

SENATE BILL 1

Introduced by Crippen

6/15	Introduced
6/19	Referred to Taxation
7/10	Hearing
	Died in Committee

1 SENATE BILL NO. 1
2 INTRODUCED BY CRIPPEN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN
5 PROVISIONS RELATING TO THE TAXATION OF THE INCOME OF
6 INDIVIDUALS AND CORPORATIONS; RESTRUCTURING THE TAX BRACKETS
7 APPLICABLE TO THE TAXATION OF THE INCOME OF INDIVIDUALS;
8 EXTENDING THE EXCLUSION OF INTEREST INCOME TO ALL
9 INDIVIDUALS; ESTABLISHING CAPITAL GAINS AND LOSSES AS A
10 SPECIFIC TYPE OF INCOME AND SUBJECTING CAPITAL GAINS AND
11 LOSSES TO TAXATION; REVISING THE STANDARD DEDUCTION
12 ALLOWABLE IN CALCULATING ADJUSTED GROSS INCOME FOR THE
13 PURPOSE OF DETERMINING INDIVIDUAL INCOME TAXES; INDEXING FOR
14 INFLATION THE AMOUNT OF RETIREMENT INCOME THAT IS EXCLUDABLE
15 FROM ADJUSTED GROSS INCOME; REVISING FOR NONRESIDENTS THE
16 FILING THRESHOLD ASSOCIATED WITH INDIVIDUAL INCOME TAXES;
17 REVISING THE EXEMPTIONS ALLOWABLE IN CALCULATING INDIVIDUAL
18 INCOME TAXES; REALLOCATING CORPORATION LICENSE TAXES
19 COLLECTED FROM BANKS AND SAVINGS AND LOAN ASSOCIATIONS;
20 AMENDING SECTIONS 15-30-103, 15-30-110 THROUGH 15-30-112,
21 15-30-122, 15-30-131, 15-30-142, 15-30-149, 15-31-304,
22 15-31-702, AND 20-9-343, MCA; AND PROVIDING AN IMMEDIATE
23 EFFECTIVE DATE AND AN APPLICABILITY DATE."

24
25 STATEMENT OF INTENT

1 A statement of intent is required for this bill because
2 15-30-110(5) requires the department of revenue to adopt
3 rules for implementing the adjustment factor for inflation
4 as it applies to the treatment of capital gains and to
5 provide forms to taxpayers for the purpose of determining
6 capital gains. It is the intent of the legislature that the
7 method for determining inflation according to department
8 rules be the same as the method described in 15-30-101(8).
9 It is also the intent of the legislature that the forms on
10 which capital gains calculations are to be made by the
11 taxpayer be designed by the department to be as simple as
12 possible.

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

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

16 "15-30-103. Rate of tax. (1) There shall be levied,
17 collected, and paid for each taxable year commencing on or
18 after December 31, 1968, upon the taxable income of every
19 taxpayer subject to this tax, after making allowance for
20 exemptions and deductions as hereinafter provided, a tax on
21 the following brackets of taxable income as adjusted under
22 subsection (2) at the following rates:

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

25 (b) on the next \$1,000 of taxable income or any part

1 ~~thereof, 3%~~
2 ~~(c) on the next \$2,000 \$4,000 of taxable income or any~~
3 ~~part thereof, 4% 3%;~~
4 ~~(d)(b) on the next \$2,000 of taxable income or any~~
5 ~~part thereof, 5%;~~
6 ~~(e) on the next \$2,000 of taxable income or any part~~
7 ~~thereof, 6%;~~
8 ~~(f) on the next \$2,000 \$6,000 of taxable income or any~~
9 ~~part thereof, 7% 6%; and~~
10 ~~(g) on the next \$4,000 of taxable income or any part~~
11 ~~thereof, 8%;~~
12 ~~(h) on the next \$6,000 of taxable income or any part~~
13 ~~thereof, 9%;~~
14 ~~(i) on the next \$15,000 of taxable income or any part~~
15 ~~thereof, 10%;~~
16 ~~(j)(c) on any taxable income in excess of \$35,000~~
17 ~~\$10,000 or any part thereof, 11% 9%.~~
18 (2) By November 1 of each year, the department shall
19 multiply the bracket amount contained in subsection (1) by
20 the inflation factor for that taxable year and round the
21 cumulative brackets to the nearest \$100. The resulting
22 adjusted brackets are effective for that taxable year and
23 shall be used as the basis for imposition of the tax in
24 subsection (1) of this section."
25 Section 2. Section 15-30-110, MCA, is amended to read:

