

HOUSE BILL 57

Introduced by Hibbard et al.

12/03 Introduced
12/03 Referred to Appropriations
12/03 First Reading
12/03 Fiscal Note Requested
12/07 Fiscal Note Received
12/08 Fiscal Note Printed
12/08 Hearing
12/08 Committee Report--Bill Passed as Amended
12/09 2nd Reading Passed
12/09 3rd Reading Passed

Transmitted to Senate
12/09 First Reading
12/09 Referred to Taxation
12/15 Hearing
12/16 Committee Report--Bill Concurred as Amended
12/16 2nd Reading Concurred
12/16 3rd Reading Concurred

Returned to House With Amendments
12/17 2nd Reading Amendments Not Concurred
12/17 Free Conference Committee Appointed

Senate
12/17 Free Conference Committee appointed

Died in Process

1 House BILL NO. 57
2 INTRODUCED BY Rep. Simpson Sen. Swift
3 BY REQUEST OF THE DEPARTMENT OF REVENUE AND
4 THE OFFICE OF BUDGET AND PROGRAM PLANNING

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING GENERAL
7 FUND MONEY, TO THE DEPARTMENT OF REVENUE FOR THE PAYMENT OF
8 REFUND CLAIMS THAT HAVE BEEN FILED FOR TAXES ALLEGEDLY PAID
9 ILLEGALLY ON FEDERAL PENSION INCOME; PROVIDING A CREDIT TO
10 PERSONS WHO FAILED TO TIMELY FILE FOR A REFUND FOR TAXES
11 PAID ON FEDERAL PENSION INCOME; APPROPRIATING FUNDS TO THE
12 DEPARTMENT OF REVENUE FOR THE ADMINISTRATIVE COSTS OF
13 ISSUING THE REFUNDS; AMENDING SECTION 15-30-147, MCA; AND
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15
16 WHEREAS, the United States Supreme Court on March 28,
17 1989, held in the case of Davis v. Michigan Department of
18 Treasury, 489 U.S. 803 (1989), that a state tax procedure
19 that exempts the state retirement benefits of local and
20 state retirees while taxing the federal retirement benefits
21 of federal retirees violates the doctrine of
22 intergovernmental tax immunity provided for in 4 U.S.C. 111;
23 and

24 WHEREAS, retired federal employees commenced suit
25 against the State of Montana (Sheehy v. Department of

1 Revenue, 250 Mont. 437, 820 P.2d 1257 (1991)), seeking a
2 declaration that Montana's income tax law providing for the
3 taxation of retirement income of federal retirees while
4 exempting the retirement income of local and state retirees
5 was unconstitutional and seeking a refund of taxes paid by
6 federal retirees for the years 1983, 1984, 1985, 1986, and
7 1987; and

8 WHEREAS, the District Court ordered that the Davis
9 decision would be applied to all taxpayers receiving federal
10 retirement income until legislation required a different
11 treatment, and the parties stipulated that the final
12 judgment in the Sheehy case would be applied to all
13 similarly situated taxpayers filing claims for refund of
14 taxes; and

15 WHEREAS, the District Court held that the Davis decision
16 should not be applied retroactively, which holding was
17 affirmed by the Montana Supreme Court; and

18 WHEREAS, the plaintiffs obtained a writ of certiorari to
19 the United States Supreme Court; and

20 WHEREAS, based upon the United States Supreme Court's
21 decision in Harper v. Virginia Department of Taxation, 509
22 U.S. ____ (1993), the Court remanded the Sheehy case for
23 further proceedings; and

24 WHEREAS, in Harper, the United States Supreme Court held
25 that its decisions on federal questions had to be applied to

1 all open and pending cases, but the Court refused to grant
2 refunds, holding that the issue of whether a taxpayer is
3 entitled to a refund is a question of state law; and

4 WHEREAS, as a result of the Harper decision, there are
5 legal issues that remain to be decided by the courts.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 NEW SECTION. **Section 1.** Appropriation for payment of
9 refunds to federal retirees. The following amounts are
10 appropriated from the general fund for fiscal year 1994 for
11 the payment of refunds to federal retirees who filed valid
12 refund claims for taxes and interest at the rate provided
13 for in 15-30-321(1) and for the department of revenue's
14 administrative costs for processing refunds for the years
15 1983, 1984, 1985, 1986, and 1987:

16 Tax and interest	\$14,768,490
17 Administrative costs	119,924

18 NEW SECTION. **Section 2.** Credit for taxes paid on
19 federal pension income. (1) For the tax year beginning after
20 December 31, 1994, and the succeeding 3 tax years, a
21 taxpayer who was required to pay a tax on federal pension
22 income for any of the tax years 1983, 1984, 1985, 1986, and
23 1987 and who failed to timely file a claim for refund for
24 any of the tax years 1983, 1984, 1985, 1986, and 1987 is
25 allowed a tax credit against the taxes imposed by 15-30-103

1 for the amount certified pursuant to 15-30-147(2). The
2 credit may be claimed on returns filed after December 31,
3 1995.

