

HOUSE BILL 47

Introduced by Cohen, et al.

6/21	Introduced
6/22	Referred to Taxation
6/26	Hearing
	Died in Committee



1 legislative members for the purposes of the study but not  
2 for other committee activities. They are entitled to the  
3 same mileage and per diem as legislative members.

4 (c) The committee shall report its recommendations to  
5 the 52nd legislature and may draft legislation necessary to  
6 implement the recommendations.

7 (2) The governor and the leadership of each party in  
8 the senate and in the house of representatives shall each  
9 appoint one nonlegislator to meet with the revenue oversight  
10 committee for the purposes of the study required by  
11 subsection (1). The appointees should be involved with tax,  
12 pension, and retirement issues in some manner, either as  
13 representatives of a segment of the population of retired or  
14 older persons or because of some technical, legal, or  
15 actuarial expertise.

16 (3) There is appropriated from the general fund for  
17 the period ending June 30, 1991, \$30,000 to the revenue  
18 oversight committee to conduct the study required by  
19 subsection (1).

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

21 \*15-30-111. **Adjusted gross income.** (1) Adjusted gross  
22 income shall be the taxpayer's federal income tax adjusted  
23 gross income as defined in section 62 of the Internal  
24 Revenue Code of 1954 or as that section may be labeled or  
25 amended and in addition shall include the following:

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

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

7 (c) that portion of a shareholder's income under  
8 subchapter S. of Chapter 1 of the Internal Revenue Code of  
9 1954, that has been reduced by any federal taxes paid by the  
10 subchapter S. corporation on the income; and

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

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

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

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

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

1 (i) under the Federal Employees' Retirement Act;  
 2 (ii) under the public employee retirement laws of a  
 3 Montana or any other state other than Montana; or  
 4 (iii) as an annuity, pension, or endowment under any  
 5 private or corporate retirement plan or system;  
 6 ~~{d}--all-benefits-paid-under-the--teachers--retirement~~  
 7 ~~law-which-are-specified-as-exempt-from-taxation-by-19-4-706;~~  
 8 ~~{e}--all--benefits--paid--under--The--Public-Employees--~~  
 9 ~~Retirement-System-Act-which-are--specified--as--exempt--from~~  
 10 ~~taxation-by-19-3-105;~~  
 11 ~~{f}--all--benefits--paid--under--the--highway--patrol~~  
 12 ~~retirement-law-which-are-specified-as-exempt--from--taxation~~  
 13 ~~by-19-6-705;~~  
 14 {g}{d} all Montana income tax refunds or credits  
 15 thereof;  
 16 ~~{h}--all-benefits-paid-under-19-11-602,19-11-604--and~~  
 17 ~~19-11-605---to--retired--and--disabled--firefighters,--their~~  
 18 ~~surviving-spouses-and-orphans-or-specified--as--exempt--from~~  
 19 ~~taxation-by-19-13-1003;~~  
 20 ~~{i}--all--benefits--paid--under--the--municipal--police~~  
 21 ~~officers--retirement-system-that--are--specified--as--exempt~~  
 22 ~~from-taxation-by-19-9-1005;~~  
 23 {j}{e} gain required to be recognized by a liquidating  
 24 corporation under 15-31-113(1)(a)(ii);  
 25 {k}{f} all tips covered by section 3402(k) of the

1 Internal Revenue Code of 1954, as amended and applicable on  
 2 January 1, 1983, received by persons for services rendered  
 3 by them to patrons of premises licensed to provide food,  
 4 beverage, or lodging;  
 5 {l}{g} all benefits received under the workers'  
 6 compensation laws;  
 7 {m}{h} all health insurance premiums paid by an  
 8 employer for an employee if attributed as income to the  
 9 employee under federal law; and  
 10 ~~{n}--all-benefits-paid--under--an--optional--retirement~~  
 11 ~~program--that--are--specified--as--exempt--from--taxation-by~~  
 12 ~~19-21-212,--and~~  
 13 {o}{i} all money received because of a settlement  
 14 agreement or judgment in a lawsuit brought against a  
 15 manufacturer or distributor of "agent orange" for damages  
 16 resulting from exposure to "agent orange".  
 17 (3) In the case of a shareholder of a corporation with  
 18 respect to which the election provided for under subchapter  
 19 S. of the Internal Revenue Code of 1954, as amended, is in  
 20 effect but with respect to which the election provided for  
 21 under 15-31-202, as amended, is not in effect, adjusted  
 22 gross income does not include any part of the corporation's  
 23 undistributed taxable income, net operating loss, capital  
 24 gains or other gains, profits, or losses required to be  
 25 included in the shareholder's federal income tax adjusted

1 gross income by reason of the election under subchapter S.  
2 However, the shareholder's adjusted gross income shall  
3 include actual distributions from the corporation to the  
4 extent they would be treated as taxable dividends if the  
5 subchapter S. election were not in effect.

