SENATE BILL 354

Introduced by Gage

2/11	Introduction
2/12	Referred to Taxation
2/12	First Reading
2/12	Fiscal Note Requested
2/19	Fiscal Note Received
2/21	Fiscal Note Printed
2/22	Hearing
2/22	Tabled in Committee

Senate BILL NO. 354

INTRODUCED BY [signature]

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING A NET OPERATING LOSS DEDUCTION FOR CERTAIN CORPORATIONS; AMENDING SECTION 15-31-119, 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 15-31-119, MCA, is amended to read:

"**15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss carrybacks to the taxable period.

(2) The term "net operating loss" means the excess of the deductions allowed by this section over the gross income, with the modifications specified in subsection (6).

(3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.

(4) A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss.

(5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable periods to which the loss was carried. For purposes of the preceding sentence, the net income for the prior taxable period must be computed with the modification specified in subsection (6)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed may not be considered to be less than zero.

(6) The modifications referred to in subsection (2) are as follows:

(a) ~~net~~ <u>Net</u> operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

(c) Any net operating loss carried over to any taxable years beginning after December 31, 1978, must be calculated under the provisions of this section effective for the taxable year for which the return claiming the net operating loss carryover is filed.

(7) A net operating loss deduction must be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(8) (a) In the case of a merger of corporations, as provided in 35-1-801(1)(a), the surviving corporation ~~may not be~~ is allowed a net operating loss deduction for Montana net operating losses sustained by the ~~merged--corporations~~ surviving corporation prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity ~~may--not--be~~ is allowed a deduction for Montana net operating losses sustained by the consolidated corporations prior to the date of consolidation. A net operating loss deduction may not be allowed for Montana net operating losses sustained by predecessor corporations prior to the date of merger or consolidation, and a net operating loss deduction may not be allowed in the case of a merger or consolidation involving financial institutions with Montana net operating losses prior to the merger or consolidation.

(b) In the case of a corporate reorganization under section 368(a)(2)(D) of the Internal Revenue Code, a net

operating loss deduction must be allowed for Montana net operating losses sustained by the merged corporations prior to the date of merger.

(9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(10) The net operating loss deduction may not be allowed with respect to taxable periods that ended on or before December 31, 1970, but must be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made."

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

NEW SECTION. **Section 3. Effective date.** [This act] is 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 SB0354, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act permitting a net operating loss deduction for certain corporations that merge or consolidate.

ASSUMPTIONS:

1. For the last two fiscal years, the average number of corporate mergers and consolidations reported to the MOntana Secretary of State's Office was about 325.
2. There will be 325 total mergers and consolidations for tax years 1991, 1992, and 1993.
3. All mergers and consolidations affecting MOntana corporation license and income taxes are reported to the Secretary of State's Office.
4. In FY90, 31% of all corporation license and income tax filers had net operating losses, and these losses averaged $67,863 excluding carryforward losses.
5. The percentage and average net operating loss of merging and consolidating corporations will be the same in tax years 1991, 1992, and 1993 as for all corporations, in FY90.
6. Therefore there will be 101 merging and consolidating corporations in tax years 1991, 1992, and 1993 with net operating losses averaging $67,863 (excluding carryforwards) each, for a total of $6,854,163.
7. The corporation tax rate is 6.75%, yielding a total revenue decrease of $462,656 per fiscal year, excluding the effect of carryforward losses and thus representing a minimum revenue decrease. A reasonable upper limit on a given year's revenue loss would be about $1,000,000.

FISCAL IMPACT:

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenues:						
Corporation Tax	60,841,000	60,378,344	(462,656)	60,111,000	60,648,344	(462,656)
Fund Information						
General Fund	56,083,000	55,656,395	(426,605)	55,409,000	45,982,114	(426,886)
Local Government	4,758,000	4,721,949	(36,051)	4,702,000	4,666,230	(35,770)
Total	60,841,000	60,378,344	(462,656)	60,111,000	60,648,344	(462,656)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Not all out-of-state corporations are required to register with the Montana Secretary of State's Office. The revenue loss in a given year including FY92 and FY93 could be substantially higher if one or more unregistered large out-of-state corporations taxed on a unitary basis and not included in the FY90 operating loss data, merged other corporations into it or consolidated with other corporations.

Rod Sundsted 2-19-91

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

Delwyn Gage 2/21/91

DELWYN GAGE, PRIMARY SPONSOR DATE

Fiscal Note for SB0354, as introduced SB 354