

1 HOUSE BILL NO. 82

2 INTRODUCED BY HIBBARD

3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CORPORATE
6 TAXES; REDUCING THE PERIODS OF LIMITATION APPLICABLE TO CORPORATIONS FOR TAXATION AND
7 REFUND PURPOSES; REPLACING THE 10 PERCENT PENALTY ON DELINQUENT CORPORATE TAX
8 RETURNS WITH A GRADUATED PERCENTAGE; AMENDING SECTIONS 15-31-111, 15-31-509, 15-31-510,
9 75-2-220, AND 75-5-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
10 RETROACTIVE APPLICABILITY DATE."
11

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

14 **NEW SECTION.** **Section 1. Graduated delinquent penalty for corporate taxpayers.** If the tax for
15 any corporation is not paid on or before the due date of the return, as provided in 15-31-111(2), or if the
16 tax is not paid on or before the due date of the return, as provided in 15-31-111(3), there is assessed a
17 penalty of 1% of the tax due, increasing by 1% for each 30-day period that the tax or any fraction of the
18 tax remains unpaid, up to a maximum penalty of 25% of the tax due. This penalty must be assessed unless
19 it is shown that failure to file was due to a reasonable cause and was not due to neglect.
20

21 **Section 2.** Section 15-31-111, MCA, is amended to read:

22 **"15-31-111. Return to be filed.** (1) Each corporation subject to the license tax imposed under this
23 chapter shall for each tax period file a true and accurate return of its net income for the tax period in the
24 manner and form prescribed by the department of revenue. The return must contain all of the facts, data,
25 and information that are appropriate and in the opinion of the department necessary to determine the
26 correctness of the net income returned and to carry out the provisions of this chapter. The return must be
27 signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting
28 officer.

29 (2) If the corporation is reporting on a calendar year basis, the return must be filed with the
30 department on or before May 15 following the close of the calendar year. If the corporation is reporting on

1 a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month
2 following the close of its fiscal year.

3 (3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6
4 months following the date prescribed for filing of its tax return. The tax and interest must be paid when
5 the return is filed. Interest must be added to the tax due as provided in 15-31-510(3).

6 (b) The department may grant an additional extension of time for the filing of a return whenever
7 in its judgment good cause exists.

8 (4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a
9 corporation subject to the license tax imposed by this chapter shall make the return in the same manner
10 and form as the corporation is required to make the return. Any license tax due on the basis of the return
11 is assessed and collected in the same manner as if assessed directly against the corporation of whose
12 business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or
13 assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or
14 stockholders."

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16 **Section 3.** Section 15-31-509, MCA, is amended to read:

17 "**15-31-509. Periods of limitation.** (1) Except as otherwise provided in ~~this section and in~~
18 ~~15-31-544 and this section, no~~ a deficiency ~~shall~~ may not be assessed or collected with respect to the year
19 for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within ~~5~~ 3
20 years from the date that the return was filed. For the purposes of this section, a return filed before the last
21 day prescribed for filing ~~shall be~~ is considered as filed on ~~such~~ the last day. ~~Where~~ When, before the
22 expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an
23 assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed
24 upon. The limitations prescribed for giving notice of a proposed assessment of additional tax ~~shall~~ may not
25 apply when:

26 (a) the taxpayer has by written agreement suspended the federal statute of limitations for collection
27 of federal tax, ~~provided if~~ the suspension of the limitation set forth in this section ~~shall last~~ lasts:

28 (i) only so long as the suspension of the federal statute of limitation; or

29 (ii) until 1 year after any federal changes have become final or any amended federal return is filed
30 as a result of ~~such~~ the suspension of the federal statute, whichever is the latest in time; or

1 (b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return,
2 as required by 15-31-506, until ~~5~~ 3 years after the federal changes become final or the amended federal
3 return was filed, whichever the case may be.

4 (2) ~~No~~ A refund or credit ~~shall~~ may not be allowed or paid with respect to the year for which a
5 return is filed after ~~5~~ 3 years from the last day prescribed for filing the return or after 1 year from the date
6 of the overpayment, whichever period expires the later, unless before the expiration of ~~such~~ the period the
7 taxpayer files a claim ~~therefor~~ for the refund or credit or the department ~~of revenue~~ has determined the
8 existence of the overpayment and has approved the refund or credit ~~thereof~~. If the taxpayer has agreed in
9 writing under the provisions of subsection (1) ~~of this section~~ to extend the time within which the
10 department may propose an additional assessment, the period within which a claim for refund or credit may
11 be filed or a credit or refund allowed in the event ~~no~~ a claim is not filed ~~shall~~ must automatically be ~~so~~
12 extended.

13 (3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback
14 adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period
15 must be the period that ends with the expiration of the 15th day of the 41st month following the end of
16 the tax year of the net loss that results in the carryback.

17 (4) If the year of the net operating loss is open under either state or federal waivers, the year to
18 which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months
19 following the expiration of the state or federal waiver, even though the claim would otherwise be barred
20 under this section."

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22 **Section 4.** Section 15-31-510, MCA, is amended to read:

23 **"15-31-510. Estimated payments -- interest penalty -- tax returns -- penalty -- interest.** (1) For
24 corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there
25 is assessed a 20% a year underpayment interest penalty calculated as follows:

26 (a) The amount of underpayment is the amount of the required installment set forth in 15-31-502
27 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

28 (b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an
29 underpayment of any installment may not be imposed if the total amount of all payments of estimated tax
30 made on or before the last date prescribed for the payment of the installment equals or exceeds the amount

1 that would have been required to be paid on or before that date if the estimated tax were an amount equal
2 to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

3 (i) for the first 3 months of the taxable year in the case of the installment required to be paid in the
4 4th month;

5 (ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment
6 required to be paid in the 6th month;

7 (iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment
8 required to be paid in the 9th month; and

9 (iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment
10 required to be paid in the 12th month of the taxable year.

