Tom E Boharski Fuchs Curtiss Wells Marshall Brainard

HOUSE BILL NO. 560

INTRODUCED BY Simon Simpkins ORR McKee Feland

Mercer Grinde Harp Wm Ryan Peck Knox Masolo

Tom Nelson

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR ESTABLISHMENT AND ADMINISTRATION OF ACCOUNTS; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF FUNDS CONTAINED WITHIN AN ACCOUNT AND FUNDS WITHDRAWN FOR ELIGIBLE MEDICAL EXPENSES OR FOR THE LONG-TERM CARE OF THE ACCOUNT HOLDER; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE MEDICAL EXPENSES AND LONG-TERM CARE; PROVIDING PENALTIES; AND AMENDING SECTION 15-30-111, MCA."

Arnott Anderson Swanson Storm Rehbein Barnett Anderson Rose Molnar Bohlinger

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Medical Care Savings Account Act of 1995".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

(c) a broker-dealer, issuer, or investment adviser as defined in 30-10-103 or a federal investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64;

(d) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50; or

(e) an employer if the employer has a self-insured health plan under ERISA.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

NEW SECTION. **Section 3. Establishment of account.** (1) An employer, except as otherwise provided by statute, contract, or a collective bargaining agreement, may establish a medical care savings account for an employee of the employer.

(2) An individual who is a resident of this state may establish a medical care savings account for that individual or for a dependent of the individual.

(3) Before making any contributions to an employee's account, an employer shall inform an employee in writing of the state and federal tax status of contributions made pursuant to [sections 1 through 7].

(4) Upon agreement between an employer and an employee, an employee may have the employer contribute either to the employee's medical care savings account or to a health insurance policy or program for the employee.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest are contained within the account or are withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder.

(2) Except as provided in subsection (4), an employee or account holder may deposit into an account in 1 year and may exclude as an annual contribution in 1 year no more than $3,000. There is no limitation on the amount of funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account.

(4) An employee or account holder may in 1 year deposit into an account more than the amount allowed by subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) A change in the account administrator does not subject the employee or account holder to tax liability.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 to 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest in the account to the estate of the employee or account holder.

<u>NEW SECTION.</u> **Section 5. Withdrawal of funds from account for purposes other than medical**

expenses and long-term care. (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder only on the last business day of the account administrator's business year.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care and other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the medical care savings account from which the payment of claims is made and has a fiduciary duty to the person for whose benefit the account is administered.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses of the employee or account holder or a dependent of the employee or account holder that are otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

NEW SECTION. **Section 7. False claims prohibited -- penalty.** (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account.

(2) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount not exceeding $300 is guilty of theft and upon conviction shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(3) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount of $300 or more is guilty of theft and upon conviction shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the amount withdrawn from an account in violation of this section.

Section 8. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ includes the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954~~,~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

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

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; ~~and~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) principal and income in a medical care savings account established in accordance with [section 3] or withdrawn from an account for eligible medical expenses as defined in [section 2] or for the long-term care of the taxpayer.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of

the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

<ins>NEW SECTION.</ins> **Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0560, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing for medical care savings accounts; providing definitions; providing for establishment and administration of accounts; providing for an exclusion from adjusted gross income of funds contained within an account and funds withdrawn for eligible medical expenses or for the long-term care of the account holder; providing for withdrawal from an account for purposes other than eligible medical expenses and long-term care; and providing penalties.

