

1 House BILL NO. 403  
 2 INTRODUCED BY Hagler  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT SUBJECTING COOPERATIVE  
 5 CORPORATIONS TO THE CORPORATION LICENSE TAX; AMENDING  
 6 SECTIONS 84-1501, 84-1502, AND 84-1504, R.C.M. 1947."  
 7

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

9 Section 1. Section 84-1501, R.C.M. 1947, is amended to  
 10 read as follows:

11 "84-1501. Corporation license tax -- organizations  
 12 exempt therefrom -- alternative tax based on gross sales.  
 13 The term corporation includes associations, cooperative  
 14 corporations, joint-stock companies, common-law trusts and  
 15 business trusts which do business in an organized capacity,  
 16 and all other corporations whether created, organized or  
 17 existing under and pursuant to the laws, agreements, or  
 18 declarations of trust of any state, country, or the United  
 19 States. For the purpose of this section, the term  
 20 "cooperative corporation" means a corporation that calls  
 21 itself a "cooperative", or that represents to any persons or  
 22 classes of persons which deal with it that their patronage  
 23 will or may entitle them to the payment, either actually or  
 24 constructively, of patronage dividends, or to an equity in  
 25 any of the corporation's assets, or that is otherwise

1 operated for the mutual benefit of persons or classes that  
 2 deal with it. Every corporation, except as hereinafter  
 3 provided and except as provided in section 40-2821 (5),  
 4 R.C.M. 1947, engaged in business in the state of Montana  
 5 shall annually pay to the state treasurer as a license fee  
 6 for the privilege of carrying on business in this state such  
 7 percentage or percentages of its total net income for the  
 8 preceding year at the rate hereinafter set forth. In the  
 9 case of corporations having income from business activity  
 10 which is taxable both within and without this state, the  
 11 license fee shall be measured by the net income derived from  
 12 or attributable to Montana sources as determined under  
 13 section 84-1503.

14 The percentage of net income to be paid under this  
 15 section shall be six and three-quarters per cent (6 3/4%) of  
 16 all net income for the taxable period. The rate set forth in  
 17 this act shall be effective for all taxable years ending on  
 18 or after February 28, 1971. This rate is retroactive to and  
 19 effective for all taxable years ending on or after February  
 20 28, 1971. Every corporation subject to taxation under this  
 21 act shall, in any event, pay a minimum tax of not less than  
 22 fifty dollars (\$50).

23 Pursuant to the provisions of article III, section 2,  
 24 of the Multistate Tax Compact (Title 84, chapter 67, R.C.M.  
 25 1947) every corporation deriving income from sources both

1 within and without the state of Montana and required to file  
 2 a return and whose only activity in Montana consists of  
 3 making sales and which does not own or rent real estate or  
 4 tangible personal property within Montana and whose annual  
 5 gross volume of sales made in Montana during the taxable  
 6 year does not exceed one hundred thousand dollars  
 7 (\$100,000), may elect to pay a tax of one-half of one  
 8 percent (0.5%) of gross sales made in Montana during the  
 9 taxable year. Such tax shall be in lieu of the tax otherwise  
 10 imposed under this section. The gross volume of sales made  
 11 in Montana during the taxable year shall be determined  
 12 according to the provisions of article IV, sections 16 and  
 13 17, of the Multistate Tax Compact.

14 There shall not be taxed under this title any income  
 15 received by any--

16 (a). Labor, agricultural or horticultural  
 17 organization;

18 (b). Fraternal beneficiary, society, order or  
 19 association operating under the lodge system or for the  
 20 exclusive benefit of the members of a fraternity itself  
 21 operating under the lodge system, and providing for the  
 22 payment of life, sick, accident or other benefits to the  
 23 members of such society, order or association or their  
 24 dependents;

25 (c). Cemetery company owned and operated exclusively

1 for the benefit of its members;

2 (d). Corporation or association organized and operated  
 3 exclusively for religious, charitable, scientific or  
 4 educational purposes, no part of the net income of which  
 5 inures to the benefit of any private stockholder or  
 6 individual;

7 (e). Business league, chamber of commerce, or board of  
 8 trade, not organized for profit, and no part of the net  
 9 income of which inures to the benefit of any private  
 10 stockholder or individual;

11 (f). Civic league or organization not organized for  
 12 profit, but operated exclusively for the promotion of social  
 13 welfare;

14 (g). Club organized and operated exclusively for  
 15 pleasure, recreation and other nonprofitable purposes, no  
 16 part of the net income of which inures to the benefit of any  
 17 private stockholder or members;

