

1 *Senate* BILL NO. *167*  
 2 INTRODUCED BY *Rasmussen* *Hager* *Brown* *Esteban*  
 3 *Kolstad* *Jergeson* *Lewis* *Steenhens* *Blaylock*  
 4 *Ward* BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE

5 TAXATION OF INCOME; PROVIDING INCENTIVES FOR THE  
 6 INSTALLATION OR ACQUISITION OF SOLAR OR OTHER RECOGNIZED  
 7 NONFOSSIL FORMS OF ENERGY GENERATION BY TAXPAYERS BY  
 8 PROVIDING INCOME OR LICENSE TAX CREDITS AND ACCELERATED  
 9 AMORTIZATION OF THE COSTS OF THE SYSTEMS; AMENDING SECTIONS  
 10 84-1502 AND 84-4906, R.C.M. 1947."

11  
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Energy system tax incentive for  
 14 individuals. (1) A resident individual taxpayer who  
 15 completes installation of an energy system using a  
 16 recognized nonfossil form of energy generation, as defined  
 17 in 84-7402, in such taxpayer's principal dwelling prior to  
 18 December 31, 1982, or who acquires title to a dwelling prior  
 19 to December 31, 1982, which dwelling is to be used as the  
 20 taxpayer's principal dwelling and is equipped with an energy  
 21 system for which the credit allowed by this section has  
 22 never been claimed, is entitled to claim a tax credit in an  
 23 amount equal to 40% of the first \$1,000 and 20% of the next  
 24 \$3,000 of the cost of such system, including installation  
 25 costs, or, if the federal government provides for a tax

1 credit substantially similar in kind (not in amount), then a  
 2 tax credit in an amount equal to 20% of the first \$1,000 and  
 3 10% of the next \$3,000 of the cost of such system, including  
 4 installation costs, against the income tax liability imposed  
 5 against such taxpayer pursuant to Title 84, chapter 49,  
 6 R.C.M. 1947.

7 (2) The tax credit is to be deducted from the  
 8 taxpayer's income tax liability for the taxable year in  
 9 which the energy system was acquired by the taxpayer. If  
 10 the amount of the tax credit exceeds the taxpayer's income  
 11 tax liability for the taxable year, the amount which exceeds  
 12 the tax liability may be carried over for deduction from the  
 13 taxpayer's income tax liability in the next succeeding  
 14 taxable year or years until the total amount of the tax  
 15 credit has been deducted from tax liability. Notwithstanding  
 16 the foregoing provision, no tax credit may be carried over  
 17 for deduction after the fourth taxable year succeeding the  
 18 taxable year in which the energy system was acquired.

19 Section 2. Energy system tax incentive for real  
 20 property owners. A taxpayer, including a corporation, who  
 21 completes installation of an energy system using a  
 22 recognized nonfossil form of energy generation, as defined  
 23 in 84-7402, upon real property located within this state  
 24 prior to December 31, 1982, which real property is either  
 25 used in a trade or business or held for the production of

*S.B. 117*

1 income, or any taxpayer who acquires title to real property  
 2 located within this state prior to December 31, 1982, which  
 3 real property is used in a trade or business or held for the  
 4 production of income and is equipped with an energy system  
 5 for which the credit allowed by this section has never been  
 6 claimed, is entitled to claim an income tax credit or in the  
 7 case of a corporation a license tax credit or income tax  
 8 credit in an amount equal to 40% of the first \$3,000 and 20%  
 9 of the next \$9,000 of the cost of the energy system,  
 10 including installation costs, or if the federal government  
 11 provides for a tax credit substantially similar in kind (not  
 12 in amount), then an income tax credit in an amount equal to  
 13 20% of the first \$3,000 and 10% of the next \$9,000 of the  
 14 cost of the energy system, including installation costs, or  
 15 an amount equal to the taxpayer's income tax liability in  
 16 the taxable year for which the credit is claimed, whichever  
 17 is less, against the tax liability imposed against such  
 18 taxpayer pursuant to Title 84, chapter 49, R.C.M. 1947 or in  
 19 the case of a corporation, pursuant to Title 84, chapter 15  
 20 or chapter 69, R.C.M. 1947. The tax credit is to be deducted  
 21 from the taxpayer's tax liability for the taxable year in  
 22 which the energy system is acquired and placed into service  
 23 by the taxpayer.

24 Section 3. Election to amortize energy system costs.

25 (1) A taxpayer who completes installation of an energy

1 system using a recognized nonfossil form of energy  
 2 generation, as defined in 84-7402, upon real property  
 3 located within this state prior to December 31, 1982, which  
 4 real property is either used in a trade or business or held  
 5 for the production of income, or any taxpayer who acquires  
 6 title to real property located within this state prior to  
 7 December 31, 1982, which real property is used in a trade or  
 8 business or held for the production of income and is  
 9 equipped with such an energy system, may elect to amortize  
 10 the adjusted basis of the energy system based upon a period  
 11 of 60 months.

