

HOUSE BILL 63

Introduced by Wallin

7/15	Introduced
7/15	Referred to Taxation
7/15	Fiscal Note Requested
7/15	First Reading
7/16	Hearing
	Died in Committee

1 House BILL NO. 63
2 INTRODUCED BY W. H. ...
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A 2 PERCENT
5 SALES TAX AND USE TAX ON THE RETAIL SALE OF PROPERTY AND
6 SERVICES; PROVIDING CERTAIN EXEMPTIONS, INCLUDING EXEMPTIONS
7 FOR PRESCRIPTION DRUGS, HEALTH CARE, AND GOODS OTHERWISE
8 TAXED; PROVIDING FOR THE ADMINISTRATION OF THE SALES TAX AND
9 USE TAX; PROVIDING PENALTIES; PROVIDING THAT THE PROCEEDS OF
10 THE SALES TAX AND USE TAX ARE DEPOSITED IN THE GENERAL FUND;
11 INCREASING THE NEW AUTOMOBILE SALES TAX TO 2 PERCENT AND
12 IMPOSING A 2 PERCENT SALES TAX ON USED AUTOMOBILES, WITH THE
13 INCREASED REVENUE TO BE DEPOSITED IN THE STATE HIGHWAY
14 ACCOUNT; AMENDING SECTIONS 61-3-502 AND 61-4-112, MCA;
15 PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY
16 DATE, AND A TERMINATION DATE."
17

18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because
20 the department of revenue is granted authority to adopt
21 rules for the administration and enforcement of the sales
22 tax and use tax. The rules are intended to provide for an
23 efficient process for the collection of the taxes, with
24 minimum expense to both the taxpayer and the state.

25 The legislature contemplates that rules adopted by the

1 department should, at a minimum, address the following:
2 (1) the registration and issuance of permits to persons
3 engaging in the business of retail sales and services;
4 (2) the reporting form for the payment of the taxes,
5 along with the requirements for the retention by the
6 taxpayers of the necessary records;
7 (3) the required security and the acceptable forms of
8 security for those taxpayers required to give security for
9 payment of the taxes;
10 (4) the use of the nontaxable transaction certificate
11 and clarification of any exemption from or deduction of the
12 taxes;
13 (5) the necessary forms and the required procedures for
14 reporting the taxes; and
15 (6) the definition of terms and establishment of
16 procedures as appropriate for efficient administration of
17 the sales tax and use tax.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. **Section 1. Definitions.** For purposes of
21 [sections 1 through 61], unless the context requires
22 otherwise, the following definitions apply:

23 (1) "Buying", "selling", "buy", "sell", or "sale" means
24 the transfer of property for consideration or the
25 performance of a service for consideration.

1 (2) "Construction" means:

2 (a) the building, altering, repairing, or demolishing

3 in the ordinary course of business of any:

4 (i) road, highway, bridge, parking area, or related

5 project;

6 (ii) building, stadium, or other structure;

7 (iii) airport, subway, or similar facility;

8 (iv) park, trail, athletic field, golf course, or

9 similar facility;

10 (v) dam, reservoir, canal, ditch, or similar facility;

11 (vi) sewage or water treatment facility, power

12 generating plant, pump station, natural gas compressing

13 station, gas processing plant, coal gasification plant,

14 refinery, distillery, or similar facility;

15 (vii) sewage, water, gas, or other pipeline;

16 (viii) transmission line;

17 (ix) radio, television, or other tower;

18 (x) water, oil, or other storage tank;

19 (xi) shaft, tunnel, or other mining appurtenance; or

20 (xii) microwave station or similar facility;

21 (b) the leveling or clearing of land;

22 (c) the excavating of earth;

23 (d) the drilling of wells of any type, including

24 seismograph shot holes or core drilling; or

25 (e) any similar work.

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

2 (4) "Engaging in business" means carrying on or causing

3 to be carried on any activity with the purpose of direct or

4 indirect benefit.

5 (5) (a) "Gross receipts", in addition to the other

6 meanings provided in this subsection (5), means the total

7 amount of money or the value of other consideration received

8 from selling property in Montana, from leasing property used

9 in Montana, or from performing services in Montana. The term

10 includes all receipts from the sale of tangible personal

11 property handled on consignment but excludes cash discounts

12 allowed and taken and any type of time-price differential.

13 (b) In an exchange in which the money or other

14 consideration received does not represent the value of the

15 property or service exchanged, gross receipts means the

16 reasonable value of the property or service exchanged.

17 (c) (i) Except as provided in [section 45], when the

18 sale of property or services is made under any type of

19 charge or conditional or time-sales contract or the leasing

20 of property is made under a leasing contract, the seller or

21 lessor shall treat all receipts, excluding any type of

22 time-price differential, under the contract as gross

23 receipts at the time of the sale.

24 (ii) If the seller or lessor transfers an interest in

25 any such contract to a third person, the seller or lessor

1 shall pay the sales tax or use tax upon the full sale or
2 leasing contract amount, excluding any type of time-price
3 differential.

4 (d) Gross receipts includes the total commissions or
5 fees derived from the business of buying, selling, or
6 promoting the purchase, sale, or leasing, as an agent or
7 broker on a commission or fee basis, of any property,
8 service, stock, bond, or security.

9 (e) Gross receipts includes all amounts paid by members
10 of a cooperative association or similar organization for
11 sales or leases of personal property or performance of
12 services by the organization.

13 (6) "Lease" or "leasing" means an arrangement in which,
14 for consideration, property is used for or by a person other
15 than the owner of the property.

16 (7) "Manufacturing" means combining or processing
17 components or materials, including the processing for ores
18 in a mill, smelter, refinery, or reduction facility, to
19 increase their value for sale in the ordinary course of
20 business. The term does not include construction.

21 (8) "Medical services" means a service:

22 (a) performed by a person licensed to practice a health
23 care profession or health care occupation licensed under
24 Title 37 or licensed as a mental health professional or
25 certified under Title 53, chapter 24, as a chemical

1 dependency counselor as a regular part of business
2 activities; and

3 (b) applied externally or internally to the human body
4 or mind for the diagnosis, cure, mitigation, treatment, or
5 prevention of disease.

6 (9) "Medicine" or "drug" means any substance or
7 preparation that is:

8 (a) intended for use by external or internal
9 application to the human body or mind in the diagnosis,
10 cure, mitigation, treatment, or prevention of disease; and

11 (b) required by law or regulation to be prescribed by a
12 person licensed to prescribe such medicine or drug.

13 (10) "Permit" means a seller's permit as described in
14 [section 36].

15 (11) "Person" means:

16 (a) an individual, estate, trust, receiver, cooperative
17 association, club, corporation, company, firm, partnership,
18 joint venture, syndicate, or other entity, including any
19 gas, water, or electric utility owned or operated by a
20 county, municipality, or other political subdivision of the
21 state; or

22 (b) the United States or any agency or instrumentality
23 of the United States or the state of Montana or any
24 political subdivision of the state.

25 (12) "Sales tax" or "use tax" means the applicable tax

1 imposed by [section 2].

2 (13) (a) "Service" means an activity that is engaged in
3 for another person for consideration and that is
4 distinguished from the sale or lease of property. The term
5 includes:

6 (i) activities performed by a person for its members or
7 shareholders; and

8 (ii) construction activities and all tangible personal
9 property that will become an ingredient or component part of
10 a construction project.

11 (b) In determining what a service is, the intended use,
12 principal objective, or ultimate objective of the
13 contracting parties is irrelevant.

14 (14) "Therapeutic and prosthetic devices" includes but
15 is not limited to prescription eyeglasses, contact lenses,
16 dentures, or artificial limbs, prescribed or ordered by a
17 person licensed to perform medical services.

18 (15) "Use" or "using" includes use, consumption, or
19 storage, other than storage for resale or for use solely
20 outside this state, in the ordinary course of business.

