

HOUSE BILL NO. 330

INTRODUCED BY BIRD
BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

JANUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 9, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 10, 1993	PRINTING REPORT.
FEBRUARY 11, 1993	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 12, 1993	THIRD READING, PASSED. AYES, 95; NOES, 1.
FEBRUARY 15, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
APRIL 3, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 8, 1993	SECOND READING, CONCURRED IN.
APRIL 12, 1993	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 14, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 15, 1993	THIRD READING, AMENDMENTS

CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 330
2 INTRODUCED BY Bird
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE STATUTE
6 OF LIMITATIONS FOR INDIVIDUAL INCOME TAX ASSESSMENTS AND
7 REFUND CLAIMS; AMENDING SECTIONS 15-30-145, 15-30-147, AND
8 15-30-149, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
9 AND AN APPLICABILITY DATE."

10

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

12 **Section 1.** Section 15-30-145, MCA, is amended to read:

13 "15-30-145. Revision of return by department -- statute
14 of limitations -- examination of records and persons. (1)
15 If, in the opinion of the department, any return of a
16 taxpayer is in any essential respect incorrect, it may
17 revise such the return.

18 (2) If any a taxpayer fails-to-make does not file a
19 return as herein required under this chapter, the department
20 is-authorized-to--make--an may, at any time, audit the
21 taxpayer or estimate of the taxable income of such the
22 taxpayer from any information in its possession and, to
23 audit--and--state-an-account-according-to-such-return-or-the
24 estimate-so-made-by-it based upon the audit or estimate,
25 assess the taxpayer for the taxes, penalties, and interest

1 due the state from-such-taxpayer.

2 (3) Except in-the-case-of-a-person-who-with-intent--to
3 evade--the--tax,--purposely--or--knowingly--files-a-false-or
4 fraudulent-return-violating-the-provisions-of--this--chapter
5 as provided in subsections (2) and (4), the amount of tax
6 due under any return shall may be determined by the
7 department within 5 years after the return was made-and--the
8 department-thereafter-shall-be-barred-from-revising-any-such
9 returns---or---recomputing--the--tax--due--thereon---and--no
10 proceeding-in-court-for-the-collection-of-such-tax-shall--be
11 instituted---after---the---expiration---of---said---period,
12 notwithstanding---the---provisions---of---15-30-322 filed,
13 regardless of whether the return was filed on or after the
14 last day prescribed for filing. For the purposes of
15 15-30-147 and this section, a tax return due under this
16 chapter and filed before the last day prescribed by law or
17 rule is considered to be filed on the last day prescribed
18 for filing.

19 (4) in--the--case--of--a-person-who If a taxpayer, with
20 intent to evade the tax, purposely or knowingly files a
21 false or fraudulent return violating-the-provisions that
22 violates a provision of this chapter, the amount of tax due
23 may be determined at any time after the return is filed and
24 the tax may be collected at any time after it becomes due
25 and, where no return has been filed, the tax may be assessed

1 ~~at-any-time.~~

2 (2)(5) The department, for the purpose of ascertaining
3 the correctness of any return or for the purpose of making
4 an estimate of taxable income of any person where
5 information has been obtained, may also examine or cause to
6 have examined by any agent or representative designated by
7 it for that purpose any books, papers, or records of
8 memoranda bearing upon the matters required to be included
9 in the return and may require the attendance of the person
10 rendering the return or any officer or employee of ~~such the~~
11 person or the attendance of any person having knowledge in
12 the premises and may take testimony and require proof
13 material for its information, with power to administer oaths
14 to ~~such the~~ person or persons."

15 **Section 2.** Section 15-30-147, MCA, is amended to read:

16 "15-30-147. **Application for revision -- appeal.** An
17 application for revision may be filed with the department by
18 a taxpayer within 5 years from the ~~original-due-date-of--the~~
19 return last day prescribed for filing the return as provided
20 in 15-30-145(3), regardless of whether the return was filed
21 on or after the last day prescribed for filing. If the
22 taxpayer is not satisfied with the action taken by the
23 department, ~~he the taxpayer may appeal to the state tax~~
24 ~~appeal board as-provided-therein, which-shall-have-authority~~
25 ~~to-grant-the-claim-or-any-part-thereof."~~

1 **Section 3.** Section 15-30-149, MCA, is amended to read:

2 "15-30-149. **Credits and refunds -- period of**
3 **limitations.** (1) If the department discovers from the
4 examination of a return or upon claim duly filed by a
5 taxpayer or upon final judgment of a court that the amount
6 of income tax collected is in excess of the amount due or
7 that any penalty or interest was erroneously or illegally
8 collected, the amount of the overpayment ~~shall~~ must be
9 credited against any income tax, penalty, or interest then
10 due from the taxpayer and the balance of ~~such the~~ excess
11 ~~shall~~ must be refunded to the taxpayer.

