DENNY Bergman

House BILL NO. 599

INTRODUCED BY

Kitzenberg

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FIRST-TIME HOME BUYER SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE ACCOUNTS; ALLOWING ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNTS; LIMITING THE PERIOD IN WHICH CONTRIBUTIONS MAY BE MADE TO THE ACCOUNT; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF PRINCIPAL AND INCOME CONTAINED WITHIN AN ACCOUNT AND AMOUNTS WITHDRAWN FOR ELIGIBLE COSTS FOR THE FIRST-TIME PURCHASE OF A SINGLE-FAMILY RESIDENCE; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE COSTS; REQUIRING THAT PRINCIPAL AND INCOME IN THE ACCOUNT MUST BE USED FOR THE PURCHASE OF A SINGLE-FAMILY RESIDENCE BY A FIRST-TIME HOME BUYER WITHIN A SPECIFIED PERIOD; TAXING AMOUNTS REMAINING IN THE ACCOUNT AS ORDINARY INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

<u>NEW SECTION.</u> **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana First-Time Home Buyer Savings Account Act".

<u>NEW SECTION.</u> **Section 2. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Account administrator" means:

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

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

(c) the account holder.

(2) "Account holder" means an individual who is a resident of this state and who establishes, individually or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer.

(3) "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence by a first-time home buyer.

(4) (a) "First-time home buyer" means an individual who has not owned or purchased under contract for deed a single-family residence, individually or jointly, within 3 years immediately preceding the establishment of a savings account under the provisions of [sections 1 through 7].

(b) A first-time home buyer also includes:

(i) a displaced homemaker who, while a homemaker, owned a home with the homemaker's spouse; and

(ii) a single parent who owned a home with a spouse.

(5) "First-time home buyer savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

(6) "Single-family residence" means an owner-occupied residence, including a trailer or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

NEW SECTION. **Section 3. Establishment of account.** A first-time home buyer who is a resident of this state may establish a first-time home buyer savings account for the first-time home buyer, either individually or jointly.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(2) (a) An account holder may exclude as an annual contribution in 1 year up to $3,000. There is no limitation on the amount of principal and interest or other income on the principal that may be retained

tax-free within an account.

(b) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed $3,000. An account holder who deposits more than $3,000 into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of $3,000 per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

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

NEW SECTION. **Section 5. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.** (1) An account holder may withdraw money from the first-time home buyer's savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(2) If the account holder withdraws money from the account other than for eligible costs for the purchase of a single-family residence or other than on the last business day of the account administrator's business year, the account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder, pay as a penalty to the department an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder, means the last weekday in December.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made and has a fiduciary duty to the person for whose benefit the account is administered.

(2) Within 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

(4) The account holder may submit documentation of eligible costs paid by the account holder in the tax year to the account administrator, and the account administrator shall reimburse the account holder from the account holder's account for eligible costs for the first-time purchase of a single-family residence.

(5) In the case of an account administrator who is also the account holder:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account;

(c) documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence must be maintained but is not required to be submitted to the account administrator; and

(d) the account administrator shall file reports as reasonably required by the department.

NEW SECTION. **Section 7. False claims prohibited.** A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account is subject to the provisions of 15-61-205.

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

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

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

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

(a) (i) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

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

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

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

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

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

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

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

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

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

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

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

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with [section 3] or withdrawn from an account for eligible costs, as provided in [section 4(7)], for the first-time purchase of a single-family residence; and

~~(k)~~(l) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

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

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

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

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

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

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

NEW SECTION. **Section 10. Effective date.** [This act] is effective January 1, 1998.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0599, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing for first-time home buyer savings accounts; providing definitions; providing for the establishment and administration of the accounts; allowing account holders to administer their own accounts; limiting the period in which contributions may be made to the account; providing for an exclusion from adjusted gross income of principal and income contained within an account and amounts withdrawn for eligible costs for the first-time purchase of a single-family residence; providing for withdrawals from an account for purposes other than eligible costs; requiring that principal and income in the account must be used for the purchase of a single-family residence by a first-time home buyer within a specified period; taxing amounts remaining in the account as ordinary income; and providing a delayed effective date.

