

SENATE BILL NO. 333

INTRODUCED BY GAGE
BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

FEBRUARY 8, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

 FIRST READING.

FEBRUARY 15, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 16, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 18, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 49; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

 FIRST READING.

APRIL 8, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 11, 1991 SECOND READING, CONCURRED IN.

APRIL 12, 1991 THIRD READING, CONCURRED IN.
AYES, 94; NOES, 1.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 12, 1991 RECEIVED FROM HOUSE.

APRIL 17, 1991 SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 17, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED.

APRIL 18, 1991

CONFERENCE COMMITTEE REPORTED.

IN THE HOUSE

APRIL 19, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 22, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 22, 1991

ON MOTION, CONFERENCE COMMITTEE
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 23, 1991

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 24, 1991

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 24, 1991

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 24, 1991

FREE CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 25, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *333*
 2 INTRODUCED BY *Duff*
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A
 6 MONTANA SHAREHOLDER OF A CORPORATION THAT IS NOT
 7 INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A
 8 MONTANA SMALL BUSINESS CORPORATION IS SUBJECT TO THE SAME
 9 INDIVIDUAL INCOME TAX TREATMENT AS A MONTANA SHAREHOLDER OF
 10 A CORPORATION THAT IS INCORPORATED IN MONTANA AND HAS NOT
 11 ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION;
 12 REQUIRING THAT A CORPORATION THAT ELECTS TO USE THE
 13 SUBCHAPTER S. CORPORATION FILING STATUS FOR FEDERAL PURPOSES
 14 USE THE MONTANA SMALL BUSINESS CORPORATION FILING STATUS FOR
 15 MONTANA PURPOSES; AMENDING SECTIONS 15-30-111, 15-30-117,
 16 15-30-126, 15-30-136, 15-30-161, 15-31-201, 15-31-202,
 17 15-31-204, AND 90-8-202, MCA; REPEALING SECTION 15-31-208,
 18 MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY
 19 DATE."

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 **Section 1.** Section 15-30-111, MCA, is amended to read:
 23 "15-30-111. **Adjusted gross income.** (1) Adjusted gross
 24 income shall be the taxpayer's federal income tax adjusted
 25 gross income as defined in section 62 of the Internal

1 Revenue Code of 1954 or as that section may be labeled or
 2 amended and in addition shall include the following:

3 (a) interest received on obligations of another state
 4 or territory or county, municipality, district, or other
 5 political subdivision thereof;

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

9 (c) that portion of a shareholder's income under
 10 subchapter S. of Chapter 1 of the Internal Revenue Code of
 11 1954, that has been reduced by any federal taxes paid by the
 12 subchapter S. corporation on the income; and

13 (d) depreciation or amortization taken on a title plant
 14 as defined in 33-25-105(15).

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

19 (a) all interest income from obligations of the United
 20 States government, the state of Montana, county,
 21 municipality, district, or other political subdivision
 22 thereof;

23 (b) interest income earned by a taxpayer age 65 or
 24 older in a taxable year up to and including \$800 for a
 25 taxpayer filing a separate return and \$1,600 for each joint



1 return;

2 (c) all benefits, not in excess of \$3,600, received:

3 (i) under the Federal Employees' Retirement Act;

4 (ii) under the public employee retirement laws of a

5 state other than Montana; or

6 (iii) as an annuity, pension, or endowment under any

7 private or corporate retirement plan or system;

8 (d) all benefits paid under the teachers' retirement

9 law which are specified as exempt from taxation by 19-4-706;

10 (e) all benefits paid under The Public Employees'

11 Retirement System Act which are specified as exempt from

12 taxation by 19-3-105;

13 (f) all benefits paid under the highway patrol

14 retirement law which are specified as exempt from taxation

15 by 19-6-705;

16 (g) all Montana income tax refunds or credits thereof;

17 (h) all benefits paid under 19-11-602, 19-11-604, and

18 19-11-605 to retired and disabled firefighters, their

19 surviving spouses and orphans or specified as exempt from

20 taxation by 19-13-1003;

21 (i) all benefits paid under the municipal police

22 officers' retirement system that are specified as exempt

23 from taxation by 19-9-1005;

24 (j) gain required to be recognized by a liquidating

25 corporation under 15-31-113(1)(a)(ii);

1 (k) all tips covered by section 3402(k) of the Internal

2 Revenue Code of 1954, as amended and applicable on January

3 1, 1983, received by persons for services rendered by them

4 to patrons of premises licensed to provide food, beverage,

5 or lodging;

6 (l) all benefits received under the workers'

7 compensation laws;

8 (m) all health insurance premiums paid by an employer

9 for an employee if attributed as income to the employee

10 under federal law;

11 (n) all benefits paid under an optional retirement

12 program that are specified as exempt from taxation by

13 19-21-212; and

14 (o) all money received because of a settlement

15 agreement or judgment in a lawsuit brought against a

16 manufacturer or distributor of "agent orange" for damages

17 resulting from exposure to "agent orange".

18 ~~(3) in the case of a shareholder of a corporation with~~

19 ~~respect to which the election provided for under subchapter~~

20 ~~S of the Internal Revenue Code of 1954, as amended, is in~~

21 ~~effect but with respect to which the election provided for~~

22 ~~under 15-31-202, as amended, is not in effect, adjusted~~

23 ~~gross income does not include any part of the corporation's~~

24 ~~undistributed taxable income, net operating loss, capital~~

25 ~~gains or other gains, profits, or losses required to be~~

1 ~~included in the shareholder's federal income tax adjusted~~
 2 ~~gross income by reason of the election under subchapter S.~~
 3 ~~However, the shareholder's adjusted gross income shall~~
 4 ~~include actual distributions from the corporation to the~~
 5 ~~extent they would be treated as taxable dividends if the~~
 6 ~~subchapter S election were not in effect.~~

7 ~~(4)(3)~~ A shareholder of a DISC that is exempt from the
 8 corporation license tax under 15-31-102(1)(1) shall include
 9 in his adjusted gross income the earnings and profits of the
 10 DISC in the same manner as provided by federal law (section
 11 995, Internal Revenue Code) for all periods for which the
 12 DISC election is effective.

13 ~~(5)(4)~~ A taxpayer who, in determining federal adjusted
 14 gross income, has reduced his business deductions by an
 15 amount for wages and salaries for which a federal tax credit
 16 was elected under section 44B of the Internal Revenue Code
 17 of 1954 or as that section may be labeled or amended is
 18 allowed to deduct the amount of the wages and salaries paid
 19 regardless of the credit taken. The deduction must be made
 20 in the year the wages and salaries were used to compute the
 21 credit. In the case of a partnership or small business
 22 corporation, the deduction must be made to determine the
 23 amount of income or loss of the partnership or small
 24 business corporation.

25 ~~(6)(5)~~ Married taxpayers filing a joint federal return

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

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

1 impairment lasting or expected to last at least 12 months.
 2 ~~†0†~~(7) A person receiving benefits described in
 3 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
 4 exclude benefits described in subsection (2)(c) from
 5 adjusted gross income unless the benefits received under
 6 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
 7 less than \$3,600, in which case the person may combine
 8 benefits to exclude up to a total of \$3,600 from adjusted
 9 gross income. (Subsection (2)(k) terminates on occurrence of
 10 contingency--sec. 3, Ch. 634, L. 1983.)"

11 **Section 2.** Section 15-30-117, MCA, is amended to read:

12 "15-30-117. **Net operating loss -- computation.** (1) A
 13 net operating loss must be determined in accordance with
 14 section 172 of the Internal Revenue Code of 1954 or as that
 15 section may be labeled or amended and in accordance with the
 16 following:

17 (a) Additions to loss include:

18 (i) that portion of the federal income tax and motor
 19 vehicle tax allowed as a deduction under 15-30-121 or
 20 15-30-131 which is attributable to income from a trade or
 21 business; and

22 (ii) wages and salaries allowed as a business deduction
 23 under 15-30-111~~†5†~~(4).

24 (b) Reductions in the loss include:

25 (i) interest received on obligations of another state

1 or territory or of a county, municipality, district, or
 2 political subdivision thereof allowed as nonbusiness income
 3 under 15-30-111(1)(a);

4 (ii) federal income tax refunds required to be reported
 5 under 15-30-111 and 15-30-131 as business income;

6 (iii) state income tax; and

7 (iv) any other nonbusiness deductions allowed under
 8 15-30-121 in excess of nonbusiness income.

9 (2) Notwithstanding the provisions of section 172 of
 10 the Internal Revenue Code of 1954 or as that section may be
 11 labeled or amended, a net operating loss does not include:

12 (a) income defined as exempt from state taxation under
 13 15-30-111(2); or

14 (b) a zero bracket deduction provided for under section
 15 63 of the Internal Revenue Code of 1954 or as that section
 16 may be labeled or amended."

17 **Section 3.** Section 15-30-126, MCA, is amended to read:

18 "15-30-126. **Small business corporation -- deduction for**
 19 **donation of computer equipment to schools.** A small business
 20 corporation ~~electing--to--be--taxed--under--the--provisions--of~~
 21 ~~15-31-202, as defined in 15-31-201,~~ is allowed a deduction
 22 equal to the fair market value, not to exceed 30% of the
 23 small business corporation's net income, of a computer or
 24 other sophisticated technological equipment or apparatus
 25 intended for use with the computer donated to an elementary,

1 secondary, or accredited postsecondary school located in
2 Montana if:

3 (1) the contribution is made no later than 5 years
4 after the manufacture of the donated property is
5 substantially completed;

6 (2) the property is not transferred by the donee in
7 exchange for money, other property, or services;

8 (3) the electing small business corporation receives a
9 written statement from the donee in which the donee agrees
10 to accept the property and representing that the use and
11 disposition of the property will be in accordance with the
12 provisions of subsection (2); and

13 (4) the deduction allowed in this section is in lieu of
14 the deduction allowed under 15-30-121 for charitable
15 contributions."

16 **Section 4.** Section 15-30-136, MCA, is amended to read:

17 "15-30-136. **Computation of income of estates or trusts**
18 -- **exemption.** (1) Except as otherwise provided in this
19 chapter, "gross income" of estates or trusts means all
20 income from whatever source derived in the taxable year,
21 including but not limited to the following items:

22 (a) dividends;

23 (b) interest received or accrued, including interest
24 received on obligations of another state or territory or a
25 county, municipality, district, or other political

1 subdivision thereof, but excluding interest income from
2 obligations of:

3 (i) the United States government or the state of
4 Montana;

5 (ii) a school district; or

6 (iii) a county, municipality, district, or other
7 political subdivision of the state;

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

10 (e) gain from sale or exchange of property, including
11 those gains that are excluded from gross income for federal
12 fiduciary income tax purposes by section 641(c) of the
13 Internal Revenue Code of 1954, as amended;

14 (f) gross profit from trade or business; and

15 (g) refunds recovered on federal income tax, to the
16 extent the deduction of such tax resulted in a reduction of
17 Montana income tax liability.

18 (2) In computing net income, there are allowed as
19 deductions:

20 (a) interest expenses deductible for federal tax
21 purposes according to section 163 of the Internal Revenue
22 Code of 1954, as amended;

23 (b) taxes paid or accrued within the taxable year,
24 including but not limited to federal income tax, but
25 excluding Montana income tax;

1 (c) that fiduciary's portion of depreciation or
2 depletion which is deductible for federal tax purposes
3 according to sections 167, 611, and 642 of the Internal
4 Revenue Code of 1954, as amended;

5 (d) charitable contributions that are deductible for
6 federal tax purposes according to section 642(c) of the
7 Internal Revenue Code of 1954, as amended;

8 (e) administrative expenses claimed for federal income
9 tax purposes, according to sections 212 and 642(g) of the
10 Internal Revenue Code of 1954, as amended, if such expenses
11 were not claimed as a deduction in the determination of
12 Montana inheritance tax;

13 (f) losses from fire, storm, shipwreck, or other
14 casualty or from theft, to the extent not compensated for by
15 insurance or otherwise, that are deductible for federal tax
16 purposes according to section 165 of the Internal Revenue
17 Code of 1954, as amended;

18 (g) net operating loss deductions allowed for federal
19 income tax under section 642(d) of the Internal Revenue Code
20 of 1954, as amended, except estates may not claim losses
21 that are deductible on the decedent's final return;

22 (h) all benefits, not in excess of \$3,600, received:

23 (i) as federal employees' retirement;

24 (ii) as retirement from public employment in a state
25 other than Montana; or

1 (iii) as an annuity, pension, or endowment under private
2 or corporate retirement plans or systems;

3 (i) all benefits paid under the Montana teachers'
4 retirement system that are specified as exempt from taxation
5 by 19-4-706;

6 (j) all benefits paid under the Montana Public
7 Employees' Retirement System Act that are specified as
8 exempt from taxation by 19-3-105;

9 (k) all benefits paid under the Montana highway patrol
10 officers' retirement system that are specified as exempt
11 from taxation by 19-6-705;

12 (l) Montana income tax refunds or credits thereof;

13 (m) all benefits paid under 19-11-602, 19-11-604, and
14 19-11-605 to retired and disabled firemen or their surviving
15 spouses or children;

16 (n) all benefits paid under the municipal police
17 officers' retirement system that are specified as exempt
18 from taxation by 19-9-1005.

19 ~~{3}--In-the-case-of-a-shareholder-of-a-corporation--with~~
20 ~~respect--to-which-the-election-provided-for-under-subchapter~~
21 ~~S7-of-the-Internal-Revenue-Code-of-19547-as-amended7--is--in~~
22 ~~effect--but--with-respect-to-which-the-election-provided-for~~
23 ~~under-15-31-202-is--not--in--effect7--net--income--does--not~~
24 ~~include--any-part-of-the-corporation's-undistributed-taxable~~
25 ~~income7-net-operating-loss7-capital-gains--or--other--gains7~~

1 profits,---or---losses---required--to--be--included--in--the
 2 shareholder's-federal-income-tax-net-income-by-reason-of-the
 3 election-under-subchapter-S. However, the shareholder's net
 4 income---shall---include---actual---distribution---from---the
 5 corporation-to-the-extent-it-would--be--treated--as--taxable
 6 dividends-if-the-subchapter-S-election-were-not-in-effect.

7 ~~(4)~~(3) The following additional deductions shall be
 8 allowed in deriving taxable income of estates and trusts:

9 (a) any amount of income for the taxable year currently
 10 required to be distributed to beneficiaries for such year;

11 (b) any other amounts properly paid or credited or
 12 required to be distributed for the taxable year;

13 (c) the amount of 60% of the excess of the net
 14 long-term capital gain over the net short-term capital loss
 15 for the taxable year.