ASSUMPTIONS:
1. This legislation is effective October 1, 1995.
2. This legislation applies to tax years beginning after December 31, 1995 (MDOR).
3. It is assumed that retirees would not use medical savings accounts (MDOR).
4. It is assumed that households in poverty would not use medical savings accounts (MDOR).
5. The 1993 poverty thresholds (below which households are estimated to be in poverty) are as follows: single person households under age 65, $7,518; single parent households, $11,137; and married couple households (with and without children), $11,631 (U.S. Bureau of the Census and MDOR).
6. The proposed legislation allows an exclusion from Montana Adjusted Gross Income of up to $3,000 of deposits in medical savings accounts, for the payment of eligible medical expenses or for long-term care expenses.
7. It is assumed that lower income groups will contribute smaller amounts to medical savings accounts as compared with higher income households (MDOR).
8. The amount of annual contributions is assumed to be national out-of-pocket health care expenditures by income group published for 1991, adjusted to calendar year 1996 by projected increases in medical costs, and modified to Montana using the ratio of average 1992 out-of-pocket Montana household health expenditures ($1,133) to estimated 1992 out-of-pocket U.S. household health expenditures ($1,679) (*Consumer Expenditure Survey*, 1990-91, U.S. Bureau of Labor Statistics; Wharton Econometric Forecasting Associates for projected medical cost increases; Montana Heath Care Authority for Montana out-of-pocket health care expenditures; and U.S. Bureau of the Census for estimated number of households).
9. The amount of assumed contributions by participating non-poverty households by income group is as follows: (1) under $5,000, all households in poverty, zero contributions; (2) $5,000--$9,999, $959 in contributions; (3) $10,000--$14,999, $1,193 in contributions; (4) $15,000--$19,999, $1,257 in contributions; (5) $20,000--$29,999, $1,377 in contributions; (6) $30,000--$39,999, $1,425; (7) $40,000--$49,999, $1,494; and (8) $50,000 and over, $1,888 in contributions (MDOR).

(continued page 2)

Dave Lewis 2-21-95 Bruce Simon

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

BRUCE SIMON, PRIMARY SPONSOR DATE
Fiscal Note for HB0560, as introduced

HB 560

ASSUMPTIONS: (continued)

10. If all households participated in the medical savings account program defined in this legislation, the negative revenue impact for the individual income tax for tax year 1996 (FY97) would be $14.6 million for resident taxpayers (MDOR Income Tax Simulation Model).
11. Even though this legislation is written for residents (Section 3), under 15-30-131 (MCA) non-residents are treated as residents. Therefore medical savings accounts are assumed to apply to residents and non-residents alike (MDOR).
12. An estimated additional 6 percent of the resident tax impact applies to non-residents, for a total potential negative revenue impact for FY97 of about $15.5 million (MDOR).
13. Not all households will participate in the medical savings account program under this bill. Only employees covered under an employer self-insured plan sanctioned by ERISA (Employee Retirement Income Security Act of 1974, Public Law 93-406) may participate through medical savings accounts set up by employers; many households already participate in the current federal flexible medical spending account program (Section 125); some people, particularly young adults, are simply very healthy and need very minimal health care; some households just above the poverty line go without health care because they cannot afford it; and many households do not use government programs because of lack of information and other reasons, 1996 would be the first year of the program (MDOR).
14. The legislation specifies a 10 percent penalty for medical savings account withdrawals for other than medical (including long-term care) purposes, to be deposited in the state general fund. It is assumed that this provision will act to deter non-medical related withdrawals and that deposits in the state general fund will be minimal.
15. It is assumed that 20 percent of households will use this program in tax year 1996, yielding a negative revenue impact of roughly $3.1 million (MDOR).
16. In order to implement this legislation, the Department of Revenue would require one additional FTE employee; a line would need to be added to the individual income tax return with related programming and other data processing costs; and additional equipment would be necessary (MDOR).

(Fiscal Impact - see page 3)

FISCAL IMPACT:

Expenditures:

	FY96 Difference	FY97 Difference
Personal Services	$13,193	$26,386
Operating Costs	10,885	3,340
Equipment	6,589	0
Total	$30,667	$29,726

Revenues:

	FY96 Difference	FY97 Difference
Individual Income Tax	0	($3,100,000)

Net Impact:

General Fund	($30,667)	($3,129,726)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Health insurance premiums and other health care costs will increase over time. Because of this increase and because of possible increased participation in the savings account program, it is likely that the negative revenue impact of this legislation will increase over the long run.