ASSUMPTIONS:
1. The effective date of this proposal is January 1, 1998. The first fiscal year affected will be fiscal year 1999 (tax year 1998).
2. Up to $3,000 of contributions to accounts can be deducted each year. Interest earnings are tax exempt.
3. Account holders are allowed to administer their own accounts.
4. A very similar Canadian savings account program for first-time home buyers, which existed between 1974 and 1984, indicates 7% of renter households would save an average of 9% of their gross income. The average length of participation in the Canadian program was 3 years.
5. There will be approximately 112,900 renter households in Montana in 1998. The projected median household income in Montana will be $30,800.
6. Based on the results of the Canadian savings program, 7,903 renter households in Montana would participate and each household would save $2,772 each year. Assuming the average marginal tax rate for savers is 6%, the revenue impact would be $1,314,427 (7,903 × $2,772 × 0.06).
7. Home ownership rates are higher in the United States than in Canada. This implies the revenue impact calculated in assumption #6 could be understated. Allowing account holders to administer their own accounts also may increase participation. To compensate for any possible understatement of the revenue impact in assumption #6, it is assumed that 10% of renter households in Montana will participate and save $3,000 per year (the maximum deductible contribution, or approximately 9.7% of projected median household income). This results in a revenue impact of $2,032,200 (11,290 households × $3,000 × 0.06).
8. Assuming it will take taxpayers some time to become fully informed about the availability of the tax-free savings accounts, the revenue impact in the first year of availability is estimated to be 75% of the impact calculated in assumption 7, or $1,524,150.
9. The administrative expenses for this proposal include adding a line to the income tax form, computer programming and storage costs for a total of $14,672.

FISCAL IMPACT:

	FY98	FY99
Expenditures:		
Income Tax	$0	$14,672
Revenues:		
Income Tax	$0	($1,524,150)
Net Impact:		
Income Tax (General Fund)	$0	($1,538,822)

Dave Lewis 3-11-97

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

PAUL BANKHEAD, PRIMARY SPONSOR DATE

Fiscal Note for HB0599, as introduced

HB 599

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0599, as amended

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing for first-time home buyer savings accounts; providing definitions; providing for the establishment and administration of the accounts; allowing account holders to administer their own accounts; limiting the period in which contributions may be made to the account; providing for an exclusion from adjusted gross income of principal and income contained within an account and amounts withdrawn for eligible costs for the first-time purchase of a single-family residence; providing for withdrawals from an account for purposes other than eligible costs; requiring that principal and income in the account must be used for the purchase of a single-family residence by a first-time home buyer within a specified period; taxing amounts remaining in the account as ordinary income; and providing a delayed effective date.

ASSUMPTIONS:
1. The effective date of this proposal is January 1, 1998. The first fiscal year affected will be fiscal year 1999 (tax year 1998).
2. Up to $3,000 of contributions to accounts can be deducted each year. Interest earnings are tax exempt, with account holders allowed to administer their own accounts.
3. In 1996, 1,247 households qualified as "first-time" home buyers for programs administered by the Montana Board of Housing. Based on this figure, it is estimated that approximately 1,000 households will participate in the proposed savings account program provided in this bill in the first year (1998). Each succeeding year an additional 1,000 new households will open qualifying savings accounts.
4. Based on the 1990 Census of Housing, the mean household income of renter households in Montana is $19,000. Participants in the proposed program will save an average of 5% of this income level each year, or will contribute $950 per year ($79 per month) on average to qualifying savings accounts.
5. It will take an average of five years for these households to save enough to meet the closing cost requirements to purchase a home.
6. The average marginal income tax rate for these households is 5%.
7. The administrative expenses for this proposal include adding a line to the income tax form, computer programming and storage costs for a total of $14,672 in FY99.