16 ~~(5)~~(4) The exemption allowed for estates and trusts is
 17 that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

18 ~~(6)~~(5) A trust or estate excluding benefits under
 19 subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not
 20 exclude benefits described in subsection (2)(h) from net
 21 income unless the benefits received under subsections (2)(i)
 22 through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in
 23 which case the trust or estate may combine benefits to
 24 exclude up to a total of \$3,600 from net income."

25 **Section 5.** Section 15-30-161, MCA, is amended to read:

1 "15-30-161. Purpose. The purpose of 15-30-162 is to
 2 allow individuals, estates, and trusts, including those
 3 owning an interest in partnerships and in small business
 4 corporations electing--to--be--taxed--under--the--provisions--of
 5 15-31-202 defined in 15-31-201, to take the investment
 6 credit as provided for in 15-30-162 in order to stimulate
 7 capital investment by the small business sector."

8 **Section 6.** Section 15-31-201, MCA, is amended to read:

9 "15-31-201. Definitions Definition of "small business
 10 corporation". ~~(1)~~ For purposes of this part, the term "small
 11 business corporation" means a corporation ~~doing-business-in~~
 12 Montana-and-which that has made a valid election under
 13 Subchapter S of Chapter 1 of the Internal Revenue Code, of
 14 1954-and-thereafter:

15 ~~(a)~~ has-filed A small business corporation shall attach
 16 a copy of the approved federal election with the Montana
 17 return filed for the first taxable year the federal election
 18 is effective. ~~department--on-or-before-the-15th-day-of-the~~
 19 ~~third-month-of-the-taxable-year-for-which-the-election-is-to~~
 20 ~~become-effective; or~~

21 ~~(b)~~ files-a-copy-of-the-federal-Subchapter-S--corporate
 22 tax-return-with-the-tax-return-filed-under-this-chapter.

23 ~~(2)~~ For purposes of this part, the term "electing small
 24 business--corporation" means, with respect to any taxable
 25 year, a small-business-corporation--which--has--made--an

1 election under Subchapter S in effect for the taxable year
2 and:

3 (a) has filed a copy of such election with the
4 department on or before the 15th day of the third month of
5 the taxable year for which the election is to become
6 effective; or

7 (b) files a copy of the federal Subchapter S corporate
8 tax return with the tax return filed under this chapter."

9 **Section 7.** Section 15-31-202, MCA, is amended to read:

10 "15-31-202. Election by small Small business
11 corporation not subject to chapter. (1) A small business
12 corporation may elect is not to be subject to the taxes
13 imposed by this chapter.

14 (2) If a small business corporation makes an election
15 under subsection (1), then:

16 (a) with respect to the taxable years of the
17 corporation for which such election is in effect, such
18 corporation is not subject to the taxes imposed by this
19 chapter and, with respect to such taxable years and all
20 succeeding taxable years, the provisions of this part apply
21 to such corporation; and

22 (b) with respect to the taxable years of a shareholder
23 of such corporation in which or with which the taxable years
24 of the corporation for which such election is in effect end,
25 the provisions of this part apply to such shareholder; and

1 with respect to such taxable years and all succeeding
2 taxable years, the provisions of this part apply to such
3 shareholder;

4 (3) An election under subsection (1) must be made in
5 accordance with rules prescribed by the department of
6 revenue;

7 (4) This election is not effective unless the The
8 corporate net income or loss of such electing the
9 corporation is included in the stockholders' adjusted gross
10 income as defined in 15-30-111.

11 (5)(2) Every electing Each small business corporation
12 is required to pay the minimum fee of \$10 required by
13 15-31-204."

14 **Section 8.** Section 15-31-204, MCA, is amended to read:

15 "15-31-204. Minimum fee of qualifying small business
16 corporations unaffected. Notwithstanding the provisions of
17 15-31-121, small business corporations electing and
18 qualifying under 15-31-202 shall pay a minimum fee of \$10."

19 **Section 9.** Section 90-8-202, MCA, is amended to read:

20 "90-8-202. Designation of qualified Montana capital
21 companies -- tax credit. (1) The board shall designate as
22 qualified Montana capital companies those certified
23 companies that have been privately capitalized at a minimum
24 level of \$200,000. A certified company seeking designation
25 as a qualified Montana capital company must make written

1 application to the board on forms provided by the board. The
2 application must contain the information required by
3 90-8-204 and such other information as the board requires.

4 (2) (a) The total amount of tax credits authorized for
5 a single qualified company may not exceed \$1,500,000. In the
6 event the capitalization of the company is later increased,
7 the company may apply for authorization of additional tax
8 credits within the foregoing limitation.

9 (b) The total credits authorized for all companies may
10 not exceed a total of \$1 million prior to June 30, 1985. The
11 total credits authorized for all companies between July 1,
12 1985, and June 30, 1987, may not exceed \$1 million plus any
13 portion of the \$1 million available for authorization before
14 June 30, 1985, that is allocated to qualified companies. The
15 total credits authorized for all companies between July 1,
16 1987, and June 30, 1989, may not exceed \$3 million plus any
17 portion of the credits available for authorization before
18 June 30, 1987, that is allocated to qualified companies. The
19 total credits authorized for all companies between July 1,
20 1989, and June 30, 1991, may not exceed \$3 million plus any
21 portion of the credits available for authorization before
22 June 30, 1989, that is allocated to qualified companies.

23 (3) The credits shall be allocated to qualified
24 companies in the order that completed applications for
25 designation as qualified capital companies are received by

1 the board, and the board shall certify to each such company
2 its appropriate allocation.

3 (4) Investors in a qualified Montana capital company
4 are entitled to the tax credits provided for in subsection
5 (5). Funds invested in a certified company prior to
6 designation as a qualified Montana capital company may, at
7 the discretion of the investor, be placed in an escrow
8 account in a Montana financial institution pending
9 designation of the company as a qualified Montana capital
10 company.

11 (5) Subject to the provisions of subsections (2) and
12 (8), an individual, small business corporation, partnership,
13 trust, decedent's estate, or corporate taxpayer that makes a
14 capital investment in a qualified Montana capital company is
15 entitled to a tax credit equal to 50% of the investment, up
16 to a maximum credit of \$150,000 per taxpayer. The credit may
17 be taken against the tax liability imposed on the investor
18 pursuant to Title 15, chapter 30, 31, or 35. The credit for
19 investments by a small business corporation ~~electing--to--be~~
20 ~~taxed--under-15-31-202~~ defined in 15-31-201 or a partnership
21 may be claimed by the small business corporation
22 shareholders or the partners.

23 (6) The tax credit allowed under subsection (5) is to
24 be credited against the taxpayer's income tax liability or
25 coal severance tax liability for the taxable year in which

1 the investment in a qualified Montana capital company is
 2 made. If the amount of the tax credit exceeds the taxpayer's
 3 tax liability for the taxable year, the amount of the credit
 4 which exceeds the tax liability may be carried back or
 5 carried forward in the following manner:

6 (a) If the sum of the amount of credit for the current
 7 taxable year plus the amount of credit, if any, carried
 8 forward from a previous taxable year exceeds the taxpayer's
 9 tax liability for the current taxable year, the excess must
 10 be carried back as a credit to the 3 preceding taxable years
 11 and, if the full credit remains unused, carried forward as a
 12 credit to the 15 succeeding taxable years.

13 (b) The amount of unused credit must be used to offset
 14 the entire tax liability of each of the 18 taxable years,
 15 beginning with the earliest and commencing to the next
 16 succeeding year until the credit is exhausted.

17 (7) The tax credit provided for in this section is
 18 available only to those taxpayers who invest in a qualified
 19 Montana capital company within 4 years of July 1, 1987.

20 (8) An individual, small business corporation,
 21 partnership, or corporate taxpayer who obtains the tax
 22 credit allowed under subsection (5) may not obtain credits
 23 in excess of the \$150,000 limit contained in subsection (5)
 24 by making investments as more than one entity. A partner or
 25 shareholder in a small business corporation may not obtain

1 more than \$150,000 in credits as an individual and as the
 2 partnership or small business corporation. A corporate
 3 taxpayer that obtains the maximum \$150,000 credit may not
 4 obtain additional credits through investments by wholly
 5 owned subsidiaries or affiliates."

6 NEW SECTION. **Section 10.** Repealer. Section 15-31-208,
 7 MCA, is repealed.

8 NEW SECTION. **Section 11.** Effective dates --
 9 applicability. (1) Except for the purposes of subsection
 10 (2), [this act] is effective December 31, 1991, and applies
 11 to tax years beginning after December 31, 1991.

12 (2) For the purpose of promulgating administrative
 13 rules to implement [sections 1 through 10], [this act] is
 14 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 SB0333, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying that a Montana shareholder of a corporation that is not incorporated in Montana and has not elected to be taxed as a Montana small business corporation is subject to the same individual income tax treatment as a Montana shareholder of a corporation that is incorporated in Montana and has not elected to be taxed as a Montana small business corporation; requiring that a corporation that elects to use the Subchapter S. corporation filing status for federal purposes use the Montana small business corporation filing status for Montana purposes; and providing effective dates and an applicability date.

FISCAL IMPACT:


Expenditures:


There is no impact on Department of Revenue administrative expenses.

Revenues:

This proposal would (1) require that corporations use the same filing status (S Corporation or C Corporation) for state tax purposes as for federal tax purposes, and (2) require the flowing through of income from S Corporations regardless of whether the corporation is incorporated in or outside of Montana. From this perspective, this proposal would simplify both tax reporting and tax administration.

Because the requirement to flow through income from out-of-state S Corporations to Montana shareholders includes both gains and losses, it is not possible to determine precise revenue impacts for the biennium. In some years out-of-state S Corporations may report more losses than gains, and in other years more gains than losses.

 2-12-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/13/91
DELWYN GAGE, PRIMARY SPONSOR DATE
Fiscal Note for SB0333, as introduced **SB 333**

APPROVED BY COMMITTEE
ON TAXATION

1 *Senate* BILL NO. *333*
2 INTRODUCED BY *Depp*
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A
6 MONTANA SHAREHOLDER OF A CORPORATION THAT IS NOT
7 INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A
8 MONTANA SMALL BUSINESS CORPORATION IS SUBJECT TO THE SAME
9 INDIVIDUAL INCOME TAX TREATMENT AS A MONTANA SHAREHOLDER OF
10 A CORPORATION THAT IS INCORPORATED IN MONTANA AND HAS NOT
11 ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION;
12 REQUIRING THAT A CORPORATION THAT ELECTS TO USE THE
13 SUBCHAPTER S. CORPORATION FILING STATUS FOR FEDERAL PURPOSES
14 USE THE MONTANA SMALL BUSINESS CORPORATION FILING STATUS FOR
15 MONTANA PURPOSES; AMENDING SECTIONS 15-30-111, 15-30-117,
16 15-30-126, 15-30-136, 15-30-161, 15-31-201, 15-31-202,
17 15-31-204, AND 90-8-202, MCA; REPEALING SECTION 15-31-208,
18 MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY
19 DATE."
20

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

22 **Section 1.** Section 15-30-111, MCA, is amended to read:
23 "15-30-111. Adjusted gross income. (1) Adjusted gross
24 income shall be the taxpayer's federal income tax adjusted
25 gross income as defined in section 62 of the Internal

1 Revenue Code of 1954 or as that section may be labeled or
2 amended and in addition shall include the following:

3 (a) interest received on obligations of another state
4 or territory or county, municipality, district, or other
5 political subdivision thereof;

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

9 (c) that portion of a shareholder's income under
10 subchapter S. of Chapter 1 of the Internal Revenue Code of
11 1954, that has been reduced by any federal taxes paid by the
12 subchapter S. corporation on the income; and

13 (d) depreciation or amortization taken on a title plant
14 as defined in 33-25-105(15).

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

19 (a) all interest income from obligations of the United
20 States government, the state of Montana, county,
21 municipality, district, or other political subdivision
22 thereof;

23 (b) interest income earned by a taxpayer age 65 or
24 older in a taxable year up to and including \$800 for a
25 taxpayer filing a separate return and \$1,600 for each joint



1 return;

2 (c) all benefits, not in excess of \$3,600, received:

3 (i) under the Federal Employees' Retirement Act;

4 (ii) under the public employee retirement laws of a
5 state other than Montana; or

6 (iii) as an annuity, pension, or endowment under any
7 private or corporate retirement plan or system;

8 (d) all benefits paid under the teachers' retirement
9 law which are specified as exempt from taxation by 19-4-706;

10 (e) all benefits paid under The Public Employees'
11 Retirement System Act which are specified as exempt from
12 taxation by 19-3-105;

13 (f) all benefits paid under the highway patrol
14 retirement law which are specified as exempt from taxation
15 by 19-6-705;

16 (g) all Montana income tax refunds or credits thereof;

17 (h) all benefits paid under 19-11-602, 19-11-604, and
18 19-11-605 to retired and disabled firefighters, their
19 surviving spouses and orphans or specified as exempt from
20 taxation by 19-13-1003;

21 (i) all benefits paid under the municipal police
22 officers' retirement system that are specified as exempt
23 from taxation by 19-9-1005;

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

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

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

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

11 (n) all benefits paid under an optional retirement
12 program that are specified as exempt from taxation by
13 19-21-212; and

14 (o) all money received because of a settlement
15 agreement or judgment in a lawsuit brought against a
16 manufacturer or distributor of "agent orange" for damages
17 resulting from exposure to "agent orange".

18 ~~{3}--In-the-case-of-a-shareholder-of-a-corporation--with~~
19 ~~respect--to-which-the-election-provided-for-under-subchapter~~
20 ~~S7-of-the-Internal-Revenue-Code-of-19547--is--in~~
21 ~~effect--but--with-respect-to-which-the-election-provided-for~~
22 ~~under-15-31-2027-as-amended7--is--not--in--effect7--adjusted~~
23 ~~gross--income-does-not-include-any-part-of-the-corporation's~~
24 ~~undistributed-taxable-income7-net--operating--loss7--capital~~
25 ~~gains--or--other--gains7--or--losses-required-to-be~~

1 ~~included in the shareholder's federal income tax adjusted~~
 2 ~~gross income by reason of the election under subchapter S.~~
 3 ~~However, the shareholder's adjusted gross income shall~~
 4 ~~include actual distributions from the corporation to the~~
 5 ~~extent they would be treated as taxable dividends if the~~
 6 ~~subchapter S election were not in effect.~~

7 ~~†4†(3)~~ A shareholder of a DISC that is exempt from the
 8 corporation license tax under 15-31-102(1)(1) shall include
 9 in his adjusted gross income the earnings and profits of the
 10 DISC in the same manner as provided by federal law (section
 11 995, Internal Revenue Code) for all periods for which the
 12 DISC election is effective.

