

HOUSE BILL 460

Introduced by Whalen, et al.

1/30	Introduced
1/30	Referred to Taxation
1/30	First Reading
1/30	Fiscal Note Requested
2/05	Fiscal Note Received
2/07	Fiscal Note Printed
2/07	Hearing
3/27	Tabled in Committee

1 HOUSE BILL NO. 460
 2 INTRODUCED BY Whalen
 3 *Duf*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING THE CORPORATE
 5 LICENSE TAX ON INSURANCE COMPANIES; AUTHORIZING THE
 6 COMMISSIONER OF INSURANCE TO ADOPT RULES TO IMPLEMENT THE
 7 TAX; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-501,
 8 15-31-101, 15-31-113, 33-1-313, AND 33-2-705, MCA; AND
 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
 10 APPLICABILITY DATE."
 11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 **Section 1.** Section 15-1-501, MCA, is amended to read:
 14 "15-1-501. Disposition of money from certain designated
 15 license and other taxes. (1) The state treasurer shall
 16 deposit to the credit of the state general fund all money
 17 received by him from the collection of:
 18 (a) fees from driver's licenses, motorcycle
 19 endorsements, and duplicate driver's licenses as provided in
 20 61-5-121;
 21 (b) electrical energy producer's license taxes under
 22 chapter 51;
 23 (c) severance taxes allocated to the general fund under
 24 chapter 36;
 25 (d) liquor license taxes under Title 16;

1 (e) telephone company license taxes under chapter 53;
 2 and
 3 (f) inheritance and estate taxes under Title 72,
 4 chapter 16.
 5 (2) All money received from the collection of income
 6 taxes under chapter 30 of this title must be deposited as
 7 follows:
 8 (a) 57% in fiscal year 1990 and 50% in fiscal year
 9 1991, to the credit of the state general fund;
 10 (b) 9.8% in fiscal year 1990 and 8.7% in fiscal year
 11 1991, to the credit of the debt service account for
 12 long-range building program bonds as described in 17-5-408;
 13 and
 14 (c) 33.2% in fiscal year 1990 and 41.3% in fiscal year
 15 1991, to the credit of the state special revenue fund for
 16 state equalization aid to the public schools of Montana as
 17 described in 20-9-343.
 18 (3) All money received from the collection of
 19 corporation license and income taxes under chapter 31 of
 20 this title, except as provided in subsection (4) and
 21 15-31-702, must be deposited as follows:
 22 (a) 64% in fiscal year 1990 and 61% in fiscal year
 23 1991, to the credit of the state general fund;
 24 (b) 11% in fiscal year 1990 and 10.5% in fiscal year
 25 1991, to the credit of the debt service account for



1 long-range building program bonds as described in 17-5-408;
2 and

3 (c) 25% in fiscal year 1990 and 28.5% in fiscal year
4 1991, to the credit of the state special revenue fund for
5 state equalization aid to the public schools of Montana as
6 described in 20-9-343.

7 (4) (a) The commissioner of insurance shall retain an
8 amount of each tax paid under 15-31-101(5) equal to the
9 amount the taxpayer would have paid under 33-2-705 had the
10 taxpayer not been exempt from the tax under 33-2-705 by
11 reason of paying a tax under 15-31-101(5). The commissioner
12 of insurance shall distribute the retained amount in the
13 same manner as taxes paid under 33-2-705.

14 (b) Tax money not necessary for the purposes of
15 subsection (4)(a) must be deposited to the credit of the
16 state general fund.

17 ~~4~~(5) The state treasurer shall also deposit to the
18 credit of the state general fund all money received by him
19 from the collection of license taxes, fees, and all net
20 revenues and receipts from all other sources under the
21 operation of the Montana Alcoholic Beverage Code.

22 ~~5~~(6) After the distribution provided for in
23 15-36-112, the remainder of the oil severance tax
24 collections must be deposited in the general fund."

