

1 SENATE BILL NO. 119

2 INTRODUCED BY COLE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING TAX
6 ADMINISTRATION; PROVIDING A THRESHOLD FOR THE REMITTANCE REQUIREMENT FOR NEW
7 EMPLOYERS WITH LESS THAN 12 MONTHS' EXPERIENCE; PROVIDING UNIFORMITY IN ALL STATUTES
8 INVOLVING QUARTERLY PAYMENT OF TAXES BY EMPLOYERS SUBJECT TO THE CHANGED PAYMENT
9 SCHEDULE; CLARIFYING THE OLD FUND LIABILITY TAX ON WAGES PAID TO DOMESTICS IF THEY EARN
10 LESS THAN \$1,000 ANNUALLY, TO CONFORM TO FEDERAL LAW; PROVIDING A DEDUCTION FOR
11 PARENTS OF CHILDREN WHO WORK AND FILE THEIR OWN RETURNS; AMENDING SECTIONS 15-1-211,
12 15-24-102, 15-30-111, 15-30-204, 39-71-2503, AND 39-71-2505, MCA; REPEALING SECTIONS
13 15-10-101, 15-10-102, AND 15-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
14 A RETROACTIVE APPLICABILITY DATE."

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

17
18 **Section 1.** Section 15-1-211, MCA, is amended to read:

19 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall
20 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

21 (a) The tax review procedure described in this section applies to all taxes administered by the
22 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,
23 property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer
24 and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the
25 employment relationship was that of an independent contractor. The procedure applies to any revised
26 assessment of centrally assessed property taxed pursuant to chapter 23.

27 (b) The term "taxpayers", as used in this section, includes all persons determined by the
28 department to have a potential tax liability.

29 (2) (a) If the department determines that a request for a refund should be denied in whole or part,
30 it shall notify the taxpayer of the determination. If the department determines that a person has failed to

1 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the
2 running of any applicable statute of limitations regarding the assessment of the tax.

3 (b) A notice under this section must clearly state:

4 (i) the reasons for the department's determination that a refund is not due or that tax plus interest
5 and penalty, if any, ~~is~~ are due;

6 (ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final
7 department decision, and the taxpayer's right to a review of determinations by the department of labor and
8 industry and board of labor appeals of whether an employer-employee relationship existed between the
9 taxpayer and certain individuals or whether the employment relationship was that of an independent
10 contractor;

11 (iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right
12 to contest the department's determination under this section or to file an appeal with the state tax appeal
13 board;

14 (iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does
15 not agree with an assessment or pay the amount assessed;

16 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the
17 taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days;
18 and

19 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the
20 tax.

21 (3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the
22 determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is
23 not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer
24 is objecting to a determination that an employer-employee relationship existed between the taxpayer and
25 individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not
26 notify the department within 30 days:

27 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

28 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax
29 appeal board; and

30 (iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

1 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer
2 disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other
3 information to the administrator of the division that administers the tax or to the administrator's designee
4 within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may
5 be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An
6 informal conference is not subject to the Montana Administrative Procedure Act.

7 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer
8 disagrees with the department's determination that an employer-employee relationship existed between the
9 taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must
10 be referred to the department of labor and industry for appeal procedures pursuant to ~~39-51-2403~~
11 39-51-2402 and 39-51-2410.

12 (c) Within 60 days after the taxpayer has presented his the taxpayer's objections, as provided in
13 subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's
14 objections and describing the reasons for the determination. The administrator's decision must also clearly
15 set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and
16 the director of revenue.

17 (4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the
18 administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may
19 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30
20 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer
21 waives any further right to review or appeal and a warrant for distraint may be issued without further
22 opportunity to be heard on the assessment.

23 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision
24 pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and
25 any other information to the director of revenue or the director's designee within 60 days after the notice
26 referred to in subsection (4)(a) is mailed. The director or the designee may consider written information,
27 hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana
28 Administrative Procedure Act.

29 (c) Within 60 days after the taxpayer has presented the objections, the director or the designee
30 shall issue a written decision addressing the objections and describing the reasons for the decision. The

1 director's decision is the final decision and assessment of the department.

2 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final
3 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the
4 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by
5 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law
6 must continue to accrue.

7 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal
8 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the
9 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the
10 department.

11 (b) If the director notifies the board within 30 days after an appeal is filed that the director has not
12 had an opportunity to review the administrator's decision and the director believes that a review may be
13 helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers
14 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide
15 the taxpayer's objections and reasons for the objections to the director so that the director or the director's
16 designee may review the controversy and issue a decision within the period of the stay granted by the
17 board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal
18 resumed.

19 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the
20 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by
21 mutual consent of the department and the taxpayer. The department shall consent to all reasonable
22 requests for extension of deadlines.

23 (8) (a) The director of revenue or the director's designee is authorized to enter into an agreement
24 with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department
25 for any taxable period.

26 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except
27 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

28 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
29 employee, or agent of this state; and

30 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,

1 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement
2 may not be annulled, modified, set aside, or disregarded."
3

4 **Section 2.** Section 15-24-102, MCA, is amended to read:

5 **"15-24-102. Valuation of interstate fleets -- determination of aggregate tax due -- exemption from**
6 **mill levies.** The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet
7 making application for proportional registration, as follows:

8 (1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the
9 department determines the depreciated value.

10 (2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by
11 61-3-721, is the market value.

12 (3) The sum of the market value of all taxable vehicles included in the fleet multiplied by the tax
13 rate for class eight property in 15-6-138 is the taxable value for the entire fleet as provided in 15-6-138.

14 (4) To determine the amount of tax due, the taxable value of the entire fleet must be multiplied by
15 the statewide average county mill levy plus state levies as provided in 15-24-103.

