



1 House BILL NO. 54  
2 INTRODUCED BY Ream

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF  
5 CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT  
6 AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS  
7 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131,  
8 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
10 DATE."  
11

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

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

14 "15-30-101. Definitions. For the purpose of this  
15 chapter, unless otherwise required by the context, the  
16 following definitions apply:

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

19 (a) the tax brackets established in 15-30-103, but  
20 unadjusted by subsection (2) of 15-30-103, in effect on June  
21 30 of the taxable year;

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

25 (c) the maximum standard deduction provided in

1 15-30-122, but unadjusted by subsection (2) of 15-30-122, in  
2 effect on June 30 of the taxable year.

3 (2) "Consumer price index" means the consumer price  
4 index, United States city average, for all items, using the  
5 1967 base of 100 as published by the bureau of labor  
6 statistics of the U.S. department of labor.

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

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

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

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

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



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

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

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

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

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

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

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

3 (13) "Pension and annuity income" means:

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

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

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

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

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

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

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

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

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

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

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

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

23 "15-30-105. Tax on nonresident -- alternative tax based  
 24 on gross sales. (1) A like tax is imposed upon every person  
 25 not resident of this state, which tax shall be levied,

1 collected, and paid annually at the rates specified in  
 2 15-30-103 with respect to his entire net income ~~as herein~~  
 3 ~~defined from all property owned and from every business,~~  
 4 ~~trade, profession, or occupation carried on in this state.~~  
 5 After calculating the tax imposed, the tax due and payable  
 6 must be determined based upon the ratio of income earned in  
 7 Montana to total income.

8 (2) Pursuant to the provisions of Article III, section  
 9 2, of the Multistate Tax Compact, every nonresident taxpayer  
 10 required to file a return and whose only activity in Montana  
 11 consists of making sales and who does not own or rent real  
 12 estate or tangible personal property within Montana and  
 13 whose annual gross volume of sales made in Montana during  
 14 the taxable year does not exceed \$100,000 may elect to pay  
 15 an income tax of 1/2 of 1% of the dollar volume of gross  
 16 sales made in Montana during the taxable year. Such tax  
 17 shall be in lieu of the tax imposed under 15-30-103. The  
 18 gross volume of sales made in Montana during the taxable  
 19 year shall be determined according to the provisions of  
 20 Article IV, sections 16 and 17, of the Multistate Tax  
 21 Compact."

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

23 "15-30-112. Exemptions. (1) Except as provided in  
 24 ~~subsections (7) and (8)~~ subsection (6), in the case of an  
 25 individual, the exemptions provided by subsections (2)

1 through ~~(6)~~ (5) shall be allowed as deductions in computing  
2 taxable income.

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

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

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

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

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

1 year.

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

13 (c) For purposes of this subsection (4), an individual  
14 is blind only if his central visual acuity does not exceed  
15 20/200 in the better eye with correcting lenses or if his  
16 visual acuity is greater than 20/200 but is accompanied by a  
17 limitation in the fields of vision such that the widest  
18 diameter of the visual field subtends an angle no greater  
19 than 20 degrees.

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

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

1 (ii) who is a child of the taxpayer and who:  
 2 (A) has not attained the age of 19 years at the close  
 3 of the calendar year in which the taxable year of the  
 4 taxpayer begins; or  
 5 (B) is a student.  
 6 (b) No exemption shall be allowed under this subsection  
 7 for any dependent who has made a joint return with his  
 8 spouse for the taxable year beginning in the calendar year  
 9 in which the taxable year of the taxpayer begins.  
 10 (c) For purposes of subsection (5)(a)(ii), the term  
 11 "child" means an individual who is a son, stepson, daughter,  
 12 or stepdaughter of the taxpayer.  
 13 (d) For purposes of subsection (5)(a)(ii)(B), the term  
 14 "student" means an individual who, during each of 5 calendar  
 15 months during the calendar year in which the taxable year of  
 16 the taxpayer begins:  
 17 (i) is a full-time student at an educational  
 18 institution; or  
 19 (ii) is pursuing a full-time course of institutional  
 20 on-farm training under the supervision of an accredited  
 21 agent of an educational institution or of a state or  
 22 political subdivision of a state. For purposes of this  
 23 subsection (5)(d)(ii), the term "educational institution"  
 24 means only an educational institution which normally  
 25 maintains a regular faculty and curriculum and normally has

