

House BILL NO. 433 *Bauer*
Walters *James* *Brannan*

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INTRODUCED BY *Walters*
Keenan *James* *Brannan* *Bitney* *Vick* *Arith* *Curtiss* *Wells* *Peterson*
A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN INDIVIDUAL TAX CREDIT FOR QUALIFYING
ELEMENTARY AND SECONDARY EDUCATION EXPENSES BY AN INDIVIDUAL FOR A DEPENDENT MINOR
BY PROVIDING A 100 PERCENT CREDIT FOR QUALIFYING EDUCATION EXPENSES FOR THE FIRST CHILD,
A 70 PERCENT CREDIT FOR QUALIFYING EDUCATION EXPENSES FOR THE SECOND CHILD, AND A 50
PERCENT CREDIT FOR QUALIFYING EDUCATION EXPENSES FOR THE THIRD AND ANY SUBSEQUENT
CHILD; REQUIRING A DECLARATION OF INTENT TO CLAIM A TAX CREDIT; AMENDING SECTIONS
20-9-161, 20-9-162, 20-9-163, AND 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
AND A RETROACTIVE APPLICABILITY DATE."

Wm. E. Bohorski
ORF

WHEREAS, Article X, section 1(1), of the Montana Constitution guarantees equality of educational opportunity to each person of the state; and

WHEREAS, the Legislature finds that allowing lower-income parents the same ability that wealthy parents now have in selecting the school of their choice enhances equality of educational opportunity; and

WHEREAS, the Legislature strongly supports the rights of parents to choose the way in which their children are educated, consistent with their academic expectations and personal values; and

WHEREAS, the Legislature believes that competition in the educational marketplace has a strengthening effect on both public and private education and serves the long-term best interests of all students; and

WHEREAS, the Legislature supports an education policy that fosters the free movement of educational consumers to the schools of their choice; and

WHEREAS, the Legislature finds that it is fiscally and educationally prudent to have the private sector absorb a portion of the ever-increasing number of students that are overcrowding our public schools and costing taxpayers tens of millions of dollars of capital construction costs; and

WHEREAS, the Legislature finds that parental choice in education can reduce the Montana property and income tax burdens and increase the amount of money available to educate each child in the public schools.

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

2

3 NEW SECTION. **Section 1. Elementary and secondary education expense tax credit.** (1) There is
4 a credit against the taxes otherwise due under this chapter for qualified elementary and secondary
5 education expenses paid by an individual for a dependent who is a minor during the tax year. In order to
6 claim the credit, the individual must have a completed intent form to claim an education tax credit on file
7 with the state pursuant to [section 2].

8 (2) (a) Education expenses that qualify for the credit under this section are amounts paid as tuition
9 and fees by an individual for a dependent who is in compliance with Title 20, chapter 5, part 1.

10 (b) Qualifying education expenses do not include amounts paid to a governmental entity as
11 property taxes, assessments, or fees.

12 (3) The amount of the credit for qualifying education expenses is as follows:

13 (a) for the tax year beginning January 1, 1997, but only for the amount by which those expenses
14 have increased from the previous tax year:

15 (i) up to \$375 for the first child;

16 (ii) 70% of \$375 for the second child; and

17 (iii) 50% of \$375 for the third and any subsequent child;

18 (b) for the tax year beginning January 1, 1998, as applied against the first \$375 of qualifying
19 education expenses for attendance from January 1, 1998, to June 30, 1998, and against the first \$375
20 of qualifying education expenses for attendance from July 1, 1998, to December 31, 1998:

21 (i) up to \$750 for the first child;

22 (ii) 70% of \$750 for the second child; and

23 (iii) 50% of \$750 for the third and any subsequent child; and

24 (c) for tax years beginning on or after January 1, 1999:

25 (i) up to \$1,000 for the first child;

26 (ii) 70% of \$1,000 for the second child; and

27 (iii) 50% of \$1,000 for the third and any subsequent child.

28 (4) A deduction or credit is not allowed under any other provision of this chapter with respect to
29 any amount for which a credit is allowed under this section. Any amount of the credit allowed under this
30 section that is in excess of an individual's tax liability must be refunded to the individual.

1 (5) In the case of a married individual filing a separate return, the amount of the credit under
2 subsection (3) is limited to one-half of the applicable amount.

3
4 **NEW SECTION. Section 2. Intent to claim education tax credit~~2~~- form.** (1) The superintendent of
5 public instruction shall provide a form on which to declare the intent to claim an education tax credit. The
6 form must outline the tax credit provided for in [section 1] and must contain an affidavit that the individual
7 completing the form intends to enroll a dependent minor in a school other than a public school in the district
8 of residence during the following school year. The form must be distributed to each student attending public
9 school. Forms must also be provided to and be available from each county superintendent of schools.

10 (2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually
11 complete the form provided for in subsection (1) and return the form to an official of the individual's district
12 of residence by May 10. Each district shall forward the forms to the county superintendent, who shall then
13 forward the forms to the superintendent of public instruction. The number of eligible dependent minors
14 indicated on the forms who were enrolled during that year must be excluded from ANB calculations for the
15 ensuing school year.

16 (3) The superintendent of public instruction shall forward a copy of each form to the department
17 of revenue for use in determining eligibility for the tax credit provided for in [section 1].