25 **Section 2.** Section 15-31-101, MCA, is amended to read:

1 "15-31-101. Organizations subject to tax. (1) The term
2 "corporation" includes associations, joint-stock companies,
3 common-law trusts and business trusts which do business in
4 an organized capacity, and all other corporations whether
5 created, organized, or existing under and pursuant to the
6 laws, agreements, or declarations of trust of any state,
7 country, or the United States.

8 (2) The terms "engaged in business" and "doing
9 business" both mean actively engaging in any transaction for
10 the purpose of financial or pecuniary gain or profit.

11 (3) Except as provided in subsection (5) and 15-31-103
12 or-33-2-705~~(4)~~ or as may be otherwise specifically provided,
13 every corporation engaged in business in the state of
14 Montana shall annually pay to the state treasurer as a
15 license fee for the privilege of carrying on business in
16 this state such percentage or percentages of its total net
17 income for the preceding taxable year at the rate
18 hereinafter set forth. In the case of corporations having
19 income from business activity which is taxable both within
20 and without this state, the license fee shall be measured by
21 the net income derived from or attributable to Montana
22 sources as determined under part 3. Except as provided in
23 15-31-502, this tax is due and payable on the 15th day of
24 the 5th month following the close of the taxable year of the
25 corporation; however, the tax becomes a lien as provided in

1 this chapter on the last day of the taxable year in which
2 the income was earned and is for the privilege of carrying
3 on business in this state for the taxable year in which the
4 income was earned.

5 (4) Every bank organized under the laws of the state of
6 Montana, of any other state, or of the United States and
7 every savings and loan association organized under the laws
8 of this state or of the United States is subject to the
9 Montana corporation license tax provided for under this
10 chapter. For taxable years beginning on and after January 1,
11 1972, this subsection is effective in accordance with Public
12 Law 91-156, section 2 (12 U.S.C. 548).

13 (5) An insurance company not exempt from the license
14 tax under 15-31-102 shall pay the license tax imposed by
15 this section if the amount of the license tax exceeds the
16 amount of the tax on net premiums due under 33-2-705. An
17 insurance company that pays the tax imposed by this section
18 is exempt from the tax imposed by 33-2-705. The license tax
19 on insurance companies must be collected by the commissioner
20 of insurance, and for purposes of this subsection, any
21 references in this title to the collection of taxes by the
22 department or department of revenue means collection by the
23 commissioner of insurance."

24 **Section 3.** Section 15-31-113, MCA, is amended to read:

25 "15-31-113. Gross income and net income. (1) The term

1 "gross income" means all income recognized in determining
2 the corporation's gross income for federal income tax
3 purposes and:

4 (a) including:

5 (i) interest exempt from federal income tax;

6 (ii) the portion of gain from a liquidation of the
7 reporting corporation not recognized for federal corporate
8 income tax purposes pursuant to sections 331 through 337 of
9 the Internal Revenue Code (as those sections may be amended
10 or renumbered) attributable to stockholders, either
11 individual or corporate, not subject to Montana income or
12 license tax under Title 15, chapter 30 or chapter 31, as
13 appropriate, on the gain passing through to the stockholders
14 pursuant to federal law; and

15 (b) excluding gain recognized for federal tax purposes
16 as a shareholder of a liquidating corporation pursuant to
17 sections 331 through 337 of the Internal Revenue Code (as
18 those sections may be amended or renumbered) when the gain
19 is required to be recognized by the liquidating corporation
20 pursuant to subsection (1)(a)(ii) of this section.

21 (2) The term "net income" means the gross income of the
22 corporation less, except as provided in subsection (4), the
23 deductions set forth in 15-31-114.

24 (3) No corporation is exempt from the corporation
25 license tax unless specifically provided for under

1 15-31-101(3) or 15-31-102. Any corporation not subject to or
 2 liable for federal income tax but not exempt from the
 3 corporation license tax under 15-31-101(3) or 15-31-102
 4 shall compute gross income for corporation license tax
 5 purposes in the same manner as a corporation that is subject
 6 to or liable for federal income tax according to the
 7 provisions for determining gross income in the federal
 8 Internal Revenue Code in effect for the taxable year.