1 a regularly organized body of students in attendance at the  
 2 place where its educational activities are carried on.  
 3 ~~(6) In the case of a nonresident taxpayer, the~~  
 4 ~~exemption deduction shall be prorated according to the ratio~~  
 5 ~~the taxpayer's Montana adjusted gross income bears to his~~  
 6 ~~federal adjusted gross income.~~  
 7 ~~(7) For taxable years beginning after December 31,~~  
 8 ~~1978 and before January 1, 1981, the amount allowed as a~~  
 9 ~~deduction in subsections (2) through (6) shall be adjusted~~  
 10 ~~as provided under section 9, Chapter 698, Laws of 1979 as~~  
 11 ~~amended by section 4, Chapter 548, Laws of 1981.~~  
 12 ~~(8)(6) For taxable years beginning after December 31,~~  
 13 ~~1987, the The department, by November 1 of each year, shall~~  
 14 ~~multiply all the exemptions provided in this section~~  
 15 ~~unadjusted by subsection (7) by the inflation factor for~~  
 16 ~~that taxable year and round the product to the nearest \$10.~~  
 17 ~~The resulting adjusted exemptions are effective for that~~  
 18 ~~taxable year and shall be used in calculating the tax~~  
 19 ~~imposed in 15-30-103."~~  
 20 **Section 4.** Section 15-30-122, MCA, is amended to read:  
 21 **"15-30-122. Standard deduction.** (1) ~~in the case of a~~  
 22 ~~resident individual, a~~ A standard deduction equal to 20% of  
 23 adjusted gross income shall be allowed if elected by the  
 24 taxpayer on his return. The standard deduction shall be in  
 25 lieu of all deductions allowed under 15-30-121. The maximum

1 standard deduction shall be \$1,500, as adjusted under the  
 2 provisions of subsection (2), except that in the case of a  
 3 single joint return of husband and wife or in the case of a  
 4 single individual who qualifies to file as a head of  
 5 household on his federal income tax return, the maximum  
 6 standard deduction shall be \$3,000, as adjusted under the  
 7 provisions of subsection (2). The standard deduction shall  
 8 not be allowed to either the husband or the wife if the tax  
 9 of one of the spouses is determined without regard to the  
 10 standard deduction. For purposes of this section, the  
 11 determination of whether an individual is married shall be  
 12 made as of the last day of the taxable year; provided,  
 13 however, if one of the spouses dies during the taxable year,  
 14 the determination shall be made as of the date of death.

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

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

24 "15-30-131. Nonresident and temporary resident  
 25 taxpayers -- adjusted gross income ---deductions. (1) In the

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

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

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

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

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

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

16 (6)--Notwithstanding--the--provisions--of--subsections--(2)  
17 and--(3),--any--contribution--made--after--December--31,--1982,--to  
18 the--state--of--Montana--or--a--political--subdivision--thereof  
19 shall--be--an--allowable--deduction--in--computing--net--income. The  
20 deduction--is--subject--to--the--limitations--set--forth--in--section  
21 170--of--the--Internal--Revenue--Code--of--1954,--as--labeled--or  
22 amended;

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

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

2 "15-30-132. Change from nonresident to resident or vice  
3 versa. If a taxpayer changes his status from that of  
4 resident to that of nonresident or from that of nonresident  
5 to that of resident during the taxable year, he shall file a  
6 return covering the fraction of the year during which he was  
7 a resident. The exemptions provided in 15-30-112 shall be  
8 prorated on the ratio the Montana adjusted gross income  
9 bears to federal adjusted gross income. A Montana citizen  
10 moving out of the state, abandoning his residence in the  
11 state, and establishing a residence elsewhere must file a  
12 return on the fractional basis. If he a resident obtains  
13 employment outside the state without abandoning his Montana  
14 residence, then income from such employment is taxable in  
15 Montana."

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

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

22 (a) dividends;

23 (b) interest received or accrued, including interest  
24 received on obligations of another state or territory or a  
25 county, municipality, district, or other political



1 subdivision thereof, but excluding interest income from  
2 obligations of:

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

5 (ii) a school district; or

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

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) any amount of income for the taxable year currently

1 required to be distributed to beneficiaries for such year;  
 2 (b) any other amounts properly paid or credited or  
 3 required to be distributed for the taxable year;  
 4 (c) the amount of 60% of the excess of the net  
 5 long-term capital gain over the net short-term capital loss  
 6 for the taxable year.  
 7 (4) The exemption allowed for estates and trusts is  
 8 that exemption provided in 15-30-112(2)(a) and  
 9 ~~15-30-112(8)~~(6)."

10 **Section 8.** Section 15-30-142, MCA, is amended to read:  
 11 "15-30-142. Returns and payment of tax -- penalty and  
 12 interest -- refunds -- credits. (1) Every single individual  
 13 and every married individual not filing a joint return with  
 14 his or her spouse and having a gross income for the taxable  
 15 year of more than \$1,000, as adjusted under the provisions  
 16 of subsection (7), and married individuals not filing  
 17 separate returns and having a combined gross income for the  
 18 taxable year of more than \$2,000, as adjusted under the  
 19 provisions of subsection (7), shall be liable for a return  
 20 to be filed on s. r. forms and according to such rules as the  
 21 department may prescribe. The gross income amounts referred  
 22 to in the preceding sentence shall be increased by \$800, as  
 23 adjusted under the provisions of 15-30-112(7)~~and (8)~~ (6),  
 24 for each additional personal exemption allowance the  
 25 taxpayer is entitled to claim for himself and his spouse

