HOUSE BILL NO. 54

INTRODUCED BY REAM, ELLIOTT

IN THE HOUSE

JULY 13, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
JULY 16, 1992	ON MOTION, ADDITIONAL SPONSOR ADDED.
	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
	PRINTING REPORT.
	SECOND READING, DO PASS AS AMENDED.
	THIRD READING, PASSED. AYES, 88; NOES, 8.
JULY 17, 1992	ENGROSSING REPORT.
	TRANSMITTED TO SENATE.

IN THE SENATE

JULY 17, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
JULY 18, 1992	SECOND READING, CONCURRED IN.
	THIRD READING, CONCURRED IN. AYES, 41; NOES, 8.
	RETURNED TO HOUSE.

IN THE HOUSE

JULY 18, 1992	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

House BILL NO. 54

INTRODUCED BY Ream

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131, 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-30-101, MCA, is amended to read:

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

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

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

(b) the exemptions contained in 15-30-112, but unadjusted by ~~subsections (7) and (8) of~~ 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in

15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

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

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

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

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

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation

included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

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

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

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

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

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of

accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

(14) "Purposely" is as defined in 45-2-101.

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

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

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

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

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

Section 2. Section 15-30-105, MCA, is amended to read:

"**15-30-105. Tax on nonresident -- alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied,

collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income ~~as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state~~. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 3. Section 15-30-112, MCA, is amended to read:

"**15-30-112. Exemptions.** (1) Except as provided in ~~subsections (7) and (8)~~ subsection (6), in the case of an individual, the exemptions provided by subsections (2) through ~~(6)~~ (5) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable

year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

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

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

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

(B) is a student.

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

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

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

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

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has

a regularly organized body of students in attendance at the place where its educational activities are carried on.

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

~~(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.~~

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

Section 4. Section 15-30-122, MCA, is amended to read:

"15-30-122. **Standard deduction.** (1) ~~In the case of a resident individual, a~~ A standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

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

Section 5. Section 15-30-131, MCA, is amended to read:

"15-30-131. Nonresident and temporary resident taxpayers -- adjusted gross income ~~---deductions~~. ~~(1)~~ In the

case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income ~~from--sources-within-this-state-but-shall-not include-income-from-annuities,-interest--on--bank--deposits, interest---on---bonds,---notes,--or--other--interest-bearing obligations,-or-dividends-on-stock-of-corporations-except-to the-extent-to-which-the-same-shall-be-a-part-of-income--from any-business,-trade,-profession,-or-occupation-carried-on-in this--state~~ as provided for in 15-30-111. ~~Interest-income from-installment-sales-of-real--or--tangible--commercial--or business--property--located--in--Montana-must-be-included-in adjusted-gross-income.-Adjusted-gross--income--from--sources within--and--without--this--state--shall--be--allocated--and apportioned-under-rules-prescribed-by-the-department.~~

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

~~(3)--In--the-case-of-a-taxpayer-other-than-a-resident-of this-state-who-is-a-resident-of-a-state-that-does-not-impose a-tax-on-the-income-of-natural-persons-residing-within--that state,--the--deductions--allowed-in-computing-net-income-are restricted-to-the-greater-of-those-directly-relating-to--the~~

~~production--of--Montana-income-or-a-prorated-amount-of-those allowed--under--15-30-121.--For---the---purposes---of---this subsection,-deductions-allowed-under-15-30-121-apply-only-to earned--income--and--must-be-prorated-according-to-the-ratio that-the-taxpayer's--Montana--earned--income--bears--to--his federal-earned-income.~~

~~(4)--A---temporary---resident--shall--be--allowed--those deductions-and-the-credit-under-15-32-109-allowed-a-resident to-the-extent-that-such-deductions-or-credit--were--actually incurred--or--expended--in--the--state-of-Montana-during-the course-of-his-residency.~~

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

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

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

Section 6. Section 15-30-132, MCA, is amended to read:

"**15-30-132. Change from nonresident to resident or vice versa.** If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return ~~covering-the-fraction-of-the-year-during-which-he-was a--resident. The--exemptions-provided-in-15-30-112-shall-be prorated-on-the-ratio--the--Montana--adjusted--gross--income bears--to--federal--adjusted-gross-income.-A-Montana-citizen moving-out-of-the-state,-abandoning--his--residence--in--the state,--and--establishing--a-residence-elsewhere-must-file-a return-on-the-fractional-basis.~~ If he a resident obtains employment outside the state ~~without-abandoning-his-Montana residence~~, then income from such employment is taxable in Montana."

