

SENATE BILL NO. 138

INTRODUCED BY D. ANKNEY, F. THOMAS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INCOME TAX EXAMINATION AND COLLECTION LAWS;
5 ~~ESTABLISHING A TIME LIMIT FOR COLLECTION OF DELINQUENT TAXES BY THE DEPARTMENT OF~~
6 ~~REVENUE; CLARIFYING WHEN A TAXPAYER MAY REVISE A RETURN AFTER AN AUDIT; CREATING A~~
7 ~~TAXPAYER REFUND PROCEDURE FOR RECOVERY OF A PAYMENT OF TAX AFTER EXPIRATION OF THE~~
8 ~~STATUTE OF LIMITATIONS FOR ASSESSMENT OF ADDITIONAL TAX; PROVIDING RULEMAKING~~
9 ~~AUTHORITY; AMENDING SECTIONS 15-1-701, 15-1-704, 15-30-2607, 15-30-2609, 15-31-503, AND 15-31-509,~~
10 ~~MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."~~
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 ~~NEW SECTION. Section 1. Limitation on collection after assessment.~~ (1) Except as provided in
15 subsection (2), the department is prohibited from collecting a delinquency any time after 10 years of the date of
16 assessment when the delinquency pertains to an assessment of tax or a penalty imposed under this chapter.

17 ~~(2) The period of limitation on collection activity in subsection (1) is extended:~~

18 ~~(a) when the taxpayer and the department agree in writing to extend the timeframe for collection activity;~~

19 or

20 ~~(b) by the amount of time the department is prohibited by law from collection activity, including but not~~
21 ~~limited to a suspension based on a judicial proceeding or military service as provided in 15-30-2632 and~~
22 ~~15-30-2633.~~

23
24 ~~NEW SECTION. Section 2. Limitation on collection after assessment.~~ (1) Except as provided in
25 subsection (2), the department is prohibited from collecting a delinquency any time after 10 years of the date of
26 assessment when the delinquency pertains to an assessment of tax or a penalty imposed under this chapter.

27 ~~(2) The period of limitation on collection activity in subsection (1) is extended:~~

28 ~~(a) when the taxpayer and the department agree in writing to extend the timeframe for collection activity;~~

29 or

30 ~~(b) by the amount of time the department is prohibited by law from collection activity, including but not~~



1 limited to a suspension based on a judicial proceeding.

2

3 ~~Section 3. Section 15-1-701, MCA, is amended to read:~~

4 ~~"15-1-701. Warrant for distraint. (1) A warrant for distraint is an order, under the official seal of the~~
 5 ~~department or of the department of transportation, directed to a sheriff of a county of Montana or to an agent~~
 6 ~~authorized by law to collect a tax. The order commands the recipient to levy upon and sell the real and personal~~
 7 ~~property of a delinquent taxpayer.~~

8 ~~(2) Upon filing the warrant as provided in 15-1-704, there is a lien against all real and personal property~~
 9 ~~of the delinquent taxpayer located in the county where the warrant is filed. The Subject to [section 1] and [section~~
 10 ~~2], the resulting lien is treated in the same manner as a properly docketed judgment lien, the department is a~~
 11 ~~judgment lien creditor, and the department may collect delinquent taxes and enforce the tax lien in the same~~
 12 ~~manner as a judgment is enforced, except that the department may enforce the judgment lien at any time within~~
 13 ~~10 years of its creation or effective date, whichever is later.~~

14 ~~(3) A warrant may be issued for the amount of unpaid tax plus accumulated penalty, if any, and~~
 15 ~~accumulated interest. The lien is for the amount indicated on the warrant plus accrued penalty and interest from~~
 16 ~~the date of the warrant. The priority date of the tax lien created by filing the warrant for distraint is the date the~~
 17 ~~tax was due as indicated on the warrant for distraint.~~

18 ~~(4) The accelerated priority date provided for in subsection (3) is not valid against purchasers, holders~~
 19 ~~of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through~~
 20 ~~15, whose interest is recorded prior to the filing of the warrant for distraint."~~

21

22 ~~Section 4. Section 15-1-704, MCA, is amended to read:~~

23 ~~"15-1-704. Filing with district court. (1) After issuing a warrant, the department may file the warrant~~
 24 ~~with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the~~
 25 ~~taxpayer listed as the judgment debtor.~~

26 ~~(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect~~
 27 ~~the tax.~~

28 ~~(3) A Except as provided in subsection (4), a judgment lien filed pursuant to this section may be renewed~~
 29 ~~for another 10-year period, upon motion, or by judgment for that purpose founded upon supplemental pleadings.~~

30 ~~(4) A judgment lien for delinquencies arising from:~~

1 ~~_____ (a) Title 15, chapter 30, is subject to the provisions of [section 1]; and~~

2 ~~_____ (b) Title 15, chapter 31, is subject to the provisions of [section 2]."~~