12 (2) (a) A credit or refund under the provisions of this
13 section may be allowed only if, prior to the expiration of
14 the period provided by ~~15-30-145--and--by 15-30-146 and~~
15 ~~15-30-147 during--which--the--department--may--determine--tax~~
16 ~~liability,~~ the taxpayer files a claim or the department
17 determines there has been an overpayment.

18 (b) If an overpayment of tax results from a net
19 operating loss carryback, the overpayment may be refunded or
20 credited within the period that expires on the 15th day of
21 the 40th month following the close of the taxable year of
22 the net operating loss if that period expires later than 5
23 years from the due date of the return for the year to which
24 the net operating loss is carried back.

25 (3) Within 6 months after a claim for refund is filed,

the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall so notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the taxable year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to his the taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed,

whichever date is later;

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

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

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

NEW SECTION. **Section 4.** Effective date -- applicability. [This act] is effective on passage and approval and applies to all tax years.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0330, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying the statute of limitations for individual income tax assessments and refund claims; and providing an immediate effective date and an applicability date.

FISCAL IMPACT:

This bill results in no fiscal impact.

 1-26-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JOANN T. "JODY" BIRD, PRIMARY SPONSOR DATE

Fiscal Note for HB0330, as introduced

HB 330

APPROVED BY COMMITTEE
ON TAXATION

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16 taxpayer is in any essential respect incorrect, it may
17 revise such the return.

18 (2) If any a taxpayer fails-to-make does not file a
19 return as herein required under this chapter, the department
20 is-authorized-to--make--an may, at any time, audit the
21 taxpayer or estimate of the taxable income of such the
22 taxpayer from any information in its possession and, to
23 audit--and--state-an-account-according-to-such-return-or-the
24 estimate-so-made-by-it based upon the audit or estimate,
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14 last day prescribed for filing. For the purposes of
15 15-30-147 and this section, a tax return due under this
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23 may be determined at any time after the return is filed and
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25 and, where no return has been filed, the tax may be assessed

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2 (2)(5) The department, for the purpose of ascertaining
3 the correctness of any return or for the purpose of making
4 an estimate of taxable income of any person where
5 information has been obtained, may also examine or cause to
6 have examined by any agent or representative designated by
7 it for that purpose any books, papers, or records of
8 memoranda bearing upon the matters required to be included
9 in the return and may require the attendance of the person
10 rendering the return or any officer or employee of such the
11 person or the attendance of any person having knowledge in
12 the premises and may take testimony and require proof
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(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

NEW SECTION. Section 4. Effective date -- applicability. (This act) is effective on passage and approval and applies to all tax years.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
April 2, 1993

Page 2 of 3
April 2, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 330 (third reading copy -- blue), respectfully report that House Bill No. 330 be amended as follows and as so amended be concurred in.

Signed: 

Senator Mike Halligan, Chair

That such amendments read:

1. Title, line 7.
Strike: "AND"

2. Title, line 8.
Following: "15-30-149,"
Insert: "AND 15-30-303,"
Following: "MCA;"
Insert: "REPEALING SECTION 15-30-322, MCA;"

3. Page 3, line 21.
Following: "filing."
Insert: "If the department has revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return until the liability for that tax year is finally determined."

4. Page 6, line 10.
Following: line 9
Insert: "Section 4. Section 15-30-303, MCA, is amended to read:
"15-30-303. Confidentiality of tax records. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or

such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:
(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;
(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or
(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.
(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.
(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding \$1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption

M - Amd. Coord.
W - Sec. of Senate

Gage
Senator Carrying Bill

741623SC.Sma

SENATE
HB 330
741623SC.Sma

Page 3 of 3
April 2, 1993

for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses; and

(d) to the board of regents information required under 20-26-1111."

