

1 *House* BILL NO. *321*
 2 INTRODUCED BY *Thomas*
 3 *Requested by Dept. of Revenue*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
 5 84-1502, R.C.M. 1947, TO ELIMINATE THE THREE (3) YEAR NET
 6 OPERATING LOSS CARRYBACK IN COMPUTING NET INCOME FOR
 7 CORPORATION LICENSE TAX PURPOSES; AND PROVIDING AN EFFECTIVE
 8 DATE."
 9

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

11 Section 1. Section 84-1502, R.C.M. 1947, is amended to
12 read as follows:

13 "84-1502. Deductions allowed in computing income. In
14 computing the net income the following deductions shall be
15 allowed from the gross income received by such corporation
16 within the year from all sources:

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

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

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

21 (B) (a) There shall be allowed as a deduction for the
 22 taxable period a net operating loss deduction determined
 23 according to the provisions of this subsection. The net
 24 operating loss deduction is the aggregate of net operating
 25 loss carryovers to such taxable period plus--the---net

1 ~~operating-loss-carrybacks-to-such-taxable-period.~~ The term
 2 "net operating loss" means the excess of the deductions
 3 allowed by this section, 84-1502, over the gross income,
 4 with the modifications specified in paragraph (b) of this
 5 subsection. If for any taxable period beginning after
 6 December 31, ~~1970~~ 1974, a net operating loss is sustained,
 7 such loss ~~shall-be-a-net-operating-loss-carryback-to-each-of~~
 8 ~~the-three-(3)-taxable-periods-preceding-the--taxable--period~~
 9 ~~of--such-loss-and~~ shall be a net operating loss carryover to
 10 each of the five (5) taxable periods following the taxable
 11 period of such loss. The portion of such loss which shall be
 12 carried to each of the other taxable years shall be the
 13 excess, if any, of the amount of such loss over the sum of
 14 the net income for each of the prior taxable periods to
 15 which such loss was carried. For purposes of the preceding
 16 sentence, the net income for such prior taxable period shall
 17 be computed with the modifications specified in paragraph
 18 (b) (ii) of this subsection and by determining the amount of
 19 the net operating loss deduction without regard to the net
 20 operating loss for the loss period or any taxable period
 21 thereafter, and the net income so computed shall not be
 22 considered to be less than zero.

23 (b) The modifications referred to in paragraph (a) of
 24 this subsection shall be as follows:

25 (i) No net operating loss deduction shall be allowed.

1 (ii) The deduction for depletion shall not exceed the
 2 amount which would be allowable if computed under the cost
 3 method.

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

7 (d) In the case of a merger of corporations, the
 8 surviving corporation shall not be allowed a net operating
 9 loss deduction for net operating losses sustained by the
 10 merged corporations prior to the date of merger.

11 In the case of a consolidation of corporations, the new
 12 corporate entity shall not be allowed a deduction for net
 13 operating losses sustained by the consolidated corporations
 14 prior to the date of consolidation.

15 (e) Notwithstanding the provisions of section
 16 84-1508.1 (c), R.C.M., 1947, interest shall not be paid with
 17 respect to a refund of tax resulting from a net operating
 18 loss ~~carryback-or~~ carryover.

19 (f) The net operating loss deduction shall not be
 20 allowed with respect to taxable periods which ended on or
 21 before December 31, 1970, but shall be allowed only with
 22 respect to taxable periods beginning on or after January 1,
 23 1971.

24 3. In the case of mines, other natural deposits, oil
 25 and gas wells, and timber, a reasonable allowance for

1 depletion and for depreciation of improvements, such
 2 reasonable allowance to be determined according to the
 3 provisions of the internal revenue code in effect for the
 4 taxable year. All elections made under the internal revenue
 5 code with respect to capitalizing or expensing exploration
 6 and development costs and intangible drilling expenses for
 7 corporation license tax purposes shall be the same as the
 8 elections made for federal income tax purposes.

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

16 5. Interest income from obligations of the state of
 17 Montana, or any political subdivision or municipality of the
 18 state of Montana.

19 6. Taxes paid within the year except the following:

20 (a) Taxes imposed by this act.

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

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

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

3 Taxes deductible under this act shall be construed to
 4 include taxes imposed by any county, school district or
 5 municipality of this state."

6 Section 2. This act is effective on passage and
 7 approval.

-End-

STATE OF MONTANA

REQUEST NO. 109-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 29, 19 75, there is hereby submitted a Fiscal Note for House Bill 321 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to eliminate the three year net operating loss carryback in computing net income for corporation license tax purposes. The act is effective on passage and approval.

ASSUMPTIONS:

1. Approximately \$1,000,000 in refunds or reduced tax liability are attributable to the current operating loss provision of three years carryback and five years carryover; eliminating the three year carryback provision would reduce this amount by 20%.
2. Normal losses under normal economic conditions are assumed for purposes of this estimate. (See Note)

FISCAL IMPACT:

	FY 76	FY 77
Estimated increase in corporation license tax revenue under proposed law	\$ 200,000	\$ 200,000

CONCLUSION:

Enactment of House Bill 321 would result in a revenue increase of approximately \$400,000 during the biennium. Corporation license tax collections are allocated 64% to the General Fund, 25% to Public School Equalization ERA and 11% to the Long-Range Building Program.

NOTE:

If present economic conditions persist, it is possible that historic data relative to corporation losses would not be appropriate to use for projecting the impact of House Bill 321. If the operating losses suffered by corporations increase significantly, the estimated increase in license tax revenue resulting from elimination of the loss carryback provision would also increase.

Michael Ballings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/3/75