

SENATE BILL NO. 139

INTRODUCED BY

HARP

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE STATUTES ON THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX; PROVIDING AN EXEMPTION FOR PARTNERS OF A PUBLICLY TRADED LIMITED PARTNERSHIP; DEFINING "ONGOING ACTIVITIES" AND "PUBLICLY TRADED LIMITED PARTNERSHIP"; CLARIFYING THAT INTERSTATE EMPLOYERS AND EMPLOYEES ARE SUBJECT TO THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX ONLY FOR INCOME EARNED IN MONTANA; AMENDING SECTIONS 15-30-304, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-30-304, MCA, is amended to read:

"15-30-304. Furnishing copy of federal return, -- copy of share of income, credit, and deductions schedule -- copies of federal corrections, and -- filing amended return required. Every Each taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year which he that the taxpayer has filed or may file with the federal government, showing his the taxpayer's net income and how obtained and the several sources from which derived. Partners of a partnership, shareholders of a subchapter S. corporation, and members or managers of a limited liability company who are subject to the workers' compensation old fund liability tax shall attach to their Montana individual income tax return a copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or manager has filed or may file with the federal government for the corresponding year. If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall report such the change or correction to the department within 90 days after receiving notice thereof of the change or correction. If a taxpayer files an amended federal income tax return changing or correcting his the taxpayer's federal taxable income for any taxable tax year, he the taxpayer shall also file an amended return with the department within 90 days thereafter after filing an amended federal income tax return. The department shall supply all necessary forms and shall, upon the

1 request of the taxpayer, return all ~~such~~ forms to the taxpayer after they have been examined by the  
2 department."

3

4 **Section 2.** Section 39-71-2501, MCA, is amended to read:

5 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

18 (5) "Ongoing activities" means obligations or occurrences that are continuous, rather than  
19 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to  
20 cover or apply to successive and similar obligations or occurrences.

21 (6) "Publicly traded limited partnership" means a business entity that issues shares or similar  
22 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders  
23 on a public exchange recognized by the securities exchange commission.

24 (7) "State fund" means the state compensation insurance fund.

25 ~~(6)~~(8) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax  
26 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from  
27 accidents that occurred before July 1, 1990.

28 ~~(7)~~(9) "Tax account" means the workers' compensation tax account created by 39-71-2504.

29 ~~(8)~~(10) "Wages" means all remuneration for services performed in the state of Montana by an  
30 employee for an employer, including the cash value of all remuneration paid in any medium other than cash.

1 The term does not include remuneration paid:

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

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

9 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (10)(a)(i), by the  
10 employer in the performance of service during the preceding calendar quarter;

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

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

17 (d) as wages or compensation, the taxation of which is prohibited by federal law;

18 (e) as wages or compensation for services performed by Montana residents outside the borders  
19 of the state of Montana."

20

21 **Section 3.** Section 39-71-2503, MCA, is amended to read:

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

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

1 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the  
2 wages.

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

8 (i) The tax imposed in this subsection (c) applies only to the ordinary income of a shareholder,  
9 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

10 (ii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this  
11 subsection (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18  
19 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are  
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
21 applications, the part remains in effect in all valid applications that are severable from the invalid  
22 applications.

23

24 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the  
25 meaning of 1-2-109, to tax years beginning after December 31, 1994.

26

27 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

28

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0139, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying the statutes on the workers' compensation old fund liability tax; providing an exemption for partners of a publicly traded limited partnership; defining "ongoing activities" and "publicly traded limited partnership"; clarifying that interstate employers and employees are subject to the workers' compensation old fund liability tax only for income earned in Montana; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. This legislation applies to tax year 95 (fiscal year 96) forward.
2. The provisions of this legislation concerning taxing only income earned in Montana and the definition of "ongoing activities" are current practice of the Department of Revenue, and thus have no revenue impact.
3. Current law provides for an exemption from the employer portion of the old fund liability tax, of corporate officer's wages of closely held corporations. The proposed legislation limits this exemption to only corporate officers who own stock in a closely held corporation. The additional revenue generated from this provision would be negligible.
4. The proposed legislation exempts partners of a publicly traded limited partnership from the old fund liability tax; there are very few of these partnerships relevant to Montana.
5. The fiscal impact of the exemption for partners of a publicly traded limited partnership is based on a sample of tax returns of the very largest publicly traded limited partnerships for TY 93. All returns sampled indicated the \$25 minimum payment was applicable.