12 (2) In computing Montana taxable income, amortization  
 13 is to be allowed as a deduction from Montana adjusted gross  
 14 income ratable over the 60-month period beginning with the  
 15 month in which the energy system is completed or acquired  
 16 and placed into service by the taxpayer. The election of the  
 17 taxpayer to claim the amortization deduction allowed by this  
 18 section is to be indicated in an appropriate statement  
 19 attached to the taxpayer's income tax return for the taxable  
 20 year in which the energy system was completed or acquired  
 21 and placed into service. The election of the taxpayer to  
 22 claim the amortization deduction does not preclude him from  
 23 taking the tax credit.

24 (3) As used in this section, "adjusted basis of the  
 25 energy system" means an amount that is properly attributable

1 to the construction, reconstruction, remodeling,  
2 installation, or acquisition of the system.

3 Section 4. 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~~ are allowed as  
7 deductions:

8 (a) ~~The the~~ items referred to in sections 161 and 211  
9 of 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 following exceptions provided in section 84-4909, relating  
13 to items which are not deductible:

14 (i) items provided for in 84-4909;

15 (ii) state income tax paid;

16 (iii) all depreciation deductions claimed on the  
17 federal return for any portion of property upon which the  
18 deduction allowed by [section 3 of this act] is claimed;

19 (b) ~~Federal~~ federal income tax paid within the taxable  
20 year;

21 (c) an amount for the amortization deduction for an  
22 energy system allowed pursuant to [section 3 of this act]."

23 Section 5. Section 84-1502, R.C.M. 1947, is amended to  
24 read as follows:

25 "84-1502. Deductions allowed in computing income. In

1 computing the net income the following deductions shall be  
2 allowed from the gross income received by such corporation  
3 within the year from all sources:

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

18 2. (A) All losses actually sustained and charged off  
19 within the year and not compensated by insurance or  
20 otherwise, including a reasonable allowance for the wear and  
21 tear and obsolescence of property used in the trade or  
22 business, such allowance to be determined according to the  
23 provisions of section 167 of the internal revenue code in  
24 effect with respect to the taxable year. However, insofar as  
25 the election to amortize the adjusted basis of an energy

1 system based upon a period of 60 months pursuant to [section  
 2 3 of this act] is not permissible under federal law, an  
 3 amount for the amortization deduction for an energy system  
 4 allowed pursuant to [section 3 of this act] is allowed and  
 5 the amount of all depreciation deductions claimed on the  
 6 federal return for any portion of property upon which the  
 7 deduction allowed by [section 3 of this act] is claimed are  
 8 not allowed. All elections for depreciation shall be the  
 9 same as the elections made for federal income tax purposes.  
 10 No deduction, except as provided above, shall be allowed for  
 11 any amount paid out for any buildings, permanent  
 12 improvements or betterments made to increase the value of  
 13 any property or estate and no deduction shall be made for  
 14 any amount of expense of restoring property or making good  
 15 the exhaustion thereof for which an allowance is or has been  
 16 made.

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

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

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

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

25 (c) A net operating loss deduction shall be allowed

1 only with regard to losses attributable to the business  
2 carried on within the state of Montana.

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

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

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

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

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

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

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

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

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

- 16 (a) Taxes imposed by this act.
- 17 (b) Taxes assessed against local benefits of a kind  
18 tending to increase the value of the property assessed.
- 19 (c) Taxes on or according to or measured by net income  
20 or profits imposed by authority of the government of the  
21 United States.

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

24 Taxes deductible under this act shall be construed to  
25 include taxes imposed by any county, school district or

1 municipality of this state."

2 Section 6. There is a new R.C.M. section that reads as  
3 follows:

4 Department of revenue duties. The department of revenue  
5 shall prescribe rules necessary to carry out the purposes of  
6 this act.

7 Section 7. There is a new R.C.M. section that reads as  
8 follows:

9 Time of application. The provisions of this act apply  
10 to all taxable years commencing after December 31, 1976.

-End-

## STATE OF MONTANA

REQUEST NO. 134-77

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 167 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 is an act relating to the taxation of income; providing incentives for the installation or acquisition of solar or other recognized nonfossil forms of energy generation by taxpayers by providing income or license tax credits and accelerated amortization of the costs of the systems.

ASSUMPTIONS

1. The number of taxpayers taking advantage of the proposed amortization deduction and tax credit, for individual income tax purposes, would be between 0.5% and 1% of all returns, and these taxpayers will be found in the top 10% of all returns. The distribution of these returns will be similar to the distribution of returns for calendar year 1975.
2. Each of the hypothetical taxpayers of assumption 1 will install \$1,000.00 worth of non-fossil energy generation equipment.
3. The amortization deduction for each affected taxpayer will be \$170 per year, as determined by the sinking fund method using 8% as the annual rate of interest and \$1,000 (from assumption 2) as the final amount at the end of 5 years.
4. The individual income tax credit for each affected taxpayer will be \$400.
5. The percentage decreases in total calendar year tax liability under assumptions 1-4 will apply equally to calendar years 1977, 1978 and 1979.
6. The Department of Revenue forecast of individual income tax for 1978 and 1979 is assumed to be the basis for comparison.

