

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

House BILL NO. 320

INTRODUCED BY Galvin H. Harkins Emar Jacobson
Cocchiarella VanHorn Bonafant Jacobs

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE EXEMPTION FROM THE REQUIREMENTS OF THE OLD FUND LIABILITY TAX TO EXPLICITLY EXCLUDE AN EMPLOYER OR EMPLOYEE WHO IS SUBJECT TO THE EQUIVALENT OF FEDERAL WORKERS' COMPENSATION LEGISLATION; AMENDING SECTIONS 39-71-2501 AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 39-71-2501, MCA, is amended to read:

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

- (1) "Department" means the department of revenue provided for in 2-15-1301.
- (2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.
- (3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.
(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.
- (4) "Employer's payroll" means wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31.
- (5) "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes but is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.
- ~~(5)~~(6) "State fund" means the state compensation insurance fund.

1 ~~(6)~~(7) "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)~~(8) "Tax account" means the workers' compensation tax account created by 39-71-2504.

5 ~~(8)~~(9) "Wages" means all remuneration for services performed by an employee for an employer,
6 including the cash value of all remuneration paid in any medium other than cash. The term does not include
7 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)~~ (9)(a), an individual is considered to be regularly employed by an
12 employer 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)~~ (9)(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 2.** 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, except an employer whose employees are covered by federal workers' compensation legislation,
28 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
29 old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter,
30 except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the

1 additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding
2 week.

3 (b) There is imposed on each employee, except ~~workers~~ an employee engaged in the rail industry
4 ~~who are under the jurisdiction of the federal railroad administration, United States department of~~
5 ~~transportation,~~ is covered by federal workers' compensation legislation, an old fund liability tax, as provided
6 in 39-71-2505, on the employee's wages in the preceding calendar quarter.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
30 department the amounts due under this section who fails to pay an amount is liable to the state for the

1 unpaid amount and any penalty and interest relating to that amount.

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

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

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

18

19 NEW SECTION. **Section 3. Effective date -- retroactive applicability.** [This act] is effective on
20 passage and approval and applies retroactively, within the meaning of 1-2-109, to taxes payable beginning
21 June 30, 1993.

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0320, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying the exemption from the requirements of the Old Fund Liability Tax to explicitly exclude an employer or employee who is subject to the equivalent of federal workers' compensation legislation.

ASSUMPTIONS:

1. The proposal applies retroactively to taxes payable beginning June 30, 1993; this is the initial effective date of the old fund liability tax (OFLT).
2. Taxes that have been collected on federal employees since June 30, 1993, will be refunded under this proposal in FY96. The department estimates that these refunds will total \$650,000.
3. FY96 and FY97 revenues are reduced by the amount of OFLT that would be collected from federal employees under current law. Based on projections of the federal employee tax base from Bureau of Economic Analysis, U.S. Department of Commerce data series, the department estimates that this will result in a revenue reduction of \$1,351,750 in FY96 and \$1,419,750 in FY97.
4. The department will incur administrative expenses associated with processing refunds (postage, computer processing, warrants, etc.)

FISCAL IMPACT:

Income Tax Division

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	\$14,000	0

Funding:

Old Fund Liability Tax (02)	\$14,000	0
-----------------------------	----------	---

Revenues:

Old Fund Liability Tax (02)	(\$2,001,750)	(\$1,419,750)
-----------------------------	---------------	---------------

Net Impact:

Old Fund Liability Tax (02)	(\$2,015,750)	(\$1,419,750)
-----------------------------	---------------	---------------

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Based on an OBPP model of long-range projections for the old fund and OFLT, HB320 is unlikely to impair the State Fund's ability to meet its obligations for claims and debt service payments. However, HB320 could affect the State Fund's ability to accelerate retirement of old fund debt and could, therefore, marginally increase total debt service costs. The State Fund is likely to have sufficient cash balances to accelerate retirement of old fund debt beginning in FY96. HB320 could also extend the period of time in which the OFLT is maintained in order to amortize all old fund liabilities by approximately one year.

