

SENATE BILL 53

Introduced by Swift

12/23	Introduced
12/23	Referred to Taxation
1/04	First Reading
1/04	Fiscal Note Requested
1/08	Fiscal Note Received
1/09	Fiscal Note Printed
1/21	Hearing
1/29	Tabled in Committee

## SENATE BILL NO. 53

INTRODUCED BY SWIFT

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN EXEMPTION OF \$10,000 FROM THE TAXATION OF PENSION AND ANNUITY INCOME; AMENDING SECTIONS 15-30-111, 17-7-502, 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1005, 19-10-504, 19-11-612, 19-12-407, 19-13-1003, AND 19-21-212, MCA; REPEALING SECTIONS 19-15-101 AND 19-15-102, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND EFFECTIVE DATES."

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

**Section 1.** Section 15-30-111, MCA, is amended to read:

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

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

(b) refunds received of federal income tax, to the extent that the deduction of such the tax resulted in a

reduction of Montana income tax liability;

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

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

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

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

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

(c) ~~it--except-as-provided--in--subsection--(2)(c)--it--~~, the first ~~\$3,600~~ \$10,000 of all pension and annuity income received as defined in 15-30-101;

~~it--for-pension--and--annuity--income--described--under subsection--(2)(c)--it--~~, as follows:

~~it--each--taxpayer-filing-singly--head-of-household--or~~

1 married-filing-separately-shall-reduce-the-total--amount--of  
2 the--exclusion--provided--in-(2)(c)(i)-by-\$2-for-every-\$1-of  
3 federal-adjusted-gross-income-in-excess-of-\$30,000-as--shown  
4 on-the-taxpayer's-return;

5 (B)--in-the-case-of-married-taxpayers-filing-jointly,-if  
6 both-taxpayers-are-receiving-pension-or-annuity-income-or-if  
7 only--one--taxpayer--is-receiving-pension-or-annuity-income,  
8 the-exclusion-claimed-as-provided--in--subsection--(2)(c)(i)  
9 must-be-reduced-by-\$2-for-every-\$1-of-federal-adjusted-gross  
10 income-in-excess-of-\$30,000-as-shown-on-their-joint-return;

11 (d) all Montana income tax refunds or tax refund  
12 credits;

13 (e) gain required to be recognized by a liquidating  
14 corporation under 15-31-113(1)(a)(ii);

15 (f) all tips covered by section 3402(k) of the Internal  
16 Revenue Code of 1954, as amended and applicable on January  
17 1, 1983, received by persons for services rendered by them  
18 to patrons of premises licensed to provide food, beverage,  
19 or lodging;

20 (g) all benefits received under the workers'  
21 compensation laws;

22 (h) all health insurance premiums paid by an employer  
23 for an employee if attributed as income to the employee  
24 under federal law; and

25 (i) all money received because of a settlement

1 agreement or judgment in a lawsuit brought against a  
2 manufacturer or distributor of "agent orange" for damages  
3 resulting from exposure to "agent orange".

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

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

22 (5) Married taxpayers filing a joint federal return who  
23 must are required to include part of their social security  
24 benefits or part of their tier 1 railroad retirement  
25 benefits in federal adjusted gross income may split the

1 federal base used in calculation of federal taxable social  
2 security benefits or federal taxable tier 1 railroad  
3 retirement benefits when they file separate Montana income  
4 tax returns. The federal base must be split equally on the  
5 Montana return.

6 (6) A taxpayer receiving retirement disability benefits  
7 who has not attained age 65 by the end of the taxable year  
8 and who has retired as permanently and totally disabled may  
9 exclude from adjusted gross income up to \$100 per week  
10 received as wages or payments in lieu of wages for a period  
11 during which the employee is absent from work due to the  
12 disability. If the adjusted gross income before this  
13 exclusion and before application of the two-earner married  
14 couple deduction exceeds \$15,000, the excess reduces the  
15 exclusion by an equal amount. This limitation affects the  
16 amount of exclusion, but not the taxpayer's eligibility for  
17 the exclusion. If eligible, married individuals shall apply  
18 the exclusion separately, but the limitation for income  
19 exceeding \$15,000 is determined with respect to the spouses  
20 on their combined adjusted gross income. For the purpose of  
21 this subsection, permanently and totally disabled means  
22 unable to engage in any substantial gainful activity by  
23 reason of any medically determined physical or mental  
24 impairment lasting or expected to last at least 12 months.  
25 (Subsection (2)(f) terminates on occurrence of

1 contingency--sec. 3, Ch. 634, L. 1983.)"