APPROVED BY SELECT COMMITTEE ON HEALTH CARE

HOUSE BILL NO. 560

INTRODUCED BY SIMON, SIMPKINS, ORR, MCKEE, FELAND, MERCER, GRINDE, HARP, RYAN, PECK, KNOX, MASOLO, GREEN, T. NELSON, HAYNE, RANEY, FUCHS, CURTISS, WELLS, BRAINARD, MARSHALL, DENNY, ELLIS, BOHARSKI, QUILICI, BROWN, ARNOTT, KOTTEL, ANDERSON, SWANSON, STOVALL, MCGEE, CLARK, MURDOCK, STORY, REHBEIN, GRADY, JORE, DEBRUYCKER, KEENAN, AHNER, DEVANEY, TAYLOR, BARNETT, KITZENBERG, GRIMES, OHS, SLITER, HIBBARD, HERRON, SOMERVILLE, ROSE, MILLS, MOLNAR, BOHLINGER, MARTINEZ, HARPER, FORBES, WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR ESTABLISHMENT AND ADMINISTRATION OF ACCOUNTS; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF FUNDS CONTAINED WITHIN AN ACCOUNT AND FUNDS WITHDRAWN FOR ELIGIBLE MEDICAL EXPENSES OR FOR THE LONG-TERM CARE OF AN EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR THE ACCOUNT HOLDER; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE MEDICAL EXPENSES AND LONG-TERM CARE; PROVIDING PENALTIES; ~~AND~~ AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION."

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

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NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], unless it clearly appears otherwise, the following definitions apply:

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(b) a health care insurer as defined in 33-22-125;

~~(c) a broker-dealer, issuer, or investment adviser as defined in 30-10-103 or a federal investment~~

~~company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64;~~

~~(d)~~(C) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50; or

~~(e)~~(D) an employer if the employer has a self-insured health plan under ERISA.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

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(2) An individual who is a resident of this state may establish a medical care savings account for that individual or for a dependent of the individual.

(3) Before making any contributions to an employee's account, an employer shall inform an employee in writing of the state and federal tax status of contributions made pursuant to [sections 1

through 7].

(4) Upon agreement between an employer and an employee, an employee may have the employer contribute ~~either~~ to the employee's medical care savings account ~~or~~, to a health insurance policy or program for the employee, OR TO BOTH THE ACCOUNT AND THE POLICY OR PROGRAM.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest ~~are~~ OR OTHER INCOME IS contained within the account or ~~are~~ withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER.

(2) ~~Except as provided in subsection (4), an~~ AN employee or account holder ~~may deposit into an account in 1 year and~~ may exclude as an annual contribution in 1 year no more than $3,000. There is no limitation on the amount of funds AND INTEREST OR OTHER INCOME ON THOSE FUNDS that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. AN EMPLOYEE OR ACCOUNT HOLDER MAY NOT DEDUCT PURSUANT TO 15-30-121 OR EXCLUDE PURSUANT TO 15-30-111 AN AMOUNT REPRESENTING A LOSS IN THE VALUE OF AN INVESTMENT CONTAINED IN AN ACCOUNT.

(4) An employee or account holder may in 1 year deposit into an account more than the amount ~~allowed by~~ EXCLUDED PURSUANT TO subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. AN EMPLOYEE OR ACCOUNT HOLDER WHO DEPOSITS MORE THAN $3,000 INTO AN ACCOUNT IN A YEAR MAY EXCLUDE FROM THE EMPLOYEE'S OR ACCOUNT HOLDER'S ADJUSTED GROSS INCOME IN ACCORDANCE WITH 15-30-111(2)(J) IN A SUBSEQUENT YEAR ANY PART OF $3,000 PER YEAR NOT PREVIOUSLY EXCLUDED.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) ~~A change in the account administrator does not subject the employee or account holder to tax liability.~~ THE EMPLOYEE OR ACCOUNT HOLDER WHO ESTABLISHES THE ACCOUNT IS THE OWNER OF THE ACCOUNT. AN EMPLOYEE OR ACCOUNT HOLDER MAY WITHDRAW MONEY IN AN ACCOUNT AND DEPOSIT THE MONEY IN ANOTHER ACCOUNT WITH A DIFFERENT OR WITH THE SAME ACCOUNT ADMINISTRATOR WITHOUT INCURRING TAX LIABILITY.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 to 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest OR OTHER INCOME in the account to the estate of the employee or account holder.