3

4 ~~_____ **Section 5.** Section 15-30-2607, MCA, is amended to read:~~

5 ~~_____ "**15-30-2607. Application for revision -- appeal.** An application for revision may be filed with the~~
 6 ~~department by a taxpayer within 3 years from the last day prescribed for filing the return as provided in~~
 7 ~~15-30-2605(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the~~
 8 ~~department has revised a return pursuant to 15-30-2605(3), the taxpayer may revise the same return until the~~
 9 ~~liability for that tax year is finally determined through the expiration of the period provided by 15-30-2606 and this~~
 10 ~~section or by a final adjudicative determination of the tax due through the exhaustion of judicial remedies. A~~
 11 ~~department audit does not create a final determination. If the taxpayer is not satisfied with the action taken by the~~
 12 ~~department, the taxpayer may appeal to the state tax appeal board."~~

13

14 ~~_____ **Section 1.** Section 15-30-2609, MCA, is amended to read:~~

15 ~~_____ "**15-30-2609. Credits and refunds -- period of limitations.** (1) If the department discovers from the~~
 16 ~~examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of~~
 17 ~~income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally~~
 18 ~~collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due~~
 19 ~~from the taxpayer and the balance of the excess must be refunded to the taxpayer.~~

20 ~~_____ (2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration~~
 21 ~~of the period provided by 15-30-2606 and 15-30-2607, or 2 years from the time the tax was paid, whichever is~~
 22 ~~later, the taxpayer files a claim or the department determines there has been an overpayment A REFUND OR~~
 23 ~~CREDIT MAY NOT BE ALLOWED OR PAID WITH RESPECT TO THE YEAR FOR WHICH A RETURN IS FILED AFTER EXPIRATION OF~~
 24 ~~THE PERIOD PROVIDED BY 15-30-2606 AND 15-30-2607 OR AFTER 1 YEAR FROM THE DATE OF THE OVERPAYMENT OR~~
 25 ~~FILING, WHICHEVER IS LATER, UNLESS BEFORE THE EXPIRATION OF THE PERIOD THE TAXPAYER FILES A CLAIM FOR REFUND~~
 26 ~~OR CREDIT OR THE DEPARTMENT HAS DETERMINED THE EXISTENCE OF THE OVERPAYMENT AND HAS APPROVED THE~~
 27 ~~REFUND OR CREDIT. If no return was filed by the taxpayer, a claim for credit or refund must be filed within 2 years~~
 28 ~~from the time the tax was paid.~~

29 ~~_____ (b) Subject to subsection (2)(c), no credit or refund is allowed after the expiration of the period of~~
 30 ~~limitation prescribed in subsection (2)(a), unless a taxpayer files a claim for credit or refund and pays at least 20%~~

1 ~~of the tax due:~~

2 ~~—— (c) (i) The department, the state tax appeal board, or a court may reduce or waive the prepayment of~~
 3 ~~tax requirement imposed by subsection (2)(b) if the taxpayer demonstrates that it would cause a significant~~
 4 ~~financial hardship:~~

5 ~~—— (ii) If a taxpayer prevails and is entitled to a refund, then the unpaid portion of any assessments that are~~
 6 ~~related to the refund claim proceeding are extinguished, regardless of the amount of tax due that was prepaid.~~

7 ~~—— (d) If the claim was not filed within the period provided by 15-30-2606 and 15-30-2607, the amount of~~
 8 ~~the credit or refund may not exceed the portion of the tax paid during the 2 years immediately preceding the filing~~
 9 ~~of the claim.~~

10 ~~—— (e) If the statute of limitations for assessment of additional tax has expired, the department may claim~~
 11 ~~a setoff defense in order to reduce or eliminate a refund claim. The setoff defense must relate to the same taxable~~
 12 ~~period and a taxpayer may not allege new issues that were not alleged in the refund claim, unless the new issue~~
 13 ~~relates to the department's setoff defense.~~

14 (b)(f)(B) If an overpayment of tax results from a net operating loss carryback, the overpayment may be
 15 refunded or credited within the period that expires on the 15th day of the 40th month following the close of the
 16 tax year of the net operating loss if that period expires later than 3 years from the due date of the return for the
 17 year to which the net operating loss is carried back.

18 (3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either
 19 approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60
 20 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review
 21 of the determination of the department may be pursued as provided in 15-1-211.

22 (4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided
 23 in 15-1-216. Except as provided in subsection (4)(b), interest is payable from the due date of the return or from
 24 the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting
 25 of the overpayment. With respect to tax paid by withholding or by estimated tax payments, the date of
 26 overpayment is the date on which the return for the tax year was due. Interest does not accrue on an
 27 overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding tax year.
 28 Interest does not accrue during any period for which the processing of a claim for refund is delayed more than
 29 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose
 30 of verifying the amount of the overpayment. Interest is not allowed if:

1 (i) the overpayment is refunded within 45 days from the date the return is due or the date the return is
2 filed, whichever date is later;

3 (ii) the overpayment results from the carryback of a net operating loss; or

4 (iii) the amount of interest is less than \$1.