13 ~~†5†(4)~~ A taxpayer who, in determining federal adjusted
 14 gross income, has reduced his business deductions by an
 15 amount for wages and salaries for which a federal tax credit
 16 was elected under section 44B of the Internal Revenue Code
 17 of 1954 or as that section may be labeled or amended is
 18 allowed to deduct the amount of the wages and salaries paid
 19 regardless of the credit taken. The deduction must be made
 20 in the year the wages and salaries were used to compute the
 21 credit. In the case of a partnership or small business
 22 corporation, the deduction must be made to determine the
 23 amount of income or loss of the partnership or small
 24 business corporation.

25 ~~†6†(5)~~ Married taxpayers filing a joint federal return

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

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

1 impairment lasting or expected to last at least 12 months.

2 ~~(8)~~(7) A person receiving benefits described in
3 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
4 exclude benefits described in subsection (2)(c) from
5 adjusted gross income unless the benefits received under
6 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
7 less than \$3,600, in which case the person may combine
8 benefits to exclude up to a total of \$3,600 from adjusted
9 gross income. (Subsection (2)(k) terminates on occurrence of
10 contingency--sec. 3, Ch. 634, L. 1983.)"

11 **Section 2.** Section 15-30-117, MCA, is amended to read:

12 "15-30-117. **Net operating loss -- computation.** (1) A
13 net operating loss must be determined in accordance with
14 section 172 of the Internal Revenue Code of 1954 or as that
15 section may be labeled or amended and in accordance with the
16 following:

17 (a) Additions to loss include:

18 (i) that portion of the federal income tax and motor
19 vehicle tax allowed as a deduction under 15-30-121 or
20 15-30-131 which is attributable to income from a trade or
21 business; and

22 (ii) wages and salaries allowed as a business deduction
23 under 15-30-111~~(5)~~(4).

24 (b) Reductions in the loss include:

25 (i) interest received on obligations of another state

1 or territory or of a county, municipality, district, or
2 political subdivision thereof allowed as nonbusiness income
3 under 15-30-111(1)(a);

4 (ii) federal income tax refunds required to be reported
5 under 15-30-111 and 15-30-131 as business income;

6 (iii) state income tax; and

7 (iv) any other nonbusiness deductions allowed under
8 15-30-121 in excess of nonbusiness income.

9 (2) Notwithstanding the provisions of section 172 of
10 the Internal Revenue Code of 1954 or as that section may be
11 labeled or amended, a net operating loss does not include:

12 (a) income defined as exempt from state taxation under
13 15-30-111(2); or

14 (b) a zero bracket deduction provided for under section
15 63 of the Internal Revenue Code of 1954 or as that section
16 may be labeled or amended."

17 **Section 3.** Section 15-30-126, MCA, is amended to read:

18 "15-30-126. **Small business corporation -- deduction for**
19 **donation of computer equipment to schools.** A small business
20 corporation ~~electing--to--be--taxed--under--the--provisions--of~~
21 ~~15-31-202~~, as defined in 15-31-201, is allowed a deduction
22 equal to the fair market value, not to exceed 30% of the
23 small business corporation's net income, of a computer or
24 other sophisticated technological equipment or apparatus
25 intended for use with the computer donated to an elementary,

1 secondary, or accredited postsecondary school located in
2 Montana if:

3 (1) the contribution is made no later than 5 years
4 after the manufacture of the donated property is
5 substantially completed;

6 (2) the property is not transferred by the donee in
7 exchange for money, other property, or services;

8 (3) the electing small business corporation receives a
9 written statement from the donee in which the donee agrees
10 to accept the property and representing that the use and
11 disposition of the property will be in accordance with the
12 provisions of subsection (2); and

13 (4) the deduction allowed in this section is in lieu of
14 the deduction allowed under 15-30-121 for charitable
15 contributions."

16 **Section 4.** Section 15-30-136, MCA, is amended to read:

17 "15-30-136. Computation of income of estates or trusts
18 -- exemption. (1) Except as otherwise provided in this
19 chapter, "gross income" of estates or trusts means all
20 income from whatever source derived in the taxable year,
21 including but not limited to the following items:

22 (a) dividends;

23 (b) interest received or accrued, including interest
24 received on obligations of another state or territory or a
25 county, municipality, district, or other political

1 subdivision thereof, but excluding interest income from
2 obligations of:

3 (i) the United States government or the state of
4 Montana;

5 (ii) a school district; or

6 (iii) a county, municipality, district, or other
7 political subdivision of the state;

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

10 (e) gain from sale or exchange of property, including
11 those gains that are excluded from gross income for federal
12 fiduciary income tax purposes by section 641(c) of the
13 Internal Revenue Code of 1954, as amended;

14 (f) gross profit from trade or business; and

15 (g) refunds recovered on federal income tax, to the
16 extent the deduction of such tax resulted in a reduction of
17 Montana income tax liability.

18 (2) In computing net income, there are allowed as
19 deductions:

20 (a) interest expenses deductible for federal tax
21 purposes according to section 163 of the Internal Revenue
22 Code of 1954, as amended;

23 (b) taxes paid or accrued within the taxable year,
24 including but not limited to federal income tax, but
25 excluding Montana income tax;

1 (c) that fiduciary's portion of depreciation or
2 depletion which is deductible for federal tax purposes
3 according to sections 167, 611, and 642 of the Internal
4 Revenue Code of 1954, as amended;

5 (d) charitable contributions that are deductible for
6 federal tax purposes according to section 642(c) of the
7 Internal Revenue Code of 1954, as amended;

8 (e) administrative expenses claimed for federal income
9 tax purposes, according to sections 212 and 642(g) of the
10 Internal Revenue Code of 1954, as amended, if such expenses
11 were not claimed as a deduction in the determination of
12 Montana inheritance tax;

13 (f) losses from fire, storm, shipwreck, or other
14 casualty or from theft, to the extent not compensated for by
15 insurance or otherwise, that are deductible for federal tax
16 purposes according to section 165 of the Internal Revenue
17 Code of 1954, as amended;

18 (g) net operating loss deductions allowed for federal
19 income tax under section 642(d) of the Internal Revenue Code
20 of 1954, as amended, except estates may not claim losses
21 that are deductible on the decedent's final return;

22 (h) all benefits, not in excess of \$3,600, received:

23 (i) as federal employees' retirement;

24 (ii) as retirement from public employment in a state
25 other than Montana; or

1 (iii) as an annuity, pension, or endowment under private
2 or corporate retirement plans or systems;

3 (i) all benefits paid under the Montana teachers'
4 retirement system that are specified as exempt from taxation
5 by 19-4-706;

6 (j) all benefits paid under the Montana Public
7 Employees' Retirement System Act that are specified as
8 exempt from taxation by 19-3-105;

9 (k) all benefits paid under the Montana highway patrol
10 officers' retirement system that are specified as exempt
11 from taxation by 19-6-705;

12 (l) Montana income tax refunds or credits thereof;

13 (m) all benefits paid under 19-11-602, 19-11-604, and
14 19-11-605 to retired and disabled firemen or their surviving
15 spouses or children;

16 (n) all benefits paid under the municipal police
17 officers' retirement system that are specified as exempt
18 from taxation by 19-9-1005.

19 ~~{3}--In-the-case-of-a-shareholder-of-a-corporation--with~~
20 ~~respect--to-which-the-election-provided-for-under-subchapter~~
21 ~~57-of-the-Internal-Revenue-Code-of-19547-as-amended7--is--in~~
22 ~~effect--but--with-respect-to-which-the-election-provided-for~~
23 ~~under-15-31-202-is--not--in--effect7--net--income--does--not~~
24 ~~include--any-part-of-the-corporation's-undistributed-taxable~~
25 ~~income7-net-operating-loss7-capital-gains--or--other--gains7~~

profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S election were not in effect.

(4)(3) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(5)(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

(6)(5) A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in which case the trust or estate may combine benefits to exclude up to a total of \$3,600 from net income."

Section 5. Section 15-30-161, MCA, is amended to read:

"15-30-161. Purpose. The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing to be taxed under the provisions of 15-31-202 defined in 15-31-201, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 6. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definitions Definition of "small business corporation". (1) For purposes of this part, the term "small business corporation" means a corporation doing business in Montana and which that has made a valid election under Subchapter S of Chapter 1 of the Internal Revenue Code of 1954 and thereafter:

(a) has filed A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective. department on or before the 15th day of the third month of the taxable year for which the election is to become effective; or

(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter;

(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an

1 election under Subchapter S in effect for the taxable year
2 and:

3 (a) has filed a copy of such election with the
4 department on or before the 15th day of the third month of
5 the taxable year for which the election is to become
6 effective; or

7 (b) files a copy of the federal Subchapter S corporate
8 tax return with the tax return filed under this chapter."

9 **Section 7.** Section 15-31-202, MCA, is amended to read:

10 "15-31-202. Election by ~~small~~ Small business
11 corporation not subject to chapter. (1) A small business
12 corporation may elect is not to be subject to the taxes
13 imposed by this chapter.

14 (2) If a small business corporation makes an election
15 under subsection (1), then:

16 (a) with respect to the taxable years of the
17 corporation for which such election is in effect, such
18 corporation is not subject to the taxes imposed by this
19 chapter and, with respect to such taxable years and all
20 succeeding taxable years, the provisions of this part apply
21 to such corporation; and

22 (b) with respect to the taxable years of a shareholder
23 of such corporation in which or with which the taxable years
24 of the corporation for which such election is in effect end,
25 the provisions of this part apply to such shareholder; and

1 with respect to such taxable years and all succeeding
2 taxable years, the provisions of this part apply to such
3 shareholder;

4 (3) An election under subsection (1) must be made in
5 accordance with rules prescribed by the department of
6 revenue;

7 (4) This election is not effective unless the The
8 corporate net income or loss of such electing the
9 corporation is included in the stockholders' adjusted gross
10 income as defined in 15-30-111.

11 (5)(2) Every electing Each small business corporation
12 is required to pay the minimum fee of \$10 required by
13 15-31-204."

14 **Section 8.** Section 15-31-204, MCA, is amended to read:

15 "15-31-204. Minimum fee of qualifying small business
16 corporations unaffected. Notwithstanding the provisions of
17 15-31-121, small business corporations electing and
18 qualifying under 15-31-202 shall pay a minimum fee of \$10."

19 **Section 9.** Section 90-8-202, MCA, is amended to read:

20 "90-8-202. Designation of qualified Montana capital
21 companies -- tax credit. (1) The board shall designate as
22 qualified Montana capital companies those certified
23 companies that have been privately capitalized at a minimum
24 level of \$200,000. A certified company seeking designation
25 as a qualified Montana capital company must make written

1 application to the board on forms provided by the board. The
2 application must contain the information required by
3 90-8-204 and such other information as the board requires.

4 (2) (a) The total amount of tax credits authorized for
5 a single qualified company may not exceed \$1,500,000. In the
6 event the capitalization of the company is later increased,
7 the company may apply for authorization of additional tax
8 credits within the foregoing limitation.

9 (b) The total credits authorized for all companies may
10 not exceed a total of \$1 million prior to June 30, 1985. The
11 total credits authorized for all companies between July 1,
12 1985, and June 30, 1987, may not exceed \$1 million plus any
13 portion of the \$1 million available for authorization before
14 June 30, 1985, that is allocated to qualified companies. The
15 total credits authorized for all companies between July 1,
16 1987, and June 30, 1989, may not exceed \$3 million plus any
17 portion of the credits available for authorization before
18 June 30, 1987, that is allocated to qualified companies. The
19 total credits authorized for all companies between July 1,
20 1989, and June 30, 1991, may not exceed \$3 million plus any
21 portion of the credits available for authorization before
22 June 30, 1989, that is allocated to qualified companies.

23 (3) The credits shall be allocated to qualified
24 companies in the order that completed applications for
25 designation as qualified capital companies are received by

1 the board, and the board shall certify to each such company
2 its appropriate allocation.

3 (4) Investors in a qualified Montana capital company
4 are entitled to the tax credits provided for in subsection
5 (5). Funds invested in a certified company prior to
6 designation as a qualified Montana capital company may, at
7 the discretion of the investor, be placed in an escrow
8 account in a Montana financial institution pending
9 designation of the company as a qualified Montana capital
10 company.

11 (5) Subject to the provisions of subsections (2) and
12 (8), an individual, small business corporation, partnership,
13 trust, decedent's estate, or corporate taxpayer that makes a
14 capital investment in a qualified Montana capital company is
15 entitled to a tax credit equal to 50% of the investment, up
16 to a maximum credit of \$150,000 per taxpayer. The credit may
17 be taken against the tax liability imposed on the investor
18 pursuant to Title 15, chapter 30, 31, or 35. The credit for
19 investments by a small business corporation ~~electing--to--be~~
20 ~~taxed--under--15-31-202~~ defined in 15-31-201 or a partnership
21 may be claimed by the small business corporation
22 shareholders or the partners.

23 (6) The tax credit allowed under subsection (5) is to
24 be credited against the taxpayer's income tax liability or
25 coal severance tax liability for the taxable year in which

1 the investment in a qualified Montana capital company is
 2 made. If the amount of the tax credit exceeds the taxpayer's
 3 tax liability for the taxable year, the amount of the credit
 4 which exceeds the tax liability may be carried back or
 5 carried forward in the following manner:

6 (a) If the sum of the amount of credit for the current
 7 taxable year plus the amount of credit, if any, carried
 8 forward from a previous taxable year exceeds the taxpayer's
 9 tax liability for the current taxable year, the excess must
 10 be carried back as a credit to the 3 preceding taxable years
 11 and, if the full credit remains unused, carried forward as a
 12 credit to the 15 succeeding taxable years.

13 (b) The amount of unused credit must be used to offset
 14 the entire tax liability of each of the 18 taxable years,
 15 beginning with the earliest and commencing to the next
 16 succeeding year until the credit is exhausted.

