

1 *Raney* *Weldon* *Jim*  
 2 INTRODUCED BY *Aster Cottlett* *Milam* *Kayle* *Jacobs*  
 3 *Mercer* *Cocchiarella* *Hittinger* *Emery* *Witarswa*  
 4 *Chris Hansen* *Forrest* *Carlson* *Long* *Quinn* *Forbes* *Josh*  
 5 *Eric* *Lee* *83615* *Hallyn* *Go* *Nelson* *Peck*  
 6 *Harriet*

House BILL NO. 550

7 A BILL FOR AN ACT ENTITLED: AN ACT PROVIDING IMPROVED TAXPAYER SERVICE TO BUSINESSES  
 8 BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX,  
 9 UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX; PROVIDING A UNIFORM DEFINITION  
 10 OF INDEPENDENT CONTRACTOR; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-211,  
 11 15-1-701, 15-1-704, 15-1-708, 15-2-201, 15-30-201, 15-30-303, 39-51-1105, 39-51-1303, 39-51-1304,  
 12 AND 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS."

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

14 Section 1. Section 15-30-201, MCA, is amended to read:

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

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

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

24 (3) "Employer" means the person for whom an individual performs or performed any service, of  
 25 whatever nature, as an employee of the person; ~~except that~~ However, if the person for whom the  
 26 individual performs or performed the service does not have control of the payment of the wages for the  
 27 service, the term "employer" means the person having control of the payment of wages.

28 (4) "Independent contractor" means an individual who renders service in the course of an  
 29 occupation and:

30 (a) has been and will continue to be free from control or direction over the performance of the

1 services, both under contract and in fact; and

2 (b) is engaged in an independently established trade, occupation, profession, or business.

3 ~~(4)(5)~~ "Wages" means all remuneration, ~~to~~ other than fees paid to a public official, ~~for~~ services  
4 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any  
5 medium other than cash, except that the term does not include remuneration paid:

6 (a) for active service as a member of the regular armed forces of the United States, as defined in  
7 10 U.S.C. 101(33);

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

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

11 (d) 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 ~~(4)(d)(5)(d)~~, 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 a quarter the individual performs service not in the course of the  
17 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 (4)(d)(i) (5)(d)(i)~~, by  
19 the employer in the performance of service during the preceding calendar quarter;

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

22 (f) for services performed by a duly ordained, commissioned, or licensed minister of a church in  
23 the exercise of his ministry or by a member of a religious order in the exercise of duties required by the  
24 order;

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

28 (ii) for services performed by an individual in and at the time of the sale of newspapers or  
29 magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to  
30 be sold ~~by him~~ at a fixed price, ~~his~~ the compensation being based on the retention of the excess of the

1 price over the amount at which the newspapers or magazines are charged ~~to him~~, whether or not he ~~is~~ the  
 2 individual is guaranteed a minimum amount of compensation for the service or is entitled to be credited with  
 3 the unsold newspapers or magazines turned back;

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

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

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

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

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

18  
 19 **Section 2.** Section 15-1-211, MCA, is amended to read:

20 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall  
 21 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

22 (a) The tax review procedure described in this section applies to all taxes administered by the  
 23 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,  
 24 and property taxes, and the issue of whether an employer-employee relationship existed between the  
 25 taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the  
 26 employment relationship was that of an independent contractor. The procedure applies to any revised  
 27 assessment of centrally assessed property taxed pursuant to chapter 23.

28 (b) The term "taxpayers", as used in this section, includes all persons determined by the  
 29 department to have a potential tax liability.

30 (2) (a) If the department determines that a request for a refund should be denied in whole or part,

1 it shall notify the taxpayer of the determination. If the department determines that a person has failed to  
2 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the  
3 running of any applicable statute of limitations regarding the assessment of the tax.

4 (b) A notice under this section must clearly state:

5 (i) the reasons for the department's determination that a refund is not due or that tax plus interest  
6 and penalty, if any, is due;

7 (ii) the taxpayer's right to a review by the department, ~~and his~~ the taxpayer's right to appeal after  
8 a final department decision, and the taxpayer's right to a review of determinations by the department of  
9 labor and industry and board of labor appeals of whether an employer-employee relationship existed  
10 between the taxpayer and certain individuals or whether the employment relationship was that of an  
11 independent contractor;

12 (iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right  
13 to contest the department's determination under this section or to file an appeal with the state tax appeal  
14 board;

15 (iv) that the taxpayer has 30 days to either notify the department in writing that ~~he~~ the taxpayer  
16 does not agree with an assessment or pay the amount assessed;

17 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless ~~he~~  
18 the taxpayer notifies the department that ~~he~~ the taxpayer disagrees with an assessment or pays within 30  
19 days; and

20 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the  
21 tax.

22 (3) (a) A taxpayer shall notify the department, in writing, that ~~he~~ the taxpayer objects to the  
23 determination within 30 days from the date the notice is mailed. The notification by the taxpayer is not  
24 required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is  
25 objecting to a determination that an employer-employee relationship existed between the taxpayer and  
26 individuals subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify  
27 the department within 30 days:

28 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

29 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax  
30 appeal board; and

1 (iii) a warrant for distraint may be issued without further opportunity to be heard on the  
2 assessment.

3 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that ~~he~~ the taxpayer  
4 disagrees with a tax assessment shall present ~~his~~ the objections, the reasons for ~~his~~ the objections, and  
5 any other information to the administrator of the division that administers the tax or to ~~his~~ the  
6 administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The  
7 reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an  
8 informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

9 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer  
10 disagrees with the department's determination that an employer-employee relationship existed between the  
11 taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, must  
12 be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2403 and  
13 39-51-2410.

14 (c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b),  
15 the administrator or ~~his~~ a designee shall issue a written decision addressing the taxpayer's objections and  
16 describing the reasons for the determination. The administrator's decision must also clearly set forth the  
17 taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director  
18 of revenue.

19 (4) (a) A taxpayer shall notify the department in writing that ~~he~~ the taxpayer objects to the  
20 administrator's decision within 30 days from the date that the decision is mailed, or ~~he~~ the taxpayer may  
21 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30  
22 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer  
23 waives any further right to review or appeal and a warrant for distraint may be issued without further  
24 opportunity to be heard on the assessment.

25 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision  
26 pursuant to subsection (4)(a) shall present ~~his~~ the taxpayer's objections, ~~his~~ the reasons for the objections,  
27 and any other information to the director of revenue or ~~his~~ the director's designee within 60 days after the  
28 notice referred to in subsection (4)(a) is mailed. The director or ~~his~~ the designee may consider written  
29 information, hold a telephone conference, or conduct an informal conference, none of which are subject  
30 to the Montana Administrative Procedure Act.

1 (c) Within 60 days after the taxpayer has presented ~~his~~ the objections, the director or ~~his~~ the  
2 designee shall issue a written decision addressing the objections and describing the reasons for the  
3 decision. The director's decision is the final decision and assessment of the department.

4 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final  
5 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the  
6 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by  
7 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law  
8 must continue to accrue.

9 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal  
10 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the  
11 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the  
12 department.

13 (b) If the director notifies the board within 30 days after an appeal is filed that ~~he~~ the director has  
14 not had an opportunity to review the administrator's decision and ~~he~~ the director believes that a review may  
15 be helpful in resolving the controversy, the board shall stay the appeal for a time the board considers  
16 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide  
17 ~~his~~ the taxpayer's objections and reasons for ~~his~~ the objections to the director so that the director or ~~his~~  
18 the director's designee may review the controversy and issue a decision within the period of the stay  
19 granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and  
20 the appeal resumed.

21 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the  
22 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by  
23 mutual consent of the department and the taxpayer. The department shall consent to all reasonable  
24 requests for extension of deadlines.

25 (8) (a) The director of revenue or ~~his~~ the director's designee is authorized to enter into an  
26 agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the  
27 department for any taxable period.

28 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except  
29 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

30 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,

1 employee, or agent of this state; and

2 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,  
3 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement  
4 may not be annulled, modified, set aside, or disregarded."

5

6 **Section 3.** Section 15-2-201, MCA, is amended to read:

7 **"15-2-201. Powers and duties.** (1) It ~~shall be~~ is the duty of the state tax appeal board to:

8 (a) prescribe rules for the tax appeal boards of the different counties in the performance of their  
9 duties and for this purpose may schedule meetings of county tax appeal boards, and it ~~shall be~~ is the duty  
10 of all invited county tax appeal board members to attend if possible, and the cost of their attendance ~~shall~~  
11 must be paid from the appropriation of the state tax appeal board;

12 (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not  
13 because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time  
14 period provided for in 15-15-101(2) to hear an appeal.

15 (c) hear appeals from decisions of the county tax appeal boards;

16 (d) hear appeals from decisions of the department of revenue in regard to business licenses,  
17 property assessments, taxes, except determinations that an employer-employee relationship existed  
18 between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2,  
19 and penalties.

20 (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by  
21 a member of the board or ~~his~~ the member's agent. ~~In case any~~ If a witness ~~shall fail to~~ does not obey ~~any~~  
22 a summons to appear before ~~said the~~ board or ~~shall refuse~~ refuses to testify or answer any material  
23 questions or to produce records, books, papers, or documents when required to do so, ~~such that~~  
24 or refusal ~~shall~~ must be reported to the attorney general, who shall thereupon institute proceedings in the  
25 proper district court to punish the witness for ~~such the~~ neglect or refusal. ~~Any~~ A person who ~~shall testify~~  
26 testifies falsely in any material matter under consideration by the board ~~shall be~~ is guilty of perjury and  
27 punished accordingly. Witnesses attending shall receive ~~like~~ the same compensation as witnesses in the  
28 district court. ~~Such~~ The compensation ~~shall~~ must be charged to the proper appropriation for the board.

29 (3) The state tax appeal board ~~shall~~ also have has the duties of an appeal board relating to ~~such~~  
30 other matters as may be provided by law."

1            **NEW SECTION.** **Section 4. Determination of employer status.** A final determination by either the  
2 department of labor and industry or the board of labor appeals that an employer-employee relationship  
3 existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter  
4 30, part 2, is conclusive and binding upon the taxpayer and the department. The determination is not  
5 subject to any further administrative or judicial challenge in any proceeding concerning a determination of  
6 the proper amount of state income tax withholding and old fund liability tax to be paid.

7  
8            **Section 5.** Section 15-30-303, MCA, is amended to read:

9            **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in  
10 accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make  
11 known in any manner:

12            (a) the amount of income or any particulars set forth or disclosed in any individual report or  
13 individual return required under this chapter or any other information secured in the administration of this  
14 chapter; or

15            (b) any federal return or federal return information disclosed on any return or report required by rule  
16 of the department or under this chapter.

17            (2) (a) The officers charged with the custody of the reports and returns may not be required to  
18 produce them or evidence of anything contained in them in an action or proceeding in a court, except in  
19 an action or proceeding:

20            (i) to which the department is a party under the provisions of this chapter or any other taxing act;  
21 or

22            (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other  
23 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

24            (b) The court may require the production of and may admit in evidence only as much of the reports  
25 or of the facts shown by the reports as are pertinent to the action or proceedings.

26            (3) This section does not prohibit:

27            (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any  
28 return or report filed in connection with the taxpayer's tax;

29            (b) the publication of statistics classified to prevent the identification of particular reports or returns  
30 and the items of particular reports or returns; or



1 (c) the inspection by the attorney general or other legal representative of the state of the report  
2 or return of any taxpayer who brings an action to set aside or review the tax based on the report or return  
3 or against whom an action or proceeding has been instituted in accordance with the provisions of  
4 15-30-311.

5 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the  
6 department orders them to be destroyed.

7 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000  
8 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer  
9 or employee of the state, the offender must be dismissed from office and may not hold any public office  
10 in this state for a period of 1 year after dismissal.

11 (6) This section may not be construed to prohibit the department from providing taxpayer return  
12 information and information from employers' payroll withholding reports to:

13 (a) the department of labor and industry to be used for the purpose of investigation and prevention  
14 of noncompliance, tax evasion, prevent and detect fraud, and abuse under the unemployment ~~compensation~~  
15 ~~program~~ insurance laws; or

16 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance,  
17 ~~prevent and detect~~ fraud, and abuse under the workers' compensation program.

18 (7) The department may permit the commissioner of internal revenue of the United States or the  
19 proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative  
20 of either officer to inspect the return of income of any individual or may furnish to the officer or an  
21 authorized representative an abstract of the return of income of any individual or supply the officer with  
22 information concerning an item of income contained in a return or disclosed by the report of an investigation  
23 of the income or return of income of an individual, but the permission may be granted or information  
24 furnished only if the statutes of the United States or of the other state grant substantially similar privileges  
25 to the proper officer of this state charged with the administration of this chapter.

