

SENATE BILL 339

Introduced by Doherty

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2/09	Fiscal Note Requested
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2/14	Fiscal Note Printed
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1 Senate BILL NO. 339
 2 INTRODUCED BY Oliver
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE ALLOCATION
 5 AND ATTRIBUTION FOR TAXATION PURPOSES OF INCOME FROM THE
 6 BUSINESS OF FINANCIAL INSTITUTIONS; DEFINING FINANCIAL
 7 INSTITUTION AND RELATED TERMS; AMENDING SECTIONS 15-31-101,
 8 15-31-301, AND 15-31-406, MCA; REPEALING SECTION 15-31-703,
 9 MCA; AND PROVIDING AN APPLICABILITY DATE AND A DELAYED
 10 EFFECTIVE DATE."
 11

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

13 **Section 1.** Section 15-31-101, MCA, is amended to read:

14 "15-31-101. Organizations subject to tax. (1) The term
 15 "corporation" includes associations, joint-stock companies,
 16 common-law trusts and business trusts which do business in
 17 an organized capacity, and all other corporations whether
 18 created, organized, or existing under and pursuant to the
 19 laws, agreements, or declarations of trust of any state,
 20 country, or the United States.

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

24 (3) Except as provided in 15-31-103 or 33-2-705(4) or
 25 as may be otherwise specifically provided, every corporation

1 engaged in business in the state of Montana shall annually
 2 pay to the state treasurer as a license fee for the
 3 privilege of carrying on business in this state such
 4 percentage or percentages of its total net income for the
 5 preceding taxable year at the rate hereinafter set forth. In
 6 the case of corporations having income from business
 7 activity which is taxable both within and without this
 8 state, the license fee shall be measured by the net income
 9 derived from or attributable to Montana sources as
 10 determined under part 3. Except as provided in 15-31-502,
 11 this tax is due and payable on the 15th day of the 5th month
 12 following the close of the taxable year of the corporation;
 13 however, the tax becomes a lien as provided in this chapter
 14 on the last day of the taxable year in which the income was
 15 earned and is for the privilege of carrying on business in
 16 this state for the taxable year in which the income was
 17 earned.

18 (4) Every bank organized under the laws of the state of
 19 Montana, of any other state, or of the United States and
 20 every savings and loan association organized under the laws
 21 of this state or of the United States is subject to the
 22 Montana corporation license tax provided for under this
 23 chapter. For taxable years beginning on and after January 1,
 24 1972, this subsection is effective in accordance with Public
 25 Law 91-156, section 2 (12 U.S.C. 548). The net income for

1 financial institutions must be calculated as provided in
2 [sections 2 through 9]."

3 NEW SECTION. Section 2. Application and purpose.

4 [Sections 2 through 9] must be used to attribute the income
5 derived from the business of a financial institution to the
6 state if the financial institution exercises its corporate
7 franchise or transacts business in Montana. Except as
8 specifically limited by [sections 2 through 9], it is the
9 intent of [sections 2 through 9] to subject to taxation all
10 of the income of a financial institution that it is within
11 the power of this state to tax.

12 NEW SECTION. Section 3. Definitions. As used in

13 [sections 2 through 9], the following definitions apply:

14 (1) "Borrower" means the individual or entity primarily
15 liable on a debt instrument. If more than one individual or
16 entity is primarily liable on a debt instrument, each
17 individual or entity is considered the borrower to the
18 extent of its interest in the debt instrument. For purposes
19 of this section, a partnership is a separate entity.

20 (2) "Business of a financial institution" includes the
21 business activities, including finance leasing, that:

22 (a) a regulated financial corporation may be authorized
23 to do under state or federal law or the business that a
24 subsidiary or a regulated financial corporation is
25 authorized to do by the proper regulatory authorities;

1 (b) a corporation organized under the authority of the
2 United States or the laws of this state or any other state
3 or country does or has authority to do that is substantially
4 similar to the business that a corporation may be created to
5 do under Title 32 or to any business that a corporation or
6 its subsidiary is authorized to do under the laws of this
7 state; or

8 (c) a corporation organized under the authority of the
9 United States or the laws of this state or any other state
10 or country does or has authority to do if the corporation
11 derives more than 50% of its gross income from lending
12 activities, including the discounting of obligations, in
13 substantial competition with the businesses described in
14 subsections (2)(a) and (2)(b). For purposes of this
15 subsection (c), the computation of the gross income of a
16 corporation does not include income from nonrecurring,
17 extraordinary items.

