SENATE BILL NO. 425

INTRODUCED BY Ric Holden

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN INDIVIDUAL INCOME TAX CREDIT AGAINST PROPERTY TAXES PAID ON THE TAXPAYER'S RESIDENCE; REQUIRING NOTICE OF AND A CLAIM FORM FOR A PROPERTY TAX CREDIT TO BE INCLUDED WITH A RESIDENTIAL PROPERTY TAX NOTICE; AMENDING SECTIONS 15-30-111 AND 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Homeowner's property tax credit -- definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Claimant" means an individual natural person who is eligible under [section 2] to file a claim.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Household" means an association of individuals who live in the same dwelling and who share its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(4) (a) "Owner-occupied residence" means a single-family residence, including a trailer or mobile home described in 15-6-134(1)(b), or a unit of a multiple-unit residence that is subject to property taxes and that is owned by a claimant, individually or jointly. The residence includes all improvements used for residential purposes and associated outbuildings but does not include the land. A taxpayer with a life estate is an owner for purposes of [sections 1 through 8].

(b) For the purposes of this subsection (4), an owner-occupied residence located in a multiple-unit building is valued by determining the value of the entire building and dividing by the number of units.

(5) "Property taxes" means general ad valorem taxes levied against the owner-occupied residence, exclusive of special assessments that are not based on millage, fees, penalties, or interest.

(6) "Property tax notice" means the original written notice showing the amount of property tax due for the entire year, as provided for in 15-16-101 or 15-24-202.

NEW SECTION. **Section 2. Homeowner's property tax credit -- eligibility.** In order to be eligible to make a claim under [sections 1 through 8], the claimant must have occupied a residence as the owner or contractor for deed for at least 7 months of the claim period and be the person who paid or whose agent paid the county treasurer the first installment of the property taxes due. A claimant may own and occupy more than one residence in this state during the year and still meet the occupancy requirement if the total occupancy is for 7 months or more. The claim must be based on any one residence upon which the claimant has paid the first installment of the property taxes during the claim period.

NEW SECTION. **Section 3. Homeowner's property tax credit -- filing date.** (1) Except as provided in subsection (2), a claim must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which the credit is claimed.

(2) The department may grant a reasonable extension of time for filing a claim whenever, in its judgment, good cause exists.

(3) If an individual who would have a claim under [sections 1 through 8] dies before filing the claim, the estate of the decedent may file the claim.

NEW SECTION. **Section 4. Homeowner's property tax credit -- form of relief -- notice -- claim form.** (1) The credit under [sections 1 through 8] is a credit against the claimant's Montana individual income tax liability for the claim period.

(2) If the amount of credit exceeds the claimant's tax liability, less any other credits under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even though the claimant does not have income taxable under this chapter. The department may not issue a refund to the claimant for less than $10.

(3) An advisory statement and a property tax relief claim form approved by the department must be included with each property tax notice involving residential property. The advisory statement must state that the homeowner may be entitled to a property tax credit.

NEW SECTION. **Section 5. Homeowner's property tax credit.** The amount of the tax credit granted under the provisions of [sections 1 through 8] is the amount that results from multiplying 15% of

$40,000 or the market value, whichever is less, of the owner-occupied residence, exclusive of the market value of the land, by the tax rate applied to the taxpayer's property under 15-6-134(1)(b), (1)(c), or (1)(e) and then multiplying the resulting product by the total mill levy applied to the owner-occupied residence, as shown on the property tax notice for the claim period.

NEW SECTION. **Section 6. Homeowner's property tax credit -- limitations.** (1) Only one claimant per household is entitled to a credit in a claim period.

(2) A claim is not allowed for a residence that is not subject to property taxes in Montana during the claim period.

NEW SECTION. **Section 7. Homeowner's property tax credit -- proof of claim.** A copy of the property tax notice and the property tax relief claim form for the claim period must be filed with each claim. In addition, each claimant shall supply all information that the department considers necessary to support the claim. Each county shall provide with the property tax notice the geocode, the value of the residential improvement, and the tax rate and mill levies applied to the improvement.

NEW SECTION. **Section 8. Homeowner's property tax credit -- fraudulent claim -- penalty -- interest.** If the claimant does not timely pay the property taxes for which a claim is filed or if a false or fraudulent claim has been paid, the credit allowed or amount paid may be recovered as any other debt owed the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt bears interest, at the rate of 3/4 of 1% a month or fraction of a month, from the date of the original payment of the claim until paid.

