

SENATE BILL 341

Introduced by Gage

2/09	Introduced
2/09	Referred to Taxation
2/09	Fiscal Note Requested
2/09	First Reading
2/15	Fiscal Note Printed
2/15	Fiscal Note Received
2/20	Hearing
3/13	Committee Report--Bill Passed as Amended
3/14	2nd Reading Passed
3/15	3rd Reading Passed
	Transmitted to House
3/16	First Reading
3/16	Referred to Taxation
4/09	Hearing
4/12	Tabled in Committee

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Senate BILL NO. *341*
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INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TAXPAYER IN DETERMINING ADJUSTED GROSS INCOME TO DEDUCT BUSINESS DEDUCTIONS THAT WERE REDUCED BY AN AMOUNT FOR WHICH A FEDERAL TAX CREDIT WAS TAKEN; AMENDING SECTIONS 15-30-111 AND 15-30-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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

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

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

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

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of

1 1954, that has been reduced by any federal taxes paid by the
2 subchapter S. corporation on the income; and
3 (d) depreciation or amortization taken on a title plant
4 as defined in 33-25-105(15).
5 (2) Notwithstanding the provisions of the federal
6 Internal Revenue Code of 1954, as labeled or amended,
7 adjusted gross income does not include the following which
8 are exempt from taxation under this chapter:
9 (a) all interest income from obligations of the United
10 States government, the state of Montana, county,
11 municipality, district, or other political subdivision
12 thereof;
13 (b) interest income earned by a taxpayer age 65 or
14 older in a taxable year up to and including \$800 for a
15 taxpayer filing a separate return and \$1,600 for each joint
16 return;
17 (c) all benefits, not in excess of \$3,600, received:
18 (i) under the Federal Employees' Retirement Act;
19 (ii) under the public employee retirement laws of a
20 state other than Montana; or
21 (iii) as an annuity, pension, or endowment under any
22 private or corporate retirement plan or system;
23 (d) all benefits paid under the teachers' retirement
24 law which are specified as exempt from taxation by 19-4-706;
25 (e) all benefits paid under The Public Employees'

1 Retirement System Act which are specified as exempt from
2 taxation by 19-3-105;

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

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

7 (h) all benefits paid under 19-11-602, 19-11-604, and
8 19-11-605 to retired and disabled firefighters, their
9 surviving spouses and orphans or specified as exempt from
10 taxation by 19-13-1003;

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

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

16 (k) all tips covered by section 3402(k) of the Internal
17 Revenue Code of 1954, as amended and applicable on January
18 1, 1983, received by persons for services rendered by them
19 to patrons of premises licensed to provide food, beverage,
20 or lodging;

21 (l) all benefits received under the workers'
22 compensation laws;

23 (m) all health insurance premiums paid by an employer
24 for an employee if attributed as income to the employee
25 under federal law;

1 (n) all benefits paid under an optional retirement
2 program that are specified as exempt from taxation by
3 19-21-212; and

4 (o) all money received because of a settlement
5 agreement or judgment in a lawsuit brought against a
6 manufacturer or distributor of "agent orange" for damages
7 resulting from exposure to "agent orange".

8 (3) In the case of a shareholder of a corporation with
9 respect to which the election provided for under subchapter
10 S. of the Internal Revenue Code of 1954, as amended, is in
11 effect but with respect to which the election provided for
12 under 15-31-202, as amended, is not in effect, adjusted
13 gross income does not include any part of the corporation's
14 undistributed taxable income, net operating loss, capital
15 gains or other gains, profits, or losses required to be
16 included in the shareholder's federal income tax adjusted
17 gross income by reason of the election under subchapter S.
18 However, the shareholder's adjusted gross income shall
19 include actual distributions from the corporation to the
20 extent they would be treated as taxable dividends if the
21 subchapter S. election were not in effect.

