

SENATE BILL 434

Introduced by Halligan, et al.

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3/22	First Reading
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1 Senate BILL NO. 434
 2 INTRODUCED BY Holligan Ream
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A SINGLE
 5 BUSINESS TAX; PROVIDING FOR A TAX ON VALUE ADDED DURING THE
 6 COURSE OF BUSINESS IN MONTANA IN LIEU OF VARIOUS TAXES BASED
 7 UPON BUSINESS INCOME, INCLUDING THE CORPORATION LICENSE OR
 8 INCOME TAX, PUBLIC CONTRACTOR'S FEES AND TAX, ELECTRIC
 9 ENERGY PRODUCERS' LICENSE TAX, TELEPHONE COMPANY LICENSE
 10 TAX, CEMENT TAXES, SURPLUS LINES PREMIUM TAX, INSURANCE
 11 PREMIUM TAX, AND CERTAIN EXEMPTIONS FOR INSURANCE TAXES;
 12 AMENDING SECTIONS 15-1-501, 15-6-201, 15-30-111, 15-30-117,
 13 15-30-129, 15-30-161, 15-30-163, 15-30-186, 15-30-201,
 14 15-31-543, 15-31-551, 15-32-115, 15-32-201, 15-32-303,
 15 15-32-402, 15-32-405, 15-32-602, 15-32-610, 17-2-121,
 16 17-5-408, 17-7-502, 20-9-141, 20-9-343, 27-1-732, 33-2-708,
 17 33-22-1513, 33-27-101, 33-27-102, 33-27-103, 87-2-903,
 18 90-4-503, AND 90-8-104, MCA; REPEALING SECTIONS 15-30-126,
 19 15-31-101, 15-31-102, 15-31-103, 15-31-111, 15-31-112,
 20 15-31-113, 15-31-114, 15-31-115, 15-31-117, 15-31-118,
 21 15-31-119, 15-31-121, 15-31-122, 15-31-123, 15-31-124,
 22 15-31-125, 15-31-126, 15-31-127, 15-31-131, 15-31-132,
 23 15-31-135, 15-31-136, 15-31-141, 15-31-142, 15-31-143,
 24 15-31-201, 15-31-202, 15-31-203, 15-31-204, 15-31-209,
 25 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305,

1 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310,
 2 15-31-311, 15-31-312, 15-31-313, 15-31-321, 15-31-322,
 3 15-31-323, 15-31-324, 15-31-325, 15-31-326, 15-31-401,
 4 15-31-402, 15-31-403, 15-31-404, 15-31-405, 15-31-406,
 5 15-31-407, 15-31-408, 15-31-501, 15-31-502, 15-31-503,
 6 15-31-504, 15-31-505, 15-31-506, 15-31-510, 15-31-522,
 7 15-31-523, 15-31-524, 15-31-552, 15-31-553, 15-31-554,
 8 15-31-701, 15-31-702, 15-31-703, 15-32-101, 15-32-102,
 9 15-32-103, 15-32-104, 15-32-105, 15-32-106, 15-32-107,
 10 15-32-108, 15-32-109, 15-32-406, 15-33-101, 15-33-102,
 11 15-33-103, 15-33-104, 15-33-105, 15-33-106, 15-50-101,
 12 15-50-205, 15-50-206, 15-50-207, 15-50-301, 15-50-304,
 13 15-51-101, 15-51-102, 15-51-103, 15-51-104, 15-51-106,
 14 15-51-109, 15-51-110, 15-51-111, 15-51-112, 15-51-113,
 15 15-51-114, 15-53-101, 15-53-102, 15-53-103, 15-53-104,
 16 15-53-105, 15-53-106, 15-53-111, 15-53-112, 15-53-113,
 17 15-53-114, 15-53-115, 15-59-101, 15-59-102, 15-59-104,
 18 15-59-105, 15-59-106, 15-59-107, 15-59-108, 15-59-109,
 19 15-59-110, 15-59-112, 15-59-113, 15-59-114, 15-59-121,
 20 15-59-201, 15-59-203, 15-59-204, 15-59-205, 15-59-206,
 21 15-59-207, 15-59-208, 15-59-209, 15-59-210, 15-59-212,
 22 15-59-213, 15-59-214, 15-59-221, 33-2-311, 33-2-705,
 23 33-2-706, 33-2-710, 33-22-1205, AND 69-3-713, MCA; AND
 24 PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY
 25 DATE."

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

NEW SECTION. **Section 1.** Short Title. [Sections 1 through 31] may be cited as the "Montana Single Business Tax Act".

NEW SECTION. **Section 2.** Definitions. As used in [sections 1 through 31], the following definitions apply:

(1) "Active shareholder" means a shareholder who receives at least \$10,000 in compensation, director's fees, or dividends from the business and who owns at least 5% of the outstanding stock.

(2) "Adjusted business income" means business income, as defined in this section, with all of the following additions:

(a) compensation and director's fees of an active shareholder of a corporation;

(b) to the extent deducted in arriving at federal taxable income, any carryback or carryover of a net operating loss or of a capital loss; and

(c) compensation and director's fees of an officer of a corporation.

(3) "Affiliated group" means two or more corporations, one of which owns or controls, directly or indirectly, 80% or more of the capital stock, with voting rights, of the other corporation or corporations.

(4) (a) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination of transfer of title and performance of services, made or engaged in or caused to be made or engaged in within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others. Although an activity of a taxpayer may be incidental to another of the taxpayer's business activities, each activity is considered to be business engaged in within the meaning of [sections 1 through 31].

(b) Business activity does not include:

(i) services rendered to an employer by an employee;

(ii) services as a director of a corporation; or

(iii) a casual transaction.

(5) "Business income" means federal taxable income. However, for a person other than a corporation, it means that part of federal taxable income derived from business activity. For a partnership, business income includes payments and items of income and expense that are attributable to business activity of the partnership and that are separately reported to the partners.

(6) "Casual transaction" means a transaction made or

1 engaged in other than in the ordinary course of repeated and
 2 successive transactions of a similar character. However, a
 3 transaction that is made or engaged in by a person and that
 4 is incidental to the person's regular business activity is
 5 considered to be a business activity within the meaning of
 6 [sections 1 through 31].

7 (7) (a) "Compensation" means all wages, salaries, fees,
 8 bonuses, commissions, or other payments that are made in the
 9 tax year on behalf of or for the benefit of employees,
 10 officers, or directors of the taxpayer and that are subject
 11 to or specifically exempt from withholding under section
 12 3401 of the Internal Revenue Code. Compensation includes, on
 13 a cash or accrual basis consistent with the taxpayer's
 14 method of accounting for federal income tax purposes,
 15 payments:

16 (i) to state and federal unemployment compensation
 17 funds;

18 (ii) under the Federal Insurance Contributions Act and
 19 similar social insurance programs;

20 (iii) for worker's compensation insurance, including
 21 self-insurance;

22 (iv) to individuals not currently working;

23 (v) to dependents and heirs of individuals because of
 24 current or former labor services rendered by those
 25 individuals;

1 (vi) to a pension, retirement, or profit-sharing plan;
 2 and

3 (vii) for insurance for which employees are the
 4 beneficiaries, including payments under health and welfare
 5 and noninsured benefit plans and payments of fees for the
 6 administration of those plans.

7 (b) Compensation does not include:

8 (i) discounts on the price of the taxpayer's
 9 merchandise or services that are sold to the taxpayer's
 10 employees, officers, or directors and that are not available
 11 to other customers; or

12 (ii) payments to an independent contractor.

13 (8) "Department" means the department of revenue
 14 provided for in 2-15-1301.

15 (9) "Employee" means an employee as defined in section
 16 3401(c) of the Internal Revenue Code. A person from whom an
 17 employer is required to withhold for federal income tax
 18 purposes is prima facie considered an employee.

19 (10) "Financial organization" means a bank, industrial
 20 bank, trust company, building and loan association, savings
 21 and loan association, bank holding company as defined in 12
 22 U.S.C. 1841, credit union, regulated investment company as
 23 defined in the Internal Revenue Code, and any other
 24 association, joint stock company, or corporation at least
 25 90% of whose assets consist of intangible personal property

1 and at least 90% of whose gross receipts income consist of
2 dividends or interest or other charges resulting from the
3 use of money or credit.

4 (11) (a) "Gross receipts" means the sum of sales and
5 rental or lease receipts.

6 (b) Gross receipts does not include:

7 (i) the amounts received in an agency capacity or other
8 representative capacity, solely on behalf of another; or

9 (ii) amounts received by a person having the authority
10 to expend or otherwise appropriate those amounts in payment
11 for or in consideration of sales or services made or
12 rendered by the person, by another acting under the person's
13 direction and control, or by a fiduciary acting as a
14 guardian, executor, administrator, receiver, conservator, or
15 trustee other than a trustee of taxes received or collected
16 from others under the direction of any law.

17 (12) "Insurance company" means an insurer authorized
18 under Title 33, chapter 2, part 1.

19 (13) "Officer" means an officer of a corporation other
20 than a corporation electing taxation under subchapter S. of
21 chapter 1, sections 1361 through 1379 of the Internal
22 Revenue Code, including the presiding officer of the board,
23 president, vice president, secretary, and treasurer or other
24 persons performing similar duties.

25 (14) "Person" means an individual, firm, bank, financial

1 institution, limited partnership, copartnership,
2 partnership, joint venture, association, corporation,
3 receiver, estate, or trust or any other group or combination
4 that acts as a unit.

5 (15) "Rent" includes a lease payment or other payment
6 for the use of any property to which the taxpayer does not
7 have legal or equitable title.

8 (16) "Sale" or "sales" means the gross receipts arising
9 from a transaction or transactions in which gross receipts
10 constitute consideration:

11 (a) for the transfer of title to or possession of:

12 (i) property that is stock in trade or other property
13 of a kind that would properly be included in the inventory
14 of the taxpayer if the property was on hand at the close of
15 the tax year; or

16 (ii) property held by the taxpayer primarily for sale to
17 customers in the ordinary course of trade or business; or

18 (b) for the performance of services that constitute
19 business activities other than those included in subsection
20 (16)(a).

21 (17) "Shareholder" means a person who owns outstanding
22 stock in the business. An individual is considered the owner
23 of stock owned, directly or indirectly, by or for family
24 members as defined by section 318(a)(1) of the Internal
25 Revenue Code.

(18) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a political subdivision of any of them. For purposes of [sections 11 through 23], state also includes a foreign country or a political subdivision of a foreign country.

(19) "Tax" includes interest and penalties unless the context provides otherwise.

(20) "Tax base" means the dollar value added during production by a business, which amount is the business's gross receipts less cost of materials and rent paid as provided in [section 3], less exemptions and adjustments, and, if applicable, after apportionment or allocation. The tax base is used to compute the amount of the tax imposed under [sections 1 through 31].

(21) "Taxpayer" means a person liable for a tax, interest, or penalty under [sections 1 through 31].

(22) "Tax year" means the calendar year or the fiscal year ending during the calendar year upon the basis of which the tax base is computed under [sections 1 through 31]. When a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by [sections 1 through 31], a taxpayer's tax year must be for the same period as is covered by the taxpayer's federal income tax return.

(23) "Unrelated business activity" means any business activity that gives rise to unrelated taxable income as defined in the Internal Revenue Code.

NEW SECTION. **Section 3.** value added. (1) The value added by a business, subject to [sections 1 through 31], is business gross receipts less the cost of materials and rent.

(2) The cost of materials includes all goods and services used in the production of a business's product or service. Capital cost acquired during a tax year is the cost of materials for that tax year, as provided in [section 7(1)]. The payments for taxes, dividends, and compensation are not the cost of goods and services used in the production of a product or service.