Section 9. 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 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); and

(e) a tax credit claimed under [sections 1 through 8] if the credit was based on any portion of a property tax that was used to reduce Montana income tax liability.

(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".

(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.)"

Section 10. Section 15-30-171, MCA, is amended to read:

"**15-30-171. Residential property tax credit for elderly -- definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means $0 or the amount obtained by subtracting the greater of $4,000 or 50% of total retirement benefits from gross household income, whichever is greater.

(9) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments received under federal social security except social security income paid directly to a nursing home.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period. A tax credit claimed under [sections 1 through 8] must be deducted from the amount of property taxes upon which a credit is determined under 15-30-171 through 15-30-179.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 1 through 8].

NEW SECTION. **Section 12. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0425, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing an individual income tax credit against property taxes paid on the taxpayer's residence; requiring notice of and a claim form for a property tax credit to be included with a residential property tax notice; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:
1. The proposal applies beginning with tax year (calendar year) 1995.
2. The credit provided is 15% of the amount determined by multiplying the lesser of the market value of the residential improvements (excluding land value) or $40,000 by the taxable valuation rate for the property and by the total number of mills levied.
3. All taxpayers eligible for the credit will apply for and receive the credit. There will be 222,000 applications in FY96, and 224,000 applications in FY97. The average credit amount is estimated to be $59 (DOR).
4. The total cost of the credit is $13,100,000 in FY96 and $13,200,000 in FY97 (DOR).
5. This proposal results in a one-time cost of $350,000 in administrative expenditures in FY96.
6. The proposal results in on-going costs of $375,000 in administrative expenditures for each fiscal year of operation beginning in FY96.

FISCAL IMPACT:

Expenditures: (Department of Revenue)
The fiscal impact shown below reflects the fiscal impact of SB425 by itself. Several cost items would be duplicative with other legislation currently under consideration in the legislature. Any appropriation in HB2 should be coordinated with other legislation affecting department expenditures.

	FY96 Difference	FY97 Difference
One-Time Cost	$ 350,000	$ 0
Ongoing Costs	375,000	375,000
Total Expense	$725,000	$375,000

Revenues:	FY96 Difference	FY97 Difference
Individual Income Tax	$(13,100,000)	$(13,200,000)

Net Impact:	FY96 Difference	FY97 Difference
General Fund	$(13,825,000)	$(13,575,000)

Dave Lewis 3-27-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Ric Holden
RIC HOLDEN, PRIMARY SPONSOR DATE
Fiscal Note for SB0425, as introduced

SB 425

APPROVED BY COM
ON TAXATION

SENATE BILL NO. 425

INTRODUCED BY HOLDEN, DENNY, BARTLETT, ELLIOTT, HARP, HARGROVE, EMERSON, BISHOP, BROWN, KEATING, AKLESTAD, CRISMORE, DEVLIN, JABS, MOHL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN INDIVIDUAL INCOME TAX CREDIT AGAINST PROPERTY TAXES PAID ON THE TAXPAYER'S RESIDENCE; REQUIRING ~~NOTICE OF AND~~ A CLAIM FORM FOR A PROPERTY TAX CREDIT TO BE ~~INCLUDED WITH A~~ MAILED TO RESIDENTIAL PROPERTY ~~TAX NOTICE~~ OWNERS; AMENDING SECTIONS 15-30-111 AND 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Homeowner's property tax credit -- definitions.** As used in [sections 1 through ~~8~~ 7], the following definitions apply:

(1) "Claimant" means an individual natural person who is eligible under [section 2] to file a claim.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Household" means an association of individuals who live in the same dwelling and who share its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(4) (a) "Owner-occupied residence" means a single-family residence, including a trailer or mobile home described in 15-6-134(1)(b), or a unit of a multiple-unit residence that is subject to property taxes and that is owned by a claimant, individually or jointly. The residence includes all improvements used for residential purposes and associated outbuildings but does not include the land. A taxpayer with a life estate is an owner for purposes of [sections 1 through ~~8~~ 7].

(b) For the purposes of this subsection (4), an owner-occupied residence located in a multiple-unit building is valued by determining the value of the entire building and dividing by the number of units.

(5) "Property taxes" means general ad valorem taxes levied against the owner-occupied residence, exclusive of special assessments that are not based on millage, fees, penalties, or interest.

