H BILL NO. 292

INTRODUCED BY Meloy Bradley Huennekens Vincent

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ENERGY CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301, 84-1502, 84-4906, AND 84-7403, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 84-7403, R.C.M. 1947, is amended to read as follows:

"84-7403. Tax treatment of certain energy-related investments. (1) ~~Upon application by a taxpayer, approved under section 84-7404, a capital investment by the taxpayer in a recognized nonfossil form of energy generation shall be treated by the department of revenue as:~~

~~(a) property exempt from taxation, to the extent the appraised value of the investment does not exceed one hundred thousand dollars ($100,000), or~~

~~(b) class seven property, as defined in sections 84-301 and 84-302, for such portion of the appraised value of the investment that exceeds one hundred thousand dollars ($100,000).~~

~~(2) Upon application by a taxpayer, approved under section 84-7404, a capital investment in a building by the taxpayer for an energy conservation purpose shall be treated by the department of revenue as class eight property, as defined in sections 84-301 and 84-302, to the extent the appraised value of the investment does not exceed twenty percent (20%) of the appraised value of the building in which the investment is made.~~ In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 84, chapter 49, or from gross corporate income allowed in computing net income under Title 84, chapter 15, a taxpayer may deduct a portion of his expenditure for constructing or installing a recognized nonfossil form of energy generation or a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
40% of first $1,000 expended	40% of first $2,000 expended
30% of next $1,000 expended	30% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended
10% of next $1,000 expended	10% of next $2,000 expended

This tax treatment is subject to approval of the department of an application as provided in 84-7404."

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"84-202. Exemptions from taxation. (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public

observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or

equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the

original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

~~(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403.~~"

Section 3. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 1/4) miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine,

and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of

operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3)

years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

~~(d) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under section 84-7463.~~

Class Eight. ~~(a)~~ Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding five (5) acres, which together have a market value of not more than twenty-seven thousand five hundred dollars ($27,500), which dwelling is owned or under a contract for deed, and which is actually occupied for at least ten (10) months per year as the primary residential dwelling of:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than six thousand dollars ($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right

of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

~~(b) A capital investment in a building for an energy conservation purpose, to the extent provided under section 84-7403.~~

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes."

Section 4. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"84-1502. 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 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.

(B) (a) 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, 84-1502, over the gross income, with the modifications specified in paragraph (b) 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 (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) 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 for 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 period shall be computed with the modifications specified in paragraph (b) (ii) 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.

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

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

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

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business

carried on within the state of Montana.

(d) 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 consolidation.

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

(f) 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. 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. 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 act.

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

6. Taxes paid within the year except the following:

(a) Taxes imposed by this act.

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

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

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

(7) That portion of an energy-related investment allowed as a deduction under 84-7403.

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

Section 5. Section 84-4906, R.C.M. 1947, is amended to read as follows:

"84-4906. Deductions allowed in computing net income. In computing net income, there shall be allowed as deductions:

(a) The items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible.

(b) Federal income tax paid within the taxable year.

(c) That portion of an energy-related investment allowed as a deduction under 84-7403."

Section 6. Effective date. This act applies to all taxable years beginning after December 31, 1977.

-End-

LC 0464/01

STATE OF MONTANA

REQUEST NO. 153-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 19 77, there is hereby submitted a Fiscal Note for House Bill 292 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

This bill transfers the energy conservation and alternative energy tax incentives from the property tax to the income and corporation license taxes, as deductions.

ASSUMPTIONS

1. The number of individual income taxpayers taking advantage of the proposed deductions from adjusted gross income for energy conservation and/or non-fossil energy generation capital investments would be 1% of all returns, and these taxpayers would be distributed in the top 10% of all returns in a manner proportional to the distribution of such returns for calendar year 1975 income.
2. Each of the hypothetical taxpayers of assumption 1 will install $1,000.00 worth of non-fossil energy generation equipment, so that the appropriate deduction from adjusted gross income would be $400.00.
3. The percentage decrease in total calendar year tax liability for all returns under assumptions 1 and 2 (0.13%) will apply equally to calendar years 1977, 1978 and 197[illegible]
4. The Department of Revenue forecast of individual income tax for 1978 and 1979 is assumed to be the basis for comparison.
5. No additional administrative, auditing or investigations personnel will be required to implement the proposed law.

