MINUTES

MONTANA SENATE
51st LEGISLATURE - SPECIAL SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Bob Brown, Chairman, on June 23, 1989, at 8:00 a.m.

ROLL CALL

Members Present: Senator Brown, Senator Hager, Senator Norman, Senator Eck, Senator Bishop, Senator Halligan, Senator Walker, Senator Harp, Senator Gage, Senator Severson, Senator Crippen

Members Excused: Senator Mazurek

Members Absent: None

Staff Present: Jill Rohyans, Committee Secretary
Jeff Martin, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 14

Presentation and Opening Statement by Sponsor:

Senator Crippen, District 45, sponsor, said the bill provides for quarterly payment of corporation and income taxes. The proceeds would be used to fund building projects in the university system. He pointed out the University of Montana School of Business is housed in an antiquated building which is equipped to accommodate only one third its average usage. Numerous buildings at Montana State University and Eastern Montana College are in need of repair or expansion and there is a great need for new facilities on most all the campuses.

Senator Crippen noted there was legislation introduced in the regular session which would have accelerated the payment of corporation and income tax to a quarterly basis. Although the bills passed out of the Senate Taxation Committee, they were not presented for consideration as it was determined the funding they provided was not a necessary component of the budget balancing process. However, Senator Crippen feared the funds this bill could generate will be used either in this special session or in the next regular session as a short term solution to some problem that must be addressed. He felt a better use for the money would be to create a long term funding mechanism to pay for maintenance and fund new buildings on the university system campuses throughout the state.

The bill accelerates the quarterly estimated payments in the same manner as the federal payments. It would affect taxpayers with a tax liability of $400 and corporate taxpayers with a liability beginning at $5000.

Senator Crippen said it is his experience as the Past President of the University of Montana Board of Trustees that corporations which make large donations want those funds used for programs, not buildings. They feel it is the obligation of the state to provide and maintain the facilities.

List of Testifying Proponents and What Group they Represent:

Carrol Krause, Commissioner of Higher Education
Sheila Stearns, University of Montana
Dr. William Tietz, President, Montana State University
Krystin M. Deschamps, Associated Students of the University of Montana
Mike Holland, Montana Society of CPA's
Stacy Farmer, Association Students of Montana State University

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Carrol Krause, Commissioner of Higher Education, reviewed building needs for each campus in the system. He stated MSU has the highest priority in terms of need and noted the last new building in the system was the Fine Arts Building at the U of M which was built in 1981. He said the electrical system at Montana Tech is archaic and the compressed campus at Eastern is causing real problems. He invited committee members to visit the campuses and become familiar with the problems that exist. There is an evergrowing need for new space and a source of on-going funding for campus expansion.

Sheila Stearns, University of Montana, noted the U of M School of Business has been placed on probation because of the space limitations it faces. She reviewed the needs of the U of M and urged the committee to establish a source of funding for buildings.

Dr. William Tietz, President, Montana State University, reviewed the building needs of MSU stating the science and technology buildings were built in 1927 and 1953. They are no where close to keeping up with the advances and space considerations of developing technology of today. This hurts the students in terms of developing their potential which in turn reflects badly on the institution itself. Monies for programs are available, however, funds for buildings and infrastructure development just do not exist. It becomes very hard to develop new programs when there is no place to house them.

Krystin Deschamps, Associated Students of the University of Montana, said most classroom space is old, inadequate, small and crowded. She asked the committee to give favorable consideration to the bill.

Mike Holland, Montana Society of CPAs, said his organization supports legislation which provides for quarterly payments of taxes as it eases the burden on the taxpayer.

Stacy Farmer, Associated Students of Montana State University, said her organization would appreciate the support of the Committee and the Legislature in consideration of a capital building fund for the university system.

<u>Questions From Committee Members:</u>

Senator Harp asked for some specific dollar amounts regarding the science building at MSU and the Business School at the U of M.