FISCAL IMPACT

|   | <u>FY 78</u>                    | <u>FY 79</u>                    |
|---|---------------------------------|---------------------------------|
| Individual Income Tax Collection<br>under current law.  | \$123.732M                      | \$140.093M                      |
| Individual Income Tax Collection<br>under proposed law. | <u>\$121.959M to \$122.768M</u> | <u>\$137.851M to \$138.973M</u> |
| DECREASE INDIV. INCOME TAX COLLECTIONS                  | <u>\$1.773M to \$.964M</u>      | <u>\$2.242M to \$1.12M</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)

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BUDGET DIRECTOR

Office of Budget and Program Planning

Date: \_\_\_\_\_

STATE OF MONTANA

REQUEST NO. 134-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 167 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.

Page 2

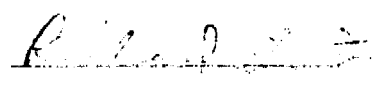
LONG-RANGE EFFECTS

0.8% to 1.6% decrease in individual income tax collections. It is impossible to estimate the effect on corporation tax collections.

TECHNICAL NOTE

An implicit assumption is that the Department of Revenue will not require any additional staff for auditing, investigations, and administration under the proposed law. This is probably not realistic.

PREPARED BY DEPARTMENT OF REVENUE

  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-24-77



## STATE OF MONTANA

REQUEST NO. 134-77

## FISCAL NOTE

REVISED  
AMENDED

Form BD-15

In compliance with a written request received April 12, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 167 ~~Revised~~ <sup>AMENDED</sup> 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.

THIS IS A REVISED FISCAL NOTEDESCRIPTION

This bill is an act relating to the taxation of income; providing incentives for the installation or acquisition of solar or other recognized nonfossil forms of energy generation by taxpayers by providing income or license tax credits and accelerated amortization of the costs of the systems.

ASSUMPTIONS

1. The number of taxpayers taking advantage of the proposed amortization deduction and tax credit, for individual income tax purposes, would be between 0.5% and 1% of all returns, and these taxpayers will be found in the top 10% of all returns. The distribution of these returns will be similar to the distribution of returns for calendar year 1975.
2. Each of the hypothetical taxpayers of assumption 1 will install \$1,000.00 worth of non-fossil energy generation equipment.
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4. The individual income tax credit for each affected taxpayer will be \$400.
5. The percentage decreases in total calendar year tax liability under assumptions 1-4 will apply equally to calendar years 1977, 1978 and 1979.
6. The Department of Revenue forecast of individual income tax for 1978 and 1979 is assumed to be the basis for comparison.

FISCAL IMPACT

|   | <u>FY 78</u>                 | <u>FY 79</u>                  |
|---|------------------------------|-------------------------------|
| Individual Income Tax Collection<br>under current law.  | \$123.732                    | \$140.093                     |
| Individual Income Tax Collection<br>under proposed law. | \$122.845M to \$123.250M     | \$138.972M to \$139.533M      |
| DECREASE INDIV. INCOME TAX COLLECTIONS                  | <u>(\$.887M) - (\$.482M)</u> | <u>(\$1.121M) - (\$.560M)</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

REQUEST NO. 134-77

FISCAL NOTE

REVISED

Form BD-15

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Approved by Committee  
on Taxation

1                   SENATE BILL NO. 167

2           INTRODUCED BY RASMUSSEN, HAGER, BROWN, ROBERTS,

3           KOLSTAD, JERGESON, LENSINK, STEPHENS, BLAYLOCK, WARDEN

4

5   A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE

6   TAXATION OF INCOME; PROVIDING INCENTIVES FOR THE

7   INSTALLATION OR ACQUISITION OF SOLAR OR OTHER RECOGNIZED

8   NONFOSSIL FORMS OF ENERGY GENERATION BY TAXPAYERS BY

9   PROVIDING INCOME OR LICENSE TAX CREDITS AND ACCELERATED

10   AMORTIZATION OF THE COSTS OF THE SYSTEMS; AMENDING SECTIONS

11   84-1502 AND 84-4906, R.C.M. 1947."