FISCAL IMPACT:

	FY 98	FY 99
Expenditures:		
Income Tax (Operating Costs)	$0	$14,672
Revenues:		
Individual Income Tax	$0	$(47,500)
Net Impact:		
Income Tax (General Fund)	$0	$(62,172)

LONG-RANGE IMPACT:
The revenue impact of this proposal will increase in succeeding years as new savings account holders are added to existing account holders, until such time as the original account holders begin to purchase homes. This is expected to take about five years. By FY2003, the cost of this program is projected to increase to approximately $237,500 annually, and remain at that level.

Dave Lewis 3·21·97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Paul Bankhead 3-22-97
PAUL BANKHEAD, PRIMARY SPONSOR DATE

Fiscal Note for HB0599, as amended
Am HB 599 #2

APPROVED BY COM
ON TAXATION

HOUSE BILL NO. 599

INTRODUCED BY BANKHEAD, DEPRATU, MASOLO, HURDLE, KRENZLER, ORR, SMITH, GRIMES, HAYNE, KITZENBERG, SCHMIDT, STORY, CRISMORE, MERCER, KNOX, GRINDE, BOHLINGER, OHS, FELAND, TROPILA, BURNETT, SIMON, ELLIS, BEAUDRY, HIBBARD, GRADY, STOVALL, BOOKOUT-REINICKE, MCGEE, HARP, MOHL, SPRAGUE, MCNUTT, THOMAS, MESAROS, RYAN, BAER, AKLESTAD, EMERSON, JENKINS, BENEDICT, DENNY, BERGMAN, WELLS, ARNOTT, MOOD, ADAMS, TAYLOR, CURTISS, M. HANSON, WALTERS, ROSE, KEATING, MAHLUM, COLE, WAGNER, MARSHALL, CAREY, STANG, L. TAYLOR, GLASER, TREXLER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FIRST-TIME HOME BUYER SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE ACCOUNTS; ALLOWING ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNTS; LIMITING THE PERIOD IN WHICH CONTRIBUTIONS MAY BE MADE TO THE ACCOUNT; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF PRINCIPAL AND INCOME CONTAINED WITHIN AN ACCOUNT AND AMOUNTS WITHDRAWN FOR ELIGIBLE COSTS FOR THE FIRST-TIME PURCHASE OF A SINGLE-FAMILY RESIDENCE; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE COSTS; REQUIRING THAT PRINCIPAL AND INCOME IN THE ACCOUNT MUST BE USED FOR THE PURCHASE OF A SINGLE-FAMILY RESIDENCE BY A FIRST-TIME HOME BUYER WITHIN A SPECIFIED PERIOD; TAXING AMOUNTS REMAINING IN THE ACCOUNT AS ORDINARY INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

<u>NEW SECTION.</u> **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana First-Time Home Buyer Savings Account Act".

<u>NEW SECTION.</u> **Section 2. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Account administrator" means:

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

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

(c) the account holder.

(2) "Account holder" means an individual who is a resident of this state and who establishes, individually or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer.

(3) "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence by a first-time home buyer.

(4) ~~(a)~~ "First-time home buyer" means an individual who has ~~not~~ NEVER owned or purchased under contract for deed, EITHER INDIVIDUALLY OR JOINTLY, a single-family residence~~, individually or jointly, within 3 years immediately preceding the establishment of a savings account under the provisions of [sections 1 through 7].~~

~~(b) A first-time home buyer also includes:~~

~~(i) a displaced homemaker who, while a homemaker, owned a home with the homemaker's spouse; and~~

~~(ii) a single parent who owned a home with a spouse~~.

