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House BILL NO. 293
Ream Va Valkenburg

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE MODERNIZATION OF THE STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX LAWS BY REQUIRING THE USE OF MODERN TECHNOLOGY TO FILE AND REMIT TAXES; ALIGNING THE TIMING OF PAYMENT OF WITHHOLDING TAX AND OLD FUND LIABILITY TAX WITH THE PAYMENT OF FEDERAL WITHHOLDING TAX, THUS REDUCING PAPERWORK FOR BOTH THE EMPLOYERS AND THE STATE; AMENDING SECTIONS 15-1-802, 15-30-201, 15-30-204, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Taxes to be paid and returns to be filed by electronic funds transfer and electronic reporting.** (1) Unless an employer has filed the election provided for in subsection (2), all tax payments required by 15-30-204 must be made by electronic funds transfer, as defined in 15-1-801, if the employer's withholding tax liability for the preceding lookback period:

- (a) ending June 30, 1995, was \$100,000 or greater;
- (b) ending June 30, 1996, was \$12,000 or greater;
- (c) ending June 30, 1997, and thereafter was \$500 or greater.

(2) An employer, within 30 days of notification of the employer's remittance schedule as required by 15-30-204, may elect to be exempt from the electronic payment and filing requirements. An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months.

(3) An employer required pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department in a format established and approved by the department.

(4) An employer not subject to the provisions of subsection (1) may elect to remit tax payments and file returns electronically by notifying the department by December 1 of the year prior to the year in



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1 which electronic payment and filings are to be made. The election is for the entire calendar year, and the
2 employer shall comply with the yearly remittance schedule as provided in 15-30-204.

3
4 **NEW SECTION. Section 2. Signature alternatives for electronically filed returns.** For purposes of
5 this part, the director of revenue may prescribe, by rule, methods for the signing, subscribing, or verifying
6 of the electronically filed tax returns required to be filed by this part. Returns electronically filed in
7 accordance with the methods adopted by rule have the same validity and consequences as physical forms
8 signed by a taxpayer.

9
10 **NEW SECTION. Section 3. Remittance of old fund liability tax.** An employer who is not required
11 to withhold wages pursuant to 15-30-202 but who had an old fund liability tax obligation under
12 39-71-2503 during the preceding lookback period, as defined in 15-30-201, is subject to the same
13 remittance schedules and filing requirements provided in 15-30-204 as employers paying wages subject
14 to state income tax withholding under 15-30-202.

15
16 **Section 4.** Section 15-1-802, MCA, is amended to read:

17 **"15-1-802. Taxes to be paid by electronic funds transfer -- limitation.** All taxes, except the state
18 income withholding tax and the old fund liability tax provided for in 15-30-204 and 39-71-2503, due the
19 state must be paid by electronic funds transfer whenever the amount due is \$500,000 or greater.
20 Whenever the payment of taxes is required to be made by electronic funds transfer under this section and
21 the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business
22 day ~~thereafter~~ after the due date."

23
24 **Section 5.** Section 15-30-201, MCA, is amended to read:

25 **"15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions
26 apply:

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

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

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

9 (4) "Lookback period" means the 12-month period ending the preceding June 30.

10 ~~(4)~~(5) "Wages" means all remuneration, ~~other than fees paid to a public official,~~ for services
11 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any
12 medium other than cash, except that the term does not include remuneration paid:

13 (a) for active service as a member of the regular armed forces of the United States, as defined in
14 10 U.S.C. 101(33);

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

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

18 (d) for casual labor not in the course of the employer's trade or business performed in any calendar
19 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
20 is performed by an individual who is regularly employed by the employer to perform the service. For
21 purposes of this subsection ~~(4)(d)~~ (d), an individual is considered to be regularly employed by an employer
22 during a calendar quarter only if:

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

25 (ii) the individual was regularly employed, ~~as determined under subsection (4)(d)(i)~~ (5)(d)(i), by the
26 employer in the performance of service during the preceding calendar quarter;

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

29 (f) for services performed by ~~a duly an~~ an ordained, commissioned, or licensed minister of a church
30 in the exercise of ~~his~~ the ministry or by a member of a religious order in the exercise of duties required by

1 the order;

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

5 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines
6 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by
7 ~~him~~ the individual at a fixed price, ~~his~~ the individual's compensation being based on the retention of the
8 excess of the price over the amount at which the newspapers or magazines are charged ~~to him~~, whether
9 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to
10 be credited with the unsold newspapers or magazines turned back;

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

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

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

18 (k) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended
19 and applicable on January 1, 1983, received by persons for services rendered by them to patrons of
20 premises licensed to provide food, beverage, or lodging;

21 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee
22 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in
23 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection ~~(4)(k)~~ (5)(k)
24 ~~terminates~~ on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

25

26 **Section 6.** Section 15-30-204, MCA, is amended to read:

27 "**15-30-204. ~~Quarterly or weekly~~ Weekly, monthly, or annual payment.** (1) ~~Except as provided~~
28 ~~in subsection (3), on or before the last day of April, July, October, and January, every~~ An employer subject
29 to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding
30 lookback period was \$12,000 or greater shall file a return in ~~such~~ the form and containing ~~such~~ the

1 information ~~as that~~ may be required by the department and, ~~except as provided in subsection (2),~~ shall pay
2 ~~therewith~~ the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid
3 during the preceding ~~quarter payroll period~~. The payment must be submitted on or before the date on
4 which federal income tax weekly withholding payments are due. On or before the last day of April, July,
5 October, and January, the employer shall file a return in the form and containing the information required
6 by the department. ~~Quarterly~~ The quarterly returns for employers ~~paying weekly~~ shall subject to this
7 subsection must be used to summarize and adjust payments and to request refunds of overpayments. The
8 employer shall also file the annual statement as required by 15-30-207.

9 (2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for
10 withholdings ~~equaled or exceeded \$300,000 for the preceding calendar year~~ during the preceding lookback
11 period was less than \$12,000 but greater than \$499 shall remit a ~~weekly~~ monthly payment to the
12 department for the amount required by 15-30-202 to be deducted and withheld by the employer from
13 wages paid during the preceding ~~week~~ month. The ~~weekly~~ monthly payment must be submitted on or
14 before the ~~date on which federal income tax weekly withholding payments are due~~ 15th day of the month
15 following the payment of the wages. The employer subject to this subsection shall, on or before February
16 28 of the year following payment of the wages, file an annual return in the form and containing the
17 information required by the department and the annual statement required by 15-30-207. The annual
18 returns for employers subject to this subsection must be used to summarize and adjust payments and to
19 request refunds of overpayments.

20 (3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202
21 upon the wages of all employees of any employer is less than ~~\$10 in each quarterly period of any year,~~
22 ~~such employer shall not be required to file the quarterly returns or to make the quarterly payments as~~
23 ~~provided in subsection (1), but in lieu thereof such~~ \$500 for the preceding lookback period, the employer
24 shall, on or before February 28 of the year succeeding that in which ~~such~~ the wages were paid, file an
25 annual return in ~~such the~~ such the form ~~as may be~~ as may be required by the department, together with the annual statement
26 required by 15-30-207, and shall at the same time pay therewith the amount required to be deducted and
27 withheld by the employer from all wages paid during the preceding calendar year.

28 (b) An employer subject to the provisions of this subsection (3) may elect to remit monthly
29 payments. If an employer elects to make monthly payments, the employer shall remit monthly payments
30 during the entire year and is subject to the same interest and penalty provisions as employers subject to

1 the provisions of subsection (2).

2 (c) If an employer subject to the provisions of this subsection (3) does not file the annual return
3 required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection
4 (2) until the department determines from the employer's subsequent filing history that the employer will
5 file in a timely fashion.

6 (4) (a) On or before November 1 of each year, the department shall notify the employers subject
7 to the provisions of this section of the employers' remittance schedules for the following calendar year
8 based upon the department's review of the preceding lookback period.

9 (b) A new employer or an employer with no filing history is subject to the provisions of subsection
10 (2) until the department is able to determine the employer's proper remittance schedule by a review of the
11 employer's first complete lookback period.

12 ~~(4)(5)~~ If the department has reason to believe that collection of the amount of any tax withheld is
13 in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of
14 income tax."

15

16 **Section 7.** Section 39-71-2501, MCA, is amended to read:

17 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

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

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

23 (3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an
24 individual performs or performed any service, of whatever nature, as an employee of the person.

25 (b) If the person for whom the individual performs or performed the service does not have control
26 of the payment of the wages for the service, the term "employer" means the person who has control of
27 the payment of wages.

28 ~~(4) "Employer's payroll" means wages paid for each of the calendar quarters ending March 31,~~
29 ~~June 30, September 30, and December 31.~~

30 ~~(5)~~ "State fund" means the state compensation insurance fund.

1 ~~(6)~~(5) "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503,
2 created to address the unfunded liability for claims for injuries resulting from accidents that occurred before
3 July 1, 1990.

4 ~~(7)~~(6) "Tax account" means the workers' compensation tax account created by 39-71-2504.