21 NEW SECTION. **Section 2.** Imposition and rate of sales
22 tax and use tax. (1) A sales tax of 2% is imposed on all
23 gross receipts, as defined in [section 1], for the privilege
24 of engaging in business in this state.

25 (2) For the privilege of using property in this state,

1 there is imposed on the person using the property a use tax
2 equal to 2% of the value of the property that was:

3 (a) manufactured by the person using the property in
4 this state;

5 (b) acquired outside this state as the result of a
6 transaction that would have been subject to the sales tax
7 had it occurred within this state; or

8 (c) acquired as the result of a transaction that was
9 not initially subject to the sales tax imposed by subsection
10 (1) or the use tax imposed by subsection (2)(b) but which
11 transaction, because of the buyer's subsequent use of the
12 property, is subject to the sales tax or use tax.

13 (3) For the privilege of using services rendered in
14 this state, there is imposed on the person using such
15 services a use tax equal to 2% of the value of the services
16 at the time at which they were rendered. Services taxable
17 under this section must have been rendered as the result of
18 a transaction that was not initially subject to the sales
19 tax or use tax but that, because of the buyer's subsequent
20 use of the service, is subject to the sales tax or use tax.

21 (4) For purposes of this section, the value of property
22 must be determined as of the time of acquisition,
23 introduction into this state, or conversion to use,
24 whichever is later.

25 NEW SECTION. **Section 3.** Presumption of taxability --

1 value. (1) In order to prevent evasion of the sales tax or
 2 use tax and to aid in its administration, it is presumed
 3 that:

4 (a) all receipts of a person engaging in business are
 5 subject to the sales tax or use tax; and

6 (b) all property bought or sold by any person for
 7 delivery into this state is bought or sold for a taxable use
 8 in this state.

9 (2) In determining the amount of tax due on the use of
 10 property or services, it is presumed, in the absence of
 11 preponderant evidence of another value, that value means the
 12 total amount of property or the reasonable value of other
 13 consideration paid for the use of the property or service,
 14 exclusive of any type of time-price differential. However,
 15 in an exchange in which the amount of money paid does not
 16 represent the value of the property or service purchased,
 17 the use tax must be imposed on the reasonable value of the
 18 property or service purchased.

19 NEW SECTION. Section 4. Separate statement of tax --
 20 no advertising to absorb or refund tax. (1) If the sales tax
 21 or use tax is stated separately on the books of the seller
 22 or lessor and the total amount of tax stated separately on
 23 transactions within the reporting period is in excess of the
 24 amount of sales tax or use tax otherwise payable on those
 25 transactions, the excess amount of tax otherwise payable and

1 stated on the transactions within the reporting period must
 2 be included in gross receipts.

3 (2) If the sales tax or use tax is not stated
 4 separately on transactions, the gross receipts for sales tax
 5 and use tax purposes include the total amounts received,
 6 with no deduction for the sales tax or use tax.

7 (3) A person may not advertise, hold out, or state to
 8 the public or to any customer that the tax imposed by
 9 [sections 1 through 61] will be absorbed or refunded.

10 NEW SECTION. Section 5. Liability of user for payment
 11 of use tax. (1) A person in this state who uses property is
 12 liable to the state for payment of the use tax if the tax is
 13 payable on the value of the property but has not been paid.

14 (2) The liability imposed by this section is discharged
 15 if the buyer has paid the use tax to the seller for payment
 16 to the department.

17 NEW SECTION. Section 6. Agents for collection of sales
 18 tax and use tax -- severability. (1) (a) A person who
 19 performs or attempts to perform an activity within this
 20 state that attempts to exploit this state's markets, who
 21 sells property or services for use in this state, and who is
 22 not subject to the sales tax or use tax on receipts from
 23 these sales shall collect the sales tax or use tax from the
 24 buyer and pay the tax collected to the department.

25 (b) "Activity", for the purposes of this section,

1 includes but is not limited to engaging in any of the
2 following in this state:

3 (i) maintaining an office or other place of business
4 that solicits orders through employees or independent
5 contractors;

6 (ii) canvassing;

7 (iii) demonstrating;

8 (iv) collecting money;

9 (v) warehousing or storing merchandise;

10 (vi) delivering or distributing products as a
11 consequence of an advertising or other sales program
12 directed at potential customers;

13 (vii) soliciting orders for tangible personal property
14 by means of a telecommunication or television shopping
15 system that uses toll-free numbers and that is intended to
16 be broadcast by cable television or other means to consumers
17 in this state;

18 (viii) soliciting orders, pursuant to a contract with a
19 broadcaster or publisher located within this state, for
20 tangible personal property by means of advertising
21 disseminated primarily to consumers located in this state
22 and only secondarily to bordering jurisdictions;

23 (ix) soliciting orders for tangible personal property by
24 mail if the solicitations are substantial and recurring and
25 if the person engaging in such activity benefits from any

1 banking, financing, debt collection, telecommunication, or
2 marketing activities occurring in this state or benefits
3 from the location in this state of authorized installation,
4 servicing, or repair facilities; or

5 (x) soliciting orders, pursuant to a contract with a
6 cable television operator located in this state, for
7 tangible property by means of advertising transmitted or
8 distributed over a cable television system in this state.

9 (2) To ensure the orderly and efficient collection of
10 the tax imposed by [sections 1 through 61], if any
11 application of this section is held invalid, the section's
12 application to other situations or persons is not affected.

13 NEW SECTION. **Section 7. Nontaxable transaction**
14 **certificate -- requirements.** (1) A nontaxable transaction
15 certificate executed by a buyer or lessee must be in the
16 possession of the seller or lessor at the time a nontaxable
17 transaction occurs.

18 (2) If the seller or lessor is not in possession of a
19 nontaxable transaction certificate within 60 days from the
20 date notice of the requirement for possession of a
21 nontaxable transaction certificate is given to him by the
22 department, all deductions claimed by him that require
23 delivery of a nontaxable transaction certificate are
24 disallowed.

25 (3) A nontaxable transaction certificate must contain

1 the information and be in the form prescribed by the
2 department.

3 (4) Only a buyer or lessee who has registered with the
4 department and whose permit is not suspended or revoked may
5 be allowed to execute a nontaxable transaction certificate.

6 (5) If the seller or lessor accepts a nontaxable
7 transaction certificate within the required time and
8 believes in good faith that the buyer or lessee will employ
9 the property or service transferred in a nontaxable manner,
10 the properly executed nontaxable transaction certificate is
11 considered conclusive evidence that the proceeds from the
12 transaction are deductible from the seller's or lessor's
13 gross receipts.

14 NEW SECTION. Section 8. Exemption -- government
15 agencies. All receipts of the United States or any agency or
16 instrumentality of the United States or of this state or any
17 political subdivision of this state are exempt from the
18 sales tax and use tax.

19 NEW SECTION. Section 9. Exemption -- prescribed
20 medicines, drugs, and certain devices -- medical services.

21 (1) The gross receipts from the sale, by prescription from a
22 person as defined in [section 1(11)(a)], of medicines,
23 drugs, insulin, and therapeutic and prosthetic devices are
24 exempt from the sales tax.

25 (2) The gross receipts from the sale of medical

1 services provided by a person or any service reasonably
2 related to the delivery of a medical service by or at a
3 health care facility, as defined in 50-5-101, but including
4 the offices of a private physician or dentist, that provides
5 medical services are exempt from the sales tax.

6 NEW SECTION. Section 10. Exemption -- wages. Except as
7 provided in [sections 1 through 61], the receipts of an
8 employee from an employer for wages, salary, commissions, or
9 any other form of remuneration for personal services are
10 exempt from the sales tax.