1 under 15-30-112(3) and (4). A nonresident shall be required  
 2 to file a return if his gross income for the taxable year  
 3 derived from sources within Montana exceeds the amount of  
 4 the exemption deduction he is entitled to claim for himself  
 5 and his spouse under the provisions of 15-30-112(2), (3),  
 6 and (4)~~7-as-prorated-according-to-15-30-112(6)~~;  
 7 (2) In accordance with instructions set forth by the  
 8 department, every taxpayer who is married and living with  
 9 husband or wife and is required to file a return may, at his  
 10 or her option, file a joint return with husband or wife even  
 11 though one of the spouses has neither gross income nor  
 12 deductions. If a joint return is made, the tax shall be  
 13 computed on the aggregate taxable income and the liability  
 14 with respect to the tax shall be joint and several. If a  
 15 joint return has been filed for a taxable year, the spouses  
 16 may not file separate returns after the time for filing the  
 17 return of either has expired unless the department so  
 18 consents.  
 19 (3) If any such taxpayer is unable to make his own  
 20 return, the return shall be made by a duly authorized agent  
 21 or by a guardian or other person charged with the care of  
 22 the person or property of such taxpayer.  
 23 (4) All taxpayers, including but not limited to those  
 24 subject to the provisions of 15-30-202 and 15-30-241, shall  
 25 compute the amount of income tax payable and shall, at the

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

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

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

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

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

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

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

10 NEW SECTION. Section 10. Retroactive applicability.  
 11 [This act] applies retroactively, within the meaning of  
 12 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:

	<u>FY1993</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Change</u>
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.



7/16/92

STEVE YEAKEL, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning



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

HB 54

APPROVED BY COMMITTEE  
ON TAXATION

1 House BILL NO. 54  
2 INTRODUCED BY Ream

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF  
5 CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT  
6 AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS  
7 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131,  
8 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
10 DATE."

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

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

14 "15-30-101. Definitions. For the purpose of this  
15 chapter, unless otherwise required by the context, the  
16 following definitions apply:

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

19 (a) the tax brackets established in 15-30-103, but  
20 unadjusted by subsection (2) of 15-30-103, in effect on June  
21 30 of the taxable year;

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

25 (c) the maximum standard deduction provided in

1 15-30-122, but unadjusted by subsection (2) of 15-30-122, in  
2 effect on June 30 of the taxable year.

3 (2) "Consumer price index" means the consumer price  
4 index, United States city average, for all items, using the  
5 1967 base of 100 as published by the bureau of labor  
6 statistics of the U.S. department of labor.

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

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

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

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

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

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

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

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

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

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

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

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

3 (13) "Pension and annuity income" means:

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

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

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

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

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

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

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

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

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

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

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

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

23 "15-30-105. Tax on nonresident -- alternative tax based  
24 on gross sales. (1) A like tax is imposed upon every person  
25 not resident of this state, which tax shall be levied,

1 collected, and paid annually at the rates specified in  
2 15-30-103 with respect to his entire net income ~~as herein~~  
3 ~~defined from all property owned and from every business~~  
4 ~~trade, profession, or occupation carried on in this state.~~  
5 After calculating the tax imposed, the tax due and payable  
6 must be determined based upon the ratio of income earned in  
7 Montana to total income.

8 (2) Pursuant to the provisions of Article III, section  
9 2, of the Multistate Tax Compact, every nonresident taxpayer  
10 required to file a return and whose only activity in Montana  
11 consists of making sales and who does not own or rent real  
12 estate or tangible personal property within Montana and  
13 whose annual gross volume of sales made in Montana during  
14 the taxable year does not exceed \$100,000 may elect to pay  
15 an income tax of 1/2 of 1% of the dollar volume of gross  
16 sales made in Montana during the taxable year. Such tax  
17 shall be in lieu of the tax imposed under 15-30-103. The  
18 gross volume of sales made in Montana during the taxable  
19 year shall be determined according to the provisions of  
20 Article IV, sections 16 and 17, of the Multistate Tax  
21 Compact."

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

23 "15-30-112. Exemptions. (1) Except as provided in  
24 ~~subsections (7) and (8)~~ subsection (6), in the case of an  
25 individual, the exemptions provided by subsections (2)

1 through ~~(6)~~ (5) shall be allowed as deductions in computing  
2 taxable income.

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

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

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

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

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

1 year.

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

13 (c) For purposes of this subsection (4), an individual  
14 is blind only if his central visual acuity does not exceed  
15 20/200 in the better eye with correcting lenses or if his  
16 visual acuity is greater than 20/200 but is accompanied by a  
17 limitation in the fields of vision such that the widest  
18 diameter of the visual field subtends an angle no greater  
19 than 20 degrees.

