

SENATE BILL 4

Introduced by Meyer

6/16	Introduced
6/19	Referred to Taxation
6/19	Hearing (A.M.)
6/19	Hearing (P.M.)
6/19	Fiscal Note Requested
6/20	Committee Report--Bill Passed as Amended
6/21	Fiscal Note Received
6/21	Taken From 2nd Reading and Rereferred to Taxation
6/22	Fiscal Note Printed Died in Committee Died in Committee

1 SENATE BILL NO. 4
2 INTRODUCTION BY MEYER
3 BY REQUEST OF THE GOVERNOR
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A UNIFORM
6 METHOD FOR THE TAXATION OF ALL TYPES OF PENSION, ANNUITY,
7 RETIREMENT, AND ENDOWMENT PLAN OR SYSTEM BENEFITS; DEFINING
8 PENSION AND ANNUITY TO INCLUDE INTEREST AND DIVIDEND INCOME
9 TAXABLE BY MONTANA THAT IS RECEIVED BY PERSONS 62 YEARS OF
10 AGE OR OLDER; EXCLUDING FROM TAXATION AN AMOUNT OF BENEFITS
11 BASED UPON THE PERCENTAGE OF YEARS IN WHICH THE EMPLOYEE
12 PAID MONTANA INCOME TAXES ON THE CONTRIBUTIONS TO THE
13 PENSION OR ANNUITY; EXEMPTING FROM TAXATION \$12,000 IN
14 BENEFITS AFTER ADJUSTMENT FOR INFLATION; AMENDING SECTIONS
15 15-30-101, 15-30-111, 15-30-136, 19-3-105, 19-4-706,
16 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1005,
17 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212,
18 MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR THIS ACT AND
19 FOR CHAPTER 532, LAWS OF 1989, AND SECTION 3, CHAPTER 617,
20 LAWS OF 1989; AND PROVIDING A RETROACTIVE APPLICABILITY
21 DATE."
22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
24 NEW SECTION. Section 1. Determination of retirement
25 benefits exempt from taxation -- limitations. (1) For the

1 purposes of 15-30-111 and 15-30-136, the amount determined
2 in subsection (1)(a) plus the amount determined in
3 subsection (1)(b), subject to the limits in subsection (2),
4 may be excluded from the amount of benefit income derived
5 from pensions and annuities as defined in 15-30-101. The
6 taxpayer is entitled to:
7 (a) the total amount of all Montana income tax
8 adjustments for pensions and annuities paying benefits to
9 the taxpayer. The tax adjustment for each pension or annuity
10 is the amount of benefits received from the pension or
11 annuity received during the year multiplied by the product
12 of 35% times a fraction with a numerator that is the number
13 of years Montana income taxes were paid on contributions the
14 employee made to the pension or annuity over a denominator
15 that is the number of years the employee made contributions
16 to the pension or annuity.
17 (b) twelve thousand dollars in benefits, adjusted by
18 the department of revenue by the inflation factor in
19 15-30-101(8), for each taxpayer regardless of the number of
20 pensions or annuities paying benefits to the taxpayer.
21 (2) The allowable exclusion amount calculated in
22 subsection (1) is subject to the following limitations:
23 (a) for taxpayers who are under 62 years of age, the
24 allowable exclusion amount is limited to the lesser of:
25 (i) the exclusion amount calculated pursuant to



1 subsection (1); or
 2 (ii) benefits received from pensions and annuities as
 3 defined in 15-30-101;
 4 (b) for taxpayers who are 62 years of age or older,
 5 the allowable exclusion amount is limited to the lesser of:
 6 (i) the exclusion amount calculated pursuant to
 7 subsection (1); or
 8 (ii) the benefits received from pensions and annuities,
 9 plus amounts from interest and dividends as provided in
 10 15-30-101(13)(d).
 11 (3) For married persons filing joint returns or
 12 married persons filing separate returns, each spouse shall
 13 calculate his own excludable pension or annuity amount.
 14 **Section 2.** Section 15-30-101, MCA, is amended to read:
 15 "15-30-101. Definitions. For the purpose of this
 16 chapter, unless otherwise required by the context, the
 17 following definitions apply:
 18 (1) "Base year structure" means the following elements
 19 of the income tax structure:
 20 (a) the tax brackets established in 15-30-103, but
 21 unadjusted by subsection (2) of 15-30-103, in effect on June
 22 30 of the taxable year;
 23 (b) the exemptions contained in 15-30-112, but
 24 unadjusted by subsections (7) and (8) of 15-30-112, in
 25 effect on June 30 of the taxable year;

1 (c) the maximum standard deduction provided in
 2 15-30-122, but unadjusted by subsection (2) of 15-30-122, in
 3 effect on June 30 of the taxable year.
 4 (2) "Consumer price index" means the consumer price
 5 index, United States city average, for all items, using the
 6 1967 base of 100 as published by the bureau of labor
 7 statistics of the U.S. department of labor.
 8 (3) "Department" means the department of revenue.
 9 (4) "Dividend" means any distribution made by a
 10 corporation out of its earnings or profits to its
 11 shareholders or members, whether in cash or in other
 12 property or in stock of the corporation, other than stock
 13 dividends as herein defined. "Stock dividends" means new
 14 stock issued, for surplus or profits capitalized, to
 15 shareholders in proportion to their previous holdings.
 16 (5) "Fiduciary" means a guardian, trustee, executor,
 17 administrator, receiver, conservator, or any person, whether
 18 individual or corporate, acting in any fiduciary capacity
 19 for any person, trust, or estate.
 20 (6) "Foreign country" or "foreign government" means
 21 any jurisdiction other than the one embraced within the
 22 United States, its territories and possessions.
 23 (7) "Gross income" means the taxpayer's gross income
 24 for federal income tax purposes as defined in section 61 of
 25 the Internal Revenue Code of 1954 or as that section may be

1 labeled or amended, excluding unemployment compensation
2 included in federal gross income under the provisions of
3 section 85 of the Internal Revenue Code of 1954 as amended.

