

1 ~~H~~ BILL NO. ~~292~~  
2 INTRODUCED BY *Meloy, Reading, Hennessey, Vincent*

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ENERGY  
5 CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE  
6 PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS  
7 DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301, 84-1502,  
8 84-4906, AND 84-7403, R.C.M. 1947, AND PROVIDING AN  
9 EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12 Section 1. Section 84-7403, R.C.M. 1947, is amended to  
13 read as follows:

14 \*84-7403. Tax treatment of certain energy-related  
15 investments. (1) ~~Upon application by a taxpayer, approved~~  
16 ~~under section 84-7404, a capital investment by the taxpayer~~  
17 ~~in a recognized nonfossil form of energy generation shall be~~  
18 ~~treated by the department of revenue as:~~

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

22 (b) ~~class seven property, as defined in sections~~  
23 ~~84-301 and 84-302, for such portion of the appraised value~~  
24 ~~of the investment that exceeds one hundred thousand dollars~~  
25 ~~(\$100,000).~~

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

17	<u>If the installation or</u>	<u>If the installation or</u>
18	<u>investment is made in</u>	<u>investment is made in</u>
19	<u>a residential building;</u>	<u>a building not used</u>
20		<u>as a residence;</u>
21	<u>40% of first \$1,000 expended</u>	<u>40% of first \$2,000 expended</u>
22	<u>30% of next \$1,000 expended</u>	<u>30% of next \$2,000 expended</u>
23	<u>20% of next \$1,000 expended</u>	<u>20% of next \$2,000 expended</u>
24	<u>10% of next \$1,000 expended</u>	<u>10% of next \$2,000 expended</u>
25	<u>This tax treatment is subject to approval of the department</u>	

1 of an application as provided in 84-7404."

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

4 "84-202. Exemptions from taxation. (1) (a) The  
5 property of the United States, the state, counties, cities,  
6 towns, school districts, municipal corporations, public  
7 libraries, buildings with land they occupy and furnishings  
8 therein owned by a church and used for actual religious  
9 worship and for residences of the clergy, together with  
10 adjacent land reasonably necessary for convenient use of  
11 such buildings owned by a church, such other property as is  
12 used exclusively for agricultural and horticultural  
13 societies, for educational purposes, hospitals and places of  
14 burial not used or held for private or corporate profit, and  
15 institutions of purely public charity, evidence of debt  
16 secured by mortgages of record upon real or personal  
17 property in the state of Montana, and public art galleries  
18 and public observatories not used or held for private or  
19 corporate profit, are exempt from taxation, but no more land  
20 than is necessary for such purpose is exempt.

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

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

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

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

1 equipping the family residence are exempt from taxation.

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

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

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

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

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

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

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

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

6 (6) Moneys and credits are exempt from taxation.

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

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

12 "84-301. Classification of property for taxation. For  
13 the purpose of taxation the taxable property in the state  
14 shall be classified as follows:

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

1 for gas, oil, coal or minerals, and the same shall be placed  
2 in this classification for the purpose of taxation.

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

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

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

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

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

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

25 (b) All unprocessed agricultural products either on

1 the farm or in storage, irrespective of whether said  
 2 products are owned by the elevator, warehouse or flour mill  
 3 owner or company storing the same, or any other person  
 4 whomever, except all perishable fruits and vegetables in  
 5 farm storage and owned by the producer, and excepting  
 6 livestock and poultry and the unprocessed products of both.

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

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

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

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

1 operation not having been assessed prior to July 1, 1961,  
 2 within the state of Montana. New industry shall mean any  
 3 person, corporation, firm, partnership, association, or  
 4 other group which establishes a new plant or plants in this  
 5 state for the operation of a new industrial endeavor, as  
 6 distinguished from a mere expansion, reorganization, or  
 7 merger of an existing industry or industries. Provided,  
 8 however, that new industrial property shall be limited to  
 9 industries that manufacture, mill, mine, produce, process or  
 10 fabricate materials, or do similar work in which capital and  
 11 labor are employed and in which materials unserviceable in  
 12 their natural state are extracted, processed or made fit for  
 13 use or are substantially altered or treated so as to create  
 14 commercial products or materials; industries that engage in  
 15 the mechanical or chemical transformation of materials or  
 16 substances into new products in the manner defined as  
 17 manufacturing in the 1972 Standard Industrial Classification  
 18 Manual, prepared by the United States office of management  
 19 and budget; and in no event shall the term new industrial  
 20 property be included to mean property used by retail or  
 21 wholesale merchants, commercial services of any type,  
 22 agriculture, trades or professions. New industrial property  
 23 does not include a plant which will create an adverse impact  
 24 on existing state, county, or municipal services. The  
 25 department shall promulgate regulations for the

1 determination of what constitutes an adverse impact taking  
 2 into consideration the number of people to be employed and  
 3 the size of the community in which the location is  
 4 contemplated. Once the department has made an initial  
 5 determination that the industrial facility qualifies as new  
 6 industrial property, the department shall then upon proper  
 7 notice hold a hearing to determine if the new industrial  
 8 classification should be retained by the property. The  
 9 local taxing authority may appear at the hearing, and it  
 10 also may waive its objection to retention of this  
 11 classification if the industry agrees to the prepayment of  
 12 taxes sufficient to satisfy tax requirements created by the  
 13 location and construction of the facility during  
 14 construction period.