18 (3) (a) "Deposit" means:

19 (i) the unpaid balance of money or its equivalent
20 received or held by a financial institution in the usual
21 course of business and for which it has given or is
22 obligated to give credit, either conditionally or
23 unconditionally;

24 (A) to a commercial, checking, savings, time, or thrift
25 account, whether or not advance notice is required to

1 withdraw the credited funds; or

2 (B) that is evidenced by its certificate of deposit,
3 thrift certificate, investment certificate, certificate of
4 indebtedness, or other similar certificate, a check or draft
5 drawn against a deposit account and certified by the
6 financial institution, or a letter of credit or a traveler's
7 check on which the financial institution is primarily
8 liable;

9 (ii) trust funds received or held by the financial
10 institution, whether held in the trust department or held or
11 deposited in any other department of the financial
12 institution;

13 (iii) money received or held by a financial institution,
14 or the credit given for money or its equivalent received or
15 held by a financial institution, in the usual course of
16 business for a special or specific purpose, regardless of
17 the legal relationship established, including but not
18 limited to escrow funds, funds held as security for an
19 obligation due to the financial institution or others, funds
20 held as dealers' reserves, or for securities loaned by the
21 bank, funds deposited by a debtor to meet maturing
22 obligations, funds deposited as advance payment on
23 subscriptions to United States government securities, funds
24 held for distribution or purchase of securities, funds held
25 to meet its acceptances or letters of credit, and withheld

1 taxes;

2 (iv) outstanding drafts, including advice or
3 authorization to charge a financial institution's balance in
4 another institution, cashier's checks, money orders, or
5 other officer's checks issued in the usual course of
6 business for any purpose, but not including those issued in
7 payment for services, dividends, or purchases or other costs
8 or expenses of the financial institution itself;

9 (v) money or its equivalent held as a credit balance by
10 a financial institution on behalf of its customer if the
11 entity is engaged in soliciting and holding credit balances
12 in the regular course of its business.

13 (b) The term deposit does not include:

14 (i) interinstitution fund transfers; or

15 (ii) funds received by the financial institution for
16 immediate application to the reduction of an indebtedness to
17 the receiving financial institution or under condition that
18 the receipt of the funds immediately reduces or extinguishes
19 the indebtedness.

20 (4) "Deposit-related fees" includes all fees associated
21 with the administration of deposit accounts.

22 (5) (a) "Exercising a corporate franchise or
23 transacting business in this state" means:

24 (i) owning, leasing, or otherwise having an interest in
25 any real or tangible personal property located in this state

1 or maintaining an office or other place of business in this
2 state;

3 (ii) making a direct loan secured by real or tangible
4 personal property located in this state;

5 (iii) having an employee, representative, or independent
6 contractor conducting business activities on the financial
7 institution's behalf in this state;

8 (iv) engaging in regular solicitation in this state,
9 whether at a place of business, by traveling loan officer or
10 other representative, by mail, or by telephone or other
11 electronic means, if the solicitation results in the
12 creation of a depository or direct debtor-creditor
13 relationship with a resident of this state. Processing or
14 transfer of checks, credit card receivables, commercial
15 paper, and other instruments through financial
16 intermediaries does not create a debtor-creditor
17 relationship.

18 (b) A financial institution is not considered to be
19 exercising a corporate franchise or transacting business in
20 this state if its sole and exclusive activities in this
21 state are limited to evaluating, acquiring, maintaining, or
22 disposing of any of the following property, including any
23 security or collateral relating to the property:

24 (i) a participation or syndication loan;

25 (ii) a real estate mortgage investment conduit, a real

1 estate investment trust, or a regulated investment company
2 as those terms are defined by the Internal Revenue Code of
3 1986, as amended;

4 (iii) money market instruments or securities;

5 (iv) loan-backed, mortgage-backed, or receivable-backed
6 security representing:

7 (A) ownership in a pool of promissory notes, mortgages,
8 or receivables;

9 (B) certificates of interest or participation in the
10 notes, mortgages, or receivables; or

11 (C) debt obligations or equity interests that provide
12 for payments in relation to payments or reasonable
13 projections of payments on notes, mortgages, or receivables;

14 (v) an interest in a loan or other asset or property
15 attributed to this state under [section 6] and in which the
16 payment obligations were solicited and entered into by an
17 independent person not acting on behalf of the financial
18 institution;