11 NEW SECTION. Section 11. Exemption -- certain goods
12 subject to other taxes. (1) The receipts from the sale of a
13 vehicle subject to the tax imposed under 61-3-502 are exempt
14 from the sales tax.

15 (2) The receipts from the sale of gasoline or ethanol
16 blended for fuel on which the Montana gasoline and vehicle
17 fuels taxes have been paid under Title 15, chapter 70, are
18 exempt from the sales tax and use tax.

19 (3) The receipts from accommodation charges on which
20 the lodging facility use tax has been paid under Title 15,
21 chapter 65, are exempt from the sales tax and use tax.

22 (4) The receipts from the sale of liquor, beer, and
23 table wine on which taxes have been paid under Title 16,
24 chapter 1, are exempt from the sales tax and use tax.

25 (5) The receipts from the sale of cigarettes and

1 tobacco products other than cigarettes on which taxes have
2 been paid under Title 16, chapter 11, are exempt from the
3 sales tax and use tax.

4 NEW SECTION. Section 12. Exemption -- dividends and
5 interest. The following are exempt from the sales tax:

- 6 (1) interest on money loaned or deposited;
7 (2) dividends or interest from stocks, bonds, or
8 securities; and
9 (3) proceeds from the sale of stocks, bonds, or
10 securities.

11 NEW SECTION. Section 13. Exemption -- isolated or
12 occasional sale or lease of property or services. The
13 receipts from the isolated or occasional sale or lease of
14 property or from the performance of a service by a person
15 who is not regularly engaged in or who does not claim to be
16 engaged in the business of selling or leasing the same or a
17 similar property or service are exempt from the sales tax
18 and use tax.

19 NEW SECTION. Section 14. Exemption -- minerals --
20 exception. (1) The receipts from the sale or use of a
21 mineral, as defined in 15-38-103, are exempt from the sales
22 tax and use tax.

- 23 (2) Minerals refined, reduced, polished, cut, faceted,
24 or otherwise processed for the purpose of being used as or
25 integrated into jewelry, art, or sculpture or as a

1 decorative embellishment or adornment, either in their own
2 right or in combination with other property, are not
3 included in the exemption provided in this section.

4 NEW SECTION. Section 15. Exemption -- property of
5 certain governmental agencies. (1) The use of property by
6 the United States or any agency or instrumentality of the
7 United States or by this state or any political subdivision
8 of this state is exempt from the use tax.

- 9 (2) The use of property by the governing body of an
10 Indian tribe on a federally recognized Indian reservation is
11 exempt from the use tax.

12 NEW SECTION. Section 16. Exemption -- personal
13 effects. The use by an individual of personal or household
14 effects brought into the state for the establishment by the
15 individual of an initial residence in this state and the use
16 of property brought into the state by a nonresident for the
17 nonresident's own nonbusiness use while temporarily within
18 this state are exempt from the use tax.

19 NEW SECTION. Section 17. Deduction -- sale of tangible
20 personal property for resale. Receipts from the sale of
21 tangible personal property may be deducted from gross
22 receipts if:

- 23 (1) the sale is made to a buyer who delivers a
24 nontaxable transaction certificate to the seller; and
25 (2) the buyer resells or plans to resell the tangible

1 personal property either by itself or in combination with
 2 other tangible personal property in the ordinary course of
 3 business and the property will subsequently be subject to
 4 the sales tax.

5 NEW SECTION. **Section 18.** Deduction -- sale of service
 6 for resale. Receipts from the sale of a service for resale
 7 may be deducted from gross receipts if:

8 (1) the sale is made to a person who delivers a
 9 nontaxable transaction certificate;

10 (2) the buyer separately states the value of the
 11 service purchased in the charge for the service on its
 12 subsequent sale; and

13 (3) the subsequent sale is in the ordinary course of
 14 business and subject to the use tax.

15 NEW SECTION. **Section 19.** Deduction -- sale to miner or
 16 manufacturer. Receipts from the sale of tangible personal
 17 property to a buyer engaged in the business of mining or
 18 manufacturing may be deducted from gross receipts if:

19 (1) the buyer delivers a nontaxable transaction
 20 certificate to the seller; and

21 (2) the buyer incorporates or will incorporate the
 22 tangible personal property as an ingredient or component
 23 part of the product in the business of mining or
 24 manufacturing.

25 NEW SECTION. **Section 20.** Deduction -- sale of tangible

1 personal property for leasing. Receipts from the sale of
 2 tangible personal property, other than furniture or
 3 appliances, and from the rental or lease of property, other
 4 than coin-operated machines and mobile homes, that is
 5 deductible under [sections 1 through 61] may be deducted
 6 from gross receipts if:

7 (1) the sale is made to a buyer who delivers a
 8 nontaxable transaction certificate to the seller;

9 (2) the buyer is engaged in a business deriving more
 10 than 50% of its receipts from leasing or selling tangible
 11 personal property of the type leased; and

12 (3) the buyer does not use the property in any manner
 13 other than holding it for lease or sale or leasing or
 14 selling it, either by itself or in combination with other
 15 tangible personal property, in the ordinary course of
 16 business.

17 NEW SECTION. **Section 21.** Deduction -- lease for
 18 subsequent lease. Receipts from the lease of tangible
 19 personal property, other than furniture or appliances, and
 20 from the rental or lease of property, other than
 21 coin-operated machines and mobile homes, that is deductible
 22 under [sections 1 through 61] may be deducted from gross
 23 receipts if:

24 (1) the lease is made to a lessee who delivers a
 25 nontaxable transaction certificate; and

1 (2) the lessee does not use the property in any manner
 2 other than for subsequent lease in the ordinary course of
 3 business.

4 NEW SECTION. Section 22. Deduction -- sale of tangible
 5 personal property to person engaged in construction
 6 business. (1) Receipts from the sale of tangible personal
 7 property may be deducted from gross receipts if the sale is
 8 made to a buyer engaged in the construction business who
 9 delivers a nontaxable transaction certificate to the seller.

10 (2) The buyer delivering the nontaxable transaction
 11 certificate shall incorporate the tangible personal property
 12 as:

13 (a) an ingredient or component part of a construction
 14 project that is subject to the sales tax or use tax upon its
 15 completion or upon the completion of the overall
 16 construction project of which it is a part; or

17 (b) an ingredient or component part of a construction
 18 project that is subject to the sales tax or use tax upon the
 19 sale in the ordinary course of business of the real property
 20 upon which it was constructed.

21 NEW SECTION. Section 23. Deduction -- sale of
 22 construction service to person engaged in construction
 23 business. (1) Receipts from the sale of a construction
 24 service may be deducted from gross receipts if the sale is
 25 made to a buyer engaged in the construction business and the

1 buyer delivers a nontaxable transaction certificate to the
 2 person performing the construction service.

3 (2) The buyer delivering the nontaxable transaction
 4 certificate shall have the construction services performed
 5 upon:

6 (a) a construction project that is subject to the sales
 7 tax or use tax upon its completion or upon the completion of
 8 the overall construction project of which it is a part; or

9 (b) a construction project that is subject to the sales
 10 tax or use tax upon the sale in the ordinary course of
 11 business of the real property upon which it was constructed.

12 NEW SECTION. Section 24. Deduction -- sale or lease of
 13 real property. (1) Except as provided in subsection (2),
 14 receipts from the sale or lease of real property may be
 15 deducted from gross receipts.

16 (2) (a) The portion of the gross receipts from the sale
 17 of real property that is attributable to improvements, other
 18 than residential improvements, constructed on the real
 19 property by the seller in the ordinary course of the
 20 seller's construction business may not be deducted from
 21 gross receipts.

22 (b) The proportion of the gross receipts from the sale
 23 of real property that is attributable to residential
 24 improvements constructed on the real property by the seller
 25 in the ordinary course of the seller's construction business

1 may be deducted from gross receipts in the proportion that
 2 the cost of the construction for everything other than
 3 materials bears to the gross receipts for the improvements.