~~(6) "Property tax notice" means the original written notice showing the amount of property tax due~~

~~for the entire year, as provided for in 15-16-101 or 15-24-202.~~

NEW SECTION. **Section 2. Homeowner's property tax credit -- eligibility.** (1) In order to be eligible to make a claim under [sections 1 through ~~8~~ 7], the claimant must have:

(A) OWNED THE RESIDENCE UPON WHICH THE CLAIM IS BASED ON JANUARY 1 OF THE CLAIM PERIOD; AND

(B) occupied a residence as the owner or contractor for deed for at least 7 months of the claim period ~~and be the person who paid or whose agent paid the county treasurer the first installment of the property taxes due~~.

(2) A claimant may own and occupy more than one residence in this state during the year and still meet the occupancy requirement if the total occupancy is for 7 months or more. ~~The claim must be based on any one residence upon which the claimant has paid the first installment of the property taxes during the claim period.~~

NEW SECTION. **Section 3. Homeowner's property tax credit -- filing date.** (1) Except as provided in subsection (2), ~~a~~ THE claim FORM PROVIDED BY THE DEPARTMENT UNDER [SECTION 4] must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which the credit is claimed.

(2) The department may grant a reasonable extension of time for filing a claim whenever, in its judgment, good cause exists.

(3) If an individual who would have a claim under [sections 1 through ~~8~~ 7] dies before filing the claim, the estate of the decedent may file the claim.

NEW SECTION. **Section 4. Homeowner's property tax credit -- form of relief -- ~~notice --~~ claim form.** (1) The credit under [sections 1 through ~~8~~ 7] is a credit against the claimant's Montana individual income tax liability for the claim period.

(2) If the amount of credit exceeds the claimant's tax liability, less any other credits under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even though the claimant does not have income taxable under this chapter. ~~The department may not issue a~~

~~refund to the claimant for less than $10.~~

(3) ~~An advisory statement and a property tax relief claim form approved by the department must be included with each property tax notice involving residential property. The advisory statement must state that the homeowner may be entitled to a property tax credit~~ THE DEPARTMENT SHALL MAIL A CLAIM FORM TO PERSONS WHO OWN RESIDENTIAL IMPROVEMENTS ON JANUARY 1 OF THE CLAIM PERIOD. THE CLAIM FORM MUST BE MAILED AT APPROXIMATELY THE SAME TIME AS PROPERTY TAX NOTICES REQUIRED BY 15-16-101 ARE MAILED. THE CLAIM FORM MUST INCLUDE THE VALUE OF THE IMPROVEMENTS, THE TAX RATE THAT APPLIES TO THE IMPROVEMENTS AS PROVIDED UNDER 15-6-134, AND THE PRIOR YEAR MILL LEVY APPLIED TO THE VALUE OF THE IMPROVEMENTS. THE CLAIM FORM MAY INCLUDE ADDITIONAL INFORMATION, REQUESTS FOR ADDITIONAL INFORMATION, AND OTHER COMPONENTS AS CONSIDERED APPROPRIATE BY THE DEPARTMENT.

NEW SECTION. **Section 5. Homeowner's property tax credit.** The amount of the tax credit granted under the provisions of [sections 1 through ~~8~~ 7] is the amount that results from multiplying 15% of $40,000 or the market value, whichever is less, of the owner-occupied residence, exclusive of the market value of the land, by the tax rate applied to the taxpayer's property under 15-6-134(1)(b), (1)(c), or (1)(e) and then multiplying the resulting product by the total PRIOR YEAR mill levy applied to the owner-occupied residence, as shown on the ~~property tax notice for the claim period~~ CLAIM FORM.

NEW SECTION. **Section 6. Homeowner's property tax credit -- limitations.** (1) Only one claimant per household is entitled to a credit in a claim period.

(2) A claim is not allowed for a residence that is not subject to property taxes in Montana during the claim period.

~~NEW SECTION. **Section 7. Homeowner's property tax credit -- proof of claim.** A copy of the property tax notice and the property tax relief claim form for the claim period must be filed with each claim. In addition, each claimant shall supply all information that the department considers necessary to support the claim. Each county shall provide with the property tax notice the geocode, the value of the residential improvement, and the tax rate and mill levies applied to the improvement.~~

NEW SECTION. **Section 7. Homeowner's property tax credit -- fraudulent claim -- penalty -- interest.** If the claimant does not timely pay the property taxes for which a claim is filed or if a false or fraudulent claim has been paid, the credit allowed or amount paid may be recovered as any other debt owed the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt, EXCLUDING PENALTY, bears interest, at the rate of 3/4 of 1% a month or fraction of a month, from the date of the original payment of the claim until paid.