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

14       Section 1. Energy system tax incentive for

15   individuals. (1) A resident individual taxpayer who

16   completes installation of an energy system using a

17   recognized nonfossil form of energy generation, as defined

18   in 84-7402, in such taxpayer's principal dwelling prior to

19   December 31, 1982, or who acquires title to a dwelling prior

20   to December 31, 1982, which dwelling is to be used as the

21   taxpayer's principal dwelling and is equipped with an energy

22   system for which the credit allowed by this section has

23   never been claimed, is entitled to claim a tax credit in an

24   amount equal to ~~40%~~ 20% of the first \$1,000 and ~~20%~~ 10% of

25   the next \$3,000 of the cost of such system, including

1   installation costs, or, if the federal government provides

2   for a tax credit substantially similar in kind (not in

3   amount), then a tax credit in an amount equal to ~~20%~~ 10% of

4   the first \$1,000 and ~~10%~~ 5% of the next \$3,000 of the cost

5   of such system, including installation costs, against the

6   income tax liability imposed against such taxpayer pursuant

7   to Title 84, chapter 49, R.C.M. 1947.

8       (2) The tax credit is to be deducted from the

9   taxpayer's income tax liability for the taxable year in

10   which the energy system was acquired by the taxpayer. If

11   the amount of the tax credit exceeds the taxpayer's income

12   tax liability for the taxable year, the amount which exceeds

13   the tax liability may be carried over for deduction from the

14   taxpayer's income tax liability in the next succeeding

15   taxable year or years until the total amount of the tax

16   credit has been deducted from tax liability. Notwithstanding

17   the foregoing provision, no tax credit may be carried over

18   for deduction after the fourth taxable year succeeding the

19   taxable year in which the energy system was acquired.

20       Section 2. Energy system tax incentive for real

21   property owners. A taxpayer, including a corporation, who

22   completes installation of an energy system using a

23   recognized nonfossil form of energy generation, as defined

24   in 84-7402, upon real property located within this state

25   prior to December 31, 1982, which real property is either

1 used in a trade or business or held for the production of  
 2 income, or any taxpayer who acquires title to real property  
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 23 which the energy system is acquired and placed into service  
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 2 system using a recognized nonfossil form of energy  
 3 generation, as defined in 84-7402, upon real property  
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 5 real property is either used in a trade or business or held  
 6 for the production of income, or any taxpayer who acquires  
 7 title to real property located within this state prior to  
 8 December 31, 1982, which real property is used in a trade or  
 9 business or held for the production of income and is  
 10 equipped with such an energy system, may elect to amortize  
 11 the adjusted basis of the energy system based upon a period  
 12 of 60 months.

13 (2) In computing Montana taxable income, amortization  
 14 is to be allowed as a deduction from Montana adjusted gross  
 15 income ratable over the 60-month period beginning with the  
 16 month in which the energy system is completed or acquired  
 17 and placed into service by the taxpayer. The election of the  
 18 taxpayer to claim the amortization deduction allowed by this  
 19 section is to be indicated in an appropriate statement  
 20 attached to the taxpayer's income tax return for the taxable  
 21 year in which the energy system was completed or acquired  
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 23 claim the amortization deduction does not preclude him from  
 24 taking the tax credit.

25 (3) As used in this section, "adjusted basis of the

1 energy system" means an amount that is properly attributable  
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4 Section 4. Section 84-4906, R.C.M. 1947, is amended to  
5 read as follows:

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7 In computing net income, there shall be ~~are~~ allowed as  
8 deductions:

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

15 (i) items provided for in 84-4909;

16 (ii) state income tax paid;

17 (iii) all depreciation deductions claimed on the  
18 federal return for any portion of property upon which the  
19 deduction allowed by [section 3 of this act] is claimed;

20 (b) ~~Federal~~ federal income tax paid within the taxable  
21 year;

22 (c) an amount for the amortization deduction for an  
23 energy system allowed pursuant to [section 3 of this act]."

24 Section 5. Section 84-1502, R.C.M. 1947, is amended to  
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1 "84-1502. Deductions allowed in computing income. In  
2 computing the net income the following deductions shall be  
3 allowed from the gross income received by such corporation  
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6 incurred during the taxable year in the maintenance and  
7 operation of its business and properties, including  
8 reasonable allowance for salaries for personal services  
9 actually rendered, subject to the limitation hereinafter  
10 contained, rentals or other payments required to be made as  
11 a condition to the continued use or possession of property  
12 to which the corporation has not taken or is not taking  
13 title, or in which it has no equity. No deduction shall be  
14 allowed for salaries paid upon which the recipient thereof  
15 has not paid Montana state income tax; provided, however,  
16 that where domestic corporations are taxed on income derived  
17 from without the state, salaries of officers paid in  
18 connection with securing such income shall be deductible.