4 (8) "Inflation factor" means a number determined for
5 each taxable year by dividing the consumer price index for
6 June of the taxable year by the consumer price index for
7 June, 1980.

8 (9) "Information agents" includes all individuals,
9 corporations, associations, and partnerships, in whatever
10 capacity acting, including lessees or mortgagors of real or
11 personal property, fiduciaries, brokers, real estate
12 brokers, employers, and all officers and employees of the
13 state or of any municipal corporation or political
14 subdivision of the state, having the control, receipt,
15 custody, disposal, or payment of interest, rent, salaries,
16 wages, premiums, annuities, compensations, remunerations,
17 emoluments, or other fixed or determinable annual or
18 periodical gains, profits, and income with respect to which
19 any person or fiduciary is taxable under this chapter.

20 (10) "Knowingly" is as defined in 45-2-101.

21 (11) "Net income" means the adjusted gross income of a
22 taxpayer less the deductions allowed by this chapter.

23 (12) "Paid", for the purposes of the deductions and
24 credits under this chapter, means paid or accrued or paid or
25 incurred, and the terms "paid or incurred" and "paid or

1 accrued" shall be construed according to the method of
2 accounting upon the basis of which the taxable income is
3 computed under this chapter.

4 (13) "Pension or annuity" means:

5 (a) retirement benefits that are periodic payments
6 attributable to personal services performed by an individual
7 prior to retirement from employment and that arise from an
8 employer-employee relationship, from service in the
9 uniformed services of the United States, or from
10 contributions to a retirement plan that are deductible for
11 federal income tax purposes;

12 (b) lump-sum distributions from pension and profit
13 sharing plans to the extent that such distributions are
14 subject to taxation by Montana;

15 (c) distributions from individual retirement, deferred
16 compensation, and self-employed retirement plans recognized
17 under the Internal Revenue Code to the extent that the
18 distributions are not considered to be premature
19 distributions for federal income tax purposes; and

20 (d) for persons 62 years of age or older:

21 (i) amounts received from fully matured, privately
22 purchased annuities; and

23 (ii) interest and dividends subject to taxation by
24 Montana.

25 ~~{13}~~ {14} "Purposely" is as defined in 45-2-101.

1 ~~(14)~~(15) "Received", for the purpose of computation of
2 taxable income under this chapter, means received or accrued
3 and the term "received or accrued" shall be construed
4 according to the method of accounting upon the basis of
5 which the taxable income is computed under this chapter.

6 ~~(15)~~(16) "Resident" applies only to natural persons and
7 includes, for the purpose of determining liability to the
8 tax imposed by this chapter with reference to the income of
9 any taxable year, any person domiciled in the state of
10 Montana and any other person who maintains a permanent place
11 of abode within the state even though temporarily absent
12 from the state and has not established a residence
13 elsewhere.

14 ~~(16)~~(17) "Taxable income" means the adjusted gross
15 income of a taxpayer less the deductions and exemptions
16 provided for in this chapter.

17 ~~(17)~~(18) "Taxable year" means the taxpayer's taxable
18 year for federal income tax purposes.

19 ~~(18)~~(19) "Taxpayer" includes any person or fiduciary,
20 resident or nonresident, subject to a tax imposed by this
21 chapter and does not include corporations."

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

23 "15-30-111. **Adjusted gross income.** (1) Adjusted gross
24 income shall be the taxpayer's federal income tax adjusted
25 gross income as defined in section 62 of the Internal

1 Revenue Code of 1954 or as that section may be labeled or
2 amended and in addition shall include the following:

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

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

9 (c) that portion of a shareholder's income under
10 subchapter S. of Chapter 1 of the Internal Revenue Code of
11 1954, that has been reduced by any federal taxes paid by the
12 subchapter S. corporation on the income; and

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

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

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

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

1 return;

2 (c) all the allowable exclusion amount of the

3 benefits, not in excess of \$3,600, received from a pension

4 or annuity, as defined in 15-30-101, determined pursuant to

5 [section 1];