18
19 **Section 3.** Section 20-9-161, MCA, is amended to read:

20 **"20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless
21 the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting
22 means an amendment to an adopted budget of the district for the following reasons:

- 23 (1) an increase in the enrollment of an elementary or high school district that is;
24 (a) beyond what could reasonably have been anticipated at the time of the adoption of the budget
25 for the current school fiscal year whenever, because of the enrollment increase, the district's budget for
26 any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and
27 support the district for the entire current school fiscal year; or

28 (b) because of enrollment of students for whom a form to declare the intent to claim an education
29 tax credit was filed as provided in [section 2];

30 (2) the destruction or impairment of any school property necessary to the maintenance of the

1 school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit
2 for its present school use;

3 (3) a judgment for damages against the district issued by a court after the adoption of the budget
4 for the current year;

5 (4) an enactment of legislation after the adoption of the budget for the current year that imposes
6 an additional financial obligation on the district;

7 (5) the receipt of:

8 (a) a settlement of taxes protested in a prior school fiscal year;

9 (b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue
10 or its agents;

11 (c) delinquent taxes from a prior school fiscal year; or

12 (d) local government severance tax payments for calendar year 1995 production as provided in
13 15-36-325(7); and

14 (e) a determination by the trustees that it is necessary to expend all or a portion of the taxes
15 received under subsection (5)(a), (5)(b), (5)(c), or (5)(d) for a project or projects that were deferred from
16 a previous budget of the district as a result of the protested taxes; or

17 (6) any other unforeseen need of the district that cannot be postponed until the next school year
18 without dire consequences affecting the safety of the students and district employees or the educational
19 functions of the district."

20

21 **Section 4.** Section 20-9-162, MCA, is amended to read:

22 **"20-9-162. Authorization for budget amendment adoption.** (1) (a) Notwithstanding the provisions
23 of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year,
24 except that a budget amendment required by an enrollment increase as provided in 20-9-161(1)(a) may not
25 be adopted until after October 1.

26 (b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a
27 resolution.

28 (c) Whenever the trustees of a district decide that a budget amendment is necessary, they may
29 proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must
30 state the facts constituting the need for the budget amendment, the funds affected by the budget

1 amendment, the anticipated source of financing, the estimated amount of money required to finance the
2 budget amendment, and the time and place the trustees will meet for the purpose of considering and
3 adopting the budget amendment for the current school fiscal year.

4 (2) The trustees shall send a copy of the proclamation to the county superintendent and to the
5 board of county commissioners of the county.

6 (3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent
7 of public instruction for approval in the manner provided in 20-9-163."

8

9 **Section 5.** Section 20-9-163, MCA, is amended to read:

10 **"20-9-163. Resolution for budget amendment -- petition to superintendent of public instruction.**

11 (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an
12 enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the
13 budget amendment. The petition must be signed by a majority of the trustees.

14 (2) The petition must state the facts constituting the need for the budget amendment, the
15 estimated amount of money required to fund the budget amendment, the funds affected by the budget
16 amendment, the anticipated source of financing for the budget amendment, and the current year
17 enrollment.

18 (3) The superintendent of public instruction shall promptly approve or disapprove the petition
19 requesting approval to adopt a resolution for a budget amendment because of increased enrollment. If the
20 petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)(a), the
21 superintendent of public instruction shall adjust the district's maximum general fund budget based on the
22 approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount
23 will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is
24 approved, the trustees may adopt a resolution for a budget amendment and take all other steps required
25 for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction
26 authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the
27 trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the
28 petition may not be construed as approval of any subsequent application for increased state aid on account
29 of the budget amendment."

30

1 **Section 6.** Section 20-9-311, MCA, is amended to read:

2 **"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging (ANB)
3 must be computed as follows:

4 (a) compute an average enrollment by:

5 (i) adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday
6 in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior
7 school fiscal year, or the nearest school day if those dates do not fall on a school day; ~~and~~

8 (ii) divide the sum by two; and

9 (iii) subtract the number of students who were enrolled during the prior school fiscal year as
10 indicated on the forms provided for in [section 2]; and

11 (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the
12 pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide
13 by 180.

14 (2) For the purpose of calculating ANB under subsection (1), up to 7 approved
15 pupil-instruction-related days may be included in the calculation.

16 (3) When a school district has approval to operate less than 180 school days under 20-9-804, the
17 total ANB must be calculated in accordance with the provisions of 20-9-805.

18 (4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be
19 counted as enrollment for one-half day.

20 (5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1),
21 enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon
22 session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided
23 in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction,
24 but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

25 (6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school
26 days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the
27 pupil resumes attendance prior to the day of the enrollment count.

28 (7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the
29 ANB calculations.

