

SENATE BILL 8

Introduced by Bartlett

11/23 Introduced
11/23 Fiscal Note Requested
11/29 First Reading
11/29 Referred to Taxation
12/01 Hearing
12/01 Fiscal Note Received
12/01 Fiscal Note Printed
12/01 Committee Report--Bill Passed as Amended
12/02 2nd Reading Passed
12/03 3rd Reading Passed

Transmitted to House
12/03 First Reading
12/03 Referred to Taxation
12/08 Hearing
12/09 Committee report-Bill Concurred as Amended
12/10 2nd Reading Concur as Amended Motion
Failed
12/11 Motion Failed to Reconsider Previous Action
and Place Back on 2nd Reading

SENATE BILL NO. 8

INTRODUCED BY BARTLETT

BY REQUEST OF THE STATE AUDITOR AND THE
OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE STATE
AUDITOR TO COLLECT DELINQUENT TAXES DUE A COUNTY OR THE
INTERNAL REVENUE SERVICE WHEN REQUESTED TO DO SO; AMENDING
SECTIONS 17-4-101, 17-4-102, 17-4-103, 17-4-105, 17-4-106,
15-16-113, AND 15-16-301, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE."

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

Section 1. Section 17-4-101, MCA, is amended to read:

"17-4-101. Definitions. In this part, the following
definitions apply:

(1) ~~The word "department" means the department of~~
~~revenue;~~

~~The term "state agency"~~ "Agency" includes:

(a) all state offices, departments, divisions, boards,
commissions, councils, committees, institutions, university
units, and other entities or instrumentalities of state
government; and

(b) with respect to delinquent taxes that they request
the state auditor to collect for them, counties and the

internal revenue service of the U.S. department of the
treasury.

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

Section 2. Section 17-4-102, MCA, is amended to read:

"17-4-102. Accounts of persons indebted to state
agencies. (1) ~~in his discretion it is the duty of the~~ The
state auditor to may:

(a) examine and settle the accounts of persons indebted
to ~~the state agencies~~ and certify the amount to the
treasurer and, upon presentation and filing of the
treasurer's receipt therefor for that amount, to give such
the person a discharge and charge the treasurer therewith
with that amount;

(b) require any a person presenting an account for
settlement to be sworn before him the state auditor and to
answer, orally or in writing, as to any facts relating to it
the account.

(2) The certificate mentioned referred to in subsection
(1)(a) must show by whom the payment is to be made, the
amount thereof of payment, and the fund into which it is to
be paid and. Certificates must be numbered in order,
beginning with number 1 at the commencement of each fiscal
year."

Section 3. Section 17-4-103, MCA, is amended to read:

*17-4-103. Collection of claims by state auditor. (1)

~~(a) In his discretion, it is the duty of the~~ The state auditor to may examine the collection of money due ~~the state~~ an agency and institute suits;

(i) in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue; and

(ii) against persons who possess public money or property and fail to pay over or deliver the money or property; and

(iii) against debtors of the state agencies.

(b) The courts of the county where the seat of government may be located have jurisdiction, without regard to the residence of the defendants, over the collection suits authorized by this section.

(2) Whenever a person has money or other personal property that belongs to the state by escheat or otherwise or has been entrusted with the collection, management, or disbursement of money, bonds, or interest accruing from the money or bonds, belonging to or held in trust by the state, and fails to render an account of the money or personal property to and make settlement with the state auditor within the time prescribed by law or, when no particular time is specified, fails to render an account and make settlement or who fails to pay into the state treasury the

money belonging to the state, upon being required to do so by the state auditor, within 20 days after the requisition, the state auditor shall state an account with that person, charging 25% damages and interest at the rate of 10% a year from the time of the failure. A copy of the account in a suit is prima facie evidence of the things stated in the account, but when the state auditor cannot for want of information state an account, he the state auditor may in an action ~~brought--by--him~~ aver that fact and allege generally the amount of money or other property due or belonging to the state.

(3) (a) The state auditor may assist in the collection of a delinquent account owing to ~~any-state~~ an agency and may separately charge the ~~state~~ agency that transferred the debt for the cost of assistance. The state auditor may designate the percentage of collected proceeds to be retained for the cost of assistance.

(b) A delinquent tax due a county or the internal revenue service may be collected by the state auditor only on request of the board of county commissioners or on request of the internal revenue service. The request must be accompanied by proof of the amount of tax due and proof of the delinquency.

(4) The state auditor may provide a collection service for the general purpose of centralizing the collection of

1 all debts owing owed to the state agencies."

2 **Section 4.** Section 17-4-105, MCA, is amended to read:

3 "17-4-105. Authority to collect debt -- offsets. (1)
4 Once a debt of ~~a state~~ an agency has been transferred to the
5 state auditor, the state auditor has the authority to
6 collect it. The state auditor may contract with commercial
7 collection agencies agents for recovery of debts owed the
8 state to agencies.

9 (2) The state auditor shall, when appropriate, offset
10 any amount due ~~a state~~ an agency from a person or entity
11 against any amount, including refunds or of taxes, owing the
12 person or entity by ~~any state~~ an agency; provided. However,
13 except for delinquent taxes owed the internal revenue
14 service, the state auditor may not exercise this right of
15 offset until the debtor has first been notified by the state
16 auditor and been given an opportunity for a hearing. An
17 offset may not be made against any amount paid out as child
18 support collected by the department of social and
19 rehabilitation services. The state auditor shall deduct from
20 the claim and draw warrants for the amounts offset in favor
21 of the respective state agencies to which the debt is due
22 and for any balance in favor of the claimant. Whenever
23 insufficient to offset all amounts due state the agencies,
24 the amount available must be applied first to debts owed by
25 reason of the nonpayment of child support and then in the

1 manner as determined appropriate by the state auditor; ~~in~~
2 ~~the state auditor's discretion~~; determines.

