

1 *H* BILL NO. *422* *Marks*
 2 INTRODUCED BY *Ramsey* *John* *Zeigler*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO INCORPORATE THE
 5 FEDERAL CHANGES OF SUBCHAPTER 5 CORPORATIONS CONTAINED IN
 6 THE TAX REFORM ACT OF 1976; AMENDING SECTIONS 84-1501.1 AND
 7 84-1501.2, R.C.M. 1947."
 8

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

10 Section 1. Section 84-1501.1, R.C.M. 1947, is amended
 11 to read as follows:

12 "84-1501.1. Definitions. (a) Small business
 13 corporation. For purposes of this act, the term "small
 14 business corporation" means a corporation doing business in
 15 Montana, and which does not--

- 16 (1) have more than ten (10) shareholders;
- 17 (2) have as a shareholder a person (other than an
 18 estate and other than a trust described in subsection a) who
 19 is not an individual;
- 20 (3) have a nonresident alien as a shareholder; and
- 21 (4) have more than one class of stock.

22 (b) Electing small business corporation. For purposes
 23 of this act, the term "electing small business corporation"
 24 means, with respect to any taxable year, a small business
 25 corporation which has made an election under this act, in

- 1 effect for such taxable year.
- 2 (c) Stock owned by husband and wife. For purposes of
 3 subsection (a)(1), stock which:
- 4 (1) is community property of a husband and wife (or
 5 the income from which is community income) under the
 6 applicable community property law of a state;
- 7 (2) is held by a husband and wife as joint tenants,
 8 tenants by the entirety, or tenants in common;
- 9 (3) was, on the date of death of a spouse, stock
 10 described in subsection (c)(1) or (c)(2) and is, by reason
 11 of such death, held by the estate of the deceased spouse and
 12 the surviving spouse or by the estates of both spouses (by
 13 reason of their deaths on the same date), in the same
 14 proportion as held by the spouses before such death; or
- 15 (4) was, on the date of the death of a surviving
 16 spouse, stock described in subsection (c)(3) and is, by
 17 reason of such death, held by the estates of both spouses in
 18 the same proportion as held by the spouses before their
 19 deaths shall be treated as owned by one shareholder.
- 20 (d) Special shareholder rules.
- 21 (1) A small business corporation which has been an
 22 electing small business corporation for a period of 5
 23 consecutive taxable years may not have more than 15
 24 shareholders.
- 25 (2) If, during the 5-year period set forth in

1 subsection (d)(1), the number of shareholders of an electing
 2 small business corporation would increase to an amount in
 3 excess of 10 (but not in excess of 15) solely by reason of
 4 additional shareholders who acquired their stock through
 5 inheritance; the corporation may have a number of additional
 6 shareholders equal to the number by which the inheriting
 7 shareholders cause the total number of shareholders of such
 8 corporation to exceed 10.

9 (e) Certain trusts permitted as shareholders. For
 10 purposes of subsection (a), the following trusts may be
 11 shareholders:

12 (1) a trust all of which is treated as owned by the
 13 grantor under sections 671 through 678 of the Internal
 14 Revenue Code;

15 (2) a trust created primarily to exercise the voting
 16 power of stock transferred to it;

17 (3) any trust with respect to stock transferred to it
 18 pursuant to the terms of a will, but only for the 60-day
 19 period beginning on the day on which such stock is
 20 transferred to it. In the case of a trust described in
 21 subsection (e)(2), each beneficiary of the trust shall, for
 22 purposes of subsection (a)(1), be treated as a shareholder.*

23 Section 2. Section 84-1501.2, R.C.M. 1947, is amended
 24 to read as follows:

25 *84-1501.2. Election by small business corporation.

1 (a) Eligibility. Except as provided in subsection (f), any
 2 small business corporation may elect, in accordance with the
 3 provisions of this section, not to be subject to the taxes
 4 imposed by this chapter. Such election shall be valid only
 5 if all persons who are shareholders in such corporation--

6 (1) on the first day of the first taxable year for
 7 which such election is effective, if such election is made
 8 on or before such first day, or

9 (2) on the day on which the election is made, if the
 10 election is made after such first day, consent to such
 11 election.

12 (b) Effect. If a small business corporation makes an
 13 election under subsection (a), then--

14 (1) with respect to the taxable years of the
 15 corporation for which such election is in effect, such
 16 corporation shall not be subject to the taxes imposed by
 17 this chapter and, with respect to such taxable years and all
 18 succeeding taxable years, the provisions of this act shall
 19 apply to such corporation, and

20 (2) with respect to the taxable years of a shareholder
 21 of such corporation in which or with which the taxable years
 22 of the corporation for which such election is in effect end,
 23 the provisions of this act shall apply to such shareholder,
 24 and with respect to such taxable years and all succeeding
 25 taxable years, the provisions of this act shall apply to

1 such shareholder.

2 (c) Where and how made.

3 (1) In general. An election under subsection (a) may
4 be made by a small business corporation for any taxable year
5 at any time during the first month of such taxable year, or
6 at any time during the month preceding such first month.
7 Such election shall be made in such manner as the department
8 of revenue shall prescribe by regulations.

9 (2) Taxable years beginning before date of enactment.