FISCAL IMPACT:

<u>Revenues:</u>	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Workers Comp Payroll Tax (02)	(\$350,000)	(\$350,000)

(If the \$25 minimum OFLT on self-employment income is eliminated as proposed by SB0033, this bill would have no impact on OFLT revenues).

Dave Lewis 1-20-95  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

John Harp 1-21-95  
 JOHN HARP, PRIMARY SPONSOR      DATE

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17 **schedule -- copies of federal corrections, and -- filing amended return required.** ~~Every~~ Each taxpayer shall,  
18 upon request of the department, furnish a copy of the return for the corresponding year ~~which he~~ that the  
19 taxpayer has filed or may file with the federal government, showing ~~his~~ the taxpayer's net income and how  
20 obtained and the several sources from which derived. Partners of a partnership, shareholders of a  
21 subchapter S. corporation, and members or managers of a limited liability company who are subject to the  
22 workers' compensation old fund liability tax shall attach to their Montana individual income tax return a  
23 copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or  
24 manager has filed or may file with RECEIVED FROM THE ENTITY THAT REPORTS INCOME TO the federal  
25 government for the corresponding year. If the amount of a taxpayer's taxable income is changed or  
26 corrected by the United States internal revenue service or other competent authority, the taxpayer shall  
27 report ~~such~~ the change or correction to the department within 90 days after receiving notice ~~thereof~~ of the  
28 change or correction. If a taxpayer files an amended federal income tax return changing or correcting ~~his~~  
29 the taxpayer's federal taxable income for any ~~taxable~~ tax year, ~~he~~ the taxpayer shall also file an amended  
30 return with the department within 90 days ~~thereafter~~ after filing an amended federal income tax return. The



1 department shall supply all necessary forms and shall, upon the request of the taxpayer, return all ~~such~~  
2 forms to the taxpayer after they have been examined by the department."

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5 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

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8 state of Montana, or any political subdivision of the United States or the state of Montana or any agency  
9 or instrumentality of the United States, the state of Montana, or a political subdivision of the United States  
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12 individual performs or performed any service, of whatever nature, as an employee of the person.

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

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

18 (5) "Ongoing activities" means obligations or occurrences that are continuous, rather than  
19 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to  
20 cover or apply to successive and similar obligations or occurrences.

21 (6) "Publicly traded limited partnership" means a business entity that issues shares or similar  
22 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders  
23 on a public exchange recognized by the securities exchange commission.

24 (7) "State fund" means the state compensation insurance fund.

25 ~~(6)(8)~~ (8) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax  
26 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from  
27 accidents that occurred before July 1, 1990.

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4 is performed by an individual who is regularly employed by the employer to perform the service. For  
5 purposes of this subsection ~~(8)(a)~~ (10)(a), an individual is considered to be regularly employed by an  
6 employer during a calendar quarter only if:

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

9 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (10)(a)(i), by the  
10 employer in the performance of service during the preceding calendar quarter;

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

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16 the employee or the employee's dependents, and employees' club activities;

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19 of the state of Montana."

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

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29 the jurisdiction of the federal railroad administration, United States department of transportation, an old  
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4 shareholder, on each partner of a partnership, and on each member or manager of a limited liability  
5 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each  
6 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,  
7 partner, or member or manager derived from ongoing activities.

8 (i) The tax imposed in this subsection (c) applies only to the ordinary income of a shareholder,  
9 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

10 (ii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this  
11 subsection (c).

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

16 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation  
17 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives  
18 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages  
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22 bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans  
23 or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month  
24 period if the workers' compensation bond repayment account contains on the first day of that period an  
25 amount, regardless of the source, that is in excess of the reserve maintained in the account and that is  
26 equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest  
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28 (g) Each employer shall maintain the records that the department requires concerning the old fund  
29 liability tax. The records are subject to inspection by the department and its employees and agents during  
30 regular business hours.