(5) "First-time home buyer savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

(6) "Single-family residence" means an owner-occupied residence, including a trailer or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

NEW SECTION. **Section 3. Establishment of account.** A first-time home buyer who is a resident of this state may establish a first-time home buyer savings account for the first-time home buyer, either individually or jointly.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(2) (a) An account holder may exclude as an annual contribution in 1 year up to $3,000. There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

(b) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed $3,000. An account holder who deposits more than $3,000 into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of $3,000 per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

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

NEW SECTION. **Section 5. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.** (1) An account holder may withdraw money from the first-time home buyer's savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(2) If the account holder withdraws money from the account other than for eligible costs for the purchase of a single-family residence or other than on the last business day of the account administrator's business year, the account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder, pay as a penalty to the department an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(3) For the purposes of this section, "last business day of the account administrator's business year", as applied to an account administrator who is also the account holder, means the last weekday in December.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made and has a fiduciary duty to the person for whose benefit the account is administered. EXCEPT FOR REPORTING AND REMITTING OF PENALTIES TO THE DEPARTMENT, A FINANCIAL INSTITUTION SHALL ADMINISTER A FIRST-TIME HOME BUYER'S SAVINGS ACCOUNT AS A REGULAR DEPOSIT. A FINANCIAL INSTITUTION IS NOT RESPONSIBLE FOR THE USE OR APPLICATIONS

OF FUNDS.

(2) Within 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

(4) The account holder may submit documentation of eligible costs paid by the account holder in the tax year to the account administrator, and the account administrator shall reimburse the account holder from the account holder's account for eligible costs for the first-time purchase of a single-family residence. THE BURDEN OF PROVING THAT A WITHDRAWAL FROM A FIRST-TIME HOME BUYER'S SAVINGS ACCOUNT WAS MADE FOR ELIGIBLE COSTS IS UPON THE ACCOUNT HOLDER AND NOT UPON THE ACCOUNT ADMINISTRATOR.

(5) In the case of an account administrator who is also the account holder:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account;

(c) documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence must be maintained but is not required to be submitted to the account administrator; ~~and~~

(d) the account administrator shall file reports as reasonably required by the department; AND

(E) THE ACCOUNT HOLDER IS REQUIRED TO FORWARD THE 10% PENALTY ON FUNDS WITHDRAWN FOR OTHER THAN ELIGIBLE COSTS TO THE DEPARTMENT.

NEW SECTION. **Section 7. False claims prohibited.** A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account is subject to the provisions of 15-61-205.

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

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

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

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

(a) (i) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

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

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

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

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

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

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

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

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

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

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

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

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with [section 3] or withdrawn from an account for eligible costs, as provided in [section 4(7)], for the first-time purchase of a single-family residence; and

~~(k)~~(l) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same

manner as provided by section 995 of the Internal Revenue Code for all periods for which the DISC election is effective.

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

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

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

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

NEW SECTION. **Section 10. Effective date.** [This act] is effective January 1, 1998.

-END-

HOUSE BILL NO. 599

INTRODUCED BY BANKHEAD, DEPRATU, MASOLO, HURDLE, KRENZLER, ORR, SMITH, GRIMES, HAYNE, KITZENBERG, SCHMIDT, STORY, CRISMORE, MERCER, KNOX, GRINDE, BOHLINGER, OHS, FELAND, TROPILA, BURNETT, SIMON, ELLIS, BEAUDRY, HIBBARD, GRADY, STOVALL, BOOKOUT-REINICKE, MCGEE, HARP, MOHL, SPRAGUE, MCNUTT, THOMAS, MESAROS, RYAN, BAER, AKLESTAD, EMERSON, JENKINS, BENEDICT, DENNY, BERGMAN, WELLS, ARNOTT, MOOD, ADAMS, TAYLOR, CURTISS, M. HANSON, WALTERS, ROSE, KEATING, MAHLUM, COLE, WAGNER, MARSHALL, CAREY, STANG, L. TAYLOR, GLASER, TREXLER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FIRST-TIME HOME BUYER SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE ACCOUNTS; ALLOWING ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNTS; LIMITING THE PERIOD IN WHICH CONTRIBUTIONS MAY BE MADE TO THE ACCOUNT; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF PRINCIPAL AND INCOME CONTAINED WITHIN AN ACCOUNT AND AMOUNTS WITHDRAWN FOR ELIGIBLE COSTS FOR THE FIRST-TIME PURCHASE OF A SINGLE-FAMILY RESIDENCE; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE COSTS; REQUIRING THAT PRINCIPAL AND INCOME IN THE ACCOUNT MUST BE USED FOR THE PURCHASE OF A SINGLE-FAMILY RESIDENCE BY A FIRST-TIME HOME BUYER WITHIN A SPECIFIED PERIOD; TAXING AMOUNTS REMAINING IN THE ACCOUNT AS ORDINARY INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