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

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

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

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

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

15 ~~(d) A capital investment in a recognized nonfossil~~  
 16 ~~form of energy generation, to the extent provided under~~  
 17 ~~section 84-7462.~~

18 Class Eight. ~~(a)~~ Any improvement on real property,  
 19 trailers affixed to land or mobile home belonging to any  
 20 person who qualifies under any one or more of the  
 21 hereinafter set forth categories, with appurtenant land not  
 22 exceeding five (5) acres, which together have a market value  
 23 of not more than twenty-seven thousand five hundred dollars  
 24 (\$27,500), which dwelling is owned or under a contract for  
 25 deed, and which is actually occupied for at least ten (10)

1 months per year as the primary residential dwelling of:  
 2 (1) a widow sixty-two (62) years of age or older,  
 3 whether with or without minor dependent children, who  
 4 qualifies under the income limitations of (4), or  
 5 (2) a widower sixty-two (62) years of age or older,  
 6 whether with or without minor dependent children, who  
 7 qualifies under the income limitations of (4), or  
 8 (3) a widow or widower with minor or dependent  
 9 children regardless of age, who qualifies under the income  
 10 limitations of (4), or  
 11 (4) a recipient or recipients of retirement or  
 12 disability benefits whose income from all sources is not  
 13 more than six thousand dollars (\$6,000) for a single person  
 14 and six thousand eight hundred dollars (\$6,800) for a  
 15 married couple total per annum whether said dwelling is  
 16 occupied by a single person or a married couple. Provided,  
 17 further, that one who applies for classification of property  
 18 under this class must make an affidavit to the state  
 19 department of revenue on a form as may be provided by the  
 20 state department of revenue supplied without cost to the  
 21 applicant, as to his income, if applicable, as to his  
 22 retirement benefits, if applicable, or, as to his marital  
 23 status, if applicable, and to the fact that he or she  
 24 actually occupies or maintains as his or her primary  
 25 residential dwelling, such land and improvements with right

1 of the county welfare board to investigate the applicant, on  
 2 the completion of the form, as to answers given on the form.  
 3 Provided, further, the assessed value of said property shall  
 4 not be increased during the life of the recipient of  
 5 retirement benefits or widow or widower covered under this  
 6 class, unless the owner-resident makes a substantial  
 7 improvement in the dwelling. For the purposes of the  
 8 affidavit required for classification of property under this  
 9 class, it shall be sufficient if the applicant signs a  
 10 statement swearing to or affirming the correctness of the  
 11 information supplied, whether or not the statement is signed  
 12 before a person authorized to administer oaths, and mails  
 13 the application and statement to the department of revenue.  
 14 This signed statement shall be treated as a statement under  
 15 oath or equivalent affirmation for purposes of section  
 16 94-7-203, R.C.M. 1947, relating to the criminal offense of  
 17 false swearing.

18 ~~(b) A capital investment in a building for an energy~~  
 19 ~~conservation purpose, to the extent provided under section~~  
 20 ~~84-7403.~~

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

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

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

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

8 "84-1502. Deductions allowed in computing income. In  
 9 computing the net income the following deductions shall be  
 10 allowed from the gross income received by such corporation  
 11 within the year from all sources:

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

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

16 (B) (a) There shall be allowed as a deduction for the  
 17 taxable period a net operating loss deduction determined  
 18 according to the provisions of this subsection. The net  
 19 operating loss deduction is the aggregate of net operating  
 20 loss carryovers to such taxable period plus the net  
 21 operating loss carrybacks to such taxable period. The term  
 22 "net operating loss" means the excess of the deductions  
 23 allowed by this section, 84-1502, over the gross income,  
 24 with the modifications specified in paragraph (b) of this  
 25 subsection. If for any taxable period beginning after



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

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

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

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

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

1 carried on within the state of Montana.

2 (d) In the case of a merger of corporations, the  
 3 surviving corporation shall not be allowed a net operating  
 4 loss deduction for net operating losses sustained by the  
 5 merged corporations prior to the date of merger.

6 In the case of a consolidation of corporations, the new  
 7 corporate entity shall not be allowed a deduction for net  
 8 operating losses sustained by the consolidated corporations  
 9 prior to the date of consolidation.

10 (e) Notwithstanding the provisions of section  
 11 84-1508.1(c), R.C.M. 1947, interest shall not be paid with  
 12 respect to a refund of tax resulting from a net operating  
 13 loss carryback or carryover.

14 (f) The net operating loss deduction shall not be  
 15 allowed with respect to taxable periods which ended on or  
 16 before December 31, 1970, but shall be allowed only with  
 17 respect to taxable periods beginning on or after January 1,  
 18 1971.

19 3. In the case of mines, other natural deposits, oil  
 20 and gas wells, and timber, a reasonable allowance for  
 21 depletion and for depreciation of improvements, such  
 22 reasonable allowance to be determined according to the  
 23 provisions of the internal revenue code in effect for the  
 24 taxable year. All elections made under the internal revenue  
 25 code with respect to capitalizing or expensing exploration

1 and development costs and intangible drilling expenses for  
2 corporation license tax purposes shall be the same as the  
3 elections made for federal income tax purposes.