Section 7. Section 15-30-136, MCA, is amended to read:

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

(a) dividends;

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

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

(ii) a school district; or

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

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

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

(f) gross profit from trade or business; and

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

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

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

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

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

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

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

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

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

(h) Montana income tax refunds or tax refund credits.

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

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

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

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

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and ~~15-30-112(8)~~ (6)."

Section 8. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $1,000, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112~~(7)-and-(8)~~ (6), for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse

under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)~~,-as-prorated-according-to-15-30-112(6)~~.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

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

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the

time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

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

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the

taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

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

<u>NEW SECTION.</u> **Section 9.** **Effective date.** [This act] is effective on passage and approval.

<u>NEW SECTION.</u> **Section 10.** **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0054, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the method of calculating the individual income taxes due from nonresident and temporary resident taxpayers; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Individual income tax revenue under current law is projected to be $336,752,000 in fiscal year 1993 (OBPP).
2. The proposed legislation applies to tax years beginning after December 31, 1991.
3. The proposed legislation will increase tax year 1992 total liabilities by $3.2 million (MDOR).
4. None of this increase in liability on part-year and nonresidents will be paid through extension filings; all of the increase will be paid within fiscal year 1993.

FISCAL IMPACT:

Revenues:

	FY1993		
	Current Law	Proposed Law	Change
Individual Income Tax	$336,752,000	$339,952,000	$3,200,000
Distribution:			
General Fund	211,480,000	213,490,000	2,010,000
School Equalization	95,974,000	96,886,000	912,000
Debt Service	29,298,000	29,576,000	278,000

Expenditures: (General Fund)

The Department of Revenue estimates additional one-time implementation operating expenses of $14,372.

Steve Yeakel 7/16/92
STEVE YEAKEL, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Bob Ream
BOB REAM, PRIMARY SPONSOR DATE
Fiscal Note for HB0054, as introduced

HB 54

APPROVED BY COMMITTEE ON TAXATION

House BILL NO. 54

INTRODUCED BY Ream

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131, 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-30-101, MCA, is amended to read:

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

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

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

(b) the exemptions contained in 15-30-112, but unadjusted by ~~subsections-(7)-and-(8)--of~~ 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in

15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

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

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

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

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

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation

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SECOND READING

included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

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

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

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

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

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of

accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

(14) "Purposely" is as defined in 45-2-101.

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

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

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

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

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

Section 2. Section 15-30-105, MCA, is amended to read:

"**15-30-105. Tax on nonresident -- alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied,

collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income ~~as-herein defined-from-all-property-owned--and--from--every--business, trade,--profession,--or-occupation-carried-on-in-this-state~~. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 3. Section 15-30-112, MCA, is amended to read:

"**15-30-112. Exemptions.** (1) Except as provided in ~~subsections-(7)-and-(8)~~ subsection (6), in the case of an individual, the exemptions provided by subsections (2) through ~~(6)~~ (5) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable

year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

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

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

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

(B) is a student.

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

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

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

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

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has

a regularly organized body of students in attendance at the place where its educational activities are carried on.

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

~~(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 540, Laws of 1981.~~

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

Section 4. Section 15-30-122, MCA, is amended to read:

"**15-30-122. Standard deduction.** (1) ~~In the case of a resident individual, a~~ A standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

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

Section 5. Section 15-30-131, MCA, is amended to read:

"15-30-131. Nonresident and temporary resident taxpayers -- adjusted gross income ~~---deductions~~. ~~(1)~~ In the