6 ~~{i}--under-the-Federal-Employees'-Retirement-Act;~~

7 ~~{ii}--under-the-public-employee--retirement--laws--of--a~~

8 ~~state-other-than-Montana;-or~~

9 ~~{iii}--as--an--annuity;-pension;-or--endowment--under--any~~

10 ~~private-or-corporate-retirement-plan-or-system;~~

11 ~~{d}--all-benefits-paid-under-the--teachers'-retirement~~

12 ~~law-which-are-specified-as-exempt-from-taxation-by-19-4-706;~~

13 ~~{e}--all--benefits--paid--under--The--Public-Employees'~~

14 ~~Retirement-System-Act-which-are--specified--as--exempt--from~~

15 ~~taxation-by-19-3-105;~~

16 ~~{f}--all--benefits--paid--under--the--highway--patrol~~

17 ~~retirement-law-which-are-specified-as-exempt--from--taxation~~

18 ~~by-19-6-705;~~

19 ~~{g}{d} all Montana income tax refunds or credits~~

20 ~~thereof;~~

21 ~~{h}--all-benefits-paid-under-19-11-602;-19-11-604;-and~~

22 ~~19-11-605--to--retired--and--disabled--firefighters;-their~~

23 ~~surviving-spouses-and-orphans-or-specified--as--exempt--from~~

24 ~~taxation-by-19-13-1003;~~

25 ~~{i}--all--benefits--paid--under--the--municipal--police~~

1 ~~officers'-retirement-system-that--are--specified--as--exempt~~

2 ~~from-taxation-by-19-9-1005;~~

3 ~~{j}{e} gain required to be recognized by a liquidating~~

4 ~~corporation under 15-31-113(1)(a)(ii);~~

5 ~~{k}{f} all tips covered by section 3402(k) of the~~

6 ~~Internal Revenue Code of 1954, as amended and applicable on~~

7 ~~January 1, 1983, received by persons for services rendered~~

8 ~~by them to patrons of premises licensed to provide food,~~

9 ~~beverage, or lodging;~~

10 ~~{l}{g} all benefits received under the workers'~~

11 ~~compensation laws;~~

12 ~~{m}{h} all health insurance premiums paid by an~~

13 ~~employer for an employee if attributed as income to the~~

14 ~~employee under federal law; and~~

15 ~~{n}--all-benefits-paid--under--an--optional--retirement~~

16 ~~program--that--are--specified--as--exempt--from--taxation-by~~

17 ~~19-21-212;-and~~

18 ~~{o}{i} all money received because of a settlement~~

19 ~~agreement or judgment in a lawsuit brought against a~~

20 ~~manufacturer or distributor of "agent orange" for damages~~

21 ~~resulting from exposure to "agent orange".~~

22 (3) In the case of a shareholder of a corporation with

23 respect to which the election provided for under subchapter

24 S. of the Internal Revenue Code of 1954, as amended, is in

25 effect but with respect to which the election provided for

1 under 15-31-202, as amended, is not in effect, adjusted
2 gross income does not include any part of the corporation's
3 undistributed taxable income, net operating loss, capital
4 gains or other gains, profits, or losses required to be
5 included in the shareholder's federal income tax adjusted
6 gross income by reason of the election under subchapter S.
7 However, the shareholder's adjusted gross income shall
8 include actual distributions from the corporation to the
9 extent they would be treated as taxable dividends if the
10 subchapter S. election were not in effect.

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

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

1 corporation, the deduction must be made to determine the
2 amount of income or loss of the partnership or small
3 business corporation.

4 (6) Married taxpayers filing a joint federal return
5 who must include part of their social security benefits or
6 part of their tier 1 railroad retirement benefits in federal
7 adjusted gross income may split the federal base used in
8 calculation of federal taxable social security benefits or
9 federal taxable tier 1 railroad retirement benefits when
10 they file separate Montana income tax returns. The federal
11 base must be split equally on the Montana return.

12 (7) A taxpayer receiving retirement disability
13 benefits who has not attained age 65 by the end of the
14 taxable year and who has retired as permanently and totally
15 disabled may exclude from adjusted gross income up to \$100
16 per week received as wages or payments in lieu of wages for
17 a period during which the employee is absent from work due
18 to the disability. If the adjusted gross income before this
19 exclusion and before application of the two-earner married
20 couple deduction exceeds \$15,000, the excess reduces the
21 exclusion by an equal amount. This limitation affects the
22 amount of exclusion, but not the taxpayer's eligibility for
23 the exclusion. If eligible, married individuals shall apply
24 the exclusion separately, but the limitation for income
25 exceeding \$15,000 is determined with respect to the spouses

1 on their combined adjusted gross income. For the purpose of
2 this subsection, permanently and totally disabled means
3 unable to engage in any substantial gainful activity by
4 reason of any medically determined physical or mental
5 impairment lasting or expected to last at least 12 months.

6 ~~{0}--A---person---receiving---benefits---described---in
7 subsections--(2)(d)--through--(2)(f);--(2)(h);--or--(2)(i)--may--not
8 exclude---benefits---described--in--subsection--(2)(c)--from
9 adjusted-gross-income-unless--the--benefits--received--under
10 subsections--(2)(d)--through--(2)(f);--(2)(h);--or--(2)(i)--are
11 less-than-\$3,600;--in--which--case--the--person--may--combine
12 benefits--to--exclude--up-to-a-total-of-\$3,600--from--adjusted
13 gross--income: (Subsection (2)(k) (2)(f) terminates on
14 occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"~~

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

16 "15-30-136. Computation of income of estates or trusts
17 -- exemption. (1) Except as otherwise provided in this
18 chapter, "gross income" of estates or trusts means all
19 income from whatever source derived in the taxable year,
20 including but not limited to the following items:

- 21 (a) dividends;
- 22 (b) interest received or accrued, including interest
23 received on obligations of another state or territory or a
24 county, municipality, district, or other political
25 subdivision thereof, but excluding interest income from

1 obligations of:

- 2 (i) the United States government or the state of
3 Montana;
- 4 (ii) a school district; or
5 (iii) a county, municipality, district, or other
6 political subdivision of the state;
- 7 (c) income from partnerships and other fiduciaries;
8 (d) gross rents and royalties;
- 9 (e) gain from sale or exchange of property, including
10 those gains that are excluded from gross income for federal
11 fiduciary income tax purposes by section 641(c) of the
12 Internal Revenue Code of 1954, as amended;
- 13 (f) gross profit from trade or business; and
14 (g) refunds recovered on federal income tax, to the
15 extent the deduction of such tax resulted in a reduction of
16 Montana income tax liability.
- 17 (2) In computing net income, there are allowed as
18 deductions:
- 19 (a) interest expenses deductible for federal tax
20 purposes according to section 163 of the Internal Revenue
21 Code of 1954, as amended;
- 22 (b) taxes paid or accrued within the taxable year,
23 including but not limited to federal income tax, but
24 excluding Montana income tax;
- 25 (c) that fiduciary's portion of depreciation or

1 depletion which is deductible for federal tax purposes
2 according to sections 167, 611, and 642 of the Internal
3 Revenue Code of 1954, as amended;

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

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

12 (f) losses from fire, storm, shipwreck, or other
13 casualty or from theft, to the extent not compensated for by
14 insurance or otherwise, that are deductible for federal tax
15 purposes according to section 165 of the Internal Revenue
16 Code of 1954, as amended;

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

21 (h) all the allowable exclusion amount of the
22 benefits, not in excess of \$3,600, received from a pension
23 or annuity, as defined in 15-30-101, determined pursuant to
24 [section 1];

25 ~~{i}--as-federal-employees'-retirement;~~

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

3 ~~{iii}--as--an--annuity;-pension;-or--endowment--under~~
4 ~~private-or-corporate-retirement-plans-or-systems;~~

5 ~~{i}--all-benefits--paid--under--the--Montana--teachers'-~~
6 ~~retirement-system-that-are-specified-as-exempt-from-taxation~~
7 ~~by-19-4-706;~~