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

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

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

15 (a) Taxes imposed by this act.

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

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

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

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

25 Taxes deductible under this act shall be construed to

1 include taxes imposed by any county, school district or  
2 municipality of this state."

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

5 "84-4906. Deductions allowed in computing net income.  
6 In computing net income, there shall be allowed as  
7 deductions:

8 (a) The items referred to in sections 161 and 211 of  
9 the Internal Revenue Code of 1954, or as sections 161 and  
10 211 shall be labeled or amended, except that state income  
11 tax paid shall not be deductible and also subject to the  
12 exceptions provided in section 84-4909, relating to items  
13 not deductible.

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

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

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

-End-

## 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 1979.
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

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

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

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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

Assumption 5 is probably not realistic.

PREPARED BY DEPARTMENT OF REVENUE

*Richard L. [Signature]*  
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."

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:~~

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

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

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

6 "84-202. Exemptions from taxation. (1) (a) The  
 7 property of the United States, the state, counties, cities,  
 8 towns, school districts, municipal corporations, public  
 9 libraries, buildings with land they occupy and furnishings  
 10 therein owned by a church and used for actual religious  
 11 worship and for residences of the clergy, together with  
 12 adjacent land reasonably necessary for convenient use of  
 13 such buildings owned by a church, such other property as is  
 14 used exclusively for agricultural and horticultural  
 15 societies, for educational purposes, hospitals and places of  
 16 burial not used or held for private or corporate profit, and  
 17 institutions of purely public charity, evidence of debt  
 18 secured by mortgages of record upon real or personal  
 19 property in the state of Montana, and public art galleries  
 20 and public observatories not used or held for private or  
 21 corporate profit, are exempt from taxation, but no more land  
 22 than is necessary for such purpose is exempt.

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

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

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

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

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

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

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

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

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

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

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

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

8 (6) Moneys and credits are exempt from taxation.

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

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

14 "84-301. Classification of property for taxation. For  
 15 the purpose of taxation the taxable property in the state  
 16 shall be classified as follows:

17 Class One. The annual net proceeds of all mines and  
 18 mining claims, except coal mines, after deducting only the  
 19 expenses specified and allowed by section 84-5403; also  
 20 where the right to enter upon land, to explore or prospect,  
 21 or dig for oil, gas, coal or mineral is reserved in land or  
 22 received by mesne conveyance (exclusive of leasehold  
 23 interests), devise or succession by any person or  
 24 corporation, the surface title to which has passed to or  
 25 remains in another, the state department of revenue shall

1 determine the value of the right to enter upon said tract of  
 2 land for the purpose of digging, exploring, or prospecting  
 3 for gas, oil, coal or minerals, and the same shall be placed  
 4 in this classification for the purpose of taxation.

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

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

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

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

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



1 property shall be put in Class Two.

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

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

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

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

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

1 the determination of the state department of revenue, is  
2 used by a new industry during the first three (3) years of  
3 operation not having been assessed prior to July 1, 1961,  
4 within the state of Montana. New industry shall mean any  
5 person, corporation, firm, partnership, association, or  
6 other group which establishes a new plant or plants in this  
7 state for the operation of a new industrial endeavor, as  
8 distinguished from a mere expansion, reorganization, or  
9 merger of an existing industry or industries. Provided,  
10 however, that new industrial property shall be limited to  
11 industries that manufacture, mill, mine, produce, process or  
12 fabricate materials, or do similar work in which capital and  
13 labor are employed and in which materials unserviceable in  
14 their natural state are extracted, processed or made fit for  
15 use or are substantially altered or treated so as to create  
16 commercial products or materials; industries that engage in  
17 the mechanical or chemical transformation of materials or  
18 substances into new products in the manner defined as  
19 manufacturing in the 1972 Standard Industrial Classification  
20 Manual, prepared by the United States office of management  
21 and budget; and in no event shall the term new industrial  
22 property be included to mean property used by retail or  
23 wholesale merchants, commercial services of any type,  
24 agriculture, trades or professions. New industrial property  
25 does not include a plant which will create an adverse impact

1 on existing state, county, or municipal services. The  
 2 department shall promulgate regulations for the  
 3 determination of what constitutes an adverse impact taking  
 4 into consideration the number of people to be employed and  
 5 the size of the community in which the location is  
 6 contemplated. Once the department has made an initial  
 7 determination that the industrial facility qualifies as new  
 8 industrial property, the department shall then upon proper  
 9 notice hold a hearing to determine if the new industrial  
 10 classification should be retained by the property. The  
 11 local taxing authority may appear at the hearing, and it  
 12 also may waive its objection to retention of this  
 13 classification if the industry agrees to the prepayment of  
 14 taxes sufficient to satisfy tax requirements created by the  
 15 location and construction of the facility during  
 16 construction period.