30 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools

1 of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the
2 schools of the district, except that when:

3 (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city
4 or town located in the district and at least 20 miles from any other school of the district, the number of
5 regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the
6 district must receive a basic entitlement for the school calculated separately from the other schools of the
7 district;

8 (ii) a school of the district is located more than 20 miles from any other school of the district and
9 no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the
10 school must be calculated separately for ANB purposes and the district must receive a basic entitlement
11 for the school calculated separately from the other schools of the district; or

12 (iii) the superintendent of public instruction approves an application not to aggregate when
13 conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel,
14 or when any other condition exists that would result in an unusual hardship to the pupils of the school if
15 they were transported to another school, the number of regularly enrolled, full-time pupils of the school
16 must be calculated separately for ANB purposes and the district must receive a basic entitlement for the
17 school calculated separately from the other schools of the district;

18 (b) a junior high school has been approved and accredited as a junior high school, all of the
19 regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils
20 for ANB purposes;

21 (c) a middle school has been approved and accredited, all pupils below the 7th grade must be
22 considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered
23 high school pupils for ANB purposes; or

24 (d) a school has not been accredited by the board of public education, the regularly enrolled,
25 full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation
26 purposes, nor will an average number belonging for the nonaccredited school be used in determining the
27 BASE funding program for the district.

28 (9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may
29 calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an
30 equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

1 (10) For average daily attendance reporting purposes, districts shall provide the superintendent of
2 public instruction with annual reports of school attendance for regularly enrolled students and special
3 education students, using a format determined by the superintendent."
4

5 NEW SECTION. Section 7. Codification instruction. (1) [Section 1] is intended to be codified as
6 an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to
7 [section 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the
9 provisions of Title 20, chapter 3, part 1, apply to [section 2].
10

11 NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.
15

16 NEW SECTION. Section 9. Effective date -- applicability. [This act] is effective on passage and
17 approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December
18 31, 1996.
19

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0433, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing an individual tax credit for qualifying elementary and secondary education expenses by an individual for a dependent minor by providing a 100 percent credit for qualifying education expenses for the first child, a 70 percent credit for qualifying education expenses for the second child, and a 50 percent credit for qualifying education expenses for the third and any subsequent child; requiring a declaration of intent to claim a tax credit.

ASSUMPTIONS:

1. This bill applies retroactively to tax years beginning after December 31, 1996; the first fiscal impact will be in FY98.
2. The credit is available for students receiving educational benefits in compliance with Title 20, Chapter 5, Part 1 attending private or attending public schools for which parents pay tuition.
3. The credit allowed is a "refundable credit"; that is, the credit amount in excess of the taxpayers's tax liability will be refunded to the taxpayer.
4. The individual claiming the tax credit must file a form declaring the individual's intention to claim an educational tax credit with the school district of residence by May 10 for the ensuing school year. The window of opportunity for persons to claim the deduction for 1997 would be after the Governor has signed the bill and after the forms have been distributed and before May 10th.
5. Home school students will not qualify for the credit due to the requirement that the credit is only available for "tuition and fee" payments which must be made to a third party.
6. Public schools who are currently waiving tuition charges do not initiate charges in response to this potential credit to parents.
7. The bill currently allows only the increase in tuition rate from the previous year to be used for the tax credit for tax year 1997. It is assumed that the annual tuition rate increase at a private school is 10% on \$1,500 annual tuition rate.
8. Due to the decline in the amount of credit for each additional student in families with more than one student the average credit per student will be 81.7% of the maximum credit allowed. The average full credit amount for tax year 1997 or FY98 will be \$375 times 81.7% or \$306. The average full credit amount for tax year 1998 or FY99 will be \$750 times 81.7% or \$613. The average full credit amount for tax year 1999 or FY00 will be \$1,000 times 81.7% or \$817.
9. The estimate of the fiscal 1998 impact assumes that tax credits are taken for expenses incurred for newly enrolled students and currently enrolled students. Newly enrolled students includes those who transfer from public schools, those initially entering a public school (attending out of district) for which the parents pay tuition, those entering private schools as their first school, and those entering private schools from home schools.
10. Transfers from home schools will be 12% of the home school enrollment in 1997 or 403 students and an additional 12% or 810 students in 1998. These new enrollments will qualify for the full tax credit in both FY98 and FY99.
11. Transfers between districts of public school enrollments for whom parents pay tuition are currently about 800 students per year. They are expected to increase by 5% per year. 40 students in 1997 and 80 students in 1998 are expected to transfer between public districts and pay tuition. The new enrollments will qualify for the full tax credit in FY98 and FY99. Currently enrolled students will receive credit only for tax year 1998 or FY99.

Dave Lewis 2/14/97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Allan Walters 2/14/97
ALLAN WALTERS, PRIMARY SPONSOR DATE

Fiscal Note for HB0433, as introduced

HB 433

(continued)