HOUSE BILL NO. 599

INTRODUCED BY BANKHEAD, DEPRATU, MASOLO, HURDLE, KRENZLER, ORR, SMITH, GRIMES, HAYNE, KITZENBERG, SCHMIDT, STORY, CRISMORE, MERCER, KNOX, GRINDE, BOHLINGER, OHS, FELAND, TROPILA, BURNETT, SIMON, ELLIS, BEAUDRY, HIBBARD, GRADY, STOVALL, BOOKOUT-REINICKE, MCGEE, HARP, MOHL, SPRAGUE, MCNUTT, THOMAS, MESAROS, RYAN, BAER, AKLESTAD, EMERSON, JENKINS, BENEDICT, DENNY, BERGMAN, WELLS, ARNOTT, MOOD, ADAMS, M. TAYLOR, CURTISS, M. HANSON, WALTERS, ROSE, KEATING, MAHLUM, COLE, WAGNER, MARSHALL, CAREY, STANG, L. TAYLOR, GLASER, TREXLER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FIRST-TIME HOME BUYER SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE ACCOUNTS; ALLOWING ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNTS; LIMITING THE PERIOD IN WHICH CONTRIBUTIONS MAY BE MADE TO THE ACCOUNT; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF PRINCIPAL AND INCOME CONTAINED WITHIN AN ACCOUNT AND AMOUNTS WITHDRAWN FOR ELIGIBLE COSTS FOR THE FIRST-TIME PURCHASE OF A SINGLE-FAMILY RESIDENCE <u>IN MONTANA</u>; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE COSTS; REQUIRING THAT PRINCIPAL AND INCOME IN THE ACCOUNT MUST BE USED FOR THE PURCHASE OF A SINGLE-FAMILY RESIDENCE <u>IN MONTANA</u> BY A FIRST-TIME HOME BUYER WITHIN A SPECIFIED PERIOD; TAXING AMOUNTS REMAINING IN THE ACCOUNT AS ORDINARY INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

<u>NEW SECTION.</u> **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana First-Time Home Buyer Savings Account Act".

<u>NEW SECTION.</u> **Section 2. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Account administrator" means:

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

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

(c) the account holder.

(2) "Account holder" means an individual who is a resident of this state and who establishes, individually or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer. A MARRIED TAXPAYER FILING SEPARATELY MAY BE AN ACCOUNT HOLDER IF THE ACCOUNT IS ESTABLISHED SEPARATELY FROM THE TAXPAYER'S SPOUSE. MARRIED TAXPAYERS FILING JOINTLY ARE CONSIDERED AS THE ACCOUNT HOLDER.

(3) "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence IN MONTANA by a first-time home buyer.

(4) ~~(a)~~ "First-time home buyer" means an individual who has ~~not~~ NEVER owned or purchased under contract for deed, EITHER INDIVIDUALLY OR JOINTLY, a single-family residence IN MONTANA OR OUT-OF-STATE~~, individually or jointly, within 3 years immediately preceding the establishment of a savings account under the provisions of [sections 1 through 7].~~

~~(b) A first-time home buyer also includes:~~

~~(i) a displaced homemaker who, while a homemaker, owned a home with the homemaker's spouse; and~~

~~(ii) a single parent who owned a home with a spouse~~.

(5) "First-time home buyer savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

(6) "Single-family residence" means an owner-occupied residence IN MONTANA, including a MANUFACTURED HOME, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

NEW SECTION. **Section 3. Establishment of account.** A first-time home buyer who is a resident of this state may establish a first-time home buyer savings account for the first-time home buyer, either individually or jointly.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(2) (a) An account holder WHO FILES SINGLY, HEAD OF HOUSEHOLD, OR MARRIED FILING SEPARATELY may exclude as an annual contribution in 1 year up to $3,000.