3 (3) (a) The department retains the power to offset tax
4 refunds due individuals against taxes owed ~~the state~~;
5 provided agencies. However, except for delinquent taxes owed
6 the internal revenue service, the department may not
7 exercise this right of offset until the taxpayer has been
8 notified by the department and been given the opportunity to
9 request a review.

10 (b) Within 30 days following mailing of notification,
11 the taxpayer may request a review of the asserted liability.
12 If a review is requested, the department shall conduct an
13 informal review conference, which is not subject to the
14 contested case procedures of the Montana Administrative
15 Procedure Act.

16 (c) Appeal from the decision of the department after
17 the review conference may be taken to the state tax appeal
18 board.

19 (d) A taxpayer is not entitled to a review conference
20 for a tax offset if the tax liability has been the subject
21 matter of any proceeding conducted for the purpose of
22 determining its validity and any a decision made as a result
23 of that proceeding has become final.

24 (4) (a) A debt owed to the department of social and
25 rehabilitation services or being collected by the department

1 of social and rehabilitation services on behalf of any
2 person or agency may be offset by the state auditor if the
3 debt is being enforced or collected by the department of
4 social and rehabilitation services under Title IV-D of the
5 Social Security Act.

6 (b) The debt need not be determined to be uncollectible
7 as provided for in 17-4-104 before being transferred to the
8 state auditor for offset. The debt must have accrued through
9 written contract, court judgment, or administrative order.

10 (c) Within 30 days following the notification provided
11 in subsection (2), the person owing a debt described in
12 subsection (4)(a) may request a hearing. The person owing a
13 debt is not entitled to a hearing if the amount of the debt
14 has been the subject matter of any proceeding conducted for
15 the purpose of determining the validity of the debt and any
16 a decision made as a result of that proceeding has become
17 final. The hearing must be conducted by teleconferencing
18 methods and is subject to the provisions of the Montana
19 Administrative Procedure Act. The department of social and
20 rehabilitation services shall adopt rules ~~necessary~~--to
21 determine governing the hearing procedures.

22 (5) ~~If, in the discretion of~~ the state auditor, ~~the~~
23 determines that a person or entity refuses or neglects has
24 refused or neglected to file a claim within a reasonable
25 time, the head of the a state agency owing the amount shall

1 file the claim on behalf of the person or entity; if
2 approved by the department of administration, it shall have
3 the same force and effect as though filed by the person or
4 entity. The amount due any person or entity from the state
5 or any agency of the state is the net amount otherwise owing
6 the person or entity after any offset as provided in this
7 section."

8 **Section 5.** Section 17-4-106, MCA, is amended to read:

9 "17-4-106. Agency owed debt to receive all money
10 collected -- exception. (1) All money collected by the state
11 auditor on debts transferred to him the state auditor by the
12 various state agencies, except funds collected under
13 17-4-103(3), must be deposited to the account or fund of the
14 agency to which the debt was originally owing. A county
15 shall apply a delinquent tax collection by the state auditor
16 to the payment of the taxpayer's most delinquent taxes.

17 (2) Funds collected under 17-4-103(3) must be deposited
18 in an account in the internal service fund for the cost of
19 assistance of debt collection by the state auditor. Funds
20 deposited in excess of the amount appropriated for operation
21 of the debt collection program must be carried forward into
22 the next fiscal year for operation of the debt collection
23 program. Any excess carried forward into the next fiscal
24 year ~~will~~ must be used to reduce the designated percentage
25 of the collected proceeds charged to the various state

1 agencies. At the end of each biennium, any fund balance in
2 excess of \$10,000 must be transferred back to the general
3 fund."

4 **Section 6.** Section 15-16-113, MCA, is amended to read:

5 "15-16-113. Personal property -- duty of treasurer --
6 penalty. (1) The county treasurer shall collect taxes on all
7 personal property and, in the case provided in 15-16-111,
8 shall immediately upon receipt of the report prescribed by
9 15-16-111 notify the person or persons against whom the tax
10 is assessed and any person who has a properly perfected
11 security interest of record with the department of justice
12 that the amount of the tax is due and payable at the county
13 treasurer's office.

14 (2) The county treasurer shall, at the time of
15 receiving the report and in any event within 30 days from
16 the receipt of such the report, levy upon and take into his
17 possession the personal property against which a tax is
18 assessed or any other personal property in the hands of the
19 delinquent taxpayer and proceed to sell the same property in
20 the same manner as property is sold on execution by the
21 sheriff.

22 (3) The county treasurer shall, for the purpose of
23 making the levy and sale, direct the sheriff to make the
24 levy and sale. The sheriff, undersheriff, or any deputy
25 sheriff of the county is ex officio a deputy county

1 treasurer for such purposes, of the levy and sale and either
2 may act and receive payment of such the taxes. The sheriff
3 may receive the same-fees-as-he fees to which the sheriff is
4 entitled to in making a seizure and sale as provided in
5 15-17-911.

6 (4) The county treasurer and his the county treasurer's
7 sureties are liable on his the county treasurer's official
8 bond for all taxes on personal property remaining
9 uncollected by reason of the willful failure and neglect of
10 the county treasurer to levy upon and sell such personal
11 property for the taxes levied thereon on the personal
12 property.