NEW SECTION. **Section 5. Withdrawal of funds from account for purposes other than medical expenses and long-term care.** (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER only on the last business day of the account administrator's business year. MONEY WITHDRAWN FROM AN ACCOUNT PURSUANT TO THIS SUBSECTION MUST BE TAXED AS ORDINARY INCOME OF THE EMPLOYEE OR ACCOUNT HOLDER.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care ~~and~~ OR other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. MONEY WITHDRAWN FROM AN ACCOUNT PURSUANT TO THIS

SUBSECTION MUST BE TAXED AS ORDINARY INCOME OF THE EMPLOYEE OR ACCOUNT HOLDER.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the medical care savings account from which the payment of claims is made and has a fiduciary duty to the person for whose benefit the account is administered.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity FOR THE LONG-TERM CARE OF THE EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses OR FOR A LONG-TERM CARE INSURANCE POLICY OR ANNUITY of the employee or account holder or a dependent of the employee or account holder that ~~are~~ IS otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity FOR THE EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

NEW SECTION. **Section 7. False claims prohibited -- penalty.** (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account.

(2) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount not exceeding $300 is guilty of theft and upon conviction shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(3) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount of $300 or more is guilty of theft and upon conviction shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the amount withdrawn from an account in violation of this section.

Section 8. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ includes the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954~~,~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

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

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to

the employee under federal law; ~~and~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) principal and income in a medical care savings account established in accordance with [section 3] or withdrawn from an account for eligible medical expenses, as defined in [section 2], OF THE TAXPAYER OR A DEPENDENT OF THE TAXPAYER or for the long-term care of the taxpayer OR A DEPENDENT OF THE TAXPAYER.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's

eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

NEW SECTION. **SECTION 9. ACCOUNT NOT TO BE TREATED AS ASSET FOR PURPOSES OF ELIGIBILITY.** IF ALLOWED BY FEDERAL LAW, THE PRINCIPAL AND ALL INTEREST OR OTHER INCOME CONTAINED WITHIN AN ACCOUNT ESTABLISHED IN ACCORDANCE WITH [SECTIONS 1 THROUGH 7] MAY NOT BE TREATED AS AN ASSET OF THE EMPLOYEE OR ACCOUNT HOLDER OR AS AN ASSET OF A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER FOR THE PURPOSES OF ELIGIBILITY FOR THE MONTANA MEDICAID PROGRAM.

NEW SECTION. **Section 10. Codification instruction.** (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

(2) [SECTION 9] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 53, CHAPTER 6, AND THE PROVISIONS OF TITLE 53, CHAPTER 6, APPLY TO [SECTION 9].

NEW SECTION. **SECTION 11. RETROACTIVE APPLICABILITY.** [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO TAX YEARS BEGINNING AFTER DECEMBER 31, 1994.

NEW SECTION. **SECTION 12. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

NEW SECTION. **SECTION 13. CONTINGENT VOIDNESS.** IN ORDER TO MAINTAIN A BALANCED BUDGET, BECAUSE [THIS ACT] REDUCES REVENUE, IT MAY NOT BE TRANSMITTED TO THE GOVERNOR UNLESS A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS CONTAINED IN HOUSE BILL NO. 2. IF A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS NOT CONTAINED IN HOUSE BILL NO.

2. [THIS ACT] IS VOID.