4 (2) The maximum credit a taxpayer may claim in any
5 year's tax liability is 25% of the original amount certified
6 pursuant to 15-30-147(2), not to exceed the total amount of
7 the taxpayer's tax liability for the year in which the
8 credit is claimed. The portion of the credit that exceeds
9 the taxpayer's liability in any year may be carried over to
10 be applied to any succeeding year's tax liability.

11 **Section 3.** Section 15-30-147, MCA, is amended to read:

12 "15-30-147. Application for revision -- appeal --
13 application for tax credit for federal pension income. (1)
14 An application for revision may be filed with the department
15 by a taxpayer within 5 years from the last day prescribed
16 for filing the return as provided in 15-30-145(3),
17 regardless of whether the return was filed on or after the
18 last day prescribed for filing. If the department has
19 revised a return pursuant to 15-30-145(3), the taxpayer may
20 revise the same return until the liability for that tax year
21 is finally determined. If the taxpayer is not satisfied with
22 the action taken by the department, the taxpayer may appeal
23 to the state tax appeal board.

24 (2) (a) (i) Notwithstanding the provisions of
25 subsection (1), a taxpayer who included federal pension

1 income in Montana adjusted gross income that resulted in the
 2 payment of a tax and who did not file a timely claim for a
 3 refund of taxes paid on federal pension income for the years
 4 1983, 1984, 1985, 1986, and 1987 may file an application for
 5 a tax credit to be used for the payment of future tax
 6 liabilities as provided in [section 2].

7 (ii) For purposes of this section, "federal pension
 8 income" means pension income received from the United States
 9 government or an agency of the United States government.

10 (b) (i) A taxpayer who filed an income tax return,
 11 using the married filing jointly status, and who did not
 12 receive federal pension income as the result of personal
 13 services performed by the taxpayer for the years 1983, 1984,
 14 1985, 1986, and 1987 may not file a claim for a credit.

15 (ii) A taxpayer who filed an income tax return, using
 16 the married filing jointly status for tax years 1983, 1984,
 17 1985, 1986, and 1987, who along with the taxpayer's spouse
 18 received federal pension income, and whose spouse is now
 19 deceased may file a claim for a credit only for the amount
 20 of federal pension income received individually by the
 21 taxpayer.

22 (c) (i) The application for a credit must be made
 23 between [the effective date of this act] and June 30, 1994.
 24 The application may be made only for the years 1983, 1984,
 25 1985, 1986, and 1987.

1 (ii) For a taxpayer who is physically or mentally
 2 incapacitated, a claim for the credit may be filed on the
 3 taxpayer's behalf by a person authorized by law to handle
 4 the taxpayer's affairs or to act for the taxpayer.

5 (d) Upon receipt of the application, the department
 6 shall review the application for completeness and accuracy.
 7 After review, the department shall certify to the taxpayer
 8 the amount of the taxpayer's credit for taxes paid on
 9 federal pension income."

10 NEW SECTION. Section 4. Effective date. [This act] is
 11 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON APPROPRIATIONS

HOUSE BILL NO. 57

INTRODUCED BY HIBBARD, SIMPKINS, SWIFT, WISEMAN

BY REQUEST OF THE DEPARTMENT OF REVENUE AND

THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING GENERAL
FUND MONEY TO THE DEPARTMENT OF REVENUE FOR THE PAYMENT OF
REFUND CLAIMS THAT HAVE BEEN FILED FOR TAXES ALLEGEDLY PAID
ILLEGALLY ON FEDERAL PENSION INCOME; PROVIDING A CREDIT TO
PERSONS WHO FAILED TO TIMELY FILE FOR A REFUND FOR TAXES
PAID ON FEDERAL PENSION INCOME; APPROPRIATING FUNDS TO THE
DEPARTMENT OF REVENUE FOR THE ADMINISTRATIVE COSTS OF
ISSUING THE REFUNDS; AMENDING SECTION 15-30-147, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
DATE."

