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

LC 0105/01

Special Session 11/93

LC 0105/01

Ъ HOUSE BILL NO. 5 INTRODUCED LAN 2 3 BY REQUEST OF THE DEPARTMENT OF REVENUE AND THE OFFICE OF BUDGET AND PROGRAM PLANNING ۵ 5 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING GENERAL 6 7 FUND MONEY. TO THE DEPARTMENT OF REVENUE FOR THE PAYMENT OF REFUND CLAIMS THAT HAVE BEEN FILED FOR TAXES ALLEGEDLY PAID 8 ILLEGALLY ON FEDERAL PENSION INCOME; PROVIDING A CREDIT TO 9 PERSONS WHO FAILED TO TIMELY FILE FOR A REFUND FOR TAXES 10 11 PAID ON FEDERAL PENSION INCOME: APPROPRIATING FUNDS TO THE 12 DEPARTMENT OF REVENUE FOR THE ADMINISTRATIVE COSTS OF ISSUING THE REFUNDS; AMENDING SECTION 15-30-147, MCA; AND 13

14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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16 WHEREAS, the United States Supreme Court on March 28, 1989, held in the case of Davis v. Michigan Department of 17 Treasury, 489 U.S. 803 (1989), that a state tax procedure 18 that exempts the state retirement benefits of local and 19 state retirees while taxing the federal retirement benefits 20 21 federal retirees violates the doctrine of 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 retirement income until legislation required a different 10 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 U.S. ____ (1993), the Court remanded the Sheehy case for 22 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

> -2-HBST INTRODUCED BILL

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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

5 legal issues that remain to be decided by the courts.

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

6

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

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 Tax and interest
 \$14,768,490

 17
 Administrative costs
 119,924

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

for the amount certified pursuant to 15-30-147(2). The
 credit may be claimed on returns filed after December 31,
 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 -application for tax credit for federal pension income. (1) 13 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), regardless of whether the return was filed on or after the 17 last day prescribed for filing. If the department has 18 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-

LC 0105/01

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53rd Legislature Special Session 11/93

HB 0057/02

APPROVED BY COMMITTEE ON APPROPRIATIONS

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1	HOUSE BILL NO. 57
2	INTRODUCED BY HIBBARD, SIMPKINS, SWIFT, WISEMAN
3	BY REQUEST OF THE DEPARTMENT OF REVENUE AND
4	THE OFFICE OF BUDGET AND PROGRAM PLANNING

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

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WHEREAS, the United States Supreme Court on March 28, 17 18 1989, held in the case of Davis v. Michigan Department of Treasury, 489 U.S. 803 (1989), that a state tax procedure 19 that exempts the state retirement benefits of local and 20 21 state retirees while taxing the federal retirement benefits 22 of federal retirees violates the doctrine of 23 intergovernmental tax immunity provided for in 4 U.S.C. 111; 24 and

25 WHEREAS, retired federal employees commenced suit



1 against the State of Montana (Sheehy v. Department of 2 Revenue, 250 Mont. 437, 820 P.2d 1257 (1991)), seeking a 3 declaration that Montana's income tax law providing for the taxation of retirement income of federal retirees while 4 5 exempting the retirement income of local and state retirees was unconstitutional and seeking a refund of taxes paid by 6 7 federal retirees for the years 1983, 1984, 1985, 1986, and 8 1987; and

9 WHEREAS, the District Court ordered that the <u>Davis</u> 10 decision would be applied to all taxpayers receiving federal 11 retirement income until legislation required a different 12 treatment, and the parties stipulated that the final 13 judgment in the <u>Sheehy</u> case would be applied to all 14 similarly situated taxpayers filing claims for refund of 15 taxes; and

16 WHEREAS, the District Court held that the <u>Davis</u> decision 17 should not be applied retroactively, which holding was 18 affirmed by the Montana Supreme Court; and

19 WHEREAS, the plaintiffs obtained a writ of certiorari to

20 the United States Supreme Court; and

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

25 WHEREAS, in <u>Harper</u>, the United States Supreme Court held

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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 <u>Harper</u> 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 refunds to federal retirees. The following amounts are 10 11 appropriated from the general fund for fiscal year 1994 for 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 16 1983, 1984, 1985, 1986, and 1987:

 17
 Tax and interest
 \$14,768,490

 18
 Administrative costs
 119,924

<u>NEW SECTION.</u> 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 HB 0057/02

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.