16 (5) To determine the tax due under this chapter, state levies applicable to interstate motor vehicle
17 fleets include but are not limited to levies imposed under ~~15-10-101~~, 15-10-106, 20-9-331, 20-9-333,
18 20-9-360, and 53-2-813.

19 (6) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and
20 distributed as provided in 15-24-105."
21

22 **Section 3.** Section 15-30-111, MCA, is amended to read:

23 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income
24 tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, as that section
25 may be labeled or amended, and in addition includes the following:

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

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

1 subsection (1)(a)(i);

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (d) all Montana income tax refunds or tax refund credits;
- 2 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- 3 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by
4 section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983,
5 received by persons for services rendered by them to patrons of premises licensed to provide food,
6 beverage, or lodging;
- 7 (g) all benefits received under the workers' compensation laws;
- 8 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
9 the employee under federal law;
- 10 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
11 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 12 (j) principal and income in a medical care savings account established in accordance with
13 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the
14 taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the
15 taxpayer; ~~and~~
- 16 (k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that
17 the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted; and
- 18 (l) income of a dependent child that is included in the taxpayer's federal adjusted gross income
19 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return
20 if the child and taxpayer meet the filing requirements in 15-30-142.
- 21 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
22 shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same
23 manner as provided by section 995 of the Internal Revenue Code for all periods for which the DISC election
24 is effective.
- 25 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
26 business deductions by an amount for wages and salaries for which a federal tax credit was elected under
27 section 44B of the Internal Revenue Code of 1954, as that section may be labeled or amended, is allowed
28 to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must
29 be made in the year that the wages and salaries were used to compute the credit. In the case of a
30 partnership or small business corporation, the deduction must be made to determine the amount of income

1 or loss of the partnership or small business corporation.

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

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

19

20 **Section 4.** Section 15-30-204, MCA, is amended to read:

21 "**15-30-204. Weekly, monthly, or annual payment.** (1) An employer subject to the provisions of
22 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding lookback period was
23 \$12,000 or greater shall file a return in the form and containing the information that may be required by
24 the department and shall pay the amount required by 15-30-202 to be deducted and withheld by the
25 employer from wages paid during the preceding payroll period. The payment must be submitted on or
26 before the date on which federal income tax weekly withholding payments are due. On or before the last
27 day of April, July, October, and January, the employer shall file a return in the form and containing the
28 information required by the department. The quarterly returns for employers subject to this subsection must
29 be used to summarize and adjust payments and to request refunds of overpayments. The employer shall
30 also file the annual statement as required by 15-30-207.

1 (2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for
2 withholdings during the preceding lookback period was less than \$12,000 but greater than \$1,199 shall
3 remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and
4 withheld by the employer from wages paid during the preceding month. The monthly payment must be
5 submitted on or before the 15th day of the month following the payment of the wages. The employer
6 subject to this subsection shall, on or before February 28 of the year following payment of the wages, file
7 an annual return in the form and containing the information required by the department and the annual
8 statement required by 15-30-207. The annual returns for employers subject to this subsection must be used
9 to summarize and adjust payments and to request refunds of overpayments.

10 (3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202
11 upon the wages of all employees of any employer is less than \$1,200 for the preceding lookback period,
12 the employer shall, on or before February 28 of the year succeeding that in which the wages were paid,
13 file an annual return in the form required by the department, together with the annual statement required
14 by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the
15 employer from all wages paid during the preceding calendar year.

16 (b) An employer subject to the provisions of this subsection (3) may elect to remit monthly
17 payments. If an employer elects to make monthly payments, the employer shall remit monthly payments
18 during the entire year and is subject to the same interest and penalty provisions as employers subject to
19 the provisions of subsection (2).

20 (c) If an employer subject to the provisions of this subsection (3) does not file the annual return
21 required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection
22 (2) until the department determines from the employer's subsequent filing history that the employer will
23 file in a timely fashion.

24 (4) (a) On or before November 1 of each year, the department shall notify the employers subject
25 to the provisions of this section of the employers' remittance schedules for the following calendar year
26 based upon the department's review of the preceding lookback period.

27 (b) A new employer or an employer with no filing history is subject to the provisions of subsection
28 (2) until the department is able to determine the employer's proper remittance schedule by a review of the
29 employer's first complete lookback period. A new employer who has been in operation for less than a full
30 12 months in the lookback period and who has withheld less than \$1,200 for this period shall follow the

1 provisions of subsection (2).

2 (c) An employer who has been in operation for less than the full 12 months of the lookback period
3 and who estimates that the total liability for state income tax withholding and old fund liability tax will not
4 exceed \$100 for the calendar year may apply to the department to remit and file pursuant to subsection
5 (3)(a). However, if the combined liability exceeds \$100 at any time during the calendar year, the employer
6 shall immediately remit the total amount due and begin to remit payments pursuant to subsection (2). The
7 employer is liable to monitor the accrued tax liability.

8 (5) If the department has reason to believe that collection of the amount of any tax withheld is in
9 jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income
10 tax."

11

12 **Section 5.** Section 39-71-2503, MCA, is amended to read:

13 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
14 employer, except an employer whose employees are covered by federal workers' compensation legislation,
15 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
16 old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

17 (i) for the preceding payroll period for employers subject to the payment schedule contained in
18 15-30-204(1);

19 (ii) for the preceding month for employers subject to the payment schedule contained in
20 15-30-204(2); and

21 (iii) for the preceding year for employers subject to the payment schedule contained in
22 15-30-204(3)(a).

23 (b) There is imposed on each employee, except an employee who is covered by federal workers'
24 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.
25 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the
26 wages.

27 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
28 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
29 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
30 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,

1 partner, or member or manager derived from ongoing activities.

2 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
3 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

4 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
5 subsection (1)(c).