5 ~~(8)~~(7) "Wages" means all remuneration for services performed in this state by an employee for an
6 employer, including the cash value of all remuneration paid in any medium other than cash. The term does
7 not include remuneration paid:

8 (a) for casual labor not in the course of the employer's trade or business performed in any calendar
9 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
10 is performed by an individual who is regularly employed by the employer to perform the service. For
11 purposes of this subsection ~~(8)(a)~~ (a), an individual is considered to be regularly employed by an employer
12 during a calendar quarter only if:

13 (i) on each of 24 days during the calendar quarter, the individual performs service not in the course
14 of the employer's trade or business for the employer for some portion of the day; and

15 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (7)(a)(i), by the
16 employer in the performance of service during the preceding calendar quarter;

17 (b) for services not in the course of the employer's trade or business, to the extent that
18 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
19 and the payments are received by the employee at the request of and for the convenience of the employer;

20 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
21 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
22 the employee or the employee's dependents, and employees' club activities;

23 (d) as wages or compensation, the taxation of which is prohibited by federal law."

24

25 **Section 8.** Section 39-71-2503, MCA, is amended to read:

26 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
27 employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional
28 amount of old fund liability tax provided in 39-71-2505, of the ~~employer's payroll in the preceding calendar~~
29 ~~quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus~~
30 ~~the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the~~

1 ~~preceding week wages paid by the employer:~~

2 (i) for the preceding payroll period for employers subject to the payment schedule contained in
3 15-30-204(1);

4 (ii) for the preceding month for employers subject to the payment schedule contained in
5 15-30-204(2); and

6 (iii) for the preceding year for employers subject to the payment schedule contained in
7 15-30-204(3)(a).

8 (b) There is imposed on each employee, except workers engaged in the rail industry who are under
9 the jurisdiction of the federal railroad administration, United States department of transportation, an old
10 fund liability tax, as provided in 39-71-2505, on the employee's wages ~~in the preceding calendar quarter.~~
11 Each employer making payment of wages for services performed in this state shall deduct and withhold the
12 tax from the wages.

13 (c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
14 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
15 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
16 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
17 partner, or member or manager.

18 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
19 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
20 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
21 officer's wages.

22 (e) A corporate officer of a closely held corporation who meets the stock ownership test under
23 section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is
24 required to pay the old fund liability tax only on the wages received. The corporation is not liable for the
25 tax on the corporate officer's wages.

26 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
27 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
28 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
29 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
30 period if the workers' compensation bond repayment account contains on the first day of that period an

1 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
2 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
3 that must be paid during that period on the outstanding loans or bonds.

4 (g) Each employer shall maintain the records that the department requires concerning the old fund
5 liability tax. The records are subject to inspection by the department and its employees and agents during
6 regular business hours.

7 (h) An employee does not have any right of action against an employer for any money deducted
8 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
9 this section.

10 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
11 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
12 old fund liability tax required by this section.

13 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
14 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
15 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
16 the old fund liability tax required by this section.

17 (2) All collections of the tax must be deposited as received in the tax account. The tax is in
18 addition to any other tax or fee assessed against persons subject to the tax.

19 ~~(3) (a) On or before the last day of April, July, October, and January, each employer subject to the~~
20 ~~tax shall file a return in the form and containing the information required by the department and, except~~
21 ~~as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the~~
22 ~~employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees'~~
23 ~~old fund liability taxes at the same time.~~

24 ~~(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its~~
25 ~~weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings~~
26 ~~for employees' old fund liability taxes at the same time.~~

27 ~~(c)~~ Tax payments and returns required by subsections (1)(a) and (1)(b) must be made ~~with the~~
28 ~~return filed~~ pursuant to 15-30-204. The department shall first credit a payment to the liability under
29 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

30 ~~(d)(b)~~ Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners

1 of partnerships, and members or managers of limited liability companies must be made with and at the
 2 same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a
 3 payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers'
 4 compensation tax account provided in 39-71-2504.

5 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
 6 department the amounts due under this section who fails to pay an amount is liable to the state for the
 7 unpaid amount and any penalty and interest relating to that amount.

8 (5) Returns and remittances under subsection (3) and any information obtained by the department
 9 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
 10 to the department of labor and industry under circumstances and conditions that ensure the continued
 11 confidentiality of the information.

12 (6) The department of labor and industry and the state fund shall, ~~on July 1, 1991, or as soon after~~
 13 ~~that date as possible,~~ give the department a list of all employers having coverage under any plan
 14 administered or regulated by the department of labor and industry and the state fund. ~~After the lists have~~
 15 ~~been given to the department, the~~ The department of labor and industry and the state fund shall update
 16 the lists weekly. The department of labor and industry and the state fund shall provide the department with
 17 access to their computer data bases and paper files and records for the purpose of the department's
 18 administration of the tax imposed by this section.

19 (7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding
 20 administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for
 21 overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply
 22 to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to
 23 partners of partnerships, to members or managers of limited liability companies, and to the department."
 24

25 **NEW SECTION. Section 9. Remittance of tax for fourth quarter of 1995 -- filing of required**
 26 **employer returns.** Notwithstanding the provisions of [sections 1 and 6], the provisions of 15-30-204 and
 27 15-30-207, as they read on January 1, 1995, govern and control the payment of tax for wages paid during
 28 1995 and the filing of all required employer returns.

29
 30 **NEW SECTION. Section 10. Codification instruction.** (1) [Sections 1 and 2] are intended to be

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

3 (2) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
4 the provisions of Title 39, chapter 71, part 25, apply to [section 3].

5

6 **NEW SECTION. Section 11. Effective date -- applicability.** [This act] is effective on passage and
7 approval and applies to tax years beginning after December 31, 1995, and to state income withholding
8 taxes and old fund liability taxes due for calendar year 1996 and thereafter.

9

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0293, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the modernization of the state income tax withholding and old fund liability tax laws, by requiring the use of modern technology to file and remit taxes; aligning the timing of payment of withholding tax and old fund liability tax with the payment of federal withholding tax, thus reducing paperwork for both the employers and the state.

ASSUMPTIONS:

1. This legislation applies to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter.
2. The proposed law aligns the timing of payment of state withholding tax and old fund liability tax with the payment of federal withholding tax; this change results in more tax revenue being paid weekly or monthly that previously was remitted quarterly.
3. Withholding and old fund liability tax rates are assumed constant. Given constant tax rates and the accrual accounting system, the total amount of fiscal year tax collections will be the same under the proposed law as compared with current law.
4. All accruals are estimated exactly and are reversed immediately after collections are received.
5. The proposal results in increased interest earnings because of the acceleration of tax collections from quarterly to weekly or monthly.
6. Extra state government cash not needed for immediate expenditure is invested, by the Montana Board of Investments, through the vehicle of the Treasurer's Fund and the related Short-term Investment Pool (STIP).
7. Most of the investments made through the Treasurer's Fund are on a daily compounding basis (Montana Board of Investments).
8. The average annual interest rate for the Treasurer's Fund for FY 96 and 97 is approximately 5.6 percent (Revenue Oversight Committee, November 30, 1994).
9. For computational simplicity, monthly and quarterly (current law) collections are assumed to be received on the 15th of the month; all quarterly collections are assumed to be received in August, November, February, and May.
10. Tax and Revenue Anticipation Notes (TRANS) will be issued in October 1996, and the additional cash generated from this accelerated filing proposal will be used to reduce the amount of that issue. As a result, the additional cash flow generated by this proposal will no longer be available beyond October, 1996.
11. The payroll base on which the cash flow is generated, will grow at a annual rate of 5.5 percent (average for last 7 years).
12. This proposal generates additional net cash flow of \$47 million in the last half of FY 96 for withholding taxes, and for 3 months of FY 97.
13. Tax revenue anticipation notes (TRANS) are issued October 1st at a projected interest rate of 4.59% (ROC), repaid on June 30th.
14. Old Fund Liability Tax payroll tax accounts for 16% of combined OFLT/Income Tax withholdings.

(continued)

Dave Lewis 1-26-95

Bob Ream

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

BOB REAM, PRIMARY SPONSOR DATE

Fiscal Note for HB0293, as introduced

HB 293

(continued)

FISCAL IMPACT: (continued)

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
TRANS Debt Service (01)	0	(\$1,600,000)

The administrative costs associated with this proposal are part of the Income and Miscellaneous Tax Division's initiatives to automate Department of Revenue mail and cashiering functions, and enable EFT/EDI, and are addressed in the Executive Budget. To the extent that the funding for those proposals is approved in the appropriations process, the administrative cost of this proposal is zero.

To date, only the cashiering equipment was approved in the subcommittee process. If the EFT/EDI proposal is not funded, the Department will not have the resources to implement this bill.

Revenues:

There is no impact on total fiscal year tax collections. Both the general fund and the workers compensation payroll tax account would earn additional interest income.

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Treasurer's Fund Earnings:		
General Fund Interest (01)	420,000	504,000
TRANS Arbitrage Earnings (01)	0	(400,000)
WC Payroll Account (02)	<u>80,000</u>	<u>96,000</u>
Total	500,000	200,000

Net Impact: (Increased Fund Balance)

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
General Fund (01)	420,000	1,704,000
WC Payroll Account (02)	80,000	96,000

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0293, third reading

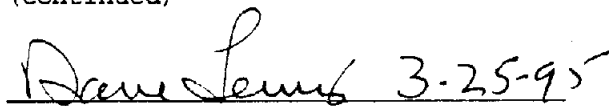
DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the modernization of the state income tax withholding and old fund liability tax laws, by requiring the use of modern technology to file and remit taxes; aligning the timing of payment of withholding tax and old fund liability tax with the payment of federal withholding tax, thus reducing paperwork for both the employers and the state; reducing the period during which interest does not have to be paid on refunds of overpayment of income taxes from six months to 45 days.