9 (4) The net income of each insurance company taxable
 10 under 15-31-101(5) is the gross income, as determined under
 11 this section, less either the deductions set forth in
 12 15-31-114 or the deductions allowed by any standard adopted
 13 by the national association of insurance commissioners for
 14 determining net income. If the commissioner of insurance
 15 chooses to apply the deductions adopted by the national
 16 association of insurance commissioners, the commissioner of
 17 insurance shall adopt the standards by rule and shall
 18 require their use."

19 **Section 4.** Section 33-1-313, MCA, is amended to read:

20 "33-1-313. Rules -- notice, hearing, and penalty. (1)
 21 The commissioner may make reasonable rules necessary for or
 22 as an aid to effectuation of any provision of this code and
 23 15-31-113(4). No such rule shall extend, modify, or conflict
 24 with any law of this state or the reasonable implications
 25 thereof. Any such rule affecting persons or matters other

1 than the personnel or the internal affairs of the
 2 commissioner's office shall be made or amended only after a
 3 hearing thereon of which notice was given as required by
 4 33-1-703. If reasonably possible the commissioner shall set
 5 forth the proposed rule or amendment in or with the notice
 6 of hearing. No such rule or amendment as to which a hearing
 7 is required shall be effective until it has been on file as
 8 a public record in the commissioner's office for at least 10
 9 days.

10 (2) In addition to any other penalty provided, willful
 11 violation of any such rule shall subject the violator to
 12 such administrative penalties as may be applicable under
 13 this code as for violation of the provision as to which such
 14 rule relates."

15 **Section 5.** Section 33-2-705, MCA, is amended to read:

16 "33-2-705. Report on premiums and other consideration
 17 -- tax. (1) Each authorized insurer and each formerly
 18 authorized insurer with respect to premiums so received
 19 while an authorized insurer in this state shall file with
 20 the commissioner, on or before March 1 each year, a report
 21 in form as prescribed by the commissioner showing total
 22 direct premium income, including policy, membership, and
 23 other fees, premiums paid by application of dividends,
 24 refunds, savings, savings coupons, and similar returns or
 25 credits to payment of premiums for new or additional or

1 extended or renewed insurance, charges for payment of
 2 premium in installments, and all other consideration for
 3 insurance from all kinds and classes of insurance, whether
 4 designated as a premium or otherwise, received by it during
 5 the preceding calendar year on account of policies covering
 6 property, subjects, or risks located, resident, or to be
 7 performed in Montana, with proper proportionate allocation
 8 of premium as to such property, subjects, or risks in
 9 Montana insured under policies or contracts covering
 10 property, subjects, or risks located or resident in more
 11 than one state, after deducting from such total direct
 12 premium income applicable cancellations, returned premiums,
 13 the unabsorbed portion of any deposit premium, the amount of
 14 reduction in or refund of premiums allowed to industrial
 15 life policyholders for payment of premiums direct to an
 16 office of the insurer, all policy dividends, refunds,
 17 savings, savings coupons, and other similar returns paid or
 18 credited to policyholders with respect to such policies. As
 19 to title insurance, "premium" includes the total charge for
 20 such insurance. No deduction shall be made of the cash
 21 surrender values of policies. Considerations received on
 22 annuity contracts shall not be included in total direct
 23 premium income and shall not be subject to tax.

24 (2) Coincident with the filing of the tax report
 25 referred to in subsection (1) above, each such insurer shall

1 pay to the commissioner a tax upon such net premiums
 2 computed at the rate of 2 3/4%.

3 (3) That portion of the tax paid hereunder by an
 4 insurer on account of premiums received for fire insurance
 5 shall be separately specified in the report as required by
 6 the commissioner, for apportionment as provided by law.
 7 Where insurance against fire is included with insurance of
 8 property against other perils at an undivided premium, the
 9 insurer shall make such reasonable allocation from such
 10 entire premium to the fire portion of the coverage as shall
 11 be stated in such report and as may be approved or accepted
 12 by the commissioner.