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

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

7 (j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member  
8 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and  
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11 (2) All collections of the tax must be deposited as received in the tax account. The tax is in  
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13 (3) (a) On or before the last day of April, July, October, and January, each employer subject to the  
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15 as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the  
16 employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees'  
17 old fund liability taxes at the same time.

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

21 (c) Tax payments required by subsections (1)(a) and (1)(b) must be made with the return filed  
22 pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and  
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26 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment  
27 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers'  
28 compensation tax account provided in 39-71-2504.

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

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

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

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7 ~~that date as possible,~~ give the department a list of all employers having coverage under any plan  
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11 access to their computer data bases and paper files and records for the purpose of the department's  
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14 administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for  
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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."

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19 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are  
20 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
21 applications, the part remains in effect in all valid applications that are severable from the invalid  
22 applications.

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24 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the  
25 meaning of 1-2-109, to tax years beginning after December 31, 1994.

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27 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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1 SENATE BILL NO. 139

2 INTRODUCED BY HARP

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE STATUTES ON THE WORKERS'  
6 COMPENSATION OLD FUND LIABILITY TAX; PROVIDING AN EXEMPTION FOR PARTNERS OF A PUBLICLY  
7 TRADED LIMITED PARTNERSHIP; DEFINING "ONGOING ACTIVITIES" AND "PUBLICLY TRADED LIMITED  
8 PARTNERSHIP"; CLARIFYING THAT INTERSTATE EMPLOYERS AND EMPLOYEES ARE SUBJECT TO THE  
9 WORKERS' COMPENSATION OLD FUND LIABILITY TAX ONLY FOR INCOME EARNED IN MONTANA;  
10 AMENDING SECTIONS 15-30-304, 39-71-2501, AND 39-71-2503, MCA; AND PROVIDING AN IMMEDIATE  
11 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

12

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

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



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 139  
Representative Hibbard

March 1, 1995 12:28 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 139 (third reading copy -- blue).

Signed: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read "Chase Hibbard".

*Representative Hibbard*

And, that such amendments to Senate Bill 139 read as follows:

1. Title, line 9.

Following: "MONTANA;"

Insert: "EXCLUDING PAYMENTS FROM A MULTIPLE EMPLOYER WELFARE  
ARRANGEMENT FROM THE DEFINITION OF WAGES;"

2. Page 3, line 17.

Following: line 16

Insert: "(d) as payments from a multiple employer welfare  
arrangement, as defined in 29 U.S.C. 1002, to a qualified  
individual employer;"

Renumber: subsequent subsections

-END-

ADOPT

95-0

REJECT

SB 139

HOUSE

481227CW.Hbk



# HOUSE COMMITTEE OF THE WHOLE AMENDMENT

Senate Bill 139  
Representative Hibbard

March 3, 1995 12:27 pm  
Page 1 of 1

Mr. Chairman: I move to amend Senate Bill 139 (third reading copy - blue).

Signed: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read "Ron Hibbard".

*Representative Hibbard*

And, that such amendments to Senate Bill 139 read as follows:

1. Page 3, line 19.  
Strike: "EMPLOYER"  
Insert: "employee"

-END-

ADOPT

REJECT

89-0

SB 139

HOUSE

501227CW.Hbk



## 1 SENATE BILL NO. 139

2 INTRODUCED BY HARP

3 BY REQUEST OF THE DEPARTMENT OF REVENUE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE STATUTES ON THE WORKERS'  
6 COMPENSATION OLD FUND LIABILITY TAX; PROVIDING AN EXEMPTION FOR PARTNERS OF A PUBLICLY  
7 TRADED LIMITED PARTNERSHIP; DEFINING "ONGOING ACTIVITIES" AND "PUBLICLY TRADED LIMITED  
8 PARTNERSHIP"; CLARIFYING THAT INTERSTATE EMPLOYERS AND EMPLOYEES ARE SUBJECT TO THE  
9 WORKERS' COMPENSATION OLD FUND LIABILITY TAX ONLY FOR INCOME EARNED IN MONTANA;  
10 EXCLUDING PAYMENTS FROM A MULTIPLE EMPLOYER WELFARE ARRANGEMENT FROM THE  
11 DEFINITION OF WAGES; AMENDING SECTIONS 15-30-304, 39-71-2501, AND 39-71-2503, MCA; AND  
12 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."  
13