11 (c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis
12 by:

13 (i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

14 (ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11,
15 as the case may be) referred to in subsection (1)(b).

16 (d) Notwithstanding the provisions of subsections (1)(a) through (1)(c), the interest penalty with
17 respect to an underpayment of any installment may not be imposed if the total amount of all payments of
18 estimated tax made on or before the last date prescribed for the payment of the installment equals or
19 exceeds 80% of the amount determined under subsection (1)(e).

20 (e) To determine the amount for any installment:

21 (i) take the taxable income for all months during the taxable year preceding the filing month;

22 (ii) divide the amount by the base period percentage for all months during the taxable year preceding
23 the filing month;

24 (iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

25 (iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing
26 month and all months during the taxable year preceding the filing month.

27 (f) For purposes of this subsection (1):

28 (i) the base period percentage for any period of months is the average percentage that the taxable
29 income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income
30 of the 3 preceding years;

1 (ii) the term "filing month" means the month in which the installment is required to be paid;

2 (iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of
3 the taxable year equals or exceeds 70%; and

4 (iv) the department of revenue may by rule provide for the determination of the base period
5 percentage in the case of reorganizations, new corporations, and other similar circumstances.

6 ~~(2) If the tax for any corporation is not paid on or before the due date of the return as provided in
7 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3),
8 there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was
9 due to reasonable cause and not to neglect.~~

10 ~~(3)~~ If any tax due under this chapter is not paid when due ~~under 15-31-111(2)~~ as provided in
11 [section 1], by reason of extension or otherwise, interest is added to the tax due at the rate of 12% a year
12 from the due date until paid."

13
14 **Section 5.** Section 75-2-220, MCA, is amended to read:

15 **"75-2-220. Fees -- special assessments -- late payment assessments.** (1) Concurrent with the
16 submittal of a permit application required under this chapter and annually for the duration of the permit, the
17 applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect,
18 of developing and administering the permitting requirements in this chapter, including:

19 (a) reviewing and acting upon the application;

20 (b) implementing and enforcing the terms and conditions of the permit. This amount does not
21 include any court costs or other costs associated with an enforcement action. If the permit is not issued,
22 the department shall return this portion of the fee to the applicant.

23 (c) emissions and ambient monitoring;

24 (d) preparing generally applicable regulations or guidance;

25 (e) modeling, analysis, and demonstrations;

26 (f) preparing inventories and tracking emissions;

27 (g) providing support to sources under the small business stationary source technical and
28 environmental compliance assistance program; and

29 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act,
30 42 U.S.C. 7661, et seq.

1 (2) In recovering the costs described in subsection (1), the department may assess an application
2 fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants
3 regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant
4 regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air
5 pollutant subject to a national primary ambient air quality standard.

6 (3) The board shall by rule provide for the annual adjustment of all fees assessed for operating
7 permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as
8 required by Subchapter V of the federal Clean Air Act.

9 (4) In addition to the fee required under subsection (1), the board may order the assessment of
10 additional fees required to fund specific activities of the department that are directed at a particular
11 geographic area if the legislature authorizes the activities and appropriates funds for the activities, including
12 emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking.
13 Additional assessments may be levied only on those sources that are within or are believed by the
14 department to be impacting the geographic area. Before the board may require the fees, it shall first
15 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration
16 or implementation of this chapter, that the amount of the requested fees is appropriate, that the
17 assessments apportion the required funding in an equitable manner, and that the department has obtained
18 the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act,
19 Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

20 (5) (a) If the applicant or permit holder fails to pay in a timely manner a fee required under
21 subsection (1), in addition to the fee, the department may:

22 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at
23 the rate contained in 15-31-510~~(3)~~; or

24 (ii) revoke the permit consistent with those procedures established under this chapter for permit
25 revocation.

26 (b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant
27 or permit holder has paid all outstanding fees required under subsections (1) and (4), including all penalties
28 and interest provided for under this subsection (5). In reissuing the revoked permit, the department may
29 modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
30 since revocation.

1 (c) The board shall by rule provide for the implementation of this subsection (5), including criteria
2 for imposition of the sanctions described in this subsection (5).

3 (6) The board may by rule allow the reduction of a fee required under this section for an operating
4 permit or permit renewal to account for the financial resources of a category of small business stationary
5 sources.

6 (7) As a condition of the continuing validity of a permit issued by the department under this chapter
7 prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections
8 (1) and (4).

9 (8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air
10 Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the
11 board may, as a condition of continued operation, require by rule that the owner or operator of the source
12 pay the fees under subsections (1) and (4).

13 (9) (a) The department shall give written notice of the fee to be assessed and the basis for the
14 department's fee assessment under this section to the owner or operator of the air pollutant source. The
15 owner or operator may appeal the department's fee assessment to the board within 20 days after receipt
16 of the written notice.

17 (b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.
18 An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

19 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon
20 receipt of the notice required in subsection (9)(a).

21 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
22 4, part 6, apply to a hearing before the board under this subsection (9).

23 (10) The department may not charge more than one fee annually to a source of air pollutants for
24 the costs identified in subsection (1)."