5 (2) The maximum credit a taxpayer may claim in any б year's tax liability is 25% of the original amount certified pursuant to 15-30-147(2), not to exceed the total amount of 7 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 ADDITION TO THE PERCENTAGE AMOUNT THAT THE TAXPAYER IS 12 ELIGIBLE TO CLAIM. 13

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

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1	to the state tax appeal board.
2	(2) (a) (i) Notwithstanding the provisions of
3	subsection (1), a taxpayer who included federal pension
4	income in Montana adjusted gross income that resulted in the
5	payment of a tax and who did not file a timely claim for a
6	refund of taxes paid on federal pension income for the years
7	1983, 1984, 1985, 1986, and 1987 may file an application for
в	a tax credit to be used for the payment of future tax
9	liabilities as provided in [section 2].
10	(ii) For purposes of this section, "federal pension
11	income" means pension income received from the United States
12	government or an agency of the United States government.
13	(b) (i) A taxpayer who filed an income tax return,
14	using the married filing jointly status, and who did not
15	receive federal pension income as the result of personal
16	services performed by the taxpayer for the years 1983, 1984,
17	1985, 1986, and 1987 may not file a claim for a credit.
18	(ii) A taxpayer who filed an income tax return, using
19	the married filing jointly status for tax years 1983, 1984,
20	1985, 1986, and 1987, who along with the taxpayer's spouse
21	received federal pension income, and whose spouse is now
22	deceased may file a claim for a credit only for the amount
23	of federal pension income received individually by the
24	taxpayer.
25	(c) (i) The application for a credit must be made

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1	between [the effective date of this act] and June 30, 1994.
2	The application may be made only for the years 1983, 1984,
3	1985, 1986, and 1987.
4	(ii) For a taxpayer who is physically or mentally
5	incapacitated, a claim for the credit may be filed on the
6	taxpayer's behalf by a person authorized by law to handle
7	the taxpayer's affairs or to act for the taxpayer.
8	(d) Upon receipt of the application, the department
9	shall review the application for completeness and accuracy.
10	After review, the department shall certify to the taxpayer
11	the amount of the taxpayer's credit for taxes paid on
12	federal pension income."
13	NEW SECTION. SECTION 4. APPLICABILITY. THE CREDIT
14	PROVIDED IN [SECTION 2] IS APPLICABLE TO AND MAY BE USED
15	ONLY TO REDUCE A TAXPAYER'S INCOME TAX LIABILITY FOR THE TAX
16	YEARS 1995, 1996, 1997, AND 1998. NO UNUSED CREDIT MAY BE
17	CARRIED OVER TO ANY TAX YEAR BEGINNING AFTER DECEMBER 31,
18	1998.
19	NEW SECTION. Section 5. Effective date. [This act] is
20	effective on passage and approval.

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⁻End-

1	HOUSE BILL NO. 57
2	INTRODUCED BY HIBBARD, SIMPKINS, SWIFT, WISEMAN
3	BY REQUEST OF THE DEPARTMENT OF REVENUE AND
4	THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING GENERAL б 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 A CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE." 15

16

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17 WHEREAS, the United States Supreme Court on March 28, 18 1989, held in the case of Davis v. Michigan Department of 19 Treasury, 489 U.S. 803 (1989), that a state tax procedure 20 that exempts the state retirement benefits of local and 21 state retirees while taxing the federal retirement benefits 22 of federal retirees violates the doctrine of 23 intergovernmental tax immunity provided for in 4 U.S.C. 111; 24 and

25 WHEREAS, retired federal employees commenced suit

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1 against the State of Montana (Sheehy v. Department of Revenue, 250 Mont. 437, 820 P.2d 1257 (1991)), seeking a 2 3 declaration that Montana's income tax law providing for the 4 taxation of retirement income of federal retirees while 5 exempting the retirement income of local and state retirees 6 was unconstitutional and seeking a refund of taxes paid by 7 federal retirees for the years 1983, 1984, 1985, 1986, and 8 1987; and

9 WHEREAS, the District Court ordered that the Davis 10 decision would be applied to all taxpayers receiving federal 11 retirement income until legislation required a different 12 treatment, and the parties stipulated that the final 13 judgment in the <u>Sheehy</u> case would be applied to all 14 similarly situated taxpayers filing claims for refund of 15 taxes; and

16 WHEREAS, the District Court held that the <u>Davis</u> decision
17 should not be applied retroactively, which holding was
18 affirmed by the Montana Supreme Court; and
19 WHEREAS, the plaintiffs obtained a writ of certiorari to

20 the United States Supreme Court; and

21 WHEREAS, based upon the United States Supreme Court's 22 decision in <u>Harper v. Virginia Department of Taxation</u>, 509 23 U.S. _____ (1993), the Court remanded the <u>Sheehy</u> case for 24 further proceedings; and

25 WHEREAS, in <u>Harper</u>, the United States Supreme Court held

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1995.