22 (4) A shareholder of a DISC that is exempt from the
23 corporation license tax under 15-31-102(1)(1) shall include
24 in his adjusted gross income the earnings and profits of the
25 DISC in the same manner as provided by federal law (section

1 995, Internal Revenue Code) for all periods for which the
2 DISC election is effective.

3 (5) A Beginning after December 31, 1988, a taxpayer
4 who, in determining federal adjusted gross income, has
5 reduced his business deductions by an amount ~~for wages and~~
6 ~~salaries~~ for which a federal tax credit was elected under
7 ~~section--44B-of~~ the Internal Revenue Code of ~~1954~~ 1986 ~~or as~~
8 ~~that-section-may-be-labeled-or-amended~~ but for which there
9 was no similar state tax credit is allowed to deduct the
10 amount of the ~~wages-and--salaries--paid--regardless--of--the~~
11 ~~credit---taken~~ business deductions reduced for federal
12 purposes. The deduction must be made in the year the wages
13 and--salaries business deductions were used to compute the
14 credit. In the case of a partnership or small business
15 corporation, the deduction must be made to determine the
16 amount of income or loss of the partnership or small
17 business corporation.

18 (6) Married taxpayers filing a joint federal return who
19 must include part of their social security benefits or part
20 of their tier 1 railroad retirement benefits in federal
21 adjusted gross income may split the federal base used in
22 calculation of federal taxable social security benefits or
23 federal taxable tier 1 railroad retirement benefits when
24 they file separate Montana income tax returns. The federal
25 base must be split equally on the Montana return.

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

20 (8) A person receiving benefits described in
21 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
22 exclude benefits described in subsection (2)(c) from
23 adjusted gross income unless the benefits received under
24 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
25 less than \$3,600, in which case the person may combine

1 benefits to exclude up to a total of \$3,600 from adjusted
2 gross income. (Subsection (2)(k) terminates on occurrence of
3 contingency--sec. 3, Ch. 634, L. 1983.)"

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

5 "15-30-117. Net operating loss -- computation. (1) A
6 net operating loss must be determined in accordance with
7 section 172 of the Internal Revenue Code of 1954 or as that
8 section may be labeled or amended and in accordance with the
9 following:

10 (a) Additions to loss include:

11 (i) that portion of the federal income tax and motor
12 vehicle tax allowed as a deduction under 15-30-121 or
13 15-30-131 which is attributable to income from a trade or
14 business; and

15 (ii) ~~wages--and-salaries-allowed-as-a~~ business deduction
16 deductions allowed under 15-30-111(5).

17 (b) Reductions in the loss include:

18 (i) interest received on obligations of another state
19 or territory or of a county, municipality, district, or
20 political subdivision thereof allowed as nonbusiness income
21 under 15-30-111(1)(a);

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

24 (iii) state income tax; and

25 (iv) any other nonbusiness deductions allowed under

1 15-30-121 in excess of nonbusiness income.

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

5 (a) income defined as exempt from state taxation under
6 15-30-111(2); or

7 (b) a zero bracket deduction provided for under section
8 63 of the Internal Revenue Code of 1954 or as that section
9 may be labeled or amended."

10 NEW SECTION. **Section 3.** **Retroactive applicability.**

11 [This act] applies retroactively, within the meaning of
12 1-2-109, to tax years beginning after December 31, 1988, for
13 which business deductions are allowed.

14 NEW SECTION. **Section 4.** **Effective date.** [This act] is
15 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 SB0341, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing a taxpayer in determining adjusted gross income to deduct business deductions that were reduced by an amount for which a federal tax credit was taken.


FISCAL IMPACT:

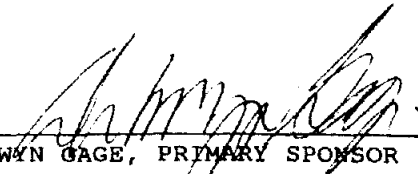
Expenditures:

This bill has no impact on Department of Revenue administrative expenditures.

Revenues:

No data are currently available on deductions pertaining to these particular federal tax credits, by state, that could be used to estimate the revenue impact of the proposal. However, it is expected to have a minimal impact on income tax collections.

 2-14-91
ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/15/91
DELWYN GAGE, PRIMARY SPONSOR DATE
Fiscal Note for SB0341, as introduced SB 341

APPROVED BY COMMITTEE
ON TAXATION

1 SENATE BILL NO. 341

2 INTRODUCED BY GAGE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TAXPAYER IN
5 DETERMINING ADJUSTED GROSS INCOME OR CORPORATE NET INCOME TO
6 DEDUCT BUSINESS DEDUCTIONS THAT WERE REDUCED BY AN AMOUNT
7 FOR WHICH A FEDERAL TAX CREDIT WAS TAKEN; AMENDING SECTIONS
8 15-30-111, AND 15-30-117, AND 15-31-114, MCA; AND PROVIDING
9 AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
10 DATE."
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20 or territory or county, municipality, district, or other
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23 extent the deduction of such tax resulted in a reduction of
24 Montana income tax liability;

25 (c) that portion of a shareholder's income under

1 subchapter S. of Chapter 1 of the Internal Revenue Code of
2 1954, that has been reduced by any federal taxes paid by the
3 subchapter S. corporation on the income; and

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

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

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11 States government, the state of Montana, county,
12 municipality, district, or other political subdivision
13 thereof;

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

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

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21 state other than Montana; or

22 (iii) as an annuity, pension, or endowment under any
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16 corporation under 15-31-113(1)(a)(ii);

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18 Revenue Code of 1954, as amended and applicable on January
19 1, 1983, received by persons for services rendered by them
20 to patrons of premises licensed to provide food, beverage,
21 or lodging;

22 (l) all benefits received under the workers'
23 compensation laws;

24 (m) all health insurance premiums paid by an employer
25 for an employee if attributed as income to the employee

1 under federal law;

2 (n) all benefits paid under an optional retirement
3 program that are specified as exempt from taxation by
4 19-21-212; and

5 (o) all money received because of a settlement
6 agreement or judgment in a lawsuit brought against a
7 manufacturer or distributor of "agent orange" for damages
8 resulting from exposure to "agent orange".

9 (3) In the case of a shareholder of a corporation with
10 respect to which the election provided for under subchapter
11 S. of the Internal Revenue Code of 1954, as amended, is in
12 effect but with respect to which the election provided for
13 under 15-31-202, as amended, is not in effect, adjusted
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15 undistributed taxable income, net operating loss, capital
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17 included in the shareholder's federal income tax adjusted
18 gross income by reason of the election under subchapter S.
19 However, the shareholder's adjusted gross income shall
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21 extent they would be treated as taxable dividends if the
22 subchapter S. election were not in effect.

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24 corporation license tax under 15-31-102(1)(1) shall include
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1 DISC in the same manner as provided by federal law (section
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3 DISC election is effective.

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8 ~~section--44B-of~~ the Internal Revenue Code of ~~1954~~ 1986 ~~or as~~
9 ~~that section may be amended or amended~~ but for which there
10 was no similar state tax credit is allowed to deduct the
11 amount of the ~~wages and salaries paid regardless of the~~
12 ~~credit taken~~ business deductions reduced **NOT ALLOWED** for
13 federal purposes. The deduction must be made in the year the
14 ~~wages and salaries~~ business deductions were used to compute
15 the credit. In the case of a partnership or small business
16 corporation, the deduction must be made to determine the
17 amount of income or loss of the partnership or small
18 business corporation.

19 (6) Married taxpayers filing a joint federal return who
20 must include part of their social security benefits or part
21 of their tier 1 railroad retirement benefits in federal
22 adjusted gross income may split the federal base used in
23 calculation of federal taxable social security benefits or
24 federal taxable tier 1 railroad retirement benefits when
25 they file separate Montana income tax returns. The federal

1 base must be split equally on the Montana return.

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

21 (8) A person receiving benefits described in
22 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
23 exclude benefits described in subsection (2)(c) from
24 adjusted gross income unless the benefits received under
25 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are

1 less than \$3,600, in which case the person may combine
 2 benefits to exclude up to a total of \$3,600 from adjusted
 3 gross income. (Subsection (2)(k) terminates on occurrence of
 4 contingency--sec. 3, Ch. 634, L. 1983.)"

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

6 **"15-30-117. Net operating loss -- computation.** (1) A
 7 net operating loss must be determined in accordance with
 8 section 172 of the Internal Revenue Code of 1954 or as that
 9 section may be labeled or amended and in accordance with the
 10 following:

11 (a) Additions to loss include:

12 (i) that portion of the federal income tax and motor
 13 vehicle tax allowed as a deduction under 15-30-121 or
 14 15-30-131 which is attributable to income from a trade or
 15 business; and

16 (ii) ~~wages-and-salaries-allowed-as-a~~ business deduction
 17 deductions allowed under 15-30-111(5).

18 (b) Reductions in the loss include:

19 (i) interest received on obligations of another state
 20 or territory or of a county, municipality, district, or
 21 political subdivision thereof allowed as nonbusiness income
 22 under 15-30-111(1)(a);

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

25 (iii) state income tax; and

1 (iv) any other nonbusiness deductions allowed under
 2 15-30-121 in excess of nonbusiness income.

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

6 (a) income defined as exempt from state taxation under
 7 15-30-111(2); or

8 (b) a zero bracket deduction provided for under section
 9 63 of the Internal Revenue Code of 1954 or as that section
 10 may be labeled or amended."

11 **SECTION 3. SECTION 15-31-114, MCA, IS AMENDED TO READ:**

12 **"15-31-114. Deductions allowed in computing income.** In
 13 computing the net income, the following deductions shall be
 14 allowed from the gross income received by such corporation
 15 within the year from all sources:

16 (1) All the ordinary and necessary expenses paid or
 17 incurred during the taxable year in the maintenance and
 18 operation of its business and properties, including
 19 reasonable allowance for salaries for personal services
 20 actually rendered, subject to the limitation hereinafter
 21 contained, rentals or other payments required to be made as
 22 a condition to the continued use or possession of property
 23 to which the corporation has not taken or is not taking
 24 title or in which it has no equity. No deduction shall be
 25 allowed for salaries paid upon which the recipient thereof

1 has not paid Montana state income tax; provided, however,
2 that where domestic corporations are taxed on income derived
3 from without the state, salaries of officers paid in
4 connection with securing such income shall be deductible.

5 (2) Beginning after December 31, 1988, there is allowed
6 a deduction for the amount for which a deduction was not
7 allowed for federal purposes because a federal tax credit
8 was elected under the Internal Revenue Code of 1986 and for
9 which there was no similar state tax credit. The deduction
10 must be made in the year the deduction was used to compute
11 the credit.

12 ~~(2)~~(3) (a) All losses actually sustained and charged
13 off within the year and not compensated by insurance or
14 otherwise, including a reasonable allowance for the wear and
15 tear and obsolescence of property used in the trade or
16 business, such allowance to be determined according to the
17 provisions of section 167 of the Internal Revenue Code in
18 effect with respect to the taxable year. All elections for
19 depreciation shall be the same as the elections made for
20 federal income tax purposes. No deduction shall be allowed
21 for any amount paid out for any buildings, permanent
22 improvements, or betterments made to increase the value of
23 any property or estate, and no deduction shall be made for
24 any amount of expense of restoring property or making good
25 the exhaustion thereof for which an allowance is or has been

1 made. No depreciation or amortization deduction shall be
2 allowed on a title plant as defined in 33-25-105(15).

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

6 ~~(3)~~(4) In the case of mines, other natural deposits,
7 oil and gas wells, and timber, a reasonable allowance for
8 depletion and for depreciation of improvements; such
9 reasonable allowance to be determined according to the
10 provisions of the Internal Revenue Code in effect for the
11 taxable year. All elections made under the Internal Revenue
12 Code with respect to capitalizing or expensing exploration
13 and development costs and intangible drilling expenses for
14 corporation license tax purposes shall be the same as the
15 elections made for federal income tax purposes.

16 ~~(4)~~(5) The amount of interest paid within the year on
17 its indebtedness incurred in the operation of the business
18 from which its income is derived; but no interest shall be
19 allowed as a deduction if paid on an indebtedness created
20 for the purchase, maintenance, or improvement of property or
21 for the conduct of business unless the income from such
22 property or business would be taxable under this part.

23 ~~(5)~~(6) (a) Taxes paid within the year, except the
24 following:

25 (i) Taxes imposed by this part.

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

3 (iii) Taxes on or according to or measured by net income
4 or profits imposed by authority of the government of the
5 United States.

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

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

11 ~~(6)~~(7) That portion of an energy-related investment
12 allowed as a deduction under 15-32-103.

13 ~~(7)~~(8) (a) Except as provided in subsection (b),
14 charitable contributions and gifts that qualify for
15 deduction under section 170 of the Internal Revenue Code, as
16 amended.

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

20 ~~(8)~~(9) In lieu of the deduction allowed under
21 subsection ~~(7)~~ (8), the taxpayer may deduct the fair market
22 value, not to exceed 30% of the taxpayer's net income, of a
23 computer or other sophisticated technological equipment or
24 apparatus intended for use with the computer donated to an
25 elementary, secondary, or accredited postsecondary school

1 located in Montana if:

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

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

7 (c) the taxpayer receives a written statement from the
8 donee in which the donee agrees to accept the property and
9 representing that the use and disposition of the property
10 will be in accordance with the provisions of (b) of this
11 subsection ~~(8)~~ (9)."

12 NEW SECTION. Section 4. Retroactive applicability.
13 [This act] applies retroactively, within the meaning of
14 1-2-109, to tax years beginning after December 31, 1988, for
15 which business deductions are allowed.

16 NEW SECTION. Section 5. Effective date. [This act] is
17 effective on passage and approval.

-End-

SENATE BILL NO. 341

INTRODUCED BY GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A TAXPAYER IN DETERMINING ADJUSTED GROSS INCOME OR CORPORATE NET INCOME TO DEDUCT BUSINESS DEDUCTIONS THAT WERE REDUCED BY AN AMOUNT FOR WHICH A FEDERAL TAX CREDIT WAS TAKEN; AMENDING SECTIONS 15-30-111, AND 15-30-117, AND 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

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

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

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

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

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

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

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

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



1 (e) all benefits paid under The Public Employees'
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 3 taxation by 19-3-105;

4 (f) all benefits paid under the highway patrol
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 14 from taxation by 19-9-1005;

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

17 (k) all tips covered by section 3402(k) of the Internal
 18 Revenue Code of 1954, as amended and applicable on January
 19 1, 1983, received by persons for services rendered by them
 20 to patrons of premises licensed to provide food, beverage,
 21 or lodging;

22 (l) all benefits received under the workers'
 23 compensation laws;

24 (m) all health insurance premiums paid by an employer
 25 for an employee if attributed as income to the employee

1 under federal law;

2 (n) all benefits paid under an optional retirement
 3 program that are specified as exempt from taxation by
 4 19-21-212; and

5 (o) all money received because of a settlement
 6 agreement or judgment in a lawsuit brought against a
 7 manufacturer or distributor of "agent orange" for damages
 8 resulting from exposure to "agent orange".

9 (3) In the case of a shareholder of a corporation with
 10 respect to which the election provided for under subchapter
 11 S. of the Internal Revenue Code of 1954, as amended, is in
 12 effect but with respect to which the election provided for
 13 under 15-31-202, as amended, is not in effect, adjusted
 14 gross income does not include any part of the corporation's
 15 undistributed taxable income, net operating loss, capital
 16 gains or other gains, profits, or losses required to be
 17 included in the shareholder's federal income tax adjusted
 18 gross income by reason of the election under subchapter S.
 19 However, the shareholder's adjusted gross income shall
 20 include actual distributions from the corporation to the
 21 extent they would be treated as taxable dividends if the
 22 subchapter S. election were not in effect.

23 (4) A shareholder of a DISC that is exempt from the
 24 corporation license tax under 15-31-102(1)(1) shall include
 25 in his adjusted gross income the earnings and profits of the

1 DISC in the same manner as provided by federal law (section
2 995, Internal Revenue Code) for all periods for which the
3 DISC election is effective.

4 (5) A Beginning after December 31, 1988, a taxpayer
5 who, in determining federal adjusted gross income, has
6 reduced his business deductions by an amount for wages and
7 salaries for which a federal tax credit was elected under
8 section--44B-of the Internal Revenue Code of 1954 1986 or as
9 that-section-may-be-labeled-or-amended but for which there
10 was no similar state tax credit is allowed to deduct the
11 amount of the wages and salaries paid regardless of the
12 credit--taken business deductions reduced NOT ALLOWED for
13 federal purposes. The deduction must be made in the year the
14 wages and salaries business deductions were used to compute
15 the credit. In the case of a partnership or small business
16 corporation, the deduction must be made to determine the
17 amount of income or loss of the partnership or small
18 business corporation.

19 (6) Married taxpayers filing a joint federal return who
20 must include part of their social security benefits or part
21 of their tier 1 railroad retirement benefits in federal
22 adjusted gross income may split the federal base used in
23 calculation of federal taxable social security benefits or
24 federal taxable tier 1 railroad retirement benefits when
25 they file separate Montana income tax returns. The federal

1 base must be split equally on the Montana return.

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

21 (8) A person receiving benefits described in
22 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
23 exclude benefits described in subsection (2)(c) from
24 adjusted gross income unless the benefits received under
25 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are

1 less than \$3,600, in which case the person may combine
2 benefits to exclude up to a total of \$3,600 from adjusted
3 gross income. (Subsection (2)(k) terminates on occurrence of
4 contingency--sec. 3, Ch. 634, L. 1983.)"

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

6 "15-30-117. **Net operating loss -- computation.** (1) A
7 net operating loss must be determined in accordance with
8 section 172 of the Internal Revenue Code of 1954 or as that
9 section may be labeled or amended and in accordance with the
10 following:

11 (a) Additions to loss include:

12 (i) that portion of the federal income tax and motor
13 vehicle tax allowed as a deduction under 15-30-121 or
14 15-30-131 which is attributable to income from a trade or
15 business; and

16 (ii) ~~wages-and-salaries-allowed-as-a~~ business deduction
17 deductions allowed under 15-30-111(5).

18 (b) Reductions in the loss include:

19 (i) interest received on obligations of another state
20 or territory or of a county, municipality, district, or
21 political subdivision thereof allowed as nonbusiness income
22 under 15-30-111(1)(a);

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

25 (iii) state income tax; and

1 (iv) any other nonbusiness deductions allowed under
2 15-30-121 in excess of nonbusiness income.

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

6 (a) income defined as exempt from state taxation under
7 15-30-111(2); or

8 (b) a zero bracket deduction provided for under section
9 63 of the Internal Revenue Code of 1954 or as that section
10 may be labeled or amended."

11 **SECTION 3. SECTION 15-31-114, MCA, IS AMENDED TO READ:**

12 "15-31-114. **Deductions allowed in computing income.** In
13 computing the net income, the following deductions shall be
14 allowed from the gross income received by such corporation
15 within the year from all sources:

16 (1) All the ordinary and necessary expenses paid or
17 incurred during the taxable year in the maintenance and
18 operation of its business and properties, including
19 reasonable allowance for salaries for personal services
20 actually rendered, subject to the limitation hereinafter
21 contained, rentals or other payments required to be made as
22 a condition to the continued use or possession of property
23 to which the corporation has not taken or is not taking
24 title or in which it has no equity. No deduction shall be
25 allowed for salaries paid upon which the recipient thereof

1 has not paid Montana state income tax; provided, however,
2 that where domestic corporations are taxed on income derived
3 from without the state, salaries of officers paid in
4 connection with securing such income shall be deductible.

5 (2) Beginning after December 31, 1988, there is allowed
6 a deduction for the amount for which a deduction was not
7 allowed for federal purposes because a federal tax credit
8 was elected under the Internal Revenue Code of 1986 and for
9 which there was no similar state tax credit. The deduction
10 must be made in the year the deduction was used to compute
11 the credit.

12 ~~(2)~~(3) (a) All losses actually sustained and charged
13 off within the year and not compensated by insurance or
14 otherwise, including a reasonable allowance for the wear and
15 tear and obsolescence of property used in the trade or
16 business, such allowance to be determined according to the
17 provisions of section 167 of the Internal Revenue Code in
18 effect with respect to the taxable year. All elections for
19 depreciation shall be the same as the elections made for
20 federal income tax purposes. No deduction shall be allowed
21 for any amount paid out for any buildings, permanent
22 improvements, or betterments made to increase the value of
23 any property or estate, and no deduction shall be made for
24 any amount of expense of restoring property or making good
25 the exhaustion thereof for which an allowance is or has been

1 made. No depreciation or amortization deduction shall be
2 allowed on a title plant as defined in 33-25-105(15).

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

6 ~~(3)~~(4) In the case of mines, other natural deposits,
7 oil and gas wells, and timber, a reasonable allowance for
8 depletion and for depreciation of improvements; such
9 reasonable allowance to be determined according to the
10 provisions of the Internal Revenue Code in effect for the
11 taxable year. All elections made under the Internal Revenue
12 Code with respect to capitalizing or expensing exploration
13 and development costs and intangible drilling expenses for
14 corporation license tax purposes shall be the same as the
15 elections made for federal income tax purposes.

16 ~~(4)~~(5) The amount of interest paid within the year on
17 its indebtedness incurred in the operation of the business
18 from which its income is derived; but no interest shall be
19 allowed as a deduction if paid on an indebtedness created
20 for the purchase, maintenance, or improvement of property or
21 for the conduct of business unless the income from such
22 property or business would be taxable under this part.

23 ~~(5)~~(6) (a) Taxes paid within the year, except the
24 following:

25 (i) Taxes imposed by this part.

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

3 (iii) Taxes on or according to or measured by net income
4 or profits imposed by authority of the government of the
5 United States.

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

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

11 ~~{6}~~{7} That portion of an energy-related investment
12 allowed as a deduction under 15-32-103.

13 ~~{7}~~{8} (a) Except as provided in subsection (b),
14 charitable contributions and gifts that qualify for
15 deduction under section 170 of the Internal Revenue Code, as
16 amended.

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

20 ~~{8}~~{9} In lieu of the deduction allowed under
21 subsection ~~{7}~~ {8}, the taxpayer may deduct the fair market
22 value, not to exceed 30% of the taxpayer's net income, of a
23 computer or other sophisticated technological equipment or
24 apparatus intended for use with the computer donated to an
25 elementary, secondary, or accredited postsecondary school

1 located in Montana if:

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

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

7 (c) the taxpayer receives a written statement from the
8 donee in which the donee agrees to accept the property and
9 representing that the use and disposition of the property
10 will be in accordance with the provisions of (b) of this
11 subsection ~~{8}~~ {9}."

12 NEW SECTION. Section 4. Retroactive applicability.
13 [This act] applies retroactively, within the meaning of
14 1-2-109, to tax years beginning after December 31, 1988, for
15 which business deductions are allowed.

16 NEW SECTION. Section 5. Effective date. [This act] is
17 effective on passage and approval.

-End-