19 (vi) an interest in the right to service or collect any
20 income from a loan, asset, or other property attributed to
21 this state under [section 6] and in which the payment
22 obligations were solicited and entered into by an
23 independent person not acting on behalf of the financial
24 institution;

25 (vii) a funded or unfunded agreement to extend or

1 guarantee credit, whether conditional, mandatory, temporary,
2 standby, secured, or otherwise;

3 (viii) an interest of a person, other than an
4 individual, estate, or trust, in real property or tangible
5 or intangible personal property acquired in satisfaction,
6 whether in whole or in part, of an asset embodying a payment
7 obligation that is in default, whether secured or unsecured,
8 if the property is disposed of within a reasonable period of
9 time; or

10 (ix) property or funds held in an escrow or trust
11 account that is maintained in connection with the property
12 described in this subsection (5)(b).

13 (6) "Finance leasing" or "finance lease" means a type
14 of capital lease to which a financial institution is a
15 party, including sales type, leveraged, and direct financing
16 leases, that involves the transfer to the lessee of
17 substantially all of the risks and burdens of ownership in
18 the property subject to the lease. A finance lease is
19 further evidenced by the lessee reporting the lease as an
20 asset and a liability for financial accounting purposes. If
21 it cannot be determined whether a capital lease falls within
22 the meaning of a financial lease, the department may refer
23 to the classification of leases contained in the statement
24 of financial accounting standards, accounting for leases, in
25 effect on [the effective date of this act].

1 (7) "Financial institution" includes:

2 (a) a holding company;

3 (b) a regulated financial corporation; and

4 (c) a corporation organized under the laws of the
5 United States, this state, or any other state or country
6 that is carrying on the business of a financial institution.

7 (8) "Holding company" means any corporation registered
8 under the federal Bank Holding Company Act of 1956, as
9 amended, or registered as a savings and loan holding company
10 under the federal National Housing Act, as amended.

11 (9) "Independent person not acting on behalf of the
12 financial institution" means:

13 (a) at the time of the acquisition of an asset, loan,
14 or property, the financial institution may not directly or
15 indirectly own 15% or more of the capital or profits
16 interest of the entity from which the financial institution
17 originally acquired the asset, loan, or property. In
18 determining indirect ownership, the financial institution is
19 considered to own all of the stock, capital interest, or
20 profits interest owned by another person if the financial
21 institution directly owns 15% or more of the stock, capital
22 interest, or profits interest in that person. In addition,
23 the financial institution is considered to own all stock,
24 capital interest, and profits interest directly owned by an
25 intermediary party in the transaction to the extent a 15% or

1 more chain of ownership of stock, capital interest, or
2 profits interest exists between the financial institution
3 and an intermediary party;

4 (b) the entity from which the financial institution
5 acquired the asset, loan, or property regularly sells,
6 assigns, or otherwise transfers interest in the asset, loan,
7 or property to three or more persons during the 12-month
8 period preceding the month of acquisition; and

9 (c) the entity from which the financial institution
10 acquired the asset, loan, or property may not sell, assign,
11 or transfer 90% or more of its exempt assets, loans, or
12 property to the financial institution during the 12-month
13 period preceding the month of the acquisition.

14 (10) "Loan-related fees" includes all fees associated
15 with the generation and administration of loans, including
16 loan servicing fees.

17 (11) "Loan servicing fees" includes fees charged by a
18 financial institution that sells, assigns, or transfers
19 loans to a purchasing financial institution in instances in
20 which the transferring financial institution continues to
21 process the loan payments.

22 (12) "Money market instrument" means federal funds sold
23 and securities purchased under agreements to resell,
24 commercial paper, banker's acceptances, purchased
25 certificates of deposit, and similar instruments to the

1 extent that the instruments are reflected as assets under
2 generally accepted accounting principles.

3 (13) "Money or its equivalent" means an instrument
4 evidencing the receipt of the equivalent of money:

5 (a) when credited or issued in exchange for checks or
6 drafts or for a promissory note upon which the person
7 obtaining the credit or instrument is primarily or
8 secondarily liable; or

9 (b) for a charge against a deposit account or in
10 settlement of checks, drafts, or other instruments forwarded
11 to the bank for collection.

12 (14) "Participation loan" means an arrangement in which
13 a lender makes a loan to a borrower and then sells all or a
14 part of the loan to a purchasing financial institution.