13 (4) With respect to authorized insurers the premium tax
 14 provided by this section shall be payment in full and in
 15 lieu of all other demands for any and all state, county,
 16 city, district, municipal, and school taxes, licenses, fees,
 17 and excises of whatever kind or character, excepting only
 18 those prescribed by this code, taxes on real and tangible
 19 personal property located in this state, and taxes payable
 20 under 15-31-101 or 50-3-109.

21 (5) The commissioner may suspend or revoke the
 22 certificate of authority of any insurer which fails to pay
 23 its taxes as required under this section.

24 (6) In addition to the penalty provided for in
 25 subsection (5), the commissioner may impose upon an insurer

1 who fails to pay the tax required under this section a fine
2 of \$100 a day for each day the tax remains unpaid past the
3 due date or 1% of the amount owed in tax, whichever is
4 greater.

5 (7) The commissioner may by rule provide a quarterly
6 schedule for payment of portions of the premium tax under
7 this section during the year in which such tax liability is
8 accrued."

9 NEW SECTION. Section 6. Appropriation. The first
10 \$50,000 collected under 15-31-101(5) in each fiscal year of
11 the fiscal biennium ending June 30, 1993, is appropriated
12 from the state general fund to the commissioner of insurance
13 to be used to administer the collection of the tax imposed
14 by 15-31-101(5).

15 NEW SECTION. Section 7. Retroactive applicability.
16 [This act] applies retroactively, within the meaning of
17 1-2-109, to taxable years beginning after December 31, 1990.

18 NEW SECTION. Section 8. Effective date. [This act] is
19 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0460, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


The proposed legislation would impose the corporate license tax on insurance companies; authorize the Commissioner of Insurance to adopt rules to implement the tax; provide an appropriation, an immediate effective date and a retroactive applicability date.

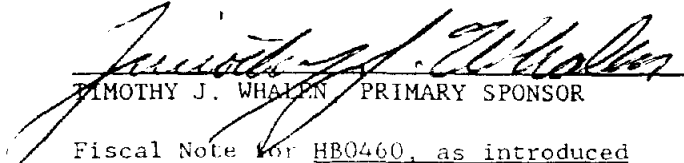
ASSUMPTIONS:

1. Property/casualty insurance premiums and insurer profits will increase by 3% per year for each year in the 1993 biennium. The estimate of corporate license taxes for these insurers was based upon a sample of 25 insurers.
2. Life/health insurance premiums and insurer profits will increase by 1% per year for each year in the 1993 biennium.
3. The estimate of corporate license tax for life and health insurers assumes that annuities will be subject to the tax even though they are exempt from premium tax. The calculation of the corporate license tax for this category of insurer was based upon a sample of 37 insurers, premium data for calendar year 1989, and pro-rata estimates of expenses and other income.
4. The corporate license tax rate will remain 6.75% and the premium tax rate will remain 2.75% throughout the 1993 biennium.
5. 2.00 FTE insurance examiners will be added to the Insurance Program in the State Auditors Office to administer the new tax. 1.00 FTE will be at Grade 13, Step 2 and 1.00 FTE will be at Grade 12, Step 2. The bill provides for a \$50,000 general fund appropriation each year to the Commissioner of Insurance for administration of the tax collection. The program is currently entirely funded by general fund.
6. Current law is represented by the executive budget for the Insurance Program in the State Auditors Office.
7. The effects of reinsurance ceded for Montana business are not considered because the necessary information is not available in insurer's annual statements. However, the absence of this information may substantially affect the accuracy of the estimates presented.

FISCAL IMPACT:

See next page.


ROD SUNDSTED, BUDGET DIRECTOR 25-91 DATE
Office of Budget and Program Planning


TIMOTHY J. WHALEN, PRIMARY SPONSOR 2-6-91 DATE
Fiscal Note for HB0460, as introduced

HB 460