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

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

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

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

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

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

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

1 (\$27,500), which dwelling is owned or under a contract for  
 2 deed, and which is actually occupied for at least ten (10)  
 3 months per year as the primary residential dwelling of:

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

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

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

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

1 actually occupies or maintains as his or her primary  
 2 residential dwelling, such land and improvements with right  
 3 of the county welfare board to investigate the applicant, on  
 4 the completion of the form, as to answers given on the form.  
 5 Provided, further, the assessed value of said property shall  
 6 not be increased during the life of the recipient of  
 7 retirement benefits or widow or widower covered under this  
 8 class, unless the owner-resident makes a substantial  
 9 improvement in the dwelling. For the purposes of the  
 10 affidavit required for classification of property under this  
 11 class, it shall be sufficient if the applicant signs a  
 12 statement swearing to or affirming the correctness of the  
 13 information supplied, whether or not the statement is signed  
 14 before a person authorized to administer oaths, and mails  
 15 the application and statement to the department of revenue.  
 16 This signed statement shall be treated as a statement under  
 17 oath or equivalent affirmation for purposes of section  
 18 94-7-203, R.C.M. 1947, relating to the criminal offense of  
 19 false swearing.

20 ~~(b) A capital investment in a building for an energy~~  
 21 ~~conservation purpose, to the extent provided under section~~  
 22 ~~94-7403.~~

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

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

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

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

10 "84-1502. Deductions allowed in computing income. In  
11 computing the net income the following deductions shall be  
12 allowed from the gross income received by such corporation  
13 within the year from all sources:

14 1. All the ordinary and necessary expenses paid or  
15 incurred during the taxable year in the maintenance and  
16 operation of its business and properties, including  
17 reasonable allowance for salaries for personal services  
18 actually rendered, subject to the limitation hereinafter  
19 contained, rentals or other payments required to be made as  
20 a condition to the continued use or possession of property  
21 to which the corporation has not taken or is not taking  
22 title, or in which it has no equity. No deduction shall be  
23 allowed for salaries paid upon which the recipient thereof  
24 has not paid Montana state income tax; provided, however,  
25 that where domestic corporations are taxed on income derived

1 from without the state, salaries of officers paid in  
2 connection with securing such income shall be deductible.

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

18 (B) (a) There shall be allowed as a deduction for the  
19 taxable period a net operating loss deduction determined  
20 according to the provisions of this subsection. The net  
21 operating loss deduction is the aggregate of net operating  
22 loss carryovers to such taxable period plus the net  
23 operating loss carrybacks to such taxable period. The term  
24 "net operating loss" means the excess of the deductions  
25 allowed by this section, 84-1502, over the gross income,

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

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

- 22 (i) No net operating loss deduction shall be allowed.
- 23 (ii) The deduction for depletion shall not exceed the  
 24 amount which would be allowable if computed under the cost  
 25 method.

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

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

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

12 (e) Notwithstanding the provisions of section  
 13 84-1508.1(c), R.C.M. 1947, interest shall not be paid with  
 14 respect to a refund of tax resulting from a net operating  
 15 loss carryback or carryover.

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

21 3. In the case of mines, other natural deposits, oil  
 22 and gas wells, and timber, a reasonable allowance for  
 23 depletion and for depreciation of improvements, such  
 24 reasonable allowance to be determined according to the  
 25 provisions of the internal revenue code in effect for the

1 taxable year. All elections made under the internal revenue  
 2 code with respect to capitalizing or expensing exploration  
 3 and development costs and intangible drilling expenses for  
 4 corporation license tax purposes shall be the same as the  
 5 elections made for federal income tax purposes.

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

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

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

17 (a) Taxes imposed by this act.

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

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

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

25 (7) That portion of an energy-related investment

1 allowed as a deduction under 84-7403.

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

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

7 "84-4906. Deductions allowed in computing net income.  
 8 In computing net income, there shall be allowed as  
 9 deductions:

10 (a) The items referred to in sections 161 and 211 of  
 11 the Internal Revenue Code of 1954, or as sections 161 and  
 12 211 shall be labeled or amended, except that state income  
 13 tax paid shall not be deductible and also subject to the  
 14 exceptions provided in section 84-4909, relating to items  
 15 not deductible.

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

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

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

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

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

11 "84-7401. Statement of purpose. The purpose of this  
12 act is to encourage the use of alternative energy sources  
13 and the conservation of energy through incentive programs.  
14 Such incentives are to be made available to the energy user  
15 on a basis which requires him to take the initiative in  
16 obtaining a particular incentive. ~~This act is not intended~~  
17 ~~to require an assessor to revalue property except upon~~  
18 ~~receipt of a properly documented and approved application.~~  
19 This act allows but does not require a public utility to  
20 extend credit for energy conservation investments."

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

-End-

Approved by Committee  
on Taxation

HOUSE BILL NO. 292

INTRODUCED BY MELOY, BRADLEY, HUENNEKENS, VINCENT

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~~(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:~~

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



1 10% of next \$1,000 expended      10% of next \$2,000 expended  
 2 This tax treatment is subject to approval of the department  
 3 of an application as provided in 84-7404 AND MAY NOT BE  
 4 CLAIMED FOR EXPENDITURES AND CAPITAL INVESTMENTS FINANCED BY  
 5 A STATE, FEDERAL, OR PRIVATE GRANT FOR DEVELOPMENT OF  
 6 RENEWABLE ENERGY SOURCES."