8 ~~{j}--all--benefits--paid--under--the--Montana--Public~~
9 ~~Employees'-Retirement--System--Act--that--are--specified--as~~
10 ~~exempt-from-taxation-by-19-3-105;~~

11 ~~{k}--all-benefits-paid-under-the-Montana-highway-patrol~~
12 ~~officers'-retirement--system--that--are-specified-as-exempt~~
13 ~~from-taxation-by-19-6-705;~~

14 ~~{i}{i} Montana income tax refunds or credits thereof;~~

15 ~~{m}--all-benefits-paid-under-19-11-602;-19-11-604--and~~
16 ~~19-11-605-to-retired-and-disabled-firemen-or-their-surviving~~
17 ~~spouses-or-children;~~

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

21 (3) In the case of a shareholder of a corporation with
22 respect to which the election provided for under subchapter
23 S. of the Internal Revenue Code of 1954, as amended, is in
24 effect but with respect to which the election provided for
25 under 15-31-202 is not in effect, net income does not

1 include any part of the corporation's undistributed taxable
 2 income, net operating loss, capital gains or other gains,
 3 profits, or losses required to be included in the
 4 shareholder's federal income tax net income by reason of the
 5 election under subchapter S. However, the shareholder's net
 6 income shall include actual distribution from the
 7 corporation to the extent it would be treated as taxable
 8 dividends if the subchapter S. election were not in effect.

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

11 (a) any amount of income for the taxable year
 12 currently required to be distributed to beneficiaries for
 13 such year;

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

16 (c) the amount of 60% of the excess of the net
 17 long-term capital gain over the net short-term capital loss
 18 for the taxable year.

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

21 ~~(6) A trust or estate excluding benefits under~~
 22 ~~subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not~~
 23 ~~exclude benefits described in subsection (2)(h) from net~~
 24 ~~income unless the benefits received under subsections (2)(i)~~
 25 ~~through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in~~

1 ~~which case the trust or estate may combine benefits to~~
 2 ~~exclude up to a total of \$3,600 from net income."~~

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

4 "19-3-105. Exemption from taxes and legal process. The
 5 right of a person to a retirement allowance or any other
 6 benefit under this chapter and the moneys money in the fund
 7 created under this chapter ~~is~~ are not:

8 (1) subject to execution, garnishment, attachment, or
 9 any other process;

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

12 (a) benefits paid in excess of the exclusion provided
 13 in [section 1]; or

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

17 (3) assignable except as in this chapter specifically
 18 provided."

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

20 "19-4-706. Exemption from taxation and legal process.
 21 The pensions, annuities, or any other benefits accrued or
 22 accruing to any person under the provisions of the
 23 retirement system and the accumulated contributions and cash
 24 and securities in the various funds of the retirement system
 25 are:

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

3 (a) the amount received in excess of the exclusion
4 provided in [section 1]; or

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

8 (2) not subject to execution, garnishment, attachment
9 by trustee process or otherwise, in law or equity, or any
10 other process; and

11 (3) unassignable except as specifically provided in
12 this chapter."

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

14 "19-5-704. **Exemption from taxes and legal process.** Any
15 money (1) Money received or to be paid as a member's
16 annuity, state annuity, or return of deductions or the right
17 of any of these ~~shall--be~~ is exempt from ~~any state or~~
18 ~~municipal tax and~~ from levy, sale, garnishment, attachment,
19 or any other process ~~whatsoever~~ and ~~shall-be~~ is unassignable
20 except as specifically provided in 19-5-705.

21 (2) Benefits received under this chapter are exempt
22 from state, county, or municipal taxation to the extent
23 authorized under [section 1]."

24 **Section 8.** Section 19-6-705, MCA, is amended to read:

25 "19-6-705. **Exemption from taxes and legal process.** Any

1 money received or to be paid as a member's annuity, state
2 annuity, or return of deductions or the right of any of
3 these is:

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

6 (a) the amount received in excess of the exclusion
7 provided in [section 1]; or

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

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

13 (3) unassignable except as specifically provided in
14 19-6-706."

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

16 "19-7-705. **Exemption from taxes and legal process.** Any
17 money received or to be paid as a member's annuity, state
18 annuity, or return of deductions or the right of any of
19 these is:

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

22 (a) the amount received in excess of the exclusion
23 provided in [section 1]; or

24 (b) a refund paid under 19-7-304(1) of a member's
25 contributions picked up by an employer after June 30, 1985,

1 as provided in 19-7-403;

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

4 (3) unassignable except as specifically provided in
5 19-7-706."

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

7 "19-8-805. **Exemption from taxes and legal process.** Any
8 money received or to be paid as a member's annuity, state
9 annuity, or return of deductions or the right of any of
10 these is:

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

13 (a) the amount received in excess of the exclusion
14 provided in [section 1]; or

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

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

20 (3) unassignable except as specifically provided in
21 19-8-806."

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

24 "19-9-1005. **Exemption from taxes.** Any money paid in
25 accordance with the provisions of this chapter is exempt

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

2 (1) the amount received in excess of the deduction
3 provided in [section 1]; or

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

7 **Section 12.** Section 19-10-504, MCA, is amended to
8 read:

9 "19-10-504. **Protection of benefits from legal process**
10 **and taxation.** (1) The benefits provided for in this part are
11 not subject to execution, garnishment, attachment, or the
12 operation of bankruptcy, insolvency, or other process of law
13 and are unassignable except as specifically provided in
14 19-10-505.

15 (2) Benefits received under this part are exempt from
16 state, county, or municipal taxation to the extent
17 authorized under [section 1]."

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

20 "19-11-612. **Protection of benefits from legal process**
21 **and taxation -- nonassignability.** (1) Any payments made or
22 to be made under this chapter are not subject to judgments,
23 garnishment, execution, or other legal process. A person
24 entitled to a pension may not assign the right, and the
25 association and trustees may not recognize any assignment or

1 pay over any sum so assigned.

2 (2) Benefits received under this chapter are exempt
3 from state, county, or municipal taxation to the extent
4 authorized under [section 1]."