10 An election may be made under subsection (a) by a small
11 business corporation for its first taxable year which begins
12 after December 31, 1958, and on or before the date of the
13 enactment of this subchapter, and ends after such date at
14 any time--

15 (A) within the 90-day period beginning on the day
16 after the date of the enactment of this subchapter, or

17 (B) if its taxable year ends within such 90-day
18 period, before the close of such taxable year.

19 An election may be made pursuant to this paragraph only
20 if the small business corporation has been a small business
21 corporation (as defined in this act) on each day after the
22 date of the enactment of this subchapter and before the day
23 of such election.

24 (d) Years for which effective. An election under
25 subsection (a) shall be effective for the taxable year of

1 the corporation for which it is made and for all succeeding
2 taxable years of the corporation, unless it is terminated,
3 with respect to any such taxable year, under subsection (e).

4 (e) Termination.

5 (1) New shareholders. An election under subsection (a)
6 made by a small business corporation shall terminate if any
7 person who was not a shareholder in such corporation--

8 (A) on the first day of the first taxable year of the
9 corporation for which the election is effective, if such
10 election is made on or before such first day, or

11 (B) on the day on which the election is made, if such
12 election is made after such first day, becomes a shareholder
13 in such corporation and ~~does not consent to such election~~
14 ~~within such time as the state department of revenue shall~~
15 ~~prescribe by regulations, such termination shall be~~
16 ~~effective for the taxable year of the corporation in which~~
17 ~~such person becomes a shareholder in the corporation and for~~
18 ~~all succeeding taxable years of the corporation~~
19 affirmatively refuses (in such manner as the department of
20 revenue shall by rules prescribe) to consent to such
21 election on or before the 60th day on which he acquires the
22 stock.

23 (2) If the person acquiring the stock is the estate of
24 a decedent, the period under subsection (e)(1) for
25 affirmatively refusing to consent to the election shall

1 expire on the 60th day after whichever of the following is
 2 the earlier:

3 (A) the day on which the executor or administrator of
 4 the estate qualifies; or

5 (B) the last day of the taxable year of the
 6 corporation in which the decedent died.

7 (3) Any termination of an election under subsection
 8 (e)(1) by reason of the affirmative refusal of any person to
 9 consent to such election shall be effective for the taxable
 10 year of the corporation in which such person becomes a
 11 shareholder in the corporation and for all succeeding
 12 taxable years of the corporation.

13 ~~(2)(4)~~ Revocation. An election under subsection (a)
 14 made by a small business corporation may be revoked by it
 15 for any taxable year of the corporation after the first
 16 taxable year for which the election is effective. An
 17 election may be revoked only if all persons who are
 18 shareholders in the corporation on the day on which the
 19 revocation is made consent to the revocation. A revocation
 20 under this paragraph shall be effective--

21 (A) for the taxable year in which made, if made before
 22 the close of the first month of such taxable year.

23 (B) for the taxable year following the taxable year in
 24 which made, if made after the close of such first month, and
 25 for all succeeding taxable years of the corporation. Such

1 revocation shall be made in such manner as the state
 2 department of revenue shall prescribe by regulations.

3 ~~(3)(5)~~ Ceases to be small business corporation. An
 4 election under subsection (a) made by a small business
 5 corporation shall terminate if at any time--

6 (A) after the first day of the first taxable year of
 7 the corporation for which the election is effective, if such
 8 election is made on or before such first day, or

9 (B) after the day on which the election is made, if
 10 such election is made after such first day, the corporation
 11 ceases to be a small business corporation (as defined in
 12 this act). Such termination shall be effective for the
 13 taxable year of the corporation in which the corporation
 14 ceases to be a small business corporation and for all
 15 succeeding taxable years of the corporation.

16 (f) Election after termination. If a small business
 17 corporation has made an election under subsection (a) and if
 18 such election has been terminated or revoked under
 19 subsection (e), such corporation (and any successor
 20 corporation) shall not be eligible to make an election under
 21 subsection (a) for any taxable year prior to its fifth
 22 taxable year which begins after the first taxable year for
 23 which such termination or revocation is effective, unless
 24 the state department of revenue consents to such election.

25 (g) This election shall not be effective unless the

1 corporate net income or loss of such electing corporation
2 shall have been included in the stockholders' adjusted gross
3 income as such is defined in section 84-4905.

4 (h) Every electing corporation shall be required to
5 pay the minimum fee of ten dollars (\$10.00) required by
6 section 84-1501.*

7 Section 3. Application. The amendments made in
8 sections 1 and 2 apply to taxable years beginning after
9 December 31, 1976.

-End-

STATE OF MONTANA

REQUEST NO. 218-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 77, there is hereby submitted a Fiscal Note for House Bill 422 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 incorporates the Federal changes of Subchapter S corporations contained in the tax reform act of 1976.

ASSUMPTIONS

It appears that the proposed legislation would have little effect on state revenue although it is impossible to estimate how many more corporations might qualify as small business corporations under the extended definition of shareholder. (There are currently 2700 small business corporations operating in Montana.) In any event this bill should not effect overall state tax revenues appreciably -- any losses in corporation license tax collections which might occur because additional corporations would qualify as small business corporations if this bill were enacted would be at least partially offset by increases in individual income tax collections (since small business corporations are taxed through the individual income tax system rather than the corporation license tax system).