NEW SECTION. Section 5. Repealer. Section 15-30-322, MCA, is repealed."

Renumber: subsequent section

-END-

HOUSE BILL NO. 330

INTRODUCED BY BIRD

BY REQUEST OF THE DEPARTMENT OF REVENUE

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Section 1. Section 15-30-145, MCA, is amended to read:

"15-30-145. Revision of return by department -- statute of limitations -- examination of records and persons. (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise such the return.

(2) If any a taxpayer fails-to-make does not file a return as herein required under this chapter, the department is--authorized--to--make--an may, at any time, audit the taxpayer or estimate of the taxable income of such the taxpayer from any information in its possession and, to audit-and-state-an-account-according-to-such-return--or--the estimate--so--made--by--it based upon the audit or estimate,

assess the taxpayer for the taxes, penalties, and interest due the state from-such-taxpayer.

(3) Except in-the-case-of-a-person-who-with-intent-to evade-the-tax-purposefully-or-knowingly-files-a-false-or fraudulent--return--violating-the-provisions-of-this-chapter as provided in subsections (2) and (4), the amount of tax due under any return shall may be determined by the department within 5 years after the return was made-and-the department-thereafter-shall-be-barred-from-revising-any-such returns--or--recomputing--the--tax--due--thereon,---and---no proceeding--in-court-for-the-collection-of-such-tax-shall-be instituted---after---the---expiration---of---said---period, notwithstanding---the---provisions---of---15-30-322 filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-147 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

(4) in-the-case-of-a-person-who If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating--the--provisions that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due

~~and, where no return has been filed, the tax may be assessed at any time.~~

~~(2)(5)~~ The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of such the person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to such the person or persons."

Section 2. Section 15-30-147, MCA, is amended to read:

"15-30-147. Application for revision -- appeal. An application for revision may be filed with the department by a taxpayer within 5 years from the original due date of the return last day prescribed for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing. IF THE DEPARTMENT HAS REVISED A RETURN PURSUANT TO 15-30-145(3), THE TAXPAYER MAY REVISE THE SAME RETURN UNTIL THE LIABILITY FOR THAT TAX YEAR IS FINALLY DETERMINED. If the taxpayer is

not satisfied with the action taken by the department, he the taxpayer may appeal to the state tax appeal board as provided therein, which shall have authority to grant the claim or any part thereof."

Section 3. Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds -- period of limitations. (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of such the excess shall must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by 15-30-145--and--by 15-30-146 and 15-30-147 during which--the--department--may--determine--tax liability, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of

1 the net operating loss if that period expires later than 5
2 years from the due date of the return for the year to which
3 the net operating loss is carried back.

4 (3) Within 6 months after a claim for refund is filed,
5 the department shall examine the claim and either approve or
6 disapprove it. If the claim is approved, the credit or
7 refund must be made to the taxpayer within 60 days after the
8 claim is approved. If the claim is disallowed, the
9 department shall so notify the taxpayer and a review of the
10 determination of the department may be pursued as provided
11 in 15-1-211.

12 (4) Interest is allowed on overpayments at the same
13 rate as charged on delinquent taxes. Interest is payable
14 from the due date of the return or from the date of the
15 overpayment, whichever date is later, to the date the
16 department approves refunding or crediting of the
17 overpayment. With respect to tax paid by withholding or by
18 estimate, the date of overpayment is the date on which the
19 return for the taxable year was due. Interest does not
20 accrue on an overpayment if the taxpayer elects to have it
21 applied to his the taxpayer's estimated tax for the
22 succeeding taxable year. Interest does not accrue during any
23 period the processing of a claim for refund is delayed more
24 than 30 days by reason of failure of the taxpayer to furnish
25 information requested by the department for the purpose of

1 verifying the amount of the overpayment. Interest is not
2 allowed if:

3 (a) the overpayment is refunded within 6 months from
4 the date the return is due or the date the return is filed,
5 whichever date is later;

6 (b) the overpayment results from the carryback of a net
7 operating loss; or

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

9 (5) An overpayment not made incident to a bona fide and
10 orderly discharge of an actual income tax liability or one
11 reasonably assumed to be imposed by this law is not
12 considered an overpayment with respect to which interest is
13 allowable."