25

26 **Section 6.** Section 75-5-516, MCA, is amended to read:

27 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) The board shall by rule
28 prescribe fees to be assessed by the department that are sufficient to cover the board's and department's
29 documented costs, both direct and indirect, of:

30 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,

- 1 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;
- 2 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;
- 3 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization
- 4 for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;
- 5 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
- 6 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
- 7 application fee to the applicant.
- 8 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and
- 9 (f) preparing water quality rules or guidance documents.
- 10 (2) The rules promulgated by the board under this section must include:
- 11 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
- 12 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and
- 13 acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application
- 14 addressed under subsection (1), except that an application with multiple discharge points may be assessed
- 15 a lower fee for those points according to board rule.
- 16 (b) an annual fee to be assessed according to the volume and concentration of waste discharged
- 17 into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on
- 18 an annual average for any activity under permit or authorization, as described in subsection (1), except that:
- 19 (i) a permit or authorization with multiple discharge points may be assessed a lower fee for those
- 20 points according to board rule; and
- 21 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
- 22 limitations and that is in compliance with other permit requirements, using the previous calendar year's
- 23 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to
- 24 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50%
- 25 and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its
- 26 first year of operation, and a permittee with a violation of any effluent limit during the previous calendar
- 27 year is not eligible for a fee reduction for the following year.
- 28 (3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the
- 29 department's estimated cost of conducting all tasks described under subsection (1) after subtracting:
- 30 (a) the fees collected under subsection (2)(a);

1 (b) state general fund appropriations for functions administered under this chapter; and

2 (c) federal grants for functions administered under this chapter.

3 (4) For purposes of subsection (3), the department's estimated cost of conducting the tasks
4 described under subsection (1) is the amount authorized by the legislature for the department's water
5 quality discharge permit programs.

6 (5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under
7 this section within 90 days after the date established by rule for fee payment, the department may:

8 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on
9 the required fee computed at the rate established under 15-31-510~~(2)~~; or

10 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1
11 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties,
12 assessments, and interest imposed under subsection (5)(a).

13 (6) Fees collected pursuant to this section must be deposited in an account in the special revenue
14 fund type pursuant to 75-5-517.

15 (7) The department shall give written notice to each person assessed a fee under this section of
16 the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice
17 must be issued at least 30 days prior to the due date for payment of the assessment.

18 (8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee
19 assessment to the board within 20 days after receiving written notice of the department's fee determination
20 under subsection (7). The appeal to the board must include a written statement detailing the reasons that
21 the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

22 (9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection
23 (8), the undisputed portion of the fee must be paid to the department upon written request of the
24 department.

25 (10) The contested case provisions of the Montana Administrative Procedure Act, provided for in
26 Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

27 (11) A municipality may raise rates to cover costs associated with the fees prescribed in this section
28 for a public sewer system without the hearing required in 69-7-111."

29

30 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 15, chapter 31, part 5, and the provisions of Title 15, chapter 31, part 5, apply to
2 [section 1].

3

4 NEW SECTION. **Section 8. Retroactive applicability.** [Sections 1 and 4] apply retroactively, within
5 the meaning of 1-2-109, to tax years beginning after December 31, 1996.

6

7 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0082, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

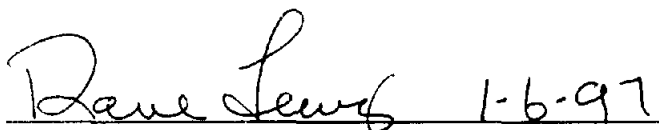
An act generally revising the laws governing corporate taxes; reducing the periods of limitation applicable to corporations for taxation and refund purposes; replacing the 10 percent penalty on delinquent corporate tax returns with a graduated percentage; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:


1. Under current law, the penalty for not paying taxes on or before the tax due date is 10% of the amount of tax due.
2. Under the proposed bill, the penalty ranges from 1% to 25%, depending on the promptness of paying the tax due.
3. The proposed bill will result in a lower penalty for corporations that pay within 9 months of the due date, the same penalty amount for corporations that pay 10 months after the due date, and a higher penalty for corporations that pay more than 10 months after the due date. The net result is expected to be little or no change from current law revenue.
4. The reduction of the period of limitation from 5 years to 3 years has no impact in the upcoming biennium. The reduction is expected to have little or no impact on revenues beginning in fiscal year 2001.

FISCAL IMPACT:

Based upon the above assumptions, this bill will have little or no fiscal impact.

 1-6-97

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


CHASE HIBBARD, PRIMARY SPONSOR DATE
Fiscal Note for HB0082, as introduced

HB 82

APPROVED BY COM
ON TAXATION

1 HOUSE BILL NO. 82

2 INTRODUCED BY HIBBARD

3 BY REQUEST OF THE DEPARTMENT OF REVENUE
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6 TAXES; REDUCING THE PERIODS OF LIMITATION APPLICABLE TO CORPORATIONS FOR TAXATION AND
7 REFUND PURPOSES; REPLACING THE 10 PERCENT PENALTY ON DELINQUENT CORPORATE TAX
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10 RETROACTIVE APPLICABILITY DATE."

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15 any corporation is not paid on or before the due date of the return, as provided in 15-31-111(2), or if the
16 tax is not paid on or before the due date of the return, as provided in 15-31-111(3), there is assessed a
17 penalty of 1% of the tax due, increasing by 1% for each 30-day period that the tax or any fraction of the
18 tax remains unpaid, up to a maximum penalty of 25% of the tax due. This penalty must be assessed unless
19 it is shown that THE failure ~~to file~~ was due to a reasonable cause and was not due to neglect.
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21 **Section 2.** Section 15-31-111, MCA, is amended to read:

22 **"15-31-111. Return to be filed.** (1) Each corporation subject to the license tax imposed under this
23 chapter shall for each tax period file a true and accurate return of its net income for the tax period in the
24 manner and form prescribed by the department of revenue. The return must contain all of the facts, data,
25 and information that are appropriate and in the opinion of the department necessary to determine the
26 correctness of the net income returned and to carry out the provisions of this chapter. The return must be
27 signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting
28 officer.