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

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



1 (ii) who is a child of the taxpayer and who:  
 2 (A) has not attained the age of 19 years at the close  
 3 of the calendar year in which the taxable year of the  
 4 taxpayer begins; or  
 5 (B) is a student.  
 6 (b) No exemption shall be allowed under this subsection  
 7 for any dependent who has made a joint return with his  
 8 spouse for the taxable year beginning in the calendar year  
 9 in which the taxable year of the taxpayer begins.  
 10 (c) For purposes of subsection (5)(a)(ii), the term  
 11 "child" means an individual who is a son, stepson, daughter,  
 12 or stepdaughter of the taxpayer.  
 13 (d) For purposes of subsection (5)(a)(ii)(B), the term  
 14 "student" means an individual who, during each of 5 calendar  
 15 months during the calendar year in which the taxable year of  
 16 the taxpayer begins:  
 17 (i) is a full-time student at an educational  
 18 institution; or  
 19 (ii) is pursuing a full-time course of institutional  
 20 on-farm training under the supervision of an accredited  
 21 agent of an educational institution or of a state or  
 22 political subdivision of a state. For purposes of this  
 23 subsection (5)(d)(ii), the term "educational institution"  
 24 means only an educational institution which normally  
 25 maintains a regular faculty and curriculum and normally has

1 a regularly organized body of students in attendance at the  
 2 place where its educational activities are carried on.  
 3 ~~(6) In the case of a nonresident taxpayer, the~~  
 4 ~~exemption deduction shall be prorated according to the ratio~~  
 5 ~~the taxpayer's Montana adjusted gross income bears to his~~  
 6 ~~federal adjusted gross income.~~  
 7 ~~(7) For taxable years beginning after December 31,~~  
 8 ~~1987 and before January 1, 1988, the amount allowed as a~~  
 9 ~~deduction in subsections (2) through (6) shall be adjusted~~  
 10 ~~as provided under section 9, Chapter 698, laws of 1979 as~~  
 11 ~~amended by section 4, Chapter 548, laws of 1981.~~  
 12 ~~(8)(6) For taxable years beginning after December 31,~~  
 13 ~~1987, the~~ The department, by November 1 of each year, shall  
 14 multiply all the exemptions provided in this section  
 15 ~~unadjusted by subsection (7)~~ by the inflation factor for  
 16 that taxable year and round the product to the nearest \$10.  
 17 The resulting adjusted exemptions are effective for that  
 18 taxable year and shall be used in calculating the tax  
 19 imposed in 15-30-103."  
 20 **Section 4.** Section 15-30-122, MCA, is amended to read:  
 21 "15-30-122. Standard deduction. (1) ~~in the case of a~~  
 22 ~~resident individual, a~~ A standard deduction equal to 20% of  
 23 adjusted gross income shall be allowed if elected by the  
 24 taxpayer on his return. The standard deduction shall be in  
 25 lieu of all deductions allowed under 15-30-121. The maximum

1 standard deduction shall be \$1,500, as adjusted under the  
 2 provisions of subsection (2), except that in the case of a  
 3 single joint return of husband and wife or in the case of a  
 4 single individual who qualifies to file as a head of  
 5 household on his federal income tax return, the maximum  
 6 standard deduction shall be \$3,000, as adjusted under the  
 7 provisions of subsection (2). The standard deduction shall  
 8 not be allowed to either the husband or the wife if the tax  
 9 of one of the spouses is determined without regard to the  
 10 standard deduction. For purposes of this section, the  
 11 determination of whether an individual is married shall be  
 12 made as of the last day of the taxable year; provided,  
 13 however, if one of the spouses dies during the taxable year,  
 14 the determination shall be made as of the date of death.

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

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

24 "15-30-131. Nonresident and temporary resident  
 25 taxpayers -- adjusted gross income ---deductions. {1} In the

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

15 {2}--in--the--case--of--a--taxpayer--other--than--a--resident--of  
 16 ~~this state who is a resident of a state that imposes--a--tax~~  
 17 ~~on the income of natural persons residing within that state,~~  
 18 ~~the---deductions---allowed---in---computing---net---income---are~~  
 19 ~~restricted to those directly connected with--the--production~~  
 20 ~~of Montana income.~~

21 {3}--in--the--case--of--a--taxpayer--other--than--a--resident--of  
 22 ~~this state who is a resident of a state that does not impose~~  
 23 ~~a tax on the income of natural persons residing within--that~~  
 24 ~~state,--the--deductions--allowed--in--computing--net--income--are~~  
 25 ~~restricted to the greater of those directly relating to--the~~

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

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

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

16 (6)--Notwithstanding--the--provisions-of-subsections-(2)  
 17 and-(3),--any-contribution-made-after-December-31,--1982,--to  
 18 the--state--of--Montana--or--a-political-subdivision-thereof  
 19 shall-be-an-allowable-deduction-in-computing-net-income.--The  
 20 deduction-is-subject-to-the-limitations-set-forth-in-section  
 21 170-of-the-Internal-Revenue-Code--of--1954,--as--labeled--or  
 22 amended.

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

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

2 "15-30-132. Change from nonresident to resident or vice  
 3 versa. If a taxpayer changes his status from that of  
 4 resident to that of nonresident or from that of nonresident  
 5 to that of resident during the taxable year, he shall file a  
 6 return covering-the-fraction-of-the-year-during-which-he-was  
 7 a--resident. The--exemptions-provided-in-15-30-112-shall-be  
 8 prorated-on-the-ratio--the--Montana--adjusted--gross--income  
 9 bears--to--federal--adjusted-gross-income.--A-Montana-citizen  
 10 moving-out-of-the-state,--abandoning--his--residence--in--the  
 11 state,--and--establishing--a-residence-elsewhere--must--file--a  
 12 return-on-the-fractional-basis. If he a resident obtains  
 13 employment outside the state without-abandoning-his-Montana  
 14 residence, then income from such employment is taxable in  
 15 Montana."