14 **SECTION 4. SECTION 15-30-303, MCA, IS AMENDED TO READ:**

15 "15-30-303. Confidentiality of tax records. (1) Except
16 in accordance with proper judicial order or as otherwise
17 provided by law, it is unlawful for the department or any
18 deputy, assistant, agent, clerk, or other officer or
19 employee to divulge or make known in any manner the amount
20 of income or any particulars set forth or disclosed in any
21 report or return required under this chapter or any other
22 information secured in the administration of this chapter.
23 It is also unlawful to divulge or make known in any manner
24 any federal return or federal return information disclosed
25 on any return or report required by rule of the department

1 or under this chapter.

2 (2) The officers charged with the custody of such
3 reports and returns shall not be required to produce any of
4 them or evidence of anything contained in them in any action
5 or proceeding in any court, except in any action or
6 proceeding to which the department is a party under the
7 provisions of this chapter or any other taxing act or on
8 behalf of any party to any action or proceedings under the
9 provisions of this chapter or such other act when the
10 reports or facts shown thereby are directly involved in such
11 action or proceedings, in either of which events the court
12 may require the production of and may admit in evidence so
13 much of said reports or of the facts shown thereby as are
14 pertinent to the action or proceedings and no more.

15 (3) Nothing herein shall be construed to prohibit:

16 (a) the delivery to a taxpayer or his duly authorized
17 representative of a certified copy of any return or report
18 filed in connection with his tax;

19 (b) the publication of statistics so classified as to
20 prevent the identification of particular reports or returns
21 and the items thereof; or

22 (c) the inspection by the attorney general or other
23 legal representative of the state of the report or return of
24 any taxpayer who shall bring action to set aside or review
25 the tax based thereon or against whom an action or

1 proceeding has been instituted in accordance with the
2 provisions of 15-30-311 and ~~15-30-322~~.

3 (4) Reports and returns shall be preserved for 3 years
4 and thereafter until the department orders them to be
5 destroyed.

6 (5) Any offense against subsections (1) through (4) of
7 this section shall be punished by a fine not exceeding
8 \$1,000 or by imprisonment in the county jail not exceeding 1
9 year, or both, at the discretion of the court, and if the
10 offender be an officer or employee of the state, he shall be
11 dismissed from office and be incapable of holding any public
12 office in this state for a period of 1 year thereafter.

13 (6) Notwithstanding the provisions of this section, the
14 department may permit the commissioner of internal revenue
15 of the United States or the proper officer of any state
16 imposing a tax upon the incomes of individuals or the
17 authorized representative of either such officer to inspect
18 the return of income of any individual or may furnish to
19 such officer or his authorized representative an abstract of
20 the return of income of any individual or supply him with
21 information concerning any item of income contained in any
22 return or disclosed by the report of any investigation of
23 the income or return of income of any individual, but such
24 permission shall be granted or such information furnished to
25 such officer or his representative only if the statutes of

1 the United States or of such other state, as the case may
 2 be, grant substantially similar privileges to the proper
 3 officer of this state charged with the administration of
 4 this chapter.

5 (7) Further, notwithstanding any of the provisions of
 6 this section, the department shall furnish:

7 (a) to the department of justice all information
 8 necessary to identify those persons qualifying for the
 9 additional exemption for blindness pursuant to 15-30-112(4),
 10 for the purpose of enabling the department of justice to
 11 administer the provisions of 61-5-105;

12 (b) to the department of social and rehabilitation
 13 services information acquired under 15-30-301, pertaining to
 14 an applicant for public assistance, reasonably necessary for
 15 the prevention and detection of public assistance fraud and
 16 abuse, provided notice to the applicant has been given;

17 (c) to the department of fish, wildlife, and parks
 18 specific information that is available from income tax
 19 returns and required under 87-2-102 to establish the
 20 residency requirements of an applicant for hunting and
 21 fishing licenses; and

22 (d) to the board of regents information required under
 23 20-26-1111."

24 NEW SECTION. SECTION 5. REPEALER. SECTION 15-30-322,
 25 MCA, IS REPEALED.

1 NEW SECTION. Section 6. Effective date --
 2 applicability. [This act] is effective on passage and
 3 approval and applies to all tax years.

-End-