PREPARED BY DEPARTMENT OF REVENUE


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-1-77

Approved by Committee
on Taxation

HOUSE BILL NO. 422

INTRODUCED BY RAMIREZ, PORTER, MOORE, FABREGA, HARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCORPORATE THE FEDERAL CHANGES OF SUBCHAPTER S CORPORATIONS CONTAINED IN THE TAX REFORM ACT OF 1976; AMENDING SECTIONS 84-1501.1 and 84-1501.2, R.C.M. 1947."

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

Section 1. Section 84-1501.1, R.C.M. 1947, is amended to read as follows:

"84-1501.1. Definitions. (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

(1) have more than ten (10) shareholders;

(2) have as a shareholder a person (other than an estate and other than a trust described in subsection e) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

(b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under this act, in

effect for such taxable year.

(c) Stock owned by husband and wife. For purposes of subsection (a)(1), stock which SHALL BE TREATED AS OWNED BY ONE SHAREHOLDER WHEN IT:

(1) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a state;

(2) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common;

(3) was, on the date of death of a spouse, stock described in subsection (c)(1) or (c)(2) and is, by reason of such death, held by the estate of the deceased spouse and the surviving spouse or by the estates of both spouses (by reason of their deaths on the same date), in the same proportion as held by the spouses before such death; or

(4) was, on the date of the death of a surviving spouse, stock described in subsection (c)(3) and is, by reason of such death, held by the estates of both spouses in the same proportion as held by the spouses before their deaths shall be treated as owned by one shareholder.

(d) Special shareholder rules.

(1) A small business corporation which has been an electing small business corporation for a period of 5 consecutive taxable years may not have more than 15 shareholders.

1 (2) If, during the 5-year period set forth in
 2 subsection (d)(1), the number of shareholders of an electing
 3 small business corporation would increase to an amount in
 4 excess of 10 (but not in excess of 15) solely by reason of
 5 additional shareholders who acquired their stock through
 6 inheritance, the corporation may have a number of additional
 7 shareholders equal to the number by which the inheriting
 8 shareholders cause the total number of shareholders of such
 9 corporation to exceed 10.

10 (e) Certain trusts permitted as shareholders. For
 11 purposes of subsection (a), the following trusts may be
 12 shareholders:

13 (1) a trust all of which is treated as owned by the
 14 grantor under sections 671 through 678 of the Internal
 15 Revenue Code;

16 (2) a trust created primarily to exercise the voting
 17 power of stock transferred to it;

18 (3) any trust with respect to stock transferred to it
 19 pursuant to the terms of a will, but only for the 60-day
 20 period beginning on the day on which such stock is
 21 transferred to it. In the case of a trust described in
 22 subsection (e)(2), each beneficiary of the trust shall, for
 23 purposes of subsection (a)(1), be treated as a shareholder."

24 Section 2. Section 84-1501.2, R.C.M. 1947, is amended
 25 to read as follows:

1 "84-1501.2. Election by small business corporation.
 2 (a) Eligibility. Except as provided in subsection (f), any
 3 small business corporation may elect, in accordance with the
 4 provisions of this section, not to be subject to the taxes
 5 imposed by this chapter. Such election shall be valid only
 6 if all persons who are shareholders in such corporation--

7 (1) on the first day of the first taxable year for
 8 which such election is effective, if such election is made
 9 on or before such first day, or

10 (2) on the day on which the election is made, if the
 11 election is made after such first day, consent to such
 12 election.

13 (b) Effect. If a small business corporation makes an
 14 election under subsection (a), then--

15 (1) with respect to the taxable years of the
 16 corporation for which such election is in effect, such
 17 corporation shall not be subject to the taxes imposed by
 18 this chapter and, with respect to such taxable years and all
 19 succeeding taxable years, the provisions of this act shall
 20 apply to such corporation, and

21 (2) with respect to the taxable years of a shareholder
 22 of such corporation in which or with which the taxable years
 23 of the corporation for which such election is in effect end,
 24 the provisions of this act shall apply to such shareholder,
 25 and with respect to such taxable years and all succeeding

1 taxable years, the provisions of this act shall apply to
2 such shareholder.

3 (c) Where and how made.

4 (1) In general. An election under subsection (a) may
5 be made by a small business corporation for any taxable year
6 at any time during the first month of such taxable year, or
7 at any time during the month preceding such first month.
8 Such election shall be made in such manner as the department
9 of revenue shall prescribe by regulations.

10 (2) Taxable years beginning before date of enactment.
11 An election may be made under subsection (a) by a small
12 business corporation for its first taxable year which begins
13 after December 31, 1958, and on or before the date of the
14 enactment of this subchapter, and ends after such date at
15 any time—

16 (A) within the 90-day period beginning on the day
17 after the date of the enactment of this subchapter, or

18 (B) if its taxable year ends within such 90-day
19 period, before the close of such taxable year.

20 An election may be made pursuant to this paragraph only
21 if the small business corporation has been a small business
22 corporation (as defined in this act) on each day after the
23 date of the enactment of this subchapter and before the day
24 of such election.