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

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

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

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

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

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

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

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

7 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
8 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
9 remainder to the account provided for in 39-71-2504.

10 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
11 partnerships, and members or managers of limited liability companies must be made with and at the same
12 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
13 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
14 for in 39-71-2504.

15 (c) Remuneration paid by an employer for domestic service in the employer's private home is not
16 considered wages subject to the workers' compensation old fund liability tax if the remuneration paid during
17 the year is less than \$1,000 for each employee. If the remuneration paid during the year is \$1,000 or
18 more, it is subject to the provisions of subsections (1)(a) and (1)(b) and must be paid with the employer's
19 Montana individual income tax return. However, if the employer withholds state income tax from the
20 wages of the employee, the employer must make tax payments and returns according to 15-30-204 and
21 subsection (3)(a) of this section.

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

25 (5) Returns and remittances under subsection (3) and any information obtained by the department
26 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
27 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,
28 tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions
29 that ensure the continued confidentiality of the information.

30 (6) The department of labor and industry and the state fund shall give the department a list of all

1 employers having coverage under any plan administered or regulated by the department of labor and
2 industry and the state fund. The department of labor and industry and the state fund shall update the lists
3 weekly. The department of labor and industry and the state fund shall provide the department with access
4 to their computer data bases and paper files and records for the purpose of the department's administration
5 of the tax imposed by this section.

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

12
13 **Section 6.** Section 39-71-2505, MCA, is amended to read:

14 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
15 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
16 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
17 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
18 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
19 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
20 pay for administering and paying the claims for the ensuing year.

21 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
22 forward to the budget director information pertaining to the amount that the state fund will borrow for the
23 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
24 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
25 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
26 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
27 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
28 cash for the year 2007.

29 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided
30 in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll

1 for in the preceding calendar quarter:

2 (A) payroll period for employers subject to the payment schedule contained in 15-30-204(1);

3 (B) month for employers subject to the payment schedule contained in 15-30-204(2);

4 (C) year for employers subject to the payment schedule contained in 15-30-204(3)(a).

5 (ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the
6 preceding calendar quarter.

7 (iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business
8 of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation
9 shareholder, partner of a partnership, or member or manager of a limited liability company.

10 (iv) The rate of the employer old fund liability tax determined by this section includes the 0.28%
11 employer old fund liability tax provided for in 39-71-2503.

12 (v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in
13 39-71-2503 terminates at the end of fiscal year 2007.

14 (B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
15 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

16 (vi) The old fund liability tax described in this section must be collected and deposited as provided
17 in 39-71-2503 and 39-71-2504.

18 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
19 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
20 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
21 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
22 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
23 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
24 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
25 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

26 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

27 (5) The budget director shall certify the cash flow projections of the state fund required by this
28 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
29 pursuant to this section."

30

1 NEW SECTION. **Section 7. Repealer.** Sections 15-10-101, 15-10-102, and 15-10-104, MCA, are
2 repealed.

3

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

6

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

8

-END-

APPROVED BY COM ON
STATE ADMINISTRATION

1 SENATE BILL NO. 119

2 INTRODUCED BY COLE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING TAX
6 ADMINISTRATION; PROVIDING A THRESHOLD FOR THE REMITTANCE REQUIREMENT FOR NEW
7 EMPLOYERS WITH LESS THAN 12 MONTHS' EXPERIENCE; PROVIDING UNIFORMITY IN ALL STATUTES
8 INVOLVING QUARTERLY PAYMENT OF TAXES BY EMPLOYERS SUBJECT TO THE CHANGED PAYMENT
9 SCHEDULE; CLARIFYING THE OLD FUND LIABILITY TAX ON WAGES PAID TO DOMESTICS IF THEY EARN
10 LESS THAN \$1,000 ANNUALLY, TO CONFORM TO FEDERAL LAW; PROVIDING A DEDUCTION FOR
11 PARENTS OF CHILDREN WHO WORK AND FILE THEIR OWN RETURNS; AMENDING SECTIONS 15-1-211,
12 15-24-102, 15-30-111, 15-30-204, 39-71-2503, AND 39-71-2505, MCA; REPEALING SECTIONS
13 15-10-101, 15-10-102, AND 15-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
14 A RETROACTIVE APPLICABILITY DATE."

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

17
18 **Section 1.** Section 15-1-211, MCA, is amended to read:

19 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall
20 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

21 (a) The tax review procedure described in this section applies to all taxes administered by the
22 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,
23 property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer
24 and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the
25 employment relationship was that of an independent contractor. The procedure applies to any revised
26 assessment of centrally assessed property taxed pursuant to chapter 23.

27 (b) The term "taxpayers", as used in this section, includes all persons determined by the
28 department to have a potential tax liability.

29 (2) (a) If the department determines that a request for a refund should be denied in whole or part,
30 it shall notify the taxpayer of the determination. If the department determines that a person has failed to

1 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the
2 running of any applicable statute of limitations regarding the assessment of the tax.

3 (b) A notice under this section must clearly state:

4 (i) the reasons for the department's determination that a refund is not due or that tax plus interest
5 and penalty, if any, ~~is~~ are due;

6 (ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final
7 department decision, and the taxpayer's right to a review of determinations by the department of labor and
8 industry and board of labor appeals of whether an employer-employee relationship existed between the
9 taxpayer and certain individuals or whether the employment relationship was that of an independent
10 contractor;

11 (iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right
12 to contest the department's determination under this section or to file an appeal with the state tax appeal
13 board;

14 (iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does
15 not agree with an assessment or pay the amount assessed;

16 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the
17 taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days;
18 and

19 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the
20 tax.