12. Transfers from public school to private schools are 1% per year. The total number of students transferred out of the public school system will be 1,662 in 1997-1998 and 3,341 by 1998-1999. These new enrollments will qualify for the full tax credit in both FY98 and FY99.
13. Without the tax credit incentive, enrollment in Montana public schools will grow at an annual rate of approximately 1% per year; private school enrollment will grow at the same rate.
14. Prior to enactment of HB433 private school enrollments are anticipated to be 8,680 students in 1997-1998 and 8,767 students in 1998-1999. Currently enrolled students will receive full credit only for tax year 1998 or FY99. In tax year 1997 or FY98, the current enrollments will receive credit only for the increase in rates they pay between 1996 and 1997. See item 7. for amounts.
15. The full revenue impact of the tax year liability impact occurs in the following fiscal year.
16. The per-student entitlement is \$3,343 for students in grades K-6 and \$4,680 for students in grades 7-12. Non-public school students are pro-rated at the current ratio of 69% K-6 and 31% grades 7-12.
17. The average per student state general fund savings resulting from students enrolling in private schools who would have otherwise been anticipated to enroll in public schools will be \$2,285.
18. These estimates do not include public school students whose parents pay fees for commercial/industrial arts, music, science, or agricultural courses, or fees paid to participate in athletics or driver's education. Nor do the estimates include high school or high school drop outs taking courses at colleges or universities.
19. The savings to the state for reduced direct state aid and GTB aid will be \$3,797,670 for FY 1998 and \$7,634,185 for FY 1999.
20. There will be an annual cost of \$9,500 associated with the printing and distribution of 190,000 tax forms on which a parent or guardian declares the intent to claim a tuition tax credit. HB 433 requires that enough forms be printed for distribution to every public school student and that it also be available from each county superintendent.
21. If a parent, after submitting a statement of intent to transfer a child from a public to a private school, does not subsequently transfer the child, a district may adopt a budget amendment to increase the district general fund budget and apply for additional direct state aid. The district will receive additional direct state aid, but will not receive special education funding or GTB aid for a returning student. Any funding for the budget amendment in excess of the direct state aid will need to come from local sources.

FISCAL IMPACT:

Expenditures:

Office of Public Instruction

Expenditures will decrease by \$1,891,980 million in FY 1998 and \$5,723,925 million in FY 1999 for direct state aid and GTB aid paid to public school districts. State expenditures for printing and distributing the form for declaring the intention to claim a tuition tax credit will be \$9,500 in each year of the 1999 biennium.

Department of Revenue

This proposal would require additional administrative expenditures to add a line for the credit to income tax form, and to provide for an additional Grade 10 FTE to review and verify the claims for credit. Total administrative expenses would increase \$33,887 in FY98 and \$26,100 in FY99 and each year thereafter.

Revenues:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Individual Income Tax	\$(2,115,380)	\$(7,808,394)

Net Impact:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Public School Support	\$3,797,670	\$7,634,185
Tax credits	(2,115,380)	(7,808,394)
OPI administrative costs	(9,500)	(9,500)
DOR administrative costs	<u>(33,887)</u>	<u>(26,100)</u>
Total (State General Fund)	\$1,638,903	(209,809)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

To the extent public school districts have lower enrollments than would have occurred with out this incentive state aid will be reduced as calculated above. If districts adjust expenditures proportionately to enrollment changes district costs and taxes will be reduced. If minor enrollment changes have little effect on total expenditures, budgets may not be reduced and local taxes would increase to offset reduced state aid. Increases in district taxes for districts who spend in excess of the BASE budget will require voter approval.

School districts will lose GTB aid to the extent that students re-enroll in public schools after their parents have declared an intent to claim an education credit. If parents are uncertain as to whether they will transfer their child to a non-public school, the parents will file an intent form just in case. If the child does not subsequently transfer, the local school district will pick up a larger share for the educational costs associated with the child than the district would have borne if the child had not been removed from the ANB count and then re-enrolled.

LONG-RANGE IMPACTS:

In future years the cost or savings to the state from HB433 will be determined primarily by increases in the tax credit and the number of taxpayers who enroll students in private schools rather than public schools. In HB433 the tax credit rises to \$1,000 in tax year 1999 when the credits are fully implemented and is extended to all private school students and public school students for whom parents pay tuition. Based on the average state savings of \$2,285 for each student who leaves a public school and a cost of \$1,000 for the associated tax credit, each family who removes their children from public schools to enroll in private schools would generate a net savings of \$1,285 if the family transferred one child. If more than 6,300 such students make this change there would be an annual net gain to the state, if less than this number change there would be an annual net loss to the state. If families with more than one child make this move fewer children would have to be transferred to make the incentive cost neutral.

TECHNICAL NOTES:

1. It is unclear if kindergarten students in private schools would be eligible for the tax credit as Title 20, chapter 5, part 1 makes no specific reference to these children.
2. Public school districts traditionally vote a budget in April and sign teacher contracts prior to the May 10th deadline for an individual to declare their intent to claim a tuition tax credit. Those districts with a significant number of students transferring to non-public schools experience difficulties.
3. It is questionable if this legislation is constitutional due to the language in Section 6 of the constitution. Section 6 reads as follows:
"Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any **direct or indirect appropriation or payment from any public fund or monies**, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination." (Emphasis added)
4. Section 20-9-314(5), MCA requires that a district experience a 6% enrollment increase in order to receive additional state aid. If this restriction does not apply when the enrollment increase is due to the re-enrollment of students whose parents had declared an intent to claim an education credit, school districts and OPI will need to keep separate tracking systems for categories of "unusual enrollment" increases.
5. The timing of the passage of this bill could cause the fiscal note to overstate the savings to the general fund in FY98. If the bill is not passed and signed into law quickly, it will be difficult to achieve the increases in the private school enrollment that are assumed in this fiscal note. The May 10th deadline for submission of the intent to claim a tuition tax-credit is only two weeks from the last day of session. The bill, if passed by the legislature, could potentially not have been signed into law by May 10th, 1997.