25 (d) Years for which effective. An election under

1 subsection (a) shall be effective for the taxable year of
2 the corporation for which it is made and for all succeeding
3 taxable years of the corporation, unless it is terminated,
4 with respect to any such taxable year, under subsection (e).

5 (e) Termination.

6 (1) New shareholders. An election under subsection (a)
7 made by a small business corporation shall terminate if any
8 person who was not a shareholder in such corporation—

9 (A) on the first day of the first taxable year of the
10 corporation for which the election is effective, if such
11 election is made on or before such first day, or

12 (B) on the day on which the election is made, if such
13 election is made after such first day, becomes a shareholder
14 in such corporation and ~~does not consent to such election~~
15 ~~within such time as the state department of revenue shall~~
16 ~~prescribe by regulations. Such termination shall be~~
17 ~~effective for the taxable year of the corporation in which~~
18 ~~such person becomes a shareholder in the corporation and for~~
19 ~~all succeeding taxable years of the corporation~~
20 affirmatively refuses (in such manner as the department of
21 revenue shall by rules prescribe) to consent to such
22 election on or before the 60th day on which he acquires the
23 stock.

24 (2) If the person acquiring the stock is the estate of
25 a decedent, the period under subsection (e) (1) for

1 affirmatively refusing to consent to the election shall
2 expire on the 60th day after whichever of the following is
3 the earlier:

4 (A) the day on which the executor or administrator of
5 the estate qualifies; or

6 (B) the last day of the taxable year of the
7 corporation in which the decedent died.

8 (3) Any termination of an election under subsection
9 (e)(1) by reason of the affirmative refusal of any person to
10 consent to such election shall be effective for the taxable
11 year of the corporation in which such person becomes a
12 shareholder in the corporation and for all succeeding
13 taxable years of the corporation.

14 ~~(3)(4)~~ Revocation. An election under subsection (a)
15 made by a small business corporation may be revoked by it
16 for any taxable year of the corporation after the first
17 taxable year for which the election is effective. An
18 election may be revoked only if all persons who are
19 shareholders in the corporation on the day on which the
20 revocation is made consent to the revocation. A revocation
21 under this paragraph shall be effective--

22 (A) for the taxable year in which made, if made before
23 the close of the first month of such taxable year.

24 (B) for the taxable year following the taxable year in
25 which made, if made after the close of such first month, and

1 for all succeeding taxable years of the corporation. Such
2 revocation shall be made in such manner as the state
3 department of revenue shall prescribe by regulations.

4 ~~(3)(5)~~ Ceases to be small business corporation. An
5 election under subsection (a) made by a small business
6 corporation shall terminate if at any time--

7 (A) after the first day of the first taxable year of
8 the corporation for which the election is effective, if such
9 election is made on or before such first day, or

10 (B) after the day on which the election is made, if
11 such election is made after such first day, the corporation
12 ceases to be a small business corporation (as defined in
13 this act). Such termination shall be effective for the
14 taxable year of the corporation in which the corporation
15 ceases to be a small business corporation and for all
16 succeeding taxable years of the corporation.

17 (f) Election after termination. If a small business
18 corporation has made an election under subsection (a) and if
19 such election has been terminated or revoked under
20 subsection (e), such corporation (and any successor
21 corporation) shall not be eligible to make an election under
22 subsection (a) for any taxable year prior to its fifth
23 taxable year which begins after the first taxable year for
24 which such termination or revocation is effective, unless
25 the state department of revenue consents to such election.

1 (g) This election shall not be effective unless the
2 corporate net income or loss of such electing corporation
3 shall have been included in the stockholders' adjusted gross
4 income as such is defined in section 84-4905.

5 (h) Every electing corporation shall be required to
6 pay the minimum fee of ten dollars (\$10.00) required by
7 section 84-1501."

8 Section 3. Application. The amendments made in
9 sections 1 and 2 apply to taxable years beginning after
10 December 31, 1976.

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(2) have as a shareholder a person (other than an estate and other than a trust described in subsection e) who is not an individual;
(3) have a nonresident alien as a shareholder; and
(4) have more than one class of stock.

(b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under this act, in

effect for such taxable year.

(c) Stock owned by husband and wife. For purposes of subsection (a)(1), stock which SHALL BE TREATED AS OWNED BY ONE SHAREHOLDER WHEN IT:

(1) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a state;

(2) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common;

(3) was, on the date of death of a spouse, stock described in subsection (c)(1) or (c)(2) and is, by reason of such death, held by the estate of the deceased spouse and the surviving spouse or by the estates of both spouses (by reason of their deaths on the same date), in the same proportion as held by the spouses before such death; or

(4) was, on the date of the death of a surviving spouse, stock described in subsection (c)(3) and is, by reason of such death, held by the estates of both spouses in the same proportion as held by the spouses before their deaths shall be treated as owned by one shareholder.

(d) Special shareholder rules.

(1) A small business corporation which has been an electing small business corporation for a period of 5 consecutive taxable years may not have more than 15 shareholders.

1 (2) If, during the 5-year period set forth in
 2 subsection (d)(1), the number of shareholders of an electing
 3 small business corporation would increase to an amount in
 4 excess of 10 (but not in excess of 15) solely by reason of
 5 additional shareholders who acquired their stock through
 6 inheritance, the corporation may have a number of additional
 7 shareholders equal to the number by which the inheriting
 8 shareholders cause the total number of shareholders of such
 9 corporation to exceed 10.