26 (8) The department shall furnish:

27 (a) to the department of justice all information necessary to identify those persons qualifying for  
28 the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the  
29 department of justice to administer the provisions of 61-5-105;

30 (b) to the department of social and rehabilitation services information acquired under 15-30-301,

1 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of  
2 public assistance fraud and abuse, provided notice to the applicant has been given;

3 (c) to the department of labor and industry for the purpose of prevention and detection of fraud  
4 and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation  
5 programs information on whether a taxpayer who is the subject of an ongoing investigation by the  
6 department of labor and industry is an employee, an independent contractor, or self-employed;

7 (d) to the department of fish, wildlife, and parks specific information that is available from income  
8 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting  
9 and fishing licenses;

10 (e) to the board of regents information required under 20-26-1111;

11 (f) to the legislative fiscal analyst and the office of budget and program planning individual income  
12 tax information as provided in 5-12-303. The information provided to the office of budget and program  
13 planning must be the same as the information provided to the legislative fiscal analyst.

14 (g) to the department of transportation the ratio of gross farm income to total gross income based  
15 on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided  
16 that notice to the applicant has been given as provided in 15-70-223. The information obtained by the  
17 department of transportation is subject to the same restrictions on disclosure as are individual income tax  
18 returns."

19  
20 **Section 6.** Section 39-71-2503, MCA, is amended to read:

21 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each  
22 employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional  
23 amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar  
24 quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus  
25 the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the  
26 preceding week.

27 (b) There is imposed on each employee, except workers engaged in the rail industry who are under  
28 the jurisdiction of the federal railroad administration, United States department of transportation, an old  
29 fund liability tax, as provided in 39-71-2505, on the employee's wages in the preceding calendar quarter.

30 (c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation

1 shareholder, on each partner of a partnership, and on each member or manager of a limited liability  
2 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each  
3 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,  
4 partner, or member or manager.

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

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

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

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

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

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

30 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member

1 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and  
2 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state  
3 the old fund liability tax required by this section.

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

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

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

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

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

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

25 (5) Returns and remittances under subsection (3) and any information obtained by the department  
26 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information  
27 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,  
28 tax evasion, fraud, and abuse under the unemployment insurance laws under circumstances and conditions  
29 that ensure the continued confidentiality of the information.

30 (6) The department of labor and industry and the state fund shall, ~~on July 1, 1991, or as soon after~~

1 ~~that date as possible~~, give the department a list of all employers having coverage under any plan  
2 administered or regulated by the department of labor and industry and the state fund. ~~After the lists have~~  
3 ~~been given to the department, the~~ The department of labor and industry and the state fund shall update  
4 the lists weekly. The department of labor and industry and the state fund shall provide the department with  
5 access to their computer data bases and paper files and records for the purpose of the department's  
6 administration of the tax imposed by this section.

7 (7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding  
8 administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for  
9 overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply  
10 to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to  
11 partners of partnerships, to members or managers of limited liability companies, and to the department."  
12

13 **Section 7.** Section 15-1-701, MCA, is amended to read:

14 **"15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of  
15 the department of revenue or of the department of transportation, directed to a sheriff of a county of  
16 Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon  
17 and sell the real and personal property of a delinquent taxpayer.

18 (2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal  
19 property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is  
20 treated in the same manner as a properly docketed judgment lien, and the department may collect  
21 delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the  
22 department may enforce the judgment lien at any time within 10 years of its creation or effective date,  
23 whichever is later.

24 (3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated  
25 interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the  
26 warrant."  
27

28 **Section 8.** Section 15-1-704, MCA, is amended to read:

29 **"15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the  
30 warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the

1 name of the taxpayer listed as the judgment debtor.

2 (2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized  
3 to collect the tax.

4 (3) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
5 pursuant to the provisions of 25-13-102."

6

7 **Section 9.** Section 39-51-1303, MCA, is amended to read:

8 "**39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer, liable  
9 corporate officer or employee, or liable member or manager of a limited liability company referred to in  
10 39-51-1105 defaults in any payment of taxes, penalties, or interest ~~thereon~~ on the taxes and penalties, the  
11 department may at its discretion initiate a civil action in the name of the Montana department of labor and  
12 industry to collect the amount due, and the employer adjudged in default shall pay the costs of ~~such~~ the  
13 action.

14 (2) An action for the collection of taxes due must be brought within 5 years after the due date of  
15 ~~such~~ the taxes or it is barred.

16 (3) The department may pursue its remedy under either this section or 39-51-1304, or both."  
17

18 **Section 10.** Section 39-51-1304, MCA, is amended to read:

19 "**39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including  
20 penalties and interest assessed ~~thereon~~ on the taxes, have the effect of a judgment against the employer,  
21 or liable corporate officer or employee or liable member or manager of a limited liability company referred  
22 to in 39-51-1105, arising at the time ~~such~~ that the payments are due. The department may issue a  
23 certificate setting forth the amount of payments due and directing the clerk of the district court of any  
24 county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time  
25 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the  
26 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce  
27 the judgment ~~pursuant to Title 26, chapter 13, except that the~~ through the sheriff or agent authorized to  
28 collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be  
29 made by means of a certified letter by an agent authorized to collect the tax. The department may enforce  
30 the judgment at any time within 10 years of the creation of the lien or the effective date of the lien,

1 whichever is later.

2 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
3 pursuant to the provisions of 25-13-102.

4 ~~(2)(3)~~ The lien provided for in subsection (1) is not valid against any third party owning an interest  
5 in real or personal property against which the judgment is enforced if:

6 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

7 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating  
8 that all taxes, penalties, and interest due from the grantor have been paid.

9 ~~(3)(4)~~ A grantor who signs and delivers an affidavit is subject to the penalties imposed by  
10 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may  
11 proceed against the employer, liable corporate officer or employee, or liable member or manager of a limited  
12 liability company referred to in 39-51-1105 under this section or 39-51-1303 or this section, or both, to  
13 collect the delinquent taxes, penalties, and interest.

14 ~~(4)(5)~~ The lien provided for in subsection (1) must be released upon payment in full of the unpaid  
15 taxes, penalties, and accumulated interest. The department may release or may partially release the lien  
16 upon partial payment or whenever the department determines that the release or partial release of the lien  
17 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if  
18 it determines that the lien is unenforceable."

19

20 **Section 11.** Section 15-1-708, MCA, is amended to read:

21 **"15-1-708. Release of lien.** (1) Upon payment in full of the unpaid tax plus penalty, if any, and  
22 accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

23 (2) Upon partial payment or whenever the department determines that a release or partial release  
24 of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release  
25 or may partially release the lien acquired by filing the warrant for distraint. The department may release the  
26 lien if it determines that the lien is unenforceable.

27 (3)(a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes  
28 and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is  
29 uncollectible, the department may transfer the debt to the state auditor for collection as provided in  
30 17-4-104.

1           (b) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
2 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
3 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
4 collected must be returned to the department to be applied to the debt, except that all fees or costs  
5 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
6 state auditor shall retain only a proportionate share of the collection fees or costs."

7  
8           **Section 12.** Section 39-51-1105, MCA, is amended to read:

9           **"39-51-1105. Liability of corporate officers or employees for taxes, penalties, and interest owed**  
10 **by corporation.** ~~When a corporation subject to Montana corporate law has failed to file the annual~~  
11 ~~corporation report with the Montana secretary of state as required by law the department shall hold the~~  
12 ~~president, vice president, secretary, and treasurer jointly and severally liable for any taxes, penalties, and~~  
13 ~~interest due for the period in which the corporation is delinquent in filing the annual corporation report. If~~  
14 ~~the required annual corporation report is made and filed after the time specified, such officers may not, on~~  
15 ~~account of prior failure to make report, be held liable for the taxes, penalties, and interest thereafter~~  
16 ~~accruing.~~

17           (1) The officer or employee of a corporation whose duty it is to pay the taxes, penalties, and  
18 interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties,  
19 and interest due.

20           (2) (a) The department shall consider the officer or employee of the corporation individually liable  
21 with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that  
22 the individual:

23           (i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the  
24 corporation;

25           (ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment  
26 of taxes; or

27           (iii) possessed the fiscal authority on behalf of the corporation to direct the filing of reports or  
28 payment of other corporate obligations and exercised the authority that resulted in failure to file reports  
29 or pay taxes due.

30           (b) The department is not limited to considering the elements set forth in subsection (2)(a) to



1 establish individual liability and may consider any other available information.

2 (3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the  
3 discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes,  
4 penalties, and interest unpaid by the corporation.

5 (4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a  
6 member-managed limited liability company must be treated as a partnership, with liability for taxes,  
7 penalties, and interest owed extending to each member.

8 (5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a  
9 manager-managed limited liability company, the managers of the limited liability company are jointly and  
10 severally liable for any taxes, penalties, and interest owed."

11  
12 **NEW SECTION. Section 13. Collection of unpaid taxes, penalties, and interest by offset.** (1) To  
13 collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the  
14 debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The  
15 department, through the state auditor's office, shall provide the debtor with notice of the right to request  
16 a hearing on the offset action. A request for hearing must be made within 30 days of the date of the  
17 notice.

18 (2) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
19 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
20 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
21 collected must be returned to the department to be applied to the debt, except that all fees or costs  
22 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
23 state auditor shall retain only a proportionate share of the collection fees or costs.

24 (3) The department may file a claim for state funds on behalf of the employer if a claim is required  
25 before funds are available for offset.

26 (4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being  
27 transferred for offset.

28  
29 **NEW SECTION. Section 14. Appropriation.** (1)(a) There is appropriated \$68,750 from the general  
30 fund to the department of revenue for the biennium ending June 30, 1997, for a cost-benefit analysis to

1 determine the feasibility of integrating employer wage reporting and related functions.

2 (b) The appropriation contained in subsection (1)(a) is funded by reducing the amount deposited  
3 in the state general fund from the payment of penalties and interest collected by the department of revenue  
4 pursuant to 15-30-321 by the amount of the appropriation contained in subsection (1)(a).

5 (2) There is appropriated \$56,250 from the workers' compensation tax account to the department  
6 of revenue for the biennium ending June 30, 1997, for a cost-benefit analysis to determine the feasibility  
7 of integrating employer wage reporting and related functions.

8 (3) There is appropriated \$125,000 from the unemployment insurance penalty and interest account  
9 established by 39-51-1301 to the department of labor and industry for the biennium ending June 30, 1997,  
10 for a cost-benefit analysis to determine the feasibility of integrating employer wage reporting and related  
11 functions.

12

13 **NEW SECTION. Section 15. Codification instruction.** (1) [Section 4] is intended to be codified as  
14 an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to  
15 [section 4].

16 (2) [Section 13] is intended to be codified as an integral part of Title 39, chapter 51, part 13, and  
17 the provisions of Title 39, chapter 51, part 13, apply to [section 13].

18

19 **NEW SECTION. Section 16. Coordination.** If House Bill No. 100 is passed and approved and if  
20 it includes a section that amends 39-51-1105, then the section of House Bill No. 100 that amends  
21 39-51-1105 is void.

22

23 **NEW SECTION. Section 17. Applicability.** (1) [Sections 7 through 10] apply, respectively, to  
24 warrants of distraint filed by the department of revenue and certificates of lien filed by the department of  
25 labor and industry on or after July 1, 1996.

26 (2) [Section 12] applies to debts incurred on or after July 1, 1996.

27

28 **NEW SECTION. Section 18. Effective dates.** (1) Except as provided in subsections (2) and (3),  
29 [this act] is effective on passage and approval.

30 (2) [Sections 2 through 4] are effective July 1, 1996.

1 (3) [Section 14] is effective July 1, 1995.

2 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0550, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing improved taxpayer service to businesses by streamlining and simplifying wage-based reporting for withholding tax, unemployment insurance tax, and old fund liability tax providing a uniform definition of independent contractor; providing an appropriation.

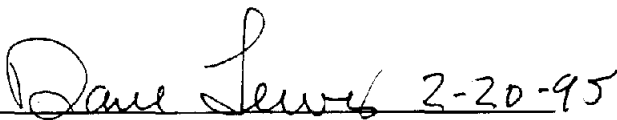
ASSUMPTIONS:

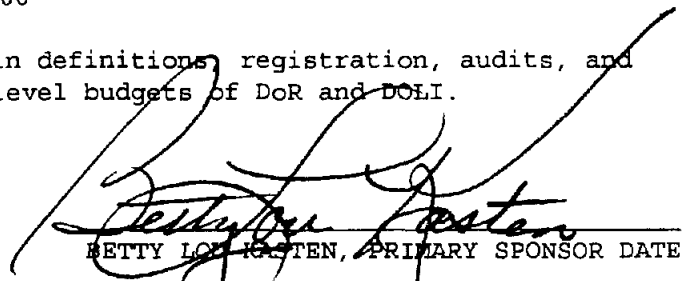
1. Costs of a cost-benefit analysis to determine the feasibility of integrating employer wage reporting and related functions would be consistent with the appropriations provided for in HB550. The cost of the study would be shared equally between the Departments of Revenue (DoR) and Labor and Industry (DOLI).
2. Assuming the cost benefit analysis supports total integration, an in-depth proposal will be prepared for the 1997 Legislature, which would include any personal services and operating costs, including systems development, at that time.
3. Administrative costs to consolidate the registration process, provide a single route of appeals, coordinate audits, and use a uniform definition of independent contractor would be absorbed within the current level budgets of the DoR and DOLI.
4. The change in the definition of independent contractor would not significantly change the end result of DoR's or DOLI's current determinations.
5. The bill would allow for collection of a debt from a liable individual or corporate officer, providing an additional source for collecting the debt. DoR currently uses State Auditor services for collection of bad debt.
6. The bill would permit DOLI to transfer an accounts receivable item to the State Auditor for "offset" sooner than is currently possible. DOLI could take action to collect an account sooner and, as a result, there could be a greater chance of collecting the debt.
7. Section 14(1) (a) provides for a general fund appropriation to the DoR and states further in Section 14(1) (b) that this appropriation would be funded by reducing the amount deposited in the state general fund from penalty and interest monies. It is unclear what Section 14(1) (b) means. This fiscal note assumes that the department would expend funds from the general fund as appropriated and would continue to deposit all penalty and interest monies to the general fund.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>1997 Biennium</u> <u>Difference</u>
<b>Dept. Labor &amp; Industry</b>	
UI Penalty/Interest Acct (03)	125,000
<b>Dept. Revenue</b>	
General Fund (01)	68,750
Old Fund Liability Tax (02)	<u>56,250</u>
Total	250,000

Administrative costs associated with changes in definitions, registration, audits, and appeals would be absorbed within the current level budgets of DoR and DOLI.