NEW SECTION. **Section 4.** Tax on value reflected by tax base. A tax of 4% for the privilege of doing business in Montana is imposed upon the tax base of each person with business activity in this state that is allocated or apportioned to this state.

NEW SECTION. **Section 5.** Determination of tax base. (1) Tax base means the value added by a business, adjusted as follows:

(a) The tax base must be allocated or apportioned as provided in [sections 11 through 23].

(b) Adjustments must be made for recapture of capital investment because of the sale of capital assets, as

provided in [section 7(2)].

(c) Exemptions from the tax must be subtracted as provided in [section 6].

(2) If compensation divided by the adjusted tax base determined in subsection (1) exceeds 75%, the tax base may be further adjusted to reduce the adjusted tax base by the number of percentage points over 75. The deduction may not exceed 25% of the adjusted tax base.

NEW SECTION. Section 6. Exemptions. The following are exempt from the tax imposed by [section 4]:

(1) (a) A small business exemption from the tax base, after any adjustment made under [section 7] and any allocation or apportionment under [sections 11 through 23], is exempt from the tax imposed by [sections 1 through 31] as follows:

(i) The first \$45,000 of the tax base is exempt.

(ii) An additional amount of \$12,000 is exempted for the second and each succeeding partner of a partnership or shareholder of a subchapter S. corporation or professional corporation who is a full-time employee of the taxpayer, whose business income from that business is at least \$12,000, and who owns at least 10% of that business. The total partner or shareholder exemption may not exceed \$48,000.

(iii) The total exemption under subsections (1)(a)(i)

and (1)(a)(ii) must be reduced by \$2 for each \$1 that business income exceeds the total amount of the exemption.

(b) For a taxpayer whose business activity is for a fractional part of a year, the exemption provided in this subsection (1), including the increase in the exemption, must be prorated for the period of the taxpayer's business activity.

(c) For the purposes of computing the exemption, "business income" has the meaning as defined in [section 2] plus compensation and director's fees of a shareholder of a corporation and any carryback or carryover of a net operating loss or capital loss to the extent deducted in arriving at federal taxable income.

(d) In calculating eligibility for the exemption provided in this subsection (1), a person who is not a corporation may elect to average its business income for the current year and the previous 4 tax years.

(e) As used in this subsection (1), business income may not be less than zero.

(f) An affiliated group, a controlled group of corporations, as defined by section 1563 of the Internal Revenue Code, or an entity under common control, as defined by the Internal Revenue Code, is entitled to only one exemption allowed by this subsection (1), whether or not a combined or consolidated return is filed.

(2) The United States, this state, other states, and the agencies, political subdivisions, and enterprises of each are exempt from the tax imposed by [section 4].

(3) A person who is exempt from federal income tax pursuant to the provisions of the Internal Revenue Code is exempt from the tax imposed by [section 4], except the following:

(a) an organization included under section 501(c)(12) or 501(c)(16) of the Internal Revenue Code;

(b) an organization exempt under section 501(c)(4) of the Internal Revenue Code that would be exempt under section 501(c)(12) of the Internal Revenue Code except for its failure to meet the requirements in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members; or

(c) the value added attributable to the activities giving rise to the unrelated taxable business income of an exempt person.

(4) For a financial organization, interest income derived from obligations of the United States that this state is prohibited by federal law from subjecting to taxation under [sections 1 through 31] is exempt from the tax imposed by [section 4].

NEW SECTION. Section 7. Treatment of capital. (1) (a)

The tax base must be adjusted to exclude capital cost,

including fabrication and installation, paid or accrued in the tax year, of tangible assets of a type that are eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. This capital cost must be multiplied by the apportionment factor, as prescribed in [sections 11 through 23], for the tax year. If the adjustment calculated pursuant to this subsection is a positive amount, it must be deducted from the tax base after allocation or apportionment. If the adjustment calculated pursuant to this subsection is a negative amount, it must, without reference to the negative sign, be added to the tax base after allocation and apportionment.

(b) If the combined capital cost determined under subsections (1)(a) and (2) exceeds the allocated or apportioned tax base determined under [section 5], the amount of the excess may be carried forward to the next tax year and considered a capital cost in that year under the provisions of subsection (1)(a). Excess capital may not be carried forward more than 10 years.

(2) The gross proceeds or benefit derived from the sale or other disposition of a tangible asset described in subsection (1) must be added into gross receipts after it has been multiplied by the apportionment factor, as prescribed by [sections 11 through 23], for the tax year.

NEW SECTION. Section 8. Tax base of insurance company.

The tax base of an insurance company is the product of 0.35 times the insurance company's gross receipts as apportioned under [section 22], excluding receipts on the sale of annuities and receipts on the sale of reinsurance. The tax base calculated under this section may not be adjusted under [section 7] but may be adjusted by deducting from gross receipts the amount of the offset allowed under 33-10-230.

NEW SECTION. Section 9. Small business credit -- conditions. (1) A person who qualifies pursuant to subsection (2) is allowed a credit against the tax imposed by [section 4]. The credit is the amount by which the tax imposed by [section 4] exceeds 6.8% of adjusted business income.

(2) The credit allowed by subsection (1) must be taken before any other credit under [sections 1 through 31]. The credit allowed by subsection (1) is available to any person whose gross receipts do not exceed \$1 million for the tax year and whose adjusted business income does not exceed \$100,000, subject to the following conditions:

(a) An individual, a partnership, or a subchapter S. corporation is not entitled to the credit if the individual, any partner of the partnership, or any shareholder of the subchapter S. corporation receives more than \$45,000 as a distributive share of the adjusted business income.

(b) A corporation other than a subchapter S.

corporation is not entitled to the credit if compensation and director's fees of a shareholder or officer exceed \$45,000.

(c) For the purposes of determining disqualification under subsection (2)(a) or (2)(b), an active shareholder's share of business income may not be attributed to another active shareholder.

(3) An affiliated group, a controlled group of corporations, or an entity under common control, as defined by the Internal Revenue Code, is not entitled to the credit allowed by this section unless the business activities of the groups or entities are consolidated.

(4) The department shall permit a taxpayer who claims the credit allowed by subsection (1) to file and pay the tax imposed by [sections 1 through 31] without computing the tax imposed under [section 4].

NEW SECTION. Section 10. Credit -- subchapter S. or unincorporated taxpayer. A taxpayer who is unincorporated or who elects the subchapter S. provisions of the Internal Revenue Code is entitled to an additional credit for a portion of the single business tax liability after the calculation of the credit provided in [section 9] for the same year, according to the following schedule:

If Business Income Is: The Credit Is Equal To:

1 \$20,000 or less 20% of the single business tax
 2 liability
 3 more than \$20,000,
 4 but less than \$40,000 15% of the single business tax
 5 liability
 6 \$40,000 or more 10% of the single business tax
 7 liability

8 NEW SECTION. Section 11. Allocation of tax base --
 9 business activities confined solely to state. A taxpayer
 10 whose business activities are confined solely to this state
 11 shall allocate the entire tax base of the taxpayer to this
 12 state except as provided in [section 18].

13 NEW SECTION. Section 12. Apportionment of tax base --
 14 business activities taxable within and outside state. A
 15 taxpayer whose business activities are taxable both within
 16 and outside this state shall apportion the tax base as
 17 provided in [sections 11 through 23].

18 NEW SECTION. Section 13. Conditions to taxpayer being
 19 taxable in another state. For purposes of apportionment of
 20 the tax base from business activities under [sections 1
 21 through 31], a taxpayer is taxable in another state if, in
 22 that state, the taxpayer is subject to a business privilege
 23 tax, a net income tax, a franchise tax measured by net
 24 income, a franchise tax for the privilege of doing business,
 25 a corporate stock tax, or a tax of the type imposed under

1 [sections 1 through 31]. A taxpayer is taxable if that state
 2 has jurisdiction to subject the taxpayer to one or more of
 3 those taxes, regardless of whether that state imposes the
 4 tax on the taxpayer.

5 NEW SECTION. Section 14. Calculation of apportionment
 6 of tax base to state. All of the tax base, other than the
 7 tax base derived principally from transportation or
 8 financial services or as otherwise specifically allocated,
 9 must be apportioned to this state by multiplying the tax
 10 base by a percentage that is the sum of all of the following
 11 percentages:

- 12 (1) the property factor multiplied by 25%;
- 13 (2) the payroll factor multiplied by 25%; and
- 14 (3) the sales factor multiplied by 50%.

15 NEW SECTION. Section 15. Property factor -- valuation.
 16 (1) The property factor is a fraction, the numerator of
 17 which is the average value of the taxpayer's real and
 18 tangible personal property owned or rented in this state
 19 during the tax year and the denominator of which is the
 20 average value of all the taxpayer's real and tangible
 21 personal property owned or rented during the tax year.

22 (2) Property owned by the taxpayer is valued at its
 23 original cost. Property rented by the taxpayer is valued at
 24 eight times the net annual rental rate. Net annual rental
 25 rate is the annual rental rate paid by the taxpayer less any

annual rental rate received by the taxpayer from subrentals.

(3) The average value of property is determined by averaging the values at the beginning and end of the tax year. However, the department may require the periodic averaging of values during the tax year if it is reasonably required to reflect properly the average value of the taxpayer's property.

NEW SECTION. Section 16. Payroll factor -- wages defined -- wages paid in state. (1) The payroll factor is a fraction, the numerator of which is the total wages paid in this state during the tax year by the taxpayer and the denominator of which is the total wages paid everywhere during the tax year by the taxpayer.

(2) For the purposes of [sections 11 through 23], "wages" means wages as defined in section 3401 of the Internal Revenue Code.

(3) Wages are paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and outside the state but the service performed outside the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and:

(i) the base of operations or, if there is no base of

operations, the place from which the service is directed or controlled is in the state; or

(ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state.

NEW SECTION. Section 17. Sales factor -- location of sales. (1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year.

(2) Sales of tangible personal property are in this state if:

(a) the property is shipped or delivered to a purchaser, other than the United States government, within this state, regardless of the free on board point or other conditions of the sales; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the purchaser is the United States government or if the taxpayer is not taxable in the state of the purchaser.

NEW SECTION. Section 18. Transportation services -- determination of tax base. The tax base of a taxpayer whose business activities consist of transportation services rendered either entirely within or partly within and partly

1 outside the state must be determined under the provisions of
2 [sections 19 and 20].

3 NEW SECTION. **Section 19. Transportation services --**
4 **tax base attributable to Montana.** (1) The tax base
5 attributable to Montana sources for a taxpayer described in
6 [section 18], other than one whose activity consists of the
7 transportation of oil or gas by pipeline, is that portion of
8 the tax base of the taxpayer derived from transportation
9 services wherever performed, based on the ratio that the
10 revenue miles of the taxpayer in Montana bear to the revenue
11 miles of the taxpayer everywhere. A revenue mile means the
12 transportation for a consideration of 1 net ton in weight or
13 of one passenger for the distance of 1 mile. The tax base
14 attributable to Montana sources for a taxpayer engaged in
15 the transportation both of property and of individuals is
16 that portion of the entire tax base of the taxpayer that is
17 equal to the sum of the passenger miles and ton mile
18 fractions, separately computed and individually weighted by
19 the ratio of gross receipts from passenger transportation to
20 total gross receipts from all transportation and by the
21 ratio of gross receipts from freight transportation to total
22 gross receipts from all transportation, respectively.