17 (7) The tax credit provided for in this section is
 18 available only to those taxpayers who invest in a qualified
 19 Montana capital company within 4 years of July 1, 1987.

20 (8) An individual, small business corporation,
 21 partnership, or corporate taxpayer who obtains the tax
 22 credit allowed under subsection (5) may not obtain credits
 23 in excess of the \$150,000 limit contained in subsection (5)
 24 by making investments as more than one entity. A partner or
 25 shareholder in a small business corporation may not obtain

1 more than \$150,000 in credits as an individual and as the
 2 partnership or small business corporation. A corporate
 3 taxpayer that obtains the maximum \$150,000 credit may not
 4 obtain additional credits through investments by wholly
 5 owned subsidiaries or affiliates."

6 NEW SECTION. **Section 10.** Repealer. Section 15-31-208,
 7 MCA, is repealed.

8 NEW SECTION. **Section 11.** Effective dates --
 9 applicability. (1) Except for the purposes of subsection
 10 (2), [this act] is effective December 31, 1991, and applies
 11 to tax years beginning after December 31, 1991.

12 (2) For the purpose of promulgating administrative
 13 rules to implement [sections 1 through 10], [this act] is
 14 effective on passage and approval.

-End-

1 *Senate* BILL NO. *333*
 2 INTRODUCED BY *Depp*
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A
 6 MONTANA SHAREHOLDER OF A CORPORATION THAT IS NOT
 7 INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A
 8 MONTANA SMALL BUSINESS CORPORATION IS SUBJECT TO THE SAME
 9 INDIVIDUAL INCOME TAX TREATMENT AS A MONTANA SHAREHOLDER OF
 10 A CORPORATION THAT IS INCORPORATED IN MONTANA AND HAS NOT
 11 ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION;
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 13 SUBCHAPTER S. CORPORATION FILING STATUS FOR FEDERAL PURPOSES
 14 USE THE MONTANA SMALL BUSINESS CORPORATION FILING STATUS FOR
 15 MONTANA PURPOSES; AMENDING SECTIONS 15-30-111, 15-30-117,
 16 15-30-126, 15-30-136, 15-30-161, 15-31-201, 15-31-202,
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 18 MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY
 19 DATE."

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 **Section 1.** Section 15-30-111, MCA, is amended to read:
 23 "15-30-111. Adjusted gross income. (1) Adjusted gross
 24 income shall be the taxpayer's federal income tax adjusted
 25 gross income as defined in section 62 of the Internal

1 Revenue Code of 1954 or as that section may be labeled or
 2 amended and in addition shall include the following:

3 (a) interest received on obligations of another state
 4 or territory or county, municipality, district, or other
 5 political subdivision thereof;

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

9 (c) that portion of a shareholder's income under
 10 subchapter S. of Chapter 1 of the Internal Revenue Code of
 11 1954, that has been reduced by any federal taxes paid by the
 12 subchapter S. corporation on the income; and

13 (d) depreciation or amortization taken on a title plant
 14 as defined in 33-25-105(15).

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

19 (a) all interest income from obligations of the United
 20 States government, the state of Montana, county,
 21 municipality, district, or other political subdivision
 22 thereof;

23 (b) interest income earned by a taxpayer age 65 or
 24 older in a taxable year up to and including \$800 for a
 25 taxpayer filing a separate return and \$1,600 for each joint



1 return;

2 (c) all benefits, not in excess of \$3,600, received:

3 (i) under the Federal Employees' Retirement Act;

4 (ii) under the public employee retirement laws of a
5 state other than Montana; or

6 (iii) as an annuity, pension, or endowment under any
7 private or corporate retirement plan or system;

8 (d) all benefits paid under the teachers' retirement
9 law which are specified as exempt from taxation by 19-4-706;

10 (e) all benefits paid under The Public Employees'
11 Retirement System Act which are specified as exempt from
12 taxation by 19-3-105;

13 (f) all benefits paid under the highway patrol
14 retirement law which are specified as exempt from taxation
15 by 19-6-705;

16 (g) all Montana income tax refunds or credits thereof;

17 (h) all benefits paid under 19-11-602, 19-11-604, and
18 19-11-605 to retired and disabled firefighters, their
19 surviving spouses and orphans or specified as exempt from
20 taxation by 19-13-1003;

21 (i) all benefits paid under the municipal police
22 officers' retirement system that are specified as exempt
23 from taxation by 19-9-1005;

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

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

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

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

11 (n) all benefits paid under an optional retirement
12 program that are specified as exempt from taxation by
13 19-21-212; and

14 (o) all money received because of a settlement
15 agreement or judgment in a lawsuit brought against a
16 manufacturer or distributor of "agent orange" for damages
17 resulting from exposure to "agent orange".

18 ~~(3) in the case of a shareholder of a corporation with~~
19 ~~respect to which the election provided for under subchapter~~
20 ~~S7 of the Internal Revenue Code of 1954, as amended, is in~~
21 ~~effect but with respect to which the election provided for~~
22 ~~under 15-31-202, as amended, is not in effect, adjusted~~
23 ~~gross income does not include any part of the corporation's~~
24 ~~undistributed taxable income, net operating loss, capital~~
25 ~~gains or other gains, profits, or losses required to be~~

1 ~~included in the shareholder's federal income tax adjusted~~
 2 ~~gross income by reason of the election under subchapter S.~~
 3 ~~However, the shareholder's adjusted gross income shall~~
 4 ~~include actual distributions from the corporation to the~~
 5 ~~extent they would be treated as taxable dividends if the~~
 6 ~~subchapter S election were not in effect.~~

7 ~~†4†(3)~~ A shareholder of a DISC that is exempt from the
 8 corporation license tax under 15-31-102(1)(1) shall include
 9 in his adjusted gross income the earnings and profits of the
 10 DISC in the same manner as provided by federal law (section
 11 995, Internal Revenue Code) for all periods for which the
 12 DISC election is effective.

13 ~~†5†(4)~~ A taxpayer who, in determining federal adjusted
 14 gross income, has reduced his business deductions by an
 15 amount for wages and salaries for which a federal tax credit
 16 was elected under section 44B of the Internal Revenue Code
 17 of 1954 or as that section may be labeled or amended is
 18 allowed to deduct the amount of the wages and salaries paid
 19 regardless of the credit taken. The deduction must be made
 20 in the year the wages and salaries were used to compute the
 21 credit. In the case of a partnership or small business
 22 corporation, the deduction must be made to determine the
 23 amount of income or loss of the partnership or small
 24 business corporation.

25 ~~†6†(5)~~ Married taxpayers filing a joint federal return

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

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

1 impairment lasting or expected to last at least 12 months.
 2 ~~(8)~~(7) A person receiving benefits described in
 3 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
 4 exclude benefits described in subsection (2)(c) from
 5 adjusted gross income unless the benefits received under
 6 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
 7 less than \$3,600, in which case the person may combine
 8 benefits to exclude up to a total of \$3,600 from adjusted
 9 gross income. (Subsection (2)(k) terminates on occurrence of
 10 contingency--sec. 3, Ch. 634, L. 1983.)"

11 **Section 2.** Section 15-30-117, MCA, is amended to read:

12 "15-30-117. Net operating loss -- computation. (1) A
 13 net operating loss must be determined in accordance with
 14 section 172 of the Internal Revenue Code of 1954 or as that
 15 section may be labeled or amended and in accordance with the
 16 following:

17 (a) Additions to loss include:

18 (i) that portion of the federal income tax and motor
 19 vehicle tax allowed as a deduction under 15-30-121 or
 20 15-30-131 which is attributable to income from a trade or
 21 business; and

22 (ii) wages and salaries allowed as a business deduction
 23 under 15-30-111~~(5)~~(4).

24 (b) Reductions in the loss include:

25 (i) interest received on obligations of another state

1 or territory or of a county, municipality, district, or
 2 political subdivision thereof allowed as nonbusiness income
 3 under 15-30-111(1)(a);

4 (ii) federal income tax refunds required to be reported
 5 under 15-30-111 and 15-30-131 as business income;

6 (iii) state income tax; and

7 (iv) any other nonbusiness deductions allowed under
 8 15-30-121 in excess of nonbusiness income.

9 (2) Notwithstanding the provisions of section 172 of
 10 the Internal Revenue Code of 1954 or as that section may be
 11 labeled or amended, a net operating loss does not include:

12 (a) income defined as exempt from state taxation under
 13 15-30-111(2); or

14 (b) a zero bracket deduction provided for under section
 15 63 of the Internal Revenue Code of 1954 or as that section
 16 may be labeled or amended."

17 **Section 3.** Section 15-30-126, MCA, is amended to read:

18 "15-30-126. Small business corporation -- deduction for
 19 donation of computer equipment to schools. A small business
 20 corporation ~~electing--to--be--taxed--under--the--provisions--of~~
 21 ~~15-31-202~~, as defined in 15-31-201, is allowed a deduction
 22 equal to the fair market value, not to exceed 30% of the
 23 small business corporation's net income, of a computer or
 24 other sophisticated technological equipment or apparatus
 25 intended for use with the computer donated to an elementary;

1 secondary, or accredited postsecondary school located in
2 Montana if:

3 (1) the contribution is made no later than 5 years
4 after the manufacture of the donated property is
5 substantially completed;

6 (2) the property is not transferred by the donee in
7 exchange for money, other property, or services;

8 (3) the electing small business corporation receives a
9 written statement from the donee in which the donee agrees
10 to accept the property and representing that the use and
11 disposition of the property will be in accordance with the
12 provisions of subsection (2); and

13 (4) the deduction allowed in this section is in lieu of
14 the deduction allowed under 15-30-121 for charitable
15 contributions."

16 **Section 4.** Section 15-30-136, MCA, is amended to read:

17 "15-30-136. Computation of income of estates or trusts
18 -- exemption. (1) Except as otherwise provided in this
19 chapter, "gross income" of estates or trusts means all
20 income from whatever source derived in the taxable year,
21 including but not limited to the following items:

22 (a) dividends;

23 (b) interest received or accrued, including interest
24 received on obligations of another state or territory or a
25 county, municipality, district, or other political

1 subdivision thereof, but excluding interest income from
2 obligations of:

3 (i) the United States government or the state of
4 Montana;

5 (ii) a school district; or

6 (iii) a county, municipality, district, or other
7 political subdivision of the state;

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

10 (e) gain from sale or exchange of property, including
11 those gains that are excluded from gross income for federal
12 fiduciary income tax purposes by section 641(c) of the
13 Internal Revenue Code of 1954, as amended;

14 (f) gross profit from trade or business; and

15 (g) refunds recovered on federal income tax, to the
16 extent the deduction of such tax resulted in a reduction of
17 Montana income tax liability.

18 (2) In computing net income, there are allowed as
19 deductions:

20 (a) interest expenses deductible for federal tax
21 purposes according to section 163 of the Internal Revenue
22 Code of 1954, as amended;

23 (b) taxes paid or accrued within the taxable year,
24 including but not limited to federal income tax, but
25 excluding Montana income tax;

1 (c) that fiduciary's portion of depreciation or
2 depletion which is deductible for federal tax purposes
3 according to sections 167, 611, and 642 of the Internal
4 Revenue Code of 1954, as amended;

5 (d) charitable contributions that are deductible for
6 federal tax purposes according to section 642(c) of the
7 Internal Revenue Code of 1954, as amended;

8 (e) administrative expenses claimed for federal income
9 tax purposes, according to sections 212 and 642(g) of the
10 Internal Revenue Code of 1954, as amended, if such expenses
11 were not claimed as a deduction in the determination of
12 Montana inheritance tax;

13 (f) losses from fire, storm, shipwreck, or other
14 casualty or from theft, to the extent not compensated for by
15 insurance or otherwise, that are deductible for federal tax
16 purposes according to section 165 of the Internal Revenue
17 Code of 1954, as amended;

18 (g) net operating loss deductions allowed for federal
19 income tax under section 642(d) of the Internal Revenue Code
20 of 1954, as amended, except estates may not claim losses
21 that are deductible on the decedent's final return;

22 (h) all benefits, not in excess of \$3,600, received:

23 (i) as federal employees' retirement;

24 (ii) as retirement from public employment in a state
25 other than Montana; or

1 (iii) as an annuity, pension, or endowment under private
2 or corporate retirement plans or systems;

3 (i) all benefits paid under the Montana teachers'
4 retirement system that are specified as exempt from taxation
5 by 19-4-706;

6 (j) all benefits paid under the Montana Public
7 Employees' Retirement System Act that are specified as
8 exempt from taxation by 19-3-105;

9 (k) all benefits paid under the Montana highway patrol
10 officers' retirement system that are specified as exempt
11 from taxation by 19-6-705;

12 (l) Montana income tax refunds or credits thereof;

13 (m) all benefits paid under 19-11-602, 19-11-604, and
14 19-11-605 to retired and disabled firemen or their surviving
15 spouses or children;

16 (n) all benefits paid under the municipal police
17 officers' retirement system that are specified as exempt
18 from taxation by 19-9-1005.

19 ~~{3}--in-the-case-of-a-shareholder-of-a-corporation--with~~
20 ~~respect--to--which--the--election--provided--for--under--subchapter~~
21 ~~S--of--the--Internal--Revenue--Code--of--1954--as--amended--is--in~~
22 ~~effect--but--with--respect--to--which--the--election--provided--for~~
23 ~~under--15-31-202--is--not--in--effect;--net--income--does--not~~
24 ~~include--any--part--of--the--corporation's--undistributed--taxable~~
25 ~~income;--net--operating--loss;--capital--gains--or--other--gains;~~

profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S election were not in effect:

(3) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

(5) A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in which case the trust or estate may combine benefits to exclude up to a total of \$3,600 from net income."

Section 5. Section 15-30-161, MCA, is amended to read:

"15-30-161. Purpose. The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing to be taxed under the provisions of 15-31-202 defined in 15-31-201, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 6. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definitions Definition of "small business corporation". (1) For purposes of this part, the term "small business corporation" means a corporation doing business in Montana and which that has made a valid election under Subchapter S of Chapter 1 of the Internal Revenue Code of 1954 and thereafter:

(a) has filed A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective. department--on-or-before-the-15th-day-of-the-third-month-of-the-taxable-year-for-which-the-election-is-to-become-effective, or

(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter.

(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an

1 election under Subchapter S in effect for the taxable year
2 and:

3 (a) has filed a copy of such election with the
4 department on or before the 15th day of the third month of
5 the taxable year for which the election is to become
6 effective; or

7 (b) files a copy of the federal Subchapter S corporate
8 tax return with the tax return filed under this chapter."

