

*Bohler
Dick
MCKEE*

*Brainard
Norman
Daniel Fuchs
Slater
Bishop
ORR*

*Wagner
Denny
Knox
Copper
HARP
Foster
Harding
Eggen
Barnett
ARLESTAD
Manna
Heldren
Tracy
Benedict
Rose
Foster
Barnett
Snow
Clark
Rehbein
Limpkins
Greenberg
Egan
Egan
Egan*

INTRODUCED BY MERCER Copper Reis Barnett HARP Foster Harding Eggen
BY REQUEST OF THE GOVERNOR Tracy ARLESTAD Manna
A BILL FOR AN ACT ENTITLED "AN ACT CREATING THE EXCESS TAX REFUND AGREEMENT (EXTRA);
PROVIDING FOR THE ADMINISTRATION OF THE EXCESS TAX REFUND AGREEMENT; STATUTORILY
APPROPRIATING MONEY FOR TAX REFUNDS AND THE ADMINISTRATION OF REFUNDS; AMENDING
SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Feland Amey Smith Storall Clark Rehbein

NEW SECTION. Section 1. Excess tax refund agreement (EXTRA). [Sections 1 through 3] may
be referred to as the "Excess Tax Refund Agreement" or "EXTRA".

NEW SECTION. Section 2. Refund of excess revenue in state general fund and state school
equalization aid account process -- requirements -- limitations. (1) On or before October 15, 1995, the
department of administration shall determine and certify to the governor the combined total of the
unreserved ending fund balances in the general fund, described in 17-2-102(1)(a)(i), and the school
equalization aid account, described in 20-9-343, for the fiscal year ending June 30, 1995.

(2) If the amount of the unreserved ending fund balances described in subsection (1) exceeds
\$24.4 million, the amount in excess of \$24.4 million, subject to the limitation provided in subsection (8),
is the amount available for refund under this section.

(3) The amount determined under subsection (2) to be available for refund must be refunded on
a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year
1994.

(4) For the purposes of this section:
(a) the term "taxpayer" does not include a fiduciary or a beneficiary of an estate or trust who was
required to file an income tax return pursuant to 15-30-135 unless a 1994 return was filed on behalf of a
decendent;

(b) a return filed using the filing status married filing jointly is considered to have been filed by a

1 single taxpayer; and

2 (c) the 1994 tax year is the 12-month period beginning January 1, 1994, and ending December
3 31, 1994, except that for fiscal year taxpayers, the 1994 tax year is a 12-month period ending between
4 January 1, 1994, and December 31, 1994.

5 (5)(a) The pro rata distribution of the amount available for refund must be calculated by the
6 department by dividing the amount available for refund described in subsection (2) by the total individual
7 income tax liability as determined by the department from all 1994 tax year returns that were filed by
8 October 15, 1995.

9 (b) The percentage determined in subsection (5)(a), adjusted to take into account the limitations
10 contained in subsection (7), must be used as the adjusted percentage multiplier described in subsection
11 (5)(c) to determine the amount of each taxpayer's refund. The department may not alter or change the
12 adjusted percentage multiplier.

13 (c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount
14 of tax shown on the taxpayer's return on line 40 of the 1994 Montana Individual Income Tax Return, Form
15 2, or line 26 of the 1994 Montana Individual Income Tax Return, Short Form 2S, depending on the form
16 used by the taxpayer for tax year 1994, by the adjusted percentage multiplier determined in subsection
17 (5)(b).

18 (6)(a) The department shall calculate the amount of each taxpayer's refund based on the taxpayer's
19 1994 tax year return on file with the department by October 15, 1995. A taxpayer filing a delinquent
20 return for the 1994 tax year after October 15, 1995, is not eligible for a refund under this section.

21 (b)(i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and
22 recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under
23 this section.