(Continued)

Dave Lewis 1-30-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 PATRICK GALVIN, PRIMARY SPONSOR DATE

Fiscal Note for HB0320, as introduced

HB 320

TECHNICAL NOTES:

HB320, particularly in conjunction with other legislation which reduces OFLT revenues such as SB33, may require the consent of holders of the 1993 variable rate notes or require refunding of this issue if the proposed change is deemed to violate covenants contained in the 1993 bond statement. Insofar as OFLT revenues are higher than previously estimated and HB320 would reduce current OFLT revenues by less than 5%, the preliminary conclusion is that it is unlikely that HB320, by itself, would be determined by the courts to be a substantial impairment of state covenants. The legislature may wish to seek the opinion of the state bond counsel on this matter.

APPROVED BY COMMITTEE
ON BUSINESS AND LABOR

House BILL NO. 320

INTRODUCED BY

Galvin H. HARP
Cocchiarella *V. H. HARP* *Ronald*

Emur Jacobson
Squires

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE EXEMPTION FROM THE REQUIREMENTS OF THE OLD FUND LIABILITY TAX TO EXPLICITLY EXCLUDE AN EMPLOYER OR EMPLOYEE WHO IS SUBJECT TO THE EQUIVALENT OF FEDERAL WORKERS' COMPENSATION LEGISLATION; AMENDING SECTIONS 39-71-2501 AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 39-71-2501, MCA, is amended to read:

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

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

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

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

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

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

(5) "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes but is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.

~~(5)~~(6) "State fund" means the state compensation insurance fund.

1 ~~(6)(7)~~ "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)(8)~~ "Tax account" means the workers' compensation tax account created by 39-71-2504.

5 ~~(8)(9)~~ "Wages" means all remuneration for services performed by an employee for an employer,
 6 including the cash value of all remuneration paid in any medium other than cash. The term does not include
 7 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)~~ (9)(a), an individual is considered to be regularly employed by an
 12 employer 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)~~ (9)(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 2.** 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, except an employer whose employees are covered by federal workers' compensation legislation,
 28 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
 29 old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter,
 30 except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the

1 additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding
2 week.

3 (b) There is imposed on each employee, except ~~workers~~ an employee engaged in the rail industry
4 ~~who are under the jurisdiction of the federal railroad administration, United States department of~~
5 ~~transportation,~~ is covered by federal workers' compensation legislation, an old fund liability tax, as provided
6 in 39-71-2505, on the employee's wages in the preceding calendar quarter.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
30 department the amounts due under this section who fails to pay an amount is liable to the state for the

1 unpaid amount and any penalty and interest relating to that amount.

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

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

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

18

19 **NEW SECTION. Section 3. Effective date -- retroactive applicability.** [This act] is effective on
20 passage and approval and applies retroactively, within the meaning of 1-2-109, to taxes payable beginning
21 June 30, 1993.

22

-END-

House BILL NO. 320

INTRODUCED BY

Galvin H. Hartz *Emar Giacoleso*
Cocchiarella *V. H. Hartz* *Ronald*

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE EXEMPTION FROM THE REQUIREMENTS OF THE OLD FUND LIABILITY TAX TO EXPLICITLY EXCLUDE AN EMPLOYER OR EMPLOYEE WHO IS SUBJECT TO THE EQUIVALENT OF FEDERAL WORKERS' COMPENSATION LEGISLATION; AMENDING SECTIONS 39-71-2501 AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 39-71-2501, MCA, is amended to read:

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

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

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

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

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

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

(5) "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes but is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.

~~(5)~~(6) "State fund" means the state compensation insurance fund.

1 ~~(6)(7)~~ "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)(8)~~ "Tax account" means the workers' compensation tax account created by 39-71-2504.

5 ~~(8)(9)~~ "Wages" means all remuneration for services performed by an employee for an employer,
6 including the cash value of all remuneration paid in any medium other than cash. The term does not include
7 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)~~ (9)(a), an individual is considered to be regularly employed by an
12 employer 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)~~ (9)(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 2.** 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, except an employer whose employees are covered by federal workers' compensation legislation,
28 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
29 old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter,
30 except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the

1 additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding
2 week.