29 (2) If the corporation is reporting on a calendar year basis, the return must be filed with the
30 department on or before May 15 following the close of the calendar year. If the corporation is reporting on

1 a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month
2 following the close of its fiscal year.

3 (3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6
4 months following the date prescribed for filing of its tax return. The tax and interest must be paid when
5 the return is filed. Interest must be added to the tax due as provided in 15-31-510(3).

6 (b) The department may grant an additional extension of time for the filing of a return whenever
7 in its judgment good cause exists.

8 (4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a
9 corporation subject to the license tax imposed by this chapter shall make the return in the same manner
10 and form as the corporation is required to make the return. Any license tax due on the basis of the return
11 is assessed and collected in the same manner as if assessed directly against the corporation of whose
12 business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or
13 assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or
14 stockholders."

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19 for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within ~~5~~ 3
20 years from the date that the return was filed. For the purposes of this section, a return filed before the last
21 day prescribed for filing ~~shall be~~ is considered as filed on ~~such~~ the last day. ~~Where~~ When, before the
22 expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an
23 assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed
24 upon. The limitations prescribed for giving notice of a proposed assessment of additional tax ~~shall may~~ not
25 apply when:

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27 of federal tax, ~~provided if~~ the suspension of the limitation set forth in this section ~~shall last~~ lasts:

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29 (ii) until 1 year after any federal changes have become final or any amended federal return is filed
30 as a result of ~~such~~ the suspension of the federal statute, whichever is the latest in time; or

1 (b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return,
 2 as required by 15-31-506, until ~~5~~ 3 years after the federal changes become final or the amended federal
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4 (2) ~~No~~ A refund or credit ~~shall~~ may not be allowed or paid with respect to the year for which a
 5 return is filed after ~~5~~ 3 years from the last day prescribed for filing the return or after 1 year from the date
 6 of the overpayment, whichever period expires the later, unless before the expiration of ~~such~~ the period the
 7 taxpayer files a claim ~~therefor~~ for the refund or credit or the department ~~of revenue~~ has determined the
 8 existence of the overpayment and has approved the refund or credit ~~thereof~~. If the taxpayer has agreed in
 9 writing under the provisions of subsection (1) ~~of this section~~ to extend the time within which the
 10 department may propose an additional assessment, the period within which a claim for refund or credit may
 11 be filed or a credit or refund allowed in the event ~~no~~ a claim is not filed ~~shall~~ must automatically be ~~so~~
 12 extended.

13 (3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback
 14 adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period
 15 must be the period that ends with the expiration of the 15th day of the 41st month following the end of
 16 the tax year of the net loss that results in the carryback.

17 (4) If the year of the net operating loss is open under either state or federal waivers, the year to
 18 which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months
 19 following the expiration of the state or federal waiver, even though the claim would otherwise be barred
 20 under this section."

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22 **Section 4.** Section 15-31-510, MCA, is amended to read:

23 **"15-31-510. Estimated payments -- interest penalty -- tax returns -- penalty -- interest.** (1) For
 24 corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there
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26 (a) The amount of underpayment is the amount of the required installment set forth in 15-31-502
 27 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

28 (b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an
 29 underpayment of any installment may not be imposed if the total amount of all payments of estimated tax
 30 made on or before the last date prescribed for the payment of the installment equals or exceeds the amount

- 1 that would have been required to be paid on or before that date if the estimated tax were an amount equal
2 to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:
- 3 (i) for the first 3 months of the taxable year in the case of the installment required to be paid in the
4 4th month;
 - 5 (ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment
6 required to be paid in the 6th month;
 - 7 (iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment
8 required to be paid in the 9th month; and
 - 9 (iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment
10 required to be paid in the 12th month of the taxable year.
- 11 (c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis
12 by:
- 13 (i) multiplying by 12 the taxable income referred to in subsection (1)(b); and
 - 14 (ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11,
15 as the case may be) referred to in subsection (1)(b).
- 16 (d) Notwithstanding the provisions of subsections (1)(a) through (1)(c), the interest penalty with
17 respect to an underpayment of any installment may not be imposed if the total amount of all payments of
18 estimated tax made on or before the last date prescribed for the payment of the installment equals or
19 exceeds 80% of the amount determined under subsection (1)(e).
- 20 (e) To determine the amount for any installment:
- 21 (i) take the taxable income for all months during the taxable year preceding the filing month;
 - 22 (ii) divide the amount by the base period percentage for all months during the taxable year preceding
23 the filing month;
 - 24 (iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and
 - 25 (iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing
26 month and all months during the taxable year preceding the filing month.
- 27 (f) For purposes of this subsection (1):
- 28 (i) the base period percentage for any period of months is the average percentage that the taxable
29 income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income
30 of the 3 preceding years;

1 (ii) the term "filing month" means the month in which the installment is required to be paid;

2 (iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of
3 the taxable year equals or exceeds 70%; and

4 (iv) the department of revenue may by rule provide for the determination of the base period
5 percentage in the case of reorganizations, new corporations, and other similar circumstances.

6 (2) ~~If the tax for any corporation is not paid on or before the due date of the return as provided in
7 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3),
8 there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was
9 due to reasonable cause and not to neglect.~~

10 ~~(3)~~ If any tax due under this chapter is not paid when due ~~under 15-31-111(2)~~ as provided in
11 [section 1], by reason of extension or otherwise, interest is added to the tax due at the rate of 12% a year
12 from the due date until paid."