ASSUMPTIONS:

1. This legislation applies to state income withholding taxes and old fund liability taxes due for calendar year 1996 and thereafter.
2. The proposed law aligns the timing of payment of state withholding tax and old fund liability tax with the payment of federal withholding tax; this change results in more tax revenue being paid weekly or monthly that previously was remitted quarterly.
3. Withholding and old fund liability tax rates are assumed constant. Given constant tax rates and the accrual accounting system, the total amount of fiscal year tax collections will be the same under the proposed law as compared with current law.
4. All accruals are estimated exactly and are reversed immediately after collections are received.
5. The proposal results in increased interest earnings because of the acceleration of tax collections from quarterly to weekly or monthly.
6. Extra state government cash not needed for immediate expenditure is invested, by the Montana Board of Investments, through the vehicle of the Treasurer's fund and the related short-term investment pool (STIP).
7. Most of the investments made through the Treasurer's fund are on a daily compounding basis (Montana Board of Investments).
8. The average annual interest rate for the Treasurer's fund for FY96 and FY97 is approximately 5.6% (Revenue Oversight Committee, November 30, 1994).
9. For computational simplicity, monthly and quarterly (current law) collections are assumed to be received on the 15th of the month; all quarterly collections are assumed to be received in August, November, February, and May.
10. Tax and revenue anticipation notes (TRANS) will be issued in October, 1996, and the additional cash generated from this accelerated filing proposal will be used to reduce the amount of that issue. As a result, the additional cash flow generated by this proposal will no longer be available beyond October, 1996.
11. The payroll base on which the cash flow is generated will grow at an annual rate of 5.5% (average for last 7 years).
12. This proposal generates additional net cash flow of \$47 million in the last half of FY96 for withholding taxes, and for three months of FY97.
13. Tax and revenue anticipation notes (TRANS) are issued October 1st at a projected interest rate of 4.59% (ROC), repaid on June 30th.
14. Old fund liability tax payroll tax accounts for 16% of combined OFLT/income tax withholdings.

(continued)


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


BOB REAM, PRIMARY SPONSOR DATE

Fiscal Note for HB0293, third reading

HB 293-#2

(continued)

ASSUMPTIONS (continued)

15. Based on department processing timeframes for the past three years, requiring the payment of interest on refunds paid after 45 days from the point of filing would increase interest payments (general fund expense) by \$280,000 annually.
16. If at least 15% of taxpayers (business and/or individual) file electronically, sufficient resources would be freed within the Department of Revenue to significantly mitigate interest costs. To achieve at least 15% electronic filings, the department will require 1.00 FTE taxpayer liaison on an ongoing basis and 1.00 FTE programmer and equipment for the 1997 biennium only.

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
TRANS Debt Service (01)	0	(\$1,600,000)

Income Tax Division:

Expenditures:

FTE	2.00	2.00
Personal Services	57,954	58,155
Operating Expenses	30,220	30,220
Equipment	<u>19,644</u>	<u>2,400</u>
Total	107,818	90,775

Funding:

General Fund (01)	59,300	49,927
Old Fund Liability Tax (02)	<u>48,518</u>	<u>40,848</u>
Total	107,818	90,775

Revenues:

There is no impact on total fiscal year tax collections. Both the general fund and the workers compensation payroll tax account would earn additional interest income.

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Treasurer's Fund Earnings:		
General Fund Interest (01)	420,000	504,000
TRANS Arbitrage Earnings (01)	0	(400,000)
WC Payroll Account (02)	<u>80,000</u>	<u>96,000</u>
Total	500,000	200,000

Individual Income Tax: *

Refund Interest (01)	(280,000)	(280,000)
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* Interest costs mitigated if at least 15% of taxpayers file electronically.

Net Impact: (Increased Fund Balance; assumes 15% taxpayers file electronically)

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
General Fund (01)	360,700	1,654,073
WC Payroll Account (02)	48,438	55,152

1 HOUSE BILL NO. 293

2 INTRODUCED BY REAM, VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE MODERNIZATION OF THE STATE INCOME
6 TAX WITHHOLDING AND OLD FUND LIABILITY TAX LAWS BY ~~REQUIRING THE USE OF~~ PROVIDING THE
7 OPTION OF USING MODERN TECHNOLOGY TO FILE AND REMIT TAXES; ALIGNING THE TIMING OF
8 PAYMENT OF WITHHOLDING TAX AND OLD FUND LIABILITY TAX WITH THE PAYMENT OF FEDERAL
9 WITHHOLDING TAX, THUS REDUCING PAPERWORK FOR BOTH THE EMPLOYERS AND THE STATE;
10 AMENDING SECTIONS ~~15-1-802~~, 15-30-201, 15-30-204, 39-71-2501, AND 39-71-2503, MCA; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

15 NEW SECTION. Section 1. ~~Taxes to be paid and returns to be filed by electronic~~ ELECTRONIC
16 funds transfer and electronic reporting -- EMPLOYER OPTION. (1) ~~Unless an employer has filed the~~
17 ~~election provided for in subsection (2), all tax payments required by 15-30-204 must be made by electronic~~
18 ~~funds transfer, as defined in 15-1-801, if the employer's withholding tax liability for the preceding lookback~~
19 ~~period:~~

20 ~~(a) ending June 30, 1995, was \$100,000 or greater;~~21 ~~(b) ending June 30, 1996, was \$12,000 or greater;~~22 ~~(c) ending June 30, 1997, and thereafter was \$500 or greater.~~

23 ~~(2) An employer, within 30 days of notification of the employer's remittance schedule as required~~
24 ~~by 15-30-204, may elect to be exempt from the electronic payment and filing requirements~~ REMIT AND
25 FILE STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX ELECTRONICALLY. An election
26 form must be provided with the notification of the employer's remittance schedule and, when returned to
27 the department, is valid for the next 12 months. AN EMPLOYER MAY CANCEL THE ELECTION PROVIDED
28 IN THIS SECTION BY PROVIDING WRITTEN NOTICE OF THE CANCELLATION TO THE DEPARTMENT.

29 ~~(3)(2) An employer required~~ WHO ELECTS pursuant to subsection (1) to remit tax payments
30 through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the

1 department in a format established and approved by the department.

2 ~~(4) An employer not subject to the provisions of subsection (1) may elect to remit tax payments~~
 3 ~~and file returns electronically by notifying the department by December 1 of the year prior to the year in~~
 4 ~~which electronic payment and filings are to be made. The election is for the entire calendar year, and the~~
 5 ~~employer shall comply with the yearly remittance schedule as provided in 15-30-204.~~

6
 7 **NEW SECTION. Section 2. Signature alternatives for electronically filed returns.** For purposes of
 8 this part, the director of revenue may prescribe, by rule, methods for the signing, subscribing, or verifying
 9 of the electronically filed tax returns required to be filed by this part. Returns electronically filed in
 10 accordance with the methods adopted by rule have the same validity and consequences as physical forms
 11 signed by a taxpayer.

12
 13 **NEW SECTION. Section 3. Remittance of old fund liability tax.** An employer who is not required
 14 to withhold wages pursuant to 15-30-202 but who had an old fund liability tax obligation under
 15 39-71-2503 during the preceding lookback period, as defined in 15-30-201, is subject to the same
 16 remittance schedules and filing requirements provided in 15-30-204 as employers paying wages subject
 17 to state income tax withholding under 15-30-202.

18
 19 ~~**Section 4.** Section 15-1-802, MCA, is amended to read:~~

20 ~~"**15-1-802. Taxes to be paid by electronic funds transfer — limitation.** All taxes, except the state~~
 21 ~~income withholding tax and the old fund liability tax provided for in 15-30-204 and 39-71-2503, due the~~
 22 ~~state must be paid by electronic funds transfer whenever the amount due is \$500,000 or greater.~~
 23 ~~Whenever the payment of taxes is required to be made by electronic funds transfer under this section and~~
 24 ~~the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business~~
 25 ~~day thereafter after the due date."~~

26
 27 **Section 4.** Section 15-30-201, MCA, is amended to read:

28 "**15-30-201. Definitions.** When used in 15-30-201 through 15-30-209, the following definitions
 29 apply:

30 (1) "Agricultural labor" includes all services performed on a farm or ranch in connection with

1 cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity,
 2 including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry,
 3 and fur-bearing animals and wildlife.

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

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

12 (4) "Lookback period" means the 12-month period ending the preceding June 30.