24 (ii) If the department's recalculation determines that the taxpayer has an increased tax liability for
25 tax year 1994 and should receive an additional refund under this section as a result of increased 1994
26 liability, the department shall credit the additional amount of refund under this section to the amount of
27 additional tax due from the taxpayer.

28 (iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional
29 tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the
30 amount of the refund exceeds \$10.

1 (iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a
2 taxpayer's original 1994 tax liability is decreased, any overpayment of the refund calculated by the
3 department based on the original tax liability must be credited against any refund due to the taxpayer.

4 (7) A refund paid to a taxpayer pursuant to this section may not exceed \$1,000. The department
5 may not issue a refund under this section if the amount of the refund is \$10 or less.

6 (8) Refunds may not be made under this section if the total amount available for refund as
7 determined in subsection (2) is less than \$10 million.

8 (9) Beginning in November 1995, the department shall calculate and issue refunds due to taxpayers
9 under this section.

10 (10) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination
11 of the amount of refund or any other issue relating to the refunds provided in this section must be raised
12 by the taxpayer with the department no later than 30 days after the refund is mailed to the taxpayer.

13 (b) A district court has no jurisdiction to entertain or consider any issue relating to the
14 determination or payment of a refund made under this section unless the issue was first presented to the
15 department and the taxpayer exhausted all administrative remedies.

16
17 **Section 3.** Section 17-7-502, MCA, is amended to read:

18 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
19 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
20 without the need for a biennial legislative appropriation or budget amendment.

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

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

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

26 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
27 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
28 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
29 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;
30 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;

1 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;
 2 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;
 3 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;
 4 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205;
 5 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;
 6 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331;
 7 90-7-220; 90-9-306; ~~and~~ 90-14-107; and [section 4].

8 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 9 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 10 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 11 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
 12 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
 13 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
 14 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
 15 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
 16 July 1, 1995.) "

17

18 **NEW SECTION. Section 4. Appropriation.** The amount determined to be available for refund as
 19 provided in [section 2(2)], limited as provided in [section 2(8)], for the Excess Tax Refund Agreement and
 20 such additional funds required to do any subsequently required acts necessary as a result of the approval
 21 of [this act], including the filing of amended returns or audit adjusted returns, is statutorily appropriated,
 22 as provided in 17-7-502, from the general fund to the department of revenue.

23

24 **NEW SECTION. Section 5. Appropriation.** (1) There is appropriated \$300,000 from the general
 25 fund to the department of revenue for fiscal year 1995 to administer the provisions of [this act].

26 (2) Notwithstanding the provisions of 17-7-302 through 17-7-304, any unexpended amount of
 27 appropriation described in subsection (1) is reappropriated to the department of revenue as a biennial
 28 appropriation for fiscal years 1996 and 1997.

29

30 **NEW SECTION. Section 6. Codification instruction.** [Sections 1 and 2] are intended to be codified

1 as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply
2 to [sections 1 and 2].

3
4 **NEW SECTION. Section 7. Effective dates -- termination.** (1) [Sections 1 through 4] are effective
5 July 1, 1995.

6 (2) [Sections 5 and 6] and this section are effective on passage and approval.

7 (3) [This act] terminates July 1, 2001.

8 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0171, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: A bill creating the excess tax refund agreement (EXTRA); providing for the administration of the excess tax refund agreement; statutorily appropriating money for the refunds and the administration of the agreement.

ASSUMPTIONS:

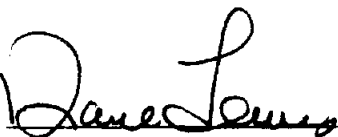
- 1) Given the Revenue Oversight Committee's FY 95 revenue estimates and the LFA's projections of FY 95 general fund and school equalization account spending (including a \$10 million general fund transfer to the capitol projects account), the fiscal year end unreserved fund balance of the general fund will be \$34.065 million.
- 2) The reference to "cash balance" in the language requiring the capitol projects account transfer makes it unlikely the transfer will occur because of insufficient general fund "cash". In addition, the language likely will be repealed this session. In either case, the fund balance increases to \$44.065 million without this transfer.
- 3) The actual amount of refunds will be determined by the excess FYE 95 balance, which the Administration believes will be at least the \$25 million anticipated in the executive budget. This amount is used for the fiscal note.
- 4) The Department of Revenue will pay all warrant writing and mail cost from the appropriations provided in the bill.
- 5) The bad debt function in the State Auditor's Office and the collections unit in the Department of Revenue will crossmatch the refund roster with their outstanding claims list and offset refunds in those cases where the taxpayer owes amounts to the state. It is assumed that approximately \$1 million in bad debts will be collected through this process; half of which will be deposited in the general fund with the majority of the remainder used to satisfy child support claims.

FISCAL IMPACT:

Given the assumptions noted above, income tax refunds of approximately \$25 million will be issued beginning in November, 1995, or approximately \$65 per taxable return. In addition, the bill appropriates \$300,000 to the Department of Revenue for the administration of the refunds. Bad debt offsets against the refunds will generate about \$500,000 in general fund revenues and \$500,000 for other claimants, mostly child support obligations.

A summary of the impact on the general fund balance for the biennium is as follows:

Income Tax Refunds	(25,000,000)
Administration Costs	(300,000)
Bad Debt Collections	<u>500,000</u>
Net Impact	(24,800,000)

 1-13-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 JOHN MERCER, PRIMARY SPONSOR DATE

Fiscal Note for HB0171, as introduced

HB171

1 HOUSE BILL NO. 171

2 INTRODUCED BY MERCER, CRIPPEN, B. BROWN, HARP, FOSTER, HARDING, ESTRADA, BOHLINGER,
3 GREEN, MCKEE, MARSHALL, WISEMAN, H. HANSON, JORE, MOLNAR, S. SMITH, SOFT, HOLLAND,
4 WAGNER, DENNY, KNOX, BRAINARD, MILLS, FUCHS, FISHER, TAYLOR, SPRAGUE, HARGROVE,
5 SLITER, EMERSON, MASOLO, BISHOP, MOHL, ORR, BECK, JABS, TVEIT, AKLESTAD, MESAROS,
6 HOLDEN, TOEWS, HIBBARD, ROSE, KASTEN, SOMERVILLE, ZOOK, REHBEIN, TREXLER, R. JOHNSON,
7 GRADY, ELLIS, MARTINEZ, SIMPKINS, MCGEE, GRIMES, ARNOTT, OHS, FORBES, GRINDE, WELLS,
8 FELAND, SIMON, L. SMITH, STOVALL, CLARK, STORY, BARNETT, T. NELSON, ANDERSON, TASH,
9 KEENAN, HERRON, CURTISS, BENEDICT, FORRESTER, DEVANEY, HAYNE, MILLS, DEVLIN,
10 GROSFIELD, MILLER, BAER, COLE, CRISMORE, JENKINS, HERTEL, BURNETT

11 BY REQUEST OF THE GOVERNOR
12

13 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE EXCESS TAX REFUND AGREEMENT (EXTRA);
14 PROVIDING FOR THE ADMINISTRATION OF THE EXCESS TAX REFUND AGREEMENT; STATUTORILY
15 APPROPRIATING MONEY FOR TAX REFUNDS AND THE ADMINISTRATION OF REFUNDS; AMENDING
16 SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."
17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 NEW SECTION. **Section 1. Excess tax refund agreement (EXTRA).** [Sections 1 through 3] may
21 be referred to as the "Excess Tax Refund Agreement" or "EXTRA".
22

23 NEW SECTION. **Section 2. Refund of excess revenue in state general fund and state school**
24 **equalization aid account -- process -- requirements -- limitations.** (1) On or before October 15, 1995, the
25 department of administration shall determine and certify to the governor the combined total of the
26 unreserved ending fund balances in the general fund, described in 17-2-102(1)(a)(i), and the school
27 equalization aid account, described in 20-9-343, for the fiscal year ending June 30, 1995.