STATE OF MONTANA - FISCAL NOTE

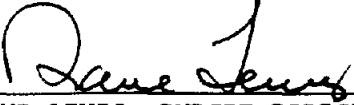
Fiscal Note for HB0433, as amended in House Taxation committee

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing an individual tax credit for qualifying elementary and secondary education expenses by an individual for a dependent minor by providing a 100 percent credit for qualifying education expenses for the first child, a 70 percent credit for qualifying education expenses for the second child, and a 50 percent credit for qualifying education expenses for the third and any subsequent child; requiring a declaration of intent to claim a tax credit.

ASSUMPTIONS:

1. This bill applies retroactively to tax years beginning after December 31, 1996; the first fiscal impact will be in FY98.
2. The credit is available for students receiving educational benefits in compliance with Title 20, Chapter 5, Part 1 attending private or attending public schools for which parents pay tuition.
3. The credit allowed is a "refundable credit"; that is, the credit amount in excess of the taxpayers's tax liability will be refunded to the taxpayer.
4. The individual claiming the tax credit must file a form declaring the individual's intention to claim an educational tax credit with the school district of residence by May 10 for the ensuing school year. The window of opportunity for persons to claim the deduction for 1997 would be after the Governor has signed the bill and after the forms have been distributed and before May 10th.
5. Home school students will not qualify for the credit due to the requirement that the credit is only available for "tuition and fee" payments which must be made to a third party.
6. Public schools who are currently waiving tuition charges do not initiate charges in response to this potential credit to parents.
7. The bill does not allow currently enrolled private school students the tax credit until the fall of 1998. Which is the same as half the tax credit for tax year 1999.
8. Due to the decline in the amount of credit for each additional student in families with more than one student the average credit per student will be 81.7% of the maximum credit allowed. The average full credit amount for tax year 1997 or FY98 will be \$375 times 81.7% or \$306. The average full credit amount for tax year 1998 or FY99 will be \$750 times 81.7% or \$613. The average full credit amount for tax year 1999 or FY00 will be \$1,000 times 81.7% or \$817.
9. The estimate of the fiscal 1998 impact assumes that tax credits are taken for expenses incurred for newly enrolled students and currently enrolled students. Newly enrolled students includes those who transfer from public schools, those initially entering a public school (attending out of district) for which the parents pay tuition, those entering private schools as their first school, and those entering private schools from home schools.
10. Transfers from home schools to private schools will be 10% of the home school enrollment in 1997 or 336 students and an additional 10% or 675 students in 1998. These new enrollments will qualify for the full tax credit in both FY98 and FY99.
11. Transfers of public school enrollments between districts for whom parents must pay tuition are currently about 800 students per year. Newly qualifying enrollments of these students are expected to be 5% per year resulting in 40 students in 1997 and 80 students in 1998 expected to transfer between public districts, pay tuition and qualify for the full tax credit in FY98 and FY99. Currently enrolled students will receive credit only for tax year 1998 or FY99.

 3-12-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3-13-97
ALLAN WALTERS, PRIMARY SPONSOR DATE

Fiscal Note for HB0433, as amended in
House Taxation Committee

AM HB 433 - #2

(continued)

12. Transfers from public school to private schools are 1% per year. The total number of students transferred out of the public school system will be 1,662 in 1997-1998 and 3,341 by 1998-1999. These new enrollments will qualify for the full tax credit in both FY98 and FY99.
13. Students entering private schools as their first enrollment in schools in Montana are 5% per year of the total private school enrollment generating 434 students in FY98 and 872 students in FY99.
14. Without the tax credit incentive, enrollment in Montana public schools will grow at an annual rate of approximately 1% per year; private school enrollment will grow at the same rate.
15. Prior to enactment of HB433 private school enrollments are anticipated to be 8,680 students in 1997-1998 and 8,767 students in 1998-1999. Currently enrolled students will receive half full credit only for tax year 1998 or FY99. In tax year 1997 or FY98, the current enrollments will receive no tax credit. See item 7. for amounts.
16. The full revenue impact of the tax year liability impact occurs in the following fiscal year.
17. The per-student entitlement is \$3,343 for students in grades K-6 and \$4,680 for students in grades 7-12. Non-public school students are pro-rated at the current ratio of 69% K-6 and 31% grades 7-12.
18. The average per student state general fund savings resulting from students enrolling in private schools who would have otherwise been anticipated to enroll in public schools will be \$2,285.
19. These estimates do not include public school students whose parents pay fees for commercial/industrial arts, music, science, or agricultural courses, or fees paid to participate in athletics or driver's education. Nor do the estimates include high school or high school drop outs taking courses at colleges or universities.
20. The savings to the state for reduced direct state aid and GTB aid will be \$3,797,670 for FY 1998 and \$7,634,185 for FY 1999.
21. There will be an annual cost of \$9,500 associated with the printing and distribution of 190,000 tax forms on which a parent or guardian declares the intent to claim a tuition tax credit. HB 433 requires that enough forms be printed for distribution to every public school student and that it also be available from each county superintendent.
22. If a parent, after submitting a statement of intent to transfer a child from a public to a private school, does not subsequently transfer the child, a district may adopt a budget amendment to increase the district general fund budget and apply for additional direct state aid. The district will receive additional direct state aid, but will not receive special education funding or GTB aid for a returning student. Any funding for the budget amendment in excess of the direct state aid will need to come from local sources.
23. The Department of Revenue (DOR) will require an additional Grade 10 and related expenses to: add a line for the credit to the income tax form and review and verify claims for the credit. These costs are estimated to be \$33,887 in FY98 and \$26,100 in FY99.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Public School Support	(3,797,670)	(7,634,185)
OPI administrative costs	9,500	9,500
DOR administrative costs	<u>33,887</u>	<u>26,100</u>
Total Expenditures	(3,754,283)	(7,598,585)