-END-

HOUSE BILL NO. 560

INTRODUCED BY SIMON, SIMPKINS, ORR, MCKEE, FELAND, MERCER, GRINDE, HARP, RYAN, PECK, KNOX, MASOLO, GREEN, T. NELSON, HAYNE, RANEY, FUCHS, CURTISS, WELLS, BRAINARD, MARSHALL, DENNY, ELLIS, BOHARSKI, QUILICI, BROWN, ARNOTT, KOTTEL, ANDERSON, SWANSON, STOVALL, MCGEE, CLARK, MURDOCK, STORY, REHBEIN, GRADY, JORE, DEBRUYCKER, KEENAN, AHNER, DEVANEY, TAYLOR, BARNETT, KITZENBERG, GRIMES, OHS, SLITER, HIBBARD, HERRON, SOMERVILLE, ROSE, MILLS, MOLNAR, BOHLINGER, MARTINEZ, HARPER, FORBES, WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR ESTABLISHMENT AND ADMINISTRATION OF ACCOUNTS; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF FUNDS CONTAINED WITHIN AN ACCOUNT AND FUNDS WITHDRAWN FOR ELIGIBLE MEDICAL EXPENSES OR FOR THE LONG-TERM CARE OF AN EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR THE ACCOUNT HOLDER; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE MEDICAL EXPENSES AND LONG-TERM CARE; PROVIDING PENALTIES; ~~AND~~ AMENDING SECTION 15-30-111, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE,~~ A DELAYED EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Medical Care Savings Account Act of 1995".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

~~(c) a broker-dealer, issuer, or investment adviser as defined in 30-10-103 or a federal investment~~

THIRD READING
AS AMENDED

~~company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64;~~

~~(d)~~(C) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50; or

~~(e)~~(D) an employer if the employer has a self-insured health plan under ERISA.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

NEW SECTION. **Section 3. Establishment of account.** (1) An employer, except as otherwise provided by statute, contract, or a collective bargaining agreement, may establish a medical care savings account for an employee of the employer OR FOR A DEPENDENT OF THE EMPLOYEE.

(2) An individual who is a resident of this state may establish a medical care savings account for that individual or for a dependent of the individual.

(3) Before making any contributions to an employee's account, an employer shall inform an employee in writing of the state and federal tax status of contributions made pursuant to [sections 1

through 7].

(4) Upon agreement between an employer and an employee, an employee may have the employer contribute ~~either~~ to the employee's medical care savings account ~~or~~, to a health insurance policy or program for the employee, OR TO BOTH THE ACCOUNT AND THE POLICY OR PROGRAM.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest ~~are~~ OR OTHER INCOME IS contained within the account or ~~are~~ withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER.

(2) ~~Except as provided in subsection (4), an~~ AN employee or account holder ~~may deposit into an account in 1 year and~~ may exclude as an annual contribution in 1 year no more than $3,000. There is no limitation on the amount of funds AND INTEREST OR OTHER INCOME ON THOSE FUNDS that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. AN EMPLOYEE OR ACCOUNT HOLDER MAY NOT DEDUCT PURSUANT TO 15-30-121 OR EXCLUDE PURSUANT TO 15-30-111 AN AMOUNT REPRESENTING A LOSS IN THE VALUE OF AN INVESTMENT CONTAINED IN AN ACCOUNT.

(4) An employee or account holder may in 1 year deposit into an account more than the amount ~~allowed by~~ EXCLUDED PURSUANT TO subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. AN EMPLOYEE OR ACCOUNT HOLDER WHO DEPOSITS MORE THAN $3,000 INTO AN ACCOUNT IN A YEAR MAY EXCLUDE FROM THE EMPLOYEE'S OR ACCOUNT HOLDER'S ADJUSTED GROSS INCOME IN ACCORDANCE WITH 15-30-111(2)(J) IN A SUBSEQUENT YEAR ANY PART OF $3,000 PER YEAR NOT PREVIOUSLY EXCLUDED.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) ~~A change in the account administrator does not subject the employee or account holder to tax liability.~~ THE EMPLOYEE OR ACCOUNT HOLDER WHO ESTABLISHES THE ACCOUNT IS THE OWNER OF THE ACCOUNT. AN EMPLOYEE OR ACCOUNT HOLDER MAY WITHDRAW MONEY IN AN ACCOUNT AND DEPOSIT THE MONEY IN ANOTHER ACCOUNT WITH A DIFFERENT OR WITH THE SAME ACCOUNT ADMINISTRATOR WITHOUT INCURRING TAX LIABILITY.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 to 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest OR OTHER INCOME in the account to the estate of the employee or account holder.