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

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

22 (a) dividends;

23 (b) interest received or accrued, including interest  
 24 received on obligations of another state or territory or a  
 25 county, municipality, district, or other political

1 subdivision thereof, but excluding interest income from  
2 obligations of:

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

5 (ii) a school district; or

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

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) any amount of income for the taxable year currently

1 required to be distributed to beneficiaries for such year;

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

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

7 (4) The exemption allowed for estates and trusts is  
8 that exemption provided in 15-30-112(2)(a) and  
9 ~~15-30-112(0)(6)~~." "

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

11 "15-30-142. Returns and payment of tax -- penalty and  
12 interest -- refunds -- credits. (1) Every single individual  
13 and every married individual not filing a joint return with  
14 his or her spouse and having a gross income for the taxable  
15 year of more than \$1,000, as adjusted under the provisions  
16 of subsection (7), and married individuals not filing  
17 separate returns and having a combined gross income for the  
18 taxable year of more than \$2,000, as adjusted under the  
19 provisions of subsection (7), shall be liable for a return  
20 to be filed on such forms and according to such rules as the  
21 department may prescribe. The gross income amounts referred  
22 to in the preceding sentence shall be increased by \$800, as  
23 adjusted under the provisions of 15-30-112(7) ~~and (0)~~ (6),  
24 for each additional personal exemption allowance the  
25 taxpayer is entitled to claim for himself and his spouse

1 under 15-30-112(3) and (4). A nonresident shall be required  
2 to file a return if his gross income for the taxable year  
3 derived from sources within Montana exceeds the amount of  
4 the exemption deduction he is entitled to claim for himself  
5 and his spouse under the provisions of 15-30-112(2), (3),  
6 and (4) ~~7-as-prorated-according-to-15-30-112(6)~~:"

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

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

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

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

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

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

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

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

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

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

10 NEW SECTION. **Section 10.** Retroactive applicability.  
 11 [This act] applies retroactively, within the meaning of  
 12 1-2-109, to tax years beginning after December 31, 1991.

-End-

1 HOUSE BILL NO. 54

2 INTRODUCED BY REAM, ELLIOTT

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF  
5 CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT  
6 AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS  
7 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131,  
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9 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
10 DATE."

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

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

14 "15-30-101. Definitions. For the purpose of this  
15 chapter, unless otherwise required by the context, the  
16 following definitions apply:

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

19 (a) the tax brackets established in 15-30-103, but  
20 unadjusted by subsection (2) of 15-30-103, in effect on June  
21 30 of the taxable year;

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

25 (c) the maximum standard deduction provided in

1 15-30-122, but unadjusted by subsection (2) of 15-30-122, in  
2 effect on June 30 of the taxable year.

3 (2) "Consumer price index" means the consumer price  
4 index, United States city average, for all items, using the  
5 1967 base of 100 as published by the bureau of labor  
6 statistics of the U.S. department of labor.

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

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

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

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

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

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

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

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

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

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

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

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

3 (13) "Pension and annuity income" means:

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

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

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

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

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

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



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

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

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

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

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

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

23 "15-30-105. Tax on nonresident -- alternative tax based  
 24 on gross sales. (1) A like tax is imposed upon every person  
 25 not resident of this state, which tax shall be levied,

1 collected, and paid annually at the rates specified in  
 2 15-30-103 with respect to his entire net income as herein  
 3 ~~defined from all property owned and from every business,~~  
 4 ~~trade, profession, or occupation carried on in this state.~~  
 5 After calculating the tax imposed, the tax due and payable  
 6 must be determined based upon the ratio of income earned in  
 7 Montana to total income. INTEREST INCOME FROM INSTALLMENT  
 8 SALES OF REAL OR TANGIBLE COMMERCIAL OR BUSINESS PROPERTY  
 9 LOCATED IN MONTANA IS CONSIDERED INCOME EARNED IN MONTANA.

10 (2) Pursuant to the provisions of Article III, section  
 11 2, of the Multistate Tax Compact, every nonresident taxpayer  
 12 required to file a return and whose only activity in Montana  
 13 consists of making sales and who does not own or rent real  
 14 estate or tangible personal property within Montana and  
 15 whose annual gross volume of sales made in Montana during  
 16 the taxable year does not exceed \$100,000 may elect to pay  
 17 an income tax of 1/2 of 1% of the dollar volume of gross  
 18 sales made in Montana during the taxable year. Such tax  
 19 shall be in lieu of the tax imposed under 15-30-103. The  
 20 gross volume of sales made in Montana during the taxable  
 21 year shall be determined according to the provisions of  
 22 Article IV, sections 16 and 17, of the Multistate Tax  
 23 Compact."

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

25 "15-30-112. Exemptions. (1) Except as provided in

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

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

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

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

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

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

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

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

15 (c) For purposes of this subsection (4), an individual  
 16 is blind only if his central visual acuity does not exceed  
 17 20/200 in the better eye with correcting lenses or if his  
 18 visual acuity is greater than 20/200 but is accompanied by a  
 19 limitation in the fields of vision such that the widest  
 20 diameter of the visual field subtends an angle no greater  
 21 than 20 degrees.