WHEREAS, the United States Supreme Court on March 28,
1989, held in the case of Davis v. Michigan Department of
Treasury, 489 U.S. 803 (1989), that a state tax procedure
that exempts the state retirement benefits of local and
state retirees while taxing the federal retirement benefits
of federal retirees violates the doctrine of
intergovernmental tax immunity provided for in 4 U.S.C. 111;
and

WHEREAS, retired federal employees commenced suit

against the State of Montana (Sheehy v. Department of
Revenue, 250 Mont. 437, 820 P.2d 1257 (1991)), seeking a
declaration that Montana's income tax law providing for the
taxation of retirement income of federal retirees while
exempting the retirement income of local and state retirees
was unconstitutional and seeking a refund of taxes paid by
federal retirees for the years 1983, 1984, 1985, 1986, and
1987; and

WHEREAS, the District Court ordered that the Davis
decision would be applied to all taxpayers receiving federal
retirement income until legislation required a different
treatment, and the parties stipulated that the final
judgment in the Sheehy case would be applied to all
similarly situated taxpayers filing claims for refund of
taxes; and

WHEREAS, the District Court held that the Davis decision
should not be applied retroactively, which holding was
affirmed by the Montana Supreme Court; and

WHEREAS, the plaintiffs obtained a writ of certiorari to
the United States Supreme Court; and

WHEREAS, based upon the United States Supreme Court's
decision in Harper v. Virginia Department of Taxation, 509
U.S. ____ (1993), the Court remanded the Sheehy case for
further proceedings; and

WHEREAS, in Harper, the United States Supreme Court held

1 that its decisions on federal questions had to be applied to
 2 all open and pending cases, but the Court refused to grant
 3 refunds, holding that the issue of whether a taxpayer is
 4 entitled to a refund is a question of state law; and

5 WHEREAS, as a result of the Harper decision, there are
 6 legal issues that remain to be decided by the courts.

7
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 NEW SECTION. Section 1. Appropriation for payment of
 10 refunds to federal retirees. The following amounts are
 11 appropriated from the general fund for fiscal year 1994 for
 12 the payment of refunds to federal retirees who filed valid
 13 refund claims for taxes and interest at the rate provided
 14 for in 15-30-321(1) and for the department of revenue's
 15 administrative costs for processing refunds for the years
 16 1983, 1984, 1985, 1986, and 1987:

17 Tax and interest	\$14,768,490
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19 NEW SECTION. Section 2. Credit for taxes paid on
 20 federal pension income. (1) For the tax year beginning after
 21 December 31, 1994, and the succeeding 3 tax years, a
 22 taxpayer who was required to pay a tax on federal pension
 23 income for any of the tax years 1983, 1984, 1985, 1986, and
 24 1987 and who failed to timely file a claim for refund for
 25 any of the tax years 1983, 1984, 1985, 1986, and 1987 is

1 allowed a tax credit against the taxes imposed by 15-30-103
 2 for the amount certified pursuant to 15-30-147(2). The
 3 credit may be claimed on returns filed after December 31,
 4 1995.

5 (2) The maximum credit a taxpayer may claim in any
 6 year's tax liability is 25% of the original amount certified
 7 pursuant to 15-30-147(2), not to exceed the total amount of
 8 the taxpayer's tax liability for the year in which the
 9 credit is claimed. The portion of the credit that exceeds
 10 the taxpayer's liability in any year may be carried over to
 11 be applied to any succeeding year's tax liability IN
 12 ADDITION TO THE PERCENTAGE AMOUNT THAT THE TAXPAYER IS
 13 ELIGIBLE TO CLAIM.

14 **Section 3.** Section 15-30-147, MCA, is amended to read:

15 "15-30-147. Application for revision -- appeal --
 16 application for tax credit for federal pension income. (1)
 17 An application for revision may be filed with the department
 18 by a taxpayer within 5 years from the last day prescribed
 19 for filing the return as provided in 15-30-145(3),
 20 regardless of whether the return was filed on or after the
 21 last day prescribed for filing. If the department has
 22 revised a return pursuant to 15-30-145(3), the taxpayer may
 23 revise the same return until the liability for that tax year
 24 is finally determined. If the taxpayer is not satisfied with
 25 the action taken by the department, the taxpayer may appeal

to the state tax appeal board.

(2) (a) (i) Notwithstanding the provisions of subsection (1), a taxpayer who included federal pension income in Montana adjusted gross income that resulted in the payment of a tax and who did not file a timely claim for a refund of taxes paid on federal pension income for the years 1983, 1984, 1985, 1986, and 1987 may file an application for a tax credit to be used for the payment of future tax liabilities as provided in [section 2].

(ii) For purposes of this section, "federal pension income" means pension income received from the United States government or an agency of the United States government.