19 2. (A) All losses actually sustained and charged off  
20 within the year and not compensated by insurance or  
21 otherwise, including a reasonable allowance for the wear and  
22 tear and obsolescence of property used in the trade or  
23 business, such allowance to be determined according to the  
24 provisions of section 167 of the internal revenue code in  
25 effect with respect to the taxable year. ~~However, insofar as~~

1 ~~the election to amortize the adjusted basis of an energy~~  
 2 ~~system based upon a period of 60 months pursuant to [section~~  
 3 ~~3 of this act] is not permissible under federal law, an~~  
 4 ~~amount for the amortization deduction for an energy system~~  
 5 ~~allowed pursuant to [section 3 of this act] is allowed and~~  
 6 ~~the amount of all depreciation deductions claimed on the~~  
 7 ~~federal return for any portion of property upon which the~~  
 8 ~~deduction allowed by [section 3 of this act] is claimed are~~  
 9 ~~not allowed.~~ All elections for depreciation shall be the  
 10 same as the elections made for federal income tax purposes.  
 11 No deduction, ~~except as provided above,~~ shall be allowed for  
 12 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 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 6. There is a new R.C.M. section that reads as  
4 follows:

5 Department of revenue duties. The department of revenue  
6 shall prescribe rules necessary to carry out the purposes of  
7 this act.

8 Section 7. There is a new R.C.M. section that reads as  
9 follows:

10 Time of application. The provisions of this act apply  
11 to all taxable years commencing after December 31, 1976.

-End-



SENATE BILL NO. 167

INTRODUCED BY RASHUSSEN, HAGER, BROWN, ROBERTS,  
KOLSTAD, JERGESON, LENSINK, STEPHENS, BLAYLOCK, WARDEN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE  
TAXATION OF INCOME; PROVIDING INCENTIVES FOR THE  
INSTALLATION OR ACQUISITION OF SOLAR OR OTHER RECOGNIZED  
NONFOSSIL FORMS OF ENERGY GENERATION BY TAXPAYERS BY  
PROVIDING INCOME OR LICENSE TAX CREDITS AND ACCELERATED  
AMORTIZATION OF THE COSTS OF THE SYSTEMS; AMENDING SECTIONS  
84-1502 AND 84-4906, R.C.M. 1947."

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

Section 1. Energy system tax incentive for  
individuals. (1) A resident individual taxpayer who  
completes installation of an energy system using a  
recognized nonfossil form of energy generation, as defined  
in 84-7402, in such taxpayer's principal dwelling prior to  
December 31, 1982, or who acquires title to a dwelling prior  
to December 31, 1982, which dwelling is to be used as the  
taxpayer's principal dwelling and is equipped with an energy  
system for which the credit allowed by this section has  
never been claimed, is entitled to claim a tax credit in an  
amount equal to ~~40%~~ 20% of the first \$1,000 and ~~20%~~ 10% of  
the next \$3,000 of the cost of such system, including

installation costs, LESS GRANTS RECEIVED or, if the federal  
government provides for a tax credit substantially similar  
in kind (not in amount), then a tax credit in an amount  
equal to ~~20%~~ 10% of the first \$1,000 and ~~10%~~ 5% of the next  
\$3,000 of the cost of such system, including installation  
costs, LESS GRANTS RECEIVED against the income tax liability  
imposed against such taxpayer pursuant to Title 84, chapter  
49, R.C.M. 1947.

(2) The tax credit is to be deducted from the  
taxpayer's income tax liability for the taxable year in  
which the energy system was acquired by the taxpayer. If  
the amount of the tax credit exceeds the taxpayer's income  
tax liability for the taxable year, the amount which exceeds  
the tax liability may be carried over for deduction from the  
taxpayer's income tax liability in the next succeeding  
taxable year or years until the total amount of the tax  
credit has been deducted from tax liability. Notwithstanding  
the foregoing provision, no tax credit may be carried over  
for deduction after the fourth taxable year succeeding the  
taxable year in which the energy system was acquired.

Section 2. Energy system tax incentive for real  
property owners. A taxpayer, including a corporation, who  
completes installation of an energy system using a  
recognized nonfossil form of energy generation, as defined  
in 84-7402, upon real property located within this state

1 prior to December 31, 1982, which real property is either  
 2 used in a trade or business or held for the production of  
 3 income, or any taxpayer who acquires title to real property  
 4 located within this state prior to December 31, 1982, which  
 5 real property is used in a trade or business or held for the  
 6 production of income and is equipped with an energy system  
 7 for which the credit allowed by this section has never been  
 8 claimed, is entitled to claim an income tax credit or in the  
 9 case of a corporation a license tax credit or income tax  
 10 credit in an amount equal to ~~40%~~ 20% of the first \$3,000 and  
 11 ~~20%~~ 10% of the next \$9,000 of the cost of the energy system,  
 12 including installation costs, LESS GRANTS RECEIVED or if the  
 13 federal government provides for a tax credit substantially  
 14 similar in kind (not in amount), then an income tax credit  
 15 in an amount equal to ~~20%~~ 10% of the first \$3,000 and ~~10%~~ 5%  
 16 of the next \$9,000 of the cost of the energy system,  
 17 including installation costs, LESS GRANTS RECEIVED or an  
 18 amount equal to the taxpayer's income tax liability in the  
 19 taxable year for which the credit is claimed, whichever is  
 20 less, against the tax liability imposed against such  
 21 taxpayer pursuant to Title 84, chapter 49, R.C.M. 1947 or in  
 22 the case of a corporation, pursuant to Title 84, chapter 15  
 23 or chapter 59, R.C.M. 1947. The tax credit is to be deducted  
 24 from the taxpayer's tax liability for the taxable year in  
 25 which the energy system is acquired and placed into service

1 by the taxpayer.