2 **Section 2.** Section 19-3-105, MCA, is amended to read:

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

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

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

11 (a) a retirement allowance received in excess of \$3,600  
12 ~~or--adjusted---by---an---amount---determined---pursuant---to~~  
13 ~~15-30-111(2)(e)(ii)~~ \$10,000 as provided in 15-30-111(2)(c);  
14 or

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

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

20 **Section 3.** Section 19-4-706, MCA, is amended to read:

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

1 are:

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

4 (a) a retirement allowance received in excess of \$3,600  
5 ~~or---adjusted---by---an---amount---determined---pursuant---to~~  
6 ~~15-30-111(2)(c)(iii)~~ \$10,000; or

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

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

13 (3) unassignable except as specifically provided in  
14 this chapter."

15 **Section 4.** Section 19-5-704, MCA, is amended to read:

16 "19-5-704. **Exemption from taxes and legal process --**  
17 **exception.** (1) Money received or to be paid as a member's  
18 annuity, state annuity, or return of deductions or the right  
19 of any of these except refunds paid under 19-5-403 of the  
20 member's contributions picked up by an employer after June  
21 30, 1991, as provided in 19-5-402, is exempt from levy,  
22 sale, garnishment, attachment, or any other process and is  
23 unassignable except as specifically provided in 19-5-705.

24 (2) The first \$3,600 ~~or-the-amount-determined-pursuant~~  
25 ~~to-15-30-111(2)(c)(iii)~~ \$10,000 received under this chapter

1 is exempt from state, county, or municipal taxation."

2 **Section 5.** Section 19-6-705, MCA, is amended to read:

3 "19-6-705. **Exemption from taxes and legal process.** Any  
4 money received or to be paid as a member's annuity, state  
5 annuity, or return of deductions or the right of any of  
6 these is:

7 (1) exempt from any state, county, or municipal tax  
8 except for:

9 (a) a retirement allowance received in excess of \$3,600  
10 ~~or---adjusted---by---an---amount---determined---pursuant---to~~  
11 ~~15-30-111(2)(c)(iii)~~ \$10,000; or

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

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

17 (3) unassignable except as specifically provided in  
18 19-6-706."

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

20 "19-7-705. **Exemption from taxes and legal process.** Any  
21 money received or to be paid as a member's annuity, state  
22 annuity, or return of deductions or the right of any of  
23 these is:

24 (1) exempt from any state, county, or municipal tax  
25 except for:

(a) a retirement allowance received in excess of \$3,600 or---adjusted---by---an---amount---determined---pursuant---to 15-30-111(2)(c)(iii) \$10,000; or

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

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

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

**Section 7.** Section 19-8-805, MCA, is amended to read:

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

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

(a) a retirement allowance received in excess of \$3,600 or---adjusted---by---an---amount---determined---pursuant---to 15-30-111(2)(c)(iii) \$10,000; or

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

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

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

**Section 8.** Section 19-9-1005, MCA, is amended to read:

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

(1) a retirement allowance received in excess of \$3,600 or---adjusted---by---an---amount---determined---pursuant---to 15-30-111(2)(c)(iii) \$10,000; or

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

**Section 9.** Section 19-10-504, MCA, is amended to read:

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

(2) The first \$3,600-or-the-amount-determined--pursuant to--15-30-111(2)(c)(iii) \$10,000 of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 10.** Section 19-11-612, MCA, is amended to read:

"19-11-612. **Protection of benefits from legal process**

and taxation -- nonassignability. (1) Any payments made or to be made under this chapter are not subject to judgments, garnishment, execution, or other legal process. A person entitled to a pension may not assign the right, and the association and trustees may not recognize any assignment or pay over any sum so assigned.

(2) The first \$3,600-or-the-amount-determined--pursuant to--15-30-111(2)(c)(ii) \$10,000 of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 11.** Section 19-12-407, MCA, is amended to read:

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

(2) The first \$3,600-or-the-amount-determined-pursuant to-15-30-111(2)(c)(ii) \$10,000 of benefits received under this part is exempt from state, county, and municipal taxation."