13 ~~(4)(5)~~ "Wages" means all remuneration, ~~{other than fees paid to a public official}~~, for services
 14 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any
 15 medium other than cash, except that the term does not include remuneration paid:

16 (a) for active service as a member of the regular armed forces of the United States, as defined in
 17 10 U.S.C. 101(33);

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

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

21 (d) for casual labor not in the course of the employer's trade or business performed in any calendar
 22 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
 23 is performed by an individual who is regularly employed by the employer to perform the service. For
 24 purposes of this subsection ~~(4)(d)~~ (d), an individual is considered to be regularly employed by an employer
 25 during a calendar quarter only if:

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

28 (ii) the individual was regularly employed, ~~{as determined under subsection (4)(d)(i)}~~ (5)(d)(i), by the
 29 employer in the performance of service during the preceding calendar quarter;

30 (e) for services by a citizen or resident of the United States for a foreign government or an

1 international organization;

2 (f) for services performed by ~~a duly~~ an ordained, commissioned, or licensed minister of a church
3 in the exercise of ~~his~~ the ministry or by a member of a religious order in the exercise of duties required by
4 the order;

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

8 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines
9 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by
10 ~~him~~ the individual at a fixed price, ~~his~~ the individual's compensation being based on the retention of the
11 excess of the price over the amount at which the newspapers or magazines are charged ~~to him~~, whether
12 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to
13 be credited with the unsold newspapers or magazines turned back;

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

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

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

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

24 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee
25 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in
26 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection ~~(4)(k)~~ (5)(k)
27 terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

28

29 **Section 5.** Section 15-30-204, MCA, is amended to read:

30 "**15-30-204. ~~Quarterly or weekly~~ Weekly, monthly, or annual payment.** (1) ~~Except as provided~~

1 ~~in subsection (3), on or before the last day of April, July, October, and January, every~~ An employer subject
 2 to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding
 3 lookback period was \$12,000 or greater shall file a return in ~~such the~~ form and containing ~~such the~~
 4 information ~~as that~~ may be required by the department and, ~~except as provided in subsection (2),~~ shall pay
 5 ~~therewith~~ the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid
 6 during the preceding ~~quarter~~ payroll period. The payment must be submitted on or before the date on
 7 which federal income tax weekly withholding payments are due. On or before the last day of April, July,
 8 October, and January, the employer shall file a return in the form and containing the information required
 9 by the department. Quarterly ~~The quarterly~~ returns for employers ~~paying weekly shall~~ subject to this
 10 subsection must be used to summarize and adjust payments and to request refunds of overpayments. The
 11 employer shall also file the annual statement as required by 15-30-207.

12 (2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for
 13 withholdings ~~equaled or exceeded \$300,000 for the preceding calendar year~~ during the preceding lookback
 14 period was less than \$12,000 but greater than \$499 shall remit a ~~weekly~~ monthly payment to the
 15 department for the amount required by 15-30-202 to be deducted and withheld by the employer from
 16 wages paid during the preceding ~~week~~ month. The ~~weekly~~ monthly payment must be submitted on or
 17 before the ~~date on which federal income tax weekly withholding payments are due~~ 15th day of the month
 18 following the payment of the wages. The employer subject to this subsection shall, on or before February
 19 28 of the year following payment of the wages, file an annual return in the form and containing the
 20 information required by the department and the annual statement required by 15-30-207. The annual
 21 returns for employers subject to this subsection must be used to summarize and adjust payments and to
 22 request refunds of overpayments.

23 (3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202
 24 upon the wages of all employees of any employer is less than ~~\$10 in each quarterly period of any year,~~
 25 ~~such employer shall not be required to file the quarterly returns or to make the quarterly payments as~~
 26 ~~provided in subsection (1), but in lieu thereof~~ such \$500 for the preceding lookback period, the employer
 27 shall, on or before February 28 of the year succeeding that in which ~~such the~~ wages were paid, file an
 28 annual return in ~~such the~~ form ~~as may be~~ required by the department, together with the annual statement
 29 required by 15-30-207, and shall at the same time pay ~~therewith~~ the amount required to be deducted and
 30 withheld by the employer from all wages paid during the preceding calendar year.

1 (b) An employer subject to the provisions of this subsection (3) may elect to remit monthly
 2 payments. If an employer elects to make monthly payments, the employer shall remit monthly payments
 3 during the entire year and is subject to the same interest and penalty provisions as employers subject to
 4 the provisions of subsection (2).

5 (c) If an employer subject to the provisions of this subsection (3) does not file the annual return
 6 required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection
 7 (2) until the department determines from the employer's subsequent filing history that the employer will
 8 file in a timely fashion.

9 (4) (a) On or before November 1 of each year, the department shall notify the employers subject
 10 to the provisions of this section of the employers' remittance schedules for the following calendar year
 11 based upon the department's review of the preceding lookback period.

12 (b) A new employer or an employer with no filing history is subject to the provisions of subsection
 13 (2) until the department is able to determine the employer's proper remittance schedule by a review of the
 14 employer's first complete lookback period.

15 ~~(4)~~(5) If the department has reason to believe that collection of the amount of any tax withheld is
 16 in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of
 17 income tax."
 18

19 **Section 6.** Section 39-71-2501, MCA, is amended to read:

20 "**39-71-2501. Definitions.** As used in this part, the following definitions apply:

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

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

26 (3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an
 27 individual performs or performed any service, of whatever nature, as an employee of the person.

28 (b) If the person for whom the individual performs or performed the service does not have control
 29 of the payment of the wages for the service, the term "employer" means the person who has control of
 30 the payment of wages.

1 (4) "~~Employer's payroll~~" means wages paid for each of the calendar quarters ending March 31,
2 June 30, September 30, and December 31.

3 ~~(5)~~ "State fund" means the state compensation insurance fund.

4 ~~(6)~~(5) "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503,
5 created to address the unfunded liability for claims for injuries resulting from accidents that occurred before
6 July 1, 1990.

7 ~~(7)~~(6) "Tax account" means the workers' compensation tax account created by 39-71-2504.

8 ~~(8)~~(7) "Wages" means all remuneration for services performed in this state by an employee for an
9 employer, including the cash value of all remuneration paid in any medium other than cash. The term does
10 not include remuneration paid:

11 (a) for casual labor not in the course of the employer's trade or business performed in any calendar
12 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
13 is performed by an individual who is regularly employed by the employer to perform the service. For
14 purposes of this subsection ~~(8)(a)~~ (a), an individual is considered to be regularly employed by an employer
15 during a calendar quarter only if:

16 (i) on each of 24 days during the calendar quarter, the individual performs service not in the course
17 of the employer's trade or business for the employer for some portion of the day; and

18 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (7)(a)(i), by the
19 employer in the performance of service during the preceding calendar quarter;

20 (b) for services not in the course of the employer's trade or business, to the extent that
21 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
22 and the payments are received by the employee at the request of and for the convenience of the employer;

23 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
24 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
25 the employee or the employee's dependents, and employees' club activities;

26 (d) as wages or compensation, the taxation of which is prohibited by federal law."
27

28 **Section 7.** Section 39-71-2503, MCA, is amended to read:

29 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
30 employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional

1 amount of old fund liability tax provided in 39-71-2505, of the ~~employer's payroll in the preceding calendar~~
2 ~~quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus~~
3 ~~the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the~~
4 ~~preceding week~~ wages paid by the employer:

5 (i) for the preceding payroll period for employers subject to the payment schedule contained in
6 15-30-204(1);

7 (ii) for the preceding month for employers subject to the payment schedule contained in
8 15-30-204(2); and

9 (iii) for the preceding year for employers subject to the payment schedule contained in
10 15-30-204(3)(a).

11 (b) There is imposed on each employee, except workers engaged in the rail industry who are under
12 the jurisdiction of the federal railroad administration, United States department of transportation, an old
13 fund liability tax, as provided in 39-71-2505, on the employee's wages ~~in the preceding calendar quarter~~.
14 Each employer making payment of wages for services performed in this state shall deduct and withhold the
15 tax from the wages.

16 (c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
17 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
18 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
19 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
20 partner, or member or manager.

21 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
22 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
23 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
24 officer's wages.

25 (e) A corporate officer of a closely held corporation who meets the stock ownership test under
26 section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is
27 required to pay the old fund liability tax only on the wages received. The corporation is not liable for the
28 tax on the corporate officer's wages.

29 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
30 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or

1 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
2 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
3 period if the workers' compensation bond repayment account contains on the first day of that period an
4 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
5 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
6 that must be paid during that period on the outstanding loans or bonds.

7 (g) Each employer shall maintain the records that the department requires concerning the old fund
8 liability tax. The records are subject to inspection by the department and its employees and agents during
9 regular business hours.

10 (h) An employee does not have any right of action against an employer for any money deducted
11 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
12 this section.

13 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
14 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
15 old fund liability tax required by this section.

16 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
17 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
18 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
19 the old fund liability tax required by this section.

20 (2) All collections of the tax must be deposited as received in the tax account. The tax is in
21 addition to any other tax or fee assessed against persons subject to the tax.

22 (3) ~~(a) On or before the last day of April, July, October, and January, each employer subject to the~~
23 ~~tax shall file a return in the form and containing the information required by the department and, except~~
24 ~~as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the~~
25 ~~employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees'~~
26 ~~old fund liability taxes at the same time.~~

27 ~~(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its~~
28 ~~weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings~~
29 ~~for employees' old fund liability taxes at the same time.~~

30 ~~(c) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made with the~~

1 ~~return filed~~ pursuant to 15-30-204. The department shall first credit a payment to the liability under
2 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

3 ~~(d)~~(b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners
4 of partnerships, and members or managers of limited liability companies must be made with and at the
5 same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a
6 payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers'
7 compensation tax account provided in 39-71-2504.

8 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
9 department the amounts due under this section who fails to pay an amount is liable to the state for the
10 unpaid amount and any penalty and interest relating to that amount.

11 (5) Returns and remittances under subsection (3) and any information obtained by the department
12 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
13 to the department of labor and industry under circumstances and conditions that ensure the continued
14 confidentiality of the information.