(b) (i) A taxpayer who filed an income tax return, using the married filing jointly status, and who did not receive federal pension income as the result of personal services performed by the taxpayer for the years 1983, 1984, 1985, 1986, and 1987 may not file a claim for a credit.

(ii) A taxpayer who filed an income tax return, using the married filing jointly status for tax years 1983, 1984, 1985, 1986, and 1987, who along with the taxpayer's spouse received federal pension income, and whose spouse is now deceased may file a claim for a credit only for the amount of federal pension income received individually by the taxpayer.

(c) (i) The application for a credit must be made

between [the effective date of this act] and June 30, 1994. The application may be made only for the years 1983, 1984, 1985, 1986, and 1987.

(ii) For a taxpayer who is physically or mentally incapacitated, a claim for the credit may be filed on the taxpayer's behalf by a person authorized by law to handle the taxpayer's affairs or to act for the taxpayer.

(d) Upon receipt of the application, the department shall review the application for completeness and accuracy. After review, the department shall certify to the taxpayer the amount of the taxpayer's credit for taxes paid on federal pension income."

NEW SECTION. SECTION 4. APPLICABILITY. THE CREDIT PROVIDED IN [SECTION 2] IS APPLICABLE TO AND MAY BE USED ONLY TO REDUCE A TAXPAYER'S INCOME TAX LIABILITY FOR THE TAX YEARS 1995, 1996, 1997, AND 1998. NO UNUSED CREDIT MAY BE CARRIED OVER TO ANY TAX YEAR BEGINNING AFTER DECEMBER 31, 1998.

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

-End-

HOUSE BILL NO. 57

INTRODUCED BY HIBBARD, SIMPKINS, SWIFT, WISEMAN

BY REQUEST OF THE DEPARTMENT OF REVENUE AND

THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING GENERAL FUND MONEY TO THE DEPARTMENT OF REVENUE FOR THE PAYMENT OF REFUND CLAIMS THAT HAVE BEEN FILED FOR TAXES ALLEGEDLY PAID ILLEGALLY ON FEDERAL PENSION INCOME; PROVIDING A CREDIT TO PERSONS WHO FAILED TO TIMELY FILE FOR A REFUND FOR TAXES PAID ON FEDERAL PENSION INCOME; APPROPRIATING FUNDS TO THE DEPARTMENT OF REVENUE FOR THE ADMINISTRATIVE COSTS OF ISSUING THE REFUNDS; AMENDING SECTION 15-30-147, MCA; AND PROVIDING AN--IMMEDIATE A CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the United States Supreme Court on March 28, 1989, held in the case of Davis v. Michigan Department of Treasury, 489 U.S. 803 (1989), that a state tax procedure that exempts the state retirement benefits of local and state retirees while taxing the federal retirement benefits of federal retirees violates the doctrine of intergovernmental tax immunity provided for in 4 U.S.C. 111; and

WHEREAS, retired federal employees commenced suit

against the State of Montana (Sheehy v. Department of Revenue, 250 Mont. 437, 820 P.2d 1257 (1991)), seeking a declaration that Montana's income tax law providing for the taxation of retirement income of federal retirees while exempting the retirement income of local and state retirees was unconstitutional and seeking a refund of taxes paid by federal retirees for the years 1983, 1984, 1985, 1986, and 1987; and

WHEREAS, the District Court ordered that the Davis decision would be applied to all taxpayers receiving federal retirement income until legislation required a different treatment, and the parties stipulated that the final judgment in the Sheehy case would be applied to all similarly situated taxpayers filing claims for refund of taxes; and

WHEREAS, the District Court held that the Davis decision should not be applied retroactively, which holding was affirmed by the Montana Supreme Court; and

WHEREAS, the plaintiffs obtained a writ of certiorari to the United States Supreme Court; and

WHEREAS, based upon the United States Supreme Court's decision in Harper v. Virginia Department of Taxation, 509 U.S. ____ (1993), the Court remanded the Sheehy case for further proceedings; and

WHEREAS, in Harper, the United States Supreme Court held

that its decisions on federal questions had to be applied to all open and pending cases, but the Court refused to grant refunds, holding that the issue of whether a taxpayer is entitled to a refund is a question of state law; and

WHEREAS, as a result of the Harper decision, there are legal issues that remain to be decided by the courts.