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

5 WHEREAS, as a result of the <u>Harper</u> 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:

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

17 Tax and interest \$14,768,490

18 Administrative costs 119,924

19 <u>NEW SECTION.</u> 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 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,

5 (2) The maximum credit a taxpaver 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 be applied to any succeeding year's tax liability. IN 11 ADDITION TO THE PERCENTAGE AMOUNT THAT THE TAXPAYER IS 12 13 ELIGIBLE TO CLAIM. A CREDIT, INCLUDING ANY CARRYOVER AMOUNT, 14 MAY NOT BE CLAIMED FOR TAX YEARS BEGINNING AFTER DECEMBER 15 31, 1998.

Section 3. Section 15-30-147, MCA, is amended to read: 16 "15-30-147. Application for revision -- appeal --17 18 application for tax credit for federal pension income. (1) 19 An application for revision may be filed with the department by a taxpayer within 5 years from the last day prescribed 20 21 for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the 22 last day prescribed for filing. If the department has 23 24 revised a return pursuant to 15-30-145(3), the taxpayer may 25 revise the same return until the liability for that tax year

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2 the action taken by the department, the taxpayer may appeal 3 to the state tax appeal board. (2) (a) (i) Notwithstanding the 4 provisions of 5 subsection (1), a taxpayer who included federal pension 6 income in Montana adjusted gross income that resulted in the 7 payment of a tax and who did not file a timely claim for a 8 refund of taxes paid on federal pension income for the years 9 1983, 1984, 1985, 1986, and 1987 may file an application for 10 a tax credit to be used for the payment of future tax 11 liabilities as provided in [section 2]. 12 (ii) For purposes of this section, "federal pension 13 income" means pension income received from the United States 14 government or an agency of the United States government. 15 (b) (i) A taxpayer who filed an income tax return, 16 using the married filing jointly status, and who did not receive federal pension income as the result of personal 17 18 services performed by the taxpayer for the years 1983, 1984, 19 1985, 1986, and 1987 may not file a claim for a credit. 20 (ii) A taxpayer who filed an income tax return, using 21 the married filing jointly status for tax years 1983, 1984, 22 1985, 1986, and 1987, who along with the taxpayer's spouse 23 received federal pension income, and whose spouse is now 24 deceased may file a claim for a credit only for the amount 25 of federal pension income received individually by the

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is finally determined. If the taxpayer is not satisfied with

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1	taxpayer.
2	(c) (i) The application for a credit must be made
3	between [the effective date of this act] and June 30, 1994.
4	The application may be made only for the years 1983, 1984,
5	1985, 1986, and 1987.
6	(ii) For a taxpayer who is physically or mentally
7	incapacitated, a claim for the credit may be filed on the
8	taxpayer's behalf by a person authorized by law to handle
9	the taxpayer's affairs or to act for the taxpayer.
10	(d) Upon receipt of the application, the department
11	shall review the application for completeness and accuracy.
12	After review, the department shall certify to the taxpayer
13	the amount of the taxpayer's credit for taxes paid on
14	federal pension income."
15	NEW SECTION, SECTION 4. APPLICABILITY. THE CREDIT
16	PROVIDED IN [SECTION 2] IS APPLICABLE TO AND MAY BE USED
17	ONLY TO REDUCE A TAXPAYER'S INCOME TAX LIABILITY FOR THE TAX
18	YEARS 1995, 1996, 1997, AND 1998. NO UNUSED CREDIT MAY BE
19	CARRIED OVER TO ANY TAX YEAR BEGINNING AFTER DECEMBER 31,
20	1998.
21	NEW SECTION. Section 5. DEFECTIVE CONTINGENT EFFECTIVE
22	date. [This act] is effective on passage-and-approval THE
23	DATE THE DIRECTOR OF REVENUE CERTIFIES TO THE GOVERNOR THAT
24	THE GROUP OF FEDERAL RETIREES SIMILARLY SITUATED TO THE
25	PLAINTIFFS IN SHEEHY V. DEPARTMENT OF REVENUE, 250 MONT.