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

25 (i) whose gross income for the calendar year in which

1 the taxable year of the taxpayer begins is less than \$800;  
 2 or

3 (ii) who is a child of the taxpayer and who:  
 4 (A) has not attained the age of 19 years at the close  
 5 of the calendar year in which the taxable year of the  
 6 taxpayer begins; or  
 7 (B) is a student.

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

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

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

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

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

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

5 ~~{6}--In--the--case--of--a--nonresident--taxpayer--the~~  
 6 ~~exemption--deduction--shall--be--prorated--according--to--the--ratio~~  
 7 ~~the--taxpayer's--Montana--adjusted--gross--income--bears--to--his~~  
 8 ~~federal--adjusted--gross--income.~~

9 ~~{7}--For--taxable--years--beginning--after--December--31,~~  
 10 ~~1978,--and--before--January--1,--1981,--the--amount--allowed--as--a~~  
 11 ~~deduction--in--subsections--(2)--through--(6)--shall--be--adjusted~~  
 12 ~~as--provided--under--section--9,--Chapter--698,--laws--of--1979--as~~  
 13 ~~amended--by--section--4,--Chapter--548,--laws--of--1981.~~

14 ~~{8}{6}~~ For--taxable--years--beginning--after--December--31,  
 15 1980,--the The department, by November 1 of each year, shall  
 16 multiply all the exemptions provided in this section  
 17 ~~unadjusted--by--subsection--(7)~~ by the inflation factor for  
 18 that taxable year and round the product to the nearest \$10.  
 19 The resulting adjusted exemptions are effective for that  
 20 taxable year and shall be used in calculating the tax  
 21 imposed in 15-30-103."

22 **Section 4.** Section 15-30-122, MCA, is amended to read:  
 23 "15-30-122. Standard deduction. (1) ~~in--the--case--of--a~~  
 24 ~~resident--individual,~~ a A standard deduction equal to 20% of  
 25 adjusted gross income shall be allowed if elected by the

1 taxpayer on his return. The standard deduction shall be in  
 2 lieu of all deductions allowed under 15-30-121. The maximum  
 3 standard deduction shall be \$1,500, as adjusted under the  
 4 provisions of subsection (2), except that in the case of a  
 5 single joint return of husband and wife or in the case of a  
 6 single individual who qualifies to file as a head of  
 7 household on his federal income tax return, the maximum  
 8 standard deduction shall be \$3,000, as adjusted under the  
 9 provisions of subsection (2). The standard deduction shall  
 10 not be allowed to either the husband or the wife if the tax  
 11 of one of the spouses is determined without regard to the  
 12 standard deduction. For purposes of this section, the  
 13 determination of whether an individual is married shall be  
 14 made as of the last day of the taxable year; provided,  
 15 however, if one of the spouses dies during the taxable year,  
 16 the determination shall be made as of the date of death.

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

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

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

17 {2}--In--the-case-of-a-taxpayer-other-than-a-resident-of  
 18 this-state-who-is-a-resident-of-a-state-that-imposes--a--tax  
 19 on-the-income-of-natural-persons-residing-within-that-state,  
 20 the---deductions---allowed---in---computing---net---income---are  
 21 restricted-to-those-directly-connected-with--the--production  
 22 of-Montana-income:

23 {3}--In--the-case-of-a-taxpayer-other-than-a-resident-of  
 24 this-state-who-is-a-resident-of-a-state-that-does-not-impose  
 25 a-tax-on-the-income-of-natural-persons-residing-within--that

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

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

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

18 (6)--Notwithstanding--the--provisions-of-subsections-(2)  
 19 and-(3),--any-contribution-made-after-December-31,--1982,--to  
 20 the--state--of--Montana--or--a-political-subdivision-thereof  
 21 shall-be-an-allowable-deduction-in-computing-net-income--The  
 22 deduction-is-subject-to-the-limitations-set-forth-in-section  
 23 170-of-the-Internal-Revenue-Code--of--1954,--as--labeled--or  
 24 amended.

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

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

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

4 "15-30-132. Change from nonresident to resident or vice  
 5 versa. If a taxpayer changes his status from that of  
 6 resident to that of nonresident or from that of nonresident  
 7 to that of resident during the taxable year, he shall file a  
 8 return covering the fraction of the year during which he was  
 9 a--resident. The--exemptions-provided-in-15-30-112-shall-be  
 10 prorated-on-the-ratio--the--Montana--adjusted--gross--income  
 11 bears--to--federal--adjusted-gross-income--A-Montana-citizen  
 12 moving-out-of-the-state,--abandoning--his--residence--in--the  
 13 state,--and--establishing--a-residence-elsewhere--must-file-a  
 14 return-on-the-fractional-basis. If he a resident obtains  
 15 employment outside the state without abandoning his Montana  
 16 residence, then income from such employment is taxable in  
 17 Montana."