NEW SECTION. **Section 5. Withdrawal of funds from account for purposes other than medical expenses and long-term care.** (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER only on the last business day of the account administrator's business year. MONEY WITHDRAWN FROM AN ACCOUNT PURSUANT TO THIS SUBSECTION MUST BE TAXED AS ORDINARY INCOME OF THE EMPLOYEE OR ACCOUNT HOLDER.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care ~~and~~ OR other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. MONEY WITHDRAWN FROM AN ACCOUNT PURSUANT TO THIS

SUBSECTION MUST BE TAXED AS ORDINARY INCOME OF THE EMPLOYEE OR ACCOUNT HOLDER.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the medical care savings account from which the payment of claims is made and has a fiduciary duty to the person for whose benefit the account is administered.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity FOR THE LONG-TERM CARE OF THE EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses OR FOR A LONG-TERM CARE INSURANCE POLICY OR ANNUITY of the employee or account holder or a dependent of the employee or account holder that ~~are~~ IS otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity FOR THE EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

NEW SECTION. **Section 7. False claims prohibited -- penalty.** (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account.

(2) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount not exceeding $300 is guilty of theft and upon conviction shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(3) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount of $300 or more is guilty of theft and upon conviction shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the amount withdrawn from an account in violation of this section.

Section 8. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ includes the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954~~,~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

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

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to

the employee under federal law; ~~and~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) principal and income in a medical care savings account established in accordance with [section 3] or withdrawn from an account for eligible medical expenses, as defined in [section 2], OF THE TAXPAYER OR A DEPENDENT OF THE TAXPAYER or for the long-term care of the taxpayer OR A DEPENDENT OF THE TAXPAYER.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's

eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

NEW SECTION. **SECTION 9. ACCOUNT NOT TO BE TREATED AS ASSET FOR PURPOSES OF ELIGIBILITY.** IF ALLOWED BY FEDERAL LAW, THE PRINCIPAL AND ALL INTEREST OR OTHER INCOME CONTAINED WITHIN AN ACCOUNT ESTABLISHED IN ACCORDANCE WITH [SECTIONS 1 THROUGH 7] MAY NOT BE TREATED AS AN ASSET OF THE EMPLOYEE OR ACCOUNT HOLDER OR AS AN ASSET OF A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER FOR THE PURPOSES OF ELIGIBILITY FOR THE MONTANA MEDICAID PROGRAM.

NEW SECTION. **Section 10. Codification instruction.** (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

(2) [SECTION 9] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 53, CHAPTER 6, AND THE PROVISIONS OF TITLE 53, CHAPTER 6, APPLY TO [SECTION 9].

~~NEW SECTION. **SECTION 11. RETROACTIVE APPLICABILITY.** [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO TAX YEARS BEGINNING AFTER DECEMBER 31, 1994.~~

NEW SECTION. **SECTION 11. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ~~ON PASSAGE AND APPROVAL~~ JANUARY 1, 1996.

NEW SECTION. **SECTION 12. CONTINGENT VOIDNESS.** IN ORDER TO MAINTAIN A BALANCED BUDGET, BECAUSE [THIS ACT] REDUCES REVENUE, IT MAY NOT BE TRANSMITTED TO THE GOVERNOR UNLESS A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS CONTAINED IN HOUSE BILL NO. 2. IF A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS NOT CONTAINED IN HOUSE BILL NO.

2, [THIS ACT] IS VOID.