28 (2) If the amount of the unreserved ending fund balances described in subsection (1) exceeds
29 \$24.4 million, the amount in excess of \$24.4 million, subject to the limitation provided in subsection (8),
30 is the amount available for refund under this section.

1 (3) The amount determined under subsection (2) to be available for refund must be refunded on
2 a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year
3 1994.

4 (4) For the purposes of this section:

5 (a) the term "taxpayer" does not include a fiduciary or a beneficiary of an estate or trust who was
6 required to file an income tax return pursuant to 15-30-135 unless a 1994 return was filed on behalf of a
7 decedent;

8 (b) a return filed using the filing status married filing jointly is considered to have been filed by a
9 single taxpayer; and

10 (c) the 1994 tax year is the 12-month period beginning January 1, 1994, and ending December
11 31, 1994, except that for fiscal year taxpayers, the 1994 tax year is a 12-month period ending between
12 January 1, 1994, and December 31, 1994.

13 (5) (a) The pro rata distribution of the amount available for refund must be calculated by the
14 department by dividing the amount available for refund described in subsection (2) by the total individual
15 income tax liability as determined by the department from all 1994 tax year returns that were filed by
16 October 15, 1995.

17 (b) The percentage determined in subsection (5)(a), adjusted to take into account the limitations
18 contained in subsection (7), must be used as the adjusted percentage multiplier described in subsection
19 (5)(c) to determine the amount of each taxpayer's refund. The department may not alter or change the
20 adjusted percentage multiplier.

21 (c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount
22 of tax shown on the taxpayer's return on line 40 of the 1994 Montana Individual Income Tax Return, Form
23 2, or line ~~26~~ 27 of the 1994 Montana Individual Income Tax Return, Short Form 2S, depending on the form
24 used by the taxpayer for tax year 1994, by the adjusted percentage multiplier determined in subsection
25 (5)(b).

26 (6) (a) The department shall calculate the amount of each taxpayer's refund based on the
27 taxpayer's 1994 tax year return on file with the department by October 15, 1995. A taxpayer filing a
28 delinquent return for the 1994 tax year after October 15, 1995, is not eligible for a refund under this
29 section.

30 (b) (i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and

1 recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under
2 this section.

3 (ii) If the department's recalculation determines that the taxpayer has an increased tax liability for
4 tax year 1994 and should receive an additional refund under this section as a result of increased 1994
5 liability, the department shall credit the additional amount of refund under this section to the amount of
6 additional tax due from the taxpayer.

7 (iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional
8 tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the
9 amount of the refund exceeds \$10.

10 (iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a
11 taxpayer's original 1994 tax liability is decreased, any overpayment of the refund calculated by the
12 department based on the original tax liability must be credited against any refund due to the taxpayer.

13 (7) A refund paid to a taxpayer pursuant to this section may not exceed \$1,000. The department
14 may not issue a refund under this section if the amount of the refund is \$10 or less.

15 (8) Refunds may not be made under this section if the total amount available for refund as
16 determined in subsection (2) is less than \$10 million.

17 (9) Beginning in November 1995, the department shall calculate and issue refunds due to taxpayers
18 under this section.

19 (10) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination
20 of the amount of refund or any other issue relating to the refunds provided in this section must be raised
21 by the taxpayer with the department no later than 30 days after the refund is mailed to the taxpayer.

22 (b) A district court has no jurisdiction to entertain or consider any issue relating to the
23 determination or payment of a refund made under this section unless the issue was first presented to the
24 department and the taxpayer exhausted all administrative remedies.

25

26 **Section 3.** Section 17-7-502, MCA, is amended to read:

27 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
28 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
29 without the need for a biennial legislative appropriation or budget amendment.