  
 DAVE LEWIS, BUDGET DIRECTOR      DATE 3-20-95  
 Office of Budget and Program Planning

  
 BETTY LOU GASTEN, PRIMARY SPONSOR DATE  
 Fiscal Note for HB0550, as introduced  
**HB 550**

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0550, 3rd reading as amended (pink copy)

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing improved taxpayer service to businesses by streamlining and simplifying wage-based reporting for withholding tax, unemployment insurance tax, and old fund liability tax providing a uniform definition of independent contractor; providing an appropriation.

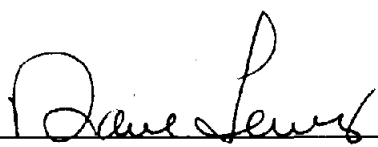
ASSUMPTIONS:

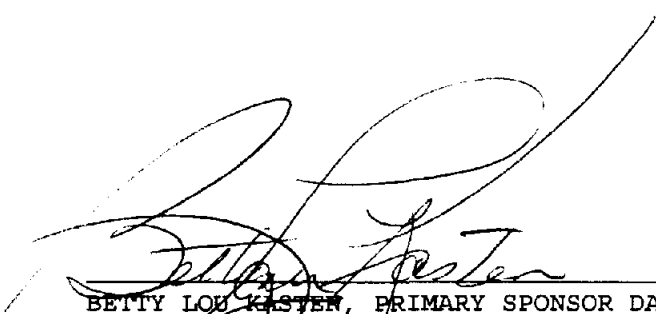
1. Costs of a cost-benefit analysis to determine the feasibility of integrating employer wage reporting and related functions would be consistent with the appropriations provided for in HB550. The cost of the study would be shared equally between the Departments of Revenue (DoR) and Labor and Industry (DOLI).
2. Assuming the cost benefit analysis supports total integration, an in-depth proposal will be prepared for the 1997 Legislature, which would include any personal services and operating costs, including systems development, at that time.
3. Administrative costs to consolidate the registration process, provide a single route of appeals, coordinate audits, and use a uniform definition of independent contractor would be absorbed within the current level budgets of the DoR and DOLI.
4. The change in the definition of independent contractor would not significantly change the end result of DoR's or DOLI's current determinations.
5. The bill would allow for collection of a debt from a liable individual or corporate officer, providing an additional source for collecting the debt. DoR currently uses State Auditor services for collection of bad debt.
6. The bill would permit DOLI to transfer an accounts receivable item to the State Auditor for "offset" sooner than is currently possible. DOLI could take action to collect an account sooner and, as a result, there could be a greater chance of collecting the debt.

FISCAL IMPACT:

<u>Expenditures:</u>	<u>1997 Biennium</u> <u>Difference</u>
<b>Dept. Labor &amp; Industry</b>	
UI Penalty/Interest Acct (03)	125,000
<b>Dept. Revenue</b>	
UI Penalty/Interest Acct (02)	68,750
Old Fund Liability Tax (02)	<u>56,250</u>
Total	250,000

Administrative costs associated with changes in definitions, registration, audits, and appeals would be absorbed within the current level budgets of DoR and DOLI.

 4-4-95  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

  
 BETTY LOU KASTEN, PRIMARY SPONSOR      DATE

**REREFERRED AND APPROVED BY COM ON  
APPROPRIATIONS**

HOUSE BILL NO. 550

INTRODUCED BY KASTEN, BARTLETT, MCCANN, KLAMPE, LARSON, WELDON, SIMON, RANEY,  
GAGE, MILLER, MERCER, COCCHIARELLA, BOHLINGER, EWER, CRIPPEN, WATERMAN, CHRISTIAENS,  
FORRESTER, BENEDICT, STANG, SQUIRES, FORBES, ZOOK, GROSFIELD, BROWN, HALLIGAN, PECK,  
HARRINGTON, T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMPROVED TAXPAYER SERVICE TO BUSINESSES  
BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX,  
UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX; PROVIDING A UNIFORM DEFINITION  
OF INDEPENDENT CONTRACTOR; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-211,  
15-1-701, 15-1-704, 15-1-708, 15-2-201, 15-30-201, 15-30-303, 39-51-1105, 39-51-1303, 39-51-1304,  
AND 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS."

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

**Section 1.** Section 15-30-201, MCA, is amended to read:

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

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

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

(3) "Employer" means the person for whom an individual performs or performed any service, of  
whatever nature, as an employee of the person; ~~except that~~ However, 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 having control of the payment of wages.

1           (4) "Independent contractor" means an individual who renders service in the course of an  
 2 occupation and:

3           (a) has been and will continue to be free from control or direction over the performance of the  
 4 services, both under contract and in fact; and

5           (b) is engaged in an independently established trade, occupation, profession, or business.

6           ~~(4)~~(5) "Wages" means all remuneration, ~~{other than fees paid to a public official}~~, for services  
 7 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any  
 8 medium other than cash, except that the term does not include remuneration paid:

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

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

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

14           (d) for casual labor not in the course of the employer's trade or business performed in any calendar  
 15 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service  
 16 is performed by an individual who is regularly employed by the employer to perform the service. For  
 17 purposes of this subsection ~~(4)(e)~~(5)(d), an individual is considered to be regularly employed by an employer  
 18 during a calendar quarter only if:

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

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

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

25           (f) for services performed by a duly ordained, commissioned, or licensed minister of a church in  
 26 the exercise of his ministry or by a member of a religious order in the exercise of duties required by the  
 27 order;

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

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

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

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

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

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

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

21  
 22 **Section 2.** Section 15-1-211, MCA, is amended to read:

23 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall  
 24 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

25 (a) The tax review procedure described in this section applies to all taxes administered by the  
 26 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,  
 27 and property taxes, and the issue of whether an employer-employee relationship existed between the  
 28 taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the  
 29 employment relationship was that of an independent contractor. The procedure applies to any revised  
 30 assessment of centrally assessed property taxed pursuant to chapter 23.



1 (b) The term "taxpayers", as used in this section, includes all persons determined by the  
2 department to have a potential tax liability.

3 (2) (a) If the department determines that a request for a refund should be denied in whole or part,  
4 it shall notify the taxpayer of the determination. If the department determines that a person has failed to  
5 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the  
6 running of any applicable statute of limitations regarding the assessment of the tax.

7 (b) A notice under this section must clearly state:

8 (i) the reasons for the department's determination that a refund is not due or that tax plus interest  
9 and penalty, if any, is due;

10 (ii) the taxpayer's right to a review by the department, ~~and his~~ the taxpayer's right to appeal after  
11 a final department decision, and the taxpayer's right to a review of determinations by the department of  
12 labor and industry and board of labor appeals of whether an employer-employee relationship existed  
13 between the taxpayer and certain individuals or whether the employment relationship was that of an  
14 independent contractor;

15 (iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right  
16 to contest the department's determination under this section or to file an appeal with the state tax appeal  
17 board;

18 (iv) that the taxpayer has 30 days to either notify the department in writing that ~~he~~ the taxpayer  
19 does not agree with an assessment or pay the amount assessed;

20 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless ~~he~~  
21 the taxpayer notifies the department that ~~he~~ the taxpayer disagrees with an assessment or pays within 30  
22 days; and

23 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the  
24 tax.

25 (3) (a) A taxpayer shall notify the department, in writing, that ~~he~~ the taxpayer objects to the  
26 determination within 30 days from the date the notice is mailed. The notification by the taxpayer is not  
27 required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is  
28 objecting to a determination that an employer-employee relationship existed between the taxpayer and  
29 individuals subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify  
30 the department within 30 days:

- 1 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;  
2 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax  
3 appeal board; and  
4 (iii) a warrant for distraint may be issued without further opportunity to be heard on the  
5 assessment.

6 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that ~~he~~ the taxpayer  
7 disagrees with a tax assessment shall present ~~his~~ the objections, the reasons for ~~his~~ the objections, and  
8 any other information to the administrator of the division that administers the tax or to ~~his~~ the  
9 administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The  
10 reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an  
11 informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

12 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer  
13 disagrees with the department's determination that an employer-employee relationship existed between the  
14 taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, must  
15 be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2403 and  
16 39-51-2410.

17 (c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b),  
18 the administrator or ~~his~~ a designee shall issue a written decision addressing the taxpayer's objections and  
19 describing the reasons for the determination. The administrator's decision must also clearly set forth the  
20 taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director  
21 of revenue.

22 (4) (a) A taxpayer shall notify the department in writing that ~~he~~ the taxpayer objects to the  
23 administrator's decision within 30 days from the date that the decision is mailed, or ~~he~~ the taxpayer may  
24 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30  
25 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer  
26 waives any further right to review or appeal and a warrant for distraint may be issued without further  
27 opportunity to be heard on the assessment.

28 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision  
29 pursuant to subsection (4)(a) shall present ~~his~~ the taxpayer's objections, ~~his~~ the reasons for the objections,  
30 and any other information to the director of revenue or ~~his~~ the director's designee within 60 days after the

1 notice referred to in subsection (4)(a) is mailed. The director or ~~his~~ the designee may consider written  
2 information, hold a telephone conference, or conduct an informal conference, none of which are subject  
3 to the Montana Administrative Procedure Act.

4 (c) Within 60 days after the taxpayer has presented ~~his~~ the objections, the director or ~~his~~ the  
5 designee shall issue a written decision addressing the objections and describing the reasons for the  
6 decision. The director's decision is the final decision and assessment of the department.

7 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final  
8 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the  
9 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by  
10 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law  
11 must continue to accrue.

12 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal  
13 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the  
14 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the  
15 department.

16 (b) If the director notifies the board within 30 days after an appeal is filed that ~~he~~ the director has  
17 not had an opportunity to review the administrator's decision and ~~he~~ the director believes that a review may  
18 be helpful in resolving the controversy, the board shall stay the appeal for a time the board considers  
19 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide  
20 ~~his~~ the taxpayer's objections and reasons for ~~his~~ the objections to the director so that the director or ~~his~~  
21 the director's designee may review the controversy and issue a decision within the period of the stay  
22 granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and  
23 the appeal resumed.

24 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the  
25 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by  
26 mutual consent of the department and the taxpayer. The department shall consent to all reasonable  
27 requests for extension of deadlines.

28 (8) (a) The director of revenue or ~~his~~ the director's designee is authorized to enter into an  
29 agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the  
30 department for any taxable period.

1 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except  
2 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

3 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,  
4 employee, or agent of this state; and

5 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,  
6 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement  
7 may not be annulled, modified, set aside, or disregarded."  
8

9 **Section 3.** Section 15-2-201, MCA, is amended to read:

10 "**15-2-201. Powers and duties.** (1) It ~~shall be~~ is the duty of the state tax appeal board to:

11 (a) prescribe rules for the tax appeal boards of the different counties in the performance of their  
12 duties and for this purpose may schedule meetings of county tax appeal boards, and it ~~shall be~~ is the duty  
13 of all invited county tax appeal board members to attend if possible, and the cost of their attendance ~~shall~~  
14 must be paid from the appropriation of the state tax appeal board;

15 (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not  
16 because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time  
17 period provided for in 15-15-101(2) to hear an appeal.

18 (c) hear appeals from decisions of the county tax appeal boards;

19 (d) hear appeals from decisions of the department of revenue in regard to business licenses,  
20 property assessments, taxes, except determinations that an employer-employee relationship existed  
21 between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2,  
22 and penalties.

23 (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by  
24 a member of the board or ~~his~~ the member's agent. ~~In case any~~ If a witness shall fail to ~~does not~~ obey any  
25 a summons to appear before ~~said~~ the board or ~~shall refuse~~ refuses to testify or answer any material  
26 questions or to produce records, books, papers, or documents when required to do so, ~~such that~~ failure  
27 or refusal ~~shall~~ must be reported to the attorney general, who shall thereupon institute proceedings in the  
28 proper district court to punish the witness for ~~such~~ the neglect or refusal. ~~Any~~ A person who ~~shall testify~~  
29 testifies falsely in any material matter under consideration by the board ~~shall be~~ is guilty of perjury and  
30 punished accordingly. Witnesses attending shall receive ~~like~~ the same compensation as witnesses in the

1 district court. ~~Such~~ The compensation ~~shall~~ must be charged to the proper appropriation for the board.