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

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

- 24 (a) dividends;
- 25 (b) interest received or accrued, including interest

1 received on obligations of another state or territory or a  
 2 county, municipality, district, or other political  
 3 subdivision thereof, but excluding interest income from  
 4 obligations of:

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

7 (ii) a school district; or

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

10 (c) income from partnerships and other fiduciaries;

11 (d) gross rents and royalties;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) The following additional deductions shall be

1 allowed in deriving taxable income of estates and trusts:

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

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

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

9 (4) The exemption allowed for estates and trusts is  
10 that exemption provided in 15-30-112(2)(a) and  
11 ~~15-30-112(8)~~ (6)."

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

13 "15-30-142. Returns and payment of tax -- penalty and  
14 interest -- refunds -- credits. (1) Every single individual  
15 and every married individual not filing a joint return with  
16 his or her spouse and having a gross income for the taxable  
17 year of more than \$1,000, as adjusted under the provisions  
18 of subsection (7), and married individuals not filing  
19 separate returns and having a combined gross income for the  
20 taxable year of more than \$2,000, as adjusted under the  
21 provisions of subsection (7), shall be liable for a return  
22 to be filed on such forms and according to such rules as the  
23 department may prescribe. The gross income amounts referred  
24 to in the preceding sentence shall be increased by \$800, as  
25 adjusted under the provisions of 15-30-112(7) ~~and (8)~~ (6),

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

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

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

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

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

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

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

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

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

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

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

12 NEW SECTION. **Section 10.** Retroactive applicability.  
 13 [This act] applies retroactively, within the meaning of  
 14 1-2-109, to tax years beginning after December 31, 1991.

-End-



1 HOUSE BILL NO. 54  
2 INTRODUCED BY REAM, ELLIOTT  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE METHOD OF  
5 CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT  
6 AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS  
7 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131,  
8 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN  
9 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY  
10 DATE."  
11

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

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

14 "15-30-101. Definitions. For the purpose of this  
15 chapter, unless otherwise required by the context, the  
16 following definitions apply:

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

19 (a) the tax brackets established in 15-30-103, but  
20 unadjusted by subsection (2) of 15-30-103, in effect on June  
21 30 of the taxable year;

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

25 (c) the maximum standard deduction provided in

1 15-30-122, but unadjusted by subsection (2) of 15-30-122, in  
2 effect on June 30 of the taxable year.

3 (2) "Consumer price index" means the consumer price  
4 index, United States city average, for all items, using the  
5 1967 base of 100 as published by the bureau of labor  
6 statistics of the U.S. department of labor.

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

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

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

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

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

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

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

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

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

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

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

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

3 (13) "Pension and annuity income" means:

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

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

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

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

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

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

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

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

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

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

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

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

23 "15-30-105. Tax on nonresident -- alternative tax based  
24 on gross sales. (1) A like tax is imposed upon every person  
25 not resident of this state, which tax shall be levied,

1 collected, and paid annually at the rates specified in  
2 15-30-103 with respect to his entire net income as herein  
3 ~~defined from all property owned and from every business,~~  
4 ~~trade, profession, or occupation carried on in this state.~~  
5 After calculating the tax imposed, the tax due and payable  
6 must be determined based upon the ratio of income earned in  
7 Montana to total income. INTEREST INCOME FROM INSTALLMENT  
8 SALES OF REAL OR TANGIBLE COMMERCIAL OR BUSINESS PROPERTY  
9 LOCATED IN MONTANA IS CONSIDERED INCOME EARNED IN MONTANA.

10 (2) Pursuant to the provisions of Article III, section  
11 2, of the Multistate Tax Compact, every nonresident taxpayer  
12 required to file a return and whose only activity in Montana  
13 consists of making sales and who does not own or rent real  
14 estate or tangible personal property within Montana and  
15 whose annual gross volume of sales made in Montana during  
16 the taxable year does not exceed \$100,000 may elect to pay  
17 an income tax of 1/2 of 1% of the dollar volume of gross  
18 sales made in Montana during the taxable year. Such tax  
19 shall be in lieu of the tax imposed under 15-30-103. The  
20 gross volume of sales made in Montana during the taxable  
21 year shall be determined according to the provisions of  
22 Article IV, sections 16 and 17, of the Multistate Tax  
23 Compact."

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

25 "15-30-112. Exemptions. (1) Except as provided in

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

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

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

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

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

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

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

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

15 (c) For purposes of this subsection (4), an individual  
 16 is blind only if his central visual acuity does not exceed  
 17 20/200 in the better eye with correcting lenses or if his  
 18 visual acuity is greater than 20/200 but is accompanied by a  
 19 limitation in the fields of vision such that the widest  
 20 diameter of the visual field subtends an angle no greater  
 21 than 20 degrees.

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

25 (i) whose gross income for the calendar year in which

1 the taxable year of the taxpayer begins is less than \$800;  
 2 or

3 (ii) who is a child of the taxpayer and who:  
 4 (A) has not attained the age of 19 years at the close  
 5 of the calendar year in which the taxable year of the  
 6 taxpayer begins; or

7 (B) is a student.