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

7 "19-12-407. Payment of pension benefits -- exemption
8 from taxation. (1) All payments under the volunteer
9 firefighters' pension plan must be approved by the board and
10 paid by warrants drawn upon the pension trust fund, payable
11 to the order of the individual qualified volunteer
12 firefighter or the beneficiary as provided in 19-12-405(1).

13 (2) Benefits received under this chapter are exempt
14 from state, county, or municipal taxation to the extent
15 authorized under [section 1]."

16 **Section 15.** Section 19-13-1003, MCA, is amended to
17 read:

18 "19-13-1003. Exemption from taxes. Any money paid in
19 accordance with the provisions of this chapter is exempt
20 from any state, county, or municipal tax except for:

21 (1) the amount received in excess of the exclusion
22 provided in [section 1]; or

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

1 **Section 16.** Section 19-21-212, MCA, is amended to
2 read:

3 "19-21-212. Exemption from taxation, legal process,
4 and assessments. All contracts, benefits, and contributions
5 under the optional retirement program and the earnings
6 thereon are:

7 (1) to the extent authorized in [section 1], exempt
8 from any state, county, or municipal tax;

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

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

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

15 **NEW SECTION. Section 17.** Codification instruction.
16 [Section 1] is intended to be codified as an integral part
17 of Title 15, chapter 30, and the provisions of Title 15,
18 chapter 30, apply to [section 1].

19 **NEW SECTION. Section 18.** Effective dates --
20 retroactive applicability. (1) (a) [This act] is effective
21 on passage and approval.

22 (b) Chapter 532, Laws of 1989, 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

LC 0007/01

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 SB4, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a uniform method for the taxation of all types of pension, annuity, retirement, and endowment plan or system benefits; defining pension and annuity to include interest and dividend income taxable by Montana that is received by persons 62 years of age or older; excluding from taxation an amount of benefits based upon the percentage of years in which the employee paid Montana income taxes on the contributions to the pension or annuity; exempting from taxation \$12,000 in benefits after adjustment for inflation; providing an immediate effective date for this act and for Chapter 532, Laws of 1989, and Section 3, Chapter 617, Laws of 1989; and providing a retroactive applicability date.

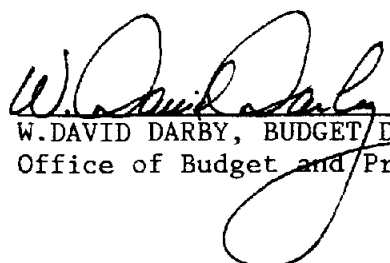
ASSUMPTIONS:


1. Individual income tax collections are projected to be \$256,617,000 in FY90, and \$274,732,000 in FY91 (HJR13).
2. The pension exclusion limitations provided for in this proposal, including the interest and dividend income of persons age 62 or older, are estimated to decrease revenues \$7.9 million annually (Department of Revenue). (Allowing persons age 62 or older to include interest and dividend income within the \$12,000 limitation is estimated to reduce revenue approximately \$4 million per year. This cost is included in the total revenue reduction shown below.)
3. This proposal applies to taxable years beginning after December 31, 1988.
4. This proposal does not provide for a repeal of the current law elderly interest exclusion, MCA 15-30-111(2)(b). Repeal of this provision of current law would reduce the revenue loss in each year by approximately \$1.5 million.
5. There is no impact on Department of Revenue administrative expenditures.
6. The Teachers' Retirement System will require additional funding for operating costs. The costs are \$10,000 in FY90 and \$2,000 in FY91.
7. The Public Employees' Retirement Division will require additional administrative expenses. The costs are \$10,000 in FY90 and \$3,000 in FY91.

FISCAL IMPACT:

Revenue Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Ind. Income Tax	\$256,617,000	\$248,717,000	\$(7,900,000)	\$274,732,000	\$266,832,000	\$(7,900,000)
<u>Fund Information:</u>						
General Fund	\$149,351,094	\$144,753,294	\$(4,597,800)	\$159,894,024	\$155,296,224	\$(4,597,800)
Foundation Program	81,604,206	79,092,006	(2,512,200)	87,364,776	84,852,576	(2,512,200)
Debt Service	25,661,700	24,871,700	(790,000)	27,473,200	26,683,200	(790,000)
Total	\$256,617,000	\$248,717,000	\$(7,900,000)	\$274,732,000	\$266,832,000	\$(7,900,000)

 DATE 6/21/89
 W.DAVID DARBY, BUDGET DIRECTOR
 Office of Budget and Program Planning

 DATE 6/21/89
 DARRYL MEYER, PRIMARY SPONSOR

Fiscal Note Request, SB4 as introduced

Form BD-15

Page 2

<u>ADDITIONAL EXPENDITURE IMPACT</u>	<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>
Teachers' Retirement System (Pension Fund Interest Earnings)						
Operating Expenses	\$ -0-	\$ 10,000	\$ 10,000	\$ -0-	\$ 2,000	\$ 2,000
Public Employees' Retirement Division (Pension Fund Interest Earnings)						
Operating Expenses	\$ -0-	\$ 10,000	\$ 10,000	\$ -0-	\$ 3,000	\$ 3,000

SB 4

APPROVED BY COMMITTEE
ON TAXATION

1 SENATE BILL NO. 4
2 INTRODUCED BY MEYER
3 BY REQUEST OF THE GOVERNOR
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A UNIFORM
6 METHOD FOR THE TAXATION OF ALL TYPES OF PENSION, ANNUITY,
7 RETIREMENT, AND ENDOWMENT PLAN OR SYSTEM BENEFITS FOR
8 PERSONS 62 YEARS OF AGE OR OLDER; DEFINING PENSION AND
9 ANNUITY TO INCLUDE INTEREST AND DIVIDEND INCOME TAXABLE BY
10 MONTANA THAT IS RECEIVED BY PERSONS 62 YEARS OF AGE OR
11 OLDER; EXCLUDING FROM TAXATION AN AMOUNT OF BENEFITS BASED
12 UPON THE PERCENTAGE OF YEARS IN WHICH THE EMPLOYEE PAID
13 MONTANA INCOME TAXES ON THE CONTRIBUTIONS TO THE PENSION OR
14 ANNUITY; EXEMPTING FROM TAXATION ~~12,000~~ \$18,000 IN BENEFITS
15 ~~AFTER ADJUSTMENT FOR INFLATION~~; AMENDING SECTIONS 15-30-101,
16 15-30-111, 15-30-136, 19-3-105, 19-4-706, 19-5-704,
17 19-6-705, 19-7-705, 19-8-805, 19-9-1005, 19-10-504,
18 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212, MCA;
19 PROVIDING AN IMMEDIATE EFFECTIVE DATE FOR THIS ACT AND FOR
20 CHAPTER 532, LAWS OF 1989, AND SECTION 3, CHAPTER 617, LAWS
21 OF 1989; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND
22 A TERMINATION DATE."
23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
25 NEW SECTION. Section 1. Determination of retirement