10 (e) Certain trusts permitted as shareholders. For
 11 purposes of subsection (a), the following trusts may be
 12 shareholders:

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 14 grantor under sections 671 through 678 of the Internal
 15 Revenue Code;

16 (2) a trust created primarily to exercise the voting
 17 power of stock transferred to it;

18 (3) any trust with respect to stock transferred to it
 19 pursuant to the terms of a will, but only for the 60-day
 20 period beginning on the day on which such stock is
 21 transferred to it. In the case of a trust described in
 22 subsection (a)(2), each beneficiary of the trust shall, for
 23 purposes of subsection (a)(1), be treated as a shareholder."

24 Section 2. Section 84-1501.2, R.C.M. 1947, is amended
 25 to read as follows:

1 "84-1501.2. Election by small business corporation.
 2 (a) Eligibility. Except as provided in subsection (f), any
 3 small business corporation may elect, in accordance with the
 4 provisions of this section, not to be subject to the taxes
 5 imposed by this chapter. Such election shall be valid only
 6 if all persons who are shareholders in such corporation--

7 (1) on the first day of the first taxable year for
 8 which such election is effective, if such election is made
 9 on or before such first day, or

10 (2) on the day on which the election is made, if the
 11 election is made after such first day, consent to such
 12 election.

13 (b) Effect. If a small business corporation makes an
 14 election under subsection (a), then--

15 (1) with respect to the taxable years of the
 16 corporation for which such election is in effect, such
 17 corporation shall not be subject to the taxes imposed by
 18 this chapter and, with respect to such taxable years and all
 19 succeeding taxable years, the provisions of this act shall
 20 apply to such corporation, and

21 (2) with respect to the taxable years of a shareholder
 22 of such corporation in which or with which the taxable years
 23 of the corporation for which such election is in effect end,
 24 the provisions of this act shall apply to such shareholder,
 25 and with respect to such taxable years and all succeeding

1 taxable years, the provisions of this act shall apply to
2 such shareholder.

3 (c) Where and how made.

4 (1) In general. An election under subsection (a) may
5 be made by a small business corporation for any taxable year
6 at any time during the first month of such taxable year, or
7 at any time during the month preceding such first month.
8 Such election shall be made in such manner as the department
9 of revenue shall prescribe by regulations.

10 (2) Taxable years beginning before date of enactment.
11 An election may be made under subsection (a) by a small
12 business corporation for its first taxable year which begins
13 after December 31, 1958, and on or before the date of the
14 enactment of this subchapter, and ends after such date at
15 any time—

16 (A) within the 90-day period beginning on the day
17 after the date of the enactment of this subchapter, or

18 (B) if its taxable year ends within such 90-day
19 period, before the close of such taxable year.

20 An election may be made pursuant to this paragraph only
21 if the small business corporation has been a small business
22 corporation (as defined in this act) on each day after the
23 date of the enactment of this subchapter and before the day
24 of such election.

25 (d) Years for which effective. An election under

1 subsection (a) shall be effective for the taxable year of
2 the corporation for which it is made and for all succeeding
3 taxable years of the corporation, unless it is terminated,
4 with respect to any such taxable year, under subsection (e).

5 (e) Termination.

6 (1) New shareholders. An election under subsection (a)
7 made by a small business corporation shall terminate if any
8 person who was not a shareholder in such corporation—

9 (A) on the first day of the first taxable year of the
10 corporation for which the election is effective, if such
11 election is made on or before such first day, or

12 (B) on the day on which the election is made, if such
13 election is made after such first day, becomes a shareholder
14 in such corporation and ~~does not consent to such election~~
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22 election on or before the 60th day on which he acquires the
23 stock.

24 (2) If the person acquiring the stock is the estate of
25 a decedent, the period under subsection (e)(1) for

1 affirmatively refusing to consent to the election shall
 2 expire on the 60th day after whichever of the following is
 3 the earlier:

4 (A) the day on which the executor or administrator of
 5 the estate qualifies; or

6 (B) the last day of the taxable year of the
 7 corporation in which the decedent died.

8 (3) Any termination of an election under subsection
 9 (e) (1) by reason of the affirmative refusal of any person to
 10 consent to such election shall be effective for the taxable
 11 year of the corporation in which such person becomes a
 12 shareholder in the corporation and for all succeeding
 13 taxable years of the corporation.

14 ~~(2)~~(4) Revocation. An election under subsection (a)
 15 made by a small business corporation may be revoked by it
 16 for any taxable year of the corporation after the first
 17 taxable year for which the election is effective. An
 18 election may be revoked only if all persons who are
 19 shareholders in the corporation on the day on which the
 20 revocation is made consent to the revocation. A revocation
 21 under this paragraph shall be effective—

22 (A) for the taxable year in which made, if made before
 23 the close of the first month of such taxable year.

24 (B) for the taxable year following the taxable year in
 25 which made, if made after the close of such first month, and

1 for all succeeding taxable years of the corporation. Such
 2 revocation shall be made in such manner as the state
 3 department of revenue shall prescribe by regulations.