23 (2) If it is shown to the satisfaction of the
24 department that the information required under subsection
25 (1) is not available or cannot be obtained without

1 unreasonable expense to the taxpayer, the department may use
2 any other data that may be available and that, in the
3 opinion of the department, will result in an equitable
4 allocation of receipts to this state.

5 NEW SECTION. **Section 20. Transportation of oil or gas**
6 **by pipeline -- tax base attributable to Montana.** (1) When
7 the tax base is derived from the transportation of oil by
8 pipeline, the tax base attributable to Montana is the tax
9 base of the taxpayer in the ratio that the barrel miles
10 transported in Montana bear to the barrel miles transported
11 by the taxpayer everywhere.

12 (2) When the tax base is derived from the
13 transportation of gas by pipeline, the tax base attributable
14 to Montana is the tax base of the taxpayer in the ratio that
15 1,000 cubic feet miles transported in Montana bear to 1,000
16 cubic feet miles transported by the taxpayer everywhere.

17 NEW SECTION. **Section 21. Financial organizations --**
18 **tax base attributable to Montana sources.** The tax base of a
19 financial organization attributable to Montana sources is:

20 (1) the entire tax base of a taxpayer whose business
21 activities are confined solely to this state;

22 (2) in the case of a taxpayer whose business activities
23 are conducted partly within and partly outside the state,
24 that portion of the tax base of the taxpayer that its gross
25 business in the state is in relation to its gross business

everywhere during the period covered by its return. Gross business includes the sum of:

(a) fees, commissions, or other compensation for financial services;

(b) gross profits from trading in stocks, bonds, or other securities;

(c) interest charged to customers for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying the accounts;

(d) interest and dividends received; and

(e) any other gross income resulting from the operation as a financial organization.

NEW SECTION. Section 22. Insurance companies -- tax base attributable to Montana. The tax base of an insurance company doing business both within and outside the state or partly within and partly outside the state is that portion of the tax base of the taxpayer that the gross direct premiums received for insurance upon property or for risk in this state, deducting premiums upon policies not taken and returned premiums on canceled policies from Montana, bear to the gross direct premiums received for insurance upon property or for risk, deducting premiums upon policies not taken and returned premiums on canceled policies everywhere.

NEW SECTION. Section 23. Election by taxpayer. (1) If the taxpayer's business activities within this state do not

include owning or renting real estate or tangible personal property and the taxpayer's dollar volume of gross sales made during the tax year within this state is not in excess of \$100,000, the taxpayer may elect for that year to report and pay a tax on the tax base, which is determined by multiplying total sales in this state for the tax year by the ratio of the tax base, for the tax imposed by [sections 1 through 31], to total sales as reported on the taxpayer's federal income tax return for the same tax year.

(2) The election is not available for any tax year for which a consolidated or combined return is filed.

NEW SECTION. Section 24. Estimated returns and payments. (1) A taxpayer who reasonably expects liability for the tax year to exceed \$600 or adjustments under [section 7] to exceed \$100,000 shall file an estimated return and pay an estimated tax for each quarter of the taxpayer's tax year.

(2) For taxpayers who pay on a calendar year basis, the quarterly returns and estimated payments must be made by April 30, July 31, October 31, and January 31. Taxpayers who do not pay on a calendar year basis shall file quarterly returns and make estimated payments on the appropriate due date that in the taxpayer's fiscal year corresponds to the calendar year.

(3) The estimated payment may be:

1 (a) made with each quarterly return of each tax year
 2 for the estimated tax base for the quarter or 25% of the
 3 estimated annual liability. The second, third, and fourth
 4 estimated payments in each tax year must include
 5 adjustments, if necessary, to correct underpayments or
 6 overpayments from previous quarterly payments in the tax
 7 year to a revised estimate of the annual tax liability.

8 (b) filed and paid before the 16th day of each month,
 9 with an estimated return computed at the rate of 1% of the
 10 gross receipts for the preceding month; or

11 (c) filed and paid before the 16th day of the months
 12 specified in subsection (2), with an estimated return
 13 computed at the rate of 1% of the gross receipts for the
 14 preceding quarter.

15 (4) Interest must be assessed to the taxpayer if the
 16 amount of estimated taxes paid is less than the tax due,
 17 unless the taxpayer's payments meet one of the following
 18 conditions:

19 (a) The sum of the estimated payments equals at least
 20 85% of the liability or 1% of the gross receipts for the tax
 21 year, and the amount of each estimated payment reasonably
 22 approximates the tax liability incurred during the quarter
 23 for which the estimated payment was made.

24 (b) The preceding year's tax liability was \$20,000 or
 25 less, and the taxpayer submitted four equal installments,

1 the sum of which equaled or exceeded the previous year's tax
 2 liability.

3 (5) Each estimated return must be made on a form
 4 prescribed by the department and must include an estimate of
 5 the annual tax liability and other information required by
 6 the department. The form may be combined with any other tax
 7 reporting form prescribed by the department.

8 (6) With respect to a taxpayer filing an estimated tax
 9 return for the taxpayer's first tax year of less than 12
 10 months, the amounts paid with each return must be
 11 proportional to the number of payments made in the first tax
 12 year.

13 (7) Payments made under this section are a credit
 14 against the payment required with the annual tax return
 15 required under [section 26].

16 (8) A taxpayer may file the estimated and annual
 17 returns required by this section if the taxpayer:

18 (a) elects under the Internal Revenue Code to file an
 19 annual federal income tax return by March 1 in the year
 20 following the taxpayer's tax year and does not make a
 21 quarterly estimate or payment; or

22 (b) does not make a quarterly estimate or payment and
 23 files a tentative annual return with a tentative payment by
 24 January 15 in the year following the taxpayer's tax year and
 25 a final return by April 15 in the year following the

1 taxpayer's tax year.

2 (9) Instead of the quarterly return prescribed in
3 subsections (1) and (2), the taxpayer may elect either of
4 the following options:

5 (a) to file and pay before the 16th day of each month
6 an estimated return computed at the rate of 1% of the gross
7 receipts for the preceding month; or

8 (b) to file and pay before the 16th day of the months
9 specified in subsection (2) an estimated return computed at
10 the rate of 1% of the gross receipts for the preceding
11 quarter.

12 NEW SECTION. Section 25. Computation of tax for first
13 tax year. A taxpayer subject to the provisions of [sections
14 1 through 31] may elect to compute the tax for the first tax
15 year if the tax year is less than 12 months, in accordance
16 with one of the following methods:

17 (1) The tax may be computed as if the provisions of
18 [sections 1 through 31] were effective on the first day of
19 the taxpayer's annual accounting period. The amount computed
20 must be multiplied by a fraction, the numerator of which is
21 the number of months in the taxpayer's first tax year and
22 the denominator of which is 12.

23 (2) The tax may be computed by determining the tax base
24 in the first tax year in accordance with an accounting
25 method, satisfactory to the department, that reflects the

1 actual tax base attributable to the period.

2 NEW SECTION. Section 26. Filing annual or final return

3 -- remittance of final liability -- extension of time. (1)
4 An annual or final return must be filed with the department
5 in the form and content prescribed by the department by the
6 last day of the fourth month after the end of the taxpayer's
7 tax year. Any final liability must be remitted with the
8 return. A person whose apportioned or allocated gross
9 receipts plus the adjustments provided in [section 7] are
10 less than \$100,000 need not file a return or pay the tax
11 provided under [sections 1 through 31].

12 (2) For a person whose apportioned or allocated gross
13 receipts plus the adjustments provided in [section 7] are
14 for a tax year of less than 12 months, the amount in
15 subsection (1) must be multiplied by a fraction, the
16 numerator of which is the number of months in the tax year
17 and the denominator of which is 12.

18 (3) The department, upon application of the taxpayer
19 and for good cause shown, may extend the date for filing the
20 annual return. Interest at the rate of 9% a year must be
21 added to the amount of the tax unpaid for the period of the
22 extension. The department shall require a tentative return
23 and payment of an estimated tax.

24 (4) If a taxpayer is granted an extension of time
25 within which to file the federal income tax return for any

1 tax year, filing of a copy of the request for extension,
 2 together with a tentative return, and payment of an
 3 estimated tax to the department by the due date provided in
 4 subsection (1) automatically extends the due date for the
 5 filing of a final return under this section for an
 6 equivalent period plus 60 days. Interest at the rate of 9% a
 7 year must be added to the amount of the tax unpaid for the
 8 period of the extension.

9 NEW SECTION. Section 27. Furnishing true and correct
 10 copy of federal return -- filing amended return. (1) A
 11 taxpayer required to file a return under [sections 1 through
 12 31] may be required to furnish a true and correct copy of
 13 any return or portion of any return that the taxpayer has
 14 filed under the provisions of the Internal Revenue Code.

15 (2) A taxpayer shall file an amended return with the
 16 department, showing any alteration in or modification of the
 17 taxpayer's federal income tax return that affects the
 18 taxpayer's tax base under [sections 1 through 31]. The
 19 amended return must be filed within 120 days after the final
 20 determination by the internal revenue service.

21 NEW SECTION. Section 28. Information return -- copy of
 22 federal return filed by voluntary association, joint
 23 venture, partnership, estate, or trust. (1) At the request
 24 of the department, a person required by the Internal Revenue
 25 Code to file or submit an information return of income paid

1 to others shall, to the extent that the information is
 2 applicable to residents of this state, at the same time file
 3 or submit to the department the information in the form and
 4 content as may be prescribed.

5 (2) A voluntary association, joint venture,
 6 partnership, estate, or trust shall, if requested by the
 7 department, file a copy of any tax return or portion of any
 8 tax return that was filed under the provisions of the
 9 Internal Revenue Code. The department may prescribe
 10 alternate forms of returns.

11 NEW SECTION. Section 29. Filing of consolidated or
 12 combined return by affiliated group of corporations --
 13 conditions. The department may require or permit the filing
 14 of a consolidated or combined return by an affiliated group
 15 of corporations that are Montana taxpayers if all of the
 16 following conditions exist:

17 (1) All members of the affiliated group are Montana
 18 taxpayers.

19 (2) Each member of the affiliated group maintains a
 20 relationship with one or more members of the group that
 21 includes intercorporate transactions of a substantial nature
 22 other than control, ownership, or financing arrangements, or
 23 any combination of those factors.

24 (3) The business activities of each member of the
 25 affiliated group are subject to apportionment by a specific

1 apportionment formula contained in [sections 1 through 31],
 2 and the specific formula also is applicable to all other
 3 members of the affiliated group and would be applicable to
 4 each member even if it were not a member of the affiliated
 5 group.

6 NEW SECTION. **Section 30.** Consolidated or combined
 7 return, tax base, or apportionment factors. Except as
 8 expressly provided in [section 29], a provision of [sections
 9 1 through 31] does not require the filing of a consolidated
 10 or combined return or a consolidation or combination of the
 11 tax base or apportionment factors of two or more
 12 corporations.

13 NEW SECTION. **Section 31.** Administration of tax --
 14 rules -- forms -- tax cumulative -- deposit in general fund
 15 -- statistics. (1) The department shall prescribe forms for
 16 use by taxpayers and shall promulgate rules in conformity
 17 with [sections 1 through 31] for:

- 18 (a) the maintenance by taxpayers of records, books, and
- 19 accounts;
- 20 (b) the computation of the tax;
- 21 (c) the manner and time of changing or electing
- 22 accounting methods and of exercising the various options
- 23 contained in [sections 1 through 31];
- 24 (d) the making of returns;
- 25 (e) the ascertainment, assessment, and collection of

1 the tax imposed under [sections 1 through 31]; and

2 (f) any other matter necessary for the administration
 3 of [sections 1 through 31].