Funding:

General Fund (01)	(3,754,283)	(7,598,585)
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Revenues:

Individual Income Tax Credits(01)	(756,317)	(4,946,066)
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Net Impact to fund balance (revenue minus expenditure)

General Fund (01)	2,997,966	2,652,519
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

To the extent public school districts have lower enrollments than would have occurred with out this incentive state aid will be reduced as calculated above. If districts adjust expenditures proportionately to enrollment changes district costs and taxes will be reduced. If minor enrollment changes have little effect on total expenditures, budgets may not be reduced and local taxes would increase to offset reduced state aid. Increases in district taxes for districts who spend in excess of the BASE budget will require voter approval.

School districts will lose GTB aid to the extent that students re-enroll in public schools after their parents have declared an intent to claim an education credit. If parents are uncertain as to whether they will transfer their child to a non-public school, the parents will file an intent form just in case. If the child does not subsequently transfer, the local school district will pick up a larger share for the educational costs associated with the child than the district would have borne if the child had not been removed from the ANB count and then re-enrolled.

LONG-RANGE IMPACTS:

In future years the cost or savings to the state from HB433 will be determined primarily by increases in the tax credit, the number of taxpayers who enroll students in private schools rather than public schools and the number of home school children that either qualify for the credit or move into private schools. In HB433 the tax credit rises to \$1,000 in tax year 1999 when the credits are fully implemented and is extended to all private school students and public school students for whom parents pay tuition. Based on the average state savings of \$2,285 for each student who leaves a public school and a cost of \$1,000 for the associated tax credit, each family who removes their children from public schools to enroll in private schools would generate a net savings of \$1,285 if the family transferred one child. If more than 7,500 such students make this change and there is a limited number of current home school children that qualify or move to private schools there would be an annual net gain to the state, if less than this number change there would be an annual net loss to the state. If families with more than one child make this move fewer children would have to be transferred to make the incentive cost-neutral.

TECHNICAL NOTES:

1. It is unclear if kindergarten students in private schools would be eligible for the tax credit as Title 20, chapter 5, part 1 makes no specific reference to these children.
2. Public school districts traditionally vote a budget in April and sign teacher contracts prior to the May 10th deadline for an individual to declare their intent to claim a tuition tax credit. Those districts with a significant number of students transferring to non-public schools may experience difficulties.
3. It is questionable if this legislation is constitutional due to the language in Section 6 of the constitution. Section 6 reads as follows: "Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any **direct or indirect appropriation or payment from any public fund or monies**, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination." (Emphasis added)
4. Section 20-9-314(5), MCA requires that a district experience a 6% enrollment increase in order to receive additional state aid. If this restriction does not apply when the enrollment increase is due to the re-enrollment of students whose parents had declared an intent to claim an education credit, school districts and OPI will need to keep separate tracking systems for categories of "unusual enrollment" increases.
5. The timing of the passage of this bill could cause the fiscal note to overstate the savings to the general fund in FY98. If the bill is not passed and signed into law quickly, it will be difficult to achieve the increases in the private school enrollment that are assumed in this fiscal note. The May 10th deadline for submission of the intent to claim a tuition tax-credit is only two weeks from the last day of session. The bill, if passed by the legislature, could potentially not have been signed into law by May 10th, 1997.

House BILL NO. 433 *Bair*
Walters
Keenan *Jan* *ahner* *Bitney* *Vick* *Smith* *Curtiss* *Wells* *Simpkins* *Bransford* *Feland* *Wm E. Bohorski*
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INTRODUCED BY *Walters*
 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN INDIVIDUAL TAX CREDIT FOR QUALIFYING
 ELEMENTARY AND SECONDARY EDUCATION EXPENSES BY AN INDIVIDUAL FOR A DEPENDENT MINOR
 BY PROVIDING A 100 PERCENT CREDIT FOR QUALIFYING EDUCATION EXPENSES FOR THE FIRST CHILD,
 A 70 PERCENT CREDIT FOR QUALIFYING EDUCATION EXPENSES FOR THE SECOND CHILD, AND A 50
 PERCENT CREDIT FOR QUALIFYING EDUCATION EXPENSES FOR THE THIRD AND ANY SUBSEQUENT
 CHILD; REQUIRING A DECLARATION OF INTENT TO CLAIM A TAX CREDIT; AMENDING SECTIONS
 20-9-161, 20-9-162, 20-9-163, AND 20-9-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, Article X, section 1(1), of the Montana Constitution guarantees equality of educational
 opportunity to each person of the state; and

WHEREAS, the Legislature finds that allowing lower-income parents the same ability that wealthy
 parents now have in selecting the school of their choice enhances equality of educational opportunity; and

WHEREAS, the Legislature strongly supports the rights of parents to choose the way in which their
 children are educated, consistent with their academic expectations and personal values; and

WHEREAS, the Legislature believes that competition in the educational marketplace has a
 strengthening effect on both public and private education and serves the long-term best interests of all
 students; and

WHEREAS, the Legislature supports an education policy that fosters the free movement of
 educational consumers to the schools of their choice; and

WHEREAS, the Legislature finds that it is fiscally and educationally prudent to have the private
 sector absorb a portion of the ever-increasing number of students that are overcrowding our public schools
 and costing taxpayers tens of millions of dollars of capital construction costs; and

WHEREAS, the Legislature finds that parental choice in education can reduce the Montana property
 and income tax burdens and increase the amount of money available to educate each child in the public
 schools.