4 ~~(3)~~(5) Ceases to be small business corporation. An
 5 election under subsection (a) made by a small business
 6 corporation shall terminate if at any time—

7 (A) after the first day of the first taxable year of
 8 the corporation for which the election is effective, if such
 9 election is made on or before such first day, or

10 (B) after the day on which the election is made, if
 11 such election is made after such first day, the corporation
 12 ceases to be a small business corporation (as defined in
 13 this act). Such termination shall be effective for the
 14 taxable year of the corporation in which the corporation
 15 ceases to be a small business corporation and for all
 16 succeeding taxable years of the corporation.

17 (f) Election after termination. If a small business
 18 corporation has made an election under subsection (a) and if
 19 such election has been terminated or revoked under
 20 subsection (e), such corporation (and any successor
 21 corporation) shall not be eligible to make an election under
 22 subsection (a) for any taxable year prior to its fifth
 23 taxable year which begins after the first taxable year for
 24 which such termination or revocation is effective, unless
 25 the state department of revenue consents to such election.

1 (g) This election shall not be effective unless the
2 corporate net income or loss of such electing corporation
3 shall have been included in the stockholders' adjusted gross
4 income as such is defined in section 84-4905.

5 (h) Every electing corporation shall be required to
6 pay the minimum fee of ten dollars (\$10.00) required by
7 section 84-1501."

8 Section 3. Application. The amendments made in
9 sections 1 and 2 apply to taxable years beginning after
10 December 31, 1976.

-End-

April 5, 1977

SENATE
STANDING COMMITTEE REPORT
Taxation Committee

That House Bill No. 422, third reading be amended as follows:

1. Amend title, line 5.

Following: "CORPORATIONS"

Insert: "and corporation loss carryovers"

2. Amend title, line 6.

Following: "84-1501.1"

Insert: ", "

3. Amend title, line 7.

Following: "84-1501.2"

Insert: "and 84-1502"

4. Amend page 9, section 2, line 7.

Following: "line 7"

Insert: "Section 3. Section 84-1502, R.C.M. 1947 is amended to read as follows:

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

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

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

April 5, 1977

Page 2

House Bill No. 422

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deduction allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the ~~three~~ (3) taxable periods preceeding the taxable period of such loss and shall be a net operating loss carryover to each of the ~~five~~ (5) taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the 3 preceeding taxable periods, shall be a net operating loss carryover to each of the 7 taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceeding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period of any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

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

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

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

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

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

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

(e) Notwithstanding the provisions of section 84-1508.1 (c), R.C.M., 1947, interest shall not be paid with respect to a

refund of tax resulting from a net operating loss carryback or carryover.

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

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

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

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

6. Taxes paid within the year except the following: (a) Taxes imposed by this act.

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

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

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

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

Renumber: subsequent sections

5. Amend page 9, section 3, line 10.

Following: "1976."

Insert: "The amendment made in section 3 applies to taxable years ending after December 31, 1975."

HOUSE BILL NO. 422

INTRODUCED BY RAMIREZ, PORTER, MOORE, FABREGA, MARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCORPORATE THE FEDERAL CHANGES OF SUBCHAPTER S CORPORATIONS AND CORPORATION LOSS CARRYOVERS CONTAINED IN THE TAX REFORM ACT OF 1976; AMENDING SECTIONS 84-1501.1, ~~AND~~ 84-1501.2, AND 84-1502, R.C.M. 1947."

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

Section 1. Section 84-1501.1, R.C.M. 1947, is amended to read as follows:

"84-1501.1. Definitions. (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

(1) have more than ten (10) shareholders;

(2) have as a shareholder a person (other than an estate and other than a trust described in subsection (e) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

(b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business

corporation which has made an election under this act, in effect for such taxable year.

(c) Stock owned by husband and wife. For purposes of subsection (a)(1), stock which SHALL BE TREATED AS OWNED BY ONE SHAREHOLDER WHEN IT:

(1) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a state;

(2) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common;

(3) was, on the date of death of a spouse, stock described in subsection (c)(1) or (c)(2) and is, by reason of such death, held by the estate of the deceased spouse and the surviving spouse or by the estates of both spouses (by reason of their deaths on the same date), in the same proportion as held by the spouses before such death; or

(4) was, on the date of the death of a surviving spouse, stock described in subsection (c)(3) and is, by reason of such death, held by the estates of both spouses in the same proportion as held by the spouses before their deaths ~~shall be treated as owned by one shareholder.~~

(d) Special shareholder rules.

(1) A small business corporation which has been an electing small business corporation for a period of 5 consecutive taxable years may not have more than 15

1 shareholders.

2 (2) If, during the 5-year period set forth in
 3 subsection (d)(1), the number of shareholders of an electing
 4 small business corporation would increase to an amount in
 5 excess of 10 (but not in excess of 15) solely by reason of
 6 additional shareholders who acquired their stock through
 7 inheritance, the corporation may have a number of additional
 8 shareholders equal to the number by which the inheriting
 9 shareholders cause the total number of shareholders of such
 10 corporation to exceed 10.