5 (b) Subject to the provisions of subsection (4)(a)(i), if the return is filed after the time prescribed for filing
6 in 15-30-2604, including any extension, interest is payable from the date the return was filed.

7 (5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax
8 liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to
9 which interest is allowable."

10

11 ~~Section 7. Section 15-31-503, MCA, is amended to read:~~

12 ~~"15-31-503. Deficiency assessment -- notice -- penalty and interest. (1) If the department determines~~
13 ~~that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice,~~
14 ~~pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the~~
15 ~~determination pursuant to 15-1-211. If the department has revised a return, the taxpayer may revise the same~~
16 ~~return until the liability for that tax year is finally determined through the expiration of the period of limitations for~~
17 ~~assessment of additional tax or by a final adjudicative determination of the tax due through the exhaustion of~~
18 ~~judicial remedies. A department audit does not create a final determination.~~

19 ~~(2) Penalty and interest on any deficiency assessment must be calculated from the date specified in~~
20 ~~15-31-502 for payment of the tax. Penalty and interest must be added to the deficiency as provided in 15-1-216.~~
21 ~~A certificate by the department of the mailing of the notice specified in subsection (1) is prima facie evidence of~~
22 ~~the computation and levy of the deficiency in tax and of the giving of the notice."~~

23

24 **Section 2.** Section 15-31-509, MCA, is amended to read:

25 **"15-31-509. Periods of limitation.** (1) Except as otherwise provided in 15-31-544 and this section, a
26 deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice
27 of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the
28 purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last
29 day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in
30 writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period

1 agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not
2 apply when:

3 (a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of
4 federal tax if the suspension of the limitation set forth in this section lasts:

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

6 (ii) until 1 year after the federal changes have become final or an amended federal return is filed as a
7 result of the suspension of the federal statute, whichever is the latest in time; or

8 (b) a taxpayer has failed to file an amended Montana return, as required by 15-31-506, until 3 years after
9 the federal changes become final or the amended federal return was filed, ~~whichever the case may be.~~

10 (2) ~~(a)~~ A refund or credit may not be allowed or paid with respect to the year for which a return is filed
11 after 3 years from the last day prescribed for filing the return or after ~~4 year~~ 2 years 1 YEAR from the date of the
12 overpayment OR FILING, whichever ~~period expires the~~ is later, unless before the expiration of the period the
13 taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment
14 and has approved the refund or credit. If no return was filed by the taxpayer, a claim for credit or refund must be
15 filed within 2 years from the time the tax was paid.

16 ~~—— (b) Subject to subsection (2)(c), no credit or refund is allowed after the expiration of the period of~~
17 ~~limitations for assessment of additional tax has expired unless a taxpayer files a claim for credit or refund and~~
18 ~~pays at least 40% of the tax due.~~

19 ~~—— (c) (i) The department, the state tax appeal board, or a court may reduce or waive the prepayment of~~
20 ~~tax requirement imposed by subsection (2)(b) if the taxpayer demonstrates that it would cause a significant~~
21 ~~financial hardship.~~

22 ~~—— (ii) If a taxpayer prevails and is entitled to a refund, then the unpaid portion of any assessments that are~~
23 ~~related to the refund claim proceeding are extinguished, regardless of the amount of tax due that was prepaid.~~

24 ~~—— (d) If the statute of limitations for assessment of additional tax has expired:~~

25 ~~—— (i) the amount of the credit or refund may not exceed the portion of the tax paid during the 2 years~~
26 ~~immediately preceding the filing of the claim; and~~

27 ~~—— (ii) the department may claim a setoff defense in order to reduce or eliminate a refund claim. The setoff~~
28 ~~defense must relate to the same taxable period and a taxpayer may not allege new issues that were not alleged~~
29 ~~in the refund claim, unless the new issue relates to the department's setoff defense.~~

30 ~~(e)~~ If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within

1 which the department may propose an additional assessment, the period within which a claim for refund or credit
 2 may be filed or a credit or refund allowed in the event a claim is not filed ~~must is~~ automatically ~~be~~ extended.

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

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

11
 12 ~~NEW SECTION. Section 9. Codification instruction. (1) [Section 1] is intended to be codified as an~~
 13 ~~integral part of Title 15, chapter 30, part 26, and the provisions of Title 15, chapter 30, part 26, apply to [section~~
 14 ~~1].~~

15 ~~(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, part 5, and the~~
 16 ~~provisions of Title 15, chapter 31, part 5, apply to [section 2].~~

17

18 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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20 NEW SECTION. Section 4. Retroactive applicability. [This act] applies retroactively, within the
 21 meaning of 1-2-109, to tax years beginning after December 31, 2016.

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- END -