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

NEW SECTION. Section 1. Appropriation for payment of refunds to federal retirees. The following amounts are appropriated from the general fund for fiscal year 1994 for the payment of refunds to federal retirees who filed valid refund claims for taxes and interest at the rate provided for in 15-30-321(1) and for the department of revenue's administrative costs for processing refunds for the years 1983, 1984, 1985, 1986, and 1987:

Tax and interest	\$14,768,490
Administrative costs	119,924

NEW SECTION. Section 2. Credit for taxes paid on federal pension income. (1) For the tax year beginning after December 31, 1994, and the succeeding 3 tax years, a taxpayer who was required to pay a tax on federal pension income for any of the tax years 1983, 1984, 1985, 1986, and 1987 and who failed to timely file a claim for refund for any of the tax years 1983, 1984, 1985, 1986, and 1987 is

allowed a tax credit against the taxes imposed by 15-30-103 for the amount certified pursuant to 15-30-147(2). The credit may be claimed on returns filed after December 31, 1995.

(2) The maximum credit a taxpayer may claim in any year's tax liability is 25% of the original amount certified pursuant to 15-30-147(2), not to exceed the total amount of the taxpayer's tax liability for the year in which the credit is claimed. The portion of the credit that exceeds the taxpayer's liability in any year may be carried over to be applied to any succeeding year's tax liability IN ADDITION TO THE PERCENTAGE AMOUNT THAT THE TAXPAYER IS ELIGIBLE TO CLAIM. A CREDIT, INCLUDING ANY CARRYOVER AMOUNT, MAY NOT BE CLAIMED FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 1998.

Section 3. Section 15-30-147, MCA, is amended to read:

"15-30-147. Application for revision -- appeal -- application for tax credit for federal pension income. (1) An application for revision may be filed with the department by a taxpayer within 5 years from the last day prescribed for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the department has revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return until the liability for that tax year

is finally determined. If the taxpayer is not satisfied with the action taken by the department, the taxpayer may appeal to the state tax appeal board.

(2) (a) (i) Notwithstanding the provisions of subsection (1), a taxpayer who included federal pension income in Montana adjusted gross income that resulted in the payment of a tax and who did not file a timely claim for a refund of taxes paid on federal pension income for the years 1983, 1984, 1985, 1986, and 1987 may file an application for a tax credit to be used for the payment of future tax liabilities as provided in [section 2].

(ii) For purposes of this section, "federal pension income" means pension income received from the United States government or an agency of the United States government.

(b) (i) A taxpayer who filed an income tax return, using the married filing jointly status, and who did not receive federal pension income as the result of personal services performed by the taxpayer for the years 1983, 1984, 1985, 1986, and 1987 may not file a claim for a credit.

(ii) A taxpayer who filed an income tax return, using the married filing jointly status for tax years 1983, 1984, 1985, 1986, and 1987, who along with the taxpayer's spouse received federal pension income, and whose spouse is now deceased may file a claim for a credit only for the amount of federal pension income received individually by the

taxpayer.

(c) (i) The application for a credit must be made between [the effective date of this act] and June 30, 1994. The application may be made only for the years 1983, 1984, 1985, 1986, and 1987.

(ii) For a taxpayer who is physically or mentally incapacitated, a claim for the credit may be filed on the taxpayer's behalf by a person authorized by law to handle the taxpayer's affairs or to act for the taxpayer.

(d) Upon receipt of the application, the department shall review the application for completeness and accuracy. After review, the department shall certify to the taxpayer the amount of the taxpayer's credit for taxes paid on federal pension income."

NEW SECTION. **SECTION 4. APPLICABILITY.** THE CREDIT PROVIDED IN [SECTION 2] IS APPLICABLE TO AND MAY BE USED ONLY TO REDUCE A TAXPAYER'S INCOME TAX LIABILITY FOR THE TAX YEARS 1995, 1996, 1997, AND 1998. NO UNUSED CREDIT MAY BE CARRIED OVER TO ANY TAX YEAR BEGINNING AFTER DECEMBER 31, 1998.

NEW SECTION. **Section 5. EFFECTIVE DATE.** [This act] is effective on ~~passage-and-approval~~ THE DATE THE DIRECTOR OF REVENUE CERTIFIES TO THE GOVERNOR THAT THE GROUP OF FEDERAL RETIREES SIMILARLY SITUATED TO THE PLAINTIFFS IN SHEEHY V. DEPARTMENT OF REVENUE, 250 MONT.

1 437, 820 P.2D 1257 (1991), HAVE BEEN CERTIFIED AS A CLASS
2 FOR PURPOSES OF LITIGATION AND THAT A FULL AND FINAL
3 COMPROMISE AND RELEASE OF ALL CLAIMS, ACTUAL OR CONTINGENT,
4 KNOWN OR UNKNOWN, INCLUDING ATTORNEY FEES, HAS BEEN ENTERED
5 INTO BETWEEN THE STATE AND THE CLASS.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
December 16, 1993

Page 2 of 3
December 16, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 57 (third reading copy -- blue), respectfully report that House Bill No. 57 be amended as follows and as so amended be concurred in.