11 (e) Certain trusts permitted as shareholders. For
 12 purposes of subsection (a), the following trusts may be
 13 shareholders:

14 (1) a trust all of which is treated as owned by the
 15 grantor under sections 671 through 678 of the Internal
 16 Revenue Code;

17 (2) a trust created primarily to exercise the voting
 18 power of stock transferred to it;

19 (3) any trust with respect to stock transferred to it
 20 pursuant to the terms of a will, but only for the 60-day
 21 period beginning on the day on which such stock is
 22 transferred to it. In the case of a trust described in
 23 subsection (e)(2), each beneficiary of the trust shall, for
 24 purposes of subsection (a)(1), be treated as a shareholder."

25 Section 2. Section 84-1501.2, P.C.M. 1947, is amended

1 to read as follows:

2 "84-1501.2. Election by small business corporation.

3 (a) Eligibility. Except as provided in subsection (f), any
 4 small business corporation may elect, in accordance with the
 5 provisions of this section, not to be subject to the taxes
 6 imposed by this chapter. Such election shall be valid only
 7 if all persons who are shareholders in such corporation--

8 (1) on the first day of the first taxable year for
 9 which such election is effective, if such election is made
 10 on or before such first day, or

11 (2) on the day on which the election is made, if the
 12 election is made after such first day, consent to such
 13 election.

14 (b) Effect. If a small business corporation makes an
 15 election under subsection (a), then--

16 (1) with respect to the taxable years of the
 17 corporation for which such election is in effect, such
 18 corporation shall not be subject to the taxes imposed by
 19 this chapter and, with respect to such taxable years and all
 20 succeeding taxable years, the provisions of this act shall
 21 apply to such corporation, and

22 (2) with respect to the taxable years of a shareholder
 23 of such corporation in which or with which the taxable years
 24 of the corporation for which such election is in effect end,
 25 the provisions of thi act shall apply to such shareholder,

1 and with respect to such taxable years and all succeeding
2 taxable years, the provisions of this act shall apply to
3 such shareholder.

4 (c) Where and how made.

5 (1) In general. An election under subsection (a) may
6 be made by a small business corporation for any taxable year
7 at any time during the first month of such taxable year, or
8 at any time during the month preceding such first month.
9 Such election shall be made in such manner as the department
10 of revenue shall prescribe by regulations.

11 (2) Taxable years beginning before date of enactment.
12 An election may be made under subsection (a) by a small
13 business corporation for its first taxable year which begins
14 after December 31, 1958, and on or before the date of the
15 enactment of this subchapter, and ends after such date at
16 any time--

17 (A) within the 90-day period beginning on the day
18 after the date of the enactment of this subchapter, or

19 (B) if its taxable year ends within such 90-day
20 period, before the close of such taxable year.

21 An election may be made pursuant to this paragraph only
22 if the small business corporation has been a small business
23 corporation (as defined in this act) on each day after the
24 date of the enactment of this subchapter and before the day
25 of such election.

1 (d) Years for which effective. An election under
2 subsection (a) shall be effective for the taxable year of
3 the corporation for which it is made and for all succeeding
4 taxable years of the corporation, unless it is terminated,
5 with respect to any such taxable year, under subsection (e).

6 (e) Termination.

7 (1) New shareholders. An election under subsection (a)
8 made by a small business corporation shall terminate if any
9 person who was not a shareholder in such corporation--

10 (A) on the first day of the first taxable year of the
11 corporation for which the election is effective, if such
12 election is made on or before such first day, or

13 (B) on the day on which the election is made, if such
14 election is made after such first day, becomes a shareholder
15 in such corporation and ~~does not consent to such election~~
16 ~~within such time as the state department of revenue shall~~
17 ~~prescribe by regulations. Such termination shall be~~
18 ~~effective for the taxable year of the corporation in which~~
19 ~~such person becomes a shareholder in the corporation and for~~
20 ~~all succeeding taxable years of the corporation~~
21 affirmatively refuses (in such manner as the department of
22 revenue shall by rules prescribe) to consent to such
23 election on or before the 60th day on which he acquires the
24 stock.

25 (2) If the person acquiring the stock is the estate of

1 ~~a decedent, the period under subsection (e)(1) for~~
 2 ~~affirmatively refusing to consent to the election shall~~
 3 ~~expire on the 60th day after whichever of the following is~~
 4 ~~the earlier:~~

5 ~~(A) the day on which the executor or administrator of~~
 6 ~~the estate qualifies; or~~

7 ~~(B) the last day of the taxable year of the~~
 8 ~~corporation in which the decedent died.~~

9 ~~(3) Any termination of an election under subsection~~
 10 ~~(e)(1) by reason of the affirmative refusal of any person to~~
 11 ~~consent to such election shall be effective for the taxable~~
 12 ~~year of the corporation in which such person becomes a~~
 13 ~~shareholder in the corporation and for all succeeding~~
 14 ~~taxable years of the corporation.~~

15 ~~(2)(4) Revocation. An election under subsection (a)~~
 16 ~~made by a small business corporation may be revoked by it~~
 17 ~~for any taxable year of the corporation after the first~~
 18 ~~taxable year for which the election is effective. An~~
 19 ~~election may be revoked only if all persons who are~~
 20 ~~shareholders in the corporation on the day on which the~~
 21 ~~revocation is made consent to the revocation. A revocation~~
 22 ~~under this paragraph shall be effective--~~

23 ~~(A) for the taxable year in which made, if made before~~
 24 ~~the close of the first month of such taxable year.~~

25 ~~(B) for the taxable year following the taxable year in~~

1 which made, if made after the close of such first month, and
 2 for all succeeding taxable years of the corporation. Such
 3 revocation shall be made in such manner as the state
 4 department of revenue shall prescribe by regulations.

