

Senate BILL NO. 434
Am

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 84-1502 AND 84-4905, R.C.M. 1947, TO ELIMINATE THE EXEMPTIONS FROM TAXABLE INCOME FOR INTEREST INCOME DERIVED FROM OBLIGATIONS OF THE UNITED STATES OR OF THE STATE OF MONTANA OR ANY POLITICAL SUBDIVISION OR MUNICIPALITY THEREOF; INCREASING THE RATE OF CORPORATION LICENSE TAX BY AMENDING 84-1501, R.C.M. 1947; DISTRIBUTING A PORTION OF THE TAX YIELD THUS INCREASED TO LOCAL GOVERNMENTS BY AMENDING SECTION 84-1901, R.C.M. 1947; ABOLISHING THE BANK SHARES TAX BY REPEALING SECTIONS 84-304 THROUGH 84-308 AND 84-4601 THROUGH 84-4605, R.C.M. 1947; EXEMPTING BANK SHARES FROM TAXATION BY AMENDING SECTION 84-202, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 84-1501, R.C.M. 1947, is amended to read as follows:

"84-1501. Corporation license tax -- organizations exempt therefrom -- alternative tax based on gross sales. The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other

corporations whether created, organized or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States. Every corporation, except as hereinafter provided and except as provided in section 40-2821(5), R.C.M. 1947, engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under section 84-1503.

The percentage of net income to be paid under this section shall be ~~six and three quarters per cent (6 3/4%)~~ 7 1/4% of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after ~~February 28, 1974~~ December 31, 1977. ~~This rate is retroactive to and effective for all taxable years ending on or after February 28, 1974.~~ Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars (\$50).

1 Pursuant to the provisions of article III, section 2,
 2 of the Multistate Tax Compact (Title 84, chapter 67, R.C.M.
 3 1947) every corporation deriving income from sources both
 4 within and without the state of Montana and required to file
 5 a return and whose only activity in Montana consists of
 6 making sales and which does not own or rent real estate or
 7 tangible personal property within Montana and whose annual
 8 gross volume of sales made in Montana during the taxable
 9 year does not exceed one hundred thousand dollars
 10 (\$100,000), may elect to pay a tax of one-half of one
 11 percent (0.5%) of gross sales made in Montana during the
 12 taxable year. Such tax shall be in lieu of the tax otherwise
 13 imposed under this section. The gross volume of sales made
 14 in Montana during the taxable year shall be determined
 15 according to the provisions of article IV, sections 16 and
 16 17, of the Multistate tax Compact.

17 There shall not be taxed under this title any income
 18 received by any--

- 19 (a) Labor, agricultural or horticultural organization;
 20 (b) Fraternal beneficiary, society, order or
 21 association operating under the lodge system or for the
 22 exclusive benefit of the members of a fraternity itself
 23 operating under the lodge system, and providing for the
 24 payment of life, sick, accident or other benefits to the
 25 members of such society, order or association or their

1 dependents;

2 (c) Cemetery company owned and operated exclusively
 3 for the benefit of its members;

4 (d) Corporation or association organized and operated
 5 exclusively for religious, charitable, scientific or
 6 educational purposes, no part of the net income of which
 7 inures to the benefit of any private stockholder or
 8 individual;

9 (e) Business league, chamber of commerce, or board of
 10 trade, not organized for profit, and no part of the net
 11 income of which inures to the benefit of any private
 12 stockholder or individual;

13 (f) Civic league or organization not organized for
 14 profit, but operated exclusively for the promotion of social
 15 welfare;

16 (g) Club organized and operated exclusively for
 17 pleasure, recreation and other non-profitable purposes, no
 18 part of the net income of which inures to the benefit of any
 19 private stockholder or members;

20 (h) Farmers' or other mutual hail, cyclone or fire
 21 insurance company, mutual ditch or irrigation company,
 22 mutual or co-operative telephone company, or like
 23 organization of a purely local character, the income of
 24 which consists solely of assessments, dues and fees
 25 collected from members for the sole purpose of meeting its

1 expenses;

2 (i) Any co-operative association or corporation
3 engaged in the business of operating a rural electrification
4 system or systems for the transmission or distribution of
5 electrical energy on a co-operative basis;

6 (j) Corporations or associations organized for the
7 exclusive purpose of holding title to property, collecting
8 income therefrom, and turning over the entire amount
9 thereof, less expenses, to an organization which itself is
10 exempt from the tax imposed by this title;

11 (k) In determining the license fee to be paid under
12 this act, there shall not be included any earnings derived
13 from any public utility managed or operated by any
14 subdivision of the state, or from the exercise of any
15 governmental function."

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

18 "84-1502. Deductions allowed in computing income. In
19 computing the net income the following deductions shall be
20 allowed from the gross income received by such corporation
21 within the year from all sources:

22 1. All the ordinary and necessary expenses paid or
23 incurred during the taxable year in the maintenance and
24 operation of its business and properties, including
25 reasonable allowance for salaries for personal services

1 actually rendered, subject to the limitation hereinafter
2 contained, rentals or other payments required to be made as
3 a condition to the continued use or possession of property
4 to which the corporation has not taken or is not taking
5 title, or in which it has no equity. No deduction shall be
6 allowed for salaries paid upon which the recipient thereof
7 has not paid Montana state income tax; provided, however,
8 that where domestic corporations are taxed on income derived
9 from without the state, salaries of officers paid in
10 connection with securing such income shall be deductible.

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

1 (B) (a) There shall be allowed as a deduction for the
 2 taxable period a net operating loss deduction determined
 3 according to the provisions of this subsection. The net
 4 operating loss deduction is the aggregate of net operating
 5 loss carryovers to such taxable period plus the net
 6 operating loss carrybacks to such taxable period. The term
 7 "net operating loss" means the excess of the deductions
 8 allowed by this section, 84-1502, over the gross income,
 9 with the modifications specified in paragraph (b) of this
 10 subsection. If for any taxable period beginning after
 11 December 31, 1970, a net operating loss is sustained, such
 12 loss shall be a net operating loss carryback to each of the
 13 three (3) taxable periods preceding the taxable period of
 14 such loss and shall be a net operating loss carryover to
 15 each of the five (5) taxable periods following the taxable
 16 period of such loss. The portion of such loss which shall be
 17 carried to each of the other taxable years shall be the
 18 excess, if any, of the amount of such loss over the sum of
 19 the net income for each of the prior taxable periods to
 20 which such loss was carried. For purposes of the preceding
 21 sentence, the net income for such prior taxable period shall
 