9 **Section 7.** Section 15-31-202, MCA, is amended to read:

10 "15-31-202. Election by small Small business
11 corporation not subject to chapter. (1) A small business
12 corporation may elect is not to be subject to the taxes
13 imposed by this chapter.

14 (2) If a small business corporation makes an election
15 under subsection (1), then:

16 (a) with respect to the taxable years of the
17 corporation for which such election is in effect, such
18 corporation is not subject to the taxes imposed by this
19 chapter and, with respect to such taxable years and all
20 succeeding taxable years, the provisions of this part apply
21 to such corporation; and

22 (b) with respect to the taxable years of a shareholder
23 of such corporation in which or with which the taxable years
24 of the corporation for which such election is in effect end,
25 the provisions of this part apply to such shareholders; and

1 with respect to such taxable years and all succeeding
2 taxable years, the provisions of this part apply to such
3 shareholder;

4 (3) An election under subsection (1) must be made in
5 accordance with rules prescribed by the department of
6 revenue;

7 (4) This election is not effective unless the The
8 corporate net income or loss of such electing the
9 corporation is included in the stockholders' adjusted gross
10 income as defined in 15-30-111.

11 (5)(2) Every electing Each small business corporation
12 is required to pay the minimum fee of \$10 required by
13 15-31-204."

14 **Section 8.** Section 15-31-204, MCA, is amended to read:

15 "15-31-204. Minimum fee of qualifying small business
16 corporations unaffected. Notwithstanding the provisions of
17 15-31-121, small business corporations electing and
18 qualifying under 15-31-202 shall pay a minimum fee of \$10."

19 **Section 9.** Section 90-8-202, MCA, is amended to read:

20 "90-8-202. Designation of qualified Montana capital
21 companies -- tax credit. (1) The board shall designate as
22 qualified Montana capital companies those certified
23 companies that have been privately capitalized at a minimum
24 level of \$200,000. A certified company seeking designation
25 as a qualified Montana capital company must make written

1 application to the board on forms provided by the board. The
2 application must contain the information required by
3 90-8-204 and such other information as the board requires.

4 (2) (a) The total amount of tax credits authorized for
5 a single qualified company may not exceed \$1,500,000. In the
6 event the capitalization of the company is later increased,
7 the company may apply for authorization of additional tax
8 credits within the foregoing limitation.

9 (b) The total credits authorized for all companies may
10 not exceed a total of \$1 million prior to June 30, 1985. The
11 total credits authorized for all companies between July 1,
12 1985, and June 30, 1987, may not exceed \$1 million plus any
13 portion of the \$1 million available for authorization before
14 June 30, 1985, that is allocated to qualified companies. The
15 total credits authorized for all companies between July 1,
16 1987, and June 30, 1989, may not exceed \$3 million plus any
17 portion of the credits available for authorization before
18 June 30, 1987, that is allocated to qualified companies. The
19 total credits authorized for all companies between July 1,
20 1989, and June 30, 1991, may not exceed \$3 million plus any
21 portion of the credits available for authorization before
22 June 30, 1989, that is allocated to qualified companies.

23 (3) The credits shall be allocated to qualified
24 companies in the order that completed applications for
25 designation as qualified capital companies are received by

1 the board, and the board shall certify to each such company
2 its appropriate allocation.

3 (4) Investors in a qualified Montana capital company
4 are entitled to the tax credits provided for in subsection
5 (5). Funds invested in a certified company prior to
6 designation as a qualified Montana capital company may, at
7 the discretion of the investor, be placed in an escrow
8 account in a Montana financial institution pending
9 designation of the company as a qualified Montana capital
10 company.

11 (5) Subject to the provisions of subsections (2) and
12 (8), an individual, small business corporation, partnership,
13 trust, decedent's estate, or corporate taxpayer that makes a
14 capital investment in a qualified Montana capital company is
15 entitled to a tax credit equal to 50% of the investment, up
16 to a maximum credit of \$150,000 per taxpayer. The credit may
17 be taken against the tax liability imposed on the investor
18 pursuant to Title 15, chapter 30, 31, or 35. The credit for
19 investments by a small business corporation ~~electing--to--be~~
20 ~~taxed--under--15-31-202~~ defined in 15-31-201 or a partnership
21 may be claimed by the small business corporation
22 shareholders or the partners.

23 (6) The tax credit allowed under subsection (5) is to
24 be credited against the taxpayer's income tax liability or
25 coal severance tax liability for the taxable year in which

1 the investment in a qualified Montana capital company is
 2 made. If the amount of the tax credit exceeds the taxpayer's
 3 tax liability for the taxable year, the amount of the credit
 4 which exceeds the tax liability may be carried back or
 5 carried forward in the following manner:

6 (a) If the sum of the amount of credit for the current
 7 taxable year plus the amount of credit, if any, carried
 8 forward from a previous taxable year exceeds the taxpayer's
 9 tax liability for the current taxable year, the excess must
 10 be carried back as a credit to the 3 preceding taxable years
 11 and, if the full credit remains unused, carried forward as a
 12 credit to the 15 succeeding taxable years.

13 (b) The amount of unused credit must be used to offset
 14 the entire tax liability of each of the 18 taxable years,
 15 beginning with the earliest and commencing to the next
 16 succeeding year until the credit is exhausted.

17 (7) The tax credit provided for in this section is
 18 available only to those taxpayers who invest in a qualified
 19 Montana capital company within 4 years of July 1, 1987.

20 (8) An individual, small business corporation,
 21 partnership, or corporate taxpayer who obtains the tax
 22 credit allowed under subsection (5) may not obtain credits
 23 in excess of the \$150,000 limit contained in subsection (5)
 24 by making investments as more than one entity. A partner or
 25 shareholder in a small business corporation may not obtain

1 more than \$150,000 in credits as an individual and as the
 2 partnership or small business corporation. A corporate
 3 taxpayer that obtains the maximum \$150,000 credit may not
 4 obtain additional credits through investments by wholly
 5 owned subsidiaries or affiliates."

6 NEW SECTION. **Section 10.** Repealer. Section 15-31-208,
 7 MCA, is repealed.

8 NEW SECTION. **Section 11.** Effective dates --
 9 applicability. (1) Except for the purposes of subsection
 10 (2), [this act] is effective December 31, 1991, and applies
 11 to tax years beginning after December 31, 1991.

12 (2) For the purpose of promulgating administrative
 13 rules to implement [sections 1 through 10], [this act] is
 14 effective on passage and approval.

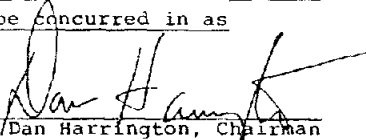
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HOUSE STANDING COMMITTEE REPORT

April 8, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that Senate Bill 333 (third reading copy -- blue) be concurrent in as amended.

Signed: 
Dan Harrington, Chairman

Carried by: Rep. Stang

And, that such amendments read:

1. Title, line 15.

Following: ";"

Insert: "PROVIDING A LIMITED EXCEPTION ALLOWING CORPORATIONS THAT CURRENTLY USE SUBCHAPTER S. CORPORATION STATUS FOR FILING FEDERAL INCOME TAX AND REGULAR CORPORATION STATUS FOR FILING MONTANA INCOME TAX TO CONTINUE THAT METHOD OF FILING;"

2. Page 14, line 10.

Strike: "For purposes of this part"

Insert: "(1) Except as provided in subsection (2)"

3. Page 15, line 9.

Following: line 8

Insert: "(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid Subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal Subchapter S. corporate tax return."

HOUSE

5333

1 SENATE BILL NO. 333

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A
6 MONTANA SHAREHOLDER OF A CORPORATION THAT IS NOT
7 INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A
8 MONTANA SMALL BUSINESS CORPORATION IS SUBJECT TO THE SAME
9 INDIVIDUAL INCOME TAX TREATMENT AS A MONTANA SHAREHOLDER OF
10 A CORPORATION THAT IS INCORPORATED IN MONTANA AND HAS NOT
11 ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION;
12 REQUIRING THAT A CORPORATION THAT ELECTS TO USE THE
13 SUBCHAPTER S. CORPORATION FILING STATUS FOR FEDERAL PURPOSES
14 USE THE MONTANA SMALL BUSINESS CORPORATION FILING STATUS FOR
15 MONTANA PURPOSES; PROVIDING A LIMITED EXCEPTION ALLOWING
16 CORPORATIONS THAT CURRENTLY USE SUBCHAPTER S. CORPORATION
17 STATUS FOR FILING FEDERAL INCOME TAX AND REGULAR CORPORATION
18 STATUS FOR FILING MONTANA INCOME TAX TO CONTINUE THAT METHOD
19 OF FILING; AMENDING SECTIONS 15-30-111, 15-30-117,
20 15-30-126, 15-30-136, 15-30-161, 15-31-201, 15-31-202,
21 15-31-204, AND 90-8-202, MCA; REPEALING SECTION 15-31-208,
22 MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY
23 DATE."

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **Section 1.** Section 15-30-111, MCA, is amended to read:

2 **"15-30-111. Adjusted gross income.** (1) Adjusted gross
3 income shall be the taxpayer's federal income tax adjusted
4 gross income as defined in section 62 of the Internal
5 Revenue Code of 1954 or as that section may be labeled or
6 amended and in addition shall include the following:

7 (a) interest received on obligations of another state
8 or territory or county, municipality, district, or other
9 political subdivision thereof;

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

13 (c) that portion of a shareholder's income under
14 subchapter S. of Chapter 1 of the Internal Revenue Code of
15 1954, that has been reduced by any federal taxes paid by the
16 subchapter S. corporation on the income; and

17 (d) depreciation or amortization taken on a title plant
18 as defined in 33-25-105(15).

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

23 (a) all interest income from obligations of the United
24 States government, the state of Montana, county,
25 municipality, district, or other political subdivision

1 thereof;

2 (b) interest income earned by a taxpayer age 65 or
3 older in a taxable year up to and including \$800 for a
4 taxpayer filing a separate return and \$1,600 for each joint
5 return;

6 (c) all benefits, not in excess of \$3,600, received:

7 (i) under the Federal Employees' Retirement Act;

8 (ii) under the public employee retirement laws of a
9 state other than Montana; or

10 (iii) as an annuity, pension, or endowment under any
11 private or corporate retirement plan or system;

12 (d) all benefits paid under the teachers' retirement
13 law which are specified as exempt from taxation by 19-4-706;

14 (e) all benefits paid under The Public Employees'
15 Retirement System Act which are specified as exempt from
16 taxation by 19-3-105;

17 (f) all benefits paid under the highway patrol
18 retirement law which are specified as exempt from taxation
19 by 19-6-705;

20 (g) all Montana income tax refunds or credits thereof;

21 (h) all benefits paid under 19-11-602, 19-11-604, and
22 19-11-605 to retired and disabled firefighters, their
23 surviving spouses and orphans or specified as exempt from
24 taxation by 19-13-1003;

25 (i) all benefits paid under the municipal police

1 officers' retirement system that are specified as exempt
2 from taxation by 19-9-1005;

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

5 (k) all tips covered by section 3402(k) of the Internal
6 Revenue Code of 1954, as amended and applicable on January
7 1, 1983, received by persons for services rendered by them
8 to patrons of premises licensed to provide food, beverage,
9 or lodging;

10 (l) all benefits received under the workers'
11 compensation laws;

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

15 (n) all benefits paid under an optional retirement
16 program that are specified as exempt from taxation by
17 19-21-212; and

18 (o) all money received because of a settlement
19 agreement or judgment in a lawsuit brought against a
20 manufacturer or distributor of "agent orange" for damages
21 resulting from exposure to "agent orange".

22 ~~(p) -- In -- the -- case -- of -- a -- shareholder -- of -- a -- corporation -- with~~
23 ~~respect -- to -- which -- the -- election -- provided -- for -- under -- subchapter~~
24 ~~S -- of -- the -- Internal -- Revenue -- Code -- of -- 1954 -- as -- amended -- is -- in~~
25 ~~effect -- but -- with -- respect -- to -- which -- the -- election -- provided -- for~~

1 under 15-31-2027 as amended is not in effect, adjusted
 2 gross income does not include any part of the corporation's
 3 undistributed taxable income, net operating loss, capital
 4 gains or other gains, profits, or losses required to be
 5 included in the shareholder's federal income tax adjusted
 6 gross income by reason of the election under subchapter S.
 7 However, the shareholder's adjusted gross income shall
 8 include actual distributions from the corporation to the
 9 extent they would be treated as taxable dividends if the
 10 subchapter S election were not in effect.

11 (4)(3) A shareholder of a DISC that is exempt from the
 12 corporation license tax under 15-31-102(1)(1) shall include
 13 in his adjusted gross income the earnings and profits of the
 14 DISC in the same manner as provided by federal law (section
 15 995, Internal Revenue Code) for all periods for which the
 16 DISC election is effective.

17 (5)(4) A taxpayer who, in determining federal adjusted
 18 gross income, has reduced his business deductions by an
 19 amount for wages and salaries for which a federal tax credit
 20 was elected under section 44B of the Internal Revenue Code
 21 of 1954 or as that section may be labeled or amended is
 22 allowed to deduct the amount of the wages and salaries paid
 23 regardless of the credit taken. The deduction must be made
 24 in the year the wages and salaries were used to compute the
 25 credit. In the case of a partnership or small business

1 corporation, the deduction must be made to determine the
 2 amount of income or loss of the partnership or small
 3 business corporation.

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

12 (7)(6) A taxpayer receiving retirement disability
 13 benefits who has not attained age 65 by the end of the
 14 taxable year and who has retired as permanently and totally
 15 disabled may exclude from adjusted gross income up to \$100
 16 per week received as wages or payments in lieu of wages for
 17 a period during which the employee is absent from work due
 18 to the disability. If the adjusted gross income before this
 19 exclusion and before application of the two-earner married
 20 couple deduction exceeds \$15,000, the excess reduces the
 21 exclusion by an equal amount. This limitation affects the
 22 amount of exclusion, but not the taxpayer's eligibility for
 23 the exclusion. If eligible, married individuals shall apply
 24 the exclusion separately, but the limitation for income
 25 exceeding \$15,000 is determined with respect to the spouses

1 on their combined adjusted gross income. For the purpose of
 2 this subsection, permanently and totally disabled means
 3 unable to engage in any substantial gainful activity by
 4 reason of any medically determined physical or mental
 5 impairment lasting or expected to last at least 12 months.