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

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

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

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

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

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

5 ~~{6}--In--the--case--of--a--nonresident--taxpayer--the~~  
 6 ~~exemption--deduction--shall--be--prorated--according--to--the--ratio~~  
 7 ~~the--taxpayer's--Montana--adjusted--gross--income--bears--to--his~~  
 8 ~~federal--adjusted--gross--income--~~

9 ~~{7}--For--taxable--years--beginning--after--December--31--~~  
 10 ~~1978--and--before--January--1--1981--the--amount--allowed--as--a~~  
 11 ~~deduction--in--subsections--(2)--through--(6)--shall--be--adjusted~~  
 12 ~~as--provided--under--section--9--Chapter--698--laws--of--1979--as~~  
 13 ~~amended--by--section--4--Chapter--548--laws--of--1981--~~

14 ~~{8}{6}~~ For--taxable--years--beginning--after--December--31--  
 15 1980--the The department, by November 1 of each year, shall  
 16 multiply all the exemptions provided in this section  
 17 unadjusted--by--subsection--(7) by the inflation factor for  
 18 that taxable year and round the product to the nearest \$10.  
 19 The resulting adjusted exemptions are effective for that  
 20 taxable year and shall be used in calculating the tax  
 21 imposed in 15-30-103."

22 **Section 4.** Section 15-30-122, MCA, is amended to read:  
 23 "15-30-122. Standard deduction. (1) ~~in--the--case--of--a~~  
 24 ~~resident--individual--a~~ A standard deduction equal to 20% of  
 25 adjusted gross income shall be allowed if elected by the

1 taxpayer on his return. The standard deduction shall be in  
 2 lieu of all deductions allowed under 15-30-121. The maximum  
 3 standard deduction shall be \$1,500, as adjusted under the  
 4 provisions of subsection (2), except that in the case of a  
 5 single joint return of husband and wife or in the case of a  
 6 single individual who qualifies to file as a head of  
 7 household on his federal income tax return, the maximum  
 8 standard deduction shall be \$3,000, as adjusted under the  
 9 provisions of subsection (2). The standard deduction shall  
 10 not be allowed to either the husband or the wife if the tax  
 11 of one of the spouses is determined without regard to the  
 12 standard deduction. For purposes of this section, the  
 13 determination of whether an individual is married shall be  
 14 made as of the last day of the taxable year; provided,  
 15 however, if one of the spouses dies during the taxable year,  
 16 the determination shall be made as of the date of death.

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

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

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

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

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

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

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

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

18 (6) Notwithstanding the provisions of subsections (2)  
 19 and (3), any contribution made after December 31, 1987, to  
 20 the state of Montana or a political subdivision thereof  
 21 shall be an allowable deduction in computing net income. The  
 22 deduction is subject to the limitations set forth in section  
 23 170 of the Internal Revenue Code of 1954, as labeled or  
 24 amended.

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

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

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

4 "15-30-132. Change from nonresident to resident or vice  
 5 versa. If a taxpayer changes his status from that of  
 6 resident to that of nonresident or from that of nonresident  
 7 to that of resident during the taxable year, he shall file a  
 8 return covering the fraction of the year during which he was  
 9 a resident. The exemptions provided in 15-30-112 shall be  
 10 prorated on the ratio the Montana adjusted gross income  
 11 bears to federal adjusted gross income. A Montana citizen  
 12 moving out of the state, abandoning his residence in the  
 13 state, and establishing a residence elsewhere must file a  
 14 return on the fractional basis. If he a resident obtains  
 15 employment outside the state without abandoning his Montana  
 16 residence, then income from such employment is taxable in  
 17 Montana."

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

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

- 24 (a) dividends;  
 25 (b) interest received or accrued, including interest

1 received on obligations of another state or territory or a  
2 county, municipality, district, or other political  
3 subdivision thereof, but excluding interest income from  
4 obligations of:

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

7 (ii) a school district; or

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

10 (c) income from partnerships and other fiduciaries;

11 (d) gross rents and royalties;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) The following additional deductions shall be



1 allowed in deriving taxable income of estates and trusts:

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

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

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

9 (4) The exemption allowed for estates and trusts is  
10 that exemption provided in 15-30-112(2)(a) and  
11 ~~15-30-112(8)(6)~~." (6)."

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

13 "15-30-142. Returns and payment of tax -- penalty and  
14 interest -- refunds -- credits. (1) Every single individual  
15 and every married individual not filing a joint return with  
16 his or her spouse and having a gross income for the taxable  
17 year of more than \$1,000, as adjusted under the provisions  
18 of subsection (7), and married individuals not filing  
19 separate returns and having a combined gross income for the  
20 taxable year of more than \$2,000, as adjusted under the  
21 provisions of subsection (7), shall be liable for a return  
22 to be filed on such forms and according to such rules as the  
23 department may prescribe. The gross income amounts referred  
24 to in the preceding sentence shall be increased by \$800, as  
25 adjusted under the provisions of 15-30-112(7) ~~and (8)~~ (6),

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

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

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

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

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

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

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

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

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

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

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

12 NEW SECTION. Section 10. Retroactive applicability.  
 13 [This act] applies retroactively, within the meaning of  
 14 1-2-109, to tax years beginning after December 31, 1991.

-End-