4 (3) Receipts attributable to the inclusion of furniture
 5 or appliances furnished by the landlord or lessor as part of
 6 a leased or rented dwelling, house, mobile home, cabin,
 7 condominium, or apartment may be deducted from gross
 8 receipts.

9 (4) For the purposes of this section, "residential
 10 improvements" means improvements to real property that are
 11 constructed for human habitation in a structure containing
 12 fewer than three units. The term includes improvements made
 13 to existing residential improvements.

14 NEW SECTION. Section 25. Deduction -- transactions in
 15 interstate commerce -- exception. (1) Receipts from a
 16 transaction in interstate commerce may be deducted from
 17 gross receipts to the extent that the imposition of the
 18 sales tax or use tax would be unlawful under the United
 19 States constitution.

20 (2) (a) The following may be deducted from gross
 21 receipts:

22 (i) receipts from transmitting messages or
 23 conversations by radio, originating from a point outside
 24 this state and received at a point within this state; and

25 (ii) receipts from the sale of radio or television

1 broadcast time if the advertising message is supplied by or
 2 on behalf of a national or regional seller or an advertiser
 3 not having its principal place of business in or being
 4 incorporated under the laws of this state.

5 (b) Commissions received by an advertising agency for
 6 performing services in this state may not be deducted from
 7 gross receipts under this section.

8 NEW SECTION. Section 26. Deduction -- intrastate
 9 transportation and services in interstate commerce. (1)
 10 Receipts from the transport of persons or property from one
 11 point within this state to another point within this state
 12 may be deducted from gross receipts if such persons or
 13 property, including any reasonably necessary services, are
 14 being transported in interstate or foreign commerce under a
 15 single contract.

16 (2) Receipts from handling, storage, drayage, or
 17 packing of property or any other accessorial services on
 18 property may be deducted from gross receipts if:

19 (a) the property has been or will be moved in
 20 interstate or foreign commerce;

21 (b) the services are performed by a local agent for a
 22 carrier or by a carrier; and

23 (c) the services are performed under a single contract
 24 in relation to transportation services.

25 NEW SECTION. Section 27. Deduction -- sale of certain

1 **services to an out-of-state buyer.** (1) Except as provided in
 2 subsection (4), receipts from performing a service may be
 3 deducted from gross receipts if the sale of the service is
 4 made to a buyer who delivers to the seller either a
 5 nontaxable transaction certificate or other evidence
 6 acceptable to the department that the transaction meets the
 7 conditions set out in subsection (3).

8 (2) The person who delivers the nontaxable transaction
 9 certificate or other evidence acceptable to the department
 10 must meet the criteria set out in subsection (3).

11 (3) Receipts from the performance of a service are
 12 deductible if the buyer of the service, any of the buyer's
 13 employees, or any person in privity with the buyer:

14 (a) does not make initial use of the product or the
 15 service in this state;

16 (b) does not take delivery of the product or the
 17 service in this state; or

18 (c) concurrent with the performance of the service,
 19 does not have a regular place of work in this state or spend
 20 more than brief and occasional periods of time in this state
 21 and:

22 (i) does not have any communication in this state
 23 related in any way to the subject matter, performance, or
 24 administration of the service with the person performing the
 25 service; or

1 (ii) does not personally perform work in this state
 2 related to the subject matter of the service.

3 (4) Receipts from performing architectural,
 4 engineering, surveying, or graphic design services may be
 5 deducted from gross receipts if the product resulting from
 6 the service or the service is used or applied exclusively
 7 outside Montana. For the purposes of this subsection, the
 8 provisions of subsection (3) do not apply.

9 (5) Receipts from performing a service that initially
 10 qualified for the deduction provided in this section but
 11 that no longer meets the criteria set forth in subsection
 12 (3) are deductible for the period prior to the
 13 disqualification.

14 NEW SECTION. **Section 28. Deduction** -- **feed,**
 15 **fertilizers, and agricultural supplies** -- **livestock**
 16 **auctioneers.** (1) Receipts from the sale of feed for
 17 livestock, fish raised for human consumption, poultry,
 18 animals raised for their hides or pelts, semen used in
 19 animal husbandry, seeds, roots, bulbs, soil conditioners,
 20 fertilizers, insecticides, insects used to control the
 21 population of other insects, fungicides, weedicides,
 22 herbicides, or water for irrigation purposes may be deducted
 23 from gross receipts if the sale is made to a person who
 24 presents a nontaxable transaction certificate or states in
 25 writing that the person is regularly engaged in the business

1 of farming, ranching, or the raising of animals for their
2 hides or pelts.

3 (2) Receipts from the sale of an agricultural service
4 may be deducted from gross receipts if the sale is made to a
5 buyer engaged in the business of farming or ranching or the
6 raising of animals for their hides or pelts and who states
7 in writing that the buyer is regularly engaged in the
8 business of farming or ranching or the raising of animals
9 for their hides or pelts or who delivers a nontaxable
10 transaction certificate to the person performing the
11 agricultural service. The buyer making the statement or
12 delivering the nontaxable transaction certificate shall have
13 the agricultural service performed upon property, real or
14 personal, including livestock and animals raised for their
15 hides or pelts, that is an integral part of an agricultural
16 operation.

17 (3) Receipts of auctioneers from selling livestock or
18 other agricultural products at auction may be deducted from
19 gross receipts.

20 NEW SECTION. Section 29. Deduction -- certain
21 **chemicals, reagents, and substances.** (1) The following may
22 be deducted from gross receipts:

23 (a) receipts from the sale of any chemical, reagent, or
24 other substance to any mining concern or milling company
25 that is used or consumed in the processing of ores or oil in

1 a mill, smelter, refinery, or reduction facility or in
2 acidizing oil wells; and

3 (b) receipts from the sale of chemicals or reagents in
4 an amount in excess of 18 tons.

5 (2) Receipts from the sale of explosives, blasting
6 material, or dynamite may not be deducted from gross
7 receipts.

8 NEW SECTION. Section 30. Deduction -- certain uses of
9 **special fuel.** (1) Receipts from the sale of special fuel, as
10 defined in 15-70-301, on which the special fuels tax has
11 been paid under Title 15, chapter 70, or which is used in
12 agriculture or to operate machinery, equipment, or vehicles
13 used in a trade or business may be deducted from gross
14 receipts.

15 (2) Receipts from the sale of special fuel used to heat
16 buildings for human comfort are not deductible.

17 NEW SECTION. Section 31. Deduction -- sale of certain
18 **services performed directly on product mined or**
19 **manufactured.** (1) Receipts from sale of the service of
20 mining, combining, or processing components or materials,
21 including minerals, may be deducted from gross receipts if
22 the sale is made to a buyer who is engaged in the business
23 of mining or manufacturing and who delivers a nontaxable
24 transaction certificate to the seller.

25 (2) The buyer delivering the nontaxable transaction

1 certificate must have the service performed directly upon
 2 tangible personal property, including minerals, that the
 3 buyer is in the business of mining or manufacturing or upon
 4 ingredients or component parts of the property.

5 NEW SECTION. **Section 32.** Deduction -- use of tangible
 6 personal property for leasing. (1) Except as provided in
 7 subsection (2), the value of leased property may be deducted
 8 in computing the use tax due if the person holding the
 9 tangible personal property for lease:

10 (a) is engaged in a business that derives a substantial
 11 portion of its receipts from leasing or selling property of
 12 the type leased;

13 (b) does not use the property in any manner other than
 14 holding it for lease or sale or leasing or selling it either
 15 by itself or in combination with other tangible personal
 16 property in the ordinary course of business; and

17 (c) does not use the property in a manner incidental to
 18 the performance of a service.