30 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply

1 with both of the following provisions:

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

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

5 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
6 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
7 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
8 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;
9 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;
10 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;
11 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;
12 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;
13 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205;
14 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;
15 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331;
16 90-7-220; 90-9-306; ~~and 90-14-107;~~ and [section 4].

17 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
18 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
19 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
20 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
21 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
22 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
23 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
24 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
25 July 1, 1995.) "

26

27 **NEW SECTION. Section 4. Appropriation.** The amount determined to be available for refund as
28 provided in [section 2(2)], limited as provided in [section 2(8)], for the Excess Tax Refund Agreement and
29 such additional funds required to do any subsequently required acts necessary as a result of the approval
30 of [this act], including the filing of amended returns or audit adjusted returns, is statutorily appropriated,

1 as provided in 17-7-502, from the general fund to the department of revenue.

2

3 **NEW SECTION. Section 5. Appropriation.** (1) There is appropriated \$300,000 from the general
4 fund to the department of revenue for fiscal year 1995 to administer the provisions of [this act].

5 (2) Notwithstanding the provisions of 17-7-302 through 17-7-304, any unexpended amount of
6 appropriation described in subsection (1) is reappropriated to the department of revenue as a biennial
7 appropriation for fiscal years 1996 and 1997.

8

9 **NEW SECTION. Section 6. Codification instruction.** [~~Sections 1 and~~ **SECTION 2**] are **IS** intended
10 to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30,
11 part 1, apply to [~~sections 1 and~~ **SECTION 2**].

12

13 **NEW SECTION. Section 7. Effective dates -- termination.** (1) [Sections 1 through 4] are effective
14 July 1, 1995.

15 (2) [Sections 5 and 6] and this section are effective on passage and approval.

16 (3) [This act] terminates July 1, 2001.

17

-END-

1 HOUSE BILL NO. 171

2 INTRODUCED BY MERCER, CRIPPEN, B. BROWN, HARP, FOSTER, HARDING, ESTRADA, BOHLINGER,
 3 GREEN, MCKEE, MARSHALL, WISEMAN, H. HANSON, JORE, MOLNAR, S. SMITH, SOFT, HOLLAND,
 4 WAGNER, DENNY, KNOX, BRAINARD, MILLS, FUCHS, FISHER, TAYLOR, SPRAGUE, HARGROVE,
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11 BY REQUEST OF THE GOVERNOR

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 15 APPROPRIATING MONEY FOR TAX REFUNDS AND THE ADMINISTRATION OF REFUNDS; AMENDING
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 24 **equalization aid account -- process -- requirements -- limitations.** (1) On or before October 15, 1995, the
 25 department of administration shall determine and certify to the governor the combined total of the
 26 unreserved ending fund balances in the general fund, described in 17-2-102(1)(a)(i), and the school
 27 equalization aid account, described in 20-9-343, for the fiscal year ending June 30, 1995.

28 (2) If the amount of the unreserved ending fund balances described in subsection (1) exceeds
 29 \$24.4 million, the amount in excess of \$24.4 million, subject to the limitation provided in subsection (8),
 30 is the amount available for refund under this section.

1 (3) The amount determined under subsection (2) to be available for refund must be refunded on
2 a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year
3 1994.

4 (4) For the purposes of this section:

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6 required to file an income tax return pursuant to 15-30-135 unless a 1994 return was filed on behalf of a
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10 (c) the 1994 tax year is the 12-month period beginning January 1, 1994, and ending December
11 31, 1994, except that for fiscal year taxpayers, the 1994 tax year is a 12-month period ending between
12 January 1, 1994, and December 31, 1994.

13 (5) (a) The pro rata distribution of the amount available for refund must be calculated by the
14 department by dividing the amount available for refund described in subsection (2) by the total individual
15 income tax liability as determined by the department from all 1994 tax year returns that were filed by
16 October 15, 1995.