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

9 "84-202. Exemptions from taxation. (1) (a) The  
 10 property of the United States, the state, counties, cities,  
 11 towns, school districts, municipal corporations, public  
 12 libraries, buildings with land they occupy and furnishings  
 13 therein owned by a church and used for actual religious  
 14 worship and for residences of the clergy, together with  
 15 adjacent land reasonably necessary for convenient use of  
 16 such buildings owned by a church, such other property as is  
 17 used exclusively for agricultural and horticultural  
 18 societies, for educational purposes, hospitals and places of  
 19 burial not used or held for private or corporate profit, and  
 20 institutions of purely public charity, evidence of debt  
 21 secured by mortgages of record upon real or personal  
 22 property in the state of Montana, and public art galleries  
 23 and public observatories not used or held for private or  
 24 corporate profit, are exempt from taxation, but no more land  
 25 than is necessary for such purpose is exempt.

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

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

1 right on account of removal of legal disability.

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

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

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

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

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

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

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

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

11 (6) Moneys and credits are exempt from taxation.

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

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

17 "84-301. Classification of property for taxation. For  
18 the purpose of taxation the taxable property in the state  
19 shall be classified as follows:

20 Class One. The annual net proceeds of all mines and  
21 mining claims, except coal mines, after deducting only the  
22 expenses specified and allowed by section 84-5403; also  
23 where the right to enter upon land, to explore or prospect,  
24 or dig for oil, gas, coal or mineral is reserved in land or  
25 received by mesne conveyance (exclusive of leasehold

1 interests), devise or succession by any person or  
 2 corporation, the surface title to which has passed to or  
 3 remains in another, the state department of revenue shall  
 4 determine the value of the right to enter upon said tract of  
 5 land for the purpose of digging, exploring, or prospecting  
 6 for gas, oil, coal or minerals, and the same shall be placed  
 7 in this classification for the purpose of taxation.

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

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

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

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

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

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

1 within incorporated limits of a city or town in which less  
 2 than ninety-five per cent (95%) of the electric consumers or  
 3 users will be served by a co-operative organization, such  
 4 property shall be put in Class Two.

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

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

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

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

1 Class Seven. (a) All new industrial property. New  
 2 industrial property shall mean any new industrial plant,  
 3 including land, buildings, machinery and fixtures which, in  
 4 the determination of the state department of revenue, is  
 5 used by a new industry during the first three (3) years of  
 6 operation not having been assessed prior to July 1, 1961,  
 7 within the state of Montana. New industry shall mean any  
 8 person, corporation, firm, partnership, association, or  
 9 other group which establishes a new plant or plants in this  
 10 state for the operation of a new industrial endeavor, as  
 11 distinguished from a mere expansion, reorganization, or  
 12 merger of an existing industry or industries. Provided,  
 13 however, that new industrial property shall be limited to  
 14 industries that manufacture, mill, mine, produce, process or  
 15 fabricate materials, or do similar work in which capital and  
 16 labor are employed and in which materials unserviceable in  
 17 their natural state are extracted, processed or made fit for  
 18 use or are substantially altered or treated so as to create  
 19 commercial products or materials; industries that engage in  
 20 the mechanical or chemical transformation of materials or  
 21 substances into new products in the manner defined as  
 22 manufacturing in the 1972 Standard Industrial Classification  
 23 Manual, prepared by the United States office of management  
 24 and budget; and in no event shall the term new industrial  
 25 property be included to mean property used by retail or

1 wholesale merchants, commercial services of any type,  
 2 agriculture, trades or professions. New industrial property  
 3 does not include a plant which will create an adverse impact  
 4 on existing state, county, or municipal services. The  
 5 department shall promulgate regulations for the  
 6 determination of what constitutes an adverse impact taking  
 7 into consideration the number of people to be employed and  
 8 the size of the community in which the location is  
 9 contemplated. Once the department has made an initial  
 10 determination that the industrial facility qualifies as new  
 11 industrial property, the department shall then upon proper  
 12 notice hold a hearing to determine if the new industrial  
 13 classification should be retained by the property. The  
 14 local taxing authority may appear at the hearing, and it  
 15 also may waive its objection to retention of this  
 16 classification if the industry agrees to the prepayment of  
 17 taxes sufficient to satisfy tax requirements created by the  
 18 location and construction of the facility during  
 19 construction period.

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

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

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

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

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

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

23 Class Eight. ~~(e)~~ Any improvement on real property,  
 24 trailers affixed to land or mobile home belonging to any  
 25 person who qualifies under any one or more of the

1 hereinafter set forth categories, with appurtenant land not  
 2 exceeding five (5) acres, which together have a market value  
 3 of not more than twenty-seven thousand five hundred dollars  
 4 (\$27,500), which dwelling is owned or under a contract for  
 5 deed, and which is actually occupied for at least ten (10)  
 6 months per year as the primary residential dwelling of:

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

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

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

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

1 applicant, as to his income, if applicable, as to his  
 2 retirement benefits, if applicable, or, as to his marital  
 3 status, if applicable, and to the fact that he or she  
 4 actually occupies or maintains as his or her primary  
 5 residential dwelling, such land and improvements with right  
 6 of the county welfare board to investigate the applicant, on  
 7 the completion of the form, as to answers given on the form.  
 8 Provided, further, the assessed value of said property shall  
 9 not be increased during the life of the recipient of  
 10 retirement benefits or widow or widower covered under this  
 11 class, unless the owner-resident makes a substantial  
 12 improvement in the dwelling. For the purposes of the  
 13 affidavit required for classification of property under this  
 14 class, it shall be sufficient if the applicant signs a  
 15 statement swearing to or affirming the correctness of the  
 16 information supplied, whether or not the statement is signed  
 17 before a person authorized to administer oaths, and mails  
 18 the application and statement to the department of revenue.  
 19 This signed statement shall be treated as a statement under  
 20 oath or equivalent affirmation for purposes of section  
 21 94-7-203, R.C.M. 1947, relating to the criminal offense of  
 22 false swearing.