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

2

3 NEW SECTION. **Section 1. Elementary and secondary education expense tax credit.** (1) There is
4 a credit against the taxes otherwise due under this chapter for qualified elementary and secondary
5 education expenses paid by an individual for a dependent who is a minor during the tax year. In order to
6 claim the credit, the individual must have a completed intent form to claim an education tax credit on file
7 with the state pursuant to [section 2].

8 (2) (a) Education expenses that qualify for the credit under this section are amounts paid as tuition
9 and fees by an individual for a dependent who is in compliance with Title 20, chapter 5, part 1.

10 (b) Qualifying education expenses do not include amounts paid to a governmental entity as
11 property taxes, assessments, or fees.

12 (3) The amount of the credit for qualifying education expenses is as follows:

13 (a) for the tax year beginning January 1, 1997, but only for the amount by which those expenses
14 have increased from the previous tax year:

15 (i) up to \$375 for the first child;

16 (ii) 70% of \$375 for the second child; and

17 (iii) 50% of \$375 for the third and any subsequent child;

18 (b) for the tax year beginning January 1, 1998, as applied against the first \$375 of qualifying
19 education expenses for attendance from January 1, 1998, to June 30, 1998, and against the first \$375
20 of qualifying education expenses for attendance from July 1, 1998, to December 31, 1998:

21 (i) up to \$750 for the first child;

22 (ii) 70% of \$750 for the second child; and

23 (iii) 50% of \$750 for the third and any subsequent child; and

24 (c) for tax years beginning on or after January 1, 1999:

25 (i) up to \$1,000 for the first child;

26 (ii) 70% of \$1,000 for the second child; and

27 (iii) 50% of \$1,000 for the third and any subsequent child.

28 (4) A deduction or credit is not allowed under any other provision of this chapter with respect to
29 any amount for which a credit is allowed under this section. Any amount of the credit allowed under this
30 section that is in excess of an individual's tax liability must be refunded to the individual.

1 (5) In the case of a married individual filing a separate return, the amount of the credit under
2 subsection (3) is limited to one-half of the applicable amount.

3
4 NEW SECTION. Section 2. Intent to claim education tax credit -- form.

(1) The superintendent of public instruction shall provide a form on which to declare the intent to claim an education tax credit. The form must outline the tax credit provided for in [section 1] and must contain an affidavit that the individual completing the form intends to enroll a dependent minor in a school other than a public school in the district of residence during the following school year. The form must be distributed to each student attending public school. Forms must also be provided to and be available from each county superintendent of schools.

10 (2) In order to be eligible for the tax credit provided for in [section 1], an individual shall annually complete the form provided for in subsection (1) and return the form to an official of the individual's district of residence by May 10. Each district shall forward the forms to the county superintendent, who shall then forward the forms to the superintendent of public instruction. The number of eligible dependent minors indicated on the forms who were enrolled during that year must be excluded from ANB calculations for the ensuing school year.

16 (3) The superintendent of public instruction shall forward a copy of each form to the department of revenue for use in determining eligibility for the tax credit provided for in [section 1].

18
19 **Section 3.** Section 20-9-161, MCA, is amended to read:

20 **"20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless
21 the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting
22 means an amendment to an adopted budget of the district for the following reasons:

23 (1) an increase in the enrollment of an elementary or high school district that is:

24 (a) beyond what could reasonably have been anticipated at the time of the adoption of the budget
25 for the current school fiscal year whenever, because of the enrollment increase, the district's budget for
26 any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and
27 support the district for the entire current school fiscal year; or

28 (b) because of enrollment of students for whom a form to declare the intent to claim an education
29 tax credit was filed as provided in [section 2];

30 (2) the destruction or impairment of any school property necessary to the maintenance of the

1 school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit
2 for its present school use;

3 (3) a judgment for damages against the district issued by a court after the adoption of the budget
4 for the current year;

5 (4) an enactment of legislation after the adoption of the budget for the current year that imposes
6 an additional financial obligation on the district;

7 (5) the receipt of:

8 (a) a settlement of taxes protested in a prior school fiscal year;

9 (b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue
10 or its agents;

11 (c) delinquent taxes from a prior school fiscal year; or

12 (d) local government severance tax payments for calendar year 1995 production as provided in
13 15-36-325(7); and

14 (e) a determination by the trustees that it is necessary to expend all or a portion of the taxes
15 received under subsection (5)(a), (5)(b), (5)(c), or (5)(d) for a project or projects that were deferred from
16 a previous budget of the district as a result of the protested taxes; or

17 (6) any other unforeseen need of the district that cannot be postponed until the next school year
18 without dire consequences affecting the safety of the students and district employees or the educational
19 functions of the district."

