

HOUSE BILL 458

Introduced by Elliott, et al.

1/30	Introduced
1/30	Referred to Taxation
1/30	First Reading
1/30	Fiscal Note Requested
2/04	Fiscal Note Received
2/13	Hearing
2/13	Fiscal Note Printed
3/27	Tabled in Committee

1 HOUSE BILL NO. 458
 2 INTRODUCED BY Tim
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON THE
 5 EXCESS PROFITS OF COAL PRODUCERS; APPLYING THE TAX TO NET
 6 PROFITS IN EXCESS OF 20 PERCENT OF GROSS INCOME; PROVIDING A
 7 METHOD FOR DETERMINING THE EXCESS PROFITS OF COAL PRODUCERS;
 8 AMENDING SECTION 15-31-114, MCA; AND PROVIDING AN IMMEDIATE
 9 EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. **Section 1.** Excess profits tax imposed on
 13 producers of coal -- definition -- filing requirements. (1)
 14 There is a tax on the excess profits of coal producers,
 15 calculated as provided in subsection (3).

16 (2) For the purposes of this section, "coal producer"
 17 means a coal mine operator required to file a statement
 18 under 15-35-104.

19 (3) The tax on excess profits of coal producers is
 20 calculated by using the formula $EPT = 0.5(EP)$, where:

21 (a) EPT is the amount of tax to be paid on excess
 22 profits; and

23 (b) EP is calculated by using the formula: $EP = NP -$
 24 $(0.2(GI))$, where:

25 (i) EP is excess profits;

1 (ii) NP is net profits and is defined for the purposes
 2 of this section as net income, as defined in 15-31-113, but
 3 subtracting all taxes listed in 15-31-114(5)(a)(i) through
 4 (5)(a)(iv) and (5)(b), whether or not the taxes are
 5 deductible for corporation license tax purposes; and

6 (iii) GI is gross income, as defined in 15-31-113(1)(a),
 7 but including the exclusion allowed in 15-31-113(1)(b).

8 (4) (a) If the amount of tax on excess profits
 9 calculated under subsection (3) is equal to or less than
 10 zero, the amount of tax to be paid on excess profits is
 11 zero.

12 (b) A calculation under subsection (3) that results in
 13 a negative amount of excess profits tax may not be used to
 14 reduce the amount of corporation license tax or corporation
 15 income tax due, nor may a negative amount of excess profits
 16 tax be carried forward or carried back against corporation
 17 license tax or corporation income tax liability in a past or
 18 future year.

19 (5) The tax on excess profits must be calculated on a
 20 return to be provided by the department and must be filed
 21 with and paid to the department at the same time as the
 22 return required to be filed for the corporation license tax
 23 under 15-31-111 or the corporation income tax under Title
 24 15, chapter 31, part 4.

25 **Section 2.** Section 15-31-114, MCA, is amended to read:

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1 "15-31-114. Deductions allowed in computing income. In
2 computing the net income, the following deductions shall be
3 allowed from the gross income received by such corporation
4 within the year from all sources:

5 (1) All the ordinary and necessary expenses paid or
6 incurred during the taxable year in the maintenance and
7 operation of its business and properties, including
8 reasonable allowance for salaries for personal services
9 actually rendered, subject to the limitation hereinafter
10 contained, rentals or other payments required to be made as
11 a condition to the continued use or possession of property
12 to which the corporation has not taken or is not taking
13 title or in which it has no equity. No deduction shall be
14 allowed for salaries paid upon which the recipient thereof
15 has not paid Montana state income tax; provided, however,
16 that where domestic corporations are taxed on income derived
17 from without the state, salaries of officers paid in
18 connection with securing such income shall be deductible.

19 (2) (a) All losses actually sustained and charged off
20 within the year and not compensated by insurance or
21 otherwise, including a reasonable allowance for the wear and
22 tear and obsolescence of property used in the trade or
23 business, such allowance to be determined according to the
24 provisions of section 167 of the Internal Revenue Code in
25 effect with respect to the taxable year. All elections for

1 depreciation shall be the same as the elections made for
2 federal income tax purposes. No deduction shall be allowed
3 for any amount paid out for any buildings, permanent
4 improvements, or betterments made to increase the value of
5 any property or estate, and no deduction shall be made for
6 any amount of expense of restoring property or making good
7 the exhaustion thereof for which an allowance is or has been
8 made. No depreciation or amortization deduction shall be
9 allowed on a title plant as defined in 33-25-105(15).