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case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income ~~from--sources-within-this-state-but-shall-not include-income-from-annuities,-interest--on--bank--deposits, interest---on---bonds,---notes,--or--other--interest-bearing obligations,-or-dividends-on-stock-of-corporations-except-to the-extent-to-which-the-same-shall-be-a-part-of-income--from any-business,-trade,-profession,-or-occupation-carried-on-in this--state~~ as provided for in 15-30-111. ~~Interest-income from-installment-sales-of-real--or--tangible--commercial--or business--property--located--in--Montana-must-be-included-in adjusted-gross-income.-Adjusted-gross--income--from--sources within--and--without--this--state--shall--be--allocated--and apportioned-under-rules-prescribed-by-the-department.~~

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

~~(3)--In--the-case-of-a-taxpayer-other-than-a-resident-of this-state-who-is-a-resident-of-a-state-that-does-not-impose a-tax-on-the-income-of-natural-persons-residing-within--that state,--the--deductions--allowed-in-computing-net-income-are restricted-to-the-greater-of-those-directly-relating-to--the~~

~~production--of--Montana-income-or-a-prorated-amount-of-those allowed--under--15-30-121.--For---the---purposes---of---this subsection,-deductions-allowed-under-15-30-121-apply-only-to earned--income--and--must-be-prorated-according-to-the-ratio that-the-taxpayer's--Montana--earned--income--bears--to--his federal-earned-income.~~

~~(4)--A---temporary---resident--shall--be--allowed--those deductions-and-the-credit-under-15-32-109-allowed-a-resident to-the-extent-that-such-deductions-or-credit--were--actually incurred--or--expended--in--the--state-of-Montana-during-the course-of-his-residency.~~

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

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

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

Section 6. Section 15-30-132, MCA, is amended to read:

"**15-30-132. Change from nonresident to resident or vice versa.** If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return ~~covering-the-fraction-of-the-year-during-which-he-was a--resident. The--exemptions-provided-in-15-30-112-shall-be prorated-on-the-ratio--the--Montana--adjusted--gross--income bears--to--federal--adjusted-gross-income.-A-Montana-citizen moving-out-of-the-state,-abandoning--his--residence--in--the state,--and--establishing--a-residence-elsewhere-must-file-a return-on-the-fractional-basis.~~ If ~~he~~ <u>a resident</u> obtains employment outside the state ~~without-abandoning-his-Montana residence,~~ then income from such employment is taxable in Montana."

Section 7. Section 15-30-136, MCA, is amended to read:

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

(a) dividends;

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

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

(ii) a school district; or

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

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

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

(f) gross profit from trade or business; and

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

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

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

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

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

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

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

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

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

(h) Montana income tax refunds or tax refund credits.

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

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

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

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

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and ~~15-30-112(8)~~(6)."

Section 8. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $1,000, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112~~(7)-and-(8)~~ (6), for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse

under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)~~,-as-prorated-according-to-15-30-112(6)~~;

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

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

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the

time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

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

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the

taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

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

NEW SECTION. **Section 9.** Effective date. [This act] is effective on passage and approval.

NEW SECTION. **Section 10.** Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991.

-End-

HOUSE BILL NO. 54

INTRODUCED BY REAM, ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131, 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-30-101, MCA, is amended to read:

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

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

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

(b) the exemptions contained in 15-30-112, but unadjusted by ~~subsections-(7)-and-(8)--of~~ 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in

15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

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

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

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

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

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation

included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

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

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

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

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

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of

accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

(14) "Purposely" is as defined in 45-2-101.

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

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

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

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

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

Section 2. Section 15-30-105, MCA, is amended to read:

"**15-30-105. Tax on nonresident -- alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied,

collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income ~~as-herein defined-from-all-property-owned--and--from--every--business, trade,--profession,--or-occupation-carried-on-in-this-state~~. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. INTEREST INCOME FROM INSTALLMENT SALES OF REAL OR TANGIBLE COMMERCIAL OR BUSINESS PROPERTY LOCATED IN MONTANA IS CONSIDERED INCOME EARNED IN MONTANA.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 3. Section 15-30-112, MCA, is amended to read:

"**15-30-112. Exemptions.** (1) Except as provided in

~~subsections (7) and (8)~~ subsection (6), in the case of an individual, the exemptions provided by subsections (2) through ~~(6)~~ (5) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be

allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

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

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

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

(B) is a student.