(B) AN ACCOUNT HOLDER WHO FILES JOINTLY MAY EXCLUDE AS ANNUAL CONTRIBUTION IN 1 YEAR UP TO $6,000.

(C) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

~~(b)~~(D) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed ~~$3,000~~ THE AMOUNT SPECIFIED IN SUBSECTION (2)(A) OR (2)(B). An account holder who deposits more than ~~$3,000~~ THE AMOUNT SPECIFIED IN SUBSECTION (2)(A) OR (2)(B) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of ~~$3,000~~ THE AMOUNT SPECIFIED IN SUBSECTION (2)(A) OR (2)(B) per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to

the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

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

<u>NEW SECTION.</u> **Section 5. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.** (1) An account holder may withdraw money from the first-time home buyer's savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(2) If the account holder withdraws money from the account other than for eligible costs for the purchase of a single-family residence or other than on the last business day of the account administrator's business year, the account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder, pay as a penalty to the department an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(3) For the purposes of this section, "last business day of the account administrator's business

year", as applied to an account administrator who is also the account holder, means the last weekday in December.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made and has a fiduciary duty to the person for whose benefit the account is administered. EXCEPT FOR REPORTING AND REMITTING OF PENALTIES TO THE DEPARTMENT, A FINANCIAL INSTITUTION SHALL ADMINISTER A FIRST-TIME HOME BUYER'S SAVINGS ACCOUNT AS A REGULAR DEPOSIT. A FINANCIAL INSTITUTION IS NOT RESPONSIBLE FOR THE USE OR APPLICATIONS OF FUNDS.

(2) Within 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

(4) The account holder may submit documentation of eligible costs paid by the account holder in the tax year to the account administrator, and the account administrator shall reimburse the account holder from the account holder's account for eligible costs for the first-time purchase of a single-family residence. THE BURDEN OF PROVING THAT A WITHDRAWAL FROM A FIRST-TIME HOME BUYER'S SAVINGS ACCOUNT WAS MADE FOR ELIGIBLE COSTS IS UPON THE ACCOUNT HOLDER AND NOT UPON THE ACCOUNT ADMINISTRATOR.

(5) In the case of an account administrator who is also the account holder:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account;

(c) documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence must be maintained but is not required to be submitted to the account administrator; ~~and~~

(d) the account administrator shall file reports as reasonably required by the department; AND

(E) THE ACCOUNT HOLDER IS REQUIRED TO FORWARD THE 10% PENALTY ON FUNDS WITHDRAWN FOR OTHER THAN ELIGIBLE COSTS TO THE DEPARTMENT.

NEW SECTION. **Section 7. False claims prohibited.** A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account is subject to the provisions of 15-61-205.

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

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

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

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

(a) (i) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

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

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

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

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

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

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

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

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

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

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

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with [section 3] or withdrawn from an account for eligible costs, as provided in [section 4(7)], for the first-time purchase of a single-family residence; and

~~(k)~~(l) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

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

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

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

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

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

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

NEW SECTION. **Section 10. Effective date.** [This act] is effective January 1, 1998.