23 ~~(b) A capital investment in a building for an energy~~  
 24 ~~conservation purpose, to the extent provided under section~~  
 25 ~~84-7483.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

20 (a) Taxes imposed by this act.

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

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

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

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

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

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

10 "84-4906. Deductions allowed in computing net income.  
 11 In computing net income, there shall be allowed as  
 12 deductions:

13 (a) The items referred to in sections 161 and 211 of  
 14 the Internal Revenue Code of 1954, or as sections 161 and  
 15 211 shall be labeled or amended, except that state income  
 16 tax paid shall not be deductible and also subject to the  
 17 exceptions provided in section 84-4909, relating to items  
 18 not deductible.

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

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

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

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

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

13 "84-7401. Statement of purpose. The purpose of this  
 14 act is to encourage the use of alternative energy sources  
 15 and the conservation of energy through incentive programs.  
 16 Such incentives are to be made available to the energy user  
 17 on a basis which requires him to take the initiative in  
 18 obtaining a particular incentive. ~~This act is not intended~~  
 19 ~~to require an assessor to revalue property except upon~~  
 20 ~~receipt of a properly documented and approved application.~~  
 21 This act allows but does not require a public utility to  
 22 extend credit for energy conservation investments."

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

-End-

1 HOUSE BILL NO. 292  
 2 INTRODUCED BY MELOY, BRADLEY, HUENNEKENS, VINCENT  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ENERGY  
 5 CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE  
 6 PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS  
 7 DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301, 84-1502,  
 8 84-4906, ~~84-7401~~, AND 84-7403, R.C.M. 1947, AND PROVIDING AN  
 9 EFFECTIVE DATE."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. Section 84-7403, R.C.M. 1947, is amended to  
 13 read as follows:

14 "84-7403. Tax treatment of certain energy-related  
 15 investments. (1) ~~Upon application by a taxpayer approved~~  
 16 ~~under section 84-7404, a capital investment by the taxpayer~~  
 17 ~~in a recognized nonfossil form of energy generation shall be~~  
 18 ~~treated by the department of revenue as:~~

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

22 ~~(b) class seven property as defined in sections~~  
 23 ~~84-301 and 84-302, for such portion of the appraised value~~  
 24 ~~of the investment that exceeds one hundred thousand dollars~~  
 25 ~~(\$100,000)."~~

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

17	<u>If the installation or</u>	<u>If the installation or</u>
18	<u>investment is made in</u>	<u>investment is made in</u>
19	<u>a residential building:</u>	<u>a building not used</u>
20		<u>as a residence:</u>
21	<u>40% 100% of first</u>	<u>40% 100% of first</u>
22	<u>\$1,000 expended</u>	<u>\$2,000 expended</u>
23	<u>30% 50% of next</u>	<u>30% 50% of next</u>
24	<u>\$1,000 expended</u>	<u>\$2,000 expended</u>
25	<u>20% of next \$1,000 expended</u>	<u>20% of next \$2,000 expended</u>

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

1 ~~10% of next \$1,000 expended~~      ~~10% of next \$2,000 expended~~  
 2 ~~This tax treatment is subject to approval of the department~~  
 3 ~~of an application as provided in 84-7404 AND MAY NOT BE~~  
 4 ~~CLAIMED FOR EXPENDITURES AND CAPITAL INVESTMENTS FINANCED BY~~  
 5 ~~A STATE, FEDERAL, OR PRIVATE GRANT FOR DEVELOPMENT OF~~  
 6 ~~RENEWABLE ENERGY SOURCES.\*~~

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

9 "84-202. Exemptions from taxation. (1) (a) The  
 10 property of the United States, the state, counties, cities,  
 11 towns, school districts, municipal corporations, public  
 12 libraries, buildings with land they occupy and furnishings  
 13 therein owned by a church and used for actual religious  
 14 worship and for residences of the clergy, together with  
 15 adjacent land reasonably necessary for convenient use of  
 16 such buildings owned by a church, such other property as is  
 17 used exclusively for agricultural and horticultural  
 18 societies, for educational purposes, hospitals and places of  
 19 burial not used or held for private or corporate profit, and  
 20 institutions of purely public charity, evidence of debt  
 21 secured by mortgages of record upon real or personal  
 22 property in the state of Montana, and public art galleries  
 23 and public observatories not used or held for private or  
 24 corporate profit, are exempt from taxation, but no more land  
 25 than is necessary for such purpose is exempt.

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

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

~~(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:~~

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

1 10% of next \$1,000 expended 10% of next \$2,000 expended  
 2 This tax treatment is subject to approval of the department  
 3 of an application as provided in 84-7404 AND MAY NOT BE  
 4 CLAIMED FOR SO MUCH OF THE EXPENDITURES AND CAPITAL  
 5 INVESTMENTS AS ARE FINANCED BY A STATE, FEDERAL, OR PRIVATE  
 6 GRANT FOR DEVELOPMENT--OF--RENEWABLE-ENERGY-SOURCES ENERGY  
 7 CONSERVATION."