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

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

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

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

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution"

means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

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

~~(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.~~

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

Section 4. Section 15-30-122, MCA, is amended to read:

"**15-30-122. Standard deduction.** (1) ~~In the case of a resident individual, a~~ A standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

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

Section 5. Section 15-30-131, MCA, is amended to read:

"**15-30-131. Nonresident and temporary resident taxpayers -- adjusted gross income ~~---deductions~~.** ~~(1)~~ In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income ~~from--sources-within-this-state-but-shall-not include-income-from-annuities,-interest--on--bank--deposits, interest---on---bonds,---notes,--or--other--interest-bearing obligations,-or-dividends-on-stock-of-corporations-except-to the-extent-to-which-the-same-shall-be-a-part-of-income--from any-business,-trade,-profession,-or-occupation-carried-on-in this--state~~ as provided for in 15-30-111. ~~Interest-income from-installment-sales-of-real--or--tangible--commercial--or business--property--located--in--Montana-must-be-included-in adjusted-gross-income.-Adjusted-gross--income--from--sources within--and--without--this--state--shall--be--allocated--and apportioned-under-rules-prescribed-by-the-department.~~

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

~~(3)--In--the-case-of-a-taxpayer-other-than-a-resident-of this-state-who-is-a-resident-of-a-state-that-does-not-impose a-tax-on-the-income-of-natural-persons-residing-within--that~~

~~state,--the--deductions--allowed-in-computing-net-income-are restricted-to-the-greater-of-those-directly-relating-to--the production--of--Montana-income-or-a-prorated-amount-of-those allowed--under--15-30-121.--For---the---purposes---of---this subsection,-deductions-allowed-under-15-30-121-apply-only-to earned--income--and--must-be-prorated-according-to-the-ratio that-the-taxpayer's--Montana--earned--income--bears--to--his federal-earned-income.~~

~~(4)--A---temporary---resident--shall--be--allowed--those deductions-and-the-credit-under-15-32-109-allowed-a-resident to-the-extent-that-such-deductions-or-credit--were--actually incurred--or--expended--in--the--state-of-Montana-during-the course-of-his-residency.~~

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

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

~~(7)--For--purposes--of-this-section,-"installment-sales"~~

~~means-sales-in-which-the-buyer-agrees-to-pay-the--seller--in one-or-more-deferred-installments.~~"

Section 6. Section 15-30-132, MCA, is amended to read:

"**15-30-132. Change from nonresident to resident or vice versa.** If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return ~~covering-the-fraction-of-the-year-during-which-he-was a--resident.~~ ~~The--exemptions-provided-in-15-30-112-shall-be prorated-on-the-ratio--the--Montana--adjusted--gross--income bears--to--federal--adjusted-gross-income.-A-Montana-citizen moving-out-of-the-state,-abandoning--his--residence--in--the state,--and--establishing--a-residence-elsewhere-must-file-a return-on-the-fractional-basis.~~ If ~~he~~ a resident obtains employment outside the state ~~without-abandoning-his-Montana residence, then~~ income from such employment is taxable in Montana."

Section 7. Section 15-30-136, MCA, is amended to read:

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

(a) dividends;

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

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

(ii) a school district; or

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

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

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

(f) gross profit from trade or business; and

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

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

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

(b) taxes paid or accrued within the taxable year,

including but not limited to federal income tax, but excluding Montana income tax;

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

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

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

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

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

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions shall be

allowed in deriving taxable income of estates and trusts:

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

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

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

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and ~~15-30-112(8)~~ (6)."

Section 8. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $1,000, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112~~(7)-and-(8)~~ (6),

for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)~~,-as-prorated-according-to-15-30-112(6)~~.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

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

(4) All taxpayers, including but not limited to those

subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

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

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall

multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

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

<u>NEW SECTION.</u> **Section 9.** **Effective date.** [This act] is effective on passage and approval.

<u>NEW SECTION.</u> **Section 10.** **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991.