21 (3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the
22 determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is
23 not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer
24 is objecting to a determination that an employer-employee relationship existed between the taxpayer and
25 individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not
26 notify the department within 30 days:

27 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

28 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax
29 appeal board; and

30 (iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

1 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer
2 disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other
3 information to the administrator of the division that administers the tax or to the administrator's designee
4 within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may
5 be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An
6 informal conference is not subject to the Montana Administrative Procedure Act.

7 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer
8 disagrees with the department's determination that an employer-employee relationship existed between the
9 taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must
10 be referred to the department of labor and industry for appeal procedures pursuant to ~~39-51-2403~~
11 39-51-2402 and 39-51-2410.

12 (c) Within 60 days after the taxpayer has presented ~~his~~ the taxpayer's objections, as provided in
13 subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's
14 objections and describing the reasons for the determination. The administrator's decision must also clearly
15 set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and
16 the director of revenue.

17 (4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the
18 administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may
19 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30
20 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer
21 waives any further right to review or appeal and a warrant for distraint may be issued without further
22 opportunity to be heard on the assessment.

23 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision
24 pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and
25 any other information to the director of revenue or the director's designee within 60 days after the notice
26 referred to in subsection (4)(a) is mailed. The director or the designee may consider written information,
27 hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana
28 Administrative Procedure Act.

29 (c) Within 60 days after the taxpayer has presented the objections, the director or the designee
30 shall issue a written decision addressing the objections and describing the reasons for the decision. The

1 director's decision is the final decision and assessment of the department.

2 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final
3 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the
4 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by
5 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law
6 must continue to accrue.

7 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal
8 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the
9 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the
10 department.

11 (b) If the director notifies the board within 30 days after an appeal is filed that the director has not
12 had an opportunity to review the administrator's decision and the director believes that a review may be
13 helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers
14 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide
15 the taxpayer's objections and reasons for the objections to the director so that the director or the director's
16 designee may review the controversy and issue a decision within the period of the stay granted by the
17 board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal
18 resumed.

19 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the
20 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by
21 mutual consent of the department and the taxpayer. The department shall consent to all reasonable
22 requests for extension of deadlines.

23 (8) (a) The director of revenue or the director's designee is authorized to enter into an agreement
24 with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department
25 for any taxable period.

26 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except
27 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

28 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
29 employee, or agent of this state; and

30 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,

1 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement
2 may not be annulled, modified, set aside, or disregarded."
3

4 **Section 2.** Section 15-24-102, MCA, is amended to read:

5 **"15-24-102. Valuation of interstate fleets -- determination of aggregate tax due -- exemption from**
6 **mill levies.** The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet
7 making application for proportional registration, as follows:

8 (1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the
9 department determines the depreciated value.

10 (2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by
11 61-3-721, is the market value.

12 (3) The sum of the market value of all taxable vehicles included in the fleet multiplied by the tax
13 rate for class eight property in 15-6-138 is the taxable value for the entire fleet as provided in 15-6-138.

14 (4) To determine the amount of tax due, the taxable value of the entire fleet must be multiplied by
15 the statewide average county mill levy plus state levies as provided in 15-24-103.

16 (5) To determine the tax due under this chapter, state levies applicable to interstate motor vehicle
17 fleets include but are not limited to levies imposed under ~~15-10-101~~, 15-10-106, 20-9-331, 20-9-333,
18 20-9-360, and 53-2-813.

19 (6) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and
20 distributed as provided in 15-24-105."
21

22 **Section 3.** Section 15-30-111, MCA, is amended to read:

23 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income
24 tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, as that section
25 may be labeled or amended, and in addition includes the following:

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

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

1 subsection (1)(a)(i);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (j) principal and income in a medical care savings account established in accordance with
13 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the
14 taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the
15 taxpayer; ~~and~~

16 (k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that
17 the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted; and

18 (l) income of a dependent child that is included in the taxpayer's federal adjusted gross income
19 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return
20 if the child and taxpayer meet the filing requirements in 15-30-142.

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

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

1 or loss of the partnership or small business corporation.

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

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

19

20 **Section 4.** Section 15-30-204, MCA, is amended to read:

21 "**15-30-204. Weekly, monthly, or annual payment.** (1) An employer subject to the provisions of
22 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding lookback period was
23 \$12,000 or greater shall file a return in the form and containing the information that may be required by
24 the department and shall pay the amount required by 15-30-202 to be deducted and withheld by the
25 employer from wages paid during the preceding payroll period. The payment must be submitted on or
26 before the date on which federal income tax weekly withholding payments are due. On or before the last
27 day of April, July, October, and January, the employer shall file a return in the form and containing the
28 information required by the department. The quarterly returns for employers subject to this subsection must
29 be used to summarize and adjust payments and to request refunds of overpayments. The employer shall
30 also file the annual statement as required by 15-30-207.

1 (2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for
2 withholdings during the preceding lookback period was less than \$12,000 but greater than \$1,199 shall
3 remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and
4 withheld by the employer from wages paid during the preceding month. The monthly payment must be
5 submitted on or before the 15th day of the month following the payment of the wages. The employer
6 subject to this subsection shall, on or before February 28 of the year following payment of the wages, file
7 an annual return in the form and containing the information required by the department and the annual
8 statement required by 15-30-207. The annual returns for employers subject to this subsection must be used
9 to summarize and adjust payments and to request refunds of overpayments.

10 (3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202
11 upon the wages of all employees of any employer is less than \$1,200 for the preceding lookback period,
12 the employer shall, on or before February 28 of the year succeeding that in which the wages were paid,
13 file an annual return in the form required by the department, together with the annual statement required
14 by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the
15 employer from all wages paid during the preceding calendar year.

16 (b) An employer subject to the provisions of this subsection (3) may elect to remit monthly
17 payments. If an employer elects to make monthly payments, the employer shall remit monthly payments
18 during the entire year and is subject to the same interest and penalty provisions as employers subject to
19 the provisions of subsection (2).