17 (b) The percentage determined in subsection (5)(a), adjusted to take into account the limitations
18 contained in subsection (7), must be used as the adjusted percentage multiplier described in subsection
19 (5)(c) to determine the amount of each taxpayer's refund. The department may not alter or change the
20 adjusted percentage multiplier.

21 (c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount
22 of tax shown on the taxpayer's return on line 40 of the 1994 Montana Individual Income Tax Return, Form
23 2, or line ~~26~~ 27 of the 1994 Montana Individual Income Tax Return, Short Form 2S, depending on the form
24 used by the taxpayer for tax year 1994, by the adjusted percentage multiplier determined in subsection
25 (5)(b).

26 (6) (a) The department shall calculate the amount of each taxpayer's refund based on the
27 taxpayer's 1994 tax year return on file with the department by October 15, 1995. A taxpayer filing a
28 delinquent return for the 1994 tax year after October 15, 1995, is not eligible for a refund under this
29 section.

30 (b) (i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and

1 recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under
2 this section.

3 (ii) If the department's recalculation determines that the taxpayer has an increased tax liability for
4 tax year 1994 and should receive an additional refund under this section as a result of increased 1994
5 liability, the department shall credit the additional amount of refund under this section to the amount of
6 additional tax due from the taxpayer.

7 (iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional
8 tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the
9 amount of the refund exceeds \$10.

10 (iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a
11 taxpayer's original 1994 tax liability is decreased, any overpayment of the refund calculated by the
12 department based on the original tax liability must be credited against any refund due to the taxpayer.

13 (7) A refund paid to a taxpayer pursuant to this section may not exceed \$1,000. The department
14 may not issue a refund under this section if the amount of the refund is \$10 or less.

15 (8) Refunds may not be made under this section if the total amount available for refund as
16 determined in subsection (2) is less than \$10 million.

17 (9) Beginning in November 1995, the department shall calculate and issue refunds due to taxpayers
18 under this section.

19 (10) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination
20 of the amount of refund or any other issue relating to the refunds provided in this section must be raised
21 by the taxpayer with the department no later than 30 days after the refund is mailed to the taxpayer.

22 (b) A district court has no jurisdiction to entertain or consider any issue relating to the
23 determination or payment of a refund made under this section unless the issue was first presented to the
24 department and the taxpayer exhausted all administrative remedies.

25

26 **Section 3.** Section 17-7-502, MCA, is amended to read:

27 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
28 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
29 without the need for a biennial legislative appropriation or budget amendment.

30 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply

1 with both of the following provisions:

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

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

5 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
6 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
7 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
8 16-1-411; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101; 17-6-201; 17-6-409;
9 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301; 19-18-512; 19-18-513;
10 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361; 20-26-1403; 20-26-1503;
11 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402;
12 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504;
13 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205;
14 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;
15 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331;
16 90-7-220; 90-9-306; ~~and~~ 90-14-107; and [section 4].

17 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
18 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
19 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
20 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
21 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
22 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
23 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
24 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
25 July 1, 1995.) "

26

27 **NEW SECTION. Section 4. Appropriation.** The amount determined to be available for refund as
28 provided in [section 2(2)], limited as provided in [section 2(8)], for the Excess Tax Refund Agreement and
29 such additional funds required to do any subsequently required acts necessary as a result of the approval
30 of [this act], including the filing of amended returns or audit adjusted returns, is statutorily appropriated,

1 as provided in 17-7-502, from the general fund to the department of revenue.

2

3 NEW SECTION. Section 5. Appropriation. (1) There is appropriated \$300,000 from the general
4 fund to the department of revenue for fiscal year 1995 to administer the provisions of [this act].

5 (2) Notwithstanding the provisions of 17-7-302 through 17-7-304, any unexpended amount of
6 appropriation described in subsection (1) is reappropriated to the department of revenue as a biennial
7 appropriation for fiscal years 1996 and 1997.

8

9 NEW SECTION. Section 6. Codification instruction. [~~Sections 1 and~~ SECTION 2] are IS intended
10 to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30,
11 part 1, apply to [~~sections 1 and~~ SECTION 2].