FISCAL IMPACT

	FY 78	FY 79
Individual income tax collections under current law	$123.732M	$140.093M
Individual income tax collections under proposed law	$123.570M	$139.904M
TOTAL DECREASE	$ .162M	$ .189M

The amounts estimated for decrease in revenue do not include decreases for corporation license tax collections. Available data makes it impossible to estimate what impact the proposed legislation might have on corporation license tax collections.

(Continued on page 2)

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: ______________

STATE OF MONTANA

REQUEST NO. 153-77

FISCAL NOTE

Form BD-15

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LONG-RANGE EFFECTS

It is anticipated that, as the techniques of non-fossil generation become more readily available, the long range effect of this bill would be to decrease individual income tax collections by more than the 0.13% indicated.

It is not possible to estimate the effect on corporation tax collections.

TECHNICAL NOTE

`ssumption 5 is probably not realistic.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. [illegible]

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-77

Approved by Committee
on Taxation

HOUSE BILL NO. 292

INTRODUCED BY MELOY, BRADLEY, HUENNEKENS, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ENERGY CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301, 84-1502, 84-4906, 84-7401, AND 84-7403, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE."

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Section 1. Section 84-7403, R.C.M. 1947, is amended to read as follows:

"84-7403. Tax treatment of certain energy-related investments. (1) ~~Upon application by a taxpayer, approved under section 84-7404, a capital investment by the taxpayer in a recognized nonfossil form of energy generation shall be treated by the department of revenue as:~~

~~(a) property exempt from taxation, to the extent the appraised value of the investment does not exceed one hundred thousand dollars ($100,000); or~~

~~(b) class seven property, as defined in sections 84-301 and 84-302, for such portion of the appraised value of the investment that exceeds one hundred thousand dollars ($100,000).~~

~~(2) Upon application by a taxpayer, approved under section 84-7404, a capital investment in a building by the taxpayer for an energy conservation purpose shall be treated by the department of revenue as class eight property, as defined in sections 84-301 and 84-302, to the extent the appraised value of the investment does not exceed twenty percent (20%) of the appraised value of the building in which the investment is made.~~ In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 84, chapter 49, or from gross corporate income allowed in computing net income under Title 84, chapter 15, a taxpayer may deduct a portion of his expenditure for constructing or installing a recognized nonfossil form of energy generation or a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
~~40%~~ 100% of first $1,000 expended	~~40%~~ 100% of first $2,000 expended
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20% of next $1,000 expended	20% of next $2,000 expended

10% of next $1,000 expended 10% of next $2,000 expended This tax treatment is subject to approval of the department of an application as provided in 84-7404."

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(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged

or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing

apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

~~(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403.~~"

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"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 1/4) miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in

the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean

property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

~~(d) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under section 84-7403.~~

Class Eight. ~~(a)~~ Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding five (5) acres, which together have a market value of not more than twenty-seven thousand five hundred dollars

($27,500), which dwelling is owned or under a contract for deed, and which is actually occupied for at least ten (10) months per year as the primary residential dwelling of:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than six thousand dollars ($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she

actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

~~(b) A capital investment in a building for an energy conservation purpose, to the extent provided under section 84-7403.~~

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes."

Section 4. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"84-1502. 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 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.

(B) (a) 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, 84-1502, over the gross income, with the modifications specified in paragraph (b) 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 (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) 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 for 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 period shall be computed with the modifications specified in paragraph (b) (ii) 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.

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

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

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

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

(d) 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 consolidation.

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

(f) 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. 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. 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 act.

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

6. Taxes paid within the year except the following:

(a) Taxes imposed by this act.

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

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

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

(7) That portion of an energy-related investment

allowed as a deduction under 84-7403.

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

Section 5. Section 84-4906, R.C.M. 1947, is amended to read as follows:

"84-4906. Deductions allowed in computing net income. In computing net income, there shall be allowed as deductions:

(a) The items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible.

(b) Federal income tax paid within the taxable year.

(c) That portion of an energy-related investment allowed as a deduction under 84-7403."