13

14 **Section 5.** Section 75-2-220, MCA, is amended to read:

15 **"75-2-220. Fees -- special assessments -- late payment assessments.** (1) Concurrent with the
16 submittal of a permit application required under this chapter and annually for the duration of the permit, the
17 applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect,
18 of developing and administering the permitting requirements in this chapter, including:

19 (a) reviewing and acting upon the application;

20 (b) implementing and enforcing the terms and conditions of the permit. This amount does not
21 include any court costs or other costs associated with an enforcement action. If the permit is not issued,
22 the department shall return this portion of the fee to the applicant.

23 (c) emissions and ambient monitoring;

24 (d) preparing generally applicable regulations or guidance;

25 (e) modeling, analysis, and demonstrations;

26 (f) preparing inventories and tracking emissions;

27 (g) providing support to sources under the small business stationary source technical and
28 environmental compliance assistance program; and

29 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act,
30 42 U.S.C. 7661, et seq.

1 (2) In recovering the costs described in subsection (1), the department may assess an application
2 fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants
3 regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant
4 regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air
5 pollutant subject to a national primary ambient air quality standard.

6 (3) The board shall by rule provide for the annual adjustment of all fees assessed for operating
7 permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as
8 required by Subchapter V of the federal Clean Air Act.

9 (4) In addition to the fee required under subsection (1), the board may order the assessment of
10 additional fees required to fund specific activities of the department that are directed at a particular
11 geographic area if the legislature authorizes the activities and appropriates funds for the activities, including
12 emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking.
13 Additional assessments may be levied only on those sources that are within or are believed by the
14 department to be impacting the geographic area. Before the board may require the fees, it shall first
15 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration
16 or implementation of this chapter, that the amount of the requested fees is appropriate, that the
17 assessments apportion the required funding in an equitable manner, and that the department has obtained
18 the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act,
19 Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

20 (5) (a) If the applicant or permit holder fails to pay in a timely manner a fee required under
21 subsection (1), in addition to the fee, the department may:

22 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at
23 the rate contained in 15-31-510~~(3)~~; or

24 (ii) revoke the permit consistent with those procedures established under this chapter for permit
25 revocation.

26 (b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant
27 or permit holder has paid all outstanding fees required under subsections (1) and (4), including all penalties
28 and interest provided for under this subsection (5). In reissuing the revoked permit, the department may
29 modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
30 since revocation.

1 (c) The board shall by rule provide for the implementation of this subsection (5), including criteria
2 for imposition of the sanctions described in this subsection (5).

3 (6) The board may by rule allow the reduction of a fee required under this section for an operating
4 permit or permit renewal to account for the financial resources of a category of small business stationary
5 sources.

6 (7) As a condition of the continuing validity of a permit issued by the department under this chapter
7 prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections
8 (1) and (4).

9 (8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air
10 Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the
11 board may, as a condition of continued operation, require by rule that the owner or operator of the source
12 pay the fees under subsections (1) and (4).

13 (9) (a) The department shall give written notice of the fee to be assessed and the basis for the
14 department's fee assessment under this section to the owner or operator of the air pollutant source. The
15 owner or operator may appeal the department's fee assessment to the board within 20 days after receipt
16 of the written notice.

17 (b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.
18 An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

19 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon
20 receipt of the notice required in subsection (9)(a).

21 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
22 4, part 6, apply to a hearing before the board under this subsection (9).

23 (10) The department may not charge more than one fee annually to a source of air pollutants for
24 the costs identified in subsection (1)."

25

26 **Section 6.** Section 75-5-516, MCA, is amended to read:

27 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) The board shall by rule
28 prescribe fees to be assessed by the department that are sufficient to cover the board's and department's
29 documented costs, both direct and indirect, of:

30 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,

- 1 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;
- 2 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;
- 3 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization
- 4 for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;
- 5 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
- 6 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
- 7 application fee to the applicant.
- 8 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and
- 9 (f) preparing water quality rules or guidance documents.
- 10 (2) The rules promulgated by the board under this section must include:
- 11 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
- 12 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and
- 13 acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application
- 14 addressed under subsection (1), except that an application with multiple discharge points may be assessed
- 15 a lower fee for those points according to board rule.
- 16 (b) an annual fee to be assessed according to the volume and concentration of waste discharged
- 17 into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on
- 18 an annual average for any activity under permit or authorization, as described in subsection (1), except that:
- 19 (i) a permit or authorization with multiple discharge points may be assessed a lower fee for those
- 20 points according to board rule; and
- 21 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
- 22 limitations and that is in compliance with other permit requirements, using the previous calendar year's
- 23 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to
- 24 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50%
- 25 and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its
- 26 first year of operation, and a permittee with a violation of any effluent limit during the previous calendar
- 27 year is not eligible for a fee reduction for the following year.
- 28 (3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the
- 29 department's estimated cost of conducting all tasks described under subsection (1) after subtracting:
- 30 (a) the fees collected under subsection (2)(a);

1 (b) state general fund appropriations for functions administered under this chapter; and

2 (c) federal grants for functions administered under this chapter.

3 (4) For purposes of subsection (3), the department's estimated cost of conducting the tasks
4 described under subsection (1) is the amount authorized by the legislature for the department's water
5 quality discharge permit programs.

6 (5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under
7 this section within 90 days after the date established by rule for fee payment, the department may:

8 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on
9 the required fee computed at the rate established under 15-31-510~~(3)~~; or

10 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1
11 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties,
12 assessments, and interest imposed under subsection (5)(a).