4 (2) The tax imposed by [sections 1 through 31] is in
 5 addition to all other taxes for which the taxpayer may be
 6 liable. The proceeds derived from the tax must be credited
 7 to the general fund of the state.

8 (3) The department shall prepare and publish statistics
 9 from the records kept to administer the tax imposed by
 10 [sections 1 through 31], detailing the distribution of tax
 11 receipts by type of business, legal form of organization,
 12 sources of tax base, timing of tax receipts, and types of
 13 deductions.

14 **Section 32.** Section 15-1-501, MCA, is amended to read:

15 "15-1-501. (Temporary) Disposition of money from
 16 certain designated license and other taxes. (1) The state
 17 treasurer shall deposit to the credit of the state general
 18 fund all money received by him from the collection of:

- 19 (a) fees from driver's licenses, motorcycle
- 20 endorsements, and duplicate driver's licenses as provided in
- 21 61-5-121;
- 22 (b) electrical energy producer's license taxes under
- 23 chapter 51;
- 24 (c) severance taxes allocated to the general fund under
- 25 chapter 36;

1 (d) liquor license taxes under Title 16;
 2 (e) telephone company license taxes under chapter 53;
 3 and
 4 (f) inheritance and estate taxes under Title 72,
 5 chapter 16.
 6 (2) All money received from the collection of income
 7 taxes under chapter 30 of this title must be deposited as
 8 follows:
 9 (a) 62.8% of the taxes to the credit of the state
 10 general fund;
 11 (b) 8.7% of the taxes to the credit of the debt service
 12 account for long-range building program bonds as described
 13 in 17-5-408;
 14 (c) 28.5% of the taxes to the credit of the state
 15 special revenue fund for state equalization aid to the
 16 public schools of Montana as described in 20-9-343; and
 17 (d) all interest and penalties to the credit of the
 18 state general fund.
 19 (3) All money received from the collection of
 20 corporation license and income taxes under chapter 31 of
 21 this title, except as provided in 15-31-702, must be
 22 deposited as follows:
 23 (a) 61% of the taxes to the credit of the state general
 24 fund;
 25 (b) 10.5% of the taxes to the credit of the debt

1 service account for long-range building program bonds as
 2 described in 17-5-408;
 3 (c) 28.5% of the taxes to the credit of the state
 4 special revenue fund for state equalization aid to the
 5 public schools of Montana as described in 20-9-343; and
 6 (d) all interest and penalties to the credit of the
 7 state general fund.
 8 (4) The state treasurer shall also deposit to the
 9 credit of the state general fund all money received by him
 10 from the collection of license taxes, fees, and all net
 11 revenues and receipts from all other sources under the
 12 operation of the Montana Alcoholic Beverage Code.
 13 (5) After the distribution provided for in 15-36-112,
 14 the remainder of the oil severance tax collections must be
 15 deposited in the general fund.
 16 (6) All refunds of taxes must be attributed to the
 17 funds in which the taxes are deposited. All refunds of
 18 interest and penalties must be attributed to the funds in
 19 which the interest and penalties are deposited.
 20 15-1-501. (Effective July 1, 1993) Disposition of money
 21 from certain designated license and other taxes. (1) The
 22 state treasurer shall deposit to the credit of the state
 23 general fund all money received by him from the collection
 24 of:
 25 (a) fees from driver's licenses, motorcycle

endorsements, and duplicate driver's licenses as provided in 61-5-121;

~~{b}--electrical--energy--producer's--license--taxes--under chapter-51;~~

~~{e}{b}~~ severance taxes allocated to the general fund under chapter 36;

~~{d}{c}~~ liquor license taxes under Title 16; and

~~{e}--telephone--company--license--taxes--under--chapter-53;~~
and

~~{f}{d}~~ inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) 59.5% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 31.8% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of

~~corporation-license-and-income-taxes~~ the single business tax
under chapter 31 of this title~~---except---as-provided-in~~
15-31-702, must be deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received ~~by--him~~ from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) All refunds of taxes must be attributed to the funds in which the taxes are deposited. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are deposited."

Section 33. Section 15-6-201, MCA, is amended to read:

"15-6-201. **Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; and

(iv) public libraries;

(b) buildings, with land they occupy and furnishings therein within the buildings, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101,

licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the

1 owner for personal and domestic purposes or for furnishing
2 or equipping the family residence;

3 (i) a truck canopy cover or topper weighing less than
4 300 pounds and having no accommodations attached. This
5 property is also exempt from taxation under 61-3-504(2) and
6 61-3-537.

7 (j) a bicycle, as defined in 61-1-123, used by the
8 owner for personal transportation purposes;

9 (k) motor homes, travel trailers, and campers;

10 (l) all watercraft;

11 (m) motor vehicles, land, fixtures, buildings, and
12 improvements owned by a cooperative association or nonprofit
13 corporation organized to furnish potable water to its
14 members or customers for uses other than the irrigation of
15 agricultural land;

16 (n) the right of entry that is a property right
17 reserved in land or received by mesne conveyance (exclusive
18 of leasehold interests), devise, or succession to enter land
19 whose surface title is held by another to explore, prospect,
20 or dig for oil, gas, coal, or minerals;

21 (o) property owned and used by a corporation or
22 association organized and operated exclusively for the care
23 of the developmentally disabled, mentally ill, or
24 vocationally handicapped as defined in 18-5-101, which is
25 not operated for gain or profit, and property owned and used

1 by an organization owning and operating facilities for the
2 care of the retired, aged, or chronically ill, which are not
3 operated for gain or profit;

4 (p) all farm buildings with a market value of less than
5 \$500 and all agricultural implements and machinery with a
6 market value of less than \$100;

7 (q) property owned by a nonprofit corporation organized
8 to provide facilities primarily for training and practice
9 for or competition in international sports and athletic
10 events and not held or used for private or corporate gain or
11 profit. For purposes of this subsection (q), "nonprofit
12 corporation" means an organization exempt from taxation
13 under section 501(c) of the Internal Revenue Code and
14 incorporated and admitted under the Montana Nonprofit
15 Corporation Act.

16 (r) provided the tools are owned by the taxpayer, the
17 first \$15,000 or less of market value of tools that are
18 customarily hand-held and that are used to:

19 (i) construct, repair, and maintain improvements to
20 real property; or

21 (ii) repair and maintain machinery, equipment,
22 appliances, or other personal property;

23 (s) harness, saddlery, and other tack equipment;

24 (t) a title plant owned by a title insurer or a title
25 insurance producer, as those terms are defined in 33-25-105;

1 and

2 (u) beginning January 1, 1994, timber as defined in
3 15-44-102.

4 (2) (a) The term "institutions of purely public
5 charity" includes any organization that meets the following
6 requirements:

7 (i) The organization qualifies as a tax-exempt
8 organization under the provisions of section 501(c)(3),
9 Internal Revenue Code, as amended.

10 (ii) The organization accomplishes its activities
11 through absolute gratuity or grants; however, the
12 organization may solicit or raise funds by the sale of
13 merchandise, memberships, or tickets to public performances
14 or entertainment or by other similar types of fundraising
15 activities.

16 (b) For the purposes of subsection (1)(g), the term
17 "public museums, art galleries, zoos, and observatories"
18 means governmental entities or nonprofit organizations whose
19 principal purpose is to hold property for public display or
20 for use as a museum, art gallery, zoo, or observatory. The
21 exempt property includes all real and personal property
22 reasonably necessary for use in connection with the public
23 display or observatory use. Unless the property is leased
24 for a profit to a governmental entity or nonprofit
25 organization by an individual or for-profit organization,

1 real and personal property owned by other persons is exempt
2 if it is:

3 (i) actually used by the governmental entity or
4 nonprofit organization as a part of its public display;

5 (ii) held for future display; or

6 (iii) used to house or store a public display.

7 (3) (a) The following portions of the appraised value
8 of a capital investment made after January 1, 1979, in a
9 recognized nonfossil form of energy generation, as defined
10 in 15-32-201, or low emission wood or biomass combustion
11 devices, as defined in 15-32-102 subsection (3)(b) of this
12 section, are exempt from taxation for a period of 10 years
13 following installation of the property:

14 ~~(a)~~(i) \$20,000 in the case of a single-family
15 residential dwelling;

16 ~~(b)~~(ii) \$100,000 in the case of a multifamily
17 residential dwelling or a nonresidential structure.

18 (b) "Low emission wood or biomass combustion device"
19 means a noncatalytic stove or furnace that:

20 (i) (A) is specifically designed to burn wood pellets
21 or other nonfossil biomass pellets; and

22 (B) has a particulate emission rate of less than 4.1
23 grams an hour when tested in conformance with the standard
24 method for measuring the emissions and efficiencies of
25 residential wood stoves, as adopted by the department of

health and environmental sciences pursuant to 15-32-203; or

(C) has an air-to-fuel ratio of 35 to 1 or greater when tested in conformance with the standard method for measuring the air-to-fuel ratio and minimum achievable burn rates for wood-fired appliances, as adopted by the department of health and environmental sciences pursuant to 15-32-203; or

(ii) burns wood or other nonfossil biomass and has a particulate emission rate of less than 4.1 grams an hour when tested in conformance with the standard method for measuring the emissions and efficiencies of residential wood stoves, as adopted by the department of health and environmental sciences pursuant to 15-32-203."

Section 34. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income ~~shall~~ must be 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 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 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) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of

the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

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

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

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

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

~~(g)(f)~~ all benefits received under the workers' compensation laws;

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

~~(i)(h)~~ all money received because of a settlement agreement or judgment in a lawsuit brought against a

manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

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

~~(4)(3)~~ A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or ~~small~~ business corporation that has made an election under subchapter S. of the Internal Revenue Code, the deduction must be made to determine the amount of income or loss of the partnership or ~~small~~ subchapter S. business corporation.

~~(5)(4)~~ Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in

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

5 ~~†6†~~(5) A taxpayer receiving retirement disability
6 benefits who has not attained age 65 by the end of the
7 taxable year and who has retired as permanently and totally
8 disabled may exclude from adjusted gross income up to \$100
9 per week received as wages or payments in lieu of wages for
10 a period during which the employee is absent from work due
11 to the disability. If the adjusted gross income before this
12 exclusion and before application of the two-earner married
13 couple deduction exceeds \$15,000, the excess reduces the
14 exclusion by an equal amount. This limitation affects the
15 amount of exclusion, but not the taxpayer's eligibility for
16 the exclusion. If eligible, married individuals shall apply
17 the exclusion separately, but the limitation for income
18 exceeding \$15,000 is determined with respect to the spouses
19 on their combined adjusted gross income. For the purpose of
20 this subsection, permanently and totally disabled means
21 unable to engage in any substantial gainful activity by
22 reason of any medically determined physical or mental
23 impairment lasting or expected to last at least 12 months.
24 (Subsection ~~†2†~~††† (2)(e) terminates on occurrence of
25 contingency---sec. 3, Ch. 634, L. 1983.)"

1 **Section 35.** Section 15-30-117, MCA, is amended to read:

2 **"15-30-117. Net operating loss -- computation.** (1) A
3 Montana net operating loss must be determined in accordance
4 with section 172 of the Internal Revenue Code of 1954 or as
5 that section may be labeled or amended and in accordance
6 with the following:

7 (a) The net operating loss deduction for Montana
8 purposes is increased by the following:

9 (i) that portion of the federal income tax and motor
10 vehicle tax allowed as a deduction under 15-30-121 or
11 15-30-131 which is attributable to income from a Montana
12 trade or business; and

13 (ii) Montana wages and salaries allowed as a business
14 deduction under ~~15-30-111†4†~~ 15-30-111(3).