19 (2) The deduction provided in subsection (1) does not
 20 apply to the value of furniture or appliances furnished by
 21 the landlord or lessor as part of a leased or rented
 22 dwelling, house, cabin, condominium, or apartment or to the
 23 lease of coin-operated machines or mobile homes.

24 NEW SECTION. **Section 33.** Deduction -- sales to
 25 government agencies and Indian tribes. (1) Receipts from a

1 sale to the United States or any agency or instrumentality
 2 of the United States or to this state or any political
 3 subdivision of this state may be deducted from gross
 4 receipts.

5 (2) Receipts from a sale to the governing body of an
 6 Indian tribe for use on a federally recognized Indian
 7 reservation may be deducted from gross receipts.

8 NEW SECTION. **Section 34.** Deduction -- computer data
 9 base services. (1) Receipts from the sale or use of computer
 10 data base services may be deducted from gross receipts.

11 (2) For the purposes of [sections 1 through 61],
 12 "computer data base services" means identifying, compiling,
 13 organizing, manipulating, or delivering information actually
 14 contained in or to be contained in a computer data base.

15 (3) Receipts from the sale of computer hardware,
 16 software, system development, design, or installation or the
 17 sale of an existing computer data base (as opposed to the
 18 sale or use of a computer data base service) may not be
 19 deducted from gross receipts.

20 NEW SECTION. **Section 35.** Credit -- out-of-state taxes.

21 (1) If a gross receipts, sales, use, or similar tax has been
 22 levied by another state or a political subdivision of
 23 another state on property bought outside this state but that
 24 will be used or consumed in this state and the tax was paid,
 25 the amount of tax paid may be credited against any use tax

1 due this state on the same property.

2 (2) If the receipts from the sale of improvements to
3 real property constructed by a person in the ordinary course
4 of the person's construction business are subject to the
5 sales tax or use tax, the amount of tax paid by the person
6 under subsection (1) on materials that became an ingredient
7 or component part of the construction project and on
8 construction services performed upon the construction
9 project may be credited against the sales tax or use tax due
10 on the sale.

11 NEW SECTION. Section 36. Seller's permit. Upon an
12 applicant's compliance with [sections 1 through 61], the
13 department shall issue to the applicant a separate, numbered
14 seller's permit for each place of business within Montana. A
15 permit is valid until revoked or suspended but is not
16 assignable. A permit is valid only for the person in whose
17 name it is issued and for the transaction of business at the
18 place designated. The permit must be conspicuously displayed
19 at all times at the place for which it is issued.

20 NEW SECTION. Section 37. Permit application --
21 requirements -- place of business -- form. (1) (a) A person
22 desiring to engage in the business of making retail sales or
23 providing services in Montana shall file with the department
24 an application for a permit. If the person has more than one
25 place of business, an application must be filed for each

1 place of business.

2 (i) A vending machine operator who has more than one
3 vending machine location is considered to have only one
4 place of business for purposes of this section.

5 (ii) An applicant who has no regular place of business
6 and who moves from place to place is considered to have only
7 one place of business and shall attach the permit to the
8 applicant's cart, stand, truck, or other merchandising
9 device.

10 (b) Each person or class of persons obligated to file a
11 return under [sections 1 through 61] is required to file
12 application for a permit.

13 (2) Each application for a permit must be on a form
14 prescribed by the department and must set forth the name
15 under which the applicant intends to transact business, the
16 location of the applicant's place or places of business, and
17 such other information as the department may require. The
18 application must be filed by the owner if the owner is a
19 natural person, by a member or partner if the owner is an
20 association or partnership, or by a person authorized to
21 sign the application if the owner is a corporation.

22 NEW SECTION. Section 38. Special activities -- permits
23 -- penalty. (1) The operator of a flea market, craft show,
24 antique show, coin show, stamp show, comic book show,
25 convention exhibit area, or similar selling event, as a

1 prerequisite to renting or leasing space on the premises
 2 owned or controlled by the operator to a person desiring to
 3 engage in or conduct business as a seller, shall obtain
 4 evidence that the seller is the holder of a valid permit
 5 issued pursuant to [section 36] or a written statement from
 6 the seller that the seller is not offering for sale any item
 7 that is taxable under [sections 1 through 61].

8 (2) "Flea market, craft show, antique show, coin show,
 9 stamp show, comic book show, convention exhibit area, or
 10 similar selling event", as used in this section, means an
 11 activity that involves a series of sales sufficient in
 12 number, scope, and character to constitute a regular course
 13 of business but does not qualify as an isolated or
 14 occasional sale pursuant to [section 13].

15 (3) An operator who fails or refuses to comply with the
 16 provisions of this section is subject to a penalty, payable
 17 to the department, of \$100 per day per seller at each
 18 selling event at which the operator fails to obtain evidence
 19 that a seller is the holder of a valid permit issued
 20 pursuant to [section 36].

21 **NEW SECTION. Section 39. Revocation or suspension of**
 22 **permit -- hearing -- notice -- appeal.** (1) Subject to the
 23 provisions of subsection (2), the department may, for
 24 reasonable cause, revoke or suspend any permit held by a
 25 person who fails to comply with the provisions of [sections

1 through 61].

2 (2) (a) The department shall hold a hearing on the
 3 proposed revocation or suspension after giving the person 30
 4 days' notice in writing, specifying the time and place of
 5 the hearing and the reason for the proposed revocation or
 6 suspension.

7 (b) The notice must include a requirement that the
 8 person show cause why the permit or permits should not be
 9 revoked or suspended.

10 (c) The notice must be served personally or by
 11 certified mail.

12 (3) After revocation, the department may not issue a
 13 new permit except upon application accompanied by reasonable
 14 evidence of the intention of the applicant to comply with
 15 the provisions of [sections 1 through 61]. The department
 16 may require security in addition to that authorized by
 17 [section 47] in an amount reasonably necessary to ensure
 18 compliance with [sections 1 through 61] as a condition for
 19 the issuance of a new permit to such an applicant.

20 (4) A person aggrieved by the department's final
 21 decision to revoke a permit as provided in subsection (1)
 22 may appeal the decision to the state tax appeal board within
 23 30 days following the date on which the department issued
 24 its final decision.

25 (5) A decision of the state tax appeal board may be

1 appealed to a court of competent jurisdiction.

2 NEW SECTION. Section 40. Nontaxable transaction
 3 certificate -- form. (1) The department shall provide for a
 4 uniform nontaxable transaction certificate. In order to
 5 obtain a deduction under [sections 1 through 61], a
 6 purchaser shall use the certificate when purchasing goods or
 7 services for resale.

8 (2) At a minimum, the certificate must provide:

9 (a) the number of the permit issued to the purchaser as
 10 provided in [section 36];

11 (b) the general character of the property or service
 12 sold by the purchaser in the regular course of business;

13 (c) the property or service purchased for resale;

14 (d) the name and address of the purchaser; and

15 (e) a signature line for the purchaser.

16 NEW SECTION. Section 41. Improper use of subject of
 17 purchase obtained with nontaxable transaction certificate --
 18 penalty. (1) If a purchaser who uses a nontaxable
 19 transaction certificate uses the subject of the purchase for
 20 a purpose other than one allowed as a deduction under
 21 [sections 1 through 61], the use is considered a taxable
 22 sale by the purchaser as of the time of first use by the
 23 purchaser and the sale price the purchaser receives is
 24 considered the gross receipts from the sale. If the sole
 25 nonexempt use is rental while holding for sale, the

1 purchaser shall include in the purchaser's gross receipts
 2 the amount of the rental charged. Upon subsequent sale of
 3 the property, the seller shall include the entire amount of
 4 gross receipts received from the resale, without deduction
 5 of amounts previously received as rentals.

6 (2) A person who uses a certificate for property that
 7 will be used for purposes other than the purpose claimed is
 8 subject to a penalty, payable to the department, of \$100 for
 9 each transaction in which an improper use of an exemption
 10 certificate has occurred.