-END-

HOUSE BILL NO. 599

INTRODUCED BY BANKHEAD, DEPRATU, MASOLO, HURDLE, KRENZLER, ORR, SMITH, GRIMES, HAYNE, KITZENBERG, SCHMIDT, STORY, CRISMORE, MERCER, KNOX, GRINDE, BOHLINGER, OHS, FELAND, TROPILA, BURNETT, SIMON, ELLIS, BEAUDRY, HIBBARD, GRADY, STOVALL, BOOKOUT-REINICKE, MCGEE, HARP, MOHL, SPRAGUE, MCNUTT, THOMAS, MESAROS, RYAN, BAER, AKLESTAD, EMERSON, JENKINS, BENEDICT, DENNY, BERGMAN, WELLS, ARNOTT, MOOD, ADAMS, M. TAYLOR, CURTISS, M. HANSON, WALTERS, ROSE, KEATING, MAHLUM, COLE, WAGNER, MARSHALL, CAREY, STANG, L. TAYLOR, GLASER, TREXLER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR FIRST-TIME HOME BUYER SAVINGS ACCOUNTS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT AND ADMINISTRATION OF THE ACCOUNTS; ALLOWING ACCOUNT HOLDERS TO ADMINISTER THEIR OWN ACCOUNTS; LIMITING THE PERIOD IN WHICH CONTRIBUTIONS MAY BE MADE TO THE ACCOUNT; PROVIDING FOR AN EXCLUSION FROM ADJUSTED GROSS INCOME OF PRINCIPAL AND INCOME CONTAINED WITHIN AN ACCOUNT AND AMOUNTS WITHDRAWN FOR ELIGIBLE COSTS FOR THE FIRST-TIME PURCHASE OF A SINGLE-FAMILY RESIDENCE <u>IN MONTANA</u>; PROVIDING FOR WITHDRAWALS FROM AN ACCOUNT FOR PURPOSES OTHER THAN ELIGIBLE COSTS; REQUIRING THAT PRINCIPAL AND INCOME IN THE ACCOUNT MUST BE USED FOR THE PURCHASE OF A SINGLE-FAMILY RESIDENCE <u>IN MONTANA</u> BY A FIRST-TIME HOME BUYER WITHIN A SPECIFIED PERIOD; TAXING AMOUNTS REMAINING IN THE ACCOUNT AS ORDINARY INCOME; AMENDING SECTION 15-30-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

<u>NEW SECTION.</u> **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana First-Time Home Buyer Savings Account Act".

<u>NEW SECTION.</u> **Section 2. Definitions.** As used in [sections 1 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Account administrator" means:

REFERENCE BILL AS AMENDED

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

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(c) the account holder.

(2) "Account holder" means an individual who is a resident of this state and who establishes, individually or jointly, a first-time home buyer savings account. The account holder must also be a first-time home buyer. A MARRIED TAXPAYER FILING SEPARATELY MAY BE AN ACCOUNT HOLDER IF THE ACCOUNT IS ESTABLISHED SEPARATELY FROM THE TAXPAYER'S SPOUSE. MARRIED TAXPAYERS FILING JOINTLY ARE CONSIDERED AS THE ACCOUNT HOLDER.

(3) "Eligible costs" means the down payment and allowable closing costs for the purchase of a single-family residence IN MONTANA by a first-time home buyer.

(4) ~~(a)~~ "First-time home buyer" means an individual who has ~~not~~ NEVER owned or purchased under contract for deed, EITHER INDIVIDUALLY OR JOINTLY, a single-family residence IN MONTANA OR OUT-OF-STATE~~, individually or jointly, within 3 years immediately preceding the establishment of a savings account under the provisions of [sections 1 through 7].~~

~~(b) A first-time home buyer also includes:~~

~~(i) a displaced homemaker who, while a homemaker, owned a home with the homemaker's spouse; and~~

~~(ii) a single parent who owned a home with a spouse~~.

(5) "First-time home buyer savings account" or "account" means an account established with an account administrator in this state pursuant to [section 3].

(6) "Single-family residence" means an owner-occupied residence IN MONTANA, including a MANUFACTURED HOME, trailer, or mobile home, that is an improvement to real property or a condominium unit that is owned by or that has been purchased under contract for deed by a person, individually or jointly.

NEW SECTION. **Section 3. Establishment of account.** A first-time home buyer who is a resident of this state may establish a first-time home buyer savings account for the first-time home buyer, either individually or jointly.

NEW SECTION. **Section 4. Tax exemption -- conditions.** (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligible costs for the purchase of a single-family residence by a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligible costs for the purchase of a single-family residence.