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HOUSE BILL NO. 560

INTRODUCED BY SIMON, SIMPKINS, ORR, MCKEE, FELAND, MERCER, GRINDE, HARP, RYAN, PECK, KNOX, MASOLO, GREEN, T. NELSON, HAYNE, RANEY, FUCHS, CURTISS, WELLS, BRAINARD, MARSHALL, DENNY, ELLIS, BOHARSKI, QUILICI, BROWN, ARNOTT, KOTTEL, ANDERSON, SWANSON, STOVALL, MCGEE, CLARK, MURDOCK, STORY, REHBEIN, GRADY, JORE, DEBRUYCKER, KEENAN, AHNER, DEVANEY, TAYLOR, BARNETT, KITZENBERG, GRIMES, OHS, SLITER, HIBBARD, HERRON, SOMERVILLE, ROSE, MILLS, MOLNAR, BOHLINGER, MARTINEZ, HARPER, FORBES, WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR MEDICAL CARE SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR ESTABLISHMENT AND ADMINISTRATION OF ACCOUNTS; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF FUNDS CONTAINED WITHIN AN ACCOUNT AND FUNDS WITHDRAWN FOR ELIGIBLE MEDICAL EXPENSES OR FOR THE LONG-TERM CARE OF AN EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR THE ACCOUNT HOLDER; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE MEDICAL EXPENSES AND LONG-TERM CARE; PROVIDING PENALTIES; ~~AND~~ AMENDING SECTION 15-30-111, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE,~~ A DELAYED EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Medical Care Savings Account Act of 1995".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

~~(c) a broker-dealer, issuer, or investment adviser as defined in 30-10-103 or a federal investment~~

~~company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64;~~

~~(d)~~(C) a certified public accountant licensed to practice in this state pursuant to Title 37, chapter 50; or

~~(e)~~(D) an employer if the employer has a self-insured health plan under ERISA.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

NEW SECTION. **Section 3. Establishment of account.** (1) An employer, except as otherwise provided by statute, contract, or a collective bargaining agreement, may establish a medical care savings account for an employee of the employer OR FOR A DEPENDENT OF THE EMPLOYEE.

(2) An individual who is a resident of this state may establish a medical care savings account for that individual or for a dependent of the individual.

(3) Before making any contributions to an employee's account, an employer shall inform an employee in writing of the state and federal tax status of contributions made pursuant to [sections 1

through 7].

(4) Upon agreement between an employer and an employee, an employee may have the employer contribute ~~either~~ to the employee's medical care savings account ~~or~~, to a health insurance policy or program for the employee, OR TO BOTH THE ACCOUNT AND THE POLICY OR PROGRAM.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest ~~are~~ OR OTHER INCOME IS contained within the account or ~~are~~ withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER.

(2) ~~Except as provided in subsection (4), an~~ AN employee or account holder ~~may deposit into an account in 1 year and~~ may exclude as an annual contribution in 1 year no more than $3,000. There is no limitation on the amount of funds AND INTEREST OR OTHER INCOME ON THOSE FUNDS that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. AN EMPLOYEE OR ACCOUNT HOLDER MAY NOT DEDUCT PURSUANT TO 15-30-121 OR EXCLUDE PURSUANT TO 15-30-111 AN AMOUNT REPRESENTING A LOSS IN THE VALUE OF AN INVESTMENT CONTAINED IN AN ACCOUNT.

(4) An employee or account holder may in 1 year deposit into an account more than the amount ~~allowed by~~ EXCLUDED PURSUANT TO subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. AN EMPLOYEE OR ACCOUNT HOLDER WHO DEPOSITS MORE THAN $3,000 INTO AN ACCOUNT IN A YEAR MAY EXCLUDE FROM THE EMPLOYEE'S OR ACCOUNT HOLDER'S ADJUSTED GROSS INCOME IN ACCORDANCE WITH 15-30-111(2)(J) IN A SUBSEQUENT YEAR ANY PART OF $3,000 PER YEAR NOT PREVIOUSLY EXCLUDED.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) ~~A change in the account administrator does not subject the employee or account holder to tax liability.~~ THE EMPLOYEE OR ACCOUNT HOLDER WHO ESTABLISHES THE ACCOUNT IS THE OWNER OF THE ACCOUNT. AN EMPLOYEE OR ACCOUNT HOLDER MAY WITHDRAW MONEY IN AN ACCOUNT AND DEPOSIT THE MONEY IN ANOTHER ACCOUNT WITH A DIFFERENT OR WITH THE SAME ACCOUNT ADMINISTRATOR WITHOUT INCURRING TAX LIABILITY.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 to 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest OR OTHER INCOME in the account to the estate of the employee or account holder.