5 ~~(3)(5) Ceases to be small business corporation. An~~
 6 ~~election under subsection (a) made by a small business~~
 7 ~~corporation shall terminate if at any time--~~

8 ~~(A) after the first day of the first taxable year of~~
 9 ~~the corporation for which the election is effective, if such~~
 10 ~~election is made on or before such first day, or~~

11 ~~(B) after the day on which the election is made, if~~
 12 ~~such election is made after such first day, the corporation~~
 13 ~~ceases to be a small business corporation (as defined in~~
 14 ~~this act). Such termination shall be effective for the~~
 15 ~~taxable year of the corporation in which the corporation~~
 16 ~~ceases to be a small business corporation and for all~~
 17 ~~succeeding taxable years of the corporation.~~

18 ~~(f) Election after termination. If a small business~~
 19 ~~corporation has made an election under subsection (a) and if~~
 20 ~~such election has been terminated or revoked under~~
 21 ~~subsection (e), such corporation (and any successor~~
 22 ~~corporation) shall not be eligible to make an election under~~
 23 ~~subsection (a) for any taxable year prior to its fifth~~
 24 ~~taxable year which begins after the first taxable year for~~
 25 ~~which such termination or revocation is effective, unless~~

1 the state department of revenue consents to such election.

2 (g) This election shall not be effective unless the
3 corporate net income or loss of such electing corporation
4 shall have been included in the stockholders' adjusted gross
5 income as such is defined in section 84-4905.

6 (h) Every electing corporation shall be required to
7 pay the minimum fee of ten dollars (\$10.00) required by
8 section 84-1501."

9 SECTION 3. SECTION 84-1502, R.C.M. 1947, IS AMENDED TO
10 READ AS FOLLOWS:

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

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

1 that where domestic corporations are taxed on income derived
2 from without the state, salaries of officers paid in
3 connection with securing such income shall be deductible.

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

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

1 allowed by this section, 84-1502, over the gross income,
 2 with the modifications specified in paragraph (b) of this
 3 subsection. If for any taxable period beginning after
 4 December 31, 1970, a net operating loss is sustained, such
 5 loss shall be a net operating loss carryback to each of the
 6 three ~~{3}~~ taxable periods preceding the taxable period of
 7 such loss and shall be a net operating loss carryover to
 8 each of the five ~~{5}~~ taxable periods following the taxable
 9 period of such loss. A net operating loss for any taxable
 10 period ending after December 31, 1975, in addition to being
 11 a net operating loss carryback to each of the three
 12 preceding taxable periods, shall be a net operating loss
 13 carryover to each of the seven taxable periods following the
 14 taxable period of such loss. The portion of such loss which
 15 shall be carried to each of the other taxable years shall be
 16 the excess, if any, of the amount of such loss over the sum
 17 of the net income for each of the prior taxable periods to
 18 which such loss was carried. For purposes of the preceding
 19 sentence, the net income for such prior taxable period shall
 20 be computed with the modifications specified in paragraph
 21 (b)(ii) of this subsection and by determining the amount of
 22 the net operating loss deduction without regard to the net
 23 operating loss for the loss period or any taxable period
 24 thereafter, and the net income so computed shall not be
 25 considered to be less than zero.

1 (b) The modifications referred to in paragraph (a) of
 2 this subsection shall be as follows:
 3 (i) No net operating loss deduction shall be allowed.
 4 (ii) The deduction for depletion shall not exceed the
 5 amount which would be allowable if computed under the cost
 6 method.
 7 (c) A net operating loss deduction shall be allowed
 8 only with regard to losses attributable to the business
 9 carried on within the state of Montana.
 10 (d) In the case of a merger of corporations, the
 11 surviving corporation shall not be allowed a net operating
 12 loss deduction for net operating losses sustained by the
 13 merged corporations prior to the date of merger.
 14 In the case of a consolidation of corporations, the new
 15 corporate entity shall not be allowed a deduction for net
 16 operating losses sustained by the consolidated corporations
 17 prior to the date of consolidation.
 18 (e) Notwithstanding the provisions of section
 19 84-1508.1 (c), R.C.M., 1947, interest shall not be paid with
 20 respect to a refund of tax resulting from a net operating
 21 loss carryback or carryover.
 22 (f) The net operating loss deduction shall not be
 23 allowed with respect to taxable periods which ended on or
 24 before December 31, 1970, but shall be allowed only with
 25 respect to taxable periods beginning on or after January 1,

1 1971.

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

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

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

22 6. Taxes paid within the year except the following:
23 (a) Taxes imposed by this act.

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

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

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

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

9 Section 4. Application. The amendments made in
10 sections 1 and 2 apply to taxable years beginning after
11 December 31, 1976. THE AMENDMENT MADE IN SECTION 3 APPLIES
12 TO TAXABLE YEARS ENDING AFTER DECEMBER 31, 1975.

-End-