

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

1 *Senate* BILL NO. 354
 2 INTRODUCED BY _____
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING A NET
 6 OPERATING LOSS DEDUCTION FOR CERTAIN CORPORATIONS; AMENDING
 7 SECTION 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
 8 DATE AND A RETROACTIVE APPLICABILITY DATE."
 9

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

11 **Section 1.** Section 15-31-119, MCA, is amended to read:

12 **"15-31-119. Net operating losses -- carryovers and**
 13 **carrybacks.** (1) The net operating loss deduction is the
 14 aggregate of net operating loss carryovers to the taxable
 15 period plus the net operating loss carrybacks to the taxable
 16 period.

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

20 (3) If for any taxable period beginning after December
 21 31, 1970, a net operating loss is sustained, the loss must
 22 be a net operating loss carryback to each of the three
 23 taxable periods preceding the taxable period of the loss and
 24 must be a net operating loss carryover to each of the five
 25 taxable periods following the taxable period of the loss.

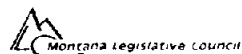
1 (4) A net operating loss for any taxable period ending
 2 after December 31, 1975, in addition to being a net
 3 operating loss carryback to each of the three preceding
 4 taxable periods, must be a net operating loss carryover to
 5 each of the seven taxable periods following the taxable
 6 period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

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

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

21 (a) ~~net~~ Net operating loss deduction may not be
 22 allowed.

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



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

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

9 (8) (a) In the case of a merger of corporations, as
10 provided in 35-1-801(1)(a), the surviving corporation may
11 not-be is allowed a net operating loss deduction for Montana
12 net operating losses sustained by the merged--corporations
13 surviving corporation prior to the date of merger. In the
14 case of a consolidation of corporations, the new corporate
15 entity may--not--be is allowed a deduction for Montana net
16 operating losses sustained by the consolidated corporations
17 prior to the date of consolidation. A net operating loss
18 deduction may not be allowed for Montana net operating
19 losses sustained by predecessor corporations prior to the
20 date of merger or consolidation, and a net operating loss
21 deduction may not be allowed in the case of a merger or
22 consolidation involving financial institutions with Montana
23 net operating losses prior to the merger or consolidation.

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

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

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

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

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

19 NEW SECTION. Section 2. Retroactive applicability.
20 [This act] applies retroactively, within the meaning of
21 1-2-109, to taxable years beginning after December 31, 1990.

22 NEW SECTION. Section 3. Effective date. [This act] is
23 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:

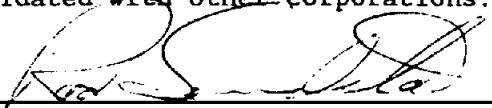
1. For the last two fiscal years, the average number of corporate mergers and consolidations reported to the Montana Secretary of State's Office was about 325.
2. There will be 325 total mergers and consolidations for tax years 1991, 1992, and 1993.
3. All mergers and consolidations affecting Montana 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
<u>Revenues:</u>						
Corporation Tax	60,841,000	60,378,344	(462,656)	60,111,000	60,648,344	(462,656)
<u>Fund Information</u>						
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, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning



 DELWYN GAGE, PRIMARY SPONSOR DATE
 3/31/91

Fiscal Note for SB0354, as introduced **SB 354**