1 benefits exempt from taxation -- limitations. (1) For the
2 purposes of 15-30-111 and 15-30-136, the amount determined
3 in subsection (1)(a) plus the amount determined in
4 subsection (1)(b), subject to the limits in subsection (2),
5 may be excluded from the amount of benefit income derived
6 from pensions and annuities as defined in 15-30-101. The
7 taxpayer is entitled to:
8 (a) the total amount of all Montana income tax
9 adjustments for pensions and annuities paying benefits to
10 the taxpayer. The tax adjustment for each pension or annuity
11 is the amount of benefits received from the pension or
12 annuity received during the year multiplied by the product
13 of 35% times a fraction with a numerator that is the number
14 of years Montana income taxes were paid on contributions the
15 employee made to the pension or annuity over a denominator
16 that is the number of years the employee made contributions
17 to the pension or annuity.
18 (b) ~~twelve---thousand---dollars~~ \$18,000 in benefits,
19 ~~adjusted by the department of revenue by the inflation~~
20 ~~factor in 15-30-101(8)~~; for each taxpayer regardless of the
21 number of pensions or annuities paying benefits to the
22 taxpayer.
23 (2) The allowable exclusion amount calculated in
24 subsection (1) is subject LIMITED to the following
25 limitations:



1 ~~{a}--for--taxpayers--who--are--under--62--years--of--age;--the~~
 2 ~~allowable--exclusion--amount--is--limited--to--the--lesser--of:~~
 3 ~~{i}--the--exclusion--amount--calculated---pursuant---to~~
 4 ~~subsection--(i);--or~~
 5 ~~{ii}--benefits--received--from--pensions--and--annuities--as~~
 6 ~~defined--in--15-30-101;~~

7 ~~{b}--for taxpayers who are 62 years of age or older,~~
 8 the THE allowable exclusion amount is limited to the lesser
 9 of:

10 ~~{i}{A}~~ the exclusion amount calculated pursuant to
 11 subsection (1); or

12 ~~{i}{B}~~ the benefits received from pensions and
 13 annuities, plus amounts from interest and dividends as
 14 provided in 15-30-101(13)(d).

15 (3) For married persons filing joint returns or
 16 married persons filing separate returns, each spouse shall
 17 calculate his own excludable pension or annuity amount.

18 **Section 2.** Section 15-30-101, MCA, is amended to read:

19 *15-30-101. Definitions. For the purpose of this
 20 chapter, unless otherwise required by the context, the
 21 following definitions apply:

22 (1) "Base year structure" means the following elements
 23 of the income tax structure:

24 (a) the tax brackets established in 15-30-103, but
 25 unadjusted by subsection (2) of 15-30-103, in effect on June

1 30 of the taxable year;

2 (b) the exemptions contained in 15-30-112, but
 3 unadjusted by subsections (7) and (8) of 15-30-112, in
 4 effect on June 30 of the taxable year;

5 (c) the maximum standard deduction provided in
 6 15-30-122, but unadjusted by subsection (2) of 15-30-122, in
 7 effect on June 30 of the taxable year.

8 (2) "Consumer price index" means the consumer price
 9 index, United States city average, for all items, using the
 10 1967 base of 100 as published by the bureau of labor
 11 statistics of the U.S. department of labor.

12 (3) "Department" means the department of revenue.

13 (4) "Dividend" means any distribution made by a
 14 corporation out of its earnings or profits to its
 15 shareholders or members, whether in cash or in other
 16 property or in stock of the corporation, other than stock
 17 dividends as herein defined. "Stock dividends" means new
 18 stock issued, for surplus or profits capitalized, to
 19 shareholders in proportion to their previous holdings.

20 (5) "Fiduciary" means a guardian, trustee, executor,
 21 administrator, receiver, conservator, or any person, whether
 22 individual or corporate, acting in any fiduciary capacity
 23 for any person, trust, or estate.

24 (6) "Foreign country" or "foreign government" means
 25 any jurisdiction other than the one embraced within the

1 United States, its territories and possessions.

2 (7) "Gross income" means the taxpayer's gross income
3 for federal income tax purposes as defined in section 61 of
4 the Internal Revenue Code of 1954 or as that section may be
5 labeled or amended, excluding unemployment compensation
6 included in federal gross income under the provisions of
7 section 85 of the Internal Revenue Code of 1954 as amended.

8 (8) "Inflation factor" means a number determined for
9 each taxable year by dividing the consumer price index for
10 June of the taxable year by the consumer price index for
11 June, 1980.

12 (9) "Information agents" includes all individuals,
13 corporations, associations, and partnerships, in whatever
14 capacity acting, including lessees or mortgagors of real or
15 personal property, fiduciaries, brokers, real estate
16 brokers, employers, and all officers and employees of the
17 state or of any municipal corporation or political
18 subdivision of the state, having the control, receipt,
19 custody, disposal, or payment of interest, rent, salaries,
20 wages, premiums, annuities, compensations, remunerations,
21 emoluments, or other fixed or determinable annual or
22 periodical gains, profits, and income with respect to which
23 any person or fiduciary is taxable under this chapter.

24 (10) "Knowingly" is as defined in 45-2-101.