18 (h). Farmers' or other mutual hail, cyclone or fire  
 19 insurance company, mutual ditch or irrigation company,  
 20 mutual or co-operative telephone company, or like  
 21 organization of a purely local character, the income of  
 22 which consists solely of assessments, dues and fees  
 23 collected from members for the sole purpose of meeting its  
 24 expenses;

25 ~~(i).--Any--co-operative--association--or--corporation~~

1 ~~engaged-in-the-business-of-operating-a-rural-electrification~~  
 2 ~~system-or-systems-for-the-transmission--or--distribution--of~~  
 3 ~~electrical-energy-on-a-co-operative-basis;~~

4 ~~(j)~~(i). Corporations or associations organized for the  
 5 exclusive purpose of holding title to property, collecting  
 6 income therefrom, and turning over the entire amount  
 7 thereof, less expenses, to an organization which itself is  
 8 exempt from the tax imposed by this title;

9 ~~(k)~~(j). In determining the license fee to be paid  
 10 under this act, there shall not be included any earnings  
 11 derived from any public utility managed or operated by any  
 12 subdivision of the state, or from the exercise of any  
 13 governmental function."

14 Section 2. Section 84-1502, R.C.M. 1947, is amended to  
 15 read as follows:

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

20 1. All the ordinary and necessary expenses paid or  
 21 incurred during the taxable year in the maintenance and  
 22 operation of its business and properties, including  
 23 reasonable allowance for salaries for personal services  
 24 actually rendered, subject to the limitation hereinafter  
 25 contained, rentals or other payments required to be made as

1 a condition to the continued use or possession of property  
 2 to which the corporation has not taken or is not taking  
 3 title, or in which it has no equity. No deduction shall be  
 4 allowed for salaries paid upon which the recipient thereof  
 5 has not paid Montana state income tax; provided, however,  
 6 that where domestic corporations are taxed on income derived  
 7 from without the state, salaries of officers paid in  
 8 connection with securing such income shall be deductible.

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

24 (B) (a) There shall be allowed as a deduction for the  
 25 taxable period a net operating loss deduction determined

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

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

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

4 (ii) The deduction for depletion shall not exceed the  
 5 amount which would be allowable if computed under the cost  
 6 method.

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

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

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

18 (e) Notwithstanding the provisions of section  
 19 84-1508.1 (c), R. C. M., 1947, interest shall not be paid  
 20 with respect to a refund of tax resulting from a net  
 21 operating loss carryback or carryover.

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

1 1971.

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

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

19 5. Interest income from obligations of the state of  
20 Montana, or any political subdivision or municipality of the  
21 state of Montana.

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

23 (a) Taxes imposed by this act.

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

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

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

6 Taxes deductible under this act shall be construed to  
7 include taxes imposed by any county, school district or  
8 municipality of this state.

9 7. In the case of cooperative corporations, no  
10 deduction shall be allowed for reserves or for transfers to  
11 capital or surplus, or for any amount allocated or paid as  
12 patronage dividends, as herein defined, except for patronage  
13 dividends actually paid in cash, check, or draft, actually  
14 received by or delivered to the patron or member not less  
15 than ninety (90) days after the close of the fiscal year  
16 during which such patronage dividends accrued or were  
17 earned. The term "patronage dividends" means an allocation  
18 or distribution to member and nonmember patrons, whether  
19 described as a refund, rebate, price adjustment, or payment  
20 of a balance due under a marketing agreement, made on some  
21 basis related to sales or purchases from the corporation  
22 during the taxable year, whether or not payable in money,  
23 certificates of indebtedness, or other instrument, or  
24 property. The term patronage dividend shall include any  
25 allocation or distribution which is conditional upon profits

1 or margins being earned by the corporation from all of its  
 2 operations, or from a class of its operations during its  
 3 fiscal year, or upon income attributable to the resale of  
 4 the producer's product along with products or class of  
 5 products of some other producers, less any deductions, the  
 6 determination of which is within the discretion of the  
 7 corporation. The term shall also include any allocation or  
 8 distribution which can be determined only with reference to  
 9 the amount of profits, margins, or income earned, or which  
 10 can be determined only after declaration or payment of  
 11 dividends on any class of stock of the corporation, or only  
 12 after the fixing of sums to be transferred to capital,  
 13 reserves or surplus."

14 Section 3. Section 84-1504, R.C.M. 1947, is amended to  
 15 read as follows:

16 "84-1504. Computation of license tax--return of net  
 17 income to be filed--definitions. (1) The license fee shall  
 18 be computed on the basis of the corporation's total net  
 19 income for the taxable period. The corporation's taxable  
 20 period shall be its taxable year for federal income tax  
 21 purposes. In the event a corporation changes its taxable  
 22 year, it shall promptly notify the state department of  
 23 revenue.