1 "15-30-110. Exemption for Treatment of gain on sale or
2 exchange of certain capital assets -- purpose -- duty of
3 department. (1) It is the purpose of this section that true
4 gain rather than nominal gain be used to determine the tax
5 on the sale or exchange of certain capital assets.
6 (2) Notwithstanding the provisions of 15-30-111,
7 adjusted Adjusted gross income does not include 40% of
8 includes all capital gains or losses on the sale or exchange
9 of capital assets before December 31, 1986, as capital gains
10 or losses are determined under subchapter P. of Chapter 1 of
11 the Internal Revenue Code as it read on December 31, 1986,
12 and as adjusted for inflation by the department.
13 (3) The inflation factor to be used by the department
14 in adjusting capital gains or losses must be based on the
15 same methodology as the inflation factors defined in
16 15-30-101(8).
17 (4) Each year the department shall prepare and provide
18 with the income tax forms the inflation adjustment factors
19 to be used for all holding periods of capital assets.
20 (5) For a capital asset held for more than 1 year, the
21 taxpayer may adjust the cost basis of the asset by the
22 inflation adjustment factor for the appropriate holding
23 period. For cash and for an installment purchase or
24 installment sale of an asset, the department shall adopt
25 rules and provide forms for use by the taxpayer in making

1 inflation adjustments to the cost of the capital asset."

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

3 ***15-30-111. Adjusted gross income.** (1) Adjusted gross
4 income shall be the taxpayer's federal income tax adjusted
5 gross income as defined in section 62 of the Internal
6 Revenue Code of 1954 or as that section may be labeled or
7 amended and in addition shall include the following:

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

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

14 (c) that portion of a shareholder's income under
15 subchapter S. of Chapter 1 of the Internal Revenue Code of
16 1954, that has been reduced by any federal taxes paid by the
17 subchapter S. corporation on the income; and

18 (d) depreciation or amortization taken on a title
19 plant as defined in 33-25-105(15); and

20 (e) capital gains or losses, as described in
21 15-30-110.

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

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

5 (b) interest income earned by a taxpayer age 65 or
6 older in a taxable year up to and including:

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

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

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

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

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

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

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

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

25 (f) all benefits paid under the highway patrol

1 retirement law which are specified as exempt from taxation
2 by 19-6-705;

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

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

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

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

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

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

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

23 (n) all benefits paid under an optional retirement
24 program that are specified as exempt from taxation by
25 19-21-212; and

1 (o) all money received because of a settlement
2 agreement or judgment in a lawsuit brought against a
3 manufacturer or distributor of "agent orange" for damages
4 resulting from exposure to "agent orange".

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

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

25 (5) A taxpayer who, in determining federal adjusted

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

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

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

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

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

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

24 "15-30-112. Exemptions. (1) Except as provided in
 25 subsections (7) and (8), in the case of an individual, the

1 exemptions provided by subsections (2) through (6) shall be
2 allowed as deductions in computing taxable income.

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

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

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

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

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

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

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

25 (c) For purposes of this subsection (4), an individual

1 is blind only if his central visual acuity does not exceed
 2 20/200 in the better eye with correcting lenses or if his
 3 visual acuity is greater than 20/200 but is accompanied by a
 4 limitation in the fields of vision such that the widest
 5 diameter of the visual field subtends an angle no greater
 6 than 20 degrees.

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

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

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

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

19 (B) is a student.

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

25 (c) For purposes of subsection (5)(a)(ii), the term

1 "child" means an individual who is a son, stepson, daughter,
 2 or stepdaughter of the taxpayer.

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

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

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

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

22 (7) For taxable years beginning after December 31,
 23 1978, and before January 1, 1981, the amount allowed as a
 24 deduction in subsections (2) through (6) shall be adjusted
 25 as provided under section 9, Chapter 698, Laws of 1979 as

1 amended by section 4, Chapter 548, Laws of 1981.

2 (8) For taxable years beginning after December 31,
3 1980, the department, by November 1 of each year, shall
4 multiply all the exemptions provided in this section
5 unadjusted by subsection (7) by the inflation factor for
6 that taxable year and round the product to the nearest \$10.
7 The resulting adjusted exemptions are effective for that
8 taxable year and shall be used in calculating the tax
9 imposed in 15-30-103."