6 (4) A shareholder of a DISC that is exempt from the  
7 corporation license tax under 15-31-102(1)(1) shall include  
8 in his adjusted gross income the earnings and profits of the  
9 DISC in the same manner as provided by federal law (section  
10 995, Internal Revenue Code) for all periods for which the  
11 DISC election is effective.

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

24 (6) Married taxpayers filing a joint federal return  
25 who must include part of their social security benefits or

1 part of their tier 1 railroad retirement benefits in federal  
2 adjusted gross income may split the federal base used in  
3 calculation of federal taxable social security benefits or  
4 federal taxable tier 1 railroad retirement benefits when  
5 they file separate Montana income tax returns. The federal  
6 base must be split equally on the Montana return.

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

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

10       **Section 4.** Section 15-30-136, MCA, is amended to read:

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

16       (a) dividends;

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

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

24       (ii) a school district; or

25       (iii) a county, municipality, district, or other

1       political subdivision of the state;

2       (c) income from partnerships and other fiduciaries;

3       (d) gross rents and royalties;

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

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

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

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

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

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

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

24       (d) charitable contributions that are deductible for  
 25 federal tax purposes according to section 642(c) of the

1 Internal Revenue Code of 1954, as amended;

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

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

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

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

17 (i) as federal employees' retirement;

18 (ii) as retirement from public employment in a Montana  
19 or any other state other than Montana; or

20 (iii) as an annuity, pension, or endowment under  
21 private or corporate retirement plans or systems;

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

25 ~~(j) all benefits paid under the Montana Public~~

1 ~~Employees' Retirement System Act that are specified as~~  
2 ~~exempt from taxation by 19-3-105;~~

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

6 ~~(l) (i) Montana income tax refunds or credits thereof;~~

7 ~~(m) all benefits paid under 19-11-602, 19-11-604, and~~  
8 ~~19-11-605 to retired and disabled firemen or their surviving~~  
9 ~~spouses or children;~~

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

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

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

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

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

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

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

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

20 **Section 5.** Section 19-3-105, MCA, is amended to read:

21 "19-3-105. Exemption from taxes and legal process. The  
22 right of a person to a retirement allowance or any other  
23 benefit under this chapter and the moneys money in the fund  
24 created under this chapter ~~is~~ are not:

25 (1) subject to execution, garnishment, attachment, or

1 any other process;

2 (2) subject to state, county, or municipal taxes  
3 except for:

4 (a) the amount received in excess of \$3,600; or

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

8 (3) assignable except as in this chapter specifically  
9 provided."

10 **Section 6.** Section 19-4-706, MCA, is amended to read:

11 "19-4-706. Exemption from taxation and legal process.

12 The pensions, annuities, or any other benefits accrued or  
13 accruing to any person under the provisions of the  
14 retirement system and the accumulated contributions and cash  
15 and securities in the various funds of the retirement system  
16 are:

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

19 (a) the amount received in excess of \$3,600; or

20 (b) a withdrawal paid under 19-4-603 of a member's  
21 contributions picked up by an employer after June 30, 1985,  
22 as provided in 19-4-602;

23 (2) not subject to execution, garnishment, attachment  
24 by trustee process or otherwise, in law or equity, or any  
25 other process; and



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

3 **Section 7.** Section 19-5-704, MCA, is amended to read:

4 "19-5-704. **Exemption from taxes and legal process.** Any  
5 money ~~(1) Money~~ received or to be paid as a member's  
6 annuity, state annuity, or return of deductions or the right  
7 of any of these ~~shall--be~~ is exempt from ~~any--state--or~~  
8 ~~municipal--tax-and-from~~ levy, sale, garnishment, attachment,  
9 or any other process ~~whatsoever~~ and ~~shall-be~~ is unassignable  
10 except as specifically provided in 19-5-705.

11 (2) The first \$3,600 received under this chapter is  
12 exempt from state, county, or municipal taxation."

13 **Section 8.** Section 19-6-705, MCA, is amended to read;

14 "19-6-705. **Exemption from taxes and legal process.** Any  
15 money received or to be paid as a member's annuity, state  
16 annuity, or return of deductions or the right of any of  
17 these is:

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

20 (a) the amount received in excess of \$3,600; or

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

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

1 (3) unassignable except as specifically provided in  
2 19-6-706."