2 Section 3. Election to amortize energy system costs.  
 3 (1) A taxpayer who completes installation of an energy  
 4 system using a recognized nonfossil form of energy  
 5 generation, as defined in 84-7402, upon real property  
 6 located within this state prior to December 31, 1982, which  
 7 real property is either used in a trade or business or held  
 8 for the production of income, or any taxpayer who acquires  
 9 title to real property located within this state prior to  
 10 December 31, 1982, which real property is used in a trade or  
 11 business or held for the production of income and is  
 12 equipped with such an energy system, may elect to amortize  
 13 the adjusted basis of the energy system based upon a period  
 14 of 60 months.

15 (2) In computing Montana taxable income, amortization  
 16 is to be allowed as a deduction from Montana adjusted gross  
 17 income ratable over the 60-month period beginning with the  
 18 month in which the energy system is completed or acquired  
 19 and placed into service by the taxpayer. The election of the  
 20 taxpayer to claim the amortization deduction allowed by this  
 21 section is to be indicated in an appropriate statement  
 22 attached to the taxpayer's income tax return for the taxable  
 23 year in which the energy system was completed or acquired  
 24 and placed into service. The election of the taxpayer to  
 25 claim the amortization deduction does not preclude him from

1 taking the tax credit.

2 (3) As used in this section, "adjusted basis of the  
3 energy system" means an amount that is properly attributable  
4 to the construction, reconstruction, remodeling,  
5 installation, or acquisition of the system LESS AMOUNTS OF  
6 GRANTS RECEIVED.

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

9 "84-4906. Deductions allowed in computing net income.  
10 In computing net income, there ~~shall be~~ are allowed as  
11 deductions:

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

18 (i) items provided for in 84-4909;

19 (ii) state income tax paid;

20 (iii) all depreciation deductions claimed on the  
21 federal return for any portion of property upon which the  
22 deduction allowed by [section 3 of this act] is claimed;

23 (b) ~~Federal~~ federal income tax paid within the taxable  
24 year;

25 (c) an amount for the amortization deduction for an

1 energy system allowed pursuant to [section 3 of this act]."

2 Section 5. Section 84-1502, R.C.M. 1947, is amended to  
3 read as follows:

4 "84-1502. Deductions allowed in computing income. In  
5 computing the net income the following deductions shall be  
6 allowed from the gross income received by such corporation  
7 within the year from all sources:

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

22 2. (A) All losses actually sustained and charged off  
23 within the year and not compensated by insurance or  
24 otherwise, including a reasonable allowance for the wear and  
25 tear and obsolescence of property used in the trade or

1 business, such allowance to be determined according to the  
 2 provisions of section 167 of the internal revenue code in  
 3 effect with respect to the taxable year. ~~However, insofar as~~  
 4 ~~the election to amortize the adjusted basis of an energy~~  
 5 ~~system based upon a period of 60 months pursuant to [section~~  
 6 ~~3 of this act] is not permissible under federal law, an~~  
 7 ~~amount for the amortization deduction for an energy system~~  
 8 ~~allowed pursuant to [section 3 of this act] is allowed and~~  
 9 ~~the amount of all depreciation deductions claimed on the~~  
 10 ~~federal return for any portion of property upon which the~~  
 11 ~~deduction allowed by [section 3 of this act] is claimed are~~  
 12 ~~not allowed.~~ All elections for depreciation shall be the  
 13 same as the elections made for federal income tax purposes.  
 14 ~~No deduction, except as provided above,~~ shall be allowed for  
 15 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 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 Section 6. There is a new R.C.M. section that reads as  
7 follows:

8 Department of revenue duties. The department of revenue  
9 shall prescribe rules necessary to carry out the purposes of  
10 this act.

11 Section 7. There is a new R.C.M. section that reads as  
12 follows:

13 Time of application. The provisions of this act apply  
14 to all taxable years commencing after December 31, 1976.

-End-

Taxation Committee amendments to  
SENATE BILL NO. 167, third reading copy.

be amended in the third reading bill as follows:

1. Amend title, lines 9, 10 and 11.

Following: "INCOME"

Strike: "OR LICENSE"

Following: "TAX"

Strike: "CREDITS AND ACCELERATED AMORTIZATION OF"

Insert: "CREDIT FOR"

Following: "AMENDING"

Strike: "SECTIONS 84-1502 AND"

Insert: "SECTION"

2. Amend page 1, section 1, line 24.

Following: "40%"

Strike: "20%"

Insert: "10%"

Following: "20%"

Strike: "10%"

Insert: "5%"

3. Amend page 2, section 1, line 4.

Following: "20%"

Strike: "10%"

Insert: "5%"

Following: "~~10%~~"

Strike: "5%"

Insert: "2 1/2%"

4. Amend page 2, line 21, through line 6 on page 5.

Following: line 20

Strike: Sections 2 and 3 in their entirety

Renumber subsequent sections.