SECTION 6. LEGISLATIVE INTENT. IT IS THE INTENT OF THE LEGISLATURE THAT NO DEDUCTION UNDER THIS ACT BE ALLOWED FOR CAPITAL INVESTMENT FOR AN ENERGY CONSERVATION PRACTICE IN THE NEW CONSTRUCTION OF A BUILDING IF THAT CAPITAL INVESTMENT WOULD HAVE BEEN MADE UNDER ESTABLISHED STANDARDS OF NEW CONSTRUCTION. THE DEPARTMENT OF REVENUE SHALL ADOPT RULES TO IMPLEMENT THIS LEGISLATIVE INTENT. SUCH RULES SHALL

BE BASED ON THE BEST CURRENTLY AVAILABLE METHODS OF ANALYSIS, INCLUDING THOSE OF THE NATIONAL BUREAU OF STANDARDS. THE METHODS OF ANALYSIS, INCLUDING THOSE OF THE NATIONAL BUREAU OF STANDARDS, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND OTHER FEDERAL AGENCIES AND PROFESSIONAL SOCIETIES AND MATERIALS DEVELOPED BY THE DEPARTMENT OF REVENUE. PROVISIONS SHALL BE MADE FOR AN ANNUAL UPDATING OF RULES AND STANDARDS AS REQUIRED.

SECTION 7. SECTION 84-7401, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"84-7401. Statement of purpose. The purpose of this act is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. ~~This act is not intended to require an assessor to revalue property except upon receipt of a properly documented and approved application.~~ This act allows but does not require a public utility to extend credit for energy conservation investments."

Section 8. Effective date. This act applies to all taxable years beginning after December 31, ~~1977~~ 1976.

-End-

Approved by Committee
on Taxation

HOUSE BILL NO. 292

INTRODUCED BY MELOY, BRADLEY, HUENNEKENS, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ENERGY CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301, 84-1502, 84-4906, 84-7401, AND 84-7403, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 84-7403, R.C.M. 1947, is amended to read as follows:

"84-7403. Tax treatment of certain energy-related investments. (1) ~~Upon--application-by-a-taxpayer,-approved under-section-84-7404,-a-capital-investment-by-the--taxpayer in-a-recognized-nonfossil-form-of-energy-generation-shall-be treated-by-the-department-of-revenue-as:~~

~~(a)--property--exempt--from-taxation,-to-the-extent-the appraised-value--of--the--investment--does--not--exceed--one hundred-thousand-dollars-($100,000),-or~~

~~(b)--class--seven--property,--as--defined--in--sections 84-301-and-84-302,-for-such-portion-of-the--appraised--value of--the-investment-that-exceeds-one-hundred-thousand-dollars ($100,000).~~

SECOND READING
SECOND PRINTING

~~(2)--Upon-application-by--a--taxpayer,--approved--under section--84-7404,--a-capital-investment-in-a-building-by-the taxpayer-for-an-energy-conservation-purpose-shall-be-treated by-the-department-of-revenue-as--class--eight--property,--as defined--in--sections--84-301--and-84-302,-to-the-extent-the appraised-value-of-the-investment--does--not--exceed--twenty percent--(20%)--of--the--appraised--value-of-the-building-in which-the-investment-is--made.~~ In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 84, chapter 49, or from gross corporate income allowed in computing net income under Title 84, chapter 15, a taxpayer may deduct a portion of his expenditure for constructing or installing a recognized nonfossil form of energy generation or a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
~~40%~~ 100% of first $1,000 expended	~~40%~~ 100% of first $2,000 expended
~~30%~~ 50% of next $1,000 expended	~~30%~~ 50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended

10% of next $1,000 expended 10% of next $2,000 expended

This tax treatment is subject to approval of the department of an application as provided in 84-7404 AND MAY NOT BE CLAIMED FOR EXPENDITURES AND CAPITAL INVESTMENTS FINANCED BY A STATE, FEDERAL, OR PRIVATE GRANT FOR DEVELOPMENT OF RENEWABLE ENERGY SOURCES."

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"84-202. Exemptions from taxation. (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own

right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

~~(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403.~~"

Section 3. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 1/4) miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial

activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for

in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

~~(d)--A-capital-investment--in--a--recognized--nonfossil form--of--energy--generation,--to--the-extent-provided-under section-84-7403.~~

Class Eight. ~~(a)~~ Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding five (5) acres, which together have a market value of not more than twenty-seven thousand five hundred dollars ($27,500), which dwelling is owned or under a contract for deed, and which is actually occupied for at least ten (10) months per year as the primary residential dwelling of:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than six thousand dollars ($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the

applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

~~(b)--A-capital-investment-in-a-building-for--an--energy conservation--purpose,--to-the-extent-provided-under-section 84-7403.~~

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes."

Section 4. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"84-1502. 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 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.