15 (b) The net operating loss deduction for Montana
16 purposes is decreased by the following:

17 (i) interest received on obligations of another state
18 or territory or of a county, municipality, district, or
19 political subdivision thereof allowed as nonbusiness income
20 under 15-30-111(1)(a);

21 (ii) federal income tax refunds required to be reported
22 under 15-30-111 and 15-30-131 as Montana business income;

23 (iii) state income tax; and

24 (iv) any other nonbusiness deductions allowed under
25 15-30-121 in excess of nonbusiness income.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include:

(a) income defined as exempt from state taxation under 15-30-111(2); or

(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended."

Section 36. Section 15-30-129, MCA, is amended to read:

"15-30-129. Tax credit for providing disability insurance for employees. There is a credit against the taxes otherwise due under this chapter allowable to an employer for the amount of premiums for disability insurance paid by the employer for his employees. ~~The--tax-credit-must-be computed-in-accordance-with-the-provisions-of-15-31-132.~~ The credit is for the amount of premiums for disability insurance issued under Title 33, chapter 22, part 12, and paid by the employer for employees, subject to the following requirements:

(1) The tax credit is available only to employers who:

(a) have been in business in Montana for at least 12 months; and

(b) employ 20 or fewer employees working at least 20 hours a week.

(2) At least 50% of each employee's insurance premium

is paid by the employer.

(3) Subject to the provisions of subsection (4), an employer is entitled to a tax credit for a maximum of 10 employees, computed as follows:

(a) a credit of \$25 a month for each employee if the employer pays 100% of the employee's premium; or

(b) a credit equal to \$25 a month multiplied by the percentage of the employee's premium paid by the employer for each employee if the employer pays less than 100% of the employee's premium.

(4) The credit may not exceed 50% of the premium cost for each employee and may not be claimed for a period of more than 36 consecutive months. A tax credit may not be granted to an employer or an employer's successor within 10 years of the last consecutive credit claimed.

(5) The credit allowed under this section may not be claimed as a carryback or carryforward and may not be refunded if the employer has no tax liability."

Section 37. Section 15-30-161, MCA, is amended to read:

"15-30-161. Purpose. The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in ~~small~~ business corporations ~~defined-in-15-31-201~~ that have made an election under subchapter S. of the Internal Revenue Code, to take the investment credit as provided for in 15-30-162 in order

1 to stimulate capital investment by the small business
2 sector."

3 **Section 38.** Section 15-30-163, MCA, is amended to read:

4 "15-30-163. Credit for contributions to university
5 system foundations. (1) For taxable years beginning after
6 December 31, 1990, and before January 1, 1996, an
7 individual, corporation, partnership, or small business
8 corporation, ~~as defined in 15-31-201~~ that has made an
9 election under subchapter S. of the Internal Revenue Code,
10 is allowed a tax credit against taxes imposed by 15-30-103
11 or ~~15-31-101~~ in an amount equal to 10% of the aggregate
12 amount of charitable contributions made by the taxpayer
13 during the year to any of the general endowment funds of the
14 Montana university system foundations or a general endowment
15 fund of a Montana private college or its foundation. The
16 maximum credit a taxpayer may claim in a year under this
17 section is \$500. The credit allowed under this section may
18 not exceed the taxpayer's income tax liability.

19 (2) There is no carryback or carryforward of the credit
20 permitted under this section, and the credit must be applied
21 in the year the donation is made, as determined by the
22 taxpayer's accounting method.

23 (3) (a) For the purposes of this section, "foundation"
24 means a nonprofit organization created exclusively for the
25 benefit of any unit of the Montana university system or a

1 Montana private college and that is exempt from taxation
2 under section 501(c)(3) of the Internal Revenue Code.

3 (b) For the purposes of this section, "Montana private
4 college" means a nonprofit private educational institution:

5 (i) whose main campus and primary operations are within
6 the state; and

7 (ii) that offers baccalaureate degree level education
8 and is accredited for that purpose by a national or regional
9 accrediting agency recognized by the board of regents of
10 higher education."

11 **Section 39.** Section 15-30-186, MCA, is amended to read:

12 "15-30-186. Credit for dependent care assistance. (1)
13 There is a credit against the taxes otherwise due under this
14 chapter allowable to an employer for amounts paid or
15 incurred during the taxable year by the employer for
16 dependent care assistance. ~~The credit must be computed in~~
17 ~~accordance with the provisions of 15-31-131.~~

18 (2) The credit is allowable to an employer for amounts
19 paid or incurred during the taxable year by the employer for
20 dependent care assistance actually provided to or on behalf
21 of an employee if the assistance is furnished by a
22 registered or licensed day-care provider and pursuant to a
23 program that meets the requirements of section 89(k) and
24 129(d)(2) through (d)(6) of the Internal Revenue Code.

25 (3) (a) The amount of the credit allowed under

1 subsection (1) is 20% of the amount paid or incurred by the
 2 employer during the taxable year, but the credit may not
 3 exceed \$1,250 of day-care assistance actually provided to or
 4 on behalf of the employee.

5 (b) For the purposes of this subsection (3), marital
 6 status must be determined under the rules of section
 7 21(e)(3) and (e)(4) of the Internal Revenue Code.

8 (c) In the case of an onsite facility, the amount upon
 9 which the credit allowed under subsection (1) is based, with
 10 respect to any dependent, must be based upon utilization and
 11 the value of the services provided.

12 (4) An amount paid or incurred during the taxable year
 13 by an employer in providing dependent care assistance to or
 14 on behalf of any employee does not qualify for the credit
 15 allowed under subsection (1) if the amount was paid to or
 16 incurred by an individual described in section 129(c)(1) or
 17 (c)(2) of the Internal Revenue Code.

18 (5) An amount paid or incurred by an employer to
 19 provide dependent care assistance to or on behalf of an
 20 employee does not qualify for the credit allowed under
 21 subsection (1):

22 (a) to the extent the amount is paid or incurred
 23 pursuant to a salary reduction plan; or

24 (b) if the amount is paid or incurred for services not
 25 performed within this state.

1 (6) If the credit allowed under subsection (1) is
 2 claimed, the amount of any deduction allowed or allowable
 3 under this chapter for the amount that qualifies for the
 4 credit, or upon which the credit is based, must be reduced
 5 by the dollar amount of the credit allowed. The election to
 6 claim a credit allowed under this section must be made at
 7 the time of filing the tax return.

8 (7) The amount upon which the credit allowed under
 9 subsection (1) is based may not be included in the gross
 10 income of the employee to whom the dependent care assistance
 11 is provided. However, the amount excluded from the income of
 12 an employee under this section may not exceed the
 13 limitations provided in section 129(b) of the Internal
 14 Revenue Code. "Wages" does not include any amount excluded
 15 under this subsection. Amounts excluded under this
 16 subsection do not qualify as expenses for which a deduction
 17 is allowed to the employee under 15-30-121.

18 (8) Any tax credit otherwise allowable under this
 19 section that is not used by the taxpayer in a particular tax
 20 year may be carried forward and offset against the
 21 taxpayer's tax liability for the next succeeding tax year.
 22 Any credit remaining unused in the next succeeding tax year
 23 may be carried forward and used in the second succeeding tax
 24 year, and likewise through the fifth year succeeding the tax
 25 year in which the credit was first allowed. A credit may not

be carried forward beyond the fifth succeeding tax year.

(9) For purposes of the credit allowed under this section, the following apply:

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989."

Section 40. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of the United States, the state of Montana, or a political subdivision thereof. The term

"employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person having control of the payment of wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his an employer, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service is performed by

1 an individual who is regularly employed by the employer to
2 perform the service. For purposes of this subsection (4)(d),
3 an individual is considered to be regularly employed by an
4 employer during a calendar quarter only if:

5 (i) on each of 24 days during a quarter the individual
6 performs service not in the course of the employer's trade
7 or business for the employer for some portion of the day;
8 and

9 (ii) the individual was regularly employed (as
10 determined under subsection (4)(d)(i)) by the employer in
11 the performance of service during the preceding calendar
12 quarter;

13 (e) for services by a citizen or resident of the United
14 States for a foreign government or an international
15 organization;

16 (f) for services performed by a duly ordained,
17 commissioned, or licensed minister of a church in the
18 exercise of his the ministry or by a member of a religious
19 order in the exercise of duties required by the order;

20 (g) (i) for services performed by an individual under
21 the age of 18 in the delivery or distribution of newspapers
22 or shopping news, not including delivery or distribution to
23 any point for subsequent delivery or distribution; or

24 (ii) for services performed by an individual in and at
25 the time of the sale of newspapers or magazines to ultimate

1 consumers under an arrangement under which the newspapers or
2 magazines are to be sold by him the individual at a fixed
3 price, his with the compensation being based on the
4 retention of the excess of the price over the amount at
5 which the newspapers or magazines are charged to him the
6 individual, whether or not he the individual is guaranteed a
7 minimum amount of compensation for the service or is
8 entitled to be credited with the unsold newspapers or
9 magazines turned back;

10 (h) for services not in the course of the employer's
11 trade or business to the extent paid in any medium other
12 than cash when the payments are in the form of lodgings or
13 meals and the services are received by the employee at the
14 request of and for the convenience of the employer;

15 (i) to or for an employee as a payment for or a
16 contribution toward the cost of any group plan or program
17 which benefits the employee, including but not limited to
18 life insurance, hospitalization insurance for the employee
19 or dependents, and employees' club activities;

20 (j) for national guard and reserve training as provided
21 in 5 U.S.C. 5517(d);

22 (k) as tips, in accordance with section 3402(k) of the
23 Internal Revenue Code of 1954, as amended and applicable on
24 January 1, 1983, received by persons for services rendered
25 by them to patrons of premises licensed to provide food,

beverage, or lodging;

(1) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under 15-30-186 or ~~15-31-131~~, subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

Section 41. Section 15-31-543, MCA, is amended to read:

"15-31-543. Penalties. (1) If ~~any--corporation-shall~~ refuse a taxpayer refuses or neglect neglects to make a return at the time hereinbefore specified in each year or ~~shall-render files~~ a false or fraudulent return, such corporation--shall--be--liable the taxpayer is subject to a penalty of not exceeding \$5,000, and if the taxpayer is a corporation, it may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as such a corporation until the license-fee tax, together with all penalties and costs, shall--be is paid, which. The forfeiture may be enforced by the attorney general by proper proceedings in court.

(2) Every A taxpayer, including any officer or employee of any corporation or other person who, without fraudulent intent, ~~shall--fail~~ fails to make, render, sign, or verify any return or to supply any information within the time

required by or under the provisions of this chapter, ~~shall be-labile~~ is subject to a penalty of not more than \$100 to be imposed, assessed, and collected by the department of revenue in the same manner as is provided in this chapter with regard to delinquent taxes."

Section 42. Section 15-31-551, MCA, is amended to read:

"15-31-551. Certified copies of ~~corporation--license~~ single business tax returns to taxpayer -- fee. Certified copies of returns filed for ~~corporation--license--tax--under~~ 15-31-111 the single business tax may be furnished by the department of revenue to the taxpayer or his the taxpayer's duly authorized representative upon payment of 50 cents for each page."

Section 43. Section 15-32-115, MCA, is amended to read:

"15-32-115. Credit for geothermal system -- to whom available -- eligible costs -- limitations. (1) A resident individual taxpayer who completes installation of a geothermal system, as defined in ~~15-32-102~~ subsection (4), in the taxpayer's principal dwelling is entitled to claim a tax credit, as provided in subsection (3), against the taxpayer's tax liability under chapter 30 for a portion of the installation costs of the system, up to \$250 per year for 4 years. The credit may not exceed the taxpayer's income tax liability for the taxable year in which the credit is claimed.