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 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); and

(e) a tax credit claimed under [sections 1 through ~~8~~ 7] if the credit was based on any portion of a property tax that was used to reduce Montana income tax liability.

(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".

(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.)"

Section 9. Section 15-30-171, MCA, is amended to read:

"**15-30-171. Residential property tax credit for elderly -- definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means $0 or the amount obtained by subtracting the greater of $4,000 or 50% of total retirement benefits from gross household income, whichever is greater.

(9) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments received under federal social security except social security income paid directly to a nursing home.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period. A tax credit claimed under [sections 1 through ~~8~~ 7] must be deducted from the amount of property taxes upon which a credit is determined under 15-30-171 through 15-30-179.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through ~~8~~ 7] are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 1 through ~~8~~ 7].

NEW SECTION. **Section 11. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

-END-

SENATE BILL NO. 425

INTRODUCED BY HOLDEN, DENNY, BARTLETT, ELLIOTT, HARP, HARGROVE, EMERSON, BISHOP, BROWN, KEATING, AKLESTAD, CRISMORE, DEVLIN, JABS, MOHL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN INDIVIDUAL INCOME TAX CREDIT AGAINST PROPERTY TAXES PAID ON THE TAXPAYER'S RESIDENCE; REQUIRING ~~NOTICE OF AND~~ A CLAIM FORM FOR A PROPERTY TAX CREDIT TO BE ~~INCLUDED WITH A~~ MAILED TO RESIDENTIAL PROPERTY ~~TAX NOTICE~~ OWNERS; AMENDING SECTIONS 15-30-111 AND 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Homeowner's property tax credit -- definitions.** As used in [sections 1 through ~~8~~ 7], the following definitions apply:

(1) "Claimant" means an individual natural person who is eligible under [section 2] to file a claim.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Household" means an association of individuals who live in the same dwelling and who share its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(4) (a) "Owner-occupied residence" means a single-family residence, including a trailer or mobile home described in 15-6-134(1)(b), or a unit of a multiple-unit residence that is subject to property taxes and that is owned by a claimant, individually or jointly. The residence includes all improvements used for residential purposes and associated outbuildings but does not include the land. A taxpayer with a life estate is an owner for purposes of [sections 1 through ~~8~~ 7].

(b) For the purposes of this subsection (4), an owner-occupied residence located in a multiple-unit building is valued by determining the value of the entire building and dividing by the number of units.

(5) "Property taxes" means general ad valorem taxes levied against the owner-occupied residence, exclusive of special assessments that are not based on millage, fees, penalties, or interest.

~~(6) "Property tax notice" means the original written notice showing the amount of property tax due~~

~~for the entire year, as provided for in 15-16-101 or 15-24-202.~~

NEW SECTION. **Section 2. Homeowner's property tax credit -- eligibility.** (1) In order to be eligible to make a claim under [sections 1 through ~~8~~ 7], the claimant must have:

(A) OWNED THE RESIDENCE UPON WHICH THE CLAIM IS BASED ON JANUARY 1 OF THE CLAIM PERIOD; AND

(B) occupied a residence as the owner or contractor for deed for at least 7 months of the claim period ~~and be the person who paid or whose agent paid the county treasurer the first installment of the property taxes due~~.

(2) A claimant may own and occupy more than one residence in this state during the year and still meet the occupancy requirement if the total occupancy is for 7 months or more. ~~The claim must be based on any one residence upon which the claimant has paid the first installment of the property taxes during the claim period.~~

NEW SECTION. **Section 3. Homeowner's property tax credit -- filing date.** (1) Except as provided in subsection (2), ~~a~~ THE claim FORM PROVIDED BY THE DEPARTMENT UNDER [SECTION 4] must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which the credit is claimed.

(2) The department may grant a reasonable extension of time for filing a claim whenever, in its judgment, good cause exists.

(3) If an individual who would have a claim under [sections 1 through ~~8~~ 7] dies before filing the claim, the estate of the decedent may file the claim.