20

21 **Section 4.** Section 20-9-162, MCA, is amended to read:

22 **"20-9-162. Authorization for budget amendment adoption.** (1) (a) Notwithstanding the provisions
23 of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year,
24 except that a budget amendment required by an enrollment increase as provided in 20-9-161(1)(a) may not
25 be adopted until after October 1.

26 (b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a
27 resolution.

28 (c) Whenever the trustees of a district decide that a budget amendment is necessary, they may
29 proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must
30 state the facts constituting the need for the budget amendment, the funds affected by the budget

1 amendment, the anticipated source of financing, the estimated amount of money required to finance the
2 budget amendment, and the time and place the trustees will meet for the purpose of considering and
3 adopting the budget amendment for the current school fiscal year.

4 (2) The trustees shall send a copy of the proclamation to the county superintendent and to the
5 board of county commissioners of the county.

6 (3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent
7 of public instruction for approval in the manner provided in 20-9-163."

8

9 **Section 5.** Section 20-9-163, MCA, is amended to read:

10 **"20-9-163. Resolution for budget amendment -- petition to superintendent of public instruction.**

11 (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an
12 enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the
13 budget amendment. The petition must be signed by a majority of the trustees.

14 (2) The petition must state the facts constituting the need for the budget amendment, the
15 estimated amount of money required to fund the budget amendment, the funds affected by the budget
16 amendment, the anticipated source of financing for the budget amendment, and the current year
17 enrollment.

18 (3) The superintendent of public instruction shall promptly approve or disapprove the petition
19 requesting approval to adopt a resolution for a budget amendment because of increased enrollment. If the
20 petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1)(a), the
21 superintendent of public instruction shall adjust the district's maximum general fund budget based on the
22 approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount
23 will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is
24 approved, the trustees may adopt a resolution for a budget amendment and take all other steps required
25 for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction
26 authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the
27 trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the
28 petition may not be construed as approval of any subsequent application for increased state aid on account
29 of the budget amendment."

30

1 **Section 6.** Section 20-9-311, MCA, is amended to read:

2 **"20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging (ANB)
3 must be computed as follows:

4 (a) compute an average enrollment by:

5 (i) adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday
6 in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior
7 school fiscal year, or the nearest school day if those dates do not fall on a school day; ~~and~~

8 (ii) divide the sum by two; and

9 (iii) subtract the number of students who were enrolled during the prior school fiscal year as
10 indicated on the forms provided for in [section 2]; and

11 (b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the
12 pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide
13 by 180.

14 (2) For the purpose of calculating ANB under subsection (1), up to 7 approved
15 pupil-instruction-related days may be included in the calculation.

16 (3) When a school district has approval to operate less than 180 school days under 20-9-804, the
17 total ANB must be calculated in accordance with the provisions of 20-9-805.

18 (4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must be
19 counted as enrollment for one-half day.

20 (5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1),
21 enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon
22 session must be counted as one-half pupil for ANB purposes. If a variance has been granted as provided
23 in 20-1-302, ANB must be computed in a manner prescribed by the superintendent of public instruction,
24 but the ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

25 (6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school
26 days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the
27 pupil resumes attendance prior to the day of the enrollment count.

28 (7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the
29 ANB calculations.

30 (8) The average number belonging of the regularly enrolled, full-time pupils for the public schools

1 of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the
2 schools of the district, except that when:

3 (a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city
4 or town located in the district and at least 20 miles from any other school of the district, the number of
5 regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the
6 district must receive a basic entitlement for the school calculated separately from the other schools of the
7 district;

8 (ii) a school of the district is located more than 20 miles from any other school of the district and
9 no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the
10 school must be calculated separately for ANB purposes and the district must receive a basic entitlement
11 for the school calculated separately from the other schools of the district; or

12 (iii) the superintendent of public instruction approves an application not to aggregate when
13 conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel,
14 or when any other condition exists that would result in an unusual hardship to the pupils of the school if
15 they were transported to another school, the number of regularly enrolled, full-time pupils of the school
16 must be calculated separately for ANB purposes and the district must receive a basic entitlement for the
17 school calculated separately from the other schools of the district;

18 (b) a junior high school has been approved and accredited as a junior high school, all of the
19 regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils
20 for ANB purposes;

21 (c) a middle school has been approved and accredited, all pupils below the 7th grade must be
22 considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered
23 high school pupils for ANB purposes; or

24 (d) a school has not been accredited by the board of public education, the regularly enrolled,
25 full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation
26 purposes, nor will an average number belonging for the nonaccredited school be used in determining the
27 BASE funding program for the district.

28 (9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may
29 calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an
30 equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

1 (10) For average daily attendance reporting purposes, districts shall provide the superintendent of
2 public instruction with annual reports of school attendance for regularly enrolled students and special
3 education students, using a format determined by the superintendent."

4
5 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as
6 an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to
7 [section 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 20, chapter 3, part 1, and the
9 provisions of Title 20, chapter 3, part 1, apply to [section 2].

10
11 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
13 applications, the part remains in effect in all valid applications that are severable from the invalid
14 applications.

15
16 **NEW SECTION. Section 9. Effective date -- applicability.** [This act] is effective on passage and
17 approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December
18 31, 1996.

19 -END-