15 (15) "Property located in this state" means:

16 (a) tangible real or personal property that is security
17 for a loan or property subject to a lease that is physically
18 situated in this state. It is presumed, subject to rebuttal,
19 that the property is physically situated in the state of the
20 billing address of the borrower or lessee.

21 (b) (i) movable tangible property, such as motor
22 vehicles, rolling stock, aircraft, vessels, and mobile
23 equipment, if:

24 (A) the operation of the property is entirely within
25 the state; or

1 (B) the operation of the property is in two or more
2 states but the principal base of operations from which the
3 property is sent out is in the state.

4 (ii) It is presumed, subject to rebuttal, that the
5 location of operation of the property and the principal base
6 of operations from which the property is sent out is in the
7 state of the billing address of the borrower or lessee.

8 (16) "Receipts" means gross income, including net
9 taxable gain on the disposition of assets, including
10 securities and money market instruments, when derived from
11 transactions and activities in the regular course of the
12 taxpayer's trade or business.

13 (17) (a) "Regulated financial corporation" means:

14 (i) an institution whose deposits or accounts are
15 insured under the Federal Deposit Insurance Act or the
16 federal savings and loan insurance corporation;

17 (ii) an institution that is a member of a federal home
18 loan bank;

19 (iii) a bank or thrift institution, incorporated or
20 organized under the laws of the United States or any state,
21 that is engaged in the business of receiving deposits or
22 that holds a bank charter or is organized under the
23 provisions of 12 U.S.C. 611 through 631;

24 (iv) a credit union incorporated or organized under the
25 laws of any state; and

1 (v) an agency, branch, or subsidiary of a foreign
2 depository as defined in 12 U.S.C. 3101.

3 (b) It is presumed, subject to rebuttal, that a
4 subsidiary and any holding company of a regulated financial
5 corporation is a financial institution for the purpose of
6 this subsection (17).

7 (18) "Reside" means the place where a person makes his
8 residence for 183 or more days of the relevant tax period.
9 For purposes of this subsection, corporations and
10 partnerships must be treated as residents of their states of
11 commercial domicile. An individual, partnership, or
12 corporation is presumed, subject to rebuttal, to reside at
13 the address to which the statement of account is regularly
14 mailed.

15 (19) "Securities" means United States treasury
16 securities, obligations of United States government agencies
17 and corporations, obligations of state and political
18 subdivisions, corporate stock and other securities,
19 participations in securities backed by mortgages held by
20 United States or state government agencies, loan-backed
21 securities, and similar investments to the extent the
22 investments are reflected as assets under generally accepted
23 accounting principles.

24 (20) "State" means a state of the United States, the
25 District of Columbia, the Commonwealth of Puerto Rico, or

1 any territory or possession of the United States or a
2 foreign country.

3 (21) "Subsidiary" means a corporation 50% or more of
4 whose voting stock is owned, directly or indirectly, by a
5 financial institution.

6 (22) "Syndication loan" means a multibank loan
7 transaction in which all the lenders are named as parties to
8 the loan and have privity of contract with the borrower.

9 (23) "Taxable" and "taxable in another state" means a
10 financial institution is taxable on receipts in another
11 state if:

12 (a) in that state, it is subject to a franchise tax for
13 the privilege of doing business or to a corporate stock tax;
14 or

15 (b) that state has jurisdiction to subject the
16 financial institution to a tax, regardless of whether the
17 state imposes a tax.

18 NEW SECTION. Section 4. Business income. All income
19 taxable under the laws of this state that arises from the
20 business of a financial institution is considered derived
21 from transactions in the regular course of the financial
22 institution's business and is subject to apportionment under
23 [sections 2 through 9]. All income that arises from
24 activities of a financial institution that are not the
25 business of a financial institution as provided in [sections

1 2 through 9] must be apportioned or allocated in accordance
2 with the rules set forth in 15-1-601.

3 NEW SECTION. Section 5. Apportionment of business
4 income. (1) If a financial institution is carrying on the
5 business of a financial institution both within and outside
6 of this state and if by reason of the business activity the
7 financial institution is taxable in another state, the
8 portion of the net income or net loss arising from the
9 business derived from sources within this state must be
10 determined by apportionment in accordance with [sections 2
11 through 9].