13 (5) Failure by the sheriff, undersheriff, or deputy
14 sheriff acting as a deputy county treasurer to make the levy
15 and sale results in a levy against the official bond of the
16 sheriff, undersheriff, or deputy sheriff for payment of the
17 delinquent tax.

18 (6) The county treasurer shall give the board of county
19 commissioners a copy of the report and a list of delinquent
20 taxpayers and the taxes due. The board may order the county
21 treasurer to verify the list under oath and to send a copy
22 of the report and a copy of the list to the state auditor
23 for collection under Title 17, chapter 4, part 1.

24 ~~†6†~~(7) The provisions of this section do not apply to
25 property for which delinquent property taxes have been

1 suspended or canceled under the provisions of Title 15,
2 chapter 24, part 17."

3 **Section 7.** Section 15-16-301, MCA, is amended to read:

4 "15-16-301. Delinquent list -- list of taxes suspended
5 or canceled -- real property. (1) On the third Monday of
6 December and on the third Monday of June of each year, the
7 county treasurer ~~must~~ shall make a detailed report to the
8 county clerk and recorder ~~in-detail~~, showing the amount of
9 taxes collected and a complete list of all persons and
10 property then owing taxes.

11 (2) The county treasurer ~~must~~ shall make a separate
12 report to the county clerk and recorder showing the amount
13 of taxes suspended or canceled under the provisions of Title
14 15, chapter 24, part 17, during the 6-month period
15 immediately preceding the date of the report.

16 (3) The county clerk and recorder shall compare the
17 reports with the books of the county treasurer and shall
18 keep a record of the reports in ~~his~~ the county clerk and
19 recorder's office.

20 (4) The county treasurer shall give the board of county
21 commissioners a copy of the report and a list of delinquent
22 taxpayers and the taxes due. The board may order the county
23 treasurer to verify the list under oath and to send a copy
24 of the report and a copy of the list to the state auditor
25 for collection under Title 17, chapter 4, part 1."

1 NEW SECTION. **Section 8.** Effective date. [This act] is
2 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0008, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: An act providing for the State of Montana, through the state auditor, to collect back taxes owed to the counties, upon request by the governing body of the requesting county, and owed to the Department of Treasury-Internal Revenue Service, authorizing the county treasurer to transmit the necessary information to the state auditor.

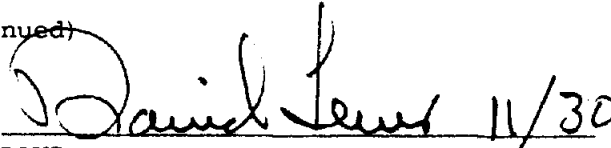
ASSUMPTIONS:


1. Currently, 50% of the warrants issued through the state auditor's warrant writer program have identification numbers that can be used to offset the warrant for valid tax debts.
2. About 40% of revenue generated by local property taxes goes to offset general fund requirements of funding the school equalization account and the university six-mill levy account.
3. Counties or the state auditor's office will be able to cross-match identification numbers between those owing county government and those receiving state warrants.
4. Recovery of debts to counties will be comparable to those estimated in Lewis and Clark County.
5. Counties, in general, will request that debts be collected as allowed under this legislation.
6. Approximately 50% of county tax debts will be referred to the bad debt collection program.
7. The bad debt offset process is already in place in the state auditor's office. This addition will create some additional indeterminable expense in the state auditor's office. The additional operating expenses will depend on how many counties participate and what level of information is available at the county level. Language added to HB2 authorizes the agency, contingent upon the passage and approval of this bill, to submit a budget amendment during the 1995 regular session in an amount equal to the total administrative fee revenue received by the agency attributable to this bill (estimated to be \$54,000 in FY95).

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenue:</u>						
General Fund (SEA & 6 Mill Levy) (01)	0	0	0	176,000,000	176,100,000	100,000
12% bad debt collection fees (06)	0	0	0	200,000	254,000	54,000
Total state revenue	0	0	0	176,200,000	176,354,000	154,000
County property tax-bad debts collection	0	0	0	0	150,000	150,000
Revenue collected for the IRS	0	0	0	0	200,000	200,000
Total revenue-all sources	0	0	0	176,200,000	176,704,000	504,000

(continued)


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


 SUE BARTLETT, PRIMARY SPONSOR DATE
 Fiscal Note for SB0008, as introduced

SB 8

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County property tax revenue should increase by about \$150,000 per year, depending on the number of counties participating. Increased expenses at the county level will be incurred for the costs of providing the data on delinquent taxpayers.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The long-term impacts may include a reduction in the number of delinquent county taxpayers. This would help local government maintain existing programs with revenue currently assessed but not collected. The state would benefit because 40% of local property taxes offset general fund for schools and universities.

To the extent that these new revenues reduce the bad debt collection administrative fee, additional revenue collected will go to participating agencies. For each percentage point reduction in the fee (currently 12%), approximately \$15,000 in additional revenue will be returned to the agencies using the bad debt system. Half of this amount is from general fund sources. This increased revenue should allow the 12% administrative fee to be reduced to about 9% in future years if revenue remains steady for other areas of the program.