Signed: *Senator Mike Halligan*
Senator Mike Halligan, Chair

That such amendments read:

1. Title, lines 6 through 9.
Strike: "APPROPRIATING" on line 6 through "INCOME;" on line 9
Following: "A" on line 9
Insert: "TAX"
2. Title, line 10.
Strike: "PERSONS"
Insert: "FEDERAL RETIREES"
Strike: "FAILED TO"
Strike: "FILE"
Insert: "FILED"
Following: "REFUND"
Insert: ", INCLUDING INTEREST,"
3. Title, line 11.
Following: "INCOME"
Insert: "DURING THE PERIOD FROM 1983 THROUGH 1987"
4. Title, lines 11 through 13.
Strike: "APPROPRIATING" on line 11 through "REFUNDS" on line 13
Insert: "PROVIDING THAT THE CREDIT AND ANY CARRYOVER IS REFUNDABLE FOR TAX YEAR 1998; PROVIDING THAT THE CREDIT AND ANY CARRYOVER IS REFUNDABLE TO THE TAXPAYER'S ESTATE OR TRUST; REQUIRING APPLICATION FOR THE CREDIT; PROHIBITING THE ACCUMULATION OF INTEREST ON REFUNDS DETERMINED FOR TAX YEARS 1983 THROUGH 1987 AFTER THE EFFECTIVE DATE OF THIS ACT"
5. Title, line 14.
Following: "IMMEDIATE"
Insert: "AN IMMEDIATE EFFECTIVE DATE AND"
6. Title, lines 14 and 15.
Strike: "EFFECTIVE" on line 14 through "APPLICABILITY" on line 15
Insert: "TERMINATION"
7. Page 3, line 9 through page 7, line 5.
Strike: everything following the enacting clause
Insert: " NEW SECTION. Section 1. Credit for taxes paid on federal pension income. (1) For the tax year beginning after

December 31, 1994, and for the succeeding 3 tax years, a taxpayer who was required to pay a tax on federal pension income for any of the tax years 1983 through 1987 and who filed a timely claim for a refund is allowed a tax credit against the taxes imposed by 15-30-103 for the amount certified pursuant to 15-30-147(2)(f). The credit may be claimed on returns filed after December 31, 1995.

(2) Except as provided in subsection (3), the maximum credit that a taxpayer may claim on any year's tax liability is 25% of the original amount certified pursuant to 15-30-147(2)(f), not to exceed the total amount of the taxpayer's tax liability for the year in which the credit is claimed. That portion of the credit that exceeds the taxpayer's liability in any year may be carried over to be applied to the succeeding year's tax liability in addition to the percentage amount that the taxpayer is eligible to claim.

(3) For tax year 1998 only, if the credit and any carryover amount exceeds the taxpayer's liability under this chapter, the amount of the excess must be refunded to the taxpayer. A credit, including any carryover amount, may not be claimed for tax years beginning after December 31, 1998.

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

"15-30-147. Application for revision -- appeal -- application for tax credit for federal pension income. (1) An application for revision may be filed with the department by a taxpayer within 5 years from the last day prescribed for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the department has revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return until the liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the department, the taxpayer may appeal to the state tax appeal board.

(2) (a) A taxpayer who included federal pension income in Montana adjusted gross income that resulted in the payment of a tax and who filed a timely claim for a refund of taxes paid on federal pension income for any of the tax years 1983 through 1987 may file an application for a tax credit to be used for the payment of future tax liabilities as provided in [section 1].

(b) A taxpayer who filed an income tax return, using the status of married filing jointly, and who did not receive federal pension income for any of the tax years 1983 through 1987 may not file a claim for a credit.

(c) A taxpayer who filed an income tax return, using the status of married filing jointly for any of the tax years 1983 through 1987, who along with the taxpayer's spouse received federal pension income, and whose spouse is now deceased may file

M- Amd. Coord.
SO Sec. of Senate

Senator Halligan
Senator Carrying Bill

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a claim for a credit for the amount of federal pension income received by the taxpayer and for the amount received by the deceased spouse.

(d) The application for credit must be made between the effective date of this act and June 30, 1994. The application may be made only for tax years 1983 through 1987.

(e) (i) For a taxpayer who is physically or mentally incapacitated, a claim for the credit may be filed on the taxpayer's behalf by a person authorized by law to handle the taxpayer's affairs or to act for the taxpayer.