2 (3) The state tax appeal board ~~shall~~ have has the duties of an appeal board relating to ~~such~~  
3 other matters as may be provided by law."  
4

5 NEW SECTION. Section 4. Determination of employer status. A final determination by either the  
6 department of labor and industry or the board of labor appeals that an employer-employee relationship  
7 existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter  
8 30, part 2, ~~is conclusive and binding upon the taxpayer and the department.~~ The determination WHICH  
9 MAY BE SUBJECT TO JUDICIAL REVIEW, AS PROVIDED IN 39-51-2404, AT THE DISCRETION OF THE  
10 TAXPAYER, is not subject to any further administrative or judicial challenge in any proceeding BEFORE OR  
11 WITH THE DEPARTMENT OF REVENUE concerning a determination of the proper amount of state income  
12 tax withholding and old fund liability tax to be paid.  
13

14 **Section 5.** Section 15-30-303, MCA, is amended to read:

15 **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in  
16 accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make  
17 known in any manner:

18 (a) the amount of income or any particulars set forth or disclosed in any individual report or  
19 individual return required under this chapter or any other information secured in the administration of this  
20 chapter; or

21 (b) any federal return or federal return information disclosed on any return or report required by rule  
22 of the department or under this chapter.

23 (2) (a) The officers charged with the custody of the reports and returns may not be required to  
24 produce them or evidence of anything contained in them in an action or proceeding in a court, except in  
25 an action or proceeding:

26 (i) to which the department is a party under the provisions of this chapter or any other taxing act;  
27 or

28 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other  
29 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

30 (b) The court may require the production of and may admit in evidence only as much of the reports

1 or of the facts shown by the reports as are pertinent to the action or proceedings.

2 (3) This section does not prohibit:

3 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any  
4 return or report filed in connection with the taxpayer's tax;

5 (b) the publication of statistics classified to prevent the identification of particular reports or returns  
6 and the items of particular reports or returns; or

7 (c) the inspection by the attorney general or other legal representative of the state of the report  
8 or return of any taxpayer who brings an action to set aside or review the tax based on the report or return  
9 or against whom an action or proceeding has been instituted in accordance with the provisions of  
10 15-30-311.

11 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the  
12 department orders them to be destroyed.

13 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000  
14 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer  
15 or employee of the state, the offender must be dismissed from office and may not hold any public office  
16 in this state for a period of 1 year after dismissal.

17 (6) This section may not be construed to prohibit the department from providing taxpayer return  
18 information and information from employers' payroll withholding reports to:

19 (a) the department of labor and industry to be used for the purpose of investigation and prevention  
20 of noncompliance, tax evasion, prevent and detect fraud, and abuse under the unemployment ~~compensation~~  
21 ~~program~~ insurance laws; or

22 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance,  
23 ~~prevent and detect~~ fraud, and abuse under the workers' compensation program.

24 (7) The department may permit the commissioner of internal revenue of the United States or the  
25 proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative  
26 of either officer to inspect the return of income of any individual or may furnish to the officer or an  
27 authorized representative an abstract of the return of income of any individual or supply the officer with  
28 information concerning an item of income contained in a return or disclosed by the report of an investigation  
29 of the income or return of income of an individual, but the permission may be granted or information  
30 furnished only if the statutes of the United States or of the other state grant substantially similar privileges

1 to the proper officer of this state charged with the administration of this chapter.

2 (8) The department shall furnish:

3 (a) to the department of justice all information necessary to identify those persons qualifying for  
4 the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the  
5 department of justice to administer the provisions of 61-5-105;

6 (b) to the department of social and rehabilitation services information acquired under 15-30-301,  
7 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of  
8 public assistance fraud and abuse, provided notice to the applicant has been given;

9 (c) to the department of labor and industry for the purpose of prevention and detection of fraud  
10 and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation  
11 programs information on whether a taxpayer who is the subject of an ongoing investigation by the  
12 department of labor and industry is an employee, an independent contractor, or self-employed;

13 (d) to the department of fish, wildlife, and parks specific information that is available from income  
14 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting  
15 and fishing licenses;

16 (e) to the board of regents information required under 20-26-1111;

17 (f) to the legislative fiscal analyst and the office of budget and program planning individual income  
18 tax information as provided in 5-12-303. The information provided to the office of budget and program  
19 planning must be the same as the information provided to the legislative fiscal analyst.

20 (g) to the department of transportation the ratio of gross farm income to total gross income based  
21 on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided  
22 that notice to the applicant has been given as provided in 15-70-223. The information obtained by the  
23 department of transportation is subject to the same restrictions on disclosure as are individual income tax  
24 returns."

25

26 **Section 6.** 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 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional  
29 amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar  
30 quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus

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

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

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

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

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

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

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

30 (h) An employee does not have any right of action against an employer for any money deducted



1 and withheld from the employee's wages and paid to the state in compliance or intended compliance with  
2 this section.

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

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

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

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

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

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

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

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

1 (5) Returns and remittances under subsection (3) and any information obtained by the department  
 2 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information  
 3 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,  
 4 tax evasion, fraud, and abuse under the unemployment insurance laws under circumstances and conditions  
 5 that ensure the continued 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 **Section 7.** Section 15-1-701, MCA, is amended to read:

20 **"15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of  
 21 the department of revenue or of the department of transportation, directed to a sheriff of a county of  
 22 Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon  
 23 and sell the real and personal property of a delinquent taxpayer.

24 (2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal  
 25 property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is  
 26 treated in the same manner as a properly docketed judgment lien, and the department may collect  
 27 delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the  
 28 department may enforce the judgment lien at any time within 10 years of its creation or effective date,  
 29 whichever is later.

30 (3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated

1 interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the  
2 warrant."

3

4 **Section 8.** Section 15-1-704, MCA, is amended to read:

5 "15-1-704. **Filing with district court.** (1) After issuing a warrant, the department may file the  
6 warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the  
7 name of the taxpayer listed as the judgment debtor.

8 (2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized  
9 to collect the tax.

10 (3) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
11 pursuant to the provisions of 25-13-102."

12

13 **Section 9.** Section 39-51-1303, MCA, is amended to read:

14 "39-51-1303. **Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer, liable  
15 corporate officer or employee, or liable member or manager of a limited liability company referred to in  
16 39-51-1105 defaults in any payment of taxes, penalties, or interest ~~thereon~~ on the taxes and penalties, the  
17 department may at its discretion initiate a civil action in the name of the Montana department of labor and  
18 industry to collect the amount due, and the employer adjudged in default shall pay the costs of ~~such~~ the  
19 action.

20 (2) An action for the collection of taxes due must be brought within 5 years after the due date of  
21 ~~such~~ the taxes or it is barred.

22 (3) The department may pursue its remedy under either this section or 39-51-1304, or both."

23

24 **Section 10.** Section 39-51-1304, MCA, is amended to read:

25 "39-51-1304. **Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including  
26 penalties and interest assessed ~~thereon~~ on the taxes, have the effect of a judgment against the employer,  
27 or liable corporate officer or employee or liable member or manager of a limited liability company referred  
28 to in 39-51-1105, arising at the time ~~such~~ that the payments are due. The department may issue a  
29 certificate setting forth the amount of payments due and directing the clerk of the district court of any  
30 county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time

1 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the  
 2 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce  
 3 the judgment ~~pursuant to Title 25, chapter 13, except that the~~ through the sheriff or agent authorized to  
 4 collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be  
 5 made by means of a certified letter by an agent authorized to collect the tax. The department may enforce  
 6 the judgment at any time within 10 years of the creation of the lien or the effective date of the lien,  
 7 whichever is later.

8 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
 9 pursuant to the provisions of 25-13-102.

10 ~~(2)(3)~~ The lien provided for in subsection (1) is not valid against any third party owning an interest  
 11 in real or personal property against which the judgment is enforced if:

12 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

13 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating  
 14 that all taxes, penalties, and interest due from the grantor have been paid.

15 ~~(3)(4)~~ A grantor who signs and delivers an affidavit is subject to the penalties imposed by  
 16 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may  
 17 proceed against the employer, liable corporate officer or employee, or liable member or manager of a limited  
 18 liability company referred to in 39-51-1105 under this section or 39-51-1303 or this section, or both, to  
 19 collect the delinquent taxes, penalties, and interest.

20 ~~(4)(5)~~ The lien provided for in subsection (1) must be released upon payment in full of the unpaid  
 21 taxes, penalties, and accumulated interest. The department may release or may partially release the lien  
 22 upon partial payment or whenever the department determines that the release or partial release of the lien  
 23 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if  
 24 it determines that the lien is unenforceable."

25

26 **Section 11.** Section 15-1-708, MCA, is amended to read:

27 **"15-1-708. Release of lien.** (1) Upon payment in full of the unpaid tax plus penalty, if any, and  
 28 accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

29 (2) Upon partial payment or whenever the department determines that a release or partial release  
 30 of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release

1 or may partially release the lien acquired by filing the warrant for distraint. The department may release the  
2 lien if it determines that the lien is unenforceable.

3 (3)(a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes  
4 and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is  
5 uncollectible, the department may transfer the debt to the state auditor for collection as provided in  
6 17-4-104.

7 (b) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
8 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
9 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
10 collected must be returned to the department to be applied to the debt, except that all fees or costs  
11 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
12 state auditor shall retain only a proportionate share of the collection fees or costs."

13

14 **Section 12.** Section 39-51-1105, MCA, is amended to read:

15 **"39-51-1105. Liability of corporate officers or employees for taxes, penalties, and interest owed**  
16 **by corporation.** ~~When a corporation subject to Montana corporate law has failed to file the annual~~  
17 ~~corporation report with the Montana secretary of state as required by law the department shall hold the~~  
18 ~~president, vice president, secretary, and treasurer jointly and severally liable for any taxes, penalties, and~~  
19 ~~interest due for the period in which the corporation is delinquent in filing the annual corporation report. If~~  
20 ~~the required annual corporation report is made and filed after the time specified, such officers may not, on~~  
21 ~~account of prior failure to make report, be held liable for the taxes, penalties, and interest thereafter~~  
22 ~~accruing.~~

23 (1) The officer or employee of a corporation whose duty it is to pay the taxes, penalties, and  
24 interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties,  
25 and interest due.

26 (2) (a) The department shall consider the officer or employee of the corporation individually liable  
27 with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that  
28 the individual:

29 (i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the  
30 corporation;

1           (ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment  
2 of taxes; or

3           (iii) possessed the fiscal authority on behalf of the corporation to direct the filing of reports or  
4 payment of other corporate obligations and exercised the authority that resulted in failure to file reports  
5 or pay taxes due.

6           (b) The department is not limited to considering the elements set forth in subsection (2)(a) to  
7 establish individual liability and may consider any other available information.

8           (3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the  
9 discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes,  
10 penalties, and interest unpaid by the corporation.

11           (4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a  
12 member-managed limited liability company must be treated as a partnership, with liability for taxes,  
13 penalties, and interest owed extending to each member.

14           (5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a  
15 manager-managed limited liability company, the managers of the limited liability company are jointly and  
16 severally liable for any taxes, penalties, and interest owed."

17  
18           **NEW SECTION. Section 13. Collection of unpaid taxes, penalties, and interest by offset.** (1) To  
19 collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the  
20 debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The  
21 department, through the state auditor's office, shall provide the debtor with notice of the right to request  
22 a hearing on the offset action. A request for hearing must be made within 30 days of the date of the  
23 notice.

24           (2) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
25 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
26 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
27 collected must be returned to the department to be applied to the debt, except that all fees or costs  
28 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
29 state auditor shall retain only a proportionate share of the collection fees or costs.

30           (3) The department may file a claim for state funds on behalf of the employer if a claim is required

1 before funds are available for offset.

2 (4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being  
3 transferred for offset.

4

5 NEW SECTION. Section 14. Appropriation. ~~(1)(a)(1)(A)~~ There is appropriated ~~\$68,750~~ \$250,000  
6 \$68,750 from the ~~general fund~~ UNEMPLOYMENT INSURANCE ADMINISTRATIVE TAX FUNDS to the  
7 department of revenue for the biennium ending June 30, 1997, for a cost-benefit analysis to determine the  
8 feasibility of integrating employer wage reporting and related functions.

9 ~~(b) The appropriation contained in subsection (1)(a) is funded by reducing the amount deposited~~  
10 ~~in the state general fund from the payment of penalties and interest collected by the department of revenue~~  
11 ~~pursuant to 15-30-321 by the amount of the appropriation contained in subsection (1)(a).~~

12 ~~(2) There is appropriated \$56,250 from the workers' compensation tax account to the department~~  
13 ~~of revenue for the biennium ending June 30, 1997, for a cost benefit analysis to determine the feasibility~~  
14 ~~of integrating employer wage reporting and related functions.~~

15 ~~(3) There is appropriated \$125,000 from the unemployment insurance penalty and interest account~~  
16 ~~established by 39-51-1301 to the department of labor and industry for the biennium ending June 30, 1997,~~  
17 ~~for a cost benefit analysis to determine the feasibility of integrating employer wage reporting and related~~  
18 ~~functions.~~

19 (B) THE APPROPRIATION CONTAINED IN SUBSECTION (1)(A) IS FUNDED BY REDUCING THE  
20 AMOUNT DEPOSITED IN THE STATE GENERAL FUND FROM THE PAYMENT OF PENALTIES AND  
21 INTEREST COLLECTED BY THE DEPARTMENT OF REVENUE PURSUANT TO 15-30-321 BY THE AMOUNT  
22 OF THE APPROPRIATION CONTAINED IN SUBSECTION (1)(A).