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- 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.

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-End-

Page 1 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.

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: REOUIRING 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

M- Amd. Coord. 50 Sec. of Senate

Sinatik Halligar Senator Carrying Bill

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

> HB 57 SENATE

Page 3 cf 3 December 16, 1993

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.

id. 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) if For a taxpayer who is physically or mentally incapacitated, a plaim 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]."

<u>NEW SECTION.</u> 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].

<u>NEW SECTION.</u> 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].

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

<u>NEW SECTION.</u> Section 6. Contingent termination. [This act] terminates on the date that the director of revenue certifies to the governor that a final decision in <u>Sheehy v. Department of Revenue</u>, 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 1 2 INTRODUCED BY HIBBARD, SIMPKINS, SWIFT, WISEMAN BY REQUEST OF THE DEPARTMENT OF REVENUE AND 3 Δ THE OFFICE OF BUDGET AND PROGRAM PLANNING 5 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING--GENERAL 6 7 PUND--MONEY-TO-THE-DEPARTMENT-OF-REVENUE-FOR-THE-PAYMENT-OF в REPUND-CLAIMS-THAT-HAVE-BEEN-FILED-POR-TAXES-ALLEGEDLY--PAID 9 ILLEGALLY--ON-FEDERAL-PENSION-INCOME: PROVIDING A TAX CREDIT 10 TO PERSONS FEDERAL RETIREES WHO PAILED TO TIMELY PILE FILED 11 FOR A REFUND, INCLUDING INTEREST, FOR TAXES PAID ON FEDERAL 12 PENSION INCOME DURING THE PERIOD FROM 1983 THROUGH 1987; 13 APPROPRIATING--PUNDS--TO--THE--DEPARTMENT-OF-REVENUE-FOR-THE 14 ADMINISTRATIVE-COSTS-OF-ISSUING-THE-REFUNDS PROVIDING THAT 15 THE CREDIT AND ANY CARRYOVER IS REFUNDABLE FOR TAX YEAR 16 1998: PROVIDING THAT THE CREDIT AND ANY CARRYOVER IS 17 REFUNDABLE TO THE TAXPAYER'S ESTATE OR TRUST; REQUIRING 18 APPLICATION FOR THE CREDIT; PROHIBITING THE ACCUMULATION OF INTEREST ON REFUNDS DETERMINED FOR TAX YEARS 1983 THROUGH 19 20 1987 AFTER THE EFFECTIVE DATE OF THIS ACT; AMENDING SECTION 15-30-147, MCA; AND PROVIDING AN--IMMEDIATE AN IMMEDIATE 21 22 EFFECTIVE DATE AND A CONTINGENT EPFECTIVE--BATE AND-AN 23 APPLICABILITY TERMINATION DATE." 24

25 WHEREAS, the

WHEREAS, the United States Supreme Court on March 28,



1 1989, held in the case of Davis v. Michigan Department of 2 Treasury, 489 U.S. 803 (1989), that a state tax procedure 3 that exempts the state retirement benefits of local and 4 state retirees while taxing the federal retirement benefits 5 of federal retirees violates doctrine of the 6 intergovernmental tax immunity provided for in 4 U.S.C. 111; 7 and

8 WHEREAS, retired federal employees commenced suit 9 against the State of Montana (Sheehy y. Department of 10 Revenue, 250 Mont. 437, 820 P.2d 1257 (1991)), seeking a 11 declaration that Montana's income tax law providing for the 12 taxation of retirement income of federal retirees while 13 exempting the retirement income of local and state retirees 14 was unconstitutional and seeking a refund of taxes paid by 15 federal retirees for the years 1983, 1984, 1985, 1986, and 16 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 <u>Sheehy</u> case would be applied to all similarly situated taxpayers filing claims for refund of taxes; and

24 WHEREAS, the District Court held that the <u>Davis</u> decision
25 should not be applied retroactively, which holding was