25 (11) "Net income" means the adjusted gross income of a

1 taxpayer less the deductions allowed by this chapter.

2 (12) "Paid", for the purposes of the deductions and
3 credits under this chapter, means paid or accrued or paid or
4 incurred, and the terms "paid or incurred" and "paid or
5 accrued" shall be construed according to the method of
6 accounting upon the basis of which the taxable income is
7 computed under this chapter.

8 (13) (A) EXCEPT AS PROVIDED IN SUBSECTION (13)(B),
9 "Pension PENSION or annuity" means:

10 (a)(I) retirement benefits that are periodic payments
11 attributable to personal services performed by an individual
12 prior to retirement from employment and that arise from an
13 employer-employee relationship, from service in the
14 uniformed services of the United States, or from
15 contributions to a retirement plan that are deductible for
16 federal income tax purposes;

17 (b)(II) lump-sum distributions from pension and profit
18 sharing plans to the extent that such distributions are
19 subject to taxation by Montana;

20 (c)(III) distributions from individual retirement,
21 deferred compensation, and self-employed retirement plans
22 recognized under the Internal Revenue Code to the extent
23 that the distributions are not considered to be premature
24 distributions for federal income tax purposes; and

25 (d)(IV) for persons 62 years of age or older:

1 {i}(A) amounts received from fully matured, privately
 2 purchased annuities; and

3 {ii}(B) interest and dividends subject to taxation by
 4 Montana.

5 (B) FOR THE PURPOSES OF THIS SUBSECTION (13), PENSION
 6 OR ANNUITY DOES NOT INCLUDE BENEFITS RECEIVED UNDER SOCIAL
 7 SECURITY OR RAILROAD RETIREMENT.

8 {i3}(14) "Purposely" is as defined in 45-2-101.

9 {i4}(15) "Received", for the purpose of computation of
 10 taxable income under this chapter, means received or accrued
 11 and the term "received or accrued" shall be construed
 12 according to the method of accounting upon the basis of
 13 which the taxable income is computed under this chapter.

14 {i5}(16) "Resident" applies only to natural persons and
 15 includes, for the purpose of determining liability to the
 16 tax imposed by this chapter with reference to the income of
 17 any taxable year, any person domiciled in the state of
 18 Montana and any other person who maintains a permanent place
 19 of abode within the state even though temporarily absent
 20 from the state and has not established a residence
 21 elsewhere.

22 {i6}(17) "Taxable income" means the adjusted gross
 23 income of a taxpayer less the deductions and exemptions
 24 provided for in this chapter.

25 {i7}(18) "Taxable year" means the taxpayer's taxable

1 year for federal income tax purposes.

2 {i8}(19) "Taxpayer" includes any person or fiduciary,
 3 resident or nonresident, subject to a tax imposed by this
 4 chapter and does not include corporations."

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

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

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

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

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

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

23 (2) Notwithstanding the provisions of the federal
 24 Internal Revenue Code of 1954, as labeled or amended,
 25 adjusted gross income does not include the following which

1 are exempt from taxation under this chapter:

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

6 (b) ~~interest income earned by a taxpayer age 65 or
7 older in a taxable year up to and including \$800 for a
8 taxpayer filing a separate return and \$1,600 for each joint
9 return;~~

10 (c) (B) all FOR TAXPAYERS 62 YEARS OF AGE OR OLDER, the
11 allowable exclusion amount of the benefits, not in excess of
12 \$3,600, received from a pension or annuity, as defined in
13 15-30-101, determined pursuant to [section 1];

14 ~~(i) under the Federal Employees' Retirement Act;~~

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

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

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

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

24 ~~(f) all benefits paid under the highway patrol
25 retirement law which are specified as exempt from taxation~~

1 by 19-6-705;

2 (g) ~~(d)~~ (C) all Montana income tax refunds or credits
3 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) (e)~~ (D) gain required to be recognized by a
12 liquidating corporation under 15-31-113(1)(a)(ii);

13 ~~(k) (f)~~ (E) 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) (g)~~ (F) all benefits received under the workers'
19 compensation laws;

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

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)~~(i)(H) 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 the corporation's
11 undistributed taxable income, net operating loss, capital
12 gains or other gains, profits, or losses required to be
13 included in the shareholder's federal income tax adjusted
14 gross income by reason of the election under subchapter S.
15 However, the shareholder's adjusted gross income shall
16 include actual distributions from the corporation to the
17 extent they would be treated as taxable dividends if the
18 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) (2)(f) (2)(E) terminates on
 22 occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"~~

23 **Section 4.** Section 15-30-136, MCA, is amended to read:
 24 "15-30-136. Computation of income of estates or trusts
 25 -- exemption. (1) Except as otherwise provided in this

1 chapter, "gross income" of estates or trusts means all
 2 income from whatever source derived in the taxable year,
 3 including but not limited to the following items:

- 4 (a) dividends;
- 5 (b) interest received or accrued, including interest
 6 received on obligations of another state or territory or a
 7 county, municipality, district, or other political
 8 subdivision thereof, but excluding interest income from
 9 obligations of:
- 10 (i) the United States government or the state of
 11 Montana;
- 12 (ii) a school district; or
- 13 (iii) a county, municipality, district, or other
 14 political subdivision of the state;
- 15 (c) income from partnerships and other fiduciaries;
- 16 (d) gross rents and royalties;
- 17 (e) gain from sale or exchange of property, including
 18 those gains that are excluded from gross income for federal
 19 fiduciary income tax purposes by section 641(c) of the
 20 Internal Revenue Code of 1954, as amended;
- 21 (f) gross profit from trade or business; and
- 22 (g) refunds recovered on federal income tax, to the
 23 extent the deduction of such tax resulted in a reduction of
 24 Montana income tax liability.
- 25 (2) In computing net income, there are allowed as

1 deductions:

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

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

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

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

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

20 (f) losses from fire, storm, shipwreck, or other
21 casualty or from theft, to the extent not compensated for by
22 insurance or otherwise, that are deductible for federal tax
23 purposes according to section 165 of the Internal Revenue
24 Code of 1954, as amended;

25 (g) net operating loss deductions allowed for federal

1 income tax under section 642(d) of the Internal Revenue Code
2 of 1954, as amended, except estates may not claim losses
3 that are deductible on the decedent's final return;

4 (h) all the allowable exclusion amount of the
5 benefits, not in excess of \$3,600, received from a pension
6 or annuity, as defined in 15-30-101, determined pursuant to
7 [section 1];

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

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

11 (iii) ~~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;~~

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

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

22 (i) (i) Montana income tax refunds or credits thereof;

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

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

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

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

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

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

24 (c) the amount of 60% of the excess of the net
 25 long-term capital gain over the net short-term capital loss

1 for the taxable year.