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 8

INTRODUCED BY BARTLETT

BY REQUEST OF THE STATE AUDITOR AND THE
OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE STATE
AUDITOR TO COLLECT DELINQUENT TAXES ~~BUE-A-COUNTY~~ USUALLY
COLLECTED BY THE COUNTY TREASURER OR THE INTERNAL REVENUE
SERVICE WHEN REQUESTED TO DO SO; REQUIRING THE BOARD OF
COUNTY COMMISSIONERS TO NOTIFY A DELINQUENT TAXPAYER OF ITS
INTENTION TO REQUEST THE STATE AUDITOR TO COLLECT DELINQUENT
TAXES; AMENDING SECTIONS 17-4-101, 17-4-102, 17-4-103,
17-4-105, 17-4-106, 15-16-113, AND 15-16-301, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 17-4-101, MCA, is amended to read:

"17-4-101. Definitions. In this part, the following
definitions apply:

(1) ~~The--word--"department"--means--the--department--of
revenue--~~

~~{2}--The-term--"state-agency"~~ "Agency" includes:

(a) all state offices, departments, divisions, boards,
commissions, councils, committees, institutions, university
units, and other entities or instrumentalities of state

government; and

(b) with respect to delinquent taxes that they--request
the state auditor IS REQUESTED to collect for--them,
counties, STATE AND LOCAL ENTITIES WHOSE TAXES ARE COLLECTED
BY THE COUNTY TREASURER and the internal revenue service of
the U.S. department of the treasury.

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

Section 2. Section 17-4-102, MCA, is amended to read:

"17-4-102. Accounts of persons indebted to state
agencies. (1) ~~in--his-discretion-it-is-the-duty-of-the~~ The
state auditor to may:

(a) examine and settle the accounts of persons indebted
to ~~the--state~~ agencies and certify the amount to the
treasurer and, upon presentation and filing of the
treasurer's receipt therefor for that amount, to give such
the person a discharge and charge the treasurer therewith
with that amount;

(b) require any a person presenting an account for
settlement to be sworn before him the state auditor and to
answer, orally or in writing, as to any facts relating to ~~it~~
the account.

(2) The certificate mentioned referred to in subsection
(1)(a) must show by whom the payment is to be made, the
amount thereof of payment, and the fund into which it is to

1 be paid ~~and~~. Certificates must be numbered in order,
2 beginning with number 1 at the commencement of each fiscal
3 year."

4 **Section 3.** Section 17-4-103, MCA, is amended to read:

5 "17-4-103. Collection of claims by state auditor. (1)

6 ~~(a) In--his--discretion, it--is--the-duty-of-the~~ The state
7 ~~auditor to may~~ examine the collection of money due ~~the-state~~
8 ~~an agency~~ and institute suits:

9 (i) in its name for official delinquencies in relation
10 to the assessment, collection, and payment of the revenue;
11 and

12 (ii) against persons who possess public money or
13 property and fail to pay over or deliver the money or
14 property; and

15 (iii) against debtors of the state agencies.

16 (b) The courts of the county where the seat of
17 government may be located have jurisdiction, without regard
18 to the residence of the defendants, over the collection
19 suits authorized by this section.

20 (2) Whenever a person has money or other personal
21 property that belongs to the state by escheat or otherwise
22 or has been entrusted with the collection, management, or
23 disbursement of money, bonds, or interest accruing from the
24 money or bonds, belonging to or held in trust by the state,
25 and fails to render an account of the money or personal

1 property to and make settlement with the state auditor
2 within the time prescribed by law or, when no particular
3 time is specified, fails to render an account and make
4 settlement or ~~who~~ fails to pay into the state treasury the
5 money belonging to the state, upon being required to do so
6 by the state auditor, within 20 days after the requisition,
7 the state auditor shall state an account with that person,
8 charging 25% damages and interest at the rate of 10% a year
9 from the time of the failure. A copy of the account in a
10 suit is prima facie evidence of the things stated in the
11 account, but when the state auditor cannot for want of
12 information state an account, ~~he~~ the state auditor may in an
13 action ~~brought-by-him~~ aver that fact and allege generally
14 the amount of money or other property due or belonging to
15 the state.

16 (3) (a) The state auditor may assist in the collection
17 of a delinquent account owing to ~~any-state~~ an agency and may
18 separately charge the ~~state~~ agency that transferred the debt
19 for the cost of assistance. The state auditor may designate
20 the percentage of collected proceeds to be retained for the
21 cost of assistance. THE COST OF ASSISTANCE FOR COLLECTING
22 TAXES THAT WOULD OTHERWISE BE COLLECTED BY THE COUNTY
23 TREASURER MUST BE ALLOCATED IN THE SAME MANNER IN WHICH THE
24 TAXES ARE DISTRIBUTED.

25 (b) A delinquent tax due-a-county USUALLY COLLECTED BY

THE COUNTY TREASURER or the internal revenue service may be collected by the state auditor only on request of the board of county commissioners or on request of the internal revenue service. The request must be accompanied by proof of the amount of tax due and proof of the delinquency. THE BOARD OF COUNTY COMMISSIONERS SHALL ALSO PROVIDE PROOF THAT, AT LEAST 30 DAYS BEFORE MAKING THE REQUEST, THE COUNTY HAS NOTIFIED THE DELINQUENT TAXPAYER BY MAIL OF THE BOARD'S INTENTION TO REQUEST ASSISTANCE FROM THE STATE AUDITOR.

(4) The state auditor may provide a collection service for the general purpose of centralizing the collection of all debts owing owed to the state agencies."

Section 4. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt -- offsets. (1) Once a debt of ~~a-state~~ an agency has been transferred to the state auditor, the state auditor has the authority to collect it. The state auditor may contract with commercial collection ~~agencies~~ agents for recovery of debts owed the ~~state~~ to agencies.