6 ~~(8)~~(7) A person receiving benefits described in
 7 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
 8 exclude benefits described in subsection (2)(c) from
 9 adjusted gross income unless the benefits received under
 10 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
 11 less than \$3,600, in which case the person may combine
 12 benefits to exclude up to a total of \$3,600 from adjusted
 13 gross income. (Subsection (2)(k) terminates on occurrence of
 14 contingency--sec. 3, Ch. 634, L. 1983.)"

15 **Section 2.** Section 15-30-117, MCA, is amended to read:

16 "15-30-117. Net operating loss -- computation. (1) A
 17 net operating loss must be determined in accordance with
 18 section 172 of the Internal Revenue Code of 1954 or as that
 19 section may be labeled or amended and in accordance with the
 20 following:

21 (a) Additions to loss include:

22 (i) that portion of the federal income tax and motor
 23 vehicle tax allowed as a deduction under 15-30-121 or
 24 15-30-131 which is attributable to income from a trade or
 25 business; and

1 (ii) wages and salaries allowed as a business deduction
 2 under 15-30-111~~(5)~~(4).

3 (b) Reductions in the loss include:

4 (i) interest received on obligations of another state
 5 or territory or of a county, municipality, district, or
 6 political subdivision thereof allowed as nonbusiness income
 7 under 15-30-111(1)(a);

8 (ii) federal income tax refunds required to be reported
 9 under 15-30-111 and 15-30-131 as business income;

10 (iii) state income tax; and

11 (iv) any other nonbusiness deductions allowed under
 12 15-30-121 in excess of nonbusiness income.

13 (2) Notwithstanding the provisions of section 172 of
 14 the Internal Revenue Code of 1954 or as that section may be
 15 labeled or amended, a net operating loss does not include:

16 (a) income defined as exempt from state taxation under
 17 15-30-111(2); or

18 (b) a zero bracket deduction provided for under section
 19 63 of the Internal Revenue Code of 1954 or as that section
 20 may be labeled or amended."

21 **Section 3.** Section 15-30-126, MCA, is amended to read:

22 "15-30-126. Small business corporation -- deduction for
 23 donation of computer equipment to schools. A small business
 24 corporation ~~electing-to-be-taxed--under--the--provisions--of~~
 25 ~~15-31-202~~, as defined in 15-31-201, is allowed a deduction

1 equal to the fair market value, not to exceed 30% of the
 2 small business corporation's net income, of a computer or
 3 other sophisticated technological equipment or apparatus
 4 intended for use with the computer donated to an elementary,
 5 secondary, or accredited postsecondary school located in
 6 Montana if:

7 (1) the contribution is made no later than 5 years
 8 after the manufacture of the donated property is
 9 substantially completed;

10 (2) the property is not transferred by the donee in
 11 exchange for money, other property, or services;

12 (3) the electing small business corporation receives a
 13 written statement from the donee in which the donee agrees
 14 to accept the property and representing that the use and
 15 disposition of the property will be in accordance with the
 16 provisions of subsection (2); and

17 (4) the deduction allowed in this section is in lieu of
 18 the deduction allowed under 15-30-121 for charitable
 19 contributions."

20 **Section 4.** Section 15-30-136, MCA, is amended to read:

21 **"15-30-136. Computation of income of estates or trusts**
 22 **-- exemption.** (1) Except as otherwise provided in this
 23 chapter, "gross income" of estates or trusts means all
 24 income from whatever source derived in the taxable year,
 25 including but not limited to the following items:

1 (a) dividends;

2 (b) interest received or accrued, including interest
 3 received on obligations of another state or territory or a
 4 county, municipality, district, or other political
 5 subdivision thereof, but excluding interest income from
 6 obligations of:

7 (i) the United States government or the state of
 8 Montana;

9 (ii) a school district; or

10 (iii) a county, municipality, district, or other
 11 political subdivision of the state;

12 (c) income from partnerships and other fiduciaries;

13 (d) gross rents and royalties;

14 (e) gain from sale or exchange of property, including
 15 those gains that are excluded from gross income for federal
 16 fiduciary income tax purposes by section 641(c) of the
 17 Internal Revenue Code of 1954, as amended;

18 (f) gross profit from trade or business; and

19 (g) refunds recovered on federal income tax, to the
 20 extent the deduction of such tax resulted in a reduction of
 21 Montana income tax liability.

22 (2) In computing net income, there are allowed as
 23 deductions:

24 (a) interest expenses deductible for federal tax
 25 purposes according to section 163 of the Internal Revenue

1 Code of 1954, as amended;

2 (b) taxes paid or accrued within the taxable year,
3 including but not limited to federal income tax, but
4 excluding Montana income tax;

5 (c) that fiduciary's portion of depreciation or
6 depletion which is deductible for federal tax purposes
7 according to sections 167, 611, and 642 of the Internal
8 Revenue Code of 1954, as amended;

9 (d) charitable contributions that are deductible for
10 federal tax purposes according to section 642(c) of the
11 Internal Revenue Code of 1954, as amended;

12 (e) administrative expenses claimed for federal income
13 tax purposes, according to sections 212 and 642(g) of the
14 Internal Revenue Code of 1954, as amended, if such expenses
15 were not claimed as a deduction in the determination of
16 Montana inheritance tax;

17 (f) losses from fire, storm, shipwreck, or other
18 casualty or from theft, to the extent not compensated for by
19 insurance or otherwise, that are deductible for federal tax
20 purposes according to section 165 of the Internal Revenue
21 Code of 1954, as amended;

22 (g) net operating loss deductions allowed for federal
23 income tax under section 642(d) of the Internal Revenue Code
24 of 1954, as amended, except estates may not claim losses
25 that are deductible on the decedent's final return;

1 (h) all benefits, not in excess of \$3,600, received:

2 (i) as federal employees' retirement;

3 (ii) as retirement from public employment in a state
4 other than Montana; or

5 (iii) as an annuity, pension, or endowment under private
6 or corporate retirement plans or systems;

7 (i) all benefits paid under the Montana teachers'
8 retirement system that are specified as exempt from taxation
9 by 19-4-706;

10 (j) all benefits paid under the Montana Public
11 Employees' Retirement System Act that are specified as
12 exempt from taxation by 19-3-105;

13 (k) all benefits paid under the Montana highway patrol
14 officers' retirement system that are specified as exempt
15 from taxation by 19-6-705;

16 (l) Montana income tax refunds or credits thereof;

17 (m) all benefits paid under 19-11-602, 19-11-604, and
18 19-11-605 to retired and disabled firemen or their surviving
19 spouses or children;

20 (n) all benefits paid under the municipal police
21 officers' retirement system that are specified as exempt
22 from taxation by 19-9-1005.

23 ~~(3)--in--the--case--of--a--shareholder--of--a--corporation--with~~
24 ~~respect--to--which--the--election--provided--for--under--subchapter~~
25 ~~S--of--the--Internal--Revenue--Code--of--1954,--as--amended,--is--in~~

effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S election were not in effect.

(4)(3) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(5)(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

(6)(5) A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(1)

through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in which case the trust or estate may combine benefits to exclude up to a total of \$3,600 from net income."

Section 5. Section 15-30-161, MCA, is amended to read:

"15-30-161. Purpose. The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing to be taxed under the provisions of 15-31-202 defined in 15-31-201, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 6. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definitions Definition of "small business corporation". (1) EXCEPT AS PROVIDED IN SUBSECTION (2), the term "small business corporation" means a corporation doing business in Montana and which that has made a valid election under Subchapter S, of Chapter 1 of the Internal Revenue Code, of 1954 and thereafter:

(a) has filed A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective. department on or before the 15th day of the third month of the taxable year for which the election is to become effective, or

1 {b}--files-a-copy-of-the-federal-Subchapter-S--corporate
2 tax-return-with-the-tax-return-filed-under-this-chapter.

3 {2}--For-purposes-of-this-part, the-term-"electing-small
4 business--corporation"--means,--with--respect-to-any-taxable
5 year,--a--small--business--corporation--which--has--made--an
6 election-under-Subchapter-S-in-effect-for-the--taxable--year
7 and:

8 {a)--has---filed--a--copy--of--such--election--with--the
9 department-on-or-before-the-15th-day-of-the-third--month--of
10 the--taxable--year--for--which--the--election--is--to-become
11 effective; or

12 {b)--files-a-copy-of-the-federal-Subchapter-S--corporate
13 tax-return-with-the-tax-return-filed-under-this-chapter.

14 (2) A CORPORATION THAT WOULD OTHERWISE BE A SMALL
15 BUSINESS CORPORATION MAY CONTINUE TO BE SUBJECT TO THE TAXES
16 IMPOSED BY TITLE 15, CHAPTER 31, IF ALL OF THE FOLLOWING
17 CONDITIONS ARE MET:

18 (A) ON DECEMBER 31, 1991, THE CORPORATION WAS DOING
19 BUSINESS IN MONTANA AND HAD A VALID SUBCHAPTER S.
20 CORPORATION ELECTION BUT HAD NOT ELECTED TO BE TAXED AS A
21 MONTANA SMALL BUSINESS CORPORATION;

22 (B) AFTER DECEMBER 31, 1991, THE CORPORATION HAS NOT
23 FILED AS A MONTANA SMALL BUSINESS CORPORATION; AND

24 (C) THE CORPORATION FILES A CORPORATE LICENSE TAX
25 RETURN, AS REQUIRED BY 15-31-111, REPORTING ALL INCOME OR

1 LOSS AS DETERMINED UNDER TITLE 15, CHAPTER 31, AND ATTACHES
2 A COPY OF THE FEDERAL SUBCHAPTER S. CORPORATE TAX RETURN."

3 **Section 7.** Section 15-31-202, MCA, is amended to read:

4 "15-31-202. Election----by----small Small business
5 corporation not subject to chapter. (1) A small business
6 corporation may--elect is not to-be subject to the taxes
7 imposed by this chapter.

8 {2}--if-a-small-business-corporation-makes--an--election
9 under-subsection-{1}, then:

10 {a)--with---respect---to---the---taxable--years--of--the
11 corporation-for-which--such--election--is--in--effect,--such
12 corporation--is--not--subject--to--the--taxes--imposed--by--this
13 chapter-and, with-respect-to--such--taxable--years--and--all
14 succeeding--taxable--years, the-provisions-of-this-part-apply
15 to-such-corporation; and

16 {b)--with-respect-to-the-taxable-years-of-a--shareholder
17 of-such-corporation-in-which-or-with-which-the-taxable-years
18 of-the-corporation-for-which-such-election-is-in-effect-end,
19 the--provisions--of-this-part-apply-to-such-shareholder, and
20 with-respect--to--such--taxable--years--and--all--succeeding
21 taxable--years, the--provisions--of-this-part-apply-to-such
22 shareholder.

23 {3}--An-election-under-subsection-{1}-must--be--made--in
24 accordance--with--rules--prescribed--by--the--department--of
25 revenue.

~~(4)~~ ~~This election is not effective unless the~~ The
 corporate net income or loss of ~~such electing~~ the
 corporation is included in the stockholders' adjusted gross
 income as defined in 15-30-111.

~~(5)~~ ~~(2)~~ ~~Every electing~~ Each small business corporation
 is required to pay the minimum fee of \$10 required by
 15-31-204."

Section 8. Section 15-31-204, MCA, is amended to read:

"15-31-204. Minimum fee of qualifying small business
 corporations unaffected. Notwithstanding the provisions of
 15-31-121, small business corporations ~~electing~~ ~~and~~
~~qualifying under 15-31-202~~ shall pay a minimum fee of \$10."

Section 9. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital
companies -- tax credit. (1) The board shall designate as
 qualified Montana capital companies those certified
 companies that have been privately capitalized at a minimum
 level of \$200,000. A certified company seeking designation
 as a qualified Montana capital company must make written
 application to the board on forms provided by the board. The
 application must contain the information required by
 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for
 a single qualified company may not exceed \$1,500,000. In the
 event the capitalization of the company is later increased,

the company may apply for authorization of additional tax
 credits within the foregoing limitation.

(b) The total credits authorized for all companies may
 not exceed a total of \$1 million prior to June 30, 1985. The
 total credits authorized for all companies between July 1,
 1985, and June 30, 1987, may not exceed \$1 million plus any
 portion of the \$1 million available for authorization before
 June 30, 1985, that is allocated to qualified companies. The
 total credits authorized for all companies between July 1,
 1987, and June 30, 1989, may not exceed \$3 million plus any
 portion of the credits available for authorization before
 June 30, 1987, that is allocated to qualified companies. The
 total credits authorized for all companies between July 1,
 1989, and June 30, 1991, may not exceed \$3 million plus any
 portion of the credits available for authorization before
 June 30, 1989, that is allocated to qualified companies.

(3) The credits shall be allocated to qualified
 companies in the order that completed applications for
 designation as qualified capital companies are received by
 the board, and the board shall certify to each such company
 its appropriate allocation.

(4) Investors in a qualified Montana capital company
 are entitled to the tax credits provided for in subsection
 (5). Funds invested in a certified company prior to
 designation as a qualified Montana capital company may, at

1 the discretion of the investor, be placed in an escrow
2 account in a Montana financial institution pending
3 designation of the company as a qualified Montana capital
4 company.

5 (5) Subject to the provisions of subsections (2) and
6 (8), an individual, small business corporation, partnership,
7 trust, decedent's estate, or corporate taxpayer that makes a
8 capital investment in a qualified Montana capital company is
9 entitled to a tax credit equal to 50% of the investment, up
10 to a maximum credit of \$150,000 per taxpayer. The credit may
11 be taken against the tax liability imposed on the investor
12 pursuant to Title 15, chapter 30, 31, or 35. The credit for
13 investments by a small business corporation ~~electing--to--be~~
14 ~~taxed--under--15-31-202~~ defined in 15-31-201 or a partnership
15 may be claimed by the small business corporation
16 shareholders or the partners.

17 (6) The tax credit allowed under subsection (5) is to
18 be credited against the taxpayer's income tax liability or
19 coal severance tax liability for the taxable year in which
20 the investment in a qualified Montana capital company is
21 made. If the amount of the tax credit exceeds the taxpayer's
22 tax liability for the taxable year, the amount of the credit
23 which exceeds the tax liability may be carried back or
24 carried forward in the following manner:

25 (a) If the sum of the amount of credit for the current

1 taxable year plus the amount of credit, if any, carried
2 forward from a previous taxable year exceeds the taxpayer's
3 tax liability for the current taxable year, the excess must
4 be carried back as a credit to the 3 preceding taxable years
5 and, if the full credit remains unused, carried forward as a
6 credit to the 15 succeeding taxable years.