13 (6) Fees collected pursuant to this section must be deposited in an account in the special revenue
14 fund type pursuant to 75-5-517.

15 (7) The department shall give written notice to each person assessed a fee under this section of
16 the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice
17 must be issued at least 30 days prior to the due date for payment of the assessment.

18 (8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee
19 assessment to the board within 20 days after receiving written notice of the department's fee determination
20 under subsection (7). The appeal to the board must include a written statement detailing the reasons that
21 the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

22 (9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection
23 (8), the undisputed portion of the fee must be paid to the department upon written request of the
24 department.

25 (10) The contested case provisions of the Montana Administrative Procedure Act, provided for in
26 Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

27 (11) A municipality may raise rates to cover costs associated with the fees prescribed in this section
28 for a public sewer system without the hearing required in 69-7-111."

29

30 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 15, chapter 31, part 5, and the provisions of Title 15, chapter 31, part 5, apply to
2 [section 1].

3

4 **NEW SECTION. Section 8. Retroactive applicability.** [Sections 1 and 4] apply retroactively, within
5 the meaning of 1-2-109, to tax years beginning after December 31, 1996.

6

7 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

8

-END-

1 HOUSE BILL NO. 82

2 INTRODUCED BY HIBBARD

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING CORPORATE
6 TAXES; REDUCING THE PERIODS OF LIMITATION APPLICABLE TO CORPORATIONS FOR TAXATION AND
7 REFUND PURPOSES; REPLACING THE 10 PERCENT PENALTY ON DELINQUENT CORPORATE TAX
8 RETURNS WITH A GRADUATED PERCENTAGE; AMENDING SECTIONS 15-31-111, 15-31-509, 15-31-510,
9 75-2-220, AND 75-5-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
10 RETROACTIVE APPLICABILITY DATE."

11

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

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

APPROVED BY COM
ON TAXATION

1 HOUSE BILL NO. 82

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3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
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6 TAXES; REDUCING THE PERIODS OF LIMITATION APPLICABLE TO CORPORATIONS FOR TAXATION AND
7 REFUND PURPOSES; REPLACING THE 10 PERCENT PENALTY ON DELINQUENT CORPORATE TAX
8 RETURNS WITH A GRADUATED PERCENTAGE; AMENDING SECTIONS 15-31-111, 15-31-509, 15-31-510,
9 75-2-220, AND 75-5-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
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8 RETURNS WITH A GRADUATED PERCENTAGE; AMENDING SECTIONS 15-31-111, 15-31-509, 15-31-510,
9 75-2-220, AND 75-5-516, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
10 RETROACTIVE APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13

14 **NEW SECTION. Section 1. Graduated delinquent penalty for corporate taxpayers.** If the tax for
15 any corporation is not paid on or before the due date of the return, as provided in 15-31-111(2), or if the
16 tax is not paid on or before the due date of the return, as provided in 15-31-111(3), there is assessed a
17 penalty of 1% of the tax due, increasing by 1% for each 30-day period that the tax or any fraction of the
18 tax remains unpaid, up to a maximum penalty of 25% of the tax due. This penalty must be assessed unless
19 it is shown that THE failure to file was due to a reasonable cause and was not due to neglect.
20

21 **Section 2.** Section 15-31-111, MCA, is amended to read:

22 "15-31-111. **Return to be filed.** (1) Each corporation subject to the license tax imposed under this
23 chapter shall for each tax period file a true and accurate return of its net income for the tax period in the
24 manner and form prescribed by the department of revenue. The return must contain all of the facts, data,
25 and information that are appropriate and in the opinion of the department necessary to determine the
26 correctness of the net income returned and to carry out the provisions of this chapter. The return must be
27 signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting
28 officer.

29 (2) If the corporation is reporting on a calendar year basis, the return must be filed with the
30 department on or before May 15 following the close of the calendar year. If the corporation is reporting on

1 a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th month
2 following the close of its fiscal year.

3 (3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6
4 months following the date prescribed for filing of its tax return. The tax and interest must be paid when
5 the return is filed. Interest must be added to the tax due as provided in 15-31-510(3).

6 (b) The department may grant an additional extension of time for the filing of a return whenever
7 in its judgment good cause exists.

8 (4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a
9 corporation subject to the license tax imposed by this chapter shall make the return in the same manner
10 and form as the corporation is required to make the return. Any license tax due on the basis of the return
11 is assessed and collected in the same manner as if assessed directly against the corporation of whose
12 business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or
13 assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or
14 stockholders."

15

16 **Section 3.** Section 15-31-509, MCA, is amended to read:

17 **"15-31-509. Periods of limitation.** (1) Except as otherwise provided in ~~this section and in~~
18 15-31-544 and this section, ~~no~~ a deficiency ~~shall~~ may not be assessed or collected with respect to the year
19 for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within ~~5~~ 3
20 years from the date that the return was filed. For the purposes of this section, a return filed before the last
21 day prescribed for filing ~~shall be~~ is considered as filed on ~~such~~ the last day. ~~Where~~ When, before the
22 expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an
23 assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed
24 upon. The limitations prescribed for giving notice of a proposed assessment of additional tax ~~shall~~ may not
25 apply when:

26 (a) the taxpayer has by written agreement suspended the federal statute of limitations for collection
27 of federal tax, ~~provided if~~ the suspension of the limitation set forth in this section ~~shall last~~ lasts:

28 (i) only so long as the suspension of the federal statute of limitation; or

29 (ii) until 1 year after any federal changes have become final or any amended federal return is filed
30 as a result of ~~such~~ the suspension of the federal statute, whichever is the latest in time; or

1 (b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return,
 2 as required by 15-31-506, until ~~5~~ 3 years after the federal changes become final or the amended federal
 3 return was filed, whichever the case may be.