(2) The state auditor shall, when appropriate, offset any amount due ~~a-state~~ an agency from a person or entity against any amount, including refunds ~~or of~~ taxes, owing the person or entity by ~~any-state~~ an agency, ~~provided.~~ However, except for delinquent taxes owed the internal revenue service, the state auditor may not exercise this right of

offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. An offset may not be made against any amount paid out as child support collected by the department of social and rehabilitation services. The state auditor shall deduct from the claim and draw warrants for the amounts offset in favor of the respective ~~state~~ agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due ~~state~~ the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner as determined appropriate by the state auditor, ~~in the state auditor's discretion, determines.~~

(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed ~~the--state,~~ provided agencies. However, except for delinquent taxes owed the internal revenue service, the department may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative

1 Procedure Act.

2 (c) Appeal from the decision of the department after
3 the review conference may be taken to the state tax appeal
4 board.

5 (d) A taxpayer is not entitled to a review conference
6 for a tax offset if the tax liability has been the subject
7 matter of any proceeding conducted for the purpose of
8 determining its validity and any a decision made as a result
9 of that proceeding has become final.

10 (4) (a) A debt owed to the department of social and
11 rehabilitation services or being collected by the department
12 of social and rehabilitation services on behalf of any
13 person or agency may be offset by the state auditor if the
14 debt is being enforced or collected by the department of
15 social and rehabilitation services under Title IV-D of the
16 Social Security Act.

17 (b) The debt need not be determined to be uncollectible
18 as provided for in 17-4-104 before being transferred to the
19 state auditor for offset. The debt must have accrued through
20 written contract, court judgment, or administrative order.

21 (c) Within 30 days following the notification provided
22 in subsection (2), the person owing a debt described in
23 subsection (4)(a) may request a hearing. The person owing a
24 debt is not entitled to a hearing if the amount of the debt
25 has been the subject matter of any proceeding conducted for

1 the purpose of determining the validity of the debt and any
2 a decision made as a result of that proceeding has become
3 final. The hearing must be conducted by teleconferencing
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6 rehabilitation services shall adopt rules ~~necessary--to~~
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9 determines that a person or entity refuses--or--neglects has
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14 the same force and effect as though filed by the person or
15 entity. The amount due any person or entity from the state
16 or any agency of the state is the net amount otherwise owing
17 the person or entity after any offset as provided in this
18 section."

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20 "17-4-106. **Agency owed debt to receive all money**
21 **collected -- exception.** (1) All money collected by the state
22 auditor on debts transferred to him the state auditor by the
23 various **state** agencies, except funds collected under
24 17-4-103(3), must be deposited to the account or fund of the
25 agency to which the debt was originally owing. A county

1 shall apply a delinquent tax collection by the state auditor
 2 to the payment of the taxpayer's most delinquent taxes.

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 4 in an account in the internal service fund for the cost of
 5 assistance of debt collection by the state auditor. Funds
 6 deposited in excess of the amount appropriated for operation
 7 of the debt collection program must be carried forward into
 8 the next fiscal year for operation of the debt collection
 9 program. Any excess carried forward into the next fiscal
 10 year ~~will~~ must be used to reduce the designated percentage
 11 of the collected proceeds charged to the various state
 12 agencies. At the end of each biennium, any fund balance in
 13 excess of \$10,000 must be transferred ~~back~~ to the general
 14 fund."

15 **Section 6.** Section 15-16-113, MCA, is amended to read:

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 17 penalty. (1) The county treasurer shall collect taxes on all
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 21 is assessed and any person who has a properly perfected
 22 security interest of record with the department of justice
 23 that the amount of the tax is due and payable at the county
 24 treasurer's office.

25 (2) The county treasurer shall, at the time of

1 receiving the report and in any event within 30 days from
 2 the receipt of ~~such~~ the report, levy upon and take into ~~his~~
 3 possession the personal property against which a tax is
 4 assessed or any other personal property in the hands of the
 5 delinquent taxpayer and proceed to sell the ~~same property~~ in
 6 the same manner as property is sold on execution by the
 7 sheriff.

8 (3) The county treasurer shall, for the purpose of
 9 making the levy and sale, direct the sheriff to make the
 10 levy and sale. The sheriff, undersheriff, or any deputy
 11 sheriff of the county is ex officio a deputy county
 12 treasurer for ~~such~~ purposes, of the levy and sale and either
 13 may act and receive payment of ~~such~~ the taxes. The sheriff
 14 may receive the ~~same-fees-as-he~~ fees to which the sheriff is
 15 entitled to in making a seizure and sale as provided in
 16 15-17-911.

17 (4) The county treasurer and ~~his~~ the county treasurer's
 18 sureties are liable on ~~his~~ the county treasurer's official
 19 bond for all taxes on personal property remaining
 20 uncollected by reason of the willful failure and neglect of
 21 the county treasurer to levy upon and sell ~~such~~ personal
 22 property for the taxes levied ~~thereon~~ on the personal
 23 property.

24 (5) Failure by the sheriff, undersheriff, or deputy
 25 sheriff acting as a deputy county treasurer to make the levy

1 and sale results in a levy against the official bond of the
2 sheriff, undersheriff, or deputy sheriff for payment of the
3 delinquent tax.

4 (6) The county treasurer shall give the board of county
5 commissioners a copy of the report and a list of delinquent
6 taxpayers and the taxes due. The board may order the county
7 treasurer to verify the list under oath and to send a copy
8 of the report and a copy of the list to the state auditor
9 for collection under Title 17, chapter 4, part 1.

10 ~~(6)~~(7) The provisions of this section do not apply to
11 property for which delinquent property taxes have been
12 suspended or canceled under the provisions of Title 15,
13 chapter 24, part 17."