20 (c) If an employer subject to the provisions of this subsection (3) does not file the annual return
21 required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection
22 (2) until the department determines from the employer's subsequent filing history that the employer will
23 file in a timely fashion.

24 (4) (a) On or before November 1 of each year, the department shall notify the employers subject
25 to the provisions of this section of the employers' remittance schedules for the following calendar year
26 based upon the department's review of the preceding lookback period.

27 (b) A new employer or an employer with no filing history is subject to the provisions of subsection
28 (2) until the department is able to determine the employer's proper remittance schedule by a review of the
29 employer's first complete lookback period. ~~A new employer who has been in operation for less than a full~~
30 ~~12 months in the lookback period and who has withheld less than \$1,200 for this period shall follow the~~

1 ~~provisions of subsection (2).~~

2 (c) An employer who has been in operation for less than the full 12 months of the lookback period
 3 and who estimates that the total liability for state income tax withholding and OR, IF THE EMPLOYER IS
 4 NOT SUBJECT TO STATE INCOME TAX WITHHOLDING, THE EMPLOYER'S TAX LIABILITY FOR THE old
 5 fund liability tax will not exceed ~~\$100~~ \$1,199 for the calendar year may apply to the department to remit
 6 and file pursuant to subsection (3)(a). However, if the ~~combined~~ liability exceeds ~~\$100~~ \$1,199 at any time
 7 during the calendar year, the employer shall immediately remit the total amount due and begin to remit
 8 payments pursuant to subsection (2). The employer is liable to monitor the accrued tax liability.

9 (5) If the department has reason to believe that collection of the amount of any tax withheld is in
 10 jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income
 11 tax."

12

13 **Section 5.** Section 39-71-2503, MCA, is amended to read:

14 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
 15 employer, except an employer whose employees are covered by federal workers' compensation legislation,
 16 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
 17 old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

18 (i) for the preceding payroll period for employers subject to the payment schedule contained in
 19 15-30-204(1);

20 (ii) for the preceding month for employers subject to the payment schedule contained in
 21 15-30-204(2); and

22 (iii) for the preceding year for employers subject to the payment schedule contained in
 23 15-30-204(3)(a).

24 (b) There is imposed on each employee, except an employee who is covered by federal workers'
 25 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.
 26 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the
 27 wages.

28 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
 29 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
 30 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each

1 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
2 partner, or member or manager derived from ongoing activities.

3 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
4 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

5 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
6 subsection (1)(c).

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

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

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

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

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

29 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
30 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the

1 old fund liability tax required by this section.

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

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

8 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
9 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
10 remainder to the account provided for in 39-71-2504.

11 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
12 partnerships, and members or managers of limited liability companies must be made with and at the same
13 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
14 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
15 for in 39-71-2504.

16 (c) Remuneration paid by an employer for domestic service in the employer's private home is not
17 considered wages subject to the workers' compensation old fund liability tax if the remuneration paid during
18 the year is less than \$1,000 for each employee. If the remuneration paid during the year is \$1,000 or
19 more, it is subject to the provisions of subsections (1)(a) and (1)(b) and must be paid with the employer's
20 Montana individual income tax return. However, if the employer withholds state income tax from the
21 wages of the employee, the employer must make tax payments and returns according to 15-30-204 and
22 subsection (3)(a) of this section.

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

26 (5) Returns and remittances under subsection (3) and any information obtained by the department
27 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
28 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,
29 tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions
30 that ensure the continued confidentiality of the information.

1 (6) The department of labor and industry and the state fund shall give the department a list of all
2 employers having coverage under any plan administered or regulated by the department of labor and
3 industry and the state fund. The department of labor and industry and the state fund shall update the lists
4 weekly. The department of labor and industry and the state fund shall provide the department with access
5 to their computer data bases and paper files and records for the purpose of the department's administration
6 of the tax imposed by this section.

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

13
14 **Section 6.** Section 39-71-2505, MCA, is amended to read:

15 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
16 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
17 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
18 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
19 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
20 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
21 pay for administering and paying the claims for the ensuing year.

22 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
23 forward to the budget director information pertaining to the amount that the state fund will borrow for the
24 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
25 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
26 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
27 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
28 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
29 cash for the year 2007.

30 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided

1 in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll
2 for in the preceding calendar quarter;

3 (A) payroll period for employers subject to the payment schedule contained in 15-30-204(1);

4 (B) month for employers subject to the payment schedule contained in 15-30-204(2);

5 (C) year for employers subject to the payment schedule contained in 15-30-204(3)(a).

6 (ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages ~~in the~~
7 ~~preceding calendar quarter~~ EACH PAYROLL PERIOD.

8 (iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business
9 of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation
10 shareholder, partner of a partnership, or member or manager of a limited liability company.

11 (iv) The rate of the employer old fund liability tax determined by this section includes the 0.28%
12 employer old fund liability tax provided for in 39-71-2503.

13 (v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in
14 39-71-2503 terminates at the end of fiscal year 2007.

15 (B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
16 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

17 (vi) The old fund liability tax described in this section must be collected and deposited as provided
18 in 39-71-2503 and 39-71-2504.

19 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
20 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
21 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
22 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
23 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
24 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
25 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
26 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

27 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

28 (5) The budget director shall certify the cash flow projections of the state fund required by this
29 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
30 pursuant to this section."

1 **NEW SECTION.** **Section 7. Repealer.** Sections 15-10-101, 15-10-102, and 15-10-104, MCA, are
2 repealed.