15 (6) The department of labor and industry and the state fund shall, ~~on July 1, 1991, or as soon after~~
16 ~~that date as possible,~~ give the department a list of all employers having coverage under any plan
17 administered or regulated by the department of labor and industry and the state fund. ~~After the lists have~~
18 ~~been given to the department, the~~ The department of labor and industry and the state fund shall update
19 the lists weekly. The department of labor and industry and the state fund shall provide the department with
20 access to their computer data bases and paper files and records for the purpose of the department's
21 administration of the tax imposed by this section.

22 (7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding
23 administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for
24 overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply
25 to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to
26 partners of partnerships, to members or managers of limited liability companies, and to the department."

27

28 **NEW SECTION. Section 8. Remittance of tax for fourth quarter of 1995 -- filing of required**
29 **employer returns.** Notwithstanding the provisions of [sections 1 and 6], the provisions of 15-30-204 and
30 15-30-207, as they read on January 1, 1995, govern and control the payment of tax for wages paid during

1 1995 and the filing of all required employer returns.

2

3 **NEW SECTION. Section 9. Codification instruction.** (1) [Sections 1 and 2] are intended to be
4 codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part
5 2, apply to [sections 1 and 2].

6 (2) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
7 the provisions of Title 39, chapter 71, part 25, apply to [section 3].

8

9 **NEW SECTION. Section 10. Effective date -- applicability.** [This act] is effective on passage and
10 approval and applies to tax years beginning after December 31, 1995, and to state income withholding
11 taxes and old fund liability taxes due for calendar year 1996 and thereafter.

12

-END-

1 HOUSE BILL NO. 293

2 INTRODUCED BY REAM, VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE MODERNIZATION OF THE STATE INCOME
 6 TAX WITHHOLDING AND OLD FUND LIABILITY TAX LAWS BY ~~REQUIRING THE USE OF~~ PROVIDING THE
 7 OPTION OF USING MODERN TECHNOLOGY TO FILE AND REMIT TAXES; ALIGNING THE TIMING OF
 8 PAYMENT OF WITHHOLDING TAX AND OLD FUND LIABILITY TAX WITH THE PAYMENT OF FEDERAL
 9 WITHHOLDING TAX, THUS REDUCING PAPERWORK FOR BOTH THE EMPLOYERS AND THE STATE;
 10 REDUCING THE PERIOD DURING WHICH INTEREST DOES NOT HAVE TO BE PAID ON REFUNDS OF
 11 OVERPAYMENT OF INCOME TAXES FROM 6 MONTHS TO 45 DAYS; AMENDING SECTIONS 15-30-149,
 12 15-1-802, 15-30-201, 15-30-204, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE
 13 EFFECTIVE DATE AND AN APPLICABILITY DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
 17 NEW SECTION. Section 1. ~~Taxes to be paid and returns to be filed by electronic~~ ELECTRONIC
 18 funds transfer and electronic reporting -- EMPLOYER OPTION. (1) ~~Unless an employer has filed the~~
 19 ~~election provided for in subsection (2), all tax payments required by 15-30-204 must be made by electronic~~
 20 ~~funds transfer, as defined in 15-1-801, if the employer's withholding tax liability for the preceding lookback~~
 21 ~~period:~~

22 ~~(a) ending June 30, 1995, was \$100,000 or greater;~~

23 ~~(b) ending June 30, 1996, was \$12,000 or greater;~~

24 ~~(c) ending June 30, 1997, and thereafter was \$500 or greater.~~

25 (2) An employer, within 30 days of notification of the employer's remittance schedule as required
 26 by 15-30-204, may elect to ~~be exempt from the electronic payment and filing requirements~~ REMIT AND
 27 FILE STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX ELECTRONICALLY. An election
 28 form must be provided with the notification of the employer's remittance schedule and, when returned to
 29 the department, is valid for the next 12 months. AN EMPLOYER MAY CANCEL THE ELECTION PROVIDED
 30 IN THIS SECTION BY PROVIDING WRITTEN NOTICE OF THE CANCELLATION TO THE DEPARTMENT.

1 ~~(3)(2)~~ An employer ~~required~~ **WHO ELECTS** pursuant to subsection (1) to remit tax payments
2 through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the
3 department in a format established and approved by the department.

4 ~~(4) An employer not subject to the provisions of subsection (1) may elect to remit tax payments~~
5 ~~and file returns electronically by notifying the department by December 1 of the year prior to the year in~~
6 ~~which electronic payment and filings are to be made. The election is for the entire calendar year, and the~~
7 ~~employer shall comply with the yearly remittance schedule as provided in 15-30-204.~~

8
9 **NEW SECTION. Section 2. Signature alternatives for electronically filed returns.** For purposes of
10 this part, the director of revenue may prescribe, by rule, methods for the signing, subscribing, or verifying
11 of the electronically filed tax returns required to be filed by this part. Returns electronically filed in
12 accordance with the methods adopted by rule have the same validity and consequences as physical forms
13 signed by a taxpayer.

14
15 **NEW SECTION. Section 3. Remittance of old fund liability tax.** An employer who is not required
16 to withhold wages pursuant to 15-30-202 but who had an old fund liability tax obligation under
17 39-71-2503 during the preceding lookback period, as defined in 15-30-201, is subject to the same
18 remittance schedules and filing requirements provided in 15-30-204 as employers paying wages subject
19 to state income tax withholding under 15-30-202.

20
21 ~~**Section 4. Section 15-1-802, MCA, is amended to read:**~~

22 ~~"15-1-802. Taxes to be paid by electronic funds transfer limitation. All taxes, except the state~~
23 ~~income withholding tax and the old fund liability tax provided for in 15-30-204 and 39-71-2503, due the~~
24 ~~state must be paid by electronic funds transfer whenever the amount due is \$500,000 or greater.~~
25 ~~Whenever the payment of taxes is required to be made by electronic funds transfer under this section and~~
26 ~~the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business~~
27 ~~day thereafter after the due date."~~

28
29 **Section 4. Section 15-30-201, MCA, is amended to read:**

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

1 apply:

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

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

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

14 (4) "Lookback period" means the 12-month period ending the preceding June 30.

15 ~~(4)(5)~~ (5) "Wages" means all remuneration, ~~other than fees paid to a public official,~~ for services
16 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any
17 medium other than cash, except that the term does not include remuneration paid:

18 (a) for active service as a member of the regular armed forces of the United States, as defined in
19 10 U.S.C. 101(33);

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

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

23 (d) for casual labor not in the course of the employer's trade or business performed in any calendar
24 quarter by an employee, ~~unless the cash remuneration paid for the service is \$50 or more and the service~~
25 is performed by an individual who is regularly employed by the employer to perform the service. For
26 purposes of this subsection ~~(4)(d)~~ (d), an individual is considered to be regularly employed by an employer
27 during a calendar quarter only if:

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

30 (ii) the individual was regularly employed, ~~as determined under subsection (4)(d)(i))~~ (5)(d)(i), by the

1 employer in the performance of service during the preceding calendar quarter;

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

4 (f) for services performed by ~~a duly an~~ ordained, commissioned, or licensed minister of a church
5 in the exercise of ~~his~~ the ministry or by a member of a religious order in the exercise of duties required by
6 the order;

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

10 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines
11 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by
12 ~~him~~ the individual at a fixed price, ~~his~~ the individual's compensation being based on the retention of the
13 excess of the price over the amount at which the newspapers or magazines are charged ~~to him~~, whether
14 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to
15 be credited with the unsold newspapers or magazines turned back;

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

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

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

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

26 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee
27 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in
28 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection ~~(4)(k)~~ (5)(k)
29 terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

30

1 **Section 5.** Section 15-30-204, MCA, is amended to read:

2 "**15-30-204. ~~Quarterly or weekly~~ Weekly, monthly, or annual payment.** (1) ~~Except as provided~~
 3 ~~in subsection (3), on or before the last day of April, July, October, and January, every~~ An employer subject
 4 to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding
 5 lookback period was \$12,000 or greater shall file a return in ~~such~~ the form and containing ~~such~~ the
 6 information ~~as that~~ that may be required by the department and, ~~except as provided in subsection (2),~~ shall pay
 7 ~~therewith~~ the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid
 8 during the preceding ~~quarter~~ payroll period. The payment must be submitted on or before the date on
 9 which federal income tax weekly withholding payments are due. On or before the last day of April, July,
 10 October, and January, the employer shall file a return in the form and containing the information required
 11 by the department. ~~Quarterly~~ The quarterly returns for employers ~~paying weekly~~ shall subject to this
 12 subsection must be used to summarize and adjust payments and to request refunds of overpayments. The
 13 employer shall also file the annual statement as required by 15-30-207.

14 (2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for
 15 withholdings ~~equaled or exceeded \$300,000 for the preceding calendar year~~ during the preceding lookback
 16 period was less than \$12,000 but greater than \$499 shall remit a ~~weekly~~ monthly payment to the
 17 department for the amount required by 15-30-202 to be deducted and withheld by the employer from
 18 wages paid during the preceding ~~week~~ month. The ~~weekly~~ monthly payment must be submitted on or
 19 before the ~~date on which federal income tax weekly withholding payments are due~~ 15th day of the month
 20 following the payment of the wages. The employer subject to this subsection shall, on or before February
 21 28 of the year following payment of the wages, file an annual return in the form and containing the
 22 information required by the department and the annual statement required by 15-30-207. The annual
 23 returns for employers subject to this subsection must be used to summarize and adjust payments and to
 24 request refunds of overpayments.