(ii) For a deceased taxpayer, a claim for the credit may be filed by either the fiduciary or the beneficiary of the deceased taxpayer's estate or trust for the full amount of the credit and for any carryover amounts. If the amount of the credit exceeds the tax liability of the estate or trust, the amount of the excess must be refunded to the estate or trust.

(f) Upon receipt of the application, the department shall review the application for completeness and accuracy. After review, the department shall certify to the taxpayer the amount of the taxpayer's credit for taxes paid on federal pension income, including accumulated interest on taxes paid for tax years 1983, 1984, 1985, 1986, and 1987 through [the effective date of this act]."

NEW SECTION. Section 3. Refunds not to include accumulated interest. Subject to the provisions of 15-30-147(2)(f), interest may not be accumulated for tax years 1983, 1984, 1985, 1986, or 1987 on refunds determined after [the effective date of this act].

NEW SECTION. Section 4. Codification instruction. [Sections 1 and 3] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 and 3].

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 6. Contingent termination. [This act] terminates on the date that the director of revenue certifies to the governor that a final decision in Sheehy v. Department of Revenue, 250 Mont. 437, 820 P.2d 1257 (1991), has denied the payment of refunds of taxes paid on federal pension income for the tax years 1983 through 1987."

-END-

HOUSE BILL NO. 57

INTRODUCED BY HIBBARD, SIMPKINS, SWIFT, WISEMAN

BY REQUEST OF THE DEPARTMENT OF REVENUE AND

THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT ~~APPROPRIATING--GENERAL~~
~~PUND--MONEY--TO--THE--DEPARTMENT--OF--REVENUE--FOR--THE--PAYMENT--OF~~
~~REFUND--CLAIMS--THAT--HAVE--BEEN--FILED--FOR--TAXES--ALLEGEDLY--PAID~~
~~ILLEGALLY--ON--FEDERAL--PENSION--INCOME,~~ PROVIDING A TAX CREDIT
TO PERSONS FEDERAL RETIREES WHO FAILED TO TIMELY FILE FILED
FOR A REFUND, INCLUDING INTEREST, FOR TAXES PAID ON FEDERAL
PENSION INCOME DURING THE PERIOD FROM 1983 THROUGH 1987;
~~APPROPRIATING--PUNDS--TO--THE--DEPARTMENT--OF--REVENUE--FOR--THE~~
~~ADMINISTRATIVE--COSTS--OF--ISSUING--THE--REFUNDS~~ PROVIDING THAT
THE CREDIT AND ANY CARRYOVER IS REFUNDABLE FOR TAX YEAR
1998; PROVIDING THAT THE CREDIT AND ANY CARRYOVER IS
REFUNDABLE TO THE TAXPAYER'S ESTATE OR TRUST; REQUIRING
APPLICATION FOR THE CREDIT; PROHIBITING THE ACCUMULATION OF
INTEREST ON REFUNDS DETERMINED FOR TAX YEARS 1983 THROUGH
1987 AFTER THE EFFECTIVE DATE OF THIS ACT; AMENDING SECTION
15-30-147, MCA; AND PROVIDING AN--IMMEDIATE AN IMMEDIATE
EFFECTIVE DATE AND A CONTINGENT ~~EPPECTIVE--DATE~~ AND--AN
APPLICABILITY TERMINATION DATE."

WHEREAS, the United States Supreme Court on March 28,

1989, held in the case of Davis v. Michigan Department of
Treasury, 489 U.S. 803 (1989), that a state tax procedure
that exempts the state retirement benefits of local and
state retirees while taxing the federal retirement benefits
of federal retirees violates the doctrine of
intergovernmental tax immunity provided for in 4 U.S.C. 111;
and

WHEREAS, retired federal employees commenced suit
against the State of Montana (Sheehy v. Department of
Revenue, 250 Mont. 437, 820 P.2d 1257 (1991)), seeking a
declaration that Montana's income tax law providing for the
taxation of retirement income of federal retirees while
exempting the retirement income of local and state retirees
was unconstitutional and seeking a refund of taxes paid by
federal retirees for the years 1983, 1984, 1985, 1986, and
1987; and

WHEREAS, the District Court ordered that the Davis
decision would be applied to all taxpayers receiving federal
retirement income until legislation required a different
treatment, and the parties stipulated that the final
judgment in the Sheehy case would be applied to all
similarly situated taxpayers filing claims for refund of
taxes; and

WHEREAS, the District Court held that the Davis decision
should not be applied retroactively, which holding was

affirmed by the Montana Supreme Court; and

WHEREAS, the plaintiffs obtained a writ of certiorari to the United States Supreme Court; and

WHEREAS, based upon the United States Supreme Court's decision in Harper v. Virginia Department of Taxation, 509 U.S. ____ (1993), the Court remanded the Sheehy case for further proceedings; and

WHEREAS, in Harper, the United States Supreme Court held that its decisions on federal questions had to be applied to all open and pending cases, but the Court refused to grant refunds, holding that the issue of whether a taxpayer is entitled to a refund is a question of state law; and

WHEREAS, as a result of the Harper decision, there are legal issues that remain to be decided by the courts.