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

4 ~~{6}--A--trust--or--estate--excluding--benefits--under~~
 5 ~~subsections--(2){i}--through--(2){k},--(2){m},--or--(2){n}--may--not~~
 6 ~~exclude--benefits--described--in--subsection--(2){h}--from--net~~
 7 ~~income--unless--the--benefits--received--under--subsections--(2){i}~~
 8 ~~through--(2){k},--(2){m},--or--(2){n}--are--less--than--\$3,600,--in~~
 9 ~~which--case--the--trust--or--estate--may--combine--benefits--to~~
 10 ~~exclude--up--to--a--total--of--\$3,600--from--net--income."~~

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

12 **"19-3-105. Exemption from taxes and legal process.** The
 13 right of a person to a retirement allowance or any other
 14 benefit under this chapter and the moneys money in the fund
 15 created under this chapter ~~is~~ are not:

16 (1) subject to execution, garnishment, attachment, or
 17 any other process;

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

20 (a) benefits paid in excess of the exclusion provided
 21 in [section 1]; or

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

25 (3) assignable except as in this chapter specifically

1 provided."

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

3 "19-4-706. Exemption from taxation and legal process.

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

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

11 (a) the amount received in excess of the exclusion
12 provided in [section 1]; or

13 (b) a withdrawal paid under 19-4-603 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 7.** 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~~

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

4 (2) Benefits received under this chapter are exempt
5 from state, county, or municipal taxation to the extent
6 authorized under [section 1]."

7 **Section 8.** Section 19-6-705, MCA, is amended to read:

8 "19-6-705. Exemption from taxes and legal process. Any
9 money received or to be paid as a member's annuity, state
10 annuity, or return of deductions or the right of any of
11 these is:

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

14 (a) the amount received in excess of the exclusion
15 provided in [section 1]; or

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

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

21 (3) unassignable except as specifically provided in
22 19-6-706."

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

24 "19-7-705. Exemption from taxes and legal process. Any
25 money received or to be paid as a member's annuity, state

1 annuity, or return of deductions or the right of any of
2 these is:

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

5 (a) the amount received in excess of the exclusion
6 provided in [section 1]; or

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

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

12 (3) unassignable except as specifically provided in
13 19-7-706."

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

15 **"19-8-805. Exemption from taxes and legal process.** Any
16 money received or to be paid as a member's annuity, state
17 annuity, or return of deductions or the right of any of
18 these is:

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

21 (a) the amount received in excess of the exclusion
22 provided in [section 1]; or

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

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

3 (3) unassignable except as specifically provided in
4 19-8-806."

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

7 **"19-9-1005. Exemption from taxes.** Any money paid in
8 accordance with the provisions of this chapter is exempt
9 from any state, county, or municipal tax except for:

10 (1) the amount received in excess of the deduction
11 provided in [section 1]; or

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

15 **Section 12.** Section 19-10-504, MCA, is amended to
16 read:

17 **"19-10-504. Protection of benefits from legal process**
18 **and taxation.** (1) The benefits provided for in this part are
19 not subject to execution, garnishment, attachment, or the
20 operation of bankruptcy, insolvency, or other process of law
21 and are unassignable except as specifically provided in
22 19-10-505.

23 (2) Benefits received under this part are exempt from
24 state, county, or municipal taxation to the extent
25 authorized under [section 1]."

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

3 "19-11-612. Protection of benefits from legal process
4 and taxation -- nonassignability. (1) Any payments made or
5 to be made under this chapter are not subject to judgments,
6 garnishment, execution, or other legal process. A person
7 entitled to a pension may not assign the right, and the
8 association and trustees may not recognize any assignment or
9 pay over any sum so assigned.

10 (2) Benefits received under this chapter are exempt
11 from state, county, or municipal taxation to the extent
12 authorized under [section 1]."

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

15 "19-12-407. Payment of pension benefits -- exemption
16 from taxation. (1) All payments under the volunteer
17 firefighters' pension plan must be approved by the board and
18 paid by warrants drawn upon the pension trust fund, payable
19 to the order of the individual qualified volunteer
20 firefighter or the beneficiary as provided in 19-12-405(1).

21 (2) Benefits received under this chapter are exempt
22 from state, county, or municipal taxation to the extent
23 authorized under [section 1]."

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

1 "19-13-1003. Exemption from taxes. Any money paid in
2 accordance with the provisions of this chapter is exempt
3 from any state, county, or municipal tax except for:

4 (1) the amount received in excess of the exclusion
5 provided in [section 1]; 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) to the extent authorized in [section 1], exempt
16 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. Codification instruction.**
24 [Section 1] is intended to be codified as an integral part
25 of Title 15, chapter 30, and the provisions of Title 15,

1 chapter 30, apply to [section 1].

2 NEW SECTION. Section 18. Effective dates --
3 retroactive applicability. (1) (a) [This act] is effective
4 on passage and approval.

5 (b) Chapter 532, Laws of 1989, and section 3, Chapter
6 617, Laws of 1989, are effective on passage and approval of
7 [this act].

8 (2) [This act] applies retroactively, within the
9 meaning of 1-2-109, to taxable years beginning after
10 December 31, 1988.

11 NEW SECTION. SECTION 19. TERMINATION. [THIS ACT]

12 TERMINATES JANUARY 1, 1991.

-End-