11 (3) Upon a showing of good cause, the department may
 12 abate or waive the penalty or a portion of the penalty.

13 NEW SECTION. Section 42. Commingling nontaxable
 14 transaction certificate goods. If a purchaser uses a
 15 nontaxable transaction certificate with respect to the
 16 purchase of fungible goods and hereafter commingles these
 17 goods with fungible goods not so purchased but of such
 18 similarity that the identity of the goods in the commingled
 19 mass cannot be determined, sales from the mass of commingled
 20 goods are considered to be sales of the goods purchased with
 21 the certificate until the quantity of commingled goods sold
 22 equals the quantity of goods originally purchased under the
 23 certificate.

24 NEW SECTION. Section 43. Liability for payment of tax
 25 -- security for retailer without place of business --

1 penalty. (1) Liability for the payment of the sales tax and
2 use tax is not extinguished until the taxes have been paid
3 to the department.

4 (2) A retailer who does not maintain a place of
5 business in this state is liable for the sales tax or use
6 tax in accordance with [sections 1 through 61] and shall
7 furnish adequate security as required in [section 47] to
8 ensure collection and payment of the taxes. When so
9 authorized and except as otherwise provided in [sections 1
10 through 61], the retailer is liable for the taxes upon all
11 tangible property sold that is to be used within this state
12 in the same manner as a retailer who maintains a place of
13 business within this state. The permit provided for in
14 [section 36] may be canceled at any time if the department
15 considers the security inadequate or believes that the taxes
16 can be collected more effectively in another manner.

17 (3) No agent, canvasser, or employee of a retailer
18 doing business in this state who is not authorized by permit
19 from the department may sell, solicit orders for, or deliver
20 any tangible personal property in Montana. If such an agent,
21 canvasser, or employee violates the provisions of [sections
22 1 through 61], the person is subject to a fine of not more
23 than \$100 for each separate transaction or event.

24 NEW SECTION. **Section 44.** Interstate and intrastate
25 carriers as retailers. A person engaged in the business of

1 intrastate or interstate transportation of tangible personal
2 property or passengers shall register as a retailer and pay
3 the taxes imposed by [sections 1 through 61].

4 NEW SECTION. **Section 45.** Application for permission to
5 report on accrual basis. (1) A person who has a permit
6 issued pursuant to [section 36] may apply to the department
7 for permission to report and pay the sales tax or use tax on
8 an accrual basis.

9 (2) The application must be made on a form prescribed
10 by the department that contains such information as the
11 department may require.

12 (3) A person may not report or pay the sales tax or use
13 tax on an accrual basis unless the person has received
14 written permission from the department.

15 NEW SECTION. **Section 46.** Returns -- payment --
16 authority of department. (1) Except as provided in
17 subsection (2), on or before the 25th day of each month in
18 which the tax imposed by [sections 1 through 61] is payable,
19 a return, on a form provided by the department, and payment
20 of the tax, less the vendor allowance provided in subsection
21 (5), for the preceding month must be filed with the
22 department. Each return must contain a confession of
23 judgment for the amount of the tax shown due, to the extent
24 not timely paid. A person making retail sales at two or more
25 places of business may file a consolidated return, subject

1 to rules prescribed by the department.

2 (2) A person who has a tax liability that averages less
3 than \$100 per month and who has been granted the authority
4 to report and pay the tax imposed by [sections 1 through 61]
5 on a quarterly basis shall file a return with payment on or
6 before the 25th day of the month following the end of the
7 quarter.

8 (3) (a) For the purposes of the sales tax or use tax, a
9 return must be filed by:

10 (i) a retailer required to pay such tax; and

11 (ii) a person:

12 (A) purchasing any items the storage, use, or other
13 consumption of which is subject to the sales tax or use tax;
14 and

15 (B) who has not paid the tax to a retailer required to
16 pay the tax.

17 (b) Each return must be signed by the person filing the
18 return or by the person's agent duly authorized in writing.

19 (4) (a) A person liable for the taxes imposed by
20 [sections 1 through 61] shall keep records, render
21 statements, make returns, and comply with the provisions of
22 [sections 1 through 61] and the rules prescribed by the
23 department. Each return or statement must include the
24 information required by the rules of the department.

25 (b) For the purpose of determining compliance with the

1 provisions of this section, the department is authorized to
2 examine or cause to be examined any books, papers, records,
3 or memoranda relevant to making a determination of the
4 amount of tax due, whether the books, papers, records, or
5 memoranda are the property of or in the possession of the
6 person filing the return or another person. The department
7 may also:

8 (i) require the attendance of a person having knowledge
9 or information relevant to a return;

10 (ii) compel the production of books, papers, records, or
11 memoranda by the person required to attend;

12 (iii) take testimony on matters material to the
13 determination; and

14 (iv) administer oaths or affirmations.

15 (5) A person filing a return under this section may
16 annually deduct from the amount of tax to be remitted to the
17 state and return as a vendor allowance 4% of the tax
18 determined to be payable to the state or \$1,200, whichever
19 is less. The annual deduction allowed under this subsection
20 applies on a calendar year basis.

21 (6) Pursuant to rules established by the department,
22 returns may be computer generated.

23 NEW SECTION. **Section 47. Security -- limitations --**
24 **sale of security deposit at auction -- bond.** (1) The
25 department may require a retailer to deposit with the

1 department security in a form and amount the department
 2 determines appropriate. The deposit may not be more than
 3 twice the estimated average liability for the period for
 4 which the return is required to be filed or \$10,000,
 5 whichever is less. The amount of security may be increased
 6 or decreased by the department, subject to the limitations
 7 provided in this section.

8 (2) (a) If necessary, the department may sell property
 9 deposited as security at public auction to recover any sales
 10 tax or use tax or amount required to be collected, including
 11 interest and penalties.

12 (b) Notice of the sale must be served personally or by
 13 certified mail upon the person who deposited the security.

14 (c) After the sale, any surplus above the amount due
 15 and that is not required as security under this section must
 16 be returned to the person who deposited the security.

17 (3) In lieu of security, the department may require a
 18 retailer to file a bond, issued by a surety company
 19 authorized to transact business in this state, to guarantee
 20 solvency and responsibility.

21 (4) In addition to the other requirements of this
 22 section, the department may require the corporate officers,
 23 directors, or shareholders of a corporation to provide a
 24 personal guaranty and assumption of liability for the
 25 payment of the tax due under [sections 1 through 61].

1 NEW SECTION. **Section 48. Extensions.** (1) The
 2 department may extend the time for filing a return and
 3 remittance of tax, deficiencies, and penalties for a period
 4 not to exceed 60 days from the date a return was due and may
 5 require both an estimated return at the time fixed for
 6 filing the regularly required return and the payment of tax
 7 on the basis of the estimated return.

8 (2) If an extension of time for payment has been
 9 granted under this section, interest at the rate provided in
 10 [section 53(2)] is payable from the date on which payment
 11 was first due without extension until the tax is paid.

12 NEW SECTION. **Section 49. Examination of return --**
 13 **adjustments -- delivery of notices and demands.** (1) The
 14 department may examine a return and make an investigation or
 15 examination of the records and accounts of a person making
 16 the return if the department considers it necessary to
 17 determine the accuracy of the return.

18 (2) To determine the accuracy of a return, the
 19 department may examine the records and accounts, using
 20 statistical or other sampling techniques consistent with
 21 generally accepted accounting principles.

22 (3) If the department determines that the amount of tax
 23 due is different from the amount reported, the amount of tax
 24 computed on the basis of the examination conducted pursuant
 25 to subsections (1) and (2) constitutes the tax to be paid.