25 (3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202
 26 upon the wages of all employees of any employer is less than ~~\$10 in each quarterly period of any year,~~
 27 ~~such employer shall not be required to file the quarterly returns or to make the quarterly payments as~~
 28 ~~provided in subsection (1), but in lieu thereof~~ such \$500 for the preceding lookback period, the employer
 29 shall, on or before February 28 of the year succeeding that in which ~~such~~ the wages were paid, file an
 30 annual return in ~~such~~ the form ~~as may be~~ required by the department, together with the annual statement

1 required by 15-30-207, and shall at the same time pay therewith the amount required to be deducted and
2 withheld by the employer from all wages paid during the preceding calendar year.

3 (b) An employer subject to the provisions of this subsection (3) may elect to remit monthly
4 payments. If an employer elects to make monthly payments, the employer shall remit monthly payments
5 during the entire year and is subject to the same interest and penalty provisions as employers subject to
6 the provisions of subsection (2).

7 (c) If an employer subject to the provisions of this subsection (3) does not file the annual return
8 required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection
9 (2) until the department determines from the employer's subsequent filing history that the employer will
10 file in a timely fashion.

11 (4) (a) On or before November 1 of each year, the department shall notify the employers subject
12 to the provisions of this section of the employers' remittance schedules for the following calendar year
13 based upon the department's review of the preceding lookback period.

14 (b) A new employer or an employer with no filing history is subject to the provisions of subsection
15 (2) until the department is able to determine the employer's proper remittance schedule by a review of the
16 employer's first complete lookback period.

17 ~~(4)(5)~~ If the department has reason to believe that collection of the amount of any tax withheld is
18 in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of
19 income tax."
20

21 **Section 6.** Section 39-71-2501, MCA, is amended to read:

22 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

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

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

28 (3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an
29 individual performs or performed any service, of whatever nature, as an employee of the person.

30 (b) If the person for whom the individual performs or performed the service does not have control

1 of the payment of the wages for the service, the term "employer" means the person who has control of
 2 the payment of wages.

3 ~~(4) "Employer's payroll" means wages paid for each of the calendar quarters ending March 31,~~
 4 ~~June 30, September 30, and December 31.~~

5 ~~(5)~~ "State fund" means the state compensation insurance fund.

6 ~~(6)~~(5) "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503,
 7 created to address the unfunded liability for claims for injuries resulting from accidents that occurred before
 8 July 1, 1990.

9 ~~(7)~~(6) "Tax account" means the workers' compensation tax account created by 39-71-2504.

10 ~~(8)~~(7) "Wages" means all remuneration for services performed in this state by an employee for an
 11 employer, including the cash value of all remuneration paid in any medium other than cash. The term does
 12 not include remuneration paid:

13 (a) for casual labor not in the course of the employer's trade or business performed in any calendar
 14 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
 15 is performed by an individual who is regularly employed by the employer to perform the service. For
 16 purposes of this subsection ~~(8)(a)~~ (a), an individual is considered to be regularly employed by an employer
 17 during a calendar quarter only if:

18 (i) on each of 24 days during the calendar quarter, the individual performs service not in the course
 19 of the employer's trade or business for the employer for some portion of the day; and

20 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (7)(a)(i), by the
 21 employer in the performance of service during the preceding calendar quarter;

22 (b) for services not in the course of the employer's trade or business, to the extent that
 23 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
 24 and the payments are received by the employee at the request of and for the convenience of the employer;

25 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
 26 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
 27 the employee or the employee's dependents, and employees' club activities;

28 (d) as wages or compensation, the taxation of which is prohibited by federal law."

29

30 **Section 7.** Section 39-71-2503, MCA, is amended to read:

1 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
2 employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional
3 amount of old fund liability tax provided in 39-71-2505, of the ~~employer's payroll in the preceding calendar~~
4 ~~quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus~~
5 ~~the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the~~
6 ~~preceding week~~ wages paid by the employer:

7 (i) for the preceding payroll period for employers subject to the payment schedule contained in
8 15-30-204(1);

9 (ii) for the preceding month for employers subject to the payment schedule contained in
10 15-30-204(2); and

11 (iii) for the preceding year for employers subject to the payment schedule contained in
12 15-30-204(3)(a).

13 (b) There is imposed on each employee, except workers engaged in the rail industry who are under
14 the jurisdiction of the federal railroad administration, United States department of transportation, an old
15 fund liability tax, as provided in 39-71-2505, on the employee's wages ~~in the preceding calendar quarter.~~
16 Each employer making payment of wages for services performed in this state shall deduct and withhold the
17 tax from the wages.

18 (c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
19 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
20 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
21 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
22 partner, or member or manager.

23 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
24 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
25 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
26 officer's wages.

27 (e) A corporate officer of a closely held corporation who meets the stock ownership test under
28 section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is
29 required to pay the old fund liability tax only on the wages received. The corporation is not liable for the
30 tax on the corporate officer's wages.

1 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
2 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
3 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
4 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
5 period if the workers' compensation bond repayment account contains on the first day of that period an
6 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
7 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
8 that must be paid during that period on the outstanding loans or bonds.

9 (g) Each employer shall maintain the records that the department requires concerning the old fund
10 liability tax. The records are subject to inspection by the department and its employees and agents during
11 regular business hours.

12 (h) An employee does not have any right of action against an employer for any money deducted
13 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
14 this section.

15 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
16 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
17 old fund liability tax required by this section.

18 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
19 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
20 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
21 the old fund liability tax required by this section.

22 (2) All collections of the tax must be deposited as received in the tax account. The tax is in
23 addition to any other tax or fee assessed against persons subject to the tax.

24 (3) (a) ~~On or before the last day of April, July, October, and January, each employer subject to the~~
25 ~~tax shall file a return in the form and containing the information required by the department and, except~~
26 ~~as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the~~
27 ~~employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees'~~
28 ~~old fund liability taxes at the same time.~~

29 (b) ~~An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its~~
30 ~~weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings~~

1 ~~for employees' old fund liability taxes at the same time.~~

2 ~~(e)~~ Tax payments and returns required by subsections (1)(a) and (1)(b) must be made ~~with the~~
3 ~~return filed~~ pursuant to 15-30-204. The department shall first credit a payment to the liability under
4 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

5 ~~(d)(b)~~ Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners
6 of partnerships, and members or managers of limited liability companies must be made with and at the
7 same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a
8 payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers'
9 compensation tax account provided in 39-71-2504.

10 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
11 department the amounts due under this section who fails to pay an amount is liable to the state for the
12 unpaid amount and any penalty and interest relating to that amount.

13 (5) Returns and remittances under subsection (3) and any information obtained by the department
14 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
15 to the department of labor and industry under circumstances and conditions that ensure the continued
16 confidentiality of the information.

17 (6) The department of labor and industry and the state fund shall, ~~on July 1, 1991, or as soon after~~
18 ~~that date as possible,~~ give the department a list of all employers having coverage under any plan
19 administered or regulated by the department of labor and industry and the state fund. ~~After the lists have~~
20 ~~been given to the department, the~~ The department of labor and industry and the state fund shall update
21 the lists weekly. The department of labor and industry and the state fund shall provide the department with
22 access to their computer data bases and paper files and records for the purpose of the department's
23 administration of the tax imposed by this section.

24 (7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding
25 administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for
26 overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply
27 to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to
28 partners of partnerships, to members or managers of limited liability companies, and to the department."

29
30 **SECTION 8. SECTION 15-30-149, MCA, IS AMENDED TO READ:**

1 **"15-30-149. Credits and refunds -- period of limitations.** (1) If the department discovers from the
2 examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the
3 amount of income tax collected is in excess of the amount due or that any penalty or interest was
4 erroneously or illegally collected, the amount of the overpayment must be credited against any income tax,
5 penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the
6 taxpayer.

7 (2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the
8 expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department
9 determines there has been an overpayment.

10 (b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be
11 refunded or credited within the period that expires on the 15th day of the 40th month following the close
12 of the taxable year of the net operating loss if that period expires later than 5 years from the due date of
13 the return for the year to which the net operating loss is carried back.

14 (3) Within 6 months after a claim for refund is filed, the department shall examine the claim and
15 either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer
16 within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the
17 taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

18 (4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest
19 is payable from the due date of the return or from the date of the overpayment, whichever date is later,
20 to the date the department approves refunding or crediting of the overpayment. With respect to tax paid
21 by withholding or by estimate, the date of overpayment is the date on which the return for the taxable year
22 was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the
23 taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the
24 processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish
25 information requested by the department for the purpose of verifying the amount of the overpayment.
26 Interest is not allowed if:

27 (a) the overpayment is refunded within ~~6 months~~ 45 days from the date the return is due or the
28 date the return is filed, whichever date is later;

29 (b) the overpayment results from the carryback of a net operating loss; or

30 (c) the amount of interest is less than \$1.

1 (5) An overpayment not made incident to a bona fide and orderly discharge of an actual income
2 tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with
3 respect to which interest is allowable."
4

5 **NEW SECTION. Section 9. Remittance of tax for fourth quarter of 1995 -- filing of required**
6 **employer returns.** Notwithstanding the provisions of [sections 1 and 6], the provisions of 15-30-204 and
7 15-30-207, as they read on January 1, 1995, govern and control the payment of tax for wages paid during
8 1995 and the filing of all required employer returns.
9

10 **NEW SECTION. Section 10. Codification instruction.** (1) [Sections 1 and 2] are intended to be
11 codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part
12 2, apply to [sections 1 and 2].