12 (2) The tax applicable to financial institutions whose
13 net income or net loss is apportionable under this section
14 must be determined by multiplying the tax base by a fraction
15 for which the numerator is the sum of the receipts factor,
16 the property factor, and the payroll factor as provided in
17 [sections 2 through 9] and for which the denominator is
18 three. If any factor is missing, the remaining factors must
19 be added together and the sum must be divided by the number
20 of remaining factors. A factor is missing if both its
21 numerator and denominator are zero, but a factor is not
22 missing merely because its numerator is zero.

23 NEW SECTION. Section 6. Determination of receipts
24 factor for financial institutions. The receipts factor is a
25 fraction for which the numerator is the receipts of the

1 financial institution within this state during the tax
 2 period and for which the denominator is the total receipts
 3 of the taxpayer wherever earned during the tax period. The
 4 numerator of the receipts factor must include, in addition
 5 to items otherwise assignable under 15-1-601:

6 (1) receipts from the lease or rental of real or
 7 tangible personal property, including both finance leases
 8 and true leases, if the property is located in this state.
 9 Tangible personal property that is characteristically moving
 10 property, such as motor vehicles, rolling stock, aircraft,
 11 vessels, and mobile equipment, is considered to be located
 12 in a state if:

13 (a) the operation of the property is entirely within
 14 the state; or

15 (b) the operation of the property is in two or more
 16 states, but the principal base of operations from which the
 17 property is sent out is in the state.

18 (2) interest income and other receipts from assets in
 19 the nature of loans that are secured primarily by real
 20 estate or tangible personal property if the security
 21 property is located in this state. If the security property
 22 is located in two or more states, it is considered located
 23 in the state having the greatest property values.

24 (3) interest income and other receipts from consumer
 25 loans not secured by real or tangible personal property that

1 are made to residents of this state, whether at a place of
 2 business, by traveling loan officer, by mail, by telephone,
 3 by other electronic means, or otherwise;

4 (4) interest income and other receipts from commercial
 5 loans and installment obligations that are not secured by
 6 real or tangible personal property if and to the extent that
 7 the borrower or debtor is a resident of this state;

8 (5) interest income and other receipts from a
 9 participating financial institution's portion of loans,
 10 including participation and syndication loans, which must be
 11 attributed under subsections (1) through (4);

12 (6) interest income and other receipts, including
 13 service charges, from financial institution credit card and
 14 travel and entertainment credit card receivables and credit
 15 card holders' fees to the extent that the borrower or debtor
 16 is a resident of this state;

17 (7) merchant discount income derived from financial
 18 institution credit card holder transactions with a merchant
 19 located in this state. In the case of merchants located
 20 within and outside the state, only receipts from merchant
 21 discounts attributable to sales made from locations within
 22 the state are attributed to this state. It is presumed,
 23 subject to rebuttal, that the location of a merchant is the
 24 address shown on the invoice submitted by the merchant to
 25 the financial institution.

1 (8) receipts from the performance of services that are
2 attributed to this state if:

3 (a) the service receipts are loan-related fees,
4 including loan servicing fees, and the borrower resides in
5 this state, except that at the financial institution's
6 election, receipts from loan-related fees that are either
7 pooled or aggregated for collective financial accounting
8 treatment or manually written as nonrecurring, extraordinary
9 charges to be processed directly to the general ledger may
10 either be attributed to a state based on the borrowers'
11 residences or on the ratio that total interest attributed to
12 that state bears to the total interest from all sources;

13 (b) the service receipts are deposit-related fees and
14 the depositor resides in this state, except that at the
15 financial institution's election, receipts from
16 deposit-related fees that are either pooled or aggregated
17 for collective financial accounting treatment or manually
18 written as nonrecurring, extraordinary charges to be
19 processed directly to the general ledger may either be
20 attributed to a state based on the depositors' residences or
21 on the ratio that total deposits attributed to that state
22 bear to total deposits from all sources;

23 (c) the service receipt is a brokerage fee and the
24 account holder is a resident of this state;

25 (d) the service receipts are fees related to estate or

1 trust services and:

2 (i) the decedent to whom the estate relates was a
3 resident of this state immediately before death; or

4 (ii) the grantor who either funded or established the
5 trust is a resident of this state; or

6 (e) the service receipt is associated with the
7 performance of any other service not identified in
8 subsections (1)(a) through (1)(d) and the service is
9 performed in this state or if the service is performed both
10 within and outside of this state and a greater proportion of
11 the service is performed in this state than in any other
12 state, as determined on the basis of the cost of
13 performance;