3 (b) There is imposed on each employee, except ~~workers~~ an employee engaged in the rail industry
4 ~~who are under the jurisdiction of the federal railroad administration, United States department of~~
5 ~~transportation,~~ is covered by federal workers' compensation legislation, an old fund liability tax, as provided
6 in 39-71-2505, on the employee's wages in the preceding calendar quarter.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
30 department the amounts due under this section who fails to pay an amount is liable to the state for the

1 unpaid amount and any penalty and interest relating to that amount.

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

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

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

18
19 **NEW SECTION. Section 3. Effective date -- retroactive applicability.** [This act] is effective on
20 passage and approval and applies retroactively, within the meaning of 1-2-109, to taxes payable beginning
21 June 30, 1993.

22 -END-

1 HOUSE BILL NO. 320

2 INTRODUCED BY GALVIN, HIBBARD, LYNCH, HARP, EWER, JACOBSON, COCCHIARELLA,
3 VAN VALKENBURG, BENEDICT, SQUIRES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE EXEMPTION FROM THE REQUIREMENTS OF
6 THE OLD FUND LIABILITY TAX TO EXPLICITLY EXCLUDE AN EMPLOYER OR EMPLOYEE WHO IS
7 SUBJECT TO THE EQUIVALENT OF FEDERAL WORKERS' COMPENSATION LEGISLATION; AMENDING
8 SECTIONS 39-71-2501 AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
9 A RETROACTIVE APPLICABILITY DATE."
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12

13 **Section 1.** Section 39-71-2501, MCA, is amended to read:

14 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

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

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

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

22 (b) If the person for whom the individual performs or performed the service does not have control
23 of the payment of the wages for the service, the term employer means the person who has control of the
24 payment of wages.

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

27 (5) "Federal workers' compensation legislation" means federal legislation that provides an employee
28 with compensation or remuneration for accidental injury or death. This legislation includes but is not limited
29 to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base
30 Act.

1 ~~(5)~~(6) "State fund" means the state compensation insurance fund.

2 ~~(6)~~(7) "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503,
3 created to address the unfunded liability for claims for injuries resulting from accidents that occurred before
4 July 1, 1990.

5 ~~(7)~~(8) "Tax account" means the workers' compensation tax account created by 39-71-2504.

6 ~~(8)~~(9) "Wages" means all remuneration for services performed by an employee for an employer,
7 including the cash value of all remuneration paid in any medium other than cash. The term does not include
8 remuneration paid:

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

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

16 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (9)(a)(i), by the
17 employer in the performance of service during the preceding calendar quarter;

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

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

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

25

26 **Section 2.** Section 39-71-2503, MCA, is amended to read:

27 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
28 employer, except an employer whose employees are covered by federal workers' compensation legislation,
29 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
30 old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter,

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

4 (b) There is imposed on each employee, except ~~workers~~ an employee engaged in the rail industry
5 ~~who are under the jurisdiction of the federal railroad administration, United States department of~~
6 ~~transportation, is covered by federal workers' compensation legislation,~~ an old fund liability tax, as provided
7 in 39-71-2505, on the employee's wages in the preceding calendar quarter.

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

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

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

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

29 (g) Each employer shall maintain the records that the department requires concerning the old fund
30 liability tax. The records are subject to inspection by the department and its employees and agents during

1 regular business hours.

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

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

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

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

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

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

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

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

30 (4) An employer's officer or employee with the duty to collect, account for, and pay to the

1 department the amounts due under this section who fails to pay an amount is liable to the state for the
2 unpaid amount and any penalty and interest relating to that amount.

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

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

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

19
20 **NEW SECTION. Section 3. Effective date -- retroactive applicability.** [This act] is effective on
21 passage and approval and applies retroactively, within the meaning of 1-2-109, to taxes payable beginning
22 June 30, 1993.

23 -END-