(2) For the purposes of this section, installation costs include the cost of:

(a) trenching, well drilling, casing, and downhole heat exchangers;

(b) piping, control devices, and pumps that move heat from the earth to heat or cool the building;

(c) ground source or ground coupled heat pumps;

(d) liquid-to-air heat exchanger, ductwork, and fans installed with a ground heat well that pump heat from a well into a building; and

(e) design and labor.

(3) The tax credit allowed under this section is deductible from the taxpayer's income tax liability for the taxable year in which the installation costs were incurred and for the next 3 taxable years succeeding the taxable year in which the installation costs were incurred. There is no carryback or carryforward of the credit permitted under this section.

(4) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a residential building."

Section 44. Section 15-32-201, MCA, is amended to read:

"15-32-201. Amount of credit -- to whom available. (1)

A resident individual taxpayer who completes installation of

an energy system using a recognized nonfossil form of energy generation, as defined in ~~15-32-102~~ subsection (4), in ~~such~~ the taxpayer's principal dwelling prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of ~~such the~~ the system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first \$1,000 and 2 1/2% of the next \$3,000 of the cost of ~~such the~~ the system, including installation costs, less grants received, against the income tax liability imposed against ~~such the~~ the taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in ~~15-32-102(5)(a)~~ 15-6-201(3)(b)(i), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 20% of the first \$1,000 and 10% of the next \$3,000 of the cost of the system, including the installation costs, against the income tax liability imposed

against the taxpayer pursuant to Title 15, chapter 30.

(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in ~~15-32-102(5)(b)~~ 15-6-201(3)(b)(ii), in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first \$1,000 and 5% of the next \$3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

(4) "Recognized nonfossil form of energy generation" means:

(a) a system for the utilization of wind, solid wastes, the decomposition of organic wastes, solar energy, including passive solar systems, or for capturing energy or converting energy sources into usable sources;

(b) a system for the production of electric power from solid wood wastes; or

(c) a small system for the utilization of water power by means of an impoundment that consists of not over 20 acres in surface area."

Section 45. Section 15-32-303, MCA, is amended to read:

"15-32-303. Deduction for purchase of Montana produced organic fertilizer. In addition to all other deductions from

adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, ~~or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1,~~ a taxpayer may deduct his expenditures for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income."

Section 46. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial investment credit -- wind-generated electricity. (1) An individual, corporation, partnership, or ~~small~~ business corporation ~~as defined in 15-31-201~~ that has made an election under subchapter S. of the Internal Revenue Code and that makes an investment of \$5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code of 1954, as amended, for a commercial system located in Montana which generates electricity by means of wind power is entitled to a tax credit against taxes imposed by 15-30-103 ~~or 15-31-121~~ in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce wind energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the wind energy

1 generating equipment supplies, on a direct contract sales
2 basis, the basic energy needed; or

3 (c) the wind energy generating equipment in which the
4 investment for which a credit is being claimed was made.

5 (2) For purposes of determining the amount of the tax
6 credit that may be claimed under subsection (1), eligible
7 costs include only those expenditures that qualify under
8 section 38 of the Internal Revenue Code of 1954, as amended,
9 and that are associated with the purchase, installation, or
10 upgrading of:

11 (a) generating equipment;

12 (b) safety devices and storage components;

13 (c) transmission lines necessary to connect with
14 existing transmission facilities; and

15 (d) transmission lines necessary to connect directly to
16 the purchaser of the electricity when no other transmission
17 facilities are available.

18 (3) Eligible costs under subsection (2) must be reduced
19 by the amount of any grants provided by the state or federal
20 government for the system."

21 **Section 47.** Section 15-32-405, MCA, is amended to read:

22 "15-32-405. **Exclusion from other tax incentives.** If a
23 credit is claimed for an investment pursuant to this part,
24 no other state energy or investment tax credit, including
25 but not limited to the tax credits allowed by 15-30-162 and

1 15-31-123--through--15-31-125, may be claimed for the
2 investment. Property tax reduction allowed by 15-6-201(3)
3 may not be applied to a facility for which a credit is
4 claimed pursuant to this part."

5 **Section 48.** Section 15-32-602, MCA, is amended to read:

6 "15-32-602. **(Temporary) Amount and duration of credit**
7 -- how claimed. (1) An individual, corporation, partnership,
8 or ~~small~~ business corporation, ~~as defined in 15-31-201~~ that
9 has made an election under subchapter S. of the Internal
10 Revenue Code, may receive a credit against taxes imposed by
11 Title 15, chapter 30 ~~or 31~~, for investments in depreciable
12 property to collect or process reclaimable material or to
13 manufacture a product from reclaimed material, if the
14 taxpayer qualifies under 15-32-603.

15 (2) Subject to 15-32-603(2), a taxpayer qualifying for
16 a credit under 15-32-603 is entitled to claim a credit in an
17 amount equal to 25% of the cost of the property purchased to
18 collect or process reclaimable material or to manufacture a
19 product from reclaimed material only in the year in which
20 the property was purchased. If qualifying property was
21 purchased prior to January 1, 1992, but on or after January
22 1, 1990, a taxpayer is entitled to a credit for tax year
23 1992. (Terminates December 31, 1995--sec. 9, Ch. 712, L.
24 1991.)"

25 **Section 49.** Section 15-32-610, MCA, is amended to read:

1 "15-32-610. (Temporary) Deduction for purchase of
2 recycled material. In addition to all other deductions from
3 adjusted gross individual income allowed in computing
4 taxable income under Title 15, chapter 30, ~~or from gross~~
5 ~~corporate income allowed in computing net income under Title~~
6 ~~15, chapter 31, part 1, a taxpayer may deduct an additional~~
7 amount equal to 5% of the taxpayer's expenditures for the
8 purchase of recycled material that was otherwise deductible
9 by the taxpayer as business-related expense in Montana.
10 (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

11 **Section 50.** Section 17-2-121, MCA, is amended to read:

12 "17-2-121. Deposits by insurance commissioner. All
13 fees, miscellaneous and examination charges, fines, and
14 penalties, ~~and those amounts received pursuant to 33-2-311,~~
15 ~~33-2-705, or 33-2-706,~~ collected by the insurance
16 commissioner pursuant to Title 33 and the rules adopted
17 thereunder under Title 33 must be deposited in the general
18 fund."

19 **Section 51.** Section 17-5-408, MCA, is amended to read:

20 "17-5-408. Percentage of income, ~~corporation--license~~
21 single business tax, and cigarette tax pledged. (1) (a) The
22 state pledges and appropriates and directs to be credited as
23 received to the debt service account 9.8% ~~for fiscal year~~
24 ~~1990--and 8.7% for fiscal year 1991~~ of all money received
25 from the collection of the individual income tax and ~~11% for~~

1 ~~fiscal year 1990 and 10.5% for fiscal year 1991~~ of all
2 money, ~~except as provided in 15-31-702,~~ received from the
3 collection of the ~~corporation--license--and--income~~ single
4 business tax as provided in 15-1-501, and such any
5 additional amount of ~~said the~~ taxes, if any, as may at any
6 time be needed to comply with the principal and interest and
7 reserve requirements stated in 17-5-405(4).

8 (b) No more than the percentages described in
9 subsection (1)(a) of such the tax collections may be pledged
10 for the purpose of 17-5-403(2). The pledge and appropriation
11 ~~herein made shall be~~ are and remain at all times a first and
12 prior charge upon all money received from the collection of
13 ~~said the~~ taxes.

14 (2) The state pledges and appropriates and directs to
15 be credited to the debt service account 70.89% of all money
16 received from the collection of the excise tax on cigarettes
17 which is levied, imposed, and assessed by 16-11-111. The
18 state also pledges and appropriates and directs to be
19 credited as received to the debt service account all money
20 received from the collection of the taxes on other tobacco
21 products which are or may hereafter be levied, imposed, and
22 assessed by law for that purpose, including the tax levied,
23 imposed, and assessed by 16-11-202. Nothing ~~herein shall~~
24 impair in this section impairs or otherwise affect affects
25 the provisions and covenants contained in the resolutions

authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made by this section shall--be--and--remain are and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subsection (2)."

Section 52. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; ~~15-31-702~~; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;

17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

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

and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

Section 53. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303; and

(ii) any additional general fund budget amount adopted by the trustees of the district under the provisions of 20-9-145 and 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(vi) anticipated net proceeds taxes for new production, as defined in 15-23-601;

(vii) anticipated revenue from local government severance taxes as provided in 15-36-112;

(viii) anticipated revenue from coal gross proceeds under 15-23-703;

(ix) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

~~{x}--anticipated--revenue--from--corporation--license--taxes collected--from--financial--institutions--under--the--provisions of--15-31-702;--and~~

~~{xi}~~(x) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year that may be used to finance the general fund, excluding any

1 guaranteed tax base aid.

2 (c) Notwithstanding the provisions of subsection (2),
3 subtract the money available to reduce the property tax
4 required to finance the general fund that has been
5 determined in subsection (1)(b) from any additional general
6 fund budget amount adopted by the trustees of the district
7 as the permissive amount under the provisions of 20-9-145 to
8 determine the general fund permissive net levy requirement.

9 (d) Subtract any amount remaining after the
10 determination in subsection (1)(c) from any additional
11 funding requirement to be met by a district levy as provided
12 in 20-9-303 and 20-9-353 to determine the additional general
13 fund levy requirement.

14 (2) The county superintendent shall calculate the
15 number of mills to be levied on the taxable property in the
16 district to finance the general fund permissive net levy
17 requirement by dividing the amount determined in subsection
18 (1)(c) by the sum of:

19 (a) the amount of guaranteed tax base aid that the
20 district will receive for each mill levied, as certified by
21 the superintendent of public instruction; and

22 (b) the taxable valuation of the district divided by
23 1,000.

24 (3) The net general fund levy requirement determined in
25 subsections (1)(c) and (1)(d) must be reported to the county

1 commissioners on the second Monday of August by the county
2 superintendent as the general fund permissive net levy
3 requirement and the additional general fund levy requirement
4 for the district, and a levy must be set by the county
5 commissioners in accordance with 20-9-142."

6 **Section 54.** Section 20-9-343, MCA, is amended to read:

7 "20-9-343. (Temporary) Definition of and revenue for
8 state equalization aid. (1) As used in this title, the term
9 "state equalization aid" means the money deposited in the
10 state special revenue fund as required in this section plus
11 any legislative appropriation of money from other sources
12 for:

13 (a) distribution to the public schools for the payment
14 of guaranteed tax base aid and for equalization of the
15 foundation program;

16 (b) the Montana educational telecommunications network
17 as provided in 20-32-101; and

18 (c) filing fees for school district audits as required
19 by 2-7-514(2).

20 (2) The superintendent of public instruction may spend
21 funds appropriated for state equalization aid, as required
22 by subsections (1)(a) and (1)(b), throughout the biennium.