14 (9) receipts from the issuance of traveler's checks and
15 money orders if the checks and money orders are purchased in
16 this state;

17 (10) receipts from investments of a financial
18 institution in securities and from money market instruments,
19 based on the ratio that total deposits from this state, its
20 residents, and its political subdivisions, agencies, and
21 instrumentalities bear to the total deposits from all
22 states, their residents, and their political subdivisions,
23 agencies, and instrumentalities. For purposes of this
24 subsection, deposits made by this state, its residents, and
25 its political subdivisions, agencies, and instrumentalities

1 must be attributed to this state regardless of whether the
 2 deposits are accepted or maintained by the financial
 3 institution at locations within this state. In the case of
 4 an unregulated financial institution subject to this
 5 subsection, receipts must be apportioned to this state based
 6 on the ratio that its gross business income earned from
 7 sources within this state bears to the gross business income
 8 earned within all states.

9 (11) all receipts allocated by this section to a state
 10 in which the financial institution is not taxable, which
 11 must be attributed pursuant to the laws of the state or the
 12 financial institution's commercial domicile.

13 NEW SECTION. **Section 7. Determination of property**
 14 **factor.** (1) The property factor is a fraction for which the
 15 numerator is the average value of the financial
 16 institution's real and tangible personal property owned or
 17 rented and used in this state and intangible personal
 18 property attributed to this state during the tax period and
 19 for which the denominator is the average value of all of the
 20 financial institution's real and tangible personal property
 21 owned or rented and used in this state and intangible
 22 personal property attributed to this state during the tax
 23 period. For purposes of this section, the value of property
 24 owned by the financial institution is its original cost. The
 25 value of real or tangible personal property rented by the

1 financial institution is eight times its net annual rental
 2 rate. The net annual rental rate for any item of rented
 3 property is the annual rate paid by the financial
 4 institution for the property less the aggregate annual
 5 subrental rates paid by subtenants of the financial
 6 institution. Good will may not be included in the property
 7 factor.

8 (2) The numerator of the property factor must include,
 9 in addition to items otherwise assignable under 15-1-601,
 10 the following:

- 11 (a) coin and currency located in this state;
 12 (b) lease financing receivables if and to the extent
 13 that the property is located within this state;
 14 (c) assets in the nature of loans that are secured by
 15 real or tangible personal property if and to the extent that
 16 the security property is located within this state. If the
 17 security property is located in two or more states, it is
 18 considered located in the state having the greatest property
 19 value.
 20 (d) assets in the nature of consumer loans and
 21 installment obligations that are unsecured or secured by
 22 intangible property if the loan was made to a resident of
 23 this state;
 24 (e) assets in the nature of commercial loans and
 25 installment obligations that are unsecured or secured by

1 intangible property if the borrower is a resident of this
2 state;

3 (f) funds deposited by this state, its residents, and
4 its agencies, instrumentalities, and political subdivisions
5 which must be attributed to this state regardless of whether
6 the deposits are accepted or maintained by the financial
7 institution at locations within this state;

8 (g) a participating financial institution's portion of
9 participation and syndication loans which must be attributed
10 under subsections (2)(b) through (2)(e);

11 (h) financial institution credit card and travel and
12 entertainment credit card receivables to the extent that the
13 borrower or debtor is a resident of this state;

14 (i) assets in the nature of securities and money market
15 instruments, based upon the ratio that total deposits from
16 this state, its residents, and its agencies,
17 instrumentalities, and political subdivisions bear to the
18 total deposits from all states, their residents, their
19 agencies, instrumentalities, and political subdivisions.

20 (3) In the case of an unregulated financial
21 institution, the assets are apportioned to this state based
22 upon the ratio that its gross business income earned from
23 sources within this state bears to the gross business income
24 earned from sources within all states.

25 (4) All intangible property located, pursuant to this

1 section, in a state in which the financial institution is
2 not taxable must be attributed pursuant to the laws of the
3 state of the financial institution's commercial domicile.

4 NEW SECTION. **Section 8.** Payroll factor. The payroll
5 factor is a fraction for which the numerator is the total
6 amount paid in this state by the financial institution for
7 compensation during the year and for which the denominator
8 is the total amount of compensation paid in every state.