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

16 Section 1. Section 15-30-304, MCA, is amended to read:

17 "15-30-304. Furnishing copy of federal return, -- copy of share of income, credit, and deductions  
18 schedule -- copies of federal corrections, and -- filing amended return required. ~~Every~~ Each taxpayer shall,  
19 upon request of the department, furnish a copy of the return for the corresponding year ~~which he~~ that the  
20 taxpayer has filed or may file with the federal government, showing ~~his~~ the taxpayer's net income and how  
21 obtained and the several sources from which derived. Partners of a partnership, shareholders of a  
22 subchapter S. corporation, and members or managers of a limited liability company who are subject to the  
23 workers' compensation old fund liability tax shall attach to their Montana individual income tax return a  
24 copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or  
25 manager has filed or may file with RECEIVED FROM THE ENTITY THAT REPORTS INCOME TO the federal  
26 government for the corresponding year. If the amount of a taxpayer's taxable income is changed or  
27 corrected by the United States internal revenue service or other competent authority, the taxpayer shall  
28 report ~~such the~~ the change or correction to the department within 90 days after receiving notice ~~thereof~~ of the  
29 change or correction. If a taxpayer files an amended federal income tax return changing or correcting ~~his~~  
30 the taxpayer's federal taxable income for any ~~taxable tax~~ tax year, ~~he~~ the taxpayer shall also file an amended

1 return with the department within 90 days ~~thereafter~~ after filing an amended federal income tax return.  
 2 The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all ~~such~~  
 3 forms to the taxpayer after they have been examined by the department."  
 4

5 **Section 2.** Section 39-71-2501, MCA, is amended to read:

6 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:

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

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

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

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

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

19 (5) "Ongoing activities" means obligations or occurrences that are continuous, rather than  
 20 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to  
 21 cover or apply to successive and similar obligations or occurrences.

22 (6) "Publicly traded limited partnership" means a business entity that issues shares or similar  
 23 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders  
 24 on a public exchange recognized by the securities exchange commission.

25 (7) "State fund" means the state compensation insurance fund.

26 ~~(6)~~(8) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax  
 27 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from  
 28 accidents that occurred before July 1, 1990.

29 ~~(7)~~(9) "Tax account" means the workers' compensation tax account created by 39-71-2504.

30 ~~(8)~~(10) "Wages" means all remuneration for services performed in the state of Montana by an

1 employee for an employer, including the cash value of all remuneration paid in any medium other than cash.

2 The term does not include remuneration paid:

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

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

10 (ii) the individual was regularly employed, as determined under subsection ~~(8)(a)(i)~~ (10)(a)(i), by the  
11 employer in the performance of service during the preceding calendar quarter;

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

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

18 (D) AS PAYMENTS FROM A MULTIPLE EMPLOYER WELFARE ARRANGEMENT, AS DEFINED IN  
19 29 U.S.C. 1002, TO A QUALIFIED INDIVIDUAL EMPLOYER EMPLOYEE;

20 ~~(d)(E)~~ as wages or compensation, the taxation of which is prohibited by federal law;

21 ~~(e)(F)~~ as wages or compensation for services performed by Montana residents outside the borders  
22 of the state of Montana."

23

24 **Section 3.** 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 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the  
5 wages.

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 derived from ongoing activities.

11 (i) The tax imposed in this subsection (c) applies only to the ordinary income of a shareholder,  
12 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

13 (ii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this  
14 subsection (c).

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

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

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

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

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

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

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

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

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

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

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

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

1 compensation tax account provided in 39-71-2504.

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

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

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

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

21

22 NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are  
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
24 applications, the part remains in effect in all valid applications that are severable from the invalid  
25 applications.

26

27 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the  
28 meaning of 1-2-109, to tax years beginning after December 31, 1994.

29

30 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

-END-

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