7 (b) The amount of unused credit must be used to offset
8 the entire tax liability of each of the 18 taxable years,
9 beginning with the earliest and commencing to the next
10 succeeding year until the credit is exhausted.

11 (7) The tax credit provided for in this section is
12 available only to those taxpayers who invest in a qualified
13 Montana capital company within 4 years of July 1, 1987.

14 (8) An individual, small business corporation,
15 partnership, or corporate taxpayer who obtains the tax
16 credit allowed under subsection (5) may not obtain credits
17 in excess of the \$150,000 limit contained in subsection (5)
18 by making investments as more than one entity. A partner or
19 shareholder in a small business corporation may not obtain
20 more than \$150,000 in credits as an individual and as the
21 partnership or small business corporation. A corporate
22 taxpayer that obtains the maximum \$150,000 credit may not
23 obtain additional credits through investments by wholly
24 owned subsidiaries or affiliates."

25 NEW SECTION. **Section 10.** Repealer. Section 15-31-208,

1 MCA, is repealed.

2 NEW SECTION. **Section 11.** Effective dates --

3 **applicability.** (1) Except for the purposes of subsection
4 (2), [this act] is effective December 31, 1991, and applies
5 to tax years beginning after December 31, 1991.

6 (2) For the purpose of promulgating administrative
7 rules to implement [sections 1 through 10], [this act] is
8 effective on passage and approval.

-End-

Free Conference Committee
on Senate Bill No. 333
Report No. 1, April 23, 1991

Mr. President and Mr. Speaker:

We, your Free Conference Committee on Senate Bill No. 333, met and considered Senate Bill No. 333 (reference copy - salmon) and recommend that Senate Bill No. 333 (reference copy - salmon) be amended as follows:

1. Title, line 5.
Strike: "CLARIFYING" on line 5
Insert: "requiring"

2. Page 21
Following: line 1
Insert: "NEW SECTION. Section 11. Conditional Grandfather Clause for certain Montana Shareholders of Foreign Corporations that have elected S corporation status for federal tax purposes. A Montana taxpayer who is a shareholder in a corporation that is not doing business in Montana and has elected S corporation status for federal tax purposes can apply Section 15-3-111(3) (1989) for all tax years beginning on or before December 31, 1996, if the following conditions are met:.

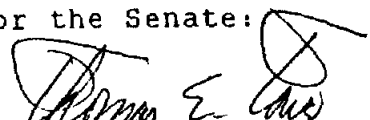
(1) The taxpayer can establish by substantial, credible evidence that the department of revenue gave the taxpayer advice concerning the application of Section 15-30-111(3), to the taxpayer's facts and circumstances.


(2) The taxpayer can establish by substantial, credible evidence that he relied on that advice to his detriment."

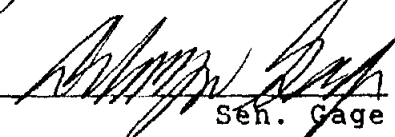
Renumber: subsequent sections

And that this Conference Committee report be adopted.

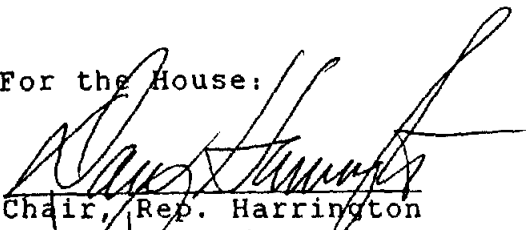
For the Senate:


Chair, Sen. Towe


Sen. Koehnke


Sen. Gage

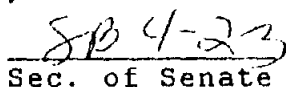
For the House:


Chair, Rep. Harrington


Rep. Elliott


Rep. Foster


Amd. Coord.


Sec. of Senate

ADOPT
REJECT

FCCR #1
SB 333

1 SENATE BILL NO. 333

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING REQUIRING
6 THAT A MONTANA SHAREHOLDER OF A CORPORATION THAT IS NOT
7 INCORPORATED IN MONTANA AND HAS NOT ELECTED TO BE TAXED AS A
8 MONTANA SMALL BUSINESS CORPORATION IS BE SUBJECT TO THE SAME
9 INDIVIDUAL INCOME TAX TREATMENT AS A MONTANA SHAREHOLDER OF
10 A CORPORATION THAT IS INCORPORATED IN MONTANA AND HAS NOT
11 ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION;
12 REQUIRING THAT A CORPORATION THAT ELECTS TO USE THE
13 SUBCHAPTER S. CORPORATION FILING STATUS FOR FEDERAL PURPOSES
14 USE THE MONTANA SMALL BUSINESS CORPORATION FILING STATUS FOR
15 MONTANA PURPOSES; PROVIDING A LIMITED EXCEPTION ALLOWING
16 CORPORATIONS THAT CURRENTLY USE SUBCHAPTER S. CORPORATION
17 STATUS FOR FILING FEDERAL INCOME TAX AND REGULAR CORPORATION
18 STATUS FOR FILING MONTANA INCOME TAX TO CONTINUE THAT METHOD
19 OF FILING; AMENDING SECTIONS 15-30-111, 15-30-117,
20 15-30-126, 15-30-136, 15-30-161, 15-31-201, 15-31-202,
21 15-31-204, AND 90-8-202, MCA; REPEALING SECTION 15-31-208,
22 MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY
23 DATE."
24

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

1 Section 1. Section 15-30-111, MCA, is amended to read:

2 "15-30-111. Adjusted gross income. (1) Adjusted gross
3 income shall be the taxpayer's federal income tax adjusted
4 gross income as defined in section 62 of the Internal
5 Revenue Code of 1954 or as that section may be labeled or
6 amended and in addition shall include the following:

7 (a) interest received on obligations of another state
8 or territory or county, municipality, district, or other
9 political subdivision thereof;

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

13 (c) that portion of a shareholder's income under
14 subchapter S. of Chapter 1 of the Internal Revenue Code of
15 1954, that has been reduced by any federal taxes paid by the
16 subchapter S. corporation on the income; and

17 (d) depreciation or amortization taken on a title plant
18 as defined in 33-25-105(15).

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

23 (a) all interest income from obligations of the United
24 States government, the state of Montana, county,
25 municipality, district, or other political subdivision

1 thereof;

2 (b) interest income earned by a taxpayer age 65 or
3 older in a taxable year up to and including \$800 for a
4 taxpayer filing a separate return and \$1,600 for each joint
5 return;

6 (c) all benefits, not in excess of \$3,600, received:

7 (i) under the Federal Employees' Retirement Act;

8 (ii) under the public employee retirement laws of a
9 state other than Montana; or

10 (iii) as an annuity, pension, or endowment under any
11 private or corporate retirement plan or system;

12 (d) all benefits paid under the teachers' retirement
13 law which are specified as exempt from taxation by 19-4-706;

14 (e) all benefits paid under The Public Employees'
15 Retirement System Act which are specified as exempt from
16 taxation by 19-3-105;

17 (f) all benefits paid under the highway patrol
18 retirement law which are specified as exempt from taxation
19 by 19-6-705;

20 (g) all Montana income tax refunds or credits thereof;

21 (h) all benefits paid under 19-11-602, 19-11-604, and
22 19-11-605 to retired and disabled firefighters, their
23 surviving spouses and orphans or specified as exempt from
24 taxation by 19-13-1003;

25 (i) all benefits paid under the municipal police

1 officers' retirement system that are specified as exempt
2 from taxation by 19-9-1005;

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

5 (k) all tips covered by section 3402(k) of the Internal
6 Revenue Code of 1954, as amended and applicable on January
7 1, 1983, received by persons for services rendered by them
8 to patrons of premises licensed to provide food, beverage,
9 or lodging;

10 (l) all benefits received under the workers'
11 compensation laws;

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

15 (n) all benefits paid under an optional retirement
16 program that are specified as exempt from taxation by
17 19-21-212; and

18 (o) all money received because of a settlement
19 agreement or judgment in a lawsuit brought against a
20 manufacturer or distributor of "agent orange" for damages
21 resulting from exposure to "agent orange".

22 ~~(p) in the case of a shareholder of a corporation with~~
23 ~~respect to which the election provided for under subchapter~~
24 ~~87 of the Internal Revenue Code of 1954, as amended, is in~~
25 ~~effect but with respect to which the election provided for~~

1 under 15-31-202, as amended, is not in effect, adjusted
 2 gross income does not include any part of the corporation's
 3 undistributed taxable income, net operating loss, capital
 4 gains or other gains, profits, or losses required to be
 5 included in the shareholder's federal income tax adjusted
 6 gross income by reason of the election under subchapter S.
 7 However, the shareholder's adjusted gross income shall
 8 include actual distributions from the corporation to the
 9 extent they would be treated as taxable dividends if the
 10 subchapter S election were not in effect.

11 ~~(4)~~(3) A shareholder of a DISC that is exempt from the
 12 corporation license tax under 15-31-102(1)(1) shall include
 13 in his adjusted gross income the earnings and profits of the
 14 DISC in the same manner as provided by federal law (section
 15 995, Internal Revenue Code) for all periods for which the
 16 DISC election is effective.

17 ~~(5)~~(4) A taxpayer who, in determining federal adjusted
 18 gross income, has reduced his business deductions by an
 19 amount for wages and salaries for which a federal tax credit
 20 was elected under section 44B of the Internal Revenue Code
 21 of 1954 or as that section may be labeled or amended is
 22 allowed to deduct the amount of the wages and salaries paid
 23 regardless of the credit taken. The deduction must be made
 24 in the year the wages and salaries were used to compute the
 25 credit. In the case of a partnership or small business

1 corporation, the deduction must be made to determine the
 2 amount of income or loss of the partnership or small
 3 business corporation.

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

12 ~~(7)~~(6) A taxpayer receiving retirement disability
 13 benefits who has not attained age 65 by the end of the
 14 taxable year and who has retired as permanently and totally
 15 disabled may exclude from adjusted gross income up to \$100
 16 per week received as wages or payments in lieu of wages for
 17 a period during which the employee is absent from work due
 18 to the disability. If the adjusted gross income before this
 19 exclusion and before application of the two-earner married
 20 couple deduction exceeds \$15,000, the excess reduces the
 21 exclusion by an equal amount. This limitation affects the
 22 amount of exclusion, but not the taxpayer's eligibility for
 23 the exclusion. If eligible, married individuals shall apply
 24 the exclusion separately, but the limitation for income
 25 exceeding \$15,000 is determined with respect to the spouses

1 on their combined adjusted gross income. For the purpose of
 2 this subsection, permanently and totally disabled means
 3 unable to engage in any substantial gainful activity by
 4 reason of any medically determined physical or mental
 5 impairment lasting or expected to last at least 12 months.

6 ~~(8)~~(7) A person receiving benefits described in
 7 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
 8 exclude benefits described in subsection (2)(c) from
 9 adjusted gross income unless the benefits received under
 10 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
 11 less than \$3,600, in which case the person may combine
 12 benefits to exclude up to a total of \$3,600 from adjusted
 13 gross income. (Subsection (2)(k) terminates on occurrence of
 14 contingency--sec. 3, Ch. 634, L. 1983.)"

15 **Section 2.** Section 15-30-117, MCA, is amended to read:

16 "15-30-117. Net operating loss -- computation. (1) A
 17 net operating loss must be determined in accordance with
 18 section 172 of the Internal Revenue Code of 1954 or as that
 19 section may be labeled or amended and in accordance with the
 20 following:

21 (a) Additions to loss include:

22 (i) that portion of the federal income tax and motor
 23 vehicle tax allowed as a deduction under 15-30-121 or
 24 15-30-131 which is attributable to income from a trade or
 25 business; and

1 (ii) wages and salaries allowed as a business deduction
 2 under 15-30-111~~(5)~~(4).

3 (b) Reductions in the loss include:

4 (i) interest received on obligations of another state
 5 or territory or of a county, municipality, district, or
 6 political subdivision thereof allowed as nonbusiness income
 7 under 15-30-111(1)(a);

8 (ii) federal income tax refunds required to be reported
 9 under 15-30-111 and 15-30-131 as business income;

10 (iii) state income tax; and

11 (iv) any other nonbusiness deductions allowed under
 12 15-30-121 in excess of nonbusiness income.

13 (2) Notwithstanding the provisions of section 172 of
 14 the Internal Revenue Code of 1954 or as that section may be
 15 labeled or amended, a net operating loss does not include:

16 (a) income defined as exempt from state taxation under
 17 15-30-111(2); or

18 (b) a zero bracket deduction provided for under section
 19 63 of the Internal Revenue Code of 1954 or as that section
 20 may be labeled or amended."

21 **Section 3.** Section 15-30-126, MCA, is amended to read:

22 "15-30-126. Small business corporation -- deduction for
 23 donation of computer equipment to schools. A small business
 24 corporation ~~electing-to-be-taxed--under--the--provisions--of~~
 25 ~~15-31-202~~, as defined in 15-31-201, is allowed a deduction

1 equal to the fair market value, not to exceed 30% of the
 2 small business corporation's net income, of a computer or
 3 other sophisticated technological equipment or apparatus
 4 intended for use with the computer donated to an elementary,
 5 secondary, or accredited postsecondary school located in
 6 Montana if:

7 (1) the contribution is made no later than 5 years
 8 after the manufacture of the donated property is
 9 substantially completed;

10 (2) the property is not transferred by the donee in
 11 exchange for money, other property, or services;

12 (3) the electing small business corporation receives a
 13 written statement from the donee in which the donee agrees
 14 to accept the property and representing that the use and
 15 disposition of the property will be in accordance with the
 16 provisions of subsection (2); and

17 (4) the deduction allowed in this section is in lieu of
 18 the deduction allowed under 15-30-121 for charitable
 19 contributions."