4 (2) ~~No~~ A refund or credit ~~shall~~ may not be allowed or paid with respect to the year for which a
 5 return is filed after ~~5~~ 3 years from the last day prescribed for filing the return or after 1 year from the date
 6 of the overpayment, whichever period expires the later, unless before the expiration of ~~such~~ the period the
 7 taxpayer files a claim ~~therefor~~ for the refund or credit or the department ~~of revenue~~ has determined the
 8 existence of the overpayment and has approved the refund or credit ~~thereof~~. If the taxpayer has agreed in
 9 writing under the provisions of subsection (1) ~~of this section~~ to extend the time within which the
 10 department may propose an additional assessment, the period within which a claim for refund or credit may
 11 be filed or a credit or refund allowed in the event ~~no~~ a claim is not filed ~~shall~~ must automatically be ~~se~~
 12 extended.

13 (3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback
 14 adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period
 15 must be the period that ends with the expiration of the 15th day of the 41st month following the end of
 16 the tax year of the net loss that results in the carryback.

17 (4) If the year of the net operating loss is open under either state or federal waivers, the year to
 18 which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months
 19 following the expiration of the state or federal waiver, even though the claim would otherwise be barred
 20 under this section."

21
 22 **Section 4.** Section 15-31-510, MCA, is amended to read:

23 "15-31-510. **Estimated payments -- interest penalty -- tax returns -- penalty -- interest.** (1) For
 24 corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there
 25 is assessed a 20% a year underpayment interest penalty calculated as follows:

26 (a) The amount of underpayment is the amount of the required installment set forth in 15-31-502
 27 that exceeds the amount, if any, of the installment paid on or before the last date prescribed for payment.

28 (b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an
 29 underpayment of any installment may not be imposed if the total amount of all payments of estimated tax
 30 made on or before the last date prescribed for the payment of the installment equals or exceeds the amount

1 that would have been required to be paid on or before that date if the estimated tax were an amount equal
2 to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

3 (i) for the first 3 months of the taxable year in the case of the installment required to be paid in the
4 4th month;

5 (ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment
6 required to be paid in the 6th month;

7 (iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment
8 required to be paid in the 9th month; and

9 (iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment
10 required to be paid in the 12th month of the taxable year.

11 (c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis
12 by:

13 (i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

14 (ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11,
15 as the case may be) referred to in subsection (1)(b).

16 (d) Notwithstanding the provisions of subsections (1)(a) through (1)(c), the interest penalty with
17 respect to an underpayment of any installment may not be imposed if the total amount of all payments of
18 estimated tax made on or before the last date prescribed for the payment of the installment equals or
19 exceeds 80% of the amount determined under subsection (1)(e).

20 (e) To determine the amount for any installment:

21 (i) take the taxable income for all months during the taxable year preceding the filing month;

22 (ii) divide the amount by the base period percentage for all months during the taxable year preceding
23 the filing month;

24 (iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

25 (iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing
26 month and all months during the taxable year preceding the filing month.

27 (f) For purposes of this subsection (1):

28 (i) the base period percentage for any period of months is the average percentage that the taxable
29 income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income
30 of the 3 preceding years;

1 (ii) the term "filing month" means the month in which the installment is required to be paid;

2 (iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of
3 the taxable year equals or exceeds 70%; and

4 (iv) the department of revenue may by rule provide for the determination of the base period
5 percentage in the case of reorganizations, new corporations, and other similar circumstances.

6 (2) ~~If the tax for any corporation is not paid on or before the due date of the return as provided in
7 15-31-111(2) or if the tax is not paid on or before the due date of the return as provided in 15-31-111(3),
8 there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was
9 due to reasonable cause and not to neglect.~~

10 ~~(3)~~ If any tax due under this chapter is not paid when due ~~under 15-31-111(2)~~ as provided in
11 [section 1], by reason of extension or otherwise, interest is added to the tax due at the rate of 12% a year
12 from the due date until paid."

13

14 **Section 5.** Section 75-2-220, MCA, is amended to read:

15 **"75-2-220. Fees -- special assessments -- late payment assessments.** (1) Concurrent with the
16 submittal of a permit application required under this chapter and annually for the duration of the permit, the
17 applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect,
18 of developing and administering the permitting requirements in this chapter, including:

19 (a) reviewing and acting upon the application;

20 (b) implementing and enforcing the terms and conditions of the permit. This amount does not
21 include any court costs or other costs associated with an enforcement action. If the permit is not issued,
22 the department shall return this portion of the fee to the applicant.

23 (c) emissions and ambient monitoring;

24 (d) preparing generally applicable regulations or guidance;

25 (e) modeling, analysis, and demonstrations;

26 (f) preparing inventories and tracking emissions;

27 (g) providing support to sources under the small business stationary source technical and
28 environmental compliance assistance program; and

29 (h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act,
30 42 U.S.C. 7661, et seq.

1 (2) In recovering the costs described in subsection (1), the department may assess an application
2 fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants
3 regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant
4 regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air
5 pollutant subject to a national primary ambient air quality standard.

6 (3) The board shall by rule provide for the annual adjustment of all fees assessed for operating
7 permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as
8 required by Subchapter V of the federal Clean Air Act.