14 **Section 7.** Section 15-16-301, MCA, is amended to read:

15 "15-16-301. Delinquent list -- list of taxes suspended
16 or canceled -- real property. (1) On the third Monday of
17 December and on the third Monday of June of each year, the
18 county treasurer ~~must~~ shall make a detailed report to the
19 county clerk and recorder ~~in-detail~~, showing the amount of
20 taxes collected and a complete list of all persons and
21 property then owing taxes.

22 (2) The county treasurer ~~must~~ shall make a separate
23 report to the county clerk and recorder showing the amount
24 of taxes suspended or canceled under the provisions of Title
25 15, chapter 24, part 17, during the 6-month period

1 immediately preceding the date of the report.

2 (3) The county clerk and recorder shall compare the
3 reports with the books of the county treasurer and shall
4 keep a record of the reports in ~~his~~ the county clerk and
5 recorder's office.

6 (4) The county treasurer shall give the board of county
7 commissioners a copy of the report and a list of delinquent
8 taxpayers and the taxes due. The board may order the county
9 treasurer to verify the list under oath and to send a copy
10 of the report and a copy of the list to the state auditor
11 for collection under Title 17, chapter 4, part 1."

12 **NEW SECTION. Section 8.** Effective date. [This act] is
13 effective on passage and approval.

-End-

SENATE BILL NO. 8

INTRODUCED BY BARTLETT

BY REQUEST OF THE STATE AUDITOR AND THE
OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE STATE
AUDITOR TO COLLECT DELINQUENT TAXES ~~ONE-A-COUNTY~~ USUALLY
COLLECTED BY THE COUNTY TREASURER OR THE INTERNAL REVENUE
SERVICE WHEN REQUESTED TO DO SO; REQUIRING THE BOARD OF
COUNTY COMMISSIONERS TO NOTIFY A DELINQUENT TAXPAYER OF ITS
INTENTION TO REQUEST THE STATE AUDITOR TO COLLECT DELINQUENT
TAXES; AMENDING SECTIONS 17-4-101, 17-4-102, 17-4-103,
17-4-105, 17-4-106, 15-16-113, AND 15-16-301, MCA; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 17-4-101, MCA, is amended to read:

"17-4-101. Definitions. In this part, the following
definitions apply:

(1) ~~The word "department" means the department of~~
~~revenue:~~

~~(2) The term "state agency"~~ "Agency" includes:

(a) all state offices, departments, divisions, boards,
commissions, councils, committees, institutions, university
units, and other entities or instrumentalities of state

government; and

(b) ~~with respect to delinquent taxes that they request~~
~~the state auditor IS REQUESTED to collect for them,~~
~~counties, STATE AND LOCAL ENTITIES WHOSE TAXES ARE COLLECTED~~
~~BY THE COUNTY TREASURER and the internal revenue service of~~
~~the U.S. department of the treasury.~~

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

Section 2. Section 17-4-102, MCA, is amended to read:

"17-4-102. Accounts of persons indebted to state
agencies. (1) ~~In his discretion it is the duty of the~~ The
state auditor to may:

(a) examine and settle the accounts of persons indebted
to ~~the state~~ agencies and certify the amount to the
treasurer and, upon presentation and filing of the
treasurer's receipt therefor for that amount, to give such
the person a discharge and charge the treasurer therewith
with that amount;

(b) require any a person presenting an account for
settlement to be sworn before him the state auditor and to
answer, orally or in writing, as to any facts relating to ~~it~~
the account.

(2) The certificate mentioned referred to in subsection
(1)(a) must show by whom the payment is to be made, the
amount thereof of payment, and the fund into which it is to

1 be paid ~~and~~. Certificates must be numbered in order,
2 beginning with number 1 at the commencement of each fiscal
3 year."

4 **Section 3.** Section 17-4-103, MCA, is amended to read:

5 "17-4-103. Collection of claims by state auditor. (1)

6 (a) In--his--discretion,--it--is--the-duty-of-the The state
7 auditor to may examine the collection of money due ~~the-state~~
8 an agency and institute suits:

9 (i) in its name for official delinquencies in relation
10 to the assessment, collection, and payment of the revenue;
11 and

12 (ii) against persons who possess public money or
13 property and fail to pay over or deliver the money or
14 property; and

15 (iii) against debtors of the state agencies.

16 (b) The courts of the county where the seat of
17 government may be located have jurisdiction, without regard
18 to the residence of the defendants, over the collection
19 suits authorized by this section.

20 (2) Whenever a person has money or other personal
21 property that belongs to the state by escheat or otherwise
22 or has been entrusted with the collection, management, or
23 disbursement of money, bonds, or interest accruing from the
24 money or bonds, belonging to or held in trust by the state,
25 and fails to render an account of the money or personal

1 property to and make settlement with the state auditor
2 within the time prescribed by law or, when no particular
3 time is specified, fails to render an account and make
4 settlement or ~~who~~ fails to pay into the state treasury the
5 money belonging to the state, upon being required to do so
6 by the state auditor, within 20 days after the requisition,
7 the state auditor shall state an account with that person,
8 charging 25% damages and interest at the rate of 10% a year
9 from the time of the failure. A copy of the account in a
10 suit is prima facie evidence of the things stated in the
11 account, but when the state auditor cannot for want of
12 information state an account, he the state auditor may in an
13 action ~~brought-by-him~~ aver that fact and allege generally
14 the amount of money or other property due or belonging to
15 the state.