10 (b) There shall be allowed as a deduction for the
11 taxable period a net operating loss deduction determined
12 according to the provisions of 15-31-119.

13 (3) In the case of mines, other natural deposits, oil
14 and gas wells, and timber, a reasonable allowance for
15 depletion and for depreciation of improvements; such
16 reasonable allowance to be determined according to the
17 provisions of the Internal Revenue Code in effect for the
18 taxable year. All elections made under the Internal Revenue
19 Code with respect to capitalizing or expensing exploration
20 and development costs and intangible drilling expenses for
21 corporation license tax purposes shall be the same as the
22 elections made for federal income tax purposes.

23 (4) The amount of interest paid within the year on its
24 indebtedness incurred in the operation of the business from
25 which its income is derived; but no interest shall be

1 allowed as a deduction if paid on an indebtedness created
2 for the purchase, maintenance, or improvement of property or
3 for the conduct of business unless the income from such
4 property or business would be taxable under this part.

5 (5) (a) Taxes paid within the year, except the
6 following:

7 (i) Taxes imposed by this part.

8 (ii) Taxes assessed against local benefits of a kind
9 tending to increase the value of the property assessed.

10 (iii) Taxes on or according to or measured by net income
11 or profits imposed by authority of the government of the
12 United States.

13 (iv) Taxes imposed by any other state or country upon or
14 measured by net income or profits.

15 (v) Taxes imposed on the excess profits of coal
16 producers as provided in [section 1].

17 (b) Taxes deductible under this part shall be construed
18 to include taxes imposed by any county, school district, or
19 municipality of this state.

20 (6) That portion of an energy-related investment
21 allowed as a deduction under 15-32-103.

22 (7) (a) Except as provided in subsection (b),
23 charitable contributions and gifts that qualify for
24 deduction under section 170 of the Internal Revenue Code, as
25 amended.

1 (b) The public service commission shall not allow in
2 the rate base of a regulated corporation the inclusion of
3 contributions made under this subsection.

4 (8) In lieu of the deduction allowed under subsection
5 (7), the taxpayer may deduct the fair market value, not to
6 exceed 30% of the taxpayer's net income, of a computer or
7 other sophisticated technological equipment or apparatus
8 intended for use with the computer donated to an elementary,
9 secondary, or accredited postsecondary school located in
10 Montana if:

11 (a) the contribution is made no later than 5 years
12 after the manufacture of the donated property is
13 substantially completed;

14 (b) the property is not transferred by the donee in
15 exchange for money, other property, or services; and

16 (c) the taxpayer receives a written statement from the
17 donee in which the donee agrees to accept the property and
18 representing that the use and disposition of the property
19 will be in accordance with the provisions of (b) of this
20 subsection (8)."

21 NEW SECTION. Section 3. Effective date -- retroactive
22 applicability. [This act] is effective on passage and
23 approval and applies retroactively, within the meaning of
24 1-2-109, to January 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0458, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a tax on the excess profits of coal producers; applying the tax to net profits in excess of 20 percent of gross income; providing a method for determining the excess profits of coal producers.

ASSUMPTIONS:

1. The method of reporting used to determine a corporation's license or income tax, is also the method used to calculate the excess profits tax provided for in this bill.
2. If a coal producer operates within and without the state, the excess profits calculation would be only on their Montana activities.
3. If a producer files on a unitary basis with affiliated companies, the excess profits calculation would be only on the producer's Montana activities.
4. For a multistate producer, gross proceeds is total Montana sales, as allocated in MCA, 15-31-311.
5. For a multistate producer, net proceeds is net income apportioned to Montana as provided under Part 3 of Chapter 31.
6. No producers who are corporations have net proceeds greater than 20% of gross proceeds.

FISCAL IMPACT:

Expenditures:


Implementation of the proposal will require 0.50 additional FTEs (approximately \$20,000) for auditing, and approximately \$500 for printing and distribution of new forms (General Fund).

Revenues:

Because no producers who are corporations are projected to have net proceeds greater than 20% of gross proceeds, there is no revenue impact under this proposal.

TECHNICAL NOTES:

The revenue impacts provided herein are based on the specific set of assumptions shown above. The bill will have to be modified to the extent that language in the bill does not provide for the allocation of income commensurate with these assumptions.


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

2-12-91

JIM ELLIOTT, PRIMARY SPONSOR

DATE

Fiscal Note for HB0458, as introduced

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