NEW SECTION. **Section 4. Homeowner's property tax credit -- form of relief -- ~~notice~~— claim form.** (1) The credit under [sections 1 through ~~8~~ 7] is a credit against the claimant's Montana individual income tax liability for the claim period.

(2) If the amount of credit exceeds the claimant's tax liability, less any other credits under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even though the claimant does not have income taxable under this chapter. ~~The department may not issue a~~

~~refund to the claimant for less than $10.~~

(3) ~~An advisory statement and a property tax relief claim form approved by the department must be included with each property tax notice involving residential property. The advisory statement must state that the homeowner may be entitled to a property tax credit~~ THE DEPARTMENT SHALL MAIL A CLAIM FORM TO PERSONS WHO OWN RESIDENTIAL IMPROVEMENTS ON JANUARY 1 OF THE CLAIM PERIOD. THE CLAIM FORM MUST BE MAILED AT APPROXIMATELY THE SAME TIME AS PROPERTY TAX NOTICES REQUIRED BY 15-16-101 ARE MAILED. THE CLAIM FORM MUST INCLUDE THE VALUE OF THE IMPROVEMENTS, THE TAX RATE THAT APPLIES TO THE IMPROVEMENTS AS PROVIDED UNDER 15-6-134, AND THE PRIOR YEAR MILL LEVY APPLIED TO THE VALUE OF THE IMPROVEMENTS. THE CLAIM FORM MAY INCLUDE ADDITIONAL INFORMATION, REQUESTS FOR ADDITIONAL INFORMATION, AND OTHER COMPONENTS AS CONSIDERED APPROPRIATE BY THE DEPARTMENT.

NEW SECTION. **Section 5. Homeowner's property tax credit.** The amount of the tax credit granted under the provisions of [sections 1 through ~~8~~ 7] is the amount that results from multiplying 15% of $40,000 or the market value, whichever is less, of the owner-occupied residence, exclusive of the market value of the land, by the tax rate applied to the taxpayer's property under 15-6-134(1)(b), (1)(c), or (1)(e) and then multiplying the resulting product by the total PRIOR YEAR mill levy applied to the owner-occupied residence, as shown on the ~~property tax notice for the claim period~~ CLAIM FORM.

NEW SECTION. **Section 6. Homeowner's property tax credit -- limitations.** (1) Only one claimant per household is entitled to a credit in a claim period.

(2) A claim is not allowed for a residence that is not subject to property taxes in Montana during the claim period.

~~NEW SECTION. **Section 7. Homeowner's property tax credit -- proof of claim.** A copy of the property tax notice and the property tax relief claim form for the claim period must be filed with each claim. In addition, each claimant shall supply all information that the department considers necessary to support the claim. Each county shall provide with the property tax notice the geocode, the value of the residential improvement, and the tax rate and mill levies applied to the improvement.~~

NEW SECTION. **Section 7. Homeowner's property tax credit -- fraudulent claim -- penalty -- interest.** If the claimant does not timely pay the property taxes for which a claim is filed or if a false or fraudulent claim has been paid, the credit allowed or amount paid may be recovered as any other debt owed the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt, EXCLUDING PENALTY, bears interest, at the rate of 3/4 of 1% a month or fraction of a month, from the date of the original payment of the claim until paid.

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 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); and

(e) a tax credit claimed under [sections 1 through ~~8~~ 7] if the credit was based on any portion of a property tax that was used to reduce Montana income tax liability.

(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".

(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.)"

Section 9. Section 15-30-171, MCA, is amended to read:

"**15-30-171. Residential property tax credit for elderly -- definitions.** As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means an individual natural person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means $0 or the amount obtained by subtracting the greater of $4,000 or 50% of total retirement benefits from gross household income, whichever is greater.

(9) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments received under federal social security except social security income paid directly to a nursing home.

(10) "Property tax paid" means general ad valorem taxes levied against the homestead, exclusive of special assessments, penalties, or interest and paid during the claim period. <u>A tax credit claimed under [sections 1 through ~~8~~ 7] must be deducted from the amount of property taxes upon which a credit is determined under 15-30-171 through 15-30-179.</u>

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

<u>NEW SECTION.</u> **Section 10. Codification instruction.** [Sections 1 through ~~8~~ <u>7</u>] are intended to be

codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 1 through ~~8~~ 7].

NEW SECTION. **Section 11. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1994.

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