9 NEW SECTION. **Section 9.** Special rules. If the
10 allocation and apportionment provisions of [sections 2
11 through 8] do not fairly represent the extent of the
12 financial institution's activity in this state, the
13 financial institution may, if reasonable, petition for or
14 the department of revenue may require, with regard to all or
15 any part of the financial institution's business activity:

16 (1) a separate accounting;

17 (2) the exclusion of one or more factors;

18 (3) the inclusion of one or more additional factors
19 that will fairly represent the financial institution's
20 business activity in this state; or

21 (4) the employment of any other method to effectuate an
22 equitable allocation and apportionment of the financial
23 institution's income.

24 **Section 10.** Section 15-31-301, MCA, is amended to read:

25 "15-31-301. Corporations subject to allocation and

1 apportionment. (1) Any corporation, other than a financial
 2 institution as defined in [section 3], having income from
 3 business activity which is taxable both within and without
 4 this state shall allocate and apportion its net income as
 5 provided in this part. A financial institution must allocate
 6 and apportion income as provided in [sections 2 through 9].

7 (2) A corporation engaged in a unitary business within
 8 and without Montana must apportion its business income as
 9 provided for under 15-31-305. A business is unitary when the
 10 operation of the business within the state is dependent upon
 11 or contributory to the operation of the business outside the
 12 state or if the units of the business within and without the
 13 state are closely allied and not capable of separate
 14 maintenance as independent businesses.

15 (3) A corporation not engaged in a unitary business
 16 must allocate its business income by means of separate
 17 accounting methods, provided its books and records are so
 18 kept that the income and expenses attributable to business
 19 operations within the state can be properly segregated from
 20 total income and expense. If the corporation's books and
 21 records do not permit such proper segregation, its business
 22 income must be apportioned according to the provisions of
 23 15-31-305."

24 **Section 11.** Section 15-31-406, MCA, is amended to read:

25 "15-31-406. License tax sections incorporated by

1 **reference.** The provisions of the following sections of this
 2 chapter are incorporated into this part by reference and
 3 made a part hereof:

4 (1) that part of 15-31-101 which defines the term
 5 "corporation" and 15-31-102, which specifies the classes of
 6 organizations whose income shall not be taxed;

7 (2) sections 15-31-111 through 15-31-114, 15-31-117
 8 through 15-31-119, 15-31-141, 15-31-142, 15-31-301 through
 9 15-31-313, [sections 2 through 9], 15-31-501 through
 10 15-31-509, 15-31-525, 15-31-526, 15-31-531, 15-31-532,
 11 15-31-541, and 15-31-543, except that the term "gross
 12 income" shall be construed as excluding the net amount of
 13 interest income from valid obligations of the United States
 14 and except that wherever the words "tax", "license tax",
 15 "license fee", "corporation excise tax", or like words
 16 appear, referring to the tax imposed under part 1 of this
 17 chapter, there shall be substituted the words "income tax"."

18 **NEW SECTION. Section 12. Repealer.** Section 15-31-703,
 19 MCA, is repealed.

20 **NEW SECTION. Section 13. Codification instruction.**
 21 [Sections 2 through 9] are intended to be codified as an
 22 integral part of Title 15, chapter 31, part 3, and the
 23 provisions of Title 15, chapter 31, part 3, apply to
 24 [sections 2 through 9].

25 **NEW SECTION. Section 14. Effective date** --

LC 1521/01

- 1 applicability. [This act] is effective January 1, 1992, and
- 2 applies to tax years commencing after December 31, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0339, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the allocation and attribution for taxation purposes of income from the business of financial institutions; defining financial institution and related terms; and providing an applicability date and a delayed effective date.

FISCAL IMPACT:


Expenditures:

There is no impact on Department of Revenue administrative expenditures.

Revenues:

This proposal would significantly alter the method of allocating and apportioning the income of multistate financial institutions. The department believes that many multistate corporations not now allocating income to Montana would be required to do so under the proposal. This would result in additional revenue. In addition, a certain number of financial institutions currently operating and reporting in Montana would be required to allocate portions of their income now being allocated to Montana to other states. This would result in a loss of revenue; however, this revenue loss is considered to be small relative to the revenue increases that would occur under the proposal resulting in a net positive revenue impact.

Precise estimates of the revenue impact are not possible within the time constraints of fiscal note preparation.


ROD SUNDSTED, BUDGET DIRECTOR DATE 2-13-91
Office of Budget and Program Planning


STEVE DOHERTY, PRIMARY SPONSOR DATE 2/14/91

Fiscal Note for SB0339, as introduced

SB 339