-End-

HOUSE BILL NO. 54

INTRODUCED BY REAM, ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131, 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-30-101, MCA, is amended to read:

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

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

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

(b) the exemptions contained in 15-30-112, but unadjusted by ~~subsections (7) and (8) of~~ 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in

15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

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

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

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

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

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation

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AS AMENDED

included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

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

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

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

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

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of

accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

(14) "Purposely" is as defined in 45-2-101.

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

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

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

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

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

Section 2. Section 15-30-105, MCA, is amended to read:

"15-30-105. **Tax on nonresident -- alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied,

collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income ~~as-herein defined-from-all-property-owned--and--from--every--business, trade,--profession,--or-occupation-carried-on-in-this-state~~. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. INTEREST INCOME FROM INSTALLMENT SALES OF REAL OR TANGIBLE COMMERCIAL OR BUSINESS PROPERTY LOCATED IN MONTANA IS CONSIDERED INCOME EARNED IN MONTANA.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 3. Section 15-30-112, MCA, is amended to read:

"15-30-112. **Exemptions.** (1) Except as provided in

~~subsections (7) and (8)~~ subsection (6), in the case of an individual, the exemptions provided by subsections (2) through ~~(6)~~ (5) shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be

allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

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

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

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

(B) is a student.

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

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

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

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

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution"

means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

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

~~(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.~~

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

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"15-30-122. **Standard deduction.** (1) ~~In the case of a resident individual, a~~ A standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

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

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"15-30-131. Nonresident and temporary resident taxpayers -- adjusted gross income ~~---deductions~~. ~~(1)~~ In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income ~~from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state~~ as provided for in 15-30-111. ~~Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in adjusted gross income. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.~~

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

~~(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that~~

~~state,--the--deductions--allowed-in-computing-net-income-are restricted-to-the-greater-of-those-directly-relating-to--the production--of--Montana-income-or-a-prorated-amount-of-those allowed--under--15-30-121.--For---the---purposes---of---this subsection,-deductions-allowed-under-15-30-121-apply-only-to earned--income--and--must-be-prorated-according-to-the-ratio that-the-taxpayer's--Montana--earned--income--bears--to--his federal-earned-income.~~

~~(4)--A---temporary---resident--shall--be--allowed--those deductions-and-the-credit-under-15-32-109-allowed-a-resident to-the-extent-that-such-deductions-or-credit--were--actually incurred--or--expended--in--the--state-of-Montana-during-the course-of-his-residency.~~

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

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

~~(7)--For--purposes--of-this-section,-"installment-sales"~~

~~means-sales-in-which-the-buyer-agrees-to-pay-the--seller--in one-or-more-deferred-installments.~~"

Section 6. Section 15-30-132, MCA, is amended to read:

"15-30-132. **Change from nonresident to resident or vice versa.** If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return ~~covering-the-fraction-of-the-year-during-which-he-was a--resident. The--exemptions-provided-in-15-30-112-shall-be prorated-on-the-ratio--the--Montana--adjusted--gross--income bears--to--federal--adjusted-gross-income.-A-Montana-citizen moving-out-of-the-state,-abandoning--his--residence--in--the state,--and--establishing--a-residence-elsewhere-must-file-a return-on-the-fractional-basis.~~ If ~~he~~ a resident obtains employment outside the state ~~without-abandoning-his-Montana residence~~, then income from such employment is taxable in Montana."

Section 7. Section 15-30-136, MCA, is amended to read:

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

(a) dividends;

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

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

(ii) a school district; or

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

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

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

(f) gross profit from trade or business; and

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

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

(b) taxes paid or accrued within the taxable year,

including but not limited to federal income tax, but excluding Montana income tax;

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

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

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

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

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

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions shall be

allowed in deriving taxable income of estates and trusts:

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

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

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

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and ~~15-30-112(8)~~ (6)."

Section 8. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax -- penalty and interest -- refunds -- credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $1,000, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112~~(7)-and-(8)~~ (6),

for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)~~, as prorated according to 15-30-112(6)~~.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

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

(4) All taxpayers, including but not limited to those

subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

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

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall

multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

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

NEW SECTION. **Section 9.** **Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 10.** **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991.

-End-