NEW SECTION. **Section 5. Withdrawal of funds from account for purposes other than medical expenses and long-term care.** (1) An employee or account holder may withdraw money from the individual's medical care savings account for any purpose other than an eligible medical expense or the long-term care of the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER only on the last business day of the account administrator's business year. MONEY WITHDRAWN FROM AN ACCOUNT PURSUANT TO THIS SUBSECTION MUST BE TAXED AS ORDINARY INCOME OF THE EMPLOYEE OR ACCOUNT HOLDER.

(2) If the employee or account holder withdraws money from the account other than for eligible medical expenses or long-term care ~~and~~ OR other than on the last business day of the account administrator's business year, the administrator shall withhold from the amount of the withdrawal and, on behalf of the employee or account holder, pay as a penalty to the department of revenue an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. MONEY WITHDRAWN FROM AN ACCOUNT PURSUANT TO THIS

SUBSECTION MUST BE TAXED AS ORDINARY INCOME OF THE EMPLOYEE OR ACCOUNT HOLDER.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the medical care savings account from which the payment of claims is made and has a fiduciary duty to the person for whose benefit the account is administered.

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity FOR THE LONG-TERM CARE OF THE EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses OR FOR A LONG-TERM CARE INSURANCE POLICY OR ANNUITY of the employee or account holder or a dependent of the employee or account holder that ~~are~~ IS otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity FOR THE EMPLOYEE OR ACCOUNT HOLDER OR A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

NEW SECTION. **Section 7. False claims prohibited -- penalty.** (1) A person may not knowingly prepare or cause to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account.

(2) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount not exceeding $300 is guilty of theft and upon conviction shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(3) A person who violates subsection (1) by preparing or causing the preparation of a false claim, receipt, statement, or billing in an amount of $300 or more is guilty of theft and upon conviction shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(4) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the amount withdrawn from an account in violation of this section.

Section 8. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ includes the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of ~~such~~ the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954~~,~~ that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

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

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to

the employee under federal law; ~~and~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"; and

(j) principal and income in a medical care savings account established in accordance with [section 3] or withdrawn from an account for eligible medical expenses, as defined in [section 2], OF THE TAXPAYER OR A DEPENDENT OF THE TAXPAYER or for the long-term care of the taxpayer OR A DEPENDENT OF THE TAXPAYER.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's

eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

NEW SECTION. **SECTION 9. ACCOUNT NOT TO BE TREATED AS ASSET FOR PURPOSES OF ELIGIBILITY.** IF ALLOWED BY FEDERAL LAW, THE PRINCIPAL AND ALL INTEREST OR OTHER INCOME CONTAINED WITHIN AN ACCOUNT ESTABLISHED IN ACCORDANCE WITH [SECTIONS 1 THROUGH 7] MAY NOT BE TREATED AS AN ASSET OF THE EMPLOYEE OR ACCOUNT HOLDER OR AS AN ASSET OF A DEPENDENT OF THE EMPLOYEE OR ACCOUNT HOLDER FOR THE PURPOSES OF ELIGIBILITY FOR THE MONTANA MEDICAID PROGRAM.

NEW SECTION. **Section 10. Codification instruction.** (1) [Sections 1 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

(2) [SECTION 9] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 53, CHAPTER 6, AND THE PROVISIONS OF TITLE 53, CHAPTER 6, APPLY TO [SECTION 9].

~~NEW SECTION. **SECTION 11. RETROACTIVE APPLICABILITY.** [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO TAX YEARS BEGINNING AFTER DECEMBER 31, 1994.~~

NEW SECTION. **SECTION 11. EFFECTIVE DATE.** [THIS ACT] IS EFFECTIVE ~~ON PASSAGE AND APPROVAL~~ JANUARY 1, 1996.

NEW SECTION. **SECTION 12. CONTINGENT VOIDNESS.** IN ORDER TO MAINTAIN A BALANCED BUDGET, BECAUSE [THIS ACT] REDUCES REVENUE, IT MAY NOT BE TRANSMITTED TO THE GOVERNOR UNLESS A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS CONTAINED IN HOUSE BILL NO. 2. IF A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS NOT CONTAINED IN HOUSE BILL NO.

<u>2, [THIS ACT] IS VOID.</u>

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