5. Amend page 5, section 4, lines 20-22.

Following: line 19

Strike: lines 20 through 22 in their entirety

6. Amend page 5, line 25 and line 1, page 6.

Following: line 24

Strike: subsection (c) in its entirety

7. Amend page 5, line 2 through line 5, page 11.

Following: line 1

Strike: Section 5 in its entirety

Renumber subsequent sections.

## SENATE BILL NO. 167

INTRODUCED BY RASMUSSEN, HAGER, BROWN, ROBERTS,  
KOLSTAD, JERGESON, LENSINK, STEPHENS, BLAYLOCK, WARDEN

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE  
TAXATION OF INCOME; PROVIDING INCENTIVES FOR THE  
INSTALLATION OR ACQUISITION OF SOLAR OR OTHER RECOGNIZED  
NONFOSSIL FORMS OF ENERGY GENERATION BY TAXPAYERS BY  
PROVIDING INCOME OR ~~LICENSE TAX CREDITS AND ACCELERATED~~  
~~AMORTIZATION OF CREDIT FOR~~ THE COSTS OF THE SYSTEMS;  
AMENDING ~~SECTIONS 84-1502 AND SECTION~~ 84-4906, R.C.M.  
1947."

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

Section 1. Energy system tax incentive for  
individuals. (1) A resident individual taxpayer who  
completes installation of an energy system using a  
recognized nonfossil form of energy generation, as defined  
in 84-7402, in such taxpayer's principal dwelling prior to  
December 31, 1982, or who acquires title to a dwelling prior  
to December 31, 1982, which dwelling is to be used as the  
taxpayer's principal dwelling and is equipped with an energy  
system for which the credit allowed by this section has  
never been claimed, is entitled to claim a tax credit in an  
amount equal to 40% ~~20% 10%~~ of the first \$1,000 and 20% ~~10%~~

5% of the next \$3,000 of the cost of such system, including  
installation costs, ~~LESS GRANTS RECEIVED~~ or, if the federal  
government provides for a tax credit substantially similar  
in kind (not in amount), then a tax credit in an amount  
equal to 20% ~~10%~~ 5% of the first \$1,000 and 10% ~~5%~~ 2 1/2% of  
the next \$3,000 of the cost of such system, including  
installation costs, ~~LESS GRANTS RECEIVED~~ against the income  
tax liability imposed against such taxpayer pursuant to  
Title 84, chapter 49, R.C.M. 1947.

(2) The tax credit is to be deducted from the  
taxpayer's income tax liability for the taxable year in  
which the energy system was acquired by the taxpayer. If  
the amount of the tax credit exceeds the taxpayer's income  
tax liability for the taxable year, the amount which exceeds  
the tax liability may be carried over for deduction from the  
taxpayer's income tax liability in the next succeeding  
taxable year or years until the total amount of the tax  
credit has been deducted from tax liability. Notwithstanding  
the foregoing provision, no tax credit may be carried over  
for deduction after the fourth taxable year succeeding the  
taxable year in which the energy system was acquired.

~~Section 2. Energy system tax incentive for real  
property owners. A taxpayer, including a corporation, who  
completes installation of an energy system using a  
recognized nonfossil form of energy generation, as defined~~



1 in 84-7402, upon real property located within this state  
 2 prior to December 31, 1982, which real property is either  
 3 used in a trade or business or held for the production of  
 4 income, or any taxpayer who acquires title to real property  
 5 located within this state prior to December 31, 1982, which  
 6 real property is used in a trade or business or held for the  
 7 production of income and is equipped with an energy system  
 8 for which the credit allowed by this section has never been  
 9 claimed, is entitled to claim an income tax credit or in the  
 10 case of a corporation a license tax credit or income tax  
 11 credit in an amount equal to 40% 20% of the first \$3,000 and  
 12 20% 10% of the next \$9,000 of the cost of the energy system  
 13 including installation costs, ~~LESS GRANTS RECEIVED~~ or if the  
 14 federal government provides for a tax credit substantially  
 15 similar in kind (not in amount), then an income tax credit  
 16 in an amount equal to 20% 10% of the first \$3,000 and 10% 5%  
 17 of the next \$9,000 of the cost of the energy system  
 18 including installation costs, ~~LESS GRANTS RECEIVED~~ or an  
 19 amount equal to the taxpayer's income tax liability in the  
 20 taxable year for which the credit is claimed, whichever is  
 21 less, against the tax liability imposed against such  
 22 taxpayer pursuant to Title 84, Chapter 49, R.C.M. 1947 or in  
 23 the case of a corporation, pursuant to Title 84, Chapter 15  
 24 or Chapter 69, R.C.M. 1947. The tax credit is to be deducted  
 25 from the taxpayer's tax liability for the taxable year in