23 (2) THERE IS APPROPRIATED \$56,250 FROM THE WORKERS' COMPENSATION TAX ACCOUNT  
24 TO THE DEPARTMENT OF REVENUE FOR THE BIENNIUM ENDING JUNE 30, 1997, FOR A COST-BENEFIT  
25 ANALYSIS TO DETERMINE THE FEASIBILITY OF INTEGRATING EMPLOYER WAGE REPORTING AND  
26 RELATED FUNCTIONS.

27 (3) THERE IS APPROPRIATED \$125,000 FROM THE UNEMPLOYMENT INSURANCE PENALTY AND  
28 INTEREST ACCOUNT ESTABLISHED BY 39-51-1301 TO THE DEPARTMENT OF LABOR AND INDUSTRY  
29 FOR THE BIENNIUM ENDING JUNE 30, 1997, FOR A COST-BENEFIT ANALYSIS TO DETERMINE THE  
30 FEASIBILITY OF INTEGRATING EMPLOYER WAGE REPORTING AND RELATED FUNCTIONS.

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

4            (2) [Section 13] is intended to be codified as an integral part of Title 39, chapter 51, part 13, and  
5 the provisions of Title 39, chapter 51, part 13, apply to [section 13].

6

7            **NEW SECTION.** **Section 16. Coordination.** If House Bill No. 100 is passed and approved and if  
8 it includes a section that amends 39-51-1105, then the section of House Bill No. 100 that amends  
9 39-51-1105 is void.

10

11            **NEW SECTION.** **Section 17. Applicability.** (1) [Sections 7 through 10] apply, respectively, to  
12 warrants of distraint filed by the department of revenue and certificates of lien filed by the department of  
13 labor and industry on or after July 1, 1996.

14            (2) [Section 12] applies to debts incurred on or after July 1, 1996.

15

16            **NEW SECTION.** **Section 18. Effective dates.** (1) Except as provided in subsections (2) and (3),  
17 [this act] is effective on passage and approval.

18            (2) [Sections 2 through 4] are effective July 1, 1996.

19            (3) [Section 14] is effective July 1, 1995.

20

-END-



## 1 HOUSE BILL NO. 550

2 INTRODUCED BY KASTEN, BARTLETT, MCCANN, KLAMPE, LARSON, WELDON, SIMON, RANEY,  
3 GAGE, MILLER, MERCER, COCCHIARELLA, BOHLINGER, EWER, CRIPPEN, WATERMAN, CHRISTIAENS,  
4 FORRESTER, BENEDICT, STANG, SQUIRES, FORBES, ZOOK, GROSFIELD, BROWN, HALLIGAN, PECK,  
5 HARRINGTON, T. NELSON

6  
7 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMPROVED TAXPAYER SERVICE TO BUSINESSES  
8 BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX,  
9 UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX; PROVIDING A UNIFORM DEFINITION  
10 OF INDEPENDENT CONTRACTOR; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-211,  
11 15-1-701, 15-1-704, 15-1-708, 15-2-201, 15-30-201, 15-30-303, 39-51-1105, 39-51-1303, 39-51-1304,  
12 AND 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.

HOUSE BILL NO. 550

INTRODUCED BY KASTEN, BARTLETT, MCCANN, KLAMPE, LARSON, WELDON, SIMON, RANEY, GAGE, MILLER, MERCER, COCCHIARELLA, BOHLINGER, EWER, CRIPPEN, WATERMAN, CHRISTIAENS, FORRESTER, BENEDICT, STANG, SQUIRES, FORBES, ZOOK, GROSFIELD, BROWN, HALLIGAN, PECK, HARRINGTON, T. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMPROVED TAXPAYER SERVICE TO BUSINESSES BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX, UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX; PROVIDING A UNIFORM DEFINITION OF INDEPENDENT CONTRACTOR; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-211, 15-1-701, 15-1-704, 15-1-708, 15-2-201, 15-30-201, 15-30-303, 39-51-1105, 39-51-1303, 39-51-1304, AND 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS."

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

Section 1. Section 15-30-201, MCA, is amended to read:

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

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

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

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person; ~~except that~~ However, 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 having control of the payment of wages.

1           (4) "Independent contractor" means an individual who renders service in the course of an  
 2 occupation and:

3           (a) has been and will continue to be free from control or direction over the performance of the  
 4 services, both under contract and in fact; and

5           (b) is engaged in an independently established trade, occupation, profession, or business.

6           ~~(4)(5)~~ "Wages" means all remuneration, ~~{other than fees paid to a public official},~~ for services  
 7 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any  
 8 medium other than cash, except that the term does not include remuneration paid:

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

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

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

14           (d) for casual labor not in the course of the employer's trade or business performed in any calendar  
 15 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service  
 16 is performed by an individual who is regularly employed by the employer to perform the service. For  
 17 purposes of this subsection ~~(4)(d)(5)(d)~~, an individual is considered to be regularly employed by an employer  
 18 during a calendar quarter only if:

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

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

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

25           (f) for services performed by a duly ordained, commissioned, or licensed minister of a church in  
 26 the exercise of his ministry or by a member of a religious order in the exercise of duties required by the  
 27 order;

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

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

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

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

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

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

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

21  
 22 **Section 2.** Section 15-1-211, MCA, is amended to read:

23 "**15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall  
 24 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

25 (a) The tax review procedure described in this section applies to all taxes administered by the  
 26 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,  
 27 and property taxes, and the issue of whether an employer-employee relationship existed between the  
 28 taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the  
 29 employment relationship was that of an independent contractor. The procedure applies to any revised  
 30 assessment of centrally assessed property taxed pursuant to chapter 23.

1 (b) The term "taxpayers", as used in this section, includes all persons determined by the  
2 department to have a potential tax liability.

3 (2) (a) If the department determines that a request for a refund should be denied in whole or part,  
4 it shall notify the taxpayer of the determination. If the department determines that a person has failed to  
5 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the  
6 running of any applicable statute of limitations regarding the assessment of the tax.

7 (b) A notice under this section must clearly state:

8 (i) the reasons for the department's determination that a refund is not due or that tax plus interest  
9 and penalty, if any, is due;

10 (ii) the taxpayer's right to a review by the department, ~~and his~~ the taxpayer's right to appeal after  
11 a final department decision, and the taxpayer's right to a review of determinations by the department of  
12 labor and industry and board of labor appeals of whether an employer-employee relationship existed  
13 between the taxpayer and certain individuals or whether the employment relationship was that of an  
14 independent contractor;

15 (iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right  
16 to contest the department's determination under this section or to file an appeal with the state tax appeal  
17 board;

18 (iv) that the taxpayer has 30 days to either notify the department in writing that ~~he~~ the taxpayer  
19 does not agree with an assessment or pay the amount assessed;

20 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless ~~he~~  
21 the taxpayer notifies the department that ~~he~~ the taxpayer disagrees with an assessment or pays within 30  
22 days; and

23 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the  
24 tax.

25 (3) (a) A taxpayer shall notify the department, in writing, that ~~he~~ the taxpayer objects to the  
26 determination within 30 days from the date the notice is mailed. The notification by the taxpayer is not  
27 required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is  
28 objecting to a determination that an employer-employee relationship existed between the taxpayer and  
29 individuals subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify  
30 the department within 30 days:

1 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;  
 2 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax  
 3 appeal board; and  
 4 (iii) a warrant for distraint may be issued without further opportunity to be heard on the  
 5 assessment.

6 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that ~~he~~ the taxpayer  
 7 disagrees with a tax assessment shall present ~~his~~ the objections, the reasons for ~~his~~ the objections, and  
 8 any other information to the administrator of the division that administers the tax or to ~~his~~ the  
 9 administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The  
 10 reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an  
 11 informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

12 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer  
 13 disagrees with the department's determination that an employer-employee relationship existed between the  
 14 taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, must  
 15 be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2403 and  
 16 39-51-2410.

17 (c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b),  
 18 the administrator or ~~his~~ a designee shall issue a written decision addressing the taxpayer's objections and  
 19 describing the reasons for the determination. The administrator's decision must also clearly set forth the  
 20 taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director  
 21 of revenue.

22 (4) (a) A taxpayer shall notify the department in writing that ~~he~~ the taxpayer objects to the  
 23 administrator's decision within 30 days from the date that the decision is mailed, or ~~he~~ the taxpayer may  
 24 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30  
 25 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer  
 26 waives any further right to review or appeal and a warrant for distraint may be issued without further  
 27 opportunity to be heard on the assessment.

28 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision  
 29 pursuant to subsection (4)(a) shall present ~~his~~ the taxpayer's objections, ~~his~~ the reasons for the objections,  
 30 and any other information to the director of revenue or ~~his~~ the director's designee within 60 days after the

1 notice referred to in subsection (4)(a) is mailed. The director or ~~his~~ the designee may consider written  
2 information, hold a telephone conference, or conduct an informal conference, none of which are subject  
3 to the Montana Administrative Procedure Act.

4 (c) Within 60 days after the taxpayer has presented ~~his~~ the objections, the director or ~~his~~ the  
5 designee shall issue a written decision addressing the objections and describing the reasons for the  
6 decision. The director's decision is the final decision and assessment of the department.

7 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final  
8 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the  
9 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by  
10 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law  
11 must continue to accrue.

12 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal  
13 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the  
14 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the  
15 department.

16 (b) If the director notifies the board within 30 days after an appeal is filed that ~~he~~ the director has  
17 not had an opportunity to review the administrator's decision and ~~he~~ the director believes that a review may  
18 be helpful in resolving the controversy, the board shall stay the appeal for a time the board considers  
19 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide  
20 his the taxpayer's objections and reasons for ~~his~~ the objections to the director so that the director or ~~his~~  
21 the director's designee may review the controversy and issue a decision within the period of the stay  
22 granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and  
23 the appeal resumed.

24 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the  
25 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by  
26 mutual consent of the department and the taxpayer. The department shall consent to all reasonable  
27 requests for extension of deadlines.

28 (8) (a) The director of revenue or ~~his~~ the director's designee is authorized to enter into an  
29 agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the  
30 department for any taxable period.

1 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except  
2 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

3 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,  
4 employee, or agent of this state; and

5 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,  
6 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement  
7 may not be annulled, modified, set aside, or disregarded."

8  
9 **Section 3.** Section 15-2-201, MCA, is amended to read:

10 "**15-2-201. Powers and duties.** (1) It ~~shall be~~ is the duty of the state tax appeal board to:

11 (a) prescribe rules for the tax appeal boards of the different counties in the performance of their  
12 duties and for this purpose may schedule meetings of county tax appeal boards, and it ~~shall be~~ is the duty  
13 of all invited county tax appeal board members to attend if possible, and the cost of their attendance ~~shall~~  
14 must be paid from the appropriation of the state tax appeal board;

15 (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not  
16 because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time  
17 period provided for in 15-15-101(2) to hear an appeal.

18 (c) hear appeals from decisions of the county tax appeal boards;

19 (d) hear appeals from decisions of the department of revenue in regard to business licenses,  
20 property assessments, taxes, except determinations that an employer-employee relationship existed  
21 between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2,  
22 and penalties.

23 (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by  
24 a member of the board or ~~his~~ the member's agent. ~~In case any~~ If a witness shall fail to does not obey any  
25 a summons to appear before ~~said~~ the board or ~~shall refuse~~ refuses to testify or answer any material  
26 questions or to produce records, books, papers, or documents when required to do so, ~~such~~ that failure  
27 or refusal ~~shall~~ must be reported to the attorney general, who shall thereupon institute proceedings in the  
28 proper district court to punish the witness for ~~such~~ the neglect or refusal. ~~Any~~ A person who ~~shall testify~~  
29 testifies falsely in any material matter under consideration by the board ~~shall be~~ is guilty of perjury and  
30 punished accordingly. Witnesses attending shall receive ~~the~~ the same compensation as witnesses in the



1 district court. ~~Such~~ The compensation ~~shall~~ must be charged to the proper appropriation for the board.

2 (3) The state tax appeal board ~~shall~~ also have has the duties of an appeal board relating to ~~such~~  
3 other matters as may be provided by law."  
4

5 **NEW SECTION. Section 4. Determination of employer status.** A final determination by either the  
6 department of labor and industry or the board of labor appeals that an employer-employee relationship  
7 existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter  
8 30, part 2, is conclusive and binding upon the taxpayer and the department. The determination is not  
9 subject to any further administrative or judicial challenge in any proceeding concerning a determination of  
10 the proper amount of state income tax withholding and old fund liability tax to be paid.  
11

12 **Section 5.** Section 15-30-303, MCA, is amended to read:

13 **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in  
14 accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make  
15 known in any manner:

16 (a) the amount of income or any particulars set forth or disclosed in any individual report or  
17 individual return required under this chapter or any other information secured in the administration of this  
18 chapter; or

19 (b) any federal return or federal return information disclosed on any return or report required by rule  
20 of the department or under this chapter.