13 (2) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
14 the provisions of Title 39, chapter 71, part 25, apply to [section 3].
15

16 **NEW SECTION. Section 11. Effective date -- applicability.** [This act] is effective on passage and
17 approval and applies to tax years beginning after December 31, 1995, and to state income withholding
18 taxes and old fund liability taxes due for calendar year 1996 and thereafter.
19

-END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 4, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 293 (third reading copy -- blue), respectfully report that HB 293 be amended as follows and as so amended be concurred in.

Signed: 
Senator Gerry Devlin, Chair

That such amendments read:

1. Page 5, line 16.

Strike: "\$499"


Insert: "\$1,199"

2. Page 5, line 28.

Strike: "\$500"

Insert: "\$1,200"

-END-


Amd. Coord.
3/15 Sec. of Senate

Van Valkenburg
Senator Carrying Bill

HB 293

SENATE

HOUSE BILL NO. 293

INTRODUCED BY REAM, VAN VALKENBURG

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE MODERNIZATION OF THE STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX LAWS BY ~~REQUIRING THE USE OF~~ PROVIDING THE OPTION OF USING MODERN TECHNOLOGY TO FILE AND REMIT TAXES; ALIGNING THE TIMING OF PAYMENT OF WITHHOLDING TAX AND OLD FUND LIABILITY TAX WITH THE PAYMENT OF FEDERAL WITHHOLDING TAX, THUS REDUCING PAPERWORK FOR BOTH THE EMPLOYERS AND THE STATE; REDUCING THE PERIOD DURING WHICH INTEREST DOES NOT HAVE TO BE PAID ON REFUNDS OF OVERPAYMENT OF INCOME TAXES FROM 6 MONTHS TO 45 DAYS; AMENDING SECTIONS 15-30-149, 15-1-802, 15-30-201, 15-30-204, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. ~~Taxes to be paid and returns to be filed by electronic~~ **ELECTRONIC funds transfer and electronic reporting -- EMPLOYER OPTION.** (1) ~~Unless an employer has filed the election provided for in subsection (2), all tax payments required by 15-30-204 must be made by electronic funds transfer, as defined in 15-1-801, if the employer's withholding tax liability for the preceding lookback period:~~

~~(a) ending June 30, 1995, was \$100,000 or greater;~~

~~(b) ending June 30, 1996, was \$12,000 or greater;~~

~~(c) ending June 30, 1997, and thereafter was \$500 or greater.~~

~~(2) An employer, within 30 days of notification of the employer's remittance schedule as required by 15-30-204, may elect to be exempt from the electronic payment and filing requirements~~ REMIT AND FILE STATE INCOME TAX WITHHOLDING AND OLD FUND LIABILITY TAX ELECTRONICALLY. An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. AN EMPLOYER MAY CANCEL THE ELECTION PROVIDED IN THIS SECTION BY PROVIDING WRITTEN NOTICE OF THE CANCELLATION TO THE DEPARTMENT.

1 ~~(3)(2)~~ An employer required WHO ELECTS pursuant to subsection (1) to remit tax payments
2 through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the
3 department in a format established and approved by the department.

4 ~~(4) An employer not subject to the provisions of subsection (1) may elect to remit tax payments~~
5 ~~and file returns electronically by notifying the department by December 1 of the year prior to the year in~~
6 ~~which electronic payment and filings are to be made. The election is for the entire calendar year, and the~~
7 ~~employer shall comply with the yearly remittance schedule as provided in 15-30-204.~~

8
9 **NEW SECTION. Section 2. Signature alternatives for electronically filed returns.** For purposes of
10 this part, the director of revenue may prescribe, by rule, methods for the signing, subscribing, or verifying
11 of the electronically filed tax returns required to be filed by this part. Returns electronically filed in
12 accordance with the methods adopted by rule have the same validity and consequences as physical forms
13 signed by a taxpayer.

14
15 **NEW SECTION. Section 3. Remittance of old fund liability tax.** An employer who is not required
16 to withhold wages pursuant to 15-30-202 but who had an old fund liability tax obligation under
17 39-71-2503 during the preceding lookback period, as defined in 15-30-201, is subject to the same
18 remittance schedules and filing requirements provided in 15-30-204 as employers paying wages subject
19 to state income tax withholding under 15-30-202.

20
21 ~~**Section 4. Section 15-1-802, MCA, is amended to read:**~~

22 ~~"15-1-802. Taxes to be paid by electronic funds transfer limitation. All taxes, except the state~~
23 ~~income withholding tax and the old fund liability tax provided for in 15-30-204 and 39-71-2503, due the~~
24 ~~state must be paid by electronic funds transfer whenever the amount due is \$500,000 or greater.~~
25 ~~Whenever the payment of taxes is required to be made by electronic funds transfer under this section and~~
26 ~~the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business~~
27 ~~day thereafter after the due date."~~

28
29 **Section 4. Section 15-30-201, MCA, is amended to read:**

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

1 apply:

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

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

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

14 (4) "Lookback period" means the 12-month period ending the preceding June 30.

15 ~~(4)~~(5) "Wages" means all remuneration, ~~{other than fees paid to a public official},~~ for services
16 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any
17 medium other than cash, except that the term does not include remuneration paid:

18 (a) for active service as a member of the regular armed forces of the United States, as defined in
19 10 U.S.C. 101(33);

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

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

23 (d) for casual labor not in the course of the employer's trade or business performed in any calendar
24 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
25 is performed by an individual who is regularly employed by the employer to perform the service. For
26 purposes of this subsection ~~(4)(d)~~ (d), an individual is considered to be regularly employed by an employer
27 during a calendar quarter only if:

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

30 (ii) the individual was regularly employed, ~~{as determined under subsection (4)(d)(i)}~~ (5)(d)(i), by the

1 employer in the performance of service during the preceding calendar quarter;

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

4 (f) for services performed by ~~a duly an~~ ordained, commissioned, or licensed minister of a church
5 in the exercise of ~~his~~ the ministry or by a member of a religious order in the exercise of duties required by
6 the order;

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

10 (ii) for services performed by an individual in and at the time of the sale of newspapers or magazines
11 to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by
12 ~~him~~ the individual at a fixed price, ~~his~~ the individual's compensation being based on the retention of the
13 excess of the price over the amount at which the newspapers or magazines are charged ~~to him~~, whether
14 or not ~~he~~ the individual is guaranteed a minimum amount of compensation for the service or is entitled to
15 be credited with the unsold newspapers or magazines turned back;

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

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

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

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

26 (l) by an employer for dependent care assistance actually provided to or on behalf of an employee
27 and for which a credit is allowed under 15-30-186 or 15-31-131, subject to the limitations provided in
28 section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection ~~(4)(k)~~ (5)(k)
29 terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

30

1 Section 5. Section 15-30-204, MCA, is amended to read:

2 "15-30-204. ~~Quarterly or weekly~~ Weekly, monthly, or annual payment. (1) ~~Except as provided~~
 3 ~~in subsection (3), on or before the last day of April, July, October, and January, every~~ An employer subject
 4 to the provisions of 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding
 5 lookback period was \$12,000 or greater shall file a return in ~~such~~ the form and containing ~~such~~ the
 6 information ~~as that~~ that may be required by the department and, ~~except as provided in subsection (2),~~ shall pay
 7 ~~therewith~~ the amount required by 15-30-202 to be deducted and withheld by the employer from wages paid
 8 during the preceding ~~quarter~~ payroll period. The payment must be submitted on or before the date on
 9 which federal income tax weekly withholding payments are due. On or before the last day of April, July,
 10 October, and January, the employer shall file a return in the form and containing the information required
 11 by the department. ~~Quarterly~~ The quarterly returns for employers ~~paying weekly shall~~ subject to this
 12 subsection must be used to summarize and adjust payments and to request refunds of overpayments. The
 13 employer shall also file the annual statement as required by 15-30-207.

14 (2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for
 15 withholdings ~~equaled or exceeded \$300,000 for the preceding calendar year~~ during the preceding lookback
 16 period was less than \$12,000 but greater than \$499 \$1,199 shall remit a ~~weekly~~ monthly payment to the
 17 department for the amount required by 15-30-202 to be deducted and withheld by the employer from
 18 wages paid during the preceding ~~week~~ month. The ~~weekly~~ monthly payment must be submitted on or
 19 before the ~~date on which federal income tax weekly withholding payments are due~~ 15th day of the month
 20 following the payment of the wages. The employer subject to this subsection shall, on or before February
 21 28 of the year following payment of the wages, file an annual return in the form and containing the
 22 information required by the department and the annual statement required by 15-30-207. The annual
 23 returns for employers subject to this subsection must be used to summarize and adjust payments and to
 24 request refunds of overpayments.

25 (3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202
 26 upon the wages of all employees of any employer is less than ~~\$10 in each quarterly period of any year,~~
 27 ~~such employer shall not be required to file the quarterly returns or to make the quarterly payments as~~
 28 ~~provided in subsection (1), but in lieu thereof~~ such \$500 \$1,200 for the preceding lookback period, the
 29 employer shall, on or before February 28 of the year succeeding that in which ~~such~~ the wages were paid,
 30 file an annual return in ~~such~~ the form ~~as may be~~ as required by the department, together with the annual

1 statement required by 15-30-207, and shall at the same time pay therewith the amount required to be
 2 deducted and withheld by the employer from all wages paid during the preceding calendar year.