(B) (a) 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, 84-1502, over the gross income, with the modifications specified in paragraph (b) 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 (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) 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 for 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 period shall be computed with the modifications specified in paragraph (b) (ii) 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.

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

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

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

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

(d) 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 consolidation.

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

(f) 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. 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. 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 act.

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

6. Taxes paid within the year except the following:

(a) Taxes imposed by this act.

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

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

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

(7) That portion of an energy-related investment allowed as a deduction under 84-7403.

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

Section 5. Section 84-4906, R.C.M. 1947, is amended to read as follows:

"84-4906. Deductions allowed in computing net income. In computing net income, there shall be allowed as deductions:

(a) The items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible.

(b) Federal income tax paid within the taxable year.

(c) That portion of an energy-related investment allowed as a deduction under 84-7403."

SECTION 6. LEGISLATIVE INTENT. IT IS THE INTENT OF THE LEGISLATURE THAT NO DEDUCTION UNDER THIS ACT BE ALLOWED FOR CAPITAL INVESTMENT FOR AN ENERGY CONSERVATION PRACTICE IN THE NEW CONSTRUCTION OF A BUILDING IF THAT CAPITAL

INVESTMENT WOULD HAVE BEEN MADE UNDER ESTABLISHED STANDARDS OF NEW CONSTRUCTION. THE DEPARTMENT OF REVENUE SHALL ADOPT RULES TO IMPLEMENT THIS LEGISLATIVE INTENT. SUCH RULES SHALL BE BASED ON THE BEST CURRENTLY AVAILABLE METHODS OF ANALYSIS, INCLUDING THOSE OF THE NATIONAL BUREAU OF STANDARDS, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND OTHER FEDERAL AGENCIES AND PROFESSIONAL SOCIETIES AND MATERIALS DEVELOPED BY THE DEPARTMENT OF REVENUE. PROVISIONS SHALL BE MADE FOR AN ANNUAL UPDATING OF RULES AND STANDARDS AS REQUIRED.

SECTION 7. SECTION 84-7401, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"84-7401. Statement of purpose. The purpose of this act is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. ~~This act is not intended to require an assessor to revalue property except upon receipt of a properly documented and approved application.~~ This act allows but does not require a public utility to extend credit for energy conservation investments."

Section 8. Effective date. This act applies to all taxable years beginning after December 31, ~~1977~~ 1976.

-End-

HOUSE BILL NO. 292

INTRODUCED BY MELOY, BRADLEY, HUENNEKENS, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ENERGY CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301, 84-1502, 84-4906, 84-7401, AND 84-7403, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 84-7403, R.C.M. 1947, is amended to read as follows:

"84-7403. Tax treatment of certain energy-related investments. (1) ~~Upon application by a taxpayer, approved under section 84-7404, a capital investment by the taxpayer in a recognized nonfossil form of energy generation shall be treated by the department of revenue as:~~

~~(a) property exempt from taxation, to the extent the appraised value of the investment does not exceed one hundred thousand dollars ($100,000), or~~

~~(b) class seven property, as defined in sections 84-301 and 84-302, for such portion of the appraised value of the investment that exceeds one hundred thousand dollars ($100,000).~~

There are no changes in HB 292 and due to length will not be rerun. Please refer to yellow copy for complete text.

THIRD READING

~~(2) Upon application by a taxpayer, approved under section 84-7404, a capital investment in a building by the taxpayer for an energy conservation purpose shall be treated by the department of revenue as class eight property, as defined in sections 84-301 and 84-302, to the extent the appraised value of the investment does not exceed twenty percent (20%) of the appraised value of the building in which the investment is made.~~ In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 84, chapter 49, or from gross corporate income allowed in computing net income under Title 84, chapter 15, a taxpayer may deduct a portion of his expenditure for constructing or installing a recognized nonfossil form of energy generation or a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
~~40%~~ 100% of first $1,000 expended	~~40%~~ 100% of first $2,000 expended
~~30%~~ 50% of next $1,000 expended	~~30%~~ 50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended

10% of next $1,000 expended   10% of next $2,000 expended

This tax treatment is subject to approval of the department of an application as provided in 84-7404 AND MAY NOT BE CLAIMED FOR EXPENDITURES AND CAPITAL INVESTMENTS FINANCED BY A STATE, FEDERAL, OR PRIVATE GRANT FOR DEVELOPMENT OF RENEWABLE ENERGY SOURCES."