1 (4) If the tax due exceeds the amount of tax reported
 2 as due on the taxpayer's return, the excess must be paid to
 3 the department within 60 days after notice of the amount and
 4 demand for payment is mailed or delivered to the person
 5 making the return. If the amount of the tax found due by the
 6 department is less than that reported as due on the return
 7 and has been paid, the excess must be refunded to the person
 8 making the return in the manner provided in 15-1-503.

9 (5) The notice and demand provided for in this section
 10 must contain a statement of the computation of the tax and
 11 must be:

12 (a) sent by mail to the taxpayer at the address given
 13 in the taxpayer's return, if any, or to the taxpayer's
 14 last-known address; or

15 (b) served personally upon the taxpayer.

16 NEW SECTION. Section 50. Penalties and interest for
 17 violation. (1) (a) If a person, without purposely or
 18 knowingly violating any requirement imposed by [sections 1
 19 through 61], fails to file a return and pay the tax on or
 20 before the due date, there must be imposed a penalty of 5%
 21 of any balance of debt unpaid with respect to such a return
 22 as of the date due, but in no event may the penalty for
 23 failure to file a return by its due date be less than \$5.
 24 The department may abate the penalty if the person
 25 establishes that the failure to file on time was due to

1 reasonable cause and was not due to neglect by the taxpayer.

2 (b) If a person, without purposely or knowingly
 3 violating any requirement imposed by [sections 1 through
 4 61], fails to pay a debt on or before its due date, there
 5 must be added to the debt a penalty of 10% of the debt, but
 6 not less than \$5, and interest must accrue on the debt at a
 7 rate of 12% per annum for the entire period it remains
 8 unpaid. The department may abate the penalty if the person
 9 establishes that the failure to pay was due to reasonable
 10 cause and was not due to neglect by the taxpayer.

11 (2) If a person purposely or knowingly violates any
 12 requirements imposed by [sections 1 through 61] by failing
 13 to file a return or to pay a debt, if one is due at the
 14 time, required by or under the provisions of [section 46],
 15 there must be added to the debt an additional amount equal
 16 to 25% thereof, but not less than \$25, and interest at 1%
 17 for each month or fraction of a month during which the debt
 18 remains unpaid.

19 NEW SECTION. Section 51. Warrants for distraint. If a
 20 tax imposed by [sections 1 through 61] or any portion of
 21 such tax is not paid when due, the department may issue a
 22 warrant for distraint as provided in Title 15, chapter 1,
 23 part 7.

24 NEW SECTION. Section 52. Authority to collect
 25 delinquent taxes. (1) The department shall collect taxes

1 that are delinquent as determined under [sections 1 through
2 61].

3 (2) To collect delinquent taxes after the time for
4 appeal under 15-1-705 has expired, the department may direct
5 the offset of tax refunds or other funds due the taxpayer
6 from the state, except wages subject to the provisions of
7 25-13-614 and retirement benefits.

8 (3) As provided in 15-1-211, the taxpayer has the right
9 to a review on the tax liability prior to any offset by the
10 department.

11 (4) The department may file a claim for state funds on
12 behalf of the taxpayer if a claim is required before funds
13 are available for offset.

14 (5) The department shall provide the taxpayer with
15 written notice of the right to request a review under
16 15-1-211 on the matter of the offset action or the
17 department's intent to file a claim on behalf of the
18 taxpayer. The taxpayer shall make a written request for a
19 review, and the review must be held by the department as
20 provided in 15-1-211.

21 NEW SECTION. Section 53. Penalty for deficiency.

22 (1) (a) If the payment of a tax deficiency is not made
23 within 60 days after it is due and payable and if the
24 deficiency is due to negligence on the part of the taxpayer
25 but without fraud, there must be added to the amount of the

1 deficiency a penalty of 10% of the tax.

2 (b) Interest accrues on the unpaid taxes at the rate of
3 1% for each month or part thereof during which the taxes
4 remain unpaid. The interest must be computed from the date
5 the return and tax were originally due.

6 (c) In no event may the penalty imposed under
7 subsection (1)(a) exceed 25% of the total tax due.

8 (2) If the time for filing a return is extended, the
9 taxpayer shall pay, in addition to the tax due, interest
10 thereon at the rate of 1% for each month or part thereof
11 from the date the return was originally required to be filed
12 to the time of payment.

13 (3) The department may not assess a penalty until such
14 time as the penalty equals \$10 or more for any one tax
15 period or the period covered by any return or statement.

16 NEW SECTION. Section 54. Limitations. Except in the
17 case of a person who, with intent to evade the tax,
18 purposely or knowingly files a false or fraudulent return
19 violating the provisions of [sections 1 through 61], the
20 amount of tax due under any return must be determined by the
21 department within 5 years after the return was made. The
22 department is barred from revising a return or recomputing
23 the tax due thereon, and no proceeding in court for the
24 collection of the tax may be instituted unless notice of an
25 additional tax was provided within the period described in

1 this section.

2 NEW SECTION. Section 55. Refunds. A claim for a refund
3 made for taxes collected under [sections 1 through 61] must
4 be in accordance with the procedure and time limits provided
5 in 15-1-503.

6 NEW SECTION. Section 56. Administration -- rules. The
7 department shall:

8 (1) administer and enforce the provisions of [sections
9 1 through 61];

10 (2) cause to be prepared and distributed forms and
11 information as may be necessary to administer the provisions
12 of [sections 1 through 61]; and

13 (3) promulgate rules as may be appropriate to
14 administer and enforce the provisions of [sections 1 through
15 61].

16 NEW SECTION. Section 57. Revocation of corporate
17 license. (1) If a corporation authorized to do business in
18 this state and required to pay the taxes imposed under
19 [sections 1 through 61] fails to comply with any of the
20 provisions of [sections 1 through 61] or any rule of the
21 department, the department may, for reasonable cause,
22 certify to the secretary of state a copy of an order finding
23 that the corporation has failed to comply with specific
24 statutory provisions or rules.

25 (2) The secretary of state shall, upon receipt of the

1 certification, revoke the license authorizing the
2 corporation to do business in this state and may issue a new
3 license only when the corporation has obtained from the
4 department an order finding that the corporation has
5 complied with its obligations under [sections 1 through 61].

6 (3) An order authorized in this section may not be made
7 until the corporation is given an opportunity to be heard
8 and to show cause at a contested case hearing before the
9 department why such order should not be made. The
10 corporation must be given 30 days' notice of the time and
11 place of the hearing and the reason for the proposed order.

12 NEW SECTION. Section 58. Tax as debt. (1) The taxes
13 imposed by [sections 1 through 61] and related interest and
14 penalties become a personal debt of the person required to
15 file a return from the time the liability arises, regardless
16 of when the time for payment of such liability occurs.

17 (2) The debt of an executor or administrator of the
18 estate of a decedent or a fiduciary, is limited to the
19 person's official or fiduciary capacity. However, if the
20 person has voluntarily distributed the assets held in that
21 capacity without reserving sufficient assets to pay the
22 taxes, interest, and penalties, the person is personally
23 liable for any deficiency.

24 (3) This section also applies to those corporate
25 officers, directors, or shareholders required by the

1 department to personally guarantee the payment of the taxes
2 for their corporations.

3 NEW SECTION. Section 59. Information --

4 confidentiality -- agreements with another state. (1) (a)
5 Except as provided in subsections (1)(b) and (2), it is
6 unlawful for an employee of the department or any other
7 public official or public employee to divulge or otherwise
8 make known any information disclosed in a report or return
9 required to be filed under [sections 1 through 61] or any
10 information concerning the affairs of the person making the
11 return that is acquired from the person's records, officers,
12 or employees in an examination or audit.

13 (b) Subsection (1)(a) does not apply to information
14 obtained from the taxpayer making the report or return in
15 connection with a proceeding involving taxes due under
16 [sections 1 through 61] or to compliance with the provisions
17 of subsection (2).