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affirmed by the Montana Supreme Court; and 1 WHEREAS, the plaintiffs obtained a writ of certiorari to 2 the United States Supreme Court; and З WHEREAS, based upon the United States Supreme Court's 4 decision in Harper v. Virginia Department of Taxation, 509 5 U.S. (1993), the Court remanded the Sheehy case for 6 further proceedings; and 7 WHEREAS, in Harper, the United States Supreme Court held 8 that its decisions on federal questions had to be applied to 9 all open and pending cases, but the Court refused to grant 10 refunds, holding that the issue of whether a taxpayer is 11 entitled to a refund is a question of state law; and 12. WHEREAS, as a result of the Harper decision, there are 13 legal issues that remain to be decided by the courts. 14 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 16 (Refer to Introduced Bill) 17 Strike everything after the enacting clause and insert: 18 NEW SECTION. Section 1. Credit for taxes paid on 19 federal pension income. (1) For the tax year beginning after 20 December 31, 1994, and for 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 through 1987 and who 23 filed a timely claim for a refund is allowed a tax credit 24 against the taxes imposed by 15-30-103 for the amount 25

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

3 (2) Except as provided in subsection (3), the maximum 4 credit that a taxpayer may claim on any year's tax liability 5 is 25% of the original amount certified pursuant to 6 15-30-147(2)(f), not to exceed the total amount of the 7 taxpayer's tax liability for the year in which the credit is 8 claimed. That portion of the credit that exceeds the 9 taxpayer's liability in any year may be carried over to be 10 applied to the succeeding year's tax liability in addition to the percentage amount that the taxpayer is eligible to 11 12 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.

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

19 "15-30-147. Application for revision -- appeal _____
20 application for tax credit for federal pension income. (1)
21 An application for revision may be filed with the department
22 by a taxpayer within 5 years from the last day prescribed
23 for filing the return as provided in 15-30-145(3),
24 regardless of whether the return was filed on or after the
25 last day prescribed for filing. If the department has

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1 revised a return pursuant to 15-30-145(3), the taxpayer may 2 revise the same return until the liability for that tax year 3 is finally determined. If the taxpayer is not satisfied with 4 the action taken by the department, the taxpayer may appeal 5 to the state tax appeal board.

6 (2) (a) A taxpayer who included federal pension income 7 in Montana adjusted gross income that resulted in the 8 payment of a tax and who filed a timely claim for a refund 9 of taxes paid on federal pension income for any of the tax 10 years 1983 through 1987 may file an application for a tax 11 credit to be used for the payment of future tax liabilities 12 as provided in [section 1].

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

17 (c) A taxpayer who filed an income tax return, using the status of married filing jointly for any of the tax 18 19 years 1983 through 1987, who along with the taxpayer's 20 spouse received federal pension income, and whose spouse is 21 now deceased may file a claim for a credit for the amount of 22 federal pension income received by the taxpayer and for the 23 amount received by the deceased spouse. 24 (d) The application for credit must be made between

25 [the effective date of this act] and June 30, 1994. The

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application may be made only for tax years 1983 through 1 2 1987. 3 (e) (i) For a taxpayer who is physically or mentally 4 incapacitated, a claim for the credit may be filed on the 5 taxpayer's behalf by a person authorized by law to handle the taxpayer's affairs or to act for the taxpayer. 6 7 (ii) For a deceased taxpayer, a claim for the credit may be filed by either the fiduciary or the beneficiary of the 8 deceased taxpayer's estate or trust for the full amount of 9 10 the credit and for any carryover amounts. If the amount of 11 the credit exceeds the tax liability of the estate or trust, 12 the amount of the excess must be refunded to the estate or 13 trust. 14 (f) Upon receipt of the application, the department shall review the application for completeness and accuracy. 15 16 After review, the department shall certify to the taxpayer the amount of the taxpayer's credit for taxes paid on 17 federal pension income, including accumulated interest on 18 19 taxes paid for tax years 1983, 1984, 1985, 1986, and 1987 20 through [the effective date of this act]." 21 NEW SECTION. Section 3. Refunds not to include 22 accumulated interest. Subject to the provisions of 15-30-147(2)(f), interest may not be accumulated for tax 23 24 years 1983, 1984, 1985, 1986, or 1987 on refunds determined

25 after [the effective date of this act].

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<u>NEW SECTION.</u> 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].

5 <u>NEW SECTION.</u> Section 5. Effective date. [This act] is
6 effective on passage and approval.

NEW SECTION. Section 6. Contingent termination. [This
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certifies to the governor that a final decision in <u>Sheehy v.</u>
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has denied the payment of refunds of taxes paid on federal
pension income for the tax years 1983 through 1987.

-End-