24 (2) Every corporation, subject to the license fee  
 25 imposed under this chapter, shall for each taxable period

1 render a true and accurate return of its net income for the  
 2 taxable period in the manner and form to be prescribed by  
 3 the state department of revenue, and containing such facts,  
 4 data and information as are appropriate and in the opinion  
 5 of the state department of revenue necessary to determine  
 6 the correctness of the net income returned and to carry out  
 7 the provisions of this act. The return shall be signed by  
 8 one (1) of the following: the president, the vice-president,  
 9 the treasurer, the assistant treasurer, or chief accounting  
 10 officer. If the corporation is reporting on a calendar year  
 11 basis the return shall be filed with the department of  
 12 revenue on or before the fifteenth day of May following the  
 13 close of the calendar year, and if reporting on a fiscal  
 14 year basis the return shall be filed with the department on  
 15 or before the fifteenth day of the fifth month following the  
 16 close of its fiscal year. Upon application a corporation  
 17 shall be allowed an automatic extension of time for filing  
 18 its return to the fifteenth day of the third month following  
 19 the date prescribed for filing of its tax return. The  
 20 application is to be made on such forms as the department of  
 21 revenue shall prescribe. The department of revenue may grant  
 22 an additional extension of time for the filing of a return  
 23 whenever in its judgment good cause exists. The terms  
 24 "engaged in business" and "doing business" both mean  
 25 actively engaging in any transaction for the purpose of

1 financial or pecuniary gain or profit. The term gross income  
 2 means all income recognized in determining the corporation's  
 3 gross income for federal income tax purposes; but shall  
 4 include interest exempt from federal income tax. In the  
 5 case of cooperative corporations, the term "gross income or  
 6 receipts" means the income from all sources within the state  
 7 of Montana and such gross income or receipts from the sale  
 8 of goods or services and other sources used in computing  
 9 gross income or receipts shall be determined without the  
 10 exclusion or subtraction of reserves or transfers to capital  
 11 or surplus, or of any patronage dividends paid or payable or  
 12 allocated to patrons or members. The gross income and net  
 13 income of a cooperative corporation shall be determined  
 14 without the exclusion or deduction of any patronage  
 15 dividends paid or payable or allocated to patrons or members  
 16 except as to patronage dividends actually paid in cash,  
 17 check, or draft, actually received by or delivered to  
 18 patrons or members. In determining the cost to a  
 19 cooperative corporation of products sold to it by a producer  
 20 for resale, whether or not in their original form, only  
 21 amounts other than patronage dividends paid or payable to  
 22 such producer on account of such sales shall be used in  
 23 computing such cost. No corporation is exempt from the  
 24 corporation license tax unless specifically provided for  
 25 under section 84-1501. Any corporation not subject to or

1 liable for federal income tax but not exempt from the  
 2 corporation license tax under section 84-1501 shall compute  
 3 gross income for corporation license tax purposes in the  
 4 same manner as a corporation that is subject to or liable  
 5 for federal income tax according to the provisions for  
 6 determining gross income in the federal internal revenue  
 7 code in effect for the taxable year. The term "net income"  
 8 means the gross income of the corporation less the  
 9 deductions set forth in section 84-1502.

10 (3) In cases wherein receivers, trustees in bankruptcy,  
 11 or assignees are operating the property or business of a  
 12 corporation subject to the license fee imposed by this act,  
 13 such receiver, trustee, or assignee shall make the return in  
 14 the same manner and form as such corporation is hereinbefore  
 15 required to make return, and any license fee due on the  
 16 basis of such returns made by the receiver, trustee, or  
 17 assignee, shall be assessed and collected in the same manner  
 18 as if assessed directly against the corporation of whose  
 19 business or property they have custody and control, and  
 20 shall be paid by such receiver, trustee, or assignee out of  
 21 the property of the company in his hands, prior to the  
 22 claims of creditors or stockholders."

-End-

STATE OF MONTANA

REQUEST NO. 121-75

FISCAL NOTE

Form BD 13

In compliance with a written request received 1-29, 19 75, there is hereby submitted a Fiscal Note for House Bill 403 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 subject cooperative corporations to the corporation license tax.

**FISCAL IMPACT:**

Cooperatives with the exception of electrical cooperatives are subject to Montana corporation license tax under current law. The Corporation Tax Division of the Department of Revenue has indicated that the revenue to be gained by taxing electrical cooperatives would be negligible.

The section regarding taxability of patronage dividends was adopted from federal statutes and merely serves to clarify current practice. Thus, no material revenue impact is expected from this amendment.

*Michael D. Ballings*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/3/75