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

11 "15-30-122. Standard deduction. (1) In the case of a
12 resident individual, a standard deduction equal--to--20%--of
13 adjusted--gross-income-shall-be is allowed if elected by the
14 taxpayer on his return. The standard deduction shall--be is
15 in lieu of all deductions allowed under 15-30-121. The
16 maximum standard deduction shall-be--\$1,500 is \$2,000, as
17 adjusted under the provisions of subsection (2), except that
18 in the case of a single joint return of husband and wife or
19 in the case of a single individual who qualifies to file as
20 a head of household on his federal income tax return, the
21 maximum standard deduction shall-be--\$3,000 is \$4,000, as
22 adjusted under the provisions of subsection (2). The
23 standard deduction shall may not be allowed to either the
24 husband or the wife if the tax of one of the spouses is
25 determined without regard to the standard deduction. For

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

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

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

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

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

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

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

24 (4)(3) A temporary resident shall be allowed those
25 deductions and the credit under 15-32-109 allowed a resident

1 to the extent that such deductions or credit were actually
2 incurred or expended in the state of Montana during the
3 course of his residency.

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

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

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

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

1 nonresidents, not filing separate returns and having a
 2 combined gross income for the taxable year of more than
 3 \$2,000, as adjusted under the provisions of subsection (7),
 4 shall be liable for a return to be filed on such forms and
 5 according to such rules as the department may prescribe. The
 6 gross income amounts referred to in the preceding sentence
 7 shall be increased by ~~8000~~ \$1,000, as adjusted under the
 8 provisions of 15-30-112(7) and (8), for each additional
 9 personal exemption allowance the taxpayer is entitled to
 10 claim for himself and his spouse under 15-30-112(3) and (4).
 11 ~~A--nonresident--shall--be--required--to--file--a--return--if--his~~
 12 ~~gross--income--for--the--taxable--year--derived--from--sources~~
 13 ~~within--Montana--exceeds--the--amount--of--the--exemption--deduction~~
 14 ~~he--is--entitled--to--claim--for--himself--and--his--spouse--under--the~~
 15 ~~provisions--of--15-30-112(2), (3), and (4), as prorated~~
 16 ~~according--to--15-30-112(6).~~

17 (2) In accordance with instructions set forth by the
 18 department, every taxpayer who is married and living with
 19 husband or wife and is required to file a return may, at his
 20 or her option, file a joint return with husband or wife even
 21 though one of the spouses has neither gross income nor
 22 deductions. If a joint return is made, the tax shall be
 23 computed on the aggregate taxable income and the liability
 24 with respect to the tax shall be joint and several. If a
 25 joint return has been filed for a taxable year, the spouses

1 may not file separate returns after the time for filing the
 2 return of either has expired unless the department so
 3 consents.

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

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

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

24 (6) If the amount of tax as verified is greater than
 25 the amount theretofore paid, the excess shall be paid by the

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

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

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

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

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

1 against any income tax, penalty, or interest then due from
 2 the taxpayer and the balance of such excess shall be
 3 refunded to the taxpayer.

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

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

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

1 provided in this chapter.

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

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

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

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

24 (5) An overpayment not made incident to a bona fide
25 and orderly discharge of an actual income tax liability or

1 one reasonably assumed to be imposed by this law shall not
2 be considered an overpayment with respect to which interest
3 is allowable."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 "15-31-702. Distribution of corporation license taxes

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

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

7 (b) 80% 32% is statutorily appropriated, as provided
 8 in 17-7-502, for allocation to the various taxing
 9 jurisdictions within the county, other than school-related
 10 jurisdictions, in which the bank or savings and loan
 11 association is located; and

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

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

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

1 association is located.

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

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

8 "20-9-343. Definition of and revenue for state
 9 equalization aid. (1) As used in this title, the term "state
 10 equalization aid" means ~~those moneys~~ the money deposited in
 11 the state special revenue fund as required in this section
 12 plus any legislative appropriation of money from other
 13 sources for distribution to the public schools for the
 14 purpose of equalization of the foundation program.

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

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

25 (a) 31.8% of all money received from the collection of

1 income taxes under chapter 30 of Title 15;

2 (b) 25% of all money, except as provided in 15-31-702,
3 received from the collection of corporation license and
4 income taxes under chapter 31 of Title 15, as provided by
5 15-1-501;

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

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

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

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

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

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

25 **NEW SECTION. Section 12.** Extension of authority. Any

1 existing authority to make rules on the subject of the
2 provisions of [this act] is extended to the provisions of
3 [this act].

4 **NEW SECTION. Section 13.** Effective date --
5 applicability. [This act] is effective on passage and
6 approval and applies to taxable years beginning after
7 December 31, 1989, and all tax revenue recorded on or after
8 December 31, 1990, regardless of when the tax obligation
9 accrued.

-End-