23 (3) The following must be paid into the state special
24 revenue fund for state equalization aid to public schools of
25 the state:

- 1 (a) money received from the collection of income taxes
- 2 under chapter 30 of Title 15, as provided by 15-1-501;
- 3 (b) except as provided in 15-31-702, money received
- 4 from the collection of corporation license and income taxes
- 5 under chapter 31 of Title 15, as provided by 15-1-501;
- 6 (c) money allocated to state equalization from the
- 7 collection of the severance tax on coal;
- 8 (d) money received from the treasurer of the United
- 9 States as the state's shares of oil, gas, and other mineral
- 10 royalties under the federal Mineral Lands Leasing Act, as
- 11 amended;
- 12 (e) interest and income money described in 20-9-341 and
- 13 20-9-342;
- 14 (f) money received from the state equalization aid levy
- 15 under 20-9-360;
- 16 (g) income from the lottery, as provided in 23-7-402;
- 17 (h) the surplus revenues collected by the counties for
- 18 foundation program support according to 20-9-331 and
- 19 20-9-333;
- 20 (i) investment income earned by investing money in the
- 21 state equalization aid account in the state special revenue
- 22 fund; and
- 23 (j) 15% of the income and earnings of all coal
- 24 severance tax funds as provided in 17-5-704.
- 25 (4) The superintendent of public instruction shall

- 1 request the board of investments to invest the money in the
- 2 state equalization aid account to maximize investment
- 3 earnings to the account.
- 4 (5) Any surplus revenue in the state equalization aid
- 5 account in the second year of a biennium may be used to
- 6 reduce any appropriation required for the next succeeding
- 7 biennium. (Terminates June 30, 1993--sec. 5, Ch. 729, L.
- 8 1991.)
- 9 20-9-343. (Effective July 1, 1993) Definition of and
- 10 revenue for state equalization aid. (1) As used in this
- 11 title, the term "state equalization aid" means the money
- 12 deposited in the state special revenue fund as required in
- 13 this section plus any legislative appropriation of money
- 14 from other sources for distribution to the public schools
- 15 for the purposes of payment of guaranteed tax base aid and
- 16 equalization of the foundation program and for the Montana
- 17 educational telecommunications network as provided in
- 18 20-32-101.
- 19 (2) The superintendent of public instruction may spend
- 20 funds appropriated for state equalization aid as required
- 21 for the purposes of guaranteed tax base aid, the foundation
- 22 program, and the Montana educational telecommunications
- 23 network, throughout the biennium.
- 24 (3) The following must be paid into the state special
- 25 revenue fund for state equalization aid to public schools of

1 the state:

2 (a) money received from the collection of income taxes
3 under chapter 30 of Title 15, as provided by 15-1-501;

4 (b) ~~except--as--provided--in--15-31-702,~~ money received
5 from the collection of ~~corporation-license-and-income--taxes~~
6 the single business tax under chapter 31 of Title 15, as
7 provided by 15-1-501;

8 (c) money allocated to state equalization from the
9 collection of the severance tax on coal;

10 (d) money received from the treasurer of the United
11 States as the state's shares of oil, gas, and other mineral
12 royalties under the federal Mineral Lands Leasing Act, as
13 amended;

14 (e) interest and income money described in 20-9-341 and
15 20-9-342;

16 (f) money received from the state equalization aid levy
17 under 20-9-360;

18 (g) income from the lottery, as provided in 23-7-402;

19 (h) the surplus revenues collected by the counties for
20 foundation program support according to 20-9-331 and
21 20-9-333;

22 (i) investment income earned by investing money in the
23 state equalization aid account in the state special revenue
24 fund; and

25 (j) 15% of the income and earnings of all coal

1 severance tax funds as provided in 17-5-704.

2 (4) The superintendent of public instruction shall
3 request the board of investments to invest the money in the
4 state equalization aid account to maximize investment
5 earnings to the account.

6 (5) Any surplus revenue in the state equalization aid
7 account in the second year of a biennium may be used to
8 reduce any appropriation required for the next succeeding
9 biennium."

10 **Section 55.** Section 27-1-732, MCA, is amended to read:

11 "27-1-732. Immunity of nonprofit corporation officers,
12 directors, and volunteers. (1) No An officer, director, or
13 volunteer of a nonprofit corporation is not individually
14 liable for any action or omission made in the course and
15 scope of his an official capacity on behalf of the nonprofit
16 corporation. This section does not apply to liability for
17 willful or wanton misconduct. The immunity granted by this
18 section does not apply to the liability of a nonprofit
19 corporation.

20 (2) For purposes of this section, "nonprofit
21 corporation" means:

22 (a) an organization exempt from taxation under section
23 501(c) of the Internal Revenue Code of 1954; or

24 (b) a corporation or organization which that is
25 eligible for or has been granted by the department of

revenue tax exempt status under the provisions of ~~35-31-102~~
[section 6]."

Section 56. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers \$ 600.00

(B) foreign insurers 600.00

(ii) annual continuation of certificate of authority
..... 600.00

(iii) reinstatement of certificate of authority
..... 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a

domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation
..... 25.00

(c) filing bylaws or amendment to bylaws where required 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority
..... 25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued 15.00

(ii) appointment of insurance producer, each insurer
..... 10.00

(iii) temporary license 15.00

(iv) amendment of license (excluding additions to license) or reissuance of master license 15.00

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of insurance producer, each insurer
..... 10.00

(iii) annual renewal of license 10.00

1 (iv) amendment of license (excluding additions to
 2 license) or reissuance of master license 15.00
 3 (g) examination, if administered by the commissioner,
 4 for license as insurance producer, each examination
 5 15.00
 6 (h) surplus lines insurance producer license:
 7 (i) application for original license and for issuance
 8 of license, if issued 50.00
 9 (ii) annual renewal of license 50.00
 10 (i) adjuster's license:
 11 (i) application for original license and for issuance
 12 of license, if issued 15.00
 13 (ii) annual renewal of license 15.00
 14 (j) insurance vending machine license, each machine,
 15 each year 10.00
 16 (k) commissioner's certificate under seal (except when
 17 on certificates of authority or licenses) 10.00
 18 (l) copies of documents on file in the commissioner's
 19 office, per page50
 20 (m) policy forms:
 21 (i) filing each policy form 25.00
 22 (ii) filing each application, rider, endorsement,
 23 amendment, insert page, schedule of rates, and clarification
 24 of risks 10.00
 25 (iii) maximum charge if policy and all forms submitted

1 at one time or resubmitted for approval within 180 days
 2 100.00
 3 (n) applications for approval of prelicensing education
 4 courses:
 5 (i) reviewing initial application 150.00
 6 (ii) periodic review 50.00
 7 (2) The commissioner shall promptly deposit with the
 8 state treasurer to the credit of the general fund of this
 9 state all fines and penalties, those--amounts--received
 10 pursuant--to-33-2-3117-33-2-7057-and-33-2-7067-and-any fees,
 11 and examination and miscellaneous charges that are collected
 12 by-him pursuant to Title 33 and the rules adopted under
 13 Title 33.
 14 (3) All fees are considered fully earned when received.
 15 In the event of overpayment, only those amounts in excess of
 16 \$10 will be refunded."
 17 **Section 57.** Section 33-22-1513, MCA, is amended to
 18 read:
 19 "33-22-1513. Operation of association plan. (1) Upon
 20 acceptance by the lead carrier under 33-22-1516, an eligible
 21 person may enroll in the association plan by payment of the
 22 association plan premium to the lead carrier.
 23 (2) Not less than 88% of the association plan premiums
 24 paid to the lead carrier may be used to pay claims and not
 25 more than 12% may be used for payment of the lead carrier's

1 direct and indirect expenses as specified in 33-22-1514.

2 (3) Any income in excess of the costs incurred by the
3 association in providing reinsurance or administrative
4 services must be held at interest and used by the
5 association to offset past and future losses due to claims
6 expenses of the association plan or be allocated to reduce
7 association plan premiums.

8 (4) (a) Each participating member of the association
9 shall share the losses due to claims expenses of the
10 association plan for plans issued or approved for issuance
11 by the association and shall share in the operating and
12 administrative expenses incurred or estimated to be incurred
13 by the association incident to the conduct of its affairs.
14 Claims expenses of the association plan that exceed the
15 premium payments allocated to the payment of benefits are
16 the liability of the association members. Association
17 members shall share in the claims expenses of the
18 association plan and operating and administrative expenses
19 of the association in an amount equal to the ratio of the
20 association member's total disability insurance premium
21 received from or on behalf of Montana residents divided by
22 the total disability insurance premium received by all
23 association members from or on behalf of Montana residents
24 as determined by the commissioner.

25 (b) For purposes of this subsection (4), "total

1 disability insurance premium" does not include premiums
2 received from disability income insurance, credit disability
3 insurance, disability waiver insurance, or life insurance.

4 (5) The association shall make an annual determination
5 of each association member's liability, if any, and may make
6 an annual fiscal yearend assessment if necessary. The
7 association may also, subject to the approval of the
8 commissioner, provide for interim assessments against the
9 association members as may be necessary to assure the
10 financial capability of the association in meeting the
11 incurred or estimated claims expenses of the association
12 plan and operating and administrative expenses of the
13 association until the association's next annual fiscal
14 yearend assessment. Payment of an assessment is due within
15 30 days of receipt by an association member of a written
16 notice of a fiscal yearend or interim assessment. Failure by
17 a contributing member to tender to the association the
18 assessment within 30 days is grounds for termination of
19 membership. An association member that ceases to do
20 disability insurance business within the state remains
21 liable for assessments through the calendar year during
22 which disability insurance business ceased. The association
23 may decline to levy an assessment against an association
24 member if the assessment, as determined pursuant to this
25 section, would not exceed \$10.

1 ~~(6) Any annual fiscal year end or interim assessment~~
 2 ~~levied against an association member may be offset, in an~~
 3 ~~amount equal to the assessment paid to the association,~~
 4 ~~against the premium tax payable by that association member~~
 5 ~~pursuant to 33-2-705 for the year in which the annual fiscal~~
 6 ~~year end or interim assessment is levied. The insurance~~
 7 ~~commissioner shall, as provided in 5-11-210, report to the~~
 8 ~~legislature the total amount of premium tax offset claimed~~
 9 ~~by association members during the preceding biennium."~~

10 **Section 58.** Section 33-27-101, MCA, is amended to read:

11 "33-27-101. Short title. Sections 15-30-107, 15-30-127,
 12 ~~15-31-117, 15-31-110,~~ and this chapter may be cited as the
 13 "Independent Liability Fund Act".

14 **Section 59.** Section 33-27-102, MCA, is amended to read:

15 "33-27-102. Purpose. The purpose of 15-30-107,
 16 15-30-127, ~~15-31-117, 15-31-110,~~ and this chapter is to
 17 create a means by which small businesses operating in
 18 Montana may establish independent liability funds to set
 19 aside assets or make investments to meet any liability
 20 claims that might be made against the small businesses by
 21 third parties."

22 **Section 60.** Section 33-27-103, MCA, is amended to read:

23 "33-27-103. Definitions. As used in 15-30-107,
 24 15-30-127, ~~15-31-117, 15-31-110,~~ and this chapter, the
 25 following definitions apply:

1 (1) "Fiscal year" means the 12-month period used by a
 2 particular small business in preparing and filing its
 3 Montana individual income tax, corporate license tax, or
 4 corporate income tax return.

5 (2) "Independent liability fund" means a collection of
 6 money, assets, and investments that has been set aside by a
 7 small business to meet the needs of any liability claims,
 8 except workers' compensation claims, brought against it by
 9 third parties.

10 (3) "Liability claim" means any legal or extralegal
 11 action by a third party asserting a right to compensation
 12 for a wrong done to it by a small business with an
 13 independent liability fund.

14 (4) "Small business" means any commercial or nonprofit
 15 enterprise qualified to do business in the state and
 16 qualified as a small business under the criteria established
 17 by the federal small business administration on April 20,
 18 1987.

19 (5) "Third party" means a person other than an employee
 20 or the management of a small business or of a subsidiary or
 21 closely related enterprise of a small business."