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"84-202. Exemptions from taxation. (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

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(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own

April 13, 1977

SENATE
STANDING COMMITTEE REPORT
Committee on Taxation

That House Bill No. 292, third reading, be amended as follows:

1. Amend page 21, section 7, line 22.
Following: line 22
Insert: "Section 8. Extension of existing classifications. Any classification of property under the provisions of 84-7403, R.C.M. 1947, that existed prior to the effective date of this act, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under Chapter 3, title 84, R.C.M. 1947 or that chapter as it may be recodified or amended.

Renumber: following section

April 14, 1977

SENATE
COMMITTEE OF THE WHOLE

That House Bill No. 292 be amended as follows:

1. Amend page 2, section 1, lines 13 and 14.
Following: "for"
Strike: "constructing or installing a recognized nonfossil form of energy generation or"

2. Amend page 3, section 1, line 4.
Following: "FOR"
Insert: "so much of the"
Following: "INVESTMENTS"
Insert: "as are"

3. Amend page 3, section 1, lines 5 and 6.
Following: "FOR"
Strike: "DEVELOPMENT OF RENEWABLE ENERGY SOURCES"
Insert: "energy conservation"

4. Amend page 21, section 7, line 23.
Following: line 22
Insert: "Section 8. Coordination with other legislation. If House Bill 70 is enacted, then in lieu of the amendments to 84-301 enacted by this act, classes fifteen and eighteen in House Bill 70 shall be further amended by deleting references to capital investments in recognized nonfossil forms of energy generation and in a building for an energy conservation purpose.
Renumber: subsequent section

HOUSE BILL NO. 292

INTRODUCED BY MELOY, BRADLEY, HUENNEKENS, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ENERGY CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301, 84-1502, 84-4906, 84-7401, AND 84-7403, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 84-7403, R.C.M. 1947, is amended to read as follows:

"84-7403. Tax treatment of certain energy-related investments. (1) ~~Upon--application-by-a-taxpayer,-approved under-section-84-7404,-a-capital-investment-by-the--taxpayer in-a-recognized-nonfossil-form-of-energy-generation-shall-be treated-by-the-department-of-revenue-as:~~

~~(a)--property--exempt--from-taxation,-to-the-extent-the appraised-value--of--the--investment--does--not--exceed--one hundred-thousand-dollars-($100,000),-or~~

~~(b)--class--seven--property,--as--defined--in--sections 84-301-and-84-302,-for-such-portion-of-the--appraised--value of--the-investment-that-exceeds-one-hundred-thousand-dollars ($100,000).~~

~~(2)--Upon-application-by--a--taxpayer,--approved--under section--84-7404,--a-capital-investment-in-a-building-by-the taxpayer-for-an-energy-conservation-purpose-shall-be-treated by-the-department-of-revenue-as--class--eight--property,--as defined--in--sections--84-301--and-84-302,-to-the-extent-the appraised-value-of-the-investment--does--not--exceed--twenty percent--(20%)--of--the--appraised--value-of-the-building-in which-the-investment-is--made.~~ In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 84, chapter 49, or from gross corporate income allowed in computing net income under Title 84, chapter 15, a taxpayer may deduct a portion of his expenditure for ~~constructing--or--installing--a--recognized nonfossil--form-of-energy-generation-or~~ a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:

If the installation or investment is made in a residential building:	If the installation or investment is made in a building not used as a residence:
~~40%~~ 100% of first $1,000 expended	~~40%~~ 100% of first $2,000 expended
~~30%~~ 50% of next $1,000 expended	~~30%~~ 50% of next $2,000 expended
20% of next $1,000 expended	20% of next $2,000 expended

10% of next $1,000 expended   10% of next $2,000 expended

This tax treatment is subject to approval of the department of an application as provided in 84-7404 AND MAY NOT BE CLAIMED FOR SO MUCH OF THE EXPENDITURES AND CAPITAL INVESTMENTS AS ARE FINANCED BY A STATE, FEDERAL, OR PRIVATE GRANT FOR ~~DEVELOPMENT OF RENEWABLE ENERGY SOURCES~~ ENERGY CONSERVATION."

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"84-202. Exemptions from taxation. (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land

than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not

after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt

from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

~~(7)--A-capital-investment--in--a--recognized--nonfossil form--of--energy-generation-is-exempt-to-the-extent-provided under-section-84-7403."~~

Section 3. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 1/4) miles.