21 (2) (a) The officers charged with the custody of the reports and returns may not be required to  
22 produce them or evidence of anything contained in them in an action or proceeding in a court, except in  
23 an action or proceeding:

24 (i) to which the department is a party under the provisions of this chapter or any other taxing act;  
25 or

26 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other  
27 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

28 (b) The court may require the production of and may admit in evidence only as much of the reports  
29 or of the facts shown by the reports as are pertinent to the action or proceedings.

30 (3) This section does not prohibit:

1 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any  
2 return or report filed in connection with the taxpayer's tax;

3 (b) the publication of statistics classified to prevent the identification of particular reports or returns  
4 and the items of particular reports or returns; or

5 (c) the inspection by the attorney general or other legal representative of the state of the report  
6 or return of any taxpayer who brings an action to set aside or review the tax based on the report or return  
7 or against whom an action or proceeding has been instituted in accordance with the provisions of  
8 15-30-311.

9 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the  
10 department orders them to be destroyed.

11 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000  
12 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer  
13 or employee of the state, the offender must be dismissed from office and may not hold any public office  
14 in this state for a period of 1 year after dismissal.

15 (6) This section may not be construed to prohibit the department from providing taxpayer return  
16 information and information from employers' payroll withholding reports to:

17 (a) the department of labor and industry to be used for the purpose of investigation and prevention  
18 of noncompliance, tax evasion, prevent and detect fraud, and abuse under the unemployment ~~compensation~~  
19 ~~program~~ insurance laws; or

20 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance,  
21 ~~prevent and detect~~ fraud, and abuse under the workers' compensation program.

22 (7) The department may permit the commissioner of internal revenue of the United States or the  
23 proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative  
24 of either officer to inspect the return of income of any individual or may furnish to the officer or an  
25 authorized representative an abstract of the return of income of any individual or supply the officer with  
26 information concerning an item of income contained in a return or disclosed by the report of an investigation  
27 of the income or return of income of an individual, but the permission may be granted or information  
28 furnished only if the statutes of the United States or of the other state grant substantially similar privileges  
29 to the proper officer of this state charged with the administration of this chapter.

30 (8) The department shall furnish:

1 (a) to the department of justice all information necessary to identify those persons qualifying for  
2 the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the  
3 department of justice to administer the provisions of 61-5-105;

4 (b) to the department of social and rehabilitation services information acquired under 15-30-301,  
5 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of  
6 public assistance fraud and abuse, provided notice to the applicant has been given;

7 (c) to the department of labor and industry for the purpose of prevention and detection of fraud  
8 and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation  
9 programs information on whether a taxpayer who is the subject of an ongoing investigation by the  
10 department of labor and industry is an employee, an independent contractor, or self-employed;

11 (d) to the department of fish, wildlife, and parks specific information that is available from income  
12 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting  
13 and fishing licenses;

14 (e) to the board of regents information required under 20-26-1111;

15 (f) to the legislative fiscal analyst and the office of budget and program planning individual income  
16 tax information as provided in 5-12-303. The information provided to the office of budget and program  
17 planning must be the same as the information provided to the legislative fiscal analyst.

18 (g) to the department of transportation the ratio of gross farm income to total gross income based  
19 on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided  
20 that notice to the applicant has been given as provided in 15-70-223. The information obtained by the  
21 department of transportation is subject to the same restrictions on disclosure as are individual income tax  
22 returns."  
23

24 **Section 6.** Section 39-71-2503, MCA, is amended to read:

25 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each  
26 employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional  
27 amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar  
28 quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus  
29 the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the  
30 preceding week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (5) Returns and remittances under subsection (3) and any information obtained by the department  
30 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information

1 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,  
 2 tax evasion, fraud, and abuse under the unemployment insurance laws under circumstances and conditions  
 3 that ensure the continued confidentiality of the information.

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

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

17 **Section 7.** Section 15-1-701, MCA, is amended to read:

18 **"15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of  
 19 the department of revenue or of the department of transportation, directed to a sheriff of a county of  
 20 Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon  
 21 and sell the real and personal property of a delinquent taxpayer.

22 (2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal  
 23 property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is  
 24 treated in the same manner as a properly docketed judgment lien, and the department may collect  
 25 delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the  
 26 department may enforce the judgment lien at any time within 10 years of its creation or effective date,  
 27 whichever is later.

28 (3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated  
 29 interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the  
 30 warrant."

1           **Section 8.** Section 15-1-704, MCA, is amended to read:

2           **"15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the  
3 warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the  
4 name of the taxpayer listed as the judgment debtor.

5           (2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized  
6 to collect the tax.

7           (3) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
8 pursuant to the provisions of 25-13-102."

9

10          **Section 9.** Section 39-51-1303, MCA, is amended to read:

11          **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer, liable  
12 corporate officer or employee, or liable member or manager of a limited liability company referred to in  
13 39-51-1105 defaults in any payment of taxes, penalties, or interest ~~thereon~~ on the taxes and penalties, the  
14 department may at its discretion initiate a civil action in the name of the Montana department of labor and  
15 industry to collect the amount due, and the employer adjudged in default shall pay the costs of ~~such~~ the  
16 action.

17          (2) An action for the collection of taxes due must be brought within 5 years after the due date of  
18 ~~such~~ the taxes or it is barred.

19          (3) The department may pursue its remedy under either this section or 39-51-1304, or both."

20

21          **Section 10.** Section 39-51-1304, MCA, is amended to read:

22          **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including  
23 penalties and interest assessed ~~thereon~~ on the taxes, have the effect of a judgment against the employer,  
24 or liable corporate officer or employee or liable member or manager of a limited liability company referred  
25 to in 39-51-1105, arising at the time ~~such~~ that the payments are due. The department may issue a  
26 certificate setting forth the amount of payments due and directing the clerk of the district court of any  
27 county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time  
28 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the  
29 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce  
30 the judgment ~~pursuant to Title 25, chapter 13, except that the~~ through the sheriff or agent authorized to

1 collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be  
 2 made by means of a certified letter by an agent authorized to collect the tax. The department may enforce  
 3 the judgment at any time within 10 years of the creation of the lien or the effective date of the lien,  
 4 whichever is later.

5 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
 6 pursuant to the provisions of 25-13-102.

7 ~~(2)~~(3) The lien provided for in subsection (1) is not valid against any third party owning an interest  
 8 in real or personal property against which the judgment is enforced if:

9 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

10 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating  
 11 that all taxes, penalties, and interest due from the grantor have been paid.

12 ~~(3)~~(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by  
 13 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may  
 14 proceed against the employer, liable corporate officer or employee, or liable member or manager of a limited  
 15 liability company referred to in 39-51-1105 under this section or 39-51-1303 or this section, or both, to  
 16 collect the delinquent taxes, penalties, and interest.

17 ~~(4)~~(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid  
 18 taxes, penalties, and accumulated interest. The department may release or may partially release the lien  
 19 upon partial payment or whenever the department determines that the release or partial release of the lien  
 20 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if  
 21 it determines that the lien is unenforceable."

22  
 23 **Section 11.** Section 15-1-708, MCA, is amended to read:

24 **"15-1-708. Release of lien.** (1) Upon payment in full of the unpaid tax plus penalty, if any, and  
 25 accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

26 (2) Upon partial payment or whenever the department determines that a release or partial release  
 27 of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release  
 28 or may partially release the lien acquired by filing the warrant for distraint. The department may release the  
 29 lien if it determines that the lien is unenforceable.

30 (3)(a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes



1 and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is  
2 uncollectible, the department may transfer the debt to the state auditor for collection as provided in  
3 17-4-104.

4 (b) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
5 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
6 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
7 collected must be returned to the department to be applied to the debt, except that all fees or costs  
8 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
9 state auditor shall retain only a proportionate share of the collection fees or costs."

10  
11 **Section 12.** Section 39-51-1105, MCA, is amended to read:

12 **"39-51-1105. Liability of corporate officers or employees for taxes, penalties, and interest owed**  
13 **by corporation.** ~~When a corporation subject to Montana corporate law has failed to file the annual~~  
14 ~~corporation report with the Montana secretary of state as required by law the department shall hold the~~  
15 ~~president, vice president, secretary, and treasurer jointly and severally liable for any taxes, penalties, and~~  
16 ~~interest due for the period in which the corporation is delinquent in filing the annual corporation report. If~~  
17 ~~the required annual corporation report is made and filed after the time specified, such officers may not, on~~  
18 ~~account of prior failure to make report, be held liable for the taxes, penalties, and interest thereafter~~  
19 ~~accruing.~~

20 (1) The officer or employee of a corporation whose duty it is to pay the taxes, penalties, and  
21 interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties,  
22 and interest due.

23 (2) (a) The department shall consider the officer or employee of the corporation individually liable  
24 with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that  
25 the individual:

26 (i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the  
27 corporation;

28 (ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment  
29 of taxes; or

30 (iii) possessed the fiscal authority on behalf of the corporation to direct the filing of reports or

1 payment of other corporate obligations and exercised the authority that resulted in failure to file reports  
2 or pay taxes due.

3 (b) The department is not limited to considering the elements set forth in subsection (2)(a) to  
4 establish individual liability and may consider any other available information.

5 (3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the  
6 discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes,  
7 penalties, and interest unpaid by the corporation.

8 (4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a  
9 member-managed limited liability company must be treated as a partnership, with liability for taxes,  
10 penalties, and interest owed extending to each member.

11 (5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a  
12 manager-managed limited liability company, the managers of the limited liability company are jointly and  
13 severally liable for any taxes, penalties, and interest owed."

14  
15 **NEW SECTION. Section 13. Collection of unpaid taxes, penalties, and interest by offset.** (1) To  
16 collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the  
17 debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The  
18 department, through the state auditor's office, shall provide the debtor with notice of the right to request  
19 a hearing on the offset action. A request for hearing must be made within 30 days of the date of the  
20 notice.

21 (2) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
22 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
23 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
24 collected must be returned to the department to be applied to the debt, except that all fees or costs  
25 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
26 state auditor shall retain only a proportionate share of the collection fees or costs.

27 (3) The department may file a claim for state funds on behalf of the employer if a claim is required  
28 before funds are available for offset.

29 (4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being  
30 transferred for offset.

1           **NEW SECTION. Section 14. Appropriation.** ~~(1)(a)~~ There is appropriated ~~\$68,750~~ \$250,000 from  
2 the general fund to the department of revenue for the biennium ending June 30, 1997, for a cost-benefit  
3 analysis to determine the feasibility of integrating employer wage reporting and related functions.

4           ~~(b) The appropriation contained in subsection (1)(a) is funded by reducing the amount deposited~~  
5 ~~in the state general fund from the payment of penalties and interest collected by the department of revenue~~  
6 ~~pursuant to 15-30-321 by the amount of the appropriation contained in subsection (1)(a).~~

7           ~~(2) There is appropriated \$56,250 from the workers' compensation tax account to the department~~  
8 ~~of revenue for the biennium ending June 30, 1997, for a cost-benefit analysis to determine the feasibility~~  
9 ~~of integrating employer wage reporting and related functions.~~

10           ~~(3) There is appropriated \$125,000 from the unemployment insurance penalty and interest account~~  
11 ~~established by 39-51-1301 to the department of labor and industry for the biennium ending June 30, 1997,~~  
12 ~~for a cost-benefit analysis to determine the feasibility of integrating employer wage reporting and related~~  
13 ~~functions.~~

14  
15           **NEW SECTION. Section 15. Codification instruction.** (1) [Section 4] is intended to be codified as  
16 an integral part of Title 15, chapter 30, part 2, and the provisions of Title 15, chapter 30, part 2, apply to  
17 [section 4].

18           (2) [Section 13] is intended to be codified as an integral part of Title 39, chapter 51, part 13, and  
19 the provisions of Title 39, chapter 51, part 13, apply to [section 13].

20  
21           **NEW SECTION. Section 16. Coordination.** If House Bill No. 100 is passed and approved and if  
22 it includes a section that amends 39-51-1105, then the section of House Bill No. 100 that amends  
23 39-51-1105 is void.

24  
25           **NEW SECTION. Section 17. Applicability.** (1) [Sections 7 through 10] apply, respectively, to  
26 warrants of distraint filed by the department of revenue and certificates of lien filed by the department of  
27 labor and industry on or after July 1, 1996.

28           (2) [Section 12] applies to debts incurred on or after July 1, 1996.

29  
30           **NEW SECTION. Section 18. Effective dates.** (1) Except as provided in subsections (2) and (3),

1 [this act] is effective on passage and approval.

2 (2) [Sections 2 through 4] are effective July 1, 1996.

3 (3) [Section 14] is effective July 1, 1995.

4 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 30, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 550 (third reading copy -- blue), respectfully report that HB 550 be amended as follows and as so amended be concurred in.

Signed: *Gerry Devlin*  
Senator Gerry Devlin, Chair

That such amendments read:

1. Page 18, line 5.

Strike: "(A)"

2. Page 18, lines 19 through 22.

Strike: subsection (b) in its entirety

3. Page 19, line 7.

Following: "Coordination."