3

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

6

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

8

-END-

1 SENATE BILL NO. 119

2 INTRODUCED BY COLE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING TAX
6 ADMINISTRATION; PROVIDING A THRESHOLD FOR THE REMITTANCE REQUIREMENT FOR NEW
7 EMPLOYERS WITH LESS THAN 12 MONTHS' EXPERIENCE; PROVIDING UNIFORMITY IN ALL STATUTES
8 INVOLVING QUARTERLY PAYMENT OF TAXES BY EMPLOYERS SUBJECT TO THE CHANGED PAYMENT
9 SCHEDULE; CLARIFYING THE OLD FUND LIABILITY TAX ON WAGES PAID TO DOMESTICS IF THEY EARN
10 LESS THAN \$1,000 ANNUALLY, TO CONFORM TO FEDERAL LAW; PROVIDING A DEDUCTION FOR
11 PARENTS OF CHILDREN WHO WORK AND FILE THEIR OWN RETURNS; AMENDING SECTIONS 15-1-211,
12 15-24-102, 15-30-111, 15-30-204, 39-71-2503, AND 39-71-2505, MCA; REPEALING SECTIONS
13 15-10-101, 15-10-102, AND 15-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
14 A RETROACTIVE APPLICABILITY DATE."

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

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

APPROVED BY COM
ON TAXATION

1 SENATE BILL NO. 119

2 INTRODUCED BY COLE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

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6 ADMINISTRATION; PROVIDING A THRESHOLD FOR THE REMITTANCE REQUIREMENT FOR NEW
7 EMPLOYERS WITH LESS THAN 12 MONTHS' EXPERIENCE; PROVIDING UNIFORMITY IN ALL STATUTES
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**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO THIRD READING COPY
(BLUE) FOR COMPLETE TEXT.**

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6 ADMINISTRATION; PROVIDING A THRESHOLD FOR THE REMITTANCE REQUIREMENT FOR NEW
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12 15-24-102, 15-30-111, 15-30-204, 39-71-2503, AND 39-71-2505, MCA; REPEALING SECTIONS
13 15-10-101, 15-10-102, AND 15-10-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
14 A RETROACTIVE APPLICABILITY DATE."

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

17
18 **Section 1.** Section 15-1-211, MCA, is amended to read:

19 **"15-1-211. Uniform tax review procedure -- notice -- appeal.** (1) The department of revenue shall
20 provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

21 (a) The tax review procedure described in this section applies to all taxes administered by the
22 department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes,
23 property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer
24 and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether the
25 employment relationship was that of an independent contractor. The procedure applies to any revised
26 assessment of centrally assessed property taxed pursuant to chapter 23.

27 (b) The term "taxpayers", as used in this section, includes all persons determined by the
28 department to have a potential tax liability.

29 (2) (a) If the department determines that a request for a refund should be denied in whole or part,
30 it shall notify the taxpayer of the determination. If the department determines that a person has failed to

1 pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the
2 running of any applicable statute of limitations regarding the assessment of the tax.

3 (b) A notice under this section must clearly state:

4 (i) the reasons for the department's determination that a refund is not due or that tax plus interest
5 and penalty, if any, is are due;

6 (ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final
7 department decision, and the taxpayer's right to a review of determinations by the department of labor and
8 industry and board of labor appeals of whether an employer-employee relationship existed between the
9 taxpayer and certain individuals or whether the employment relationship was that of an independent
10 contractor;

11 (iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right
12 to contest the department's determination under this section or to file an appeal with the state tax appeal
13 board;

14 (iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does
15 not agree with an assessment or pay the amount assessed;

16 (v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the
17 taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days;
18 and

19 (vi) that the notice stops the running of the statute of limitations regarding the assessment of the
20 tax.

21 (3) (a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the
22 determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is
23 not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer
24 is objecting to a determination that an employer-employee relationship existed between the taxpayer and
25 individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not
26 notify the department within 30 days:

27 (i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

28 (ii) the taxpayer waives any further right to review under this section or to appeal to the state tax
29 appeal board; and

30 (iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

1 (b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer
2 disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other
3 information to the administrator of the division that administers the tax or to the administrator's designee
4 within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may
5 be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An
6 informal conference is not subject to the Montana Administrative Procedure Act.

7 (ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer
8 disagrees with the department's determination that an employer-employee relationship existed between the
9 taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must
10 be referred to the department of labor and industry for appeal procedures pursuant to ~~39-51-2403~~
11 39-51-2402 and 39-51-2410.

12 (c) Within 60 days after the taxpayer has presented ~~his~~ the taxpayer's objections, as provided in
13 subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's
14 objections and describing the reasons for the determination. The administrator's decision must also clearly
15 set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and
16 the director of revenue.

17 (4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the
18 administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may
19 appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30
20 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer
21 waives any further right to review or appeal and a warrant for distraint may be issued without further
22 opportunity to be heard on the assessment.

23 (b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision
24 pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and
25 any other information to the director of revenue or the director's designee within 60 days after the notice
26 referred to in subsection (4)(a) is mailed. The director or the designee may consider written information,
27 hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana
28 Administrative Procedure Act.

29 (c) Within 60 days after the taxpayer has presented the objections, the director or the designee
30 shall issue a written decision addressing the objections and describing the reasons for the decision. The

1 director's decision is the final decision and assessment of the department.

2 (5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final
3 decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the
4 board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by
5 the board or, if further appeals are filed, by the appropriate court. However, any interest required by law
6 must continue to accrue.

7 (6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal
8 with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the
9 administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the
10 department.

11 (b) If the director notifies the board within 30 days after an appeal is filed that the director has not
12 had an opportunity to review the administrator's decision and the director believes that a review may be
13 helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers
14 reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide
15 the taxpayer's objections and reasons for the objections to the director so that the director or the director's
16 designee may review the controversy and issue a decision within the period of the stay granted by the
17 board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal
18 resumed.