20 **Section 4.** Section 15-30-136, MCA, is amended to read:

21 "15-30-136. Computation of income of estates or trusts
 22 -- exemption. (1) Except as otherwise provided in this
 23 chapter, "gross income" of estates or trusts means all
 24 income from whatever source derived in the taxable year,
 25 including but not limited to the following items:

1 (a) dividends;

2 (b) interest received or accrued, including interest
 3 received on obligations of another state or territory or a
 4 county, municipality, district, or other political
 5 subdivision thereof, but excluding interest income from
 6 obligations of:

7 (i) the United States government or the state of
 8 Montana;

9 (ii) a school district; or

10 (iii) a county, municipality, district, or other
 11 political subdivision of the state;

12 (c) income from partnerships and other fiduciaries;

13 (d) gross rents and royalties;

14 (e) gain from sale or exchange of property, including
 15 those gains that are excluded from gross income for federal
 16 fiduciary income tax purposes by section 641(c) of the
 17 Internal Revenue Code of 1954, as amended;

18 (f) gross profit from trade or business; and

19 (g) refunds recovered on federal income tax, to the
 20 extent the deduction of such tax resulted in a reduction of
 21 Montana income tax liability.

22 (2) In computing net income, there are allowed as
 23 deductions:

24 (a) interest expenses deductible for federal tax
 25 purposes according to section 163 of the Internal Revenue

1 Code of 1954, as amended;

2 (b) taxes paid or accrued within the taxable year,
3 including but not limited to federal income tax, but
4 excluding Montana income tax;

5 (c) that fiduciary's portion of depreciation or
6 depletion which is deductible for federal tax purposes
7 according to sections 167, 611, and 642 of the Internal
8 Revenue Code of 1954, as amended;

9 (d) charitable contributions that are deductible for
10 federal tax purposes according to section 642(c) of the
11 Internal Revenue Code of 1954, as amended;

12 (e) administrative expenses claimed for federal income
13 tax purposes, according to sections 212 and 642(g) of the
14 Internal Revenue Code of 1954, as amended, if such expenses
15 were not claimed as a deduction in the determination of
16 Montana inheritance tax;

17 (f) losses from fire, storm, shipwreck, or other
18 casualty or from theft, to the extent not compensated for by
19 insurance or otherwise, that are deductible for federal tax
20 purposes according to section 165 of the Internal Revenue
21 Code of 1954, as amended;

22 (g) net operating loss deductions allowed for federal
23 income tax under section 642(d) of the Internal Revenue Code
24 of 1954, as amended, except estates may not claim losses
25 that are deductible on the decedent's final return;

1 (h) all benefits, not in excess of \$3,600, received:

2 (i) as federal employees' retirement;

3 (ii) as retirement from public employment in a state
4 other than Montana; or

5 (iii) as an annuity, pension, or endowment under private
6 or corporate retirement plans or systems;

7 (i) all benefits paid under the Montana teachers'
8 retirement system that are specified as exempt from taxation
9 by 19-4-706;

10 (j) all benefits paid under the Montana Public
11 Employees' Retirement System Act that are specified as
12 exempt from taxation by 19-3-105;

13 (k) all benefits paid under the Montana highway patrol
14 officers' retirement system that are specified as exempt
15 from taxation by 19-6-705;

16 (l) Montana income tax refunds or credits thereof;

17 (m) all benefits paid under 19-11-602, 19-11-604, and
18 19-11-605 to retired and disabled firemen or their surviving
19 spouses or children;

20 (n) all benefits paid under the municipal police
21 officers' retirement system that are specified as exempt
22 from taxation by 19-9-1005.

23 ~~{3}--in--the--case--of--a--shareholder--of--a--corporation--with~~
24 ~~respect--to--which--the--election--provided--for--under--subchapter~~
25 ~~S7--of--the--Internal--Revenue--Code--of--19547--as--amended7--is--in~~

1 effect but with respect to which the election provided for
 2 under ~~15-31-202~~ is not in effect, net income does not
 3 include any part of the corporation's undistributed taxable
 4 income, net operating loss, capital gains or other gains,
 5 profits, or losses required to be included in the
 6 shareholder's federal income tax net income by reason of the
 7 election under subchapter S. However, the shareholder's net
 8 income shall include actual distribution from the
 9 corporation to the extent it would be treated as taxable
 10 dividends if the subchapter S election were not in effect.

11 ~~(4)~~(3) The following additional deductions shall be
 12 allowed in deriving taxable income of estates and trusts:

13 (a) any amount of income for the taxable year currently
 14 required to be distributed to beneficiaries for such year;

15 (b) any other amounts properly paid or credited or
 16 required to be distributed for the taxable year;

17 (c) the amount of 60% of the excess of the net
 18 long-term capital gain over the net short-term capital loss
 19 for the taxable year.

20 ~~(5)~~(4) The exemption allowed for estates and trusts is
 21 that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

22 ~~(6)~~(5) A trust or estate excluding benefits under
 23 subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not
 24 exclude benefits described in subsection (2)(h) from net
 25 income unless the benefits received under subsections (2)(i)

1 through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in
 2 which case the trust or estate may combine benefits to
 3 exclude up to a total of \$3,600 from net income."

4 **Section 5.** Section 15-30-161, MCA, is amended to read:

5 "15-30-161. Purpose. The purpose of 15-30-162 is to
 6 allow individuals, estates, and trusts, including those
 7 owning an interest in partnerships and in small business
 8 corporations electing to be taxed under the provisions of
 9 ~~15-31-202~~ defined in 15-31-201, to take the investment
 10 credit as provided for in 15-30-162 in order to stimulate
 11 capital investment by the small business sector."

12 **Section 6.** Section 15-31-201, MCA, is amended to read:

13 "15-31-201. Definitions Definition of "small business
 14 corporation". ~~(1)~~ For purposes of this part (1) EXCEPT AS
 15 PROVIDED IN SUBSECTION (2), the term "small business
 16 corporation" means a corporation doing business in Montana
 17 and which that has made a valid election under Subchapter S
 18 of Chapter 1 of the Internal Revenue Code, of 1954 and
 19 thereafter:

20 ~~(a)~~ has filed A small business corporation shall attach
 21 a copy of the approved federal election with the Montana
 22 return filed for the first taxable year the federal election
 23 is effective. ~~department on or before the 15th day of the~~
 24 ~~third month of the taxable year for which the election is to~~
 25 ~~become effective; or~~

(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter;

(2) For purposes of this part, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under Subchapter S in effect for the taxable year and:

(a) has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective; or

(b) files a copy of the federal Subchapter S corporate tax return with the tax return filed under this chapter;

(2) A CORPORATION THAT WOULD OTHERWISE BE A SMALL BUSINESS CORPORATION MAY CONTINUE TO BE SUBJECT TO THE TAXES IMPOSED BY TITLE 15, CHAPTER 31, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(A) ON DECEMBER 31, 1991, THE CORPORATION WAS DOING BUSINESS IN MONTANA AND HAD A VALID SUBCHAPTER S CORPORATION ELECTION BUT HAD NOT ELECTED TO BE TAXED AS A MONTANA SMALL BUSINESS CORPORATION;

(B) AFTER DECEMBER 31, 1991, THE CORPORATION HAS NOT FILED AS A MONTANA SMALL BUSINESS CORPORATION; AND

(C) THE CORPORATION FILES A CORPORATE LICENSE TAX RETURN, AS REQUIRED BY 15-31-111, REPORTING ALL INCOME OR

LOSS AS DETERMINED UNDER TITLE 15, CHAPTER 31, AND ATTACHES A COPY OF THE FEDERAL SUBCHAPTER S. CORPORATE TAX RETURN."

Section 7. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small Small business corporation not subject to chapter. (1) A small business corporation may elect is not to be subject to the taxes imposed by this chapter.

(2) If a small business corporation makes an election under subsection (1), then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation is not subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such corporation; and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such shareholder;

(3) An election under subsection (1) must be made in accordance with rules prescribed by the department of revenue.

1 ~~(4)~~--This--election--is--not--effective--unless--the The
 2 corporate net income or loss of such---electing the
 3 corporation is included in the stockholders' adjusted gross
 4 income as defined in 15-30-111.

5 ~~(5)~~(2) ~~Every-electing~~ Each small business corporation
 6 is required to pay the minimum fee of \$10 required by
 7 15-31-204."

8 **Section 8.** Section 15-31-204, MCA, is amended to read:

9 "15-31-204. Minimum fee of qualifying small business
 10 corporations unaffected. Notwithstanding the provisions of
 11 15-31-121, small business corporations ~~electing---and~~
 12 ~~qualifying-under-15-31-202~~ shall pay a minimum fee of \$10."

13 **Section 9.** Section 90-8-202, MCA, is amended to read:

14 "90-8-202. Designation of qualified Montana capital
 15 companies -- tax credit. (1) The board shall designate as
 16 qualified Montana capital companies those certified
 17 companies that have been privately capitalized at a minimum
 18 level of \$200,000. A certified company seeking designation
 19 as a qualified Montana capital company must make written
 20 application to the board on forms provided by the board. The
 21 application must contain the information required by
 22 90-8-204 and such other information as the board requires.

23 (2) (a) The total amount of tax credits authorized for
 24 a single qualified company may not exceed \$1,500,000. In the
 25 event the capitalization of the company is later increased,

1 the company may apply for authorization of additional tax
 2 credits within the foregoing limitation.

3 (b) The total credits authorized for all companies may
 4 not exceed a total of \$1 million prior to June 30, 1985. The
 5 total credits authorized for all companies between July 1,
 6 1985, and June 30, 1987, may not exceed \$1 million plus any
 7 portion of the \$1 million available for authorization before
 8 June 30, 1985, that is allocated to qualified companies. The
 9 total credits authorized for all companies between July 1,
 10 1987, and June 30, 1989, may not exceed \$3 million plus any
 11 portion of the credits available for authorization before
 12 June 30, 1987, that is allocated to qualified companies. The
 13 total credits authorized for all companies between July 1,
 14 1989, and June 30, 1991, may not exceed \$3 million plus any
 15 portion of the credits available for authorization before
 16 June 30, 1989, that is allocated to qualified companies.

17 (3) The credits shall be allocated to qualified
 18 companies in the order that completed applications for
 19 designation as qualified capital companies are received by
 20 the board, and the board shall certify to each such company
 21 its appropriate allocation.

22 (4) Investors in a qualified Montana capital company
 23 are entitled to the tax credits provided for in subsection
 24 (5). Funds invested in a certified company prior to
 25 designation as a qualified Montana capital company may, at

1 the discretion of the investor, be placed in an escrow
2 account in a Montana financial institution pending
3 designation of the company as a qualified Montana capital
4 company.

5 (5) Subject to the provisions of subsections (2) and
6 (8), an individual, small business corporation, partnership,
7 trust, decedent's estate, or corporate taxpayer that makes a
8 capital investment in a qualified Montana capital company is
9 entitled to a tax credit equal to 50% of the investment, up
10 to a maximum credit of \$150,000 per taxpayer. The credit may
11 be taken against the tax liability imposed on the investor
12 pursuant to Title 15, chapter 30, 31, or 35. The credit for
13 investments by a small business corporation electing--to--be
14 ~~taxed--under-15-31-202~~ defined in 15-31-201 or a partnership
15 may be claimed by the small business corporation
16 shareholders or the partners.

17 (6) The tax credit allowed under subsection (5) is to
18 be credited against the taxpayer's income tax liability or
19 coal severance tax liability for the taxable year in which
20 the investment in a qualified Montana capital company is
21 made. If the amount of the tax credit exceeds the taxpayer's
22 tax liability for the taxable year, the amount of the credit
23 which exceeds the tax liability may be carried back or
24 carried forward in the following manner:

25 (a) If the sum of the amount of credit for the current

1 taxable year plus the amount of credit, if any, carried
2 forward from a previous taxable year exceeds the taxpayer's
3 tax liability for the current taxable year, the excess must
4 be carried back as a credit to the 3 preceding taxable years
5 and, if the full credit remains unused, carried forward as a
6 credit to the 15 succeeding taxable years.

7 (b) The amount of unused credit must be used to offset
8 the entire tax liability of each of the 18 taxable years,
9 beginning with the earliest and commencing to the next
10 succeeding year until the credit is exhausted.

11 (7) The tax credit provided for in this section is
12 available only to those taxpayers who invest in a qualified
13 Montana capital company within 4 years of July 1, 1987.

14 (8) An individual, small business corporation,
15 partnership, or corporate taxpayer who obtains the tax
16 credit allowed under subsection (5) may not obtain credits
17 in excess of the \$150,000 limit contained in subsection (5)
18 by making investments as more than one entity. A partner or
19 shareholder in a small business corporation may not obtain
20 more than \$150,000 in credits as an individual and as the
21 partnership or small business corporation. A corporate
22 taxpayer that obtains the maximum \$150,000 credit may not
23 obtain additional credits through investments by wholly
24 owned subsidiaries or affiliates."

25 NEW SECTION. Section 10. Repealer. Section 15-31-208,

1 MCA, is repealed.

2 NEW SECTION. SECTION 11. CONDITIONAL GRANDFATHER
3 CLAUSE FOR CERTAIN MONTANA SHAREHOLDERS OF FOREIGN
4 CORPORATIONS THAT HAVE ELECTED SUBCHAPTER S. CORPORATION
5 STATUS FOR FEDERAL TAX PURPOSES. A MONTANA TAXPAYER WHO IS A
6 SHAREHOLDER IN A CORPORATION THAT IS NOT DOING BUSINESS IN
7 MONTANA AND THAT HAS ELECTED SUBCHAPTER S. CORPORATION
8 STATUS FOR FEDERAL TAX PURPOSES MAY APPLY 15-30-111(3)
9 (1989) FOR ALL TAX YEARS BEGINNING ON OR BEFORE DECEMBER 31,
10 1996, IF THE FOLLOWING CONDITIONS ARE MET:

11 (1) THE TAXPAYER CAN ESTABLISH BY SUBSTANTIAL, CREDIBLE
12 EVIDENCE THAT THE DEPARTMENT OF REVENUE GAVE THE TAXPAYER
13 ADVICE CONCERNING THE APPLICATION OF 15-30-111(3) TO THE
14 TAXPAYER'S FACTS AND CIRCUMSTANCES.

15 (2) THE TAXPAYER CAN ESTABLISH BY SUBSTANTIAL, CREDIBLE
16 EVIDENCE THAT HE RELIED ON THAT ADVICE TO HIS DETRIMENT.

17 NEW SECTION. Section 12. Effective dates --
18 applicability. (1) Except for the purposes of subsection
19 (2), [this act] is effective December 31, 1991, and applies
20 to tax years beginning after December 31, 1991.

21 (2) For the purpose of promulgating administrative
22 rules to implement [sections 1 through 10], [this act] is
23 effective on passage and approval.

-End-