3 **Section 9.** Section 19-7-705, MCA, is amended to read:

4 "19-7-705. **Exemption from taxes and legal process.** Any  
5 money received or to be paid as a member's annuity, state  
6 annuity, or return of deductions or the right of any of  
7 these is:

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

10 (a) the amount received in excess of \$3,600; or

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

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

16 (3) unassignable except as specifically provided in  
17 19-7-706."

18 **Section 10.** Section 19-8-805, MCA, is amended to read:

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

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

25 (a) the amount received in excess of \$3,600; or

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

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

6       (3) unassignable except as specifically provided in  
7 19-8-806."

8       **Section 11.** Section 19-9-1005, MCA, is amended to  
9 read:

10       **"19-9-1005. Exemption from taxes.** Any money paid in  
11 accordance with the provisions of this chapter is exempt  
12 from any state, county, or municipal tax except for:

13       (1) the amount received in excess of \$3,600; or

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

17       **Section 12.** Section 19-10-504, MCA, is amended to  
18 read:

19       **"19-10-504. Protection of benefits from legal process**  
20 and taxation. (1) The benefits provided for in this part are  
21 not subject to execution, garnishment, attachment, or the  
22 operation of bankruptcy, insolvency, or other process of law  
23 and are unassignable except as specifically provided in  
24 19-10-505.

25       (2) The first \$3,600 of benefits received under this

1 part are exempt from state, county, and municipal taxation."

2       **Section 13.** Section 19-11-612, MCA, is amended to  
3 read:

4       **"19-11-612. Protection of benefits from legal process**  
5 and taxation -- nonassignability. (1) Any payments made or  
6 to be made under this chapter are not subject to judgments,  
7 garnishment, execution, or other legal process. A person  
8 entitled to a pension may not assign the right, and the  
9 association and trustees may not recognize any assignment or  
10 pay over any sum so assigned.

11       (2) The first \$3,600 of benefits received under this  
12 chapter are exempt from state, county, and municipal  
13 taxation."

14       **Section 14.** Section 19-12-407, MCA, is amended to  
15 read:

16       **"19-12-407. Payment of pension benefits -- exemption**  
17 from taxation. (1) All payments under the volunteer  
18 firefighters' pension plan must be approved by the board and  
19 paid by warrants drawn upon the pension trust fund, payable  
20 to the order of the individual qualified volunteer  
21 firefighter or the beneficiary as provided in 19-12-405(1).

22       (2) The first \$3,600 of benefits received under this  
23 chapter are exempt from state, county, and municipal  
24 taxation."

25       **Section 15.** Section 19-13-1003, MCA, is amended to

1 read:

2 \*19-13-1003. Exemption from taxes. Any money paid in  
3 accordance with the provisions of this chapter is exempt  
4 from any state, county, or municipal tax except for:

5 (1) the amount received in excess of \$3,600; or

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

9 **Section 16.** Section 19-21-212, MCA, is amended to  
10 read:

11 \*19-21-212. Exemption from taxation, legal process,  
12 and assessments. All contracts, benefits, and contributions  
13 under the optional retirement program and the earnings  
14 thereon are:

15 (1) except for the amount received in excess of  
16 \$3,600, exempt from any state, county, or municipal tax;

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

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

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

23 **NEW SECTION. Section 17. Appropriation.** There is  
24 appropriated to the department of administration for the  
25 biennium ending June 30, 1991, from the general fund

1 \$2,200,000 for the purposes of paying the benefit increases  
2 granted by [section 1]. The department of administration  
3 shall distribute the appropriated money to the appropriate  
4 state and local funds paying the increased benefits. If the  
5 amount of money appropriated by this section is insufficient  
6 to fully reimburse the disbursing funds, the department  
7 shall prorate the appropriated money to those funds.

8 **NEW SECTION. Section 18.** Code commissioner  
9 instruction. [Section 1] is intended to be an integral part  
10 of the chapters listed in [section 1(3)(a) through (3)(i)],  
11 and the provisions of those chapters apply to [section 1].  
12 The code commissioner is requested to print [sections 1 and  
13 2] as temporary chapter compiler's comments with the section  
14 text in the Montana Code Annotated.

15 **NEW SECTION. Section 19.** Effective date --  
16 retroactive applicability -- termination. (1) (a) [This act]  
17 is effective on passage and approval.

18 (b) Chapter 532, Laws of 1987, and section 3, Chapter  
19 617, Laws of 1989, are effective on passage and approval of  
20 [this act].

21 (2) [This act] applies retroactively, within the  
22 meaning of 1-2-109, to taxable years beginning after and to  
23 benefits paid after December 31, 1988.

24 (3) [Sections 1 and 3 through 16] terminate December  
25 31, 1990.

-End-

-20-