**Section 12.** Section 19-13-1003, MCA, is amended to read:

"19-13-1003. Exemption from taxes. Any money paid in accordance with the provisions of this chapter is exempt

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

(1) a retirement allowance received in excess of \$3,600 or--adjusted---by---an---amount---determined---pursuant---to 15-30-111(2)(c)(ii) \$10,000; or

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

**Section 13.** Section 19-21-212, MCA, is amended to read:

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

(1) except for a retirement allowance received in excess of \$3,600--or--adjusted--by--an--amount--determined pursuant-to-15-30-111(2)(c)(ii) \$10,000, exempt from any state, county, or municipal tax;

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

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

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

**Section 14.** Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an

1 appropriation made by permanent law that authorizes spending  
2 by a state agency without the need for a biennial  
3 legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be  
5 effective, a statutory appropriation must comply with both  
6 of the following provisions:

7 (a) The law containing the statutory authority must be  
8 listed in subsection (3).

9 (b) The law or portion of the law making a statutory  
10 appropriation must specifically state that a statutory  
11 appropriation is made as provided in this section.

12 (3) The following laws are the only laws containing  
13 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
14 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
15 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;  
16 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;  
17 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;  
18 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007;  
19 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
20 19-11-606; 19-12-301; 19-13-604; ~~19-15-101~~; 20-4-109;  
21 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811;  
22 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;  
23 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;  
24 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206;  
25 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108;

1 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310;  
2 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215;  
3 90-6-331; 90-7-220; and 90-9-306.

4 (4) There is a statutory appropriation to pay the  
5 principal, interest, premiums, and costs of issuing, paying,  
6 and securing all bonds, notes, or other obligations, as due,  
7 that have been authorized and issued pursuant to the laws of  
8 Montana. Agencies that have entered into agreements  
9 authorized by the laws of Montana to pay the state  
10 treasurer, for deposit in accordance with 17-2-101 through  
11 17-2-107, as determined by the state treasurer, an amount  
12 sufficient to pay the principal and interest as due on the  
13 bonds or notes have statutory appropriation authority for  
14 the payments. (In subsection (3): pursuant to sec. 7, Ch.  
15 567, L. 1991, the inclusion of 19-6-709 terminates upon  
16 death of last recipient eligible for supplemental benefit;  
17 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of  
18 22-3-811 terminates June 30, 1993.)"

19 NEW SECTION. **Section 15.** Repealer. Sections 19-15-101  
20 and 19-15-102, MCA, are repealed.

21 NEW SECTION. **Section 16.** Effective dates --  
22 retroactive applicability. (1) [This section] is effective  
23 on passage and approval.

24 (2) [Sections 1 through 13] are effective on passage  
25 and approval and apply retroactively, within the meaning of



SB 0053/01

1 1-2-109, to tax years beginning after December 31, 1992.

2 (3) [Sections 14 and 15] are effective July 1, 1993.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0053, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide an exemption of \$10,000 from the taxation of pension and annuity income; repealing the current adjustment to eligible public retirees; and providing a retroactive applicability date and effective dates.

ASSUMPTIONS:Retirement Benefit Adjustment:

1. The projected total benefits to be paid in CY93 and CY94 for the retirement systems reported by the Public Employees Retirement Board are \$84,278,710 and \$92,501,090, respectively.
2. The projected total benefits to be paid in CY93 and CY94 for the Teachers' Retirement system are \$68,808,369 and \$74,595,153, respectively.

Income Tax Revenue:

1. Estimated individual income tax revenues are \$330,248,000 in FY94, and \$339,688,000 in FY95.
2. This bill would provide an exclusion of up to \$10,000 of qualifying retirement or pension income for each individual retiree in the household, regardless of household income (blanket exclusion).

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
<u>Retirement Benefit Adjustment:</u>						
PERS	2,106,968	0	(2,106,968)	2,312,530	0	(2,312,530)
TERS	<u>1,720,209</u>	<u>0</u>	<u>(1,720,209)</u>	<u>1,864,879</u>	<u>0</u>	<u>(1,864,879)</u>
Total General Fund	3,827,177	0	(3,827,177)	4,177,409	0	(4,177,409)
<u>Revenues:</u>						
Individual Income Tax:	330,248,000	318,337,000	(11,911,000)	339,688,000	327,777,000	(11,911,000)
Net General Fund Impact:			(8,083,823)			(7,733,591)

David Lewis 1-8-93  
 DAVID LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

Bernie A. Swift 1/8/93  
 BERNIE SWIFT, PRIMARY SPONSOR DATE

Fiscal Note for SB0053, as introduced

**SB 53**