12

13 NEW SECTION. Section 7. Effective dates -- termination. (1) [Sections 1 through 4] are effective
14 July 1, 1995.

15 (2) [Sections 5 and 6] and this section are effective on passage and approval.

16 (3) [This act] terminates July 1, 2001.

17

-END-

1 HOUSE BILL NO. 171

2 INTRODUCED BY MERCER, CRIPPEN, B. BROWN, HARP, FOSTER, HARDING, ESTRADA, BOHLINGER,
 3 GREEN, MCKEE, MARSHALL, WISEMAN, H. HANSON, JORE, MOLNAR, S. SMITH, SOFT, HOLLAND,
 4 WAGNER, DENNY, KNOX, BRAINARD, MILLS, FUCHS, FISHER, TAYLOR, SPRAGUE, HARGROVE,
 5 SLITER, EMERSON, MASOLO, BISHOP, MOHL, ORR, BECK, JABS, TVEIT, AKLESTAD, MESAROS,
 6 HOLDEN, TOEWS, HIBBARD, ROSE, KASTEN, SOMERVILLE, ZOOK, REHBEIN, TREXLER, R. JOHNSON,
 7 GRADY, ELLIS, MARTINEZ, SIMPKINS, MCGEE, GRIMES, ARNOTT, OHS, FORBES, GRINDE, WELLS,
 8 FELAND, SIMON, L. SMITH, STOVALL, CLARK, STORY, BARNETT, T. NELSON, ANDERSON, TASH,
 9 KEENAN, HERRON, CURTISS, BENEDICT, FORRESTER, DEVANEY, HAYNE, MILLS, DEVLIN,
 10 GROSFIELD, MILLER, BAER, COLE, CRISMORE, JENKINS, HERTEL, BURNETT

11 BY REQUEST OF THE GOVERNOR
 12

13 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE EXCESS TAX REFUND AGREEMENT (EXTRA);
 14 PROVIDING FOR THE ADMINISTRATION OF THE EXCESS TAX REFUND AGREEMENT; STATUTORILY
 15 APPROPRIATING MONEY FOR TAX REFUNDS AND THE ADMINISTRATION OF REFUNDS; AMENDING
 16 SECTION 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."
 17

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 19

20 NEW SECTION. **Section 1. Excess tax refund agreement (EXTRA).** [Sections 1 through 3] may
 21 be referred to as the "Excess Tax Refund Agreement" or "EXTRA".
 22

23 NEW SECTION. **Section 2. Refund of excess revenue in state general fund and state school**
 24 **equalization aid account -- process -- requirements -- limitations.** (1) On or before October 15, 1995, the
 25 department of administration shall determine and certify to the governor the combined total of the
 26 unreserved ending fund balances in the general fund, described in 17-2-102(1)(a)(i), and the school
 27 equalization aid account, described in 20-9-343, for the fiscal year ending June 30, 1995.

28 (2) If the amount of the unreserved ending fund balances described in subsection (1) exceeds
 29 \$24.4 million, the amount in excess of \$24.4 million, subject to the limitation provided in subsection (8),
 30 is the amount available for refund under this section.

1 (3) The amount determined under subsection (2) to be available for refund must be refunded on
2 a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year
3 1994.

4 (4) For the purposes of this section:

5 (a) the term "taxpayer" does not include a fiduciary or a beneficiary of an estate or trust who was
6 required to file an income tax return pursuant to 15-30-135 unless a 1994 return was filed on behalf of a
7 decedent;

8 (b) a return filed using the filing status married filing jointly is considered to have been filed by a
9 single taxpayer; and

10 (c) the 1994 tax year is the 12-month period beginning January 1, 1994, and ending December
11 31, 1994, except that for fiscal year taxpayers, the 1994 tax year is a 12-month period ending between
12 January 1, 1994, and December 31, 1994.