18 (c) Nothing in this section may be construed to
19 prohibit the department from publishing statistics if they
20 are classified in a way that does not disclose the identity
21 and content of any particular return or report. A person
22 violating the provisions of this section is subject to the
23 penalty provided in 15-30-303 for violating the
24 confidentiality of individual income tax information.

25 (2) (a) The department may enter into an agreement with

1 the taxing officials of another state for the interpretation
2 and administration of the laws of their state that provide
3 for the collection of sales taxes or use taxes in order to
4 promote fair and equitable administration of such laws and
5 to eliminate double taxation.

6 (b) The department, in order to implement the
7 provisions of [sections 1 through 61], may furnish
8 information on a reciprocal basis to the taxing officials of
9 another state or to the taxing officials of a municipality
10 of this state that has a local sales tax or use tax.

11 (3) In order to facilitate processing of returns and
12 payments of taxes required by [sections 1 through 61], the
13 department may contract with vendors and may disclose data
14 to the vendors. The data disclosed must be administered by
15 the vendor in a manner consistent with this section.

16 NEW SECTION. Section 60. Sales tax and use tax

17 account. (1) There is within the state special revenue fund
18 a sales tax and use tax account.

19 (2) All money collected under [sections 1 through 61]
20 must be paid by the department into the sales tax and use
21 tax account.

22 (3) There must be retained in the sales tax and use tax
23 account the amounts necessary under [sections 1 through 61]
24 to repay overpayments, pay any erroneous receipts illegally
25 assessed or collected or that are excessive in amount, and

1 pay any other refunds otherwise required.

2 NEW SECTION. Section 61. Disposition of sales tax and
 3 use tax revenue. Except as provided in [section 60(3)] and
 4 61-3-502, sales tax and use tax revenue is allocated to the
 5 general fund.

6 **Section 62.** Section 61-3-502, MCA, is amended to read:

7 "61-3-502. Sales tax on new and used motor vehicles --
 8 exemptions. (1) In consideration of the right to use the
 9 highways of the state, there is imposed a tax upon all sales
 10 of new and used motor vehicles, excluding trailers,
 11 semitrailers, and housetrailer, for which a license is
 12 sought and an original application for title is made. The
 13 tax must be paid by the purchaser when he applies for his
 14 original Montana license through the county treasurer.

15 (2) ~~Except as provided in subsections (4) and (5), the~~
 16 The sales tax is 2%.

17 ~~(a) 1 1/2% of the f.o.b. factory list price or f.o.b.~~
 18 ~~port of entry list price, during the first quarter of the~~
 19 ~~year or for a registration period other than a calendar year~~
 20 ~~or calendar quarter;~~

21 ~~(b) 1 1/8% of the list price during the second quarter~~
 22 ~~of the year;~~

23 ~~(c) 3/4 of 1% during the third quarter of the year;~~

24 ~~(d) 3/8 of 1% during the fourth quarter of the year;~~

25 ~~(3) if the manufacturer or importer fails to furnish~~

1 ~~the f.o.b. factory list price or f.o.b. port of entry list~~
 2 ~~price, the department may use published price lists.~~

3 ~~(4) The new car sales tax on vehicles subject to the~~
 4 ~~provisions of 61-3-313 through 61-3-316 is 1 1/2% of the~~
 5 ~~f.o.b. factory list price or f.o.b. port of entry list price~~
 6 ~~regardless of the month in which the new vehicle is~~
 7 ~~purchased.~~

8 ~~(5) The sales tax on new motor vehicles registered as~~
 9 ~~part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b.~~
 10 ~~factory list price or f.o.b. port of entry list price.~~

11 ~~(6)(3) The proceeds from this tax must be remitted to~~
 12 ~~the state treasurer every 30 days for credit to the state~~
 13 ~~highway account of the state special revenue fund.~~

14 ~~(7)(4) The A new vehicle is not subject to any other~~
 15 ~~assessment, fee in lieu of tax, or tax during the calendar~~
 16 ~~year in which the original application for title is made.~~

17 ~~(8)(5) (a) The applicant for original registration of~~
 18 ~~any new and unused motor vehicle, or a new motor vehicle~~
 19 ~~furnished without charge by a dealer to a school district~~
 20 ~~for use as a traffic education motor vehicle by a school~~
 21 ~~district operating a state-approved traffic education~~
 22 ~~program within the state, whether or not previously licensed~~
 23 ~~or titled to the school district (except a mobile home as~~
 24 ~~defined in 15-1-101(1)), acquired by original contract after~~
 25 ~~January 1 of any year, is required, whenever the vehicle has~~

1 not been otherwise assessed, to pay the motor vehicle sales
2 tax provided by this section irrespective of whether the
3 vehicle was in the state of Montana on January 1 of the
4 year.

5 (b) No motor vehicle may be registered or licensed
6 under the provisions of this subsection unless the
7 application for registration is accompanied by a statement
8 of origin to be furnished by the dealer selling the vehicle,
9 showing that the vehicle has not previously been registered
10 or owned, except as otherwise provided herein, by any
11 person, firm, corporation, or association that is not a new
12 motor vehicle dealer holding a franchise or distribution
13 agreement from a new car manufacturer, distributor, or
14 importer.

15 †9†(6) (a) Motor vehicles operating exclusively for
16 transportation of persons for hire within the limits of
17 incorporated cities or towns and within 15 miles from such
18 limits are exempt from subsection (1).

19 (b) Motor vehicles brought or driven into Montana by a
20 nonresident, migratory, bona fide agricultural worker
21 temporarily employed in agricultural work in this state
22 where those motor vehicles are used exclusively for
23 transportation of agricultural workers are also exempt from
24 subsection (1).

25 (c) Vehicles lawfully displaying a licensed dealer's

1 plate as provided in 61-4-103 are exempt from subsection (1)
2 when moving to or from a dealer's place of business when
3 unloaded or loaded with dealer's property only, and in the
4 case of vehicles having a gross loaded weight of less than
5 24,000 pounds, while being demonstrated in the course of the
6 dealer's business."

7 **Section 63.** Section 61-4-112, MCA, is amended to read:

8 **"61-4-112. New motor vehicles -- transfers by dealers.**

9 (1) When a motor vehicle dealer transfers a new motor
10 vehicle to a purchaser or other recipient, the dealer shall:

11 (a) issue and affix a sticker as prescribed in
12 61-4-111(1)(a) for transfers of used motor vehicles and
13 retain a copy of the sticker;

14 (b) within 4 working days following the date of
15 delivery of the new motor vehicle, forward to the county
16 treasurer of the county where the purchaser or recipient
17 resides:

18 (i) one copy of the sticker issued under subsection
19 (1)(a);

20 (ii) an application for certificate of title with a
21 notice of security interest, if any, executed by the
22 purchaser or recipient; and

23 (iii) a statement of origin as prescribed in
24 61-3-502†8††b† 61-3-502.

25 (2) Upon receipt from the county treasurer of the

1 documents required under subsection (1), the department
2 shall issue a certificate of ownership and certificate of
3 registration together with a statement of lien as provided
4 in 61-3-202."

5 NEW SECTION. **Section 64.** Codification instruction.
6 {Sections 1 through 61} are intended to be codified as an
7 integral part of Title 15, and the provisions of Title 15
8 apply to {sections 1 through 61}.

9 NEW SECTION. **Section 65.** Severability. If a part of
10 {this act} is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of {this
12 act} is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. **Section 66.** Saving clause. {This act}
16 does not affect rights and duties that matured, penalties
17 that were incurred, or proceedings that were begun before
18 {the effective date of this act}.

19 NEW SECTION. **Section 67.** Effective date --
20 applicability -- termination. (1) {This act} is effective on
21 passage and approval, and {sections 1 through 61} are
22 applicable after December 31, 1992.

23 (2) {This act} terminates June 30, 1995.

-End-