

1 *Senate* BILL NO. *87*
 2 INTRODUCED BY *Fowle, Masten, Thiesman, Oyle*
 3 *Hay, Lockyer, Brown, Manning, Shinnel*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
 5 DEDUCTION OF CORPORATE CHARITABLE CONTRIBUTIONS AND GIFTS IN
 6 COMPUTING NET INCOME FOR THE PAYMENT OF THE CORPORATION
 7 LICENSE TAX; AMENDING SECTION 84-1502, R.C.M. 1947."

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

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

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

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

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

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

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

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

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

- 24 (i) No net operating loss deduction shall be allowed.
 25 (ii) The deduction for depletion shall not exceed the

1 amount which would be allowable if computed under the cost
 2 method.

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

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

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

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

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

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

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

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

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

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

19 (a) Taxes imposed by this act.

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

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

25 (d) Taxes imposed by any other state or country upon

1 or measured by net income or profits.

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 ~~7. Charitable contributions and gifts qualifying for a~~
 6 ~~deduction under section 170 of the Internal Revenue Code, as~~
 7 ~~amended."~~

-End-

STATE OF MONTANA

REQUEST NO. 77-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 14, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 87 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 amends the corporation license tax law in order to allow a deduction in computing taxable income for charitable contributions and gifts made by a corporation.

ASSUMPTIONS

1. Actual corporation license tax data for FY 76 indicate that, had the proposed deduction been available, a loss in revenue to the state amounting to \$256,000 would have resulted.
2. Actual collections of corporation license tax during FY 76 were \$23.020 million.
3. The same percentage decrease as observed in FY 76 will occur in both FY 78 and 79.
4. Corporation license tax collections are estimated to be \$26.5 million in FY 78 and \$28.0 million in FY 79.
5. No change in administrative expenses will be noted.

FISCAL IMPACT

	<u>FY 78</u>	<u>FY 79</u>
Corp. Lic. tax under current law	\$26.5 million	\$28.0 million
Corp. Lic. tax under proposed law	<u>\$26.206 million</u>	<u>\$27.689 million</u>
DECREASE in Corp. License tax	<u>\$294,000</u>	<u>\$311,000</u>

EFFECT ON COUNTY OR LOCAL REVENUE

None

LONG-RANGE EFFECTS

Revenue from the corporation license tax would be about 1% less under the proposed law than it would be under current law.

CONCLUSION

If the bill were enacted corporation license tax collections for the 1978-79 biennium would fall approximately \$600,000 below levels currently projected.

PREPARED BY DEPARTMENT OF REVENUE

[Signature]
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/14/77

Approved by Committee
on Taxation

SENATE BILL NO. 87

INTRODUCED BY LOWE, MATHERS, THIESSEN

BOYLAN, HAGER, LOCKREM, BROWN, MANNING, HIMSL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE
DEDUCTION OF CORPORATE CHARITABLE CONTRIBUTIONS AND GIFTS IN
COMPUTING NET INCOME FOR THE PAYMENT OF THE CORPORATION
LICENSE TAX; AMENDING SECTION 84-1502, R.C.M. 1947."

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

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

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

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

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

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

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

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
 17 with respect to a refund of tax resulting from a net
 18 operating loss carryback or carryover.

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

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

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

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

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

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

20 (a) Taxes imposed by this act.

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

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

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

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

6 ~~7. Charitable contributions and gifts qualifying for a~~
 7 ~~deduction under section 170 of the Internal Revenue Code, as~~
 8 ~~amended WHICH QUALIFY, AND TO THE EXTENT ALLOWED, AS A~~
 9 ~~DEDUCTION FROM GROSS INCOME OF CORPORATIONS, UNDER SECTION~~
 10 ~~170 OF THE INTERNAL REVENUE CODE OR AS THAT SECTION MAY BE~~
 11 ~~AMENDED OR REMEMBERED."~~

-End-

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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.

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 2 or measured by net income or profits.

3 Taxes deductible under this act shall be construed to
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 5 municipality of this state.

6 7. Charitable contributions and gifts qualifying for a
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 9 DEDUCTION FROM GROSS INCOME OF CORPORATIONS, UNDER SECTION
 10 170 OF THE INTERNAL REVENUE CODE OR AS THAT SECTION MAY BE
 11 AMENDED OR RENUMBERED."

-End-