13 (5) (a) The pro rata distribution of the amount available for refund must be calculated by the
14 department by dividing the amount available for refund described in subsection (2) by the total individual
15 income tax liability as determined by the department from all 1994 tax year returns that were filed by
16 October 15, 1995.

17 (b) The percentage determined in subsection (5)(a), adjusted to take into account the limitations
18 contained in subsection (7), must be used as the adjusted percentage multiplier described in subsection
19 (5)(c) to determine the amount of each taxpayer's refund. The department may not alter or change the
20 adjusted percentage multiplier.

21 (c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount
22 of tax shown on the taxpayer's return on line 40 of the 1994 Montana Individual Income Tax Return, Form
23 2, or line ~~26~~ 27 of the 1994 Montana Individual Income Tax Return, Short Form 2S, depending on the form
24 used by the taxpayer for tax year 1994, by the adjusted percentage multiplier determined in subsection
25 (5)(b).

26 (6) (a) The department shall calculate the amount of each taxpayer's refund based on the
27 taxpayer's 1994 tax year return on file with the department by October 15, 1995. A taxpayer filing a
28 delinquent return for the 1994 tax year after October 15, 1995, is not eligible for a refund under this
29 section.

30 (b) (i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and

1 recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under
2 this section.

3 (ii) If the department's recalculation determines that the taxpayer has an increased tax liability for
4 tax year 1994 and should receive an additional refund under this section as a result of increased 1994
5 liability, the department shall credit the additional amount of refund under this section to the amount of
6 additional tax due from the taxpayer.

7 (iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional
8 tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, but only if the
9 amount of the refund exceeds \$10.

10 (iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a
11 taxpayer's original 1994 tax liability is decreased, any overpayment of the refund calculated by the
12 department based on the original tax liability must be credited against any refund due to the taxpayer.

13 (7) A refund paid to a taxpayer pursuant to this section may not exceed \$1,000. The department
14 may not issue a refund under this section if the amount of the refund is \$10 or less.

15 (8) Refunds may not be made under this section if the total amount available for refund as
16 determined in subsection (2) is less than \$10 million.

17 (9) Beginning in November 1995, the department shall calculate and issue refunds due to taxpayers
18 under this section.

19 (10) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination
20 of the amount of refund or any other issue relating to the refunds provided in this section must be raised
21 by the taxpayer with the department no later than 30 days after the refund is mailed to the taxpayer.

22 (b) A district court has no jurisdiction to entertain or consider any issue relating to the
23 determination or payment of a refund made under this section unless the issue was first presented to the
24 department and the taxpayer exhausted all administrative remedies.

25
26 **Section 3.** Section 17-7-502, MCA, is amended to read:

27 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
28 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
29 without the need for a biennial legislative appropriation or budget amendment.

30 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply

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

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13 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107; 67-3-205;
14 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222; 80-4-416;
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17 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
18 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
19 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
20 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
21 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
22 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
23 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
24 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
25 July 1, 1995.) "

26

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29 such additional funds required to do any subsequently required acts necessary as a result of the approval
30 of [this act], including the filing of amended returns or audit adjusted returns, is statutorily appropriated.

1 as provided in 17-7-502, from the general fund to the department of revenue.

2

3 NEW SECTION. Section 5. Appropriation. (1) There is appropriated \$300,000 from the general
4 fund to the department of revenue for fiscal year 1995 to administer the provisions of [this act].

5 (2) Notwithstanding the provisions of 17-7-302 through 17-7-304, any unexpended amount of
6 appropriation described in subsection (1) is reappropriated to the department of revenue as a biennial
7 appropriation for fiscal years 1996 and 1997.

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10 to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30,
11 part 1, apply to [~~sections 1 and SECTION 2~~].

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14 July 1, 1995.

15 (2) [Sections 5 and 6] and this section are effective on passage and approval.

16 (3) [This act] terminates July 1, 2001.

17

-END-