16 (3) (a) The state auditor may assist in the collection
17 of a delinquent account owing to ~~any-state~~ an agency and may
18 separately charge the state agency that transferred the debt
19 for the cost of assistance. The state auditor may designate
20 the percentage of collected proceeds to be retained for the
21 cost of assistance. THE COST OF ASSISTANCE FOR COLLECTING
22 TAXES THAT WOULD OTHERWISE BE COLLECTED BY THE COUNTY
23 TREASURER MUST BE ALLOCATED IN THE SAME MANNER IN WHICH THE
24 TAXES ARE DISTRIBUTED.

25 (b) A delinquent tax ~~due-a-county~~ USUALLY COLLECTED BY

THE COUNTY TREASURER or the internal revenue service may be collected by the state auditor only on request of the board of county commissioners or on request of the internal revenue service. The request must be accompanied by proof of the amount of tax due and proof of the delinquency. THE BOARD OF COUNTY COMMISSIONERS SHALL ALSO PROVIDE PROOF THAT, AT LEAST 30 DAYS BEFORE MAKING THE REQUEST, THE COUNTY HAS NOTIFIED THE DELINQUENT TAXPAYER BY MAIL OF THE BOARD'S INTENTION TO REQUEST ASSISTANCE FROM THE STATE AUDITOR.

(4) The state auditor may provide a collection service for the general purpose of centralizing the collection of all debts owing owed to the state agencies."

Section 4. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt -- offsets. (1)

Once a debt of ~~a state~~ an agency has been transferred to the state auditor, the state auditor has the authority to collect it. The state auditor may contract with commercial collection ~~agencies~~ agents for recovery of debts owed ~~the state~~ to agencies.

(2) The state auditor shall, when appropriate, offset any amount due ~~a state~~ an agency from a person or entity against any amount, including refunds ~~or of~~ taxes, owing the person or entity by ~~any state~~ an agency, ~~provided.~~ However, ~~except for delinquent taxes owed the internal revenue service,~~ the state auditor may not exercise this right of

offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. An offset may not be made against any amount paid out as child support collected by the department of social and rehabilitation services. The state auditor shall deduct from the claim and draw warrants for the amounts offset in favor of the respective ~~state~~ agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due ~~state~~ the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner ~~as determined appropriate by the state auditor,~~ in the state auditor's discretion, determines.

(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed ~~the state~~ provided agencies. However, except for delinquent taxes owed the internal revenue service, the department may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative

1 Procedure Act.

2 (c) Appeal from the decision of the department after
3 the review conference may be taken to the state tax appeal
4 board.

5 (d) A taxpayer is not entitled to a review conference
6 for a tax offset if the tax liability has been the subject
7 matter of any proceeding conducted for the purpose of
8 determining its validity and any a decision made as a result
9 of that proceeding has become final.

10 (4) (a) A debt owed to the department of social and
11 rehabilitation services or being collected by the department
12 of social and rehabilitation services on behalf of any
13 person or agency may be offset by the state auditor if the
14 debt is being enforced or collected by the department of
15 social and rehabilitation services under Title IV-D of the
16 Social Security Act.

17 (b) The debt need not be determined to be uncollectible
18 as provided for in 17-4-104 before being transferred to the
19 state auditor for offset. The debt must have accrued through
20 written contract, court judgment, or administrative order.

21 (c) Within 30 days following the notification provided
22 in subsection (2), the person owing a debt described in
23 subsection (4)(a) may request a hearing. The person owing a
24 debt is not entitled to a hearing if the amount of the debt
25 has been the subject matter of any proceeding conducted for

1 the purpose of determining the validity of the debt and any
2 a decision made as a result of that proceeding has become
3 final. The hearing must be conducted by teleconferencing
4 methods and is subject to the provisions of the Montana
5 Administrative Procedure Act. The department of social and
6 rehabilitation services shall adopt rules necessary--to
7 determine governing the hearing procedures.

8 (5) ~~If,--in--the--discretion--of~~ the state auditor, ~~the~~
9 determines that a person or entity refuses--or--neglects has
10 refused or neglected to file a claim within a reasonable
11 time, the head of the a state agency owing the amount shall
12 file the claim on behalf of the person or entity; if
13 approved by the department of administration, it shall have
14 the same force and effect as though filed by the person or
15 entity. The amount due any person or entity from the state
16 or any agency of the state is the net amount otherwise owing
17 the person or entity after any offset as provided in this
18 section."

19 **Section 5.** Section 17-4-106, MCA, is amended to read:

20 "17-4-106. Agency owed debt to receive all money
21 collected -- exception. (1) All money collected by the state
22 auditor on debts transferred to him the state auditor by the
23 various state agencies, except funds collected under
24 17-4-103(3), must be deposited to the account or fund of the
25 agency to which the debt was originally owing. A county

1 shall apply a delinquent tax collection by the state auditor
2 to the payment of the taxpayer's most delinquent taxes.

3 (2) Funds collected under 17-4-103(3) must be deposited
4 in an account in the internal service fund for the cost of
5 assistance of debt collection by the state auditor. Funds
6 deposited in excess of the amount appropriated for operation
7 of the debt collection program must be carried forward into
8 the next fiscal year for operation of the debt collection
9 program. Any excess carried forward into the next fiscal
10 year ~~will~~ must be used to reduce the designated percentage
11 of the collected proceeds charged to the various state
12 agencies. At the end of each biennium, any fund balance in
13 excess of \$10,000 must be transferred back to the general
14 fund."