19 (7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the
20 Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by
21 mutual consent of the department and the taxpayer. The department shall consent to all reasonable
22 requests for extension of deadlines.

23 (8) (a) The director of revenue or the director's designee is authorized to enter into an agreement
24 with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department
25 for any taxable period.

26 (b) An agreement under the provisions of subsection (8)(a) is final and conclusive, and, except
27 upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

28 (i) the agreement may not be reopened as to matters agreed upon or be modified by any officer,
29 employee, or agent of this state; and

30 (ii) in any suit, action, or proceeding under the agreement or any determination, assessment,

1 collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement
2 may not be annulled, modified, set aside, or disregarded."
3

4 **Section 2.** Section 15-24-102, MCA, is amended to read:

5 **"15-24-102. Valuation of interstate fleets -- determination of aggregate tax due -- exemption from**
6 **mill levies.** The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet
7 making application for proportional registration, as follows:

8 (1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the
9 department determines the depreciated value.

10 (2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by
11 61-3-721, is the market value.

12 (3) The sum of the market value of all taxable vehicles included in the fleet multiplied by the tax
13 rate for class eight property in 15-6-138 is the taxable value for the entire fleet as provided in 15-6-138.

14 (4) To determine the amount of tax due, the taxable value of the entire fleet must be multiplied by
15 the statewide average county mill levy plus state levies as provided in 15-24-103.

16 (5) To determine the tax due under this chapter, state levies applicable to interstate motor vehicle
17 fleets include but are not limited to levies imposed under ~~15-10-101~~, 15-10-106, 20-9-331, 20-9-333,
18 20-9-360, and 53-2-813.

19 (6) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and
20 distributed as provided in 15-24-105."
21

22 **Section 3.** Section 15-30-111, MCA, is amended to read:

23 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income
24 tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, as that section
25 may be labeled or amended, and in addition includes the following:

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

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

1 subsection (1)(a)(i);

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (d) all Montana income tax refunds or tax refund credits;
- 2 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);
- 3 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by
4 section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983,
5 received by persons for services rendered by them to patrons of premises licensed to provide food,
6 beverage, or lodging;
- 7 (g) all benefits received under the workers' compensation laws;
- 8 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
9 the employee under federal law;
- 10 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
11 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 12 (j) principal and income in a medical care savings account established in accordance with
13 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the
14 taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the
15 taxpayer; ~~and~~
- 16 (k) the recovery during the tax year of any amount deducted in any prior tax year to the extent that
17 the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted; and
- 18 (l) income of a dependent child that is included in the taxpayer's federal adjusted gross income
19 pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return
20 if the child and taxpayer meet the filing requirements in 15-30-142.
- 21 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l)
22 shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same
23 manner as provided by section 995 of the Internal Revenue Code for all periods for which the DISC election
24 is effective.
- 25 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's
26 business deductions by an amount for wages and salaries for which a federal tax credit was elected under
27 section 44B of the Internal Revenue Code of 1954, as that section may be labeled or amended, is allowed
28 to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must
29 be made in the year that the wages and salaries were used to compute the credit. In the case of a
30 partnership or small business corporation, the deduction must be made to determine the amount of income

1 or loss of the partnership or small business corporation.

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

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

19
20 **Section 4.** Section 15-30-204, MCA, is amended to read:

21 **"15-30-204. Weekly, monthly, or annual payment.** (1) An employer subject to the provisions of
22 15-30-202 and 15-30-203 whose total liability for withholdings during the preceding lookback period was
23 \$12,000 or greater shall file a return in the form and containing the information that may be required by
24 the department and shall pay the amount required by 15-30-202 to be deducted and withheld by the
25 employer from wages paid during the preceding payroll period. The payment must be submitted on or
26 before the date on which federal income tax weekly withholding payments are due. On or before the last
27 day of April, July, October, and January, the employer shall file a return in the form and containing the
28 information required by the department. The quarterly returns for employers subject to this subsection must
29 be used to summarize and adjust payments and to request refunds of overpayments. The employer shall
30 also file the annual statement as required by 15-30-207.

1 (2) An employer subject to the provisions of 15-30-202 and 15-30-203 whose total liability for
2 withholdings during the preceding lookback period was less than \$12,000 but greater than \$1,199 shall
3 remit a monthly payment to the department for the amount required by 15-30-202 to be deducted and
4 withheld by the employer from wages paid during the preceding month. The monthly payment must be
5 submitted on or before the 15th day of the month following the payment of the wages. The employer
6 subject to this subsection shall, on or before February 28 of the year following payment of the wages, file
7 an annual return in the form and containing the information required by the department and the annual
8 statement required by 15-30-207. The annual returns for employers subject to this subsection must be used
9 to summarize and adjust payments and to request refunds of overpayments.

10 (3) (a) If the total amount of the tax withheld by an employer under the provisions of 15-30-202
11 upon the wages of all employees of any employer is less than \$1,200 for the preceding lookback period,
12 the employer shall, on or before February 28 of the year succeeding that in which the wages were paid,
13 file an annual return in the form required by the department, together with the annual statement required
14 by 15-30-207, and shall at the same time pay the amount required to be deducted and withheld by the
15 employer from all wages paid during the preceding calendar year.

16 (b) An employer subject to the provisions of this subsection (3) may elect to remit monthly
17 payments. If an employer elects to make monthly payments, the employer shall remit monthly payments
18 during the entire year and is subject to the same interest and penalty provisions as employers subject to
19 the provisions of subsection (2).

20 (c) If an employer subject to the provisions of this subsection (3) does not file the annual return
21 required by subsection (3)(a), the employer is subject to the payment and filing provisions of subsection
22 (2) until the department determines from the employer's subsequent filing history that the employer will
23 file in a timely fashion.