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Credit for taxes paid on federal pension income. (1) For the tax year beginning after December 31, 1994, and for the succeeding 3 tax years, a taxpayer who was required to pay a tax on federal pension income for any of the tax years 1983 through 1987 and who filed a timely claim for a refund is allowed a tax credit against the taxes imposed by 15-30-103 for the amount

certified pursuant to 15-30-147(2)(f). The credit may be claimed on returns filed after December 31, 1995.

(2) Except as provided in subsection (3), the maximum credit that a taxpayer may claim on any year's tax liability is 25% of the original amount certified pursuant to 15-30-147(2)(f), not to exceed the total amount of the taxpayer's tax liability for the year in which the credit is claimed. That portion of the credit that exceeds the taxpayer's liability in any year may be carried over to be applied to the succeeding year's tax liability in addition to the percentage amount that the taxpayer is eligible to claim.

(3) For tax year 1998 only, if the credit and any carryover amount exceeds the taxpayer's liability under this chapter, the amount of the excess must be refunded to the taxpayer. A credit, including any carryover amount, may not be claimed for tax years beginning after December 31, 1998.

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

"15-30-147. Application for revision -- appeal -- application for tax credit for federal pension income. (1) An application for revision may be filed with the department by a taxpayer within 5 years from the last day prescribed for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the department has

revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return until the liability for that tax year is finally determined. If the taxpayer is not satisfied with the action taken by the department, the taxpayer may appeal to the state tax appeal board.

(2) (a) A taxpayer who included federal pension income in Montana adjusted gross income that resulted in the payment of a tax and who filed a timely claim for a refund of taxes paid on federal pension income for any of the tax years 1983 through 1987 may file an application for a tax credit to be used for the payment of future tax liabilities as provided in [section 1].

(b) A taxpayer who filed an income tax return, using the status of married filing jointly, and who did not receive federal pension income for any of the tax years 1983 through 1987 may not file a claim for a credit.

(c) A taxpayer who filed an income tax return, using the status of married filing jointly for any of the tax years 1983 through 1987, who along with the taxpayer's spouse received federal pension income, and whose spouse is now deceased may file a claim for a credit for the amount of federal pension income received by the taxpayer and for the amount received by the deceased spouse.

(d) The application for credit must be made between [the effective date of this act] and June 30, 1994. The

application may be made only for tax years 1983 through 1987.

(e) (i) For a taxpayer who is physically or mentally incapacitated, a claim for the credit may be filed on the taxpayer's behalf by a person authorized by law to handle the taxpayer's affairs or to act for the taxpayer.

(ii) For a deceased taxpayer, a claim for the credit may be filed by either the fiduciary or the beneficiary of the deceased taxpayer's estate or trust for the full amount of the credit and for any carryover amounts. If the amount of the credit exceeds the tax liability of the estate or trust, the amount of the excess must be refunded to the estate or trust.

(f) Upon receipt of the application, the department shall review the application for completeness and accuracy. After review, the department shall certify to the taxpayer the amount of the taxpayer's credit for taxes paid on federal pension income, including accumulated interest on taxes paid for tax years 1983, 1984, 1985, 1986, and 1987 through [the effective date of this act]."

NEW SECTION. Section 3. Refunds not to include accumulated interest. Subject to the provisions of 15-30-147(2)(f), interest may not be accumulated for tax years 1983, 1984, 1985, 1986, or 1987 on refunds determined after [the effective date of this act].

1 NEW SECTION. **Section 4.** Codification instruction.
2 [Sections 1 and 3] are intended to be codified as an
3 integral part of Title 15, chapter 30, and the provisions of
4 Title 15, chapter 30, apply to [sections 1 and 3].

5 NEW SECTION. **Section 5.** Effective date. [This act] is
6 effective on passage and approval.

7 NEW SECTION. **Section 6.** Contingent termination. [This
8 act] terminates on the date that the director of revenue
9 certifies to the governor that a final decision in Sheehy v.
10 Department of Revenue, 250 Mont. 437, 820 P.2d 1257 (1991),
11 has denied the payment of refunds of taxes paid on federal
12 pension income for the tax years 1983 through 1987.

-End-