9 (4) In addition to the fee required under subsection (1), the board may order the assessment of
10 additional fees required to fund specific activities of the department that are directed at a particular
11 geographic area if the legislature authorizes the activities and appropriates funds for the activities, including
12 emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking.
13 Additional assessments may be levied only on those sources that are within or are believed by the
14 department to be impacting the geographic area. Before the board may require the fees, it shall first
15 determine, after opportunity for hearing, that the activities to be funded are necessary for the administration
16 or implementation of this chapter, that the amount of the requested fees is appropriate, that the
17 assessments apportion the required funding in an equitable manner, and that the department has obtained
18 the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act,
19 Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

20 (5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under
21 subsection (1), in addition to the fee, the department may:

22 (i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at
23 the rate contained in 15-31-510~~(3)~~; or

24 (ii) revoke the permit consistent with those procedures established under this chapter for permit
25 revocation.

26 (b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant
27 or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties
28 and interest provided for under this subsection (5). In reissuing the revoked permit, the department may
29 modify the terms and conditions of the permit as necessary to account for changes in air quality occurring
30 since revocation.

1 (c) The board shall by rule provide for the implementation of this subsection (5), including criteria
2 for imposition of the sanctions described in this subsection (5).

3 (6) The board may by rule allow the reduction of a fee required under this section for an operating
4 permit or permit renewal to account for the financial resources of a category of small business stationary
5 sources.

6 (7) As a condition of the continuing validity of a permit issued by the department under this chapter
7 prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections
8 (1) and (4).

9 (8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air
10 Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the
11 board may, as a condition of continued operation, require by rule that the owner or operator of the source
12 pay the fees under subsections (1) and (4).

13 (9) (a) The department shall give written notice of the fee to be assessed and the basis for the
14 department's fee assessment under this section to the owner or operator of the air pollutant source. The
15 owner or operator may appeal the department's fee assessment to the board within 20 days after receipt
16 of the written notice.

17 (b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive.
18 An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

19 (c) If any part of the fee assessment is not appealed, it must be paid to the department upon
20 receipt of the notice required in subsection (9)(a).

21 (d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
22 4, part 6, apply to a hearing before the board under this subsection (9).

23 (10) The department may not charge more than one fee annually to a source of air pollutants for
24 the costs identified in subsection (1)."

25
26 **Section 6.** Section 75-5-516, MCA, is amended to read:

27 **"75-5-516. Fees authorized for recovery -- process -- rulemaking.** (1) The board shall by rule
28 prescribe fees to be assessed by the department that are sufficient to cover the board's and department's
29 documented costs, both direct and indirect, of:

30 (a) reviewing and acting upon an application for a permit, permit modification, permit renewal,

1 certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

2 (b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

3 (c) reviewing and acting upon an application for a permit, certificate, license, or other authorization
4 for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

5 (d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a)
6 through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any
7 application fee to the applicant.

8 (e) conducting compliance inspections and monitoring effluent and ambient water quality; and

9 (f) preparing water quality rules or guidance documents.

10 (2) The rules promulgated by the board under this section must include:

11 (a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through
12 (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and
13 acting upon the applications. This fee may not be more than \$5,000 per discharge point for an application
14 addressed under subsection (1), except that an application with multiple discharge points may be assessed
15 a lower fee for those points according to board rule.

16 (b) an annual fee to be assessed according to the volume and concentration of waste discharged
17 into state waters. The annual fee may not be more than \$3,000 per million gallons discharged per day on
18 an annual average for any activity under permit or authorization, as described in subsection (1), except that:

19 (i) a permit or authorization with multiple discharge points may be assessed a lower fee for those
20 points according to board rule; and

21 (ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent
22 limitations and that is in compliance with other permit requirements, using the previous calendar year's
23 discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to
24 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50%
25 and 100% of their effluent limitations. However, a new permittee is not eligible for a fee reduction in its
26 first year of operation, and a permittee with a violation of any effluent limit during the previous calendar
27 year is not eligible for a fee reduction for the following year.

28 (3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the
29 department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

30 (a) the fees collected under subsection (2)(a);

1 (b) state general fund appropriations for functions administered under this chapter; and

2 (c) federal grants for functions administered under this chapter.

3 (4) For purposes of subsection (3), the department's estimated cost of conducting the tasks
4 described under subsection (1) is the amount authorized by the legislature for the department's water
5 quality discharge permit programs.

6 (5) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under
7 this section within 90 days after the date established by rule for fee payment, the department may:

8 (a) impose an additional assessment consisting of not more than 20% of the fee plus interest on
9 the required fee computed at the rate established under 15-31-510~~(3)~~; or

10 (b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1
11 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties,
12 assessments, and interest imposed under subsection (5)(a).

13 (6) Fees collected pursuant to this section must be deposited in an account in the special revenue
14 fund type pursuant to 75-5-517.

15 (7) The department shall give written notice to each person assessed a fee under this section of
16 the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice
17 must be issued at least 30 days prior to the due date for payment of the assessment.

18 (8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee
19 assessment to the board within 20 days after receiving written notice of the department's fee determination
20 under subsection (7). The appeal to the board must include a written statement detailing the reasons that
21 the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

22 (9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection
23 (8), the undisputed portion of the fee must be paid to the department upon written request of the
24 department.

25 (10) The contested case provisions of the Montana Administrative Procedure Act, provided for in
26 Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

27 (11) A municipality may raise rates to cover costs associated with the fees prescribed in this section
28 for a public sewer system without the hearing required in 69-7-111."

29
30 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 15, chapter 31, part 5, and the provisions of Title 15, chapter 31, part 5, apply to
2 [section 1].

3

4 NEW SECTION. **Section 8. Retroactive applicability.** [Sections 1 and 4] apply retroactively, within
5 the meaning of 1-2-109, to tax years beginning after December 31, 1996.

6

7 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

8

-END-