1 which the energy system is acquired and placed into service  
 2 by the taxpayer

3 Section 3. Election to amortize energy system costs  
 4 (1) A taxpayer who completes installation of an energy  
 5 system using a recognized nonfossil form of energy  
 6 generation, as defined in 84-7402, upon real property  
 7 located within this state prior to December 31, 1982, which  
 8 real property is either used in a trade or business or held  
 9 for the production of income, or any taxpayer who acquires  
 10 title to real property located within this state prior to  
 11 December 31, 1982, which real property is used in a trade or  
 12 business or held for the production of income and is  
 13 equipped with such an energy system, may elect to amortize  
 14 the adjusted basis of the energy system based upon a period  
 15 of 60 months.

16 (2) In computing Montana taxable income, amortization  
 17 is to be allowed as a deduction from Montana adjusted gross  
 18 income, retable over the 60 month period beginning with the  
 19 month in which the energy system is completed or acquired  
 20 and placed into service by the taxpayer. The election of the  
 21 taxpayer to claim the amortization deduction allowed by this  
 22 section is to be indicated in an appropriate statement  
 23 attached to the taxpayer's income tax return for the taxable  
 24 year in which the energy system was completed or acquired  
 25 and placed into service. The election of the taxpayer to

1 claim the amortization deduction does not preclude him from  
2 taking the tax credit.

3 (3) As used in this section, "adjusted basis of the  
4 energy system" means an amount that is properly attributable  
5 to the construction, reconstruction, remodeling,  
6 installation, or acquisition of the system. ~~LESS AMOUNTS OF~~  
7 ~~GRANTS RECEIVED.~~

8 Section 2. 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 are allowed as  
12 deductions:

13 (a) ~~The~~ the items referred to in sections 161 and 211  
14 of 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 following exceptions provided in section 84-4909, relating  
18 to items which are not deductible:

- 19 (i) items provided for in 84-4909;
- 20 (ii) state income tax paid;
- 21 ~~(iii) all depreciation deductions claimed on the~~
- 22 ~~federal return for any portion of property upon which the~~
- 23 ~~deduction allowed by [section 3 of this act] is claimed;~~

24 (b) Federal federal income tax paid within the taxable  
25 year:

1 ~~(c) an amount for the amortization deduction for an~~  
2 ~~energy system allowed pursuant to [section 3 of this act]."~~  
3 Section 5. Section 84-1582, R.C.M. 1947, is amended to  
4 read as follows:

5 "84-1582. Deductions allowed in computing income in  
6 computing the net income the following deductions shall be  
7 allowed from the gross income received by such corporation  
8 within the year from all sources:

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

23 2. (A) All losses actually sustained and charged off  
24 within the year and not compensated by insurance or  
25 otherwise, including a reasonable allowance for the wear and

1 ~~wear and obsolescence of property used in the trade or~~  
 2 ~~business; such allowance to be determined according to the~~  
 3 ~~provisions of section 167 of the internal revenue code in~~  
 4 ~~effect with respect to the taxable year. However, insofar as~~  
 5 ~~the election to amortize the adjusted basis of an energy~~  
 6 ~~system based upon a period of 60 months pursuant to [section~~  
 7 ~~3 of this act] is not permissible under federal law, an~~  
 8 ~~amount for the amortization deduction for an energy system~~  
 9 ~~allowed pursuant to [section 3 of this act] is allowed and~~  
 10 ~~the amount of all depreciation deductions claimed on the~~  
 11 ~~federal return for any portion of property upon which the~~  
 12 ~~deduction allowed by [section 3 of this act] is claimed are~~  
 13 ~~not allowed. All elections for depreciation shall be the~~  
 14 ~~same as the elections made for federal income tax purposes.~~  
 15 ~~No deduction, except as provided above, shall be allowed for~~  
 16 ~~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 ~~methods.~~  
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), RSM 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 ~~Taxes deductible under this act shall be construed to~~  
5 ~~include taxes imposed by any county, school district or~~  
6 ~~municipality of this state.~~

7 Section 3. There is a new R.C.M. section that reads as  
8 follows:

9 Department of revenue duties. The department of revenue  
10 shall prescribe rules necessary to carry out the purposes of  
11 this act.

12 Section 4. There is a new R.C.M. section that reads as  
13 follows:

14 Time of application. The provisions of this act apply  
15 to all taxable years commencing after December 31, 1976.

-End-