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

10 "84-202. Exemptions from taxation. (1) (a) The  
 11 property of the United States, the state, counties, cities,  
 12 towns, school districts, municipal corporations, public  
 13 libraries, buildings with land they occupy and furnishings  
 14 therein owned by a church and used for actual religious  
 15 worship and for residences of the clergy, together with  
 16 adjacent land reasonably necessary for convenient use of  
 17 such buildings owned by a church, such other property as is  
 18 used exclusively for agricultural and horticultural  
 19 societies, for educational purposes, hospitals and places of  
 20 burial not used or held for private or corporate profit, and  
 21 institutions of purely public charity, evidence of debt  
 22 secured by mortgages of record upon real or personal  
 23 property in the state of Montana, and public art galleries  
 24 and public observatories not used or held for private or  
 25 corporate profit, are exempt from taxation, but no more land

1 than is necessary for such purpose is exempt.

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

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



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

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

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

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

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

25 (5) [The following agricultural products are exempt

1 from taxation:]

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

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

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

12 (6) Moneys and credits are exempt from taxation.

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

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

18 "84-301. Classification of property for taxation. For  
19 the purpose of taxation the taxable property in the state  
20 shall be classified as follows:

21 Class One. The annual net proceeds of all mines and  
22 mining claims, except coal mines, after deducting only the  
23 expenses specified and allowed by section 84-5403; also  
24 where the right to enter upon land, to explore or prospect,  
25 or dig for oil, gas, coal or mineral is reserved in land or

1 received by mesne conveyance (exclusive of leasehold  
2 interests), devise or succession by any person or  
3 corporation, the surface title to which has passed to or  
4 remains in another, the state department of revenue shall  
5 determine the value of the right to enter upon said tract of  
6 land for the purpose of digging, exploring, or prospecting  
7 for gas, oil, coal or minerals, and the same shall be placed  
8 in this classification for the purpose of taxation.

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

25 Class Three. Livestock, poultry, and unprocessed

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

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

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

18 Class Five. (a) All poles, lines, transformers,  
19 transformer stations, meters, tools, improvements, machinery  
20 and other property used and owned by co-operative rural  
21 electrical and co-operative rural telephone associations  
22 organized under the laws of Montana except those within the  
23 incorporated limits of a city or town in which less than  
24 ninety-five per cent (95%) of the electric consumers and/or  
25 telephone users are served by a co-operative organization,

1 and as to the property enumerated in this sub-section (a)  
 2 within incorporated limits of a city or town in which less  
 3 than ninety-five per cent (95%) of the electric consumers or  
 4 users will be served by a co-operative organization, such  
 5 property shall be put in Class Two.

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

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

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

25 Class Six. Property formerly included in this class is

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

2 Class Seven. (a) All new industrial property. New  
 3 industrial property shall mean any new industrial plant,  
 4 including land, buildings, machinery and fixtures which, in  
 5 the determination of the state department of revenue, is  
 6 used by a new industry during the first three (3) years of  
 7 operation not having been assessed prior to July 1, 1961,  
 8 within the state of Montana. New industry shall mean any  
 9 person, corporation, firm, partnership, association, or  
 10 other group which establishes a new plant or plants in this  
 11 state for the operation of a new industrial endeavor, as  
 12 distinguished from a mere expansion, reorganization, or  
 13 merger of an existing industry or industries. Provided,  
 14 however, that new industrial property shall be limited to  
 15 industries that manufacture, mill, mine, produce, process or  
 16 fabricate materials, or do similar work in which capital and  
 17 labor are employed and in which materials unserviceable in  
 18 their natural state are extracted, processed or made fit for  
 19 use or are substantially altered or treated so as to create  
 20 commercial products or materials; industries that engage in  
 21 the mechanical or chemical transformation of materials or  
 22 substances into new products in the manner defined as  
 23 manufacturing in the 1972 Standard Industrial Classification  
 24 Manual, prepared by the United States office of management  
 25 and budget; and in no event shall the term new industrial

1 property be included to mean property used by retail or  
 2 wholesale merchants, commercial services of any type,  
 3 agriculture, trades or professions. New industrial property  
 4 does not include a plant which will create an adverse impact  
 5 on existing state, county, or municipal services. The  
 6 department shall promulgate regulations for the  
 7 determination of what constitutes an adverse impact taking  
 8 into consideration the number of people to be employed and  
 9 the size of the community in which the location is  
 10 contemplated. Once the department has made an initial  
 11 determination that the industrial facility qualifies as new  
 12 industrial property, the department shall then upon proper  
 13 notice hold a hearing to determine if the new industrial  
 14 classification should be retained by the property. The  
 15 local taxing authority may appear at the hearing, and it  
 16 also may waive its objection to retention of this  
 17 classification if the industry agrees to the prepayment of  
 18 taxes sufficient to satisfy tax requirements created by the  
 19 location and construction of the facility during  
 20 construction period.