22 **Section 61.** Section 87-2-903, MCA, is amended to read:

23 "87-2-903. Compensation and duties of agents -- penalty
 24 for late submission of license money. (1) License agents,
 25 except salaried employees of the department, shall receive

1 for all services rendered the sum of ~~40-cents-for--the--1992~~
 2 ~~license--year--and~~ 50 cents thereafter for each license,
 3 permit, or certificate issued. Each license agent shall
 4 submit to the department all duplicates of each class of
 5 licenses sold and shall accompany the duplicate licenses
 6 with all moneys received for the sale of the licenses less
 7 the appropriate fee. The department may designate classes of
 8 license agents and may establish a deadline for submission
 9 of license money by each class of agent. Each license agent
 10 shall keep ~~his~~ the agent's license account open at all
 11 reasonable hours to inspection by the department, the
 12 director, the wardens, or the legislative auditor.

13 (2) For purposes of this section, the term "license"
 14 includes any license, permit, and certificate prescribed by
 15 the department.

16 (3) If a license agent fails to submit to the
 17 department all money received from the declared sale of
 18 licenses, less the appropriate fee, by the deadline
 19 established by the department, an interest charge--~~equal--to~~
 20 ~~the rate of 9% charged--on--late-corporation-license-tax~~
 21 ~~payments-under-15-31-502~~ must be assessed. Acceptance of
 22 late payments with interest does not preclude the department
 23 from summarily revoking the appointment of a license agent
 24 under 87-2-904."

25 **Section 62.** Section 90-4-503, MCA, is amended to read:

1 "90-4-503. Residential conservation service
 2 established. ~~{1}~~ There is a residential conservation service
 3 established in Montana under the National Energy
 4 Conservation Policy Act of 1978, which shall be administered
 5 by the department according to the provisions of P.L. 95-619
 6 and this part.

7 ~~{2}--This-part-is--supplemental--to--the--provisions--of~~
 8 ~~15-32-187-administered-by-the-public-service-commission--"~~

9 **Section 63.** Section 90-8-104, MCA, is amended to read:

10 "90-8-104. Definitions. As used in this chapter, unless
 11 the context requires otherwise, the following definitions
 12 apply:

13 (1) "Capital base" means equity capital raised by a
 14 certified Montana capital company or by a certified Montana
 15 small business investment capital company for which tax
 16 credits were claimed under this chapter.

17 (2) "Certified Montana capital company" or "certified
 18 Montana small business investment capital company" means:

19 (a) a development credit corporation created pursuant
 20 to Title 32, chapter 4; or

21 (b) a profit or nonprofit entity organized and existing
 22 under the laws of Montana, created for the purpose of making
 23 venture or risk capital available for qualified investments
 24 and that has been certified by the department.

25 (3) "Department" means the department of commerce.

1 (4) "Montana business" means a business which is
2 located or principally based within Montana.

3 (5) "Qualified investment" means an investment that
4 does not violate any of the provisions of this chapter, does
5 not displace other sources of equity or debt financing that
6 are available to the project unless the department
7 determines that the investment furthers the purposes of this
8 chapter, and is:

9 (a) a debt or equity financing of a Montana business
10 that meets both of the following criteria:

11 (i) the business is engaged in one or more of the
12 following activities:

13 (A) manufacturing;

14 (B) agricultural, fishery, or forestry production and
15 processing;

16 (C) mineral production and processing, except for
17 conventional oil and gas exploration;

18 (D) recognized nonfossil forms of energy generation, as
19 defined in 15-30-201, or the manufacture of low emission
20 wood or biomass combustion devices, as defined in 15-32-102
21 15-6-201(3)(b);

22 (E) transportation;

23 (F) research and development of products or processes
24 associated with any of the activities enumerated in (A)
25 through---(F)---above subsections (5)(a)(i)(A) through

1 (5)(a)(i)(E);

2 (G) wholesale or retail distribution activities for
3 which products produced in Montana comprise 50% or more of
4 the gross sales receipts;

5 (H) any activity conducted in the state for which 50%
6 or more of the gross receipts are derived from the sale of
7 products or services outside Montana; and

8 (I) tourism; and

9 (ii) the business is a small business as defined in
10 rules adopted by the department;

11 (b) a debt or equity financing of a business outside
12 Montana if such the investment is likely to produce a
13 qualified investment in Montana, as long as such the
14 investment does not exceed 25% of the capital base of the
15 capital company; or

16 (c) a debt or equity financing of an acquisition of a
17 non-Montana business that will be relocated in Montana.

18 (6) "Qualified Montana capital company" means a
19 certified Montana capital company that has been designated a
20 qualified capital company under the provisions of 90-8-202
21 so that investors in the company may receive the tax credits
22 authorized in 90-8-202.

23 (7) "Qualified Montana small business investment
24 capital company" means a certified Montana small business
25 investment capital company that has been designated a

qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

NEW SECTION. Section 64. Codification instruction. [Sections 1 through 31] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 1 through 31].

NEW SECTION. Section 65. Transition -- capital assets -- pre-1994 tax transactions. (1) Tangible assets that would have been subject to adjustment under [section 7] if they were purchased while [sections 1 through 31] were in effect, may, if they were purchased after December 31, 1989, be used to adjust the tax base of the taxpayer under [section 7] for tax years beginning after January 1, 1994, by using as the cost of the item, one-half of the undepreciated value of the item as shown by the taxpayer's federal tax return for tax year 1993.

(2) All uncompleted tax transactions that were required under tax laws repealed or amended by [this act] prior to January 1, 1994, must be completed after December 31, 1993, under the law in effect on December 31, 1993. The transactions include returns and reports that must be filed, mistakes in forms that must be corrected, audits, payment of taxes, payment of refunds, payment of penalties, and other matters relating to the collection and refund of taxes under

the laws repealed or amended by [this act].

NEW SECTION. Section 66. Repealer -- corporation license or income tax -- public contractor's fees and tax -- electric energy producers' license tax -- telephone company license tax -- cement taxes -- surplus lines premium tax -- insurance premium tax -- exemptions for insurance taxes. Sections 15-30-126, 15-31-101, 15-31-102, 15-31-103, 15-31-111, 15-31-112, 15-31-113, 15-31-114, 15-31-115, 15-31-117, 15-31-118, 15-31-119, 15-31-121, 15-31-122, 15-31-123, 15-31-124, 15-31-125, 15-31-126, 15-31-127, 15-31-131, 15-31-132, 15-31-135, 15-31-136, 15-31-141, 15-31-142, 15-31-143, 15-31-201, 15-31-202, 15-31-203, 15-31-204, 15-31-209, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, 15-31-313, 15-31-321, 15-31-322, 15-31-323, 15-31-324, 15-31-325, 15-31-326, 15-31-401, 15-31-402, 15-31-403, 15-31-404, 15-31-405, 15-31-406, 15-31-407, 15-31-408, 15-31-501, 15-31-502, 15-31-503, 15-31-504, 15-31-505, 15-31-506, 15-31-510, 15-31-522, 15-31-523, 15-31-524, 15-31-552, 15-31-553, 15-31-554, 15-31-701, 15-31-702, 15-31-703, 15-32-101, 15-32-102, 15-32-103, 15-32-104, 15-32-105, 15-32-106, 15-32-107, 15-32-108, 15-32-109, 15-32-406, 15-33-101, 15-33-102, 15-33-103, 15-33-104, 15-33-105, 15-33-106, 15-50-101, 15-50-205, 15-50-206, 15-50-207,

1 15-50-301, 15-50-304, 15-51-101, 15-51-102, 15-51-103,
2 15-51-104, 15-51-106, 15-51-109, 15-51-110, 15-51-111,
3 15-51-112, 15-51-113, 15-51-114, 15-53-101, 15-53-102,
4 15-53-103, 15-53-104, 15-53-105, 15-53-106, 15-53-111,
5 15-53-112, 15-53-113, 15-53-114, 15-53-115, 15-59-101,
6 15-59-102, 15-59-104, 15-59-105, 15-59-106, 15-59-107,
7 15-59-108, 15-59-109, 15-59-110, 15-59-112, 15-59-113,
8 15-59-114, 15-59-121, 15-59-201, 15-59-203, 15-59-204,
9 15-59-205, 15-59-206, 15-59-207, 15-59-208, 15-59-209,
10 15-59-210, 15-59-212, 15-59-213, 15-59-214, 15-59-221,
11 33-2-311, 33-2-705, 33-2-706, 33-2-710, 33-22-1205, and
12 69-3-713, MCA, are repealed.

13 NEW SECTION. Section 67. Effective date. [This act] is
14 effective January 1, 1994.

15 NEW SECTION. Section 68. Applicability -- rulemaking.
16 (1) [This act] applies to tax years beginning after December
17 31, 1993.

18 (2) The department of revenue may institute rulemaking
19 under Title 2, chapter 4, to implement [this act] prior to
20 October 1, 1993, but the rules may not be effective prior to
21 October 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 SB0434, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for a single business tax; providing for a tax on value added during the course of business in Montana in lieu of various taxes based upon business income, including the corporation license or income tax, public contractor's fees and tax, electrical energy producer's license tax, telephone company license tax, cement taxes, surplus lines premium tax, insurance premium tax, and certain exemptions for insurance taxes; and providing a delayed effective date and an applicability date.

FISCAL IMPACT:Expenditures:

Under this proposal Department of Revenue administrative expenses will decrease commensurate with costs associated with those taxes administered by the department that are being repealed under the bill (Corporation License Tax, Public Contractor's Gross Receipts Taxes, Electrical Energy Producer's License Tax, Telephone Company License Tax, and Cement Taxes). However, administration expenses will increase in an amount necessary to administer the single business tax. The department has not had sufficient time to study fully the net impact that this proposal would have on administration costs.

Revenues:Revenue Loss:

Based on anticipated collections for fiscal years 1994 and 1995, the bill would result in a revenue reduction of approximately \$208,368,000 each biennium, for the following taxes repealed under this proposal.

	<u>Fiscal 1994</u>	<u>Fiscal 1995</u>	<u>Biennium</u>
Corporation License Tax	\$ 64,850,000	\$ 66,804,000	\$131,654,000
Contractor's Gross Rec. Tax	1,242,000	1,252,000	2,494,000
Elec. Energy Prod. Lic. Tax	3,994,000	4,021,000	8,015,000
Telephone Co. Lic. Tax	4,003,000	4,091,000	8,094,000
Cement Taxes	130,000	130,000	260,000
Insurance Premiums Tax	<u>27,426,000</u>	<u>30,425,000</u>	<u>57,851,000</u>
Total Collections	\$101,645,000	\$106,723,000	\$208,368,000

(Over)

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MIKE HALLIGAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0434, as introduced

SB 434

Fiscal Note Request, SB0434, as introduced
Form BD-15 page 2
(continued)

FISCAL IMPACT: (Continued)

Revenue Gain:

The department does not have sufficient data to provide an accurate estimate of the revenue associated with the single business tax provided for in this proposal. However, based on Michigan's experience with a similar tax, it is clear that revenue, depending on the specifics finally adopted in the proposal, would be more than sufficient to replace the revenue loss shown above for those taxes being repealed. The extent of revenue generation in excess of repealed revenues is a question for further empirical analysis.

EFFECT ON LOCAL REVENUES:

The proposal repeals sources of revenue to local governments without providing a replacement mechanism for these sources. For example, 80% of the corporation license tax derived from financial institutions is returned to the local governments in the jurisdictions where the financial institution is located. Total revenue to local governments from this source are estimated to be \$5,530,000 in FY94, and \$5,920,000 in FY95.

In addition, a portion of insurance premiums taxes are used to fund municipalities' policemen and firemen retirement funds. Payments to these funds from insurance premiums taxes are currently \$6,900,000 annually.

SB 434