24 (4) (a) On or before November 1 of each year, the department shall notify the employers subject
25 to the provisions of this section of the employers' remittance schedules for the following calendar year
26 based upon the department's review of the preceding lookback period.

27 (b) A new employer or an employer with no filing history is subject to the provisions of subsection
28 (2) until the department is able to determine the employer's proper remittance schedule by a review of the
29 employer's first complete lookback period. ~~A new employer who has been in operation for less than a full~~
30 ~~12 months in the lookback period and who has withheld less than \$1,200 for this period shall follow the~~

1 ~~provisions of subsection (2).~~

2 (c) An employer who has been in operation for less than the full 12 months of the lookback period
 3 and who estimates that the total liability for state income tax withholding and OR, IF THE EMPLOYER IS
 4 NOT SUBJECT TO STATE INCOME TAX WITHHOLDING, THE EMPLOYER'S TAX LIABILITY FOR THE old
 5 fund liability tax will not exceed \$100 \$1,199 for the calendar year may apply to the department to remit
 6 and file pursuant to subsection (3)(a). However, if the combined liability exceeds \$100 \$1,199 at any time
 7 during the calendar year, the employer shall immediately remit the total amount due and begin to remit
 8 payments pursuant to subsection (2). The employer is liable to monitor the accrued tax liability.

9 (5) If the department has reason to believe that collection of the amount of any tax withheld is in
 10 jeopardy, it may proceed as provided for under 15-30-312 with respect to jeopardy assessments of income
 11 tax."

12

13 **Section 5.** Section 39-71-2503, MCA, is amended to read:

14 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
 15 employer, except an employer whose employees are covered by federal workers' compensation legislation,
 16 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
 17 old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

18 (i) for the preceding payroll period for employers subject to the payment schedule contained in
 19 15-30-204(1);

20 (ii) for the preceding month for employers subject to the payment schedule contained in
 21 15-30-204(2); and

22 (iii) for the preceding year for employers subject to the payment schedule contained in
 23 15-30-204(3)(a).

24 (b) There is imposed on each employee, except an employee who is covered by federal workers'
 25 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.
 26 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the
 27 wages.

28 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
 29 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
 30 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each

1 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
2 partner, or member or manager derived from ongoing activities.

3 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
4 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

5 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
6 subsection (1)(c).

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

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

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

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

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

29 (i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and
30 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the

1 old fund liability tax required by this section.

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

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

8 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
9 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
10 remainder to the account provided for in 39-71-2504.

11 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
12 partnerships, and members or managers of limited liability companies must be made with and at the same
13 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
14 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the account provided
15 for in 39-71-2504.

16 (c) Remuneration paid by an employer for domestic service in the employer's private home is not
17 considered wages subject to the workers' compensation old fund liability tax if the remuneration paid during
18 the year is less than \$1,000 for each employee. If the remuneration paid during the year is \$1,000 or
19 more, it is subject to the provisions of subsections (1)(a) and (1)(b) and must be paid with the employer's
20 Montana individual income tax return. However, if the employer withholds state income tax from the
21 wages of the employee, the employer must make tax payments and returns according to 15-30-204 and
22 subsection (3)(a) of this section.

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

26 (5) Returns and remittances under subsection (3) and any information obtained by the department
27 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
28 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,
29 tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions
30 that ensure the continued confidentiality of the information.

1 (6) The department of labor and industry and the state fund shall give the department a list of all
2 employers having coverage under any plan administered or regulated by the department of labor and
3 industry and the state fund. The department of labor and industry and the state fund shall update the lists
4 weekly. The department of labor and industry and the state fund shall provide the department with access
5 to their computer data bases and paper files and records for the purpose of the department's administration
6 of the tax imposed by this section.

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

13
14 **Section 6.** Section 39-71-2505, MCA, is amended to read:

15 **"39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before**
16 **July 1, 1990.** (1) The state fund shall pay for the cost of administering and paying claims for injuries
17 resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by
18 borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable
19 on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the
20 state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to
21 pay for administering and paying the claims for the ensuing year.

22 (2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall
23 forward to the budget director information pertaining to the amount that the state fund will borrow for the
24 ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in
25 subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected
26 liability payments and cash needs on which the amount to be borrowed is based. The schedule must include
27 but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old
28 fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend
29 cash for the year 2007.

30 (b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided

1 in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll
 2 for in the preceding calendar quarter;

3 (A) payroll period for employers subject to the payment schedule contained in 15-30-204(1);

4 (B) month for employers subject to the payment schedule contained in 15-30-204(2);

5 (C) year for employers subject to the payment schedule contained in 15-30-204(3)(a).

6 (ii) The employee old fund liability tax is an amount equal to 0.2% of the employee's wages ~~in the~~
 7 ~~preceding calendar quarter~~ **EACH PAYROLL PERIOD.**

8 (iii) The old fund liability tax is an amount equal to 0.2% on the profit of each separate business
 9 of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation
 10 shareholder, partner of a partnership, or member or manager of a limited liability company.

11 (iv) The rate of the employer old fund liability tax determined by this section includes the 0.28%
 12 employer old fund liability tax provided for in 39-71-2503.

13 (v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in
 14 39-71-2503 terminates at the end of fiscal year 2007.

15 (B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are
 16 outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

17 (vi) The old fund liability tax described in this section must be collected and deposited as provided
 18 in 39-71-2503 and 39-71-2504.

19 (3) If in any January the cumulative projected amount to be borrowed by the state fund from
 20 reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,
 21 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,
 22 not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,
 23 the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the
 24 following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance
 25 for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability
 26 tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

27 (4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

28 (5) The budget director shall certify the cash flow projections of the state fund required by this
 29 section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected
 30 pursuant to this section."