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

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

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

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

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

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

24 Class Eight. ~~(a)~~ Any improvement on real property,  
 25 trailers affixed to land or mobile home belonging to any

1 person who qualifies under any one or more of the  
 2 hereinafter set forth categories, with appurtenant land not  
 3 exceeding five (5) acres, which together have a market value  
 4 of not more than twenty-seven thousand five hundred dollars  
 5 (\$27,500), which dwelling is owned or under a contract for  
 6 deed, and which is actually occupied for at least ten (10)  
 7 months per year as the primary residential dwelling of:

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

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

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

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

1 state department of revenue supplied without cost to the  
 2 applicant, as to his income, if applicable, as to his  
 3 retirement benefits, if applicable, or, as to his marital  
 4 status, if applicable, and to the fact that he or she  
 5 actually occupies or maintains as his or her primary  
 6 residential dwelling, such land and improvements with right  
 7 of the county welfare board to investigate the applicant, on  
 8 the completion of the form, as to answers given on the form.  
 9 Provided, further, the assessed value of said property shall  
 10 not be increased during the life of the recipient of  
 11 retirement benefits or widow or widower covered under this  
 12 class, unless the owner-resident makes a substantial  
 13 improvement in the dwelling. For the purposes of the  
 14 affidavit required for classification of property under this  
 15 class, it shall be sufficient if the applicant signs a  
 16 statement swearing to or affirming the correctness of the  
 17 information supplied, whether or not the statement is signed  
 18 before a person authorized to administer oaths, and mails  
 19 the application and statement to the department of revenue.  
 20 This signed statement shall be treated as a statement under  
 21 oath or equivalent affirmation for purposes of section  
 22 94-7-203, R.C.M. 1947, relating to the criminal offense of  
 23 false swearing.

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

1 ~~84-7483.~~

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

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

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

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

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

18 1. All the ordinary and necessary expenses paid or  
19 incurred during the taxable year in the maintenance and  
20 operation of its business and properties, including  
21 reasonable allowance for salaries for personal services  
22 actually rendered, subject to the limitation hereinafter  
23 contained, rentals or other payments required to be made as  
24 a condition to the continued use or possession of property  
25 to which the corporation has not taken or is not taking

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

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

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

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

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

1 (i) No net operating loss deduction shall be allowed.  
 2 (ii) The deduction for depletion shall not exceed the  
 3 amount which would be allowable if computed under the cost  
 4 method.

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

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

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

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

20 (f) The net operating loss deduction shall not be  
 21 allowed with respect to taxable periods which ended on or  
 22 before December 31, 1970, but shall be allowed only with  
 23 respect to taxable periods beginning on or after January 1,  
 24 1971.

25 3. In the case of mines, other natural deposits, oil

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

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

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

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

- 21 (a) Taxes imposed by this act.
- 22 (b) Taxes assessed against local benefits of a kind  
 23 tending to increase the value of the property assessed.
- 24 (c) Taxes on or according to or measured by net income  
 25 or profits imposed by authority of the government of the

1 United States.

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

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

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

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

11 "84-4906. Deductions allowed in computing net income.  
 12 In computing net income, there shall be allowed as  
 13 deductions:

14 (a) The items referred to in sections 161 and 211 of  
 15 the Internal Revenue Code of 1954, or as sections 161 and  
 16 211 shall be labeled or amended, except that state income  
 17 tax paid shall not be deductible and also subject to the  
 18 exceptions provided in section 84-4909, relating to items  
 19 not deductible.

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

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

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



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

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

14 "84-7401. Statement of purpose. The purpose of this  
 15 act is to encourage the use of alternative energy sources  
 16 and the conservation of energy through incentive programs.  
 17 Such incentives are to be made available to the energy user  
 18 on a basis which requires him to take the initiative in  
 19 obtaining a particular incentive. ~~This act is not intended~~  
 20 ~~to require an assessor to revalue property except upon~~  
 21 ~~receipt of a property documented and approved application.~~  
 22 This act allows but does not require a public utility to  
 23 extend credit for energy conservation investments."

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

1 84-301 ENACTED BY THIS ACT, CLASSES FIFTEEN AND EIGHTEEN IN  
 2 HOUSE BILL 70 SHALL BE FURTHER AMENDED BY DELETING  
 3 REFERENCES TO CAPITAL INVESTMENTS IN RECOGNIZED NONFOSSIL  
 4 FORMS OF ENERGY GENERATION AND IN BUILDING FOR AN ENERGY  
 5 CONSERVATION PURPOSE.

6 SECTION 9. EXTENSION OF EXISTING CLASSIFICATIONS. ANY  
 7 CLASSIFICATION OF PROPERTY UNDER THE PROVISIONS OF 84-7403,  
 8 R.C.M. 1947, THAT EXISTED PRIOR TO THE EFFECTIVE DATE OF  
 9 THIS ACT, APPROVED BY THE DEPARTMENT OF REVENUE BEFORE APRIL  
 10 19, 1977, SHALL CONTINUE IN EFFECT UNTIL DECEMBER 31, 1982,  
 11 ON JANUARY 1, 1983, THE TAXABLE PERCENTAGE OF SUCH PROPERTY  
 12 SHALL BE DETERMINED UNDER CHAPTER 3, TITLE 84, R.C.M. 1947,  
 13 OR THAT CHAPTER AS IT MAY BE RECODIFIED OR AMENDED.

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

-End-