3 (b) An employer subject to the provisions of this subsection (3) may elect to remit monthly
 4 payments. If an employer elects to make monthly payments, the employer shall remit monthly payments
 5 during the entire year and is subject to the same interest and penalty provisions as employers subject to
 6 the provisions of subsection (2).

7 (c) If an employer subject to the provisions of this subsection (3) does not file the annual return
 8 required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection
 9 (2) until the department determines from the employer's subsequent filing history that the employer will
 10 file in a timely fashion.

11 (4) (a) On or before November 1 of each year, the department shall notify the employers subject
 12 to the provisions of this section of the employers' remittance schedules for the following calendar year
 13 based upon the department's review of the preceding lookback period.

14 (b) A new employer or an employer with no filing history is subject to the provisions of subsection
 15 (2) until the department is able to determine the employer's proper remittance schedule by a review of the
 16 employer's first complete lookback period.

17 ~~(4)~~(5) If the department has reason to believe that collection of the amount of any tax withheld is
 18 in jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of
 19 income tax."
 20

21 **Section 6.** Section 39-71-2501, MCA, is amended to read:

22 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

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

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

28 (3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an
 29 individual performs or performed any service, of whatever nature, as an employee of the person.

30 (b) If the person for whom the individual performs or performed the service does not have control

1 of the payment of the wages for the service, the term "employer" means the person who has control of
 2 the payment of wages.

3 ~~(4) "Employer's payroll" means wages paid for each of the calendar quarters ending March 31,~~
 4 ~~June 30, September 30, and December 31.~~

5 ~~(5)~~ "State fund" means the state compensation insurance fund.

6 ~~(6)~~(5) "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503,
 7 created to address the unfunded liability for claims for injuries resulting from accidents that occurred before
 8 July 1, 1990.

9 ~~(7)~~(6) "Tax account" means the workers' compensation tax account created by 39-71-2504.

10 ~~(8)~~(7) "Wages" means all remuneration for services performed in this state by an employee for an
 11 employer, including the cash value of all remuneration paid in any medium other than cash. The term does
 12 not include remuneration paid:

13 (a) for casual labor not in the course of the employer's trade or business performed in any calendar
 14 quarter by an employee, unless the cash remuneration paid for the service is \$50 or more and the service
 15 is performed by an individual who is regularly employed by the employer to perform the service. For
 16 purposes of this subsection ~~(8)(a)~~ (a), an individual is considered to be regularly employed by an employer
 17 during a calendar quarter only if:

18 (i) on each of 24 days during the calendar quarter, the individual performs service not in the course
 19 of the employer's trade or business for the employer for some portion of the day; and

20 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (7)(a)(i), by the
 21 employer in the performance of service during the preceding calendar quarter;

22 (b) for services not in the course of the employer's trade or business, to the extent that
 23 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
 24 and the payments are received by the employee at the request of and for the convenience of the employer;

25 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
 26 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
 27 the employee or the employee's dependents, and employees' club activities;

28 (d) as wages or compensation, the taxation of which is prohibited by federal law."
 29

30 **Section 7.** Section 39-71-2503, MCA, is amended to read:

1 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
2 employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional
3 amount of old fund liability tax provided in 39-71-2505, of the ~~employer's payroll in the preceding calendar~~
4 ~~quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus~~
5 ~~the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the~~
6 ~~preceding week~~ wages paid by the employer:

7 (i) for the preceding payroll period for employers subject to the payment schedule contained in
8 15-30-204(1);

9 (ii) for the preceding month for employers subject to the payment schedule contained in
10 15-30-204(2); and

11 (iii) for the preceding year for employers subject to the payment schedule contained in
12 15-30-204(3)(a).

13 (b) There is imposed on each employee, except workers engaged in the rail industry who are under
14 the jurisdiction of the federal railroad administration, United States department of transportation, an old
15 fund liability tax, as provided in 39-71-2505, on the employee's wages ~~in the preceding calendar quarter.~~
16 Each employer making payment of wages for services performed in this state shall deduct and withhold the
17 tax from the wages.

18 (c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
19 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
20 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
21 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
22 partner, or member or manager.

23 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
24 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
25 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
26 officer's wages.

27 (e) A corporate officer of a closely held corporation who meets the stock ownership test under
28 section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is
29 required to pay the old fund liability tax only on the wages received. The corporation is not liable for the
30 tax on the corporate officer's wages.

1 (f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred
2 for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or
3 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans
4 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month
5 period if the workers' compensation bond repayment account contains on the first day of that period an
6 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is
7 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest
8 that must be paid during that period on the outstanding loans or bonds.

9 (g) Each employer shall maintain the records that the department requires concerning the old fund
10 liability tax. The records are subject to inspection by the department and its employees and agents during
11 regular business hours.

12 (h) An employee does not have any right of action against an employer for any money deducted
13 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
14 this section.

15 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
16 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
17 old fund liability tax required by this section.

18 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
19 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
20 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
21 the old fund liability tax required by this section.

22 (2) All collections of the tax must be deposited as received in the tax account. The tax is in
23 addition to any other tax or fee assessed against persons subject to the tax.

24 ~~(3) (a) On or before the last day of April, July, October, and January, each employer subject to the~~
25 ~~tax shall file a return in the form and containing the information required by the department and, except~~
26 ~~as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the~~
27 ~~employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees'~~
28 ~~old fund liability taxes at the same time.~~

29 ~~(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its~~
30 ~~weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings~~

1 ~~for employees' old fund liability taxes at the same time.~~

2 (e) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made ~~with the~~
3 ~~return filed~~ pursuant to 15-30-204. The department shall first credit a payment to the liability under
4 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

5 (d)(b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners
6 of partnerships, and members or managers of limited liability companies must be made with and at the
7 same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a
8 payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers'
9 compensation tax account provided in 39-71-2504.

10 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
11 department the amounts due under this section who fails to pay an amount is liable to the state for the
12 unpaid amount and any penalty and interest relating to that amount.

13 (5) Returns and remittances under subsection (3) and any information obtained by the department
14 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
15 to the department of labor and industry under circumstances and conditions that ensure the continued
16 confidentiality of the information.

17 (6) The department of labor and industry and the state fund shall, ~~on July 1, 1991, or as soon after~~
18 ~~that date as possible,~~ give the department a list of all employers having coverage under any plan
19 administered or regulated by the department of labor and industry and the state fund. ~~After the lists have~~
20 ~~been given to the department, the~~ The department of labor and industry and the state fund shall update
21 the lists weekly. The department of labor and industry and the state fund shall provide the department with
22 access to their computer data bases and paper files and records for the purpose of the department's
23 administration of the tax imposed by this section.

24 (7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding
25 administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for
26 overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply
27 to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to
28 partners of partnerships, to members or managers of limited liability companies, and to the department."
29

30 **SECTION 8. SECTION 15-30-149, MCA, IS AMENDED TO READ:**

1 **"15-30-149. Credits and refunds -- period of limitations.** (1) If the department discovers from the
2 examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the
3 amount of income tax collected is in excess of the amount due or that any penalty or interest was
4 erroneously or illegally collected, the amount of the overpayment must be credited against any income tax,
5 penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the
6 taxpayer.

7 (2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the
8 expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department
9 determines there has been an overpayment.

10 (b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be
11 refunded or credited within the period that expires on the 15th day of the 40th month following the close
12 of the taxable year of the net operating loss if that period expires later than 5 years from the due date of
13 the return for the year to which the net operating loss is carried back.

14 (3) Within 6 months after a claim for refund is filed, the department shall examine the claim and
15 either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer
16 within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the
17 taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

18 (4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest
19 is payable from the due date of the return or from the date of the overpayment, whichever date is later,
20 to the date the department approves refunding or crediting of the overpayment. With respect to tax paid
21 by withholding or by estimate, the date of overpayment is the date on which the return for the taxable year
22 was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the
23 taxpayer's estimated tax for the succeeding taxable year. Interest does not accrue during any period the
24 processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish
25 information requested by the department for the purpose of verifying the amount of the overpayment.
26 Interest is not allowed if:

27 (a) the overpayment is refunded within ~~6 months~~ 45 days from the date the return is due or the
28 date the return is filed, whichever date is later;

29 (b) the overpayment results from the carryback of a net operating loss; or

30 (c) the amount of interest is less than \$1.

1 (5) An overpayment not made incident to a bona fide and orderly discharge of an actual income
2 tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with
3 respect to which interest is allowable."
4

5 **NEW SECTION. Section 9. Remittance of tax for fourth quarter of 1995 -- filing of required**
6 **employer returns.** Notwithstanding the provisions of [sections 1 and 6], the provisions of 15-30-204 and
7 15-30-207, as they read on January 1, 1995, govern and control the payment of tax for wages paid during
8 1995 and the filing of all required employer returns.
9

10 **NEW SECTION. Section 10. Codification instruction.** (1) [Sections 1 and 2] are intended to be
11 codified as an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part
12 2, apply to [sections 1 and 2].

13 (2) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, part 25, and
14 the provisions of Title 39, chapter 71, part 25, apply to [section 3].
15

16 **NEW SECTION. Section 11. Effective date -- applicability.** [This act] is effective on passage and
17 approval and applies to tax years beginning after December 31, 1995, and to state income withholding
18 taxes and old fund liability taxes due for calendar year 1996 and thereafter.
19

-END-