15 **Section 6.** Section 15-16-113, MCA, is amended to read:

16 "15-16-113. Personal property -- duty of treasurer --
17 penalty. (1) The county treasurer shall collect taxes on all
18 personal property and, in the case provided in 15-16-111,
19 shall immediately upon receipt of the report prescribed by
20 15-16-111 notify the person or persons against whom the tax
21 is assessed and any person who has a properly perfected
22 security interest of record with the department of justice
23 that the amount of the tax is due and payable at the county
24 treasurer's office.

25 (2) The county treasurer shall, at the time of

1 receiving the report and in any event within 30 days from
2 the receipt of ~~such~~ the report, levy upon and take into ~~his~~
3 possession the personal property against which a tax is
4 assessed or any other personal property in the hands of the
5 delinquent taxpayer and proceed to sell the ~~same~~ property in
6 the same manner as property is sold on execution by the
7 sheriff.

8 (3) The county treasurer shall, for the purpose of
9 making the levy and sale, direct the sheriff to make the
10 levy and sale. The sheriff, undersheriff, or any deputy
11 sheriff of the county is ex officio a deputy county
12 treasurer for ~~such~~ purposes, of the levy and sale and ~~either~~
13 may act and receive payment of ~~such~~ the taxes. The sheriff
14 may receive the ~~same fees as he~~ fees to which the sheriff is
15 entitled to in making a seizure and sale as provided in
16 15-17-911.

17 (4) The county treasurer and ~~his~~ the county treasurer's
18 sureties are liable on ~~his~~ the county treasurer's official
19 bond for all taxes on personal property remaining
20 uncollected by reason of the willful failure and neglect of
21 the county treasurer to levy upon and sell ~~such~~ personal
22 property for the taxes levied ~~thereon~~ on the personal
23 property.

24 (5) Failure by the sheriff, undersheriff, or deputy
25 sheriff acting as a deputy county treasurer to make the levy

1 and sale results in a levy against the official bond of the
2 sheriff, undersheriff, or deputy sheriff for payment of the
3 delinquent tax.

4 (6) The county treasurer shall give the board of county
5 commissioners a copy of the report and a list of delinquent
6 taxpayers and the taxes due. The board may order the county
7 treasurer to verify the list under oath and to send a copy
8 of the report and a copy of the list to the state auditor
9 for collection under Title 17, chapter 4, part 1.

10 ~~†6†~~(7) The provisions of this section do not apply to
11 property for which delinquent property taxes have been
12 suspended or canceled under the provisions of Title 15,
13 chapter 24, part 17."

14 **Section 7.** Section 15-16-301, MCA, is amended to read:

15 "15-16-301. Delinquent list -- list of taxes suspended
16 or canceled -- real property. (1) On the third Monday of
17 December and on the third Monday of June of each year, the
18 county treasurer ~~must~~ shall make a detailed report to the
19 county clerk and recorder ~~in-detail~~, showing the amount of
20 taxes collected and a complete list of all persons and
21 property then owing taxes.

22 (2) The county treasurer ~~must~~ shall make a separate
23 report to the county clerk and recorder showing the amount
24 of taxes suspended or canceled under the provisions of Title
25 15, chapter 24, part 17, during the 6-month period

1 immediately preceding the date of the report.

2 (3) The county clerk and recorder shall compare the
3 reports with the books of the county treasurer and shall
4 keep a record of the reports in ~~his~~ the county clerk and
5 recorder's office.

6 (4) The county treasurer shall give the board of county
7 commissioners a copy of the report and a list of delinquent
8 taxpayers and the taxes due. The board may order the county
9 treasurer to verify the list under oath and to send a copy
10 of the report and a copy of the list to the state auditor
11 for collection under Title 17, chapter 4, part 1."

12 **NEW SECTION. Section 8.** Effective date. [This act] is
13 effective on passage and approval.

-End-



December 9, 1993
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HOUSE STANDING COMMITTEE REPORT

December 9, 1993

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chapter 4, may be used even if the delinquent taxes have been suspended, declared to be uncollectible, or stricken from the tax records.

NEW SECTION. Section 7. Codification instruction.
[Section 6] is intended to be codified as an integral part of Title 7, chapter 6, part 21, and the provisions of Title 7, chapter 6, part 21, apply to [section 6]."

-END-

Mr. Speaker: We, the committee on Taxation report that Senate Bill 8 (third reading copy - blue) be concurred in, as amended.

Signed:

Bob Gilbert
Bob Gilbert, Chair

And, that such amendments read:

Carried by: Rep. Ewer

1. Title, line 13.

Following: "17-4-105,"

Insert: "AND"

Strike: ", 15-16-113, AND 15-16-301,"

2. Page 9, line 15 through page 12, line 11.

Strike: sections 6 and 7 in their entirety

Insert: "NEW SECTION. Section 6. Collection of delinquent taxes by state auditor. (1) The board of county commissioners

may use the debt collection services of the state auditor under Title 17, chapter 4, to collect delinquent taxes, other than taxes on real property and improvements, that would otherwise be collected by the county treasurer.

(2) Before using the debt collection services, the board of county commissioners shall:

(a) ensure that the county treasurer has made a reasonable effort to collect the delinquent taxes; and

(b) attempt to notify the delinquent taxpayer of the intent to use the state auditor's debt collection services. The notification must be by first-class mail addressed to the taxpayer's last-known address.

(3) If the taxes remain delinquent 30 days after the notification, the board of county commissioners shall certify to the state auditor the amount of the delinquent tax, including penalty, interest, and costs, as accurately as can be determined.

(4) The debt collection services under Title 17,

Committee Vote:

Yes 16, No 4.

101305SC.Hcr

SB 8
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HOUSE
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