(2) (a) An account holder WHO FILES SINGLY, HEAD OF HOUSEHOLD, OR MARRIED FILING SEPARATELY may exclude as an annual contribution in 1 year up to $3,000.

(B) AN ACCOUNT HOLDER WHO FILES JOINTLY MAY EXCLUDE AS ANNUAL CONTRIBUTION IN 1 YEAR UP TO $6,000.

(C) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

~~(b)~~(D) An account holder may not contribute to the first-time home buyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the account holder in the year does not exceed ~~$3,000~~ THE AMOUNT SPECIFIED IN SUBSECTION (2)(A) OR (2)(B). An account holder who deposits more than ~~$3,000~~ THE AMOUNT SPECIFIED IN SUBSECTION (2)(A) OR (2)(B) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of ~~$3,000~~ THE AMOUNT SPECIFIED IN SUBSECTION (2)(A) OR (2)(B) per year not previously excluded.

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to

the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) The amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

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

NEW SECTION. **Section 5. Withdrawal of funds from account for purposes other than eligible costs for first-time home purchase.** (1) An account holder may withdraw money from the first-time home buyer's savings account for any purpose other than eligible costs for the first-time purchase of a single-family residence only on the last business day of the account administrator's business year. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(2) If the account holder withdraws money from the account other than for eligible costs for the purchase of a single-family residence or other than on the last business day of the account administrator's business year, the account administrator shall withhold from the amount of the withdrawal and, on behalf of the account holder, pay as a penalty to the department an amount equal to 10% of the amount of the withdrawal. Payments made to the department pursuant to this section must be deposited in the general fund. Money withdrawn from an account pursuant to this subsection must be taxed as ordinary income of the account holder.

(3) For the purposes of this section, "last business day of the account administrator's business

year", as applied to an account administrator who is also the account holder, means the last weekday in December.

NEW SECTION. **Section 6. Administration of account.** (1) An account administrator shall administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made and has a fiduciary duty to the person for whose benefit the account is administered. EXCEPT FOR REPORTING AND REMITTING OF PENALTIES TO THE DEPARTMENT, A FINANCIAL INSTITUTION SHALL ADMINISTER A FIRST-TIME HOME BUYER'S SAVINGS ACCOUNT AS A REGULAR DEPOSIT. A FINANCIAL INSTITUTION IS NOT RESPONSIBLE FOR THE USE OR APPLICATIONS OF FUNDS.

(2) Within 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

(4) The account holder may submit documentation of eligible costs paid by the account holder in the tax year to the account administrator, and the account administrator shall reimburse the account holder from the account holder's account for eligible costs for the first-time purchase of a single-family residence. THE BURDEN OF PROVING THAT A WITHDRAWAL FROM A FIRST-TIME HOME BUYER'S SAVINGS ACCOUNT WAS MADE FOR ELIGIBLE COSTS IS UPON THE ACCOUNT HOLDER AND NOT UPON THE ACCOUNT ADMINISTRATOR.

(5) In the case of an account administrator who is also the account holder:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account;

(c) documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence must be maintained but is not required to be submitted to the account administrator; ~~and~~

(d) the account administrator shall file reports as reasonably required by the department_; AND_

(E) THE ACCOUNT HOLDER IS REQUIRED TO FORWARD THE 10% PENALTY ON FUNDS WITHDRAWN FOR OTHER THAN ELIGIBLE COSTS TO THE DEPARTMENT.

NEW SECTION. **Section 7. False claims prohibited.** A person who knowingly prepares or causes to be prepared a false claim, receipt, statement, or billing to justify the withdrawal of money from an account is subject to the provisions of 15-61-205.

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

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

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

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

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

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

(a) (i) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

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

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

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

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

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

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

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

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

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

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

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

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with [section 3] or withdrawn from an account for eligible costs, as provided in [section 4(7)], for the first-time purchase of a single-family residence; and

~~(k)~~(l) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted.

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

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

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

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

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

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

NEW SECTION. **Section 10. Effective date.** [This act] is effective January 1, 1998.

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