Insert: "(1)"

4. Page 19, line 10.

Insert: "(2) If House Bill No. 563 is passed and approved transferring debt collection from the state auditor to the department of administration, then the reference to "state auditor" in 15-1-708(3)(a) of [this act] is changed to "department of administration" and any reference to "state auditor" in 17-4-103 is changed to "department"."

-END-

*DS*  
Amd. Coord.  
Sec. of Senate

*Sen. Bartlett*  
Senator Carrying Bill

HB 550

SENATE

1 HOUSE BILL NO. 550

2 INTRODUCED BY KASTEN, BARTLETT, MCCANN, KLAMPE, LARSON, WELDON, SIMON, RANEY,  
 3 GAGE, MILLER, MERCER, COCCHIARELLA, BOHLINGER, EWER, CRIPPEN, WATERMAN, CHRISTIAENS,  
 4 FORRESTER, BENEDICT, STANG, SQUIRES, FORBES, ZOOK, GROSFIELD, BROWN, HALLIGAN, PECK,  
 5 HARRINGTON, T. NELSON

6  
 7 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING IMPROVED TAXPAYER SERVICE TO BUSINESSES  
 8 BY STREAMLINING AND SIMPLIFYING WAGE-BASED REPORTING FOR WITHHOLDING TAX,  
 9 UNEMPLOYMENT INSURANCE TAX, AND OLD FUND LIABILITY TAX; PROVIDING A UNIFORM DEFINITION  
 10 OF INDEPENDENT CONTRACTOR; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-211,  
 11 15-1-701, 15-1-704, 15-1-708, 15-2-201, 15-30-201, 15-30-303, 39-51-1105, 39-51-1303, 39-51-1304,  
 12 AND 39-71-2503, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY PROVISIONS."

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

15  
 16 **Section 1.** Section 15-30-201, MCA, is amended to read:

17 "15-30-201. **Definitions.** When used in 15-30-201 through 15-30-209, the following definitions  
 18 apply:

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

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

27 (3) "Employer" means the person for whom an individual performs or performed any service, of  
 28 whatever nature, as an employee of the person; ~~except that~~ However, if the person for whom the  
 29 individual performs or performed the service does not have control of the payment of the wages for the  
 30 service, the term "employer" means the person having control of the payment of wages.

1           ~~(4)~~ "Independent contractor" means an individual who renders service in the course of an  
2 occupation and:

3           ~~(a)~~ has been and will continue to be free from control or direction over the performance of the  
4 services, both under contract and in fact; and

5           ~~(b)~~ is engaged in an independently established trade, occupation, profession, or business.

6           ~~(4)(5)~~ "Wages" means all remuneration, ~~{other than fees paid to a public official},~~ for services  
7 performed by an employee for ~~his~~ the employer, including the cash value of all remuneration paid in any  
8 medium other than cash, except that the term does not include remuneration paid:

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

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

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

14           ~~(d)~~ for casual labor not in the course of the employer's trade or business performed in any calendar  
15 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service  
16 is performed by an individual who is regularly employed by the employer to perform the service. For  
17 purposes of this subsection ~~(4)(d)(5)(d)~~, an individual is considered to be regularly employed by an employer  
18 during a calendar quarter only if:

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

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

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

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

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

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

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

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

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

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

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

21  
 22 **Section 2.** Section 15-1-211, MCA, is amended to read:

23 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall  
 24 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

25 (a) The tax review procedure described in this section applies to all taxes administered by the  
 26 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,  
 27 and property taxes, and the issue of whether an employer-employee relationship existed between the  
 28 taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the  
 29 employment relationship was that of an independent contractor. The procedure applies to any revised  
 30 assessment of centrally assessed property taxed pursuant to chapter 23.



1 (b) The term "taxpayers", as used in this section, includes all persons determined by the  
2 department to have a potential tax liability.

3 (2) (a) If the department determines that a request for a refund should be denied in whole or part,  
4 it shall notify the taxpayer of the determination. If the department determines that a person has failed to  
5 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the  
6 running of any applicable statute of limitations regarding the assessment of the tax.

7 (b) A notice under this section must clearly state:

8 (i) the reasons for the department's determination that a refund is not due or that tax plus interest  
9 and penalty, if any, is due;

10 (ii) the taxpayer's right to a review by the department, ~~and his~~ the taxpayer's right to appeal after  
11 a final department decision, and the taxpayer's right to a review of determinations by the department of  
12 labor and industry and board of labor appeals of whether an employer-employee relationship existed  
13 between the taxpayer and certain individuals or whether the employment relationship was that of an  
14 independent contractor;

15 (iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right  
16 to contest the department's determination under this section or to file an appeal with the state tax appeal  
17 board;

18 (iv) that the taxpayer has 30 days to either notify the department in writing that ~~he~~ the taxpayer  
19 does not agree with an assessment or pay the amount assessed;

20 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless ~~he~~  
21 the taxpayer notifies the department that ~~he~~ the taxpayer disagrees with an assessment or pays within 30  
22 days; and

23 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the  
24 tax.

25 (3) (a) A taxpayer shall notify the department, in writing, that ~~he~~ the taxpayer objects to the  
26 determination within 30 days from the date the notice is mailed. The notification by the taxpayer is not  
27 required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is  
28 objecting to a determination that an employer-employee relationship existed between the taxpayer and  
29 individuals subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify  
30 the department within 30 days:

- 1 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;  
2 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax  
3 appeal board; and  
4 (iii) a warrant for distraint may be issued without further opportunity to be heard on the  
5 assessment.

6 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that ~~he~~ the taxpayer  
7 disagrees with a tax assessment shall present ~~his~~ the objections, the reasons for ~~his~~ the objections, and  
8 any other information to the administrator of the division that administers the tax or to ~~his~~ the  
9 administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The  
10 reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an  
11 informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

12 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer  
13 disagrees with the department's determination that an employer-employee relationship existed between the  
14 taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, must  
15 be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2403 and  
16 39-51-2410.

17 (c) Within 60 days after the taxpayer has presented his objections, as provided in subsection (3)(b),  
18 the administrator or ~~his~~ a designee shall issue a written decision addressing the taxpayer's objections and  
19 describing the reasons for the determination. The administrator's decision must also clearly set forth the  
20 taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director  
21 of revenue.

22 (4) (a) A taxpayer shall notify the department in writing that ~~he~~ the taxpayer objects to the  
23 administrator's decision within 30 days from the date that the decision is mailed, or ~~he~~ the taxpayer may  
24 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30  
25 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer  
26 waives any further right to review or appeal and a warrant for distraint may be issued without further  
27 opportunity to be heard on the assessment.

28 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision  
29 pursuant to subsection (4)(a) shall present ~~his~~ the taxpayer's objections, ~~his~~ the reasons for the objections,  
30 and any other information to the director of revenue or ~~his~~ the director's designee within 60 days after the

1 notice referred to in subsection (4)(a) is mailed. The director or ~~his~~ the designee may consider written  
2 information, hold a telephone conference, or conduct an informal conference, none of which are subject  
3 to the Montana Administrative Procedure Act.

4 (c) Within 60 days after the taxpayer has presented ~~his~~ the objections, the director or ~~his~~ the  
5 designee shall issue a written decision addressing the objections and describing the reasons for the  
6 decision. The director's decision is the final decision and assessment of the department.

7 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final  
8 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the  
9 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by  
10 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law  
11 must continue to accrue.

12 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal  
13 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the  
14 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the  
15 department.

16 (b) If the director notifies the board within 30 days after an appeal is filed that ~~he~~ the director has  
17 not had an opportunity to review the administrator's decision and ~~he~~ the director believes that a review may  
18 be helpful in resolving the controversy, the board shall stay the appeal for a time the board considers  
19 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide  
20 ~~his~~ the taxpayer's objections and reasons for ~~his~~ the objections to the director so that the director or ~~his~~  
21 the director's designee may review the controversy and issue a decision within the period of the stay  
22 granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and  
23 the appeal resumed.

24 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the  
25 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by  
26 mutual consent of the department and the taxpayer. The department shall consent to all reasonable  
27 requests for extension of deadlines.

28 (8) (a) The director of revenue or ~~his~~ the director's designee is authorized to enter into an  
29 agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the  
30 department for any taxable period.

1 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except  
2 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

3 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,  
4 employee, or agent of this state; and

5 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,  
6 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement  
7 may not be annulled, modified, set aside, or disregarded."

8  
9 **Section 3.** Section 15-2-201, MCA, is amended to read:

10 **"15-2-201. Powers and duties.** (1) It ~~shall be~~ is the duty of the state tax appeal board to:

11 (a) prescribe rules for the tax appeal boards of the different counties in the performance of their  
12 duties and for this purpose may schedule meetings of county tax appeal boards, and it ~~shall be~~ is the duty  
13 of all invited county tax appeal board members to attend if possible, and the cost of their attendance ~~shall~~  
14 must be paid from the appropriation of the state tax appeal board;

15 (b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not  
16 because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time  
17 period provided for in 15-15-101(2) to hear an appeal.

18 (c) hear appeals from decisions of the county tax appeal boards;

19 (d) hear appeals from decisions of the department of revenue in regard to business licenses,  
20 property assessments, taxes, except determinations that an employer-employee relationship existed  
21 between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2,  
22 and penalties.

23 (2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by  
24 a member of the board or ~~his~~ the member's agent. ~~In case any~~ If a witness shall fail to does not obey any  
25 a summons to appear before ~~said~~ the board or ~~shall refuse~~ refuses to testify or answer any material  
26 questions or to produce records, books, papers, or documents when required to do so, ~~such~~ that failure  
27 or refusal ~~shall~~ must be reported to the attorney general, who shall thereupon institute proceedings in the  
28 proper district court to punish the witness for ~~such~~ the neglect or refusal. ~~Any~~ A person who ~~shall testify~~  
29 testifies falsely in any material matter under consideration by the board ~~shall be~~ is guilty of perjury and  
30 punished accordingly. Witnesses attending shall receive ~~like~~ the same compensation as witnesses in the

1 district court. ~~Such~~ The compensation ~~shall~~ must be charged to the proper appropriation for the board.

2 (3) The state tax appeal board ~~shall~~ also ~~have~~ has the duties of an appeal board relating to ~~such~~  
3 other matters as may be provided by law."

4  
5 **NEW SECTION. Section 4. Determination of employer status.** A final determination by either the  
6 department of labor and industry or the board of labor appeals that an employer-employee relationship  
7 existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter  
8 30, part 2, ~~is conclusive and binding upon the taxpayer and the department. The determination~~ WHICH  
9 MAY BE SUBJECT TO JUDICIAL REVIEW, AS PROVIDED IN 39-51-2404, AT THE DISCRETION OF THE  
10 TAXPAYER, is not subject to any further administrative or judicial challenge in any proceeding BEFORE OR  
11 WITH THE DEPARTMENT OF REVENUE concerning a determination of the proper amount of state income  
12 tax withholding and old fund liability tax to be paid.

13  
14 **Section 5.** Section 15-30-303, MCA, is amended to read:

15 **"15-30-303. Confidentiality of tax records.** (1) Except as provided in subsections (7) and (8) or in  
16 accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make  
17 known in any manner:

18 (a) the amount of income or any particulars set forth or disclosed in any individual report or  
19 individual return required under this chapter or any other information secured in the administration of this  
20 chapter; or

21 (b) any federal return or federal return information disclosed on any return or report required by rule  
22 of the department or under this chapter.

23 (2) (a) The officers charged with the custody of the reports and returns may not be required to  
24 produce them or evidence of anything contained in them in an action or proceeding in a court, except in  
25 an action or proceeding:

26 (i) to which the department is a party under the provisions of this chapter or any other taxing act;  
27 or

28 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other  
29 taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

30 (b) The court may require the production of and may admit in evidence only as much of the reports

1 or of the facts shown by the reports as are pertinent to the action or proceedings.

2 (3) This section does not prohibit:

3 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any  
4 return or report filed in connection with the taxpayer's tax;

5 (b) the publication of statistics classified to prevent the identification of particular reports or returns  
6 and the items of particular reports or returns; or

7 (c) the inspection by the attorney general or other legal representative of the state of the report  
8 or return of any taxpayer who brings an action to set aside or review the tax based on the report or return  
9 or against whom an action or proceeding has been instituted in accordance with the provisions of  
10 15-30-311.

11 (4) Reports and returns must be preserved for at least 3 years and may be preserved until the  
12 department orders them to be destroyed.

13 (5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000  
14 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer  
15 or employee of the state, the offender must be dismissed from office and may not hold any public office  
16 in this state for a period of 1 year after dismissal.

17 (6) This section may not be construed to prohibit the department from providing taxpayer return  
18 information and information from employers' payroll withholding reports to:

19 (a) the department of labor and industry to be used for the purpose of investigation and prevention  
20 of noncompliance, tax evasion, prevent and detect fraud, and abuse under the unemployment ~~compensation~~  
21 ~~program~~ insurance laws; or

22 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance,  
23 ~~prevent and detect fraud,~~ and abuse under the workers' compensation program.

24 (7) The department may permit the commissioner of internal revenue of the United States or the  
25 proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative  
26 of either officer to inspect the return of income of any individual or may furnish to the officer or an  
27 authorized representative an abstract of the return of income of any individual or supply the officer with  
28 information concerning an item of income contained in a return or disclosed by the report of an investigation  
29 of the income or return of income of an individual, but the permission may be granted or information  
30 furnished only if the statutes of the United States or of the other state grant substantially similar privileges

1 to the proper officer of this state charged with the administration of this chapter.

2 (8) The department shall furnish:

3 (a) to the department of justice all information necessary to identify those persons qualifying for  
4 the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the  
5 department of justice to administer the provisions of 61-5-105;

6 (b) to the department of social and rehabilitation services information acquired under 15-30-301,  
7 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of  
8 public assistance fraud and abuse, provided notice to the applicant has been given;

9 (c) to the department of labor and industry for the purpose of prevention and detection of fraud  
10 and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation  
11 programs information on whether a taxpayer who is the subject of an ongoing investigation by the  
12 department of labor and industry is an employee, an independent contractor, or self-employed;

13 (d) to the department of fish, wildlife, and parks specific information that is available from income  
14 tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting  
15 and fishing licenses;

16 (e) to the board of regents information required under 20-26-1111;

17 (f) to the legislative fiscal analyst and the office of budget and program planning individual income  
18 tax information as provided in 5-12-303. The information provided to the office of budget and program  
19 planning must be the same as the information provided to the legislative fiscal analyst.

20 (g) to the department of transportation the ratio of gross farm income to total gross income based  
21 on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided  
22 that notice to the applicant has been given as provided in 15-70-223. The information obtained by the  
23 department of transportation is subject to the same restrictions on disclosure as are individual income tax  
24 returns."

25

26 **Section 6.** 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 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional  
29 amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar  
30 quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus

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

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

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

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

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

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

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

30 (h) An employee does not have any right of action against an employer for any money deducted



1 and withheld from the employee's wages and paid to the state in compliance or intended compliance with  
2 this section.

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

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

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

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

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

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

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

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

1 (5) Returns and remittances under subsection (3) and any information obtained by the department  
2 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information  
3 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,  
4 tax evasion, fraud, and abuse under the unemployment insurance laws under circumstances and conditions  
5 that ensure the continued 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 **Section 7.** Section 15-1-701, MCA, is amended to read:

20 "**15-1-701. Warrant for distraint.** (1) A warrant for distraint is an order, under the official seal of  
21 the department of revenue or of the department of transportation, directed to a sheriff of a county of  
22 Montana or to an agent authorized by law to collect a tax. The order commands the recipient to levy upon  
23 and sell the real and personal property of a delinquent taxpayer.

24 (2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal  
25 property of the delinquent taxpayer located in the county where the warrant is filed. The resulting lien is  
26 treated in the same manner as a properly docketed judgment lien, and the department may collect  
27 delinquent taxes and enforce the tax lien in the same manner as a judgment is enforced, except that the  
28 department may enforce the judgment lien at any time within 10 years of its creation or effective date,  
29 whichever is later.

30 (3) A warrant may be issued for the amount of unpaid tax plus penalty, if any, and accumulated

1 interest. The lien is for the amount indicated on the warrant plus accrued interest from the date of the  
2 warrant."

3

4 **Section 8.** Section 15-1-704, MCA, is amended to read:

5 **"15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the  
6 warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the  
7 name of the taxpayer listed as the judgment debtor.

8 (2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized  
9 to collect the tax.

10 (3) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
11 pursuant to the provisions of 25-13-102."

12

13 **Section 9.** Section 39-51-1303, MCA, is amended to read:

14 **"39-51-1303. Collection of unpaid taxes by civil action.** (1) If, after due notice, any employer, liable  
15 corporate officer or employee, or liable member or manager of a limited liability company referred to in  
16 39-51-1105 defaults in any payment of taxes, penalties, or interest ~~thereon~~ on the taxes and penalties, the  
17 department may at its discretion initiate a civil action in the name of the Montana department of labor and  
18 industry to collect the amount due, and the employer adjudged in default shall pay the costs of ~~such~~ the  
19 action.

20 (2) An action for the collection of taxes due must be brought within 5 years after the due date of  
21 ~~such~~ the taxes or it is barred.

22 (3) The department may pursue its remedy under either this section or 39-51-1304, or both."  
23

24

24 **Section 10.** Section 39-51-1304, MCA, is amended to read:

25 **"39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including  
26 penalties and interest assessed ~~thereon~~ on the taxes, have the effect of a judgment against the employer,  
27 or liable corporate officer or employee or liable member or manager of a limited liability company referred  
28 to in 39-51-1105, arising at the time ~~such~~ that the payments are due. The department may issue a  
29 certificate setting forth the amount of payments due and directing the clerk of the district court of any  
30 county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time

1 the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the  
 2 due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce  
 3 the judgment pursuant to Title 25, chapter 13, ~~except that the~~ through the sheriff or agent authorized to  
 4 collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be  
 5 made by means of a certified letter by an agent authorized to collect the tax. The department may enforce  
 6 the judgment at any time within 10 years of the creation of the lien or the effective date of the lien,  
 7 whichever is later.

8 (2) A judgment lien filed pursuant to this section may be renewed for another 10-year period  
 9 pursuant to the provisions of 25-13-102.

10 ~~(2)(3)~~ The lien provided for in subsection (1) is not valid against any third party owning an interest  
 11 in real or personal property against which the judgment is enforced if:

12 (a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

13 (b) the third party receives from the most recent grantor of the interest a signed affidavit stating  
 14 that all taxes, penalties, and interest due from the grantor have been paid.

15 ~~(3)(4)~~ A grantor who signs and delivers an affidavit is subject to the penalties imposed by  
 16 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may  
 17 proceed against the employer, liable corporate officer or employee, or liable member or manager of a limited  
 18 liability company referred to in 39-51-1105 under this section or 39-51-1303 or this section, or both, to  
 19 collect the delinquent taxes, penalties, and interest.

20 ~~(4)(5)~~ The lien provided for in subsection (1) must be released upon payment in full of the unpaid  
 21 taxes, penalties, and accumulated interest. The department may release or may partially release the lien  
 22 upon partial payment or whenever the department determines that the release or partial release of the lien  
 23 will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if  
 24 it determines that the lien is unenforceable."

25  
 26 **Section 11.** Section 15-1-708, MCA, is amended to read:

27 **"15-1-708. Release of lien.** (1) Upon payment in full of the unpaid tax plus penalty, if any, and  
 28 accumulated interest, the department shall release the lien acquired by filing the warrant for distraint.

29 (2) Upon partial payment or whenever the department determines that a release or partial release  
 30 of the lien will facilitate the collection of the unpaid tax, penalty, and interest, the department may release

1 or may partially release the lien acquired by filing the warrant for distraint. The department may release the  
2 lien if it determines that the lien is unenforceable.

3 (3)(a) After making all reasonable efforts to collect unpaid taxes, penalties, and interest on the taxes  
4 and penalties, the department may determine a debt to be uncollectible. Upon determining that a debt is  
5 uncollectible, the department may transfer the debt to the state auditor for collection as provided in  
6 17-4-104.

7 (b) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
8 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
9 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
10 collected must be returned to the department to be applied to the debt, except that all fees or costs  
11 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
12 state auditor shall retain only a proportionate share of the collection fees or costs."

13

14 **Section 12.** Section 39-51-1105, MCA, is amended to read:

15 **"39-51-1105. Liability of corporate officers or employees for taxes, penalties, and interest owed**  
16 **by corporation. ~~When a corporation subject to Montana corporate law has failed to file the annual~~**  
17 **~~corporation report with the Montana secretary of state as required by law the department shall hold the~~**  
18 **~~president, vice president, secretary, and treasurer jointly and severally liable for any taxes, penalties, and~~**  
19 **~~interest due for the period in which the corporation is delinquent in filing the annual corporation report. If~~**  
20 **~~the required annual corporation report is made and filed after the time specified, such officers may not, on~~**  
21 **~~account of prior failure to make report, be held liable for the taxes, penalties, and interest thereafter~~**  
22 **~~accruing.~~**

23 (1) The officer or employee of a corporation whose duty it is to pay the taxes, penalties, and  
24 interest, as provided by 39-51-1103(1) and (2) and 39-51-1125(1) and (2), is liable for the taxes, penalties,  
25 and interest due.

26 (2) (a) The department shall consider the officer or employee of the corporation individually liable  
27 with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that  
28 the individual:

29 (i) possessed the authority, duty, and responsibility to file reports and pay taxes on behalf of the  
30 corporation;

1           (ii) possessed the authority on behalf of the corporation to direct the filing of reports and payment  
2 of taxes; or

3           (iii) possessed the fiscal authority on behalf of the corporation to direct the filing of reports or  
4 payment of other corporate obligations and exercised the authority that resulted in failure to file reports  
5 or pay taxes due.

6           (b) The department is not limited to considering the elements set forth in subsection (2)(a) to  
7 establish individual liability and may consider any other available information.

8           (3) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the  
9 discharge of penalty and interest against the corporation. The individual is liable for any amount of taxes,  
10 penalties, and interest unpaid by the corporation.

11           (4) For determining liability for unemployment insurance taxes, penalties, and interest owed, a  
12 member-managed limited liability company must be treated as a partnership, with liability for taxes,  
13 penalties, and interest owed extending to each member.

14           (5) For determining liability for unemployment insurance taxes, penalties, and interest owed by a  
15 manager-managed limited liability company, the managers of the limited liability company are jointly and  
16 severally liable for any taxes, penalties, and interest owed."

17  
18           **NEW SECTION. Section 13. Collection of unpaid taxes, penalties, and interest by offset.** (1) To  
19 collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the  
20 debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The  
21 department, through the state auditor's office, shall provide the debtor with notice of the right to request  
22 a hearing on the offset action. A request for hearing must be made within 30 days of the date of the  
23 notice.

24           (2) Subject to approval by the department, reasonable fees or costs of collection incurred by the  
25 state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable  
26 for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money  
27 collected must be returned to the department to be applied to the debt, except that all fees or costs  
28 collected must be retained by the state auditor. If less than the full amount of the debt is collected, the  
29 state auditor shall retain only a proportionate share of the collection fees or costs.

30           (3) The department may file a claim for state funds on behalf of the employer if a claim is required

1 before funds are available for offset.

2 (4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being  
3 transferred for offset.

4  
5 NEW SECTION. Section 14. Appropriation. (1)(a)(1)(A) There is appropriated ~~\$68,750~~ \$250,000  
6 \$68,750 from the general fund UNEMPLOYMENT INSURANCE ADMINISTRATIVE TAX FUNDS to the  
7 department of revenue for the biennium ending June 30, 1997, for a cost-benefit analysis to determine the  
8 feasibility of integrating employer wage reporting and related functions.

9 ~~(b) The appropriation contained in subsection (1)(a) is funded by reducing the amount deposited~~  
10 ~~in the state general fund from the payment of penalties and interest collected by the department of revenue~~  
11 ~~pursuant to 15-30-321 by the amount of the appropriation contained in subsection (1)(a).~~

12 ~~(2) There is appropriated \$56,250 from the workers' compensation tax account to the department~~  
13 ~~of revenue for the biennium ending June 30, 1997, for a cost benefit analysis to determine the feasibility~~  
14 ~~of integrating employer wage reporting and related functions.~~

15 ~~(3) There is appropriated \$125,000 from the unemployment insurance penalty and interest account~~  
16 ~~established by 39-51-1301 to the department of labor and industry for the biennium ending June 30, 1997,~~  
17 ~~for a cost benefit analysis to determine the feasibility of integrating employer wage reporting and related~~  
18 ~~functions.~~

19 ~~(B) THE APPROPRIATION CONTAINED IN SUBSECTION (1)(A) IS FUNDED BY REDUCING THE~~  
20 ~~AMOUNT DEPOSITED IN THE STATE GENERAL FUND FROM THE PAYMENT OF PENALTIES AND~~  
21 ~~INTEREST COLLECTED BY THE DEPARTMENT OF REVENUE PURSUANT TO 15-30-321 BY THE AMOUNT~~  
22 ~~OF THE APPROPRIATION CONTAINED IN SUBSECTION (1)(A).~~

23 ~~(2) THERE IS APPROPRIATED \$56,250 FROM THE WORKERS' COMPENSATION TAX ACCOUNT~~  
24 ~~TO THE DEPARTMENT OF REVENUE FOR THE BIENNIUM ENDING JUNE 30, 1997, FOR A COST-BENEFIT~~  
25 ~~ANALYSIS TO DETERMINE THE FEASIBILITY OF INTEGRATING EMPLOYER WAGE REPORTING AND~~  
26 ~~RELATED FUNCTIONS.~~

27 ~~(3) THERE IS APPROPRIATED \$125,000 FROM THE UNEMPLOYMENT INSURANCE PENALTY AND~~  
28 ~~INTEREST ACCOUNT ESTABLISHED BY 39-51-1301 TO THE DEPARTMENT OF LABOR AND INDUSTRY~~  
29 ~~FOR THE BIENNIUM ENDING JUNE 30, 1997, FOR A COST-BENEFIT ANALYSIS TO DETERMINE THE~~  
30 ~~FEASIBILITY OF INTEGRATING EMPLOYER WAGE REPORTING AND RELATED FUNCTIONS.~~