Class Three. Livestock, poultry, and unprocessed

products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is

now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property

taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

~~(d)--A-capital-investment--in--a--recognized--nonfossil form--of--energy--generation,--to--the-extent-provided-under section-84-7403.~~

Class Eight. ~~(a)~~ Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding five (5) acres, which together have a market value of not more than twenty-seven thousand five hundred dollars ($27,500), which dwelling is owned or under a contract for deed, and which is actually occupied for at least ten (10) months per year as the primary residential dwelling of:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than six thousand dollars ($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the

state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

~~(b)--A-capital-investment-in-a-building-for--an--energy conservation--purpose,--to-the-extent-provided-under-section~~

~~84-7403.~~

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes."

Section 4. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"84-1502. 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 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.

(B) (a) 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, 84-1502, over the gross income, with the modifications specified in paragraph (b) 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 (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) 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 for 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 period shall be computed with the modifications specified in paragraph (b) (ii) 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.

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

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

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

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

(d) 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 consolidation.

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

(f) 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. 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. 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 act.

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

6. Taxes paid within the year except the following:

(a) Taxes imposed by this act.

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

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the

United States.

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

(7) That portion of an energy-related investment allowed as a deduction under 84-7403.

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

Section 5. Section 84-4906, R.C.M. 1947, is amended to read as follows:

"84-4906. Deductions allowed in computing net income. In computing net income, there shall be allowed as deductions:

(a) The items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible.

(b) Federal income tax paid within the taxable year.

(c) That portion of an energy-related investment allowed as a deduction under 84-7403."

SECTION 6. LEGISLATIVE INTENT. IT IS THE INTENT OF THE LEGISLATURE THAT NO DEDUCTION UNDER THIS ACT BE ALLOWED FOR CAPITAL INVESTMENT FOR AN ENERGY CONSERVATION PRACTICE

IN THE NEW CONSTRUCTION OF A BUILDING IF THAT CAPITAL INVESTMENT WOULD HAVE BEEN MADE UNDER ESTABLISHED STANDARDS OF NEW CONSTRUCTION. THE DEPARTMENT OF REVENUE SHALL ADOPT RULES TO IMPLEMENT THIS LEGISLATIVE INTENT. SUCH RULES SHALL BE BASED ON THE BEST CURRENTLY AVAILABLE METHODS OF ANALYSIS, INCLUDING THOSE OF THE NATIONAL BUREAU OF STANDARDS, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND OTHER FEDERAL AGENCIES AND PROFESSIONAL SOCIETIES AND MATERIALS DEVELOPED BY THE DEPARTMENT OF REVENUE. PROVISIONS SHALL BE MADE FOR AN ANNUAL UPDATING OF RULES AND STANDARDS AS REQUIRED.

SECTION 7. SECTION 84-7401, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"84-7401. Statement of purpose. The purpose of this act is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. ~~This act is not intended to require an assessor to revalue property except upon receipt of a properly documented and approved application.~~ This act allows but does not require a public utility to extend credit for energy conservation investments."

SECTION 8. COORDINATION WITH OTHER LEGISLATION. IF HOUSE BILL 70 IS ENACTED, THEN IN LIEU OF THE AMENDMENTS TO

84-301 ENACTED BY THIS ACT, CLASSES FIFTEEN AND EIGHTEEN IN HOUSE BILL 70 SHALL BE FURTHER AMENDED BY DELETING REFERENCES TO CAPITAL INVESTMENTS IN RECOGNIZED NONFOSSIL FORMS OF ENERGY GENERATION AND IN BUILDING FOR AN ENERGY CONSERVATION PURPOSE.

SECTION 9. EXTENSION OF EXISTING CLASSIFICATIONS. ANY CLASSIFICATION OF PROPERTY UNDER THE PROVISIONS OF 84-7403, R.C.M. 1947, THAT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ACT, APPROVED BY THE DEPARTMENT OF REVENUE BEFORE APRIL 19, 1977, SHALL CONTINUE IN EFFECT UNTIL DECEMBER 31, 1982. ON JANUARY 1, 1983, THE TAXABLE PERCENTAGE OF SUCH PROPERTY SHALL BE DETERMINED UNDER CHAPTER 3, TITLE 84, R.C.M. 1947, OR THAT CHAPTER AS IT MAY BE RECODIFIED OR AMENDED.

Section 10. Effective date. This act applies to all taxable years beginning after December 31, ~~1977~~ 1976.

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