Dr. Krause said the science building costs would be $18 million and the Business School $14 million. The building most in need at Eastern would be $8.5 -$14 million, renovation of the building at Montana Tech would be about $2.5 million, and the technology building at Northern would be about $1 million.

Senator Crippen said the principal should amount to approximately $60 million. Senator Crippen said depending on the interest and the amortization schedule a fairly substantial bonding program should develop.

Closing by Sponsor:

Senator Crippen said the bill could be amended to bring the penalty and interest provisions in line with the federal guidelines. He said this is an important issue and one which needs to be addressed now as delays will only increase the problems and the dollars needed to solve them. This is an opportunity to establish a long range funding mechanism with money that will certainly be used in the near future for a "quick fix" solution if we do not look ahead and make provisions now for the future of the campuses of the university system.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 14

Discussion: See Following

Amendments and Votes:

Senator Halligan Moved to amend the bill to comply with the penalty and interest provisions of federal law in regards to quarterly payment of corporate and individual income tax.

The motion CARRIED unanimously.

Recommendation and Vote:

Senator Halligan MOVED SB 14 Do Pass As Amended.

Senator Harp suggested felt the money, approximately $52 million, should be split up with some of the money going to schools and property tax relief.

General discussion followed regarding the flow of the money and various ways of dividing the proceeds. No consensus was reached, rather, there was just an exploration of possible alternatives.

The motion CARRIED on a roll call vote (Exhibit #1).

DISPOSITION OF SENATE BILL 6

Discussion:

Ken Nordtvedt, Director, Department of Revenue, presented proposed amendments to the bill to the Committee

(Exhibits #2 and #3).

Amendments and Votes:

Senator Crippen MOVED to adopt the proposed amendments (Exhibit #3).

The motion CARRIED unanimously.

Recommendation and Vote:

Senator Crippen MOVED SB 6 Do Pass As Amended.

The motion CARRIED on a roll call vote (Exhibit #4).

ADJOURNMENT

Adjournment At: 10:00 a.m.

Bob Brown

SENATOR BOB BROWN, Chairman

BB/jdr

MIN623.jdr

SENATE STANDING COMMITTEE REPORT

June 26, 1989

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 6 (first reading copy -- white), respectfully report that SB 6 be amended and as so amended do pass:

1. Title, line 6.
Strike: "CAPITAL GAINS OR LOSSES"
Insert: "THE COST BASIS OF CAPITAL ASSETS"

2. Title, line 7.
Following: "15-30-111"
Insert: ", 15-30-136, 15-31-114,"

3. Page 1, line 13.
Following: "(1)"
Strike: "Notwithstanding the provisions of 15-30-110"
Insert: "For capital assets sold after December 31, 1989"

4. Page 2, line 5.
Strike: "factors"
Insert: "factor"

5. Page 2, line 6.
Strike: "all holding periods of capital assets"
Insert: "the previous years' holding period"

6. Page 2, line 8.
Following: "assets"
Insert: "each year"

7. Page 2, line 9.
Strike: "appropriate"
Insert: "previous years'"

8. Page 2, lines 10 and 11.
Following: "period"
Strike: remainder of line 10 through "agreement" on line 11

9. Page 2.
Following: line 14
Insert: "(7) On a sale or exchange of an asset either for cash or under an installment agreement, the taxpayer may use the cost basis as adjusted for inflation under this section.

(8) For purposes of this chapter, "capital gains" equals the selling price less the Montana adjusted basis. For an asset acquired after December 31, 1989, the adjusted basis for Montana purposes is calculated by multiplying the cost of the asset by the inflation factor in the year of the sale, less the accumulated depreciation calculated under the Internal Revenue Code of 1986,

as amended, and less any depreciation taken under 15-30-111(2)(q) or 15-31-114(2)(b)."

10. Page 3, line 6.
Following: "~~and~~"
Insert: "and"

11. Page 3, line 8.
Following: "33-25-105(15)"
Strike: "; and"
Insert: "."

12. Page 3, lines 9 and 10.
Strike: subsection (e) in its entirety

13. Page 5, line 13.
Following: "orange""
Strike: "."
Insert: "; and"

14. Page 5.
Following: line 13
Insert: "(p) the difference between the capital gains and losses included in the federal adjusted gross income and the capital gains and losses as calculated in [section 1]; and

(q) for an asset purchased and sold after December 31, 1989, and held for its entire federal depreciable life, an additional depreciation expense is allowed for the year following the final year of federal depreciation. The amount of additional depreciation that may be claimed in the subsequent year is calculated by multiplying the original cost of the asset by the inflation factor as defined in [section 1], less the accumulated depreciation claimed for that asset under the Internal Revenue Code of 1986, as amended."

15. Page 8.
Following: line 6
Insert: "Section 3. Section 15-30-136, MCA, is amended to read:

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

(a) dividends;

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

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

(ii) a school district; or

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

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

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

(f) gross profit from trade or business; and

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

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

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

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

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

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

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

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

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

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

(i) as federal employees' retirement;

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

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

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

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

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

(l) Montana income tax refunds or credits thereof;

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

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

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

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

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

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

(c) ~~the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year~~ for an asset sold after December 31, 1989, the difference between the capital gains and losses included in the federal fiduciary gross income and the capital gains and losses as calculated in [section 1];

(d) for an asset purchased and sold after December 31, 1989, and held for its entire federal depreciable life, an additional depreciation expense is allowed for the year following the final year of federal depreciation. The amount of additional depreciation that may be claimed in the subsequent year is calculated by multiplying the original cost of the asset by the inflation factor as defined in [section 1], less the accumulated depreciation claimed for that asset under the Internal Revenue Code of 1986, as amended.

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

(6) A trust or estate excluding benefits under subsections

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

Section 4. Section 15-31-114, MCA, is amended to read:

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

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

(2) (a) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the taxable year. ~~All elections~~ Except as provided in subsection (2)(b), all elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made. No depreciation or amortization deduction shall be allowed on a title plant as defined in 33-25-105(15).

(b) For an asset purchased and sold after December 31, 1989, and held for its entire federal depreciable life, an additional depreciation expense is allowed for the year following the final year of federal depreciation. The amount of additional depreciation that may be claimed in the subsequent year is calculated by multiplying the original cost of the asset by the inflation factor as defined in [section 1], less the accumulated depreciation claimed for that asset under the Internal Revenue Code of 1986, as amended.

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

(3) For an asset sold after December 31, 1989, the difference between the capital gains and losses included in the federal adjusted gross income and the capital gains and losses as calculated in [section 1].

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

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

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

(i) Taxes imposed by this part.

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

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

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

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

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

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

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

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

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

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

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

Renumber: subsequent sections

DO PASS AS AMENDED

Signed: ____________________
Bob Brown, Chairman

H.C. 6/26/89
2:10 p.m.

SENATE TAXATION
EXHIBIT NO. 1
DATE 6/23/89
BILL NO. SB14

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date 6/23/89 Senate Bill No. 14 Time 9:30

NAME	YES	NO
SENATOR BROWN	X	
SENATOR BISHOP		X
SENATOR CRIPPEN	X	
SENATOR ECK	X	
SENATOR GAGE		X
SENATOR HAGER		X
SENATOR HALLIGAN	X	
SENATOR HARP		X
SENATOR MAZUREK		
SENATOR NORMAN	X	
SENATOR SEVERSON		X
SENATOR WALKER	X	

Jill Rohyans
Secretary

SENATOR BOB BROWN
Chairman

Motion: Sen Halligan — SB 14 DPAA

Carried

SENATE TAXATION
EXHIBIT NO. 2 p.1
DATE 6/23/89
BILL NO. SB 6

DEPARTMENT OF REVENUE

STAN STEPHENS, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

MEMORANDUM

To: Senator Bruce Crippen

From: Steve Bender, Acting Deputy Director
Department of Revenue

Re: Explanation of Amendments to SB 6

Date: June 22, 1989

Attached to this memo please find:

* Proposed amendments to SB 6 providing corrections, clarifying the application of the bill to assets sold and assets retained, and extending this treatment to taxpayers subject to the Corporate License Tax.

* Examples of how SB 6, as amended, would work

As we have discussed this bill is intended to remove from taxation the element of " gains " attributable solely to inflation. This is accomplished by indexing the cost basis of an asset. Under this bill the adjustment will occur whether the business asset is sold or retained past its "useful life".

In the former instance, the bill provides for the calculation of an adjusted cost basis to be used in arriving at the true gain subject to Montana taxation. The Montana adjusted capital gain will be compared to the federal gain reported to calculate the adjustment necessary to remove the effects of inflation. Since the full amount of the gain will have been included in federal AGI, the adjustment will be an additional deduction for Montana purposes assuming the asset was held over an inflationary period.

SENATE TAXATION
EXHIBIT NO. 2 p.2
DATE 6/23/89
BILL NO. SB6

Senator Crippen
June 22, 1989
Page 2.

In the case of an asset retained past its useful life, ie. fully depreciated for federal purposes, the bill provides for a calculation of an additional depreciation deduction to mitigate the effects of inflation. This is accomplished by providing a one time, additional, deprecation deduction <u>without</u> radically departing from federal depreciation methods.

Briefly, the additional depreciation deduction is equal to the amount the cost basis of the asset, adjusted by the inflation factor, exceeds the accumulated federal depreciation specific to that asset. The deduction is granted in the year following the final year of federal depreciation. This provision will address the disparity created in inflationary periods by limiting the write off of business investments in depreciable assets to historical dollars.

If we can provide anything further, please advise.

SB 6 AS AMENDED EXAMPLES
CAPITAL GAIN AND DEPRECIATION INDEXING

ASSUMPTIONS

1. There is an inflation factor of 4% per year
2. The inflation factor is compounded each year
3. Indexing starts in 1988

EXAMPLE #1

Item:	Stock	Sales Price:	$15,000
Bought:	Jan. 1990	Cost:	10,000
Sold:	Feb. 1991		

Gain Under:	Present Law	SB #6	
	$15,000		$15,000
	(10,000)	10,000 x 1.04 =	10,400
	5,000		4,600

$400 less gain would be reported under SB 6 because of the indexing of the inflation factor.

EXAMPLE #2

Item:	Land	Sales Price:	$60,000
Bought:	Jan. 1990	Cost:	30,000
Sold:	Jan. 1994		

Gain Under:	Present Law	SB #6	
	$60,000		$60,000
	(30,000)	30,000 x 1.17 =	35,100
	30,000		24,900

$5,100 less gain would be reported under SB 6 because of the indexing of the inflation factor.

When depreciation is involved there is a two step process. First the adjusted basis has to be calculated. Then the gain is found by subtracting the adjusted basis from the sales price.

EXAMPLE #3

Item:	Depreciable Machinery	Sales Price:	$120,000
Bought:	Jan. 1988	Cost:	100,000
Sold:	Jan. 1993	Depreciation taken	50,000
Inflation factor:	1.22		

Gain Under:	Present Law		SB #6
Step 1:			
Cost	100,000	100,000 x 1.22 =	122,000
Depreciation	(50,000)		(50,000)
Adjusted Basis	50,000		72,000
Step 2:			
Sales Price	$120,000		$120,000
Adjusted Basis	50,000		72,000
Gain	70,000		48,000

After the cost of the machinery is indexed, the accumulated depreciation is deducted to arrive at the Montana adjusted basis. There would be $22,000 less gain reported under SB 6 with the indexing of the cost basis of the asset.

EXAMPLE #4

Assume the same facts as in the above example except the Sales Price was $60,000.

Gain Under:	Present Law		SB #6
Step 1:			
Cost	$100,000	100,000 x 1.22 =	122,000
Depreciation	(50,000)		(50,000)
Adjusted Basis	50,000		72,000

Step 2:

Sales Price	$ 60,000	$ 60,000
Adjusted Basis	(50,000)	(72,000)
Gain	10,000	(12,000)

Under this example there would be $22,000 less gain reported under SB 6 because of the indexing.

EXAMPLE 5 ASSET HELD PAST THE FEDERAL DEPRECIABLE LIFE

Asset purchased Jan. 1, 1990

Cost $12,000

Annual Depreciation $4,000 / year , 3yr. useful life

Inflation factor 1993 = 1.25

Depreciation Expense deducted on 1990, 1991, & 1992 returns totals $12,000.

Additional Depreciation Expense deductible in 1993 =

Inflation factor X Cost Basis - Accumulated Depr.= Add'l Depr.

(1.25 X $12,000) - $12,000 = $3,000 Add'l Depreciation
Per SB 6 as amended.

SENATE TAXATION
EXHIBIT NO. 3
DATE: 6/23/89
BILL NO. SB6

June 22, 1989

TO: Steve Bender, Deputy Director

FROM: Jeff, Miller, Administrator

RE: Proposed Amendments to SB 6

1. Title, line 6
Following: "CAPITAL"
Strike: "GAINS OR LOSSES"
Insert: "ASSETS COST BASIS"

2. Title, line 7
Following: "15-30-111"
Insert: 15-30-136, 15-31-114

3. Page 1, line 13
Following: "(1)"
Strike: "Notwithstanding the provisions of 15-30-110"
Insert: "For capital assets sold after December 31, 1989"

4. Page 2, line 5
Following: "adjustment"
Strike: "factors"
Insert: "factor"

5. Page 2, line 6
Following: "for"
Strike: "all holding periods of capital assets"
Insert: "the previous years' holding period"

6. Page 2, line 8
Following: " assets"
Insert: "each year"

7. Page 2, line 9
Following: "the"
Strike: "appropriate"
Insert: "previous years'"

8. Page 2, line 10
Following: "period"
Strike: "for a purchase or a sale of assets either for cash or under an installment agreement"

9. Page 2
Following: line 21

SENATE TAXATION
EXHIBIT NO. 3
DATE 6/23/89
BILL NO. SB6

Insert: "(7) On a sale or exchange of assets either for cash or under an installment agreement the taxpayer may use the cost basis as adjusted for inflation under this section.

(8) For purposes of this chapter, capital gains equals the selling price less the Montana adjusted basis. For assets acquired after December 31, 1989 the adjusted basis for Montana purposes is calculated by multiplying the cost of the asset by the inflation factor in the year of the sale less the accumulated depreciation calculated under the Internal Revenue Code, and any depreciation taken under 15-30-111(2)(q) or 15-31-114(3)(c)."

10. Page 3, line 6
Following: "income;"
Strike: "and"
Insert: "and"

11. Page 3, line 8
Following: "33-25-105(15);"
Strike: "and"

12. Page 3, line 9
Strike: "(e) capital gains or losses as described in 15-30-110 or in [section 1]"

13. Page 5, line 13
Following: "orange""
Strike: "."
Insert: "and"

14. Page 5
Following: line 13
Insert: "(p) the difference between the capital gains and losses included in the federal adjusted gross income and the capital gains and losses as calculated in [section 1]; and

(q) for assets purchased and sold after December 31, 1989 and held for its entire federal depreciable life, an additional depreciation expense is allowed for the year following the final year of federal depreciation. The amount of additional depreciation which can be claimed in the subsequent year would be calculated by multiplying the original cost of the asset by the inflation factor as defined in [section 1] less the accumulated depreciation claimed for that asset under the Internal Revenue Code of 1986, as amended."

15. Page 8
Following: line 6
Insert: "Section 3. 15-30-136, is amended to read:
"15-30-136. Computation of income of estates or trusts-exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

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

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

(ii) a school district; or

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

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

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

(f) gross profit from trade or business; and

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

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

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

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

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

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

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

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

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

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

(i) as federal employees' retirement;

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

(iii) as an annuity, pension, or endowment under private or

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corporate retirement plans or systems;

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

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

(k) all benefits paid under the Montana highway patrolmen's retirement system that are specified as exempt from taxation by 19-6-705;

(l) Montana income tax refunds or credits thereof;

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

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

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1945, as amended, is in effect but with respect to which the election provided for under 15-31-202 is not in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S. election were not in effect.

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

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

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

(c) ~~the amount of 60% of the excess of the net long term capital gain over the short term capital loss for the taxable year~~ for assets sold after December 31, 1989, the difference between the capital gains and losses included in the federal fiduciary gross income and the capital gains and losses using the inflation factor in [section 1];

(d) for assets purchased and sold after December 31, 1989 and held for its entire federal depreciable life, an additional depreciation expense is allowed for the year following the final year of federal depreciation. The amount of additional depreciation which can be claimed in the subsequent year would be calculated by multiplying the original cost of the asset by the inflation factor as defined in [section 1] less the accumulated depreciation claimed for that asset under the Internal Revenue Code of 1986, as amended.

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

(6) A trust or estate excluding benefits under subsections

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

SECTION 4. Section 15-31-114, MCA, is amended to read:

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

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance from salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

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

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryback to each of the five

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taxable periods following the taxable period of such loss. 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, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income to each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable periods shall be computed with the modifications specified in (ii) (B) of this subsection 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 shall not be considered to be less than zero.

(ii) The modifications referred to in (i) of this subsection shall be as follows:

(A) No net operating loss deduction shall be allowed.

(B) The deduction for depletion shall not exceed the amount which 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 if filed.

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

(iv) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidations.

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

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

(3) (a) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements; such reasonable allowance to be determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible

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drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes~~.~~;

(b) the difference between the capital gains and losses included in the federal adjusted gross income and the capital gains and losses as calculated in [section 1]; and

(c) for assets purchased and sold after December 31, 1989 and held for its entire federal depreciable life, an additional depreciation expense is allowed for the year following the final year of federal depreciation. The amount of additional depreciation which can be claimed in the subsequent year would be calculated by multiplying the original cost of the asset by the inflation factor as defined in [section 1] less the accumulated depreciation claimed for that asset under the Internal Revenue Code of 1986, as amended.

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

(5) (a) Taxes paid within the year, except following:

(i) Taxes imposed by this part.

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

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

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

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

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

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

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

(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

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

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

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

Renumber: subsequent sections

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ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date 6/23/89 Senate Bill No. SB 6 Time 9:15

NAME	YES	NO
SENATOR BROWN	X	
SENATOR BISHOP		X
SENATOR CRIPPEN	X	
SENATOR ECK		X
SENATOR GAGE	X	
SENATOR HAGER	X	
SENATOR HALLIGAN	X	
SENATOR HARP	X	
SENATOR MAZUREK		
SENATOR NORMAN	X	
SENATOR SEVERSON	X	
SENATOR WALKER	X	

Secretary

SENATOR BOB BROWN
Chairman

Motion: by Senator Crippen That SB 6 Do Pass As Amended

Carried

1989

DATE 6/23/89

COMMITTEE ON Taxation

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Sheila M Stearns	University of Montana	SB 14	✓	
Krystin M. Deschamps	Assoc. Students of UM	SB 14	✓	
Stacy Farmer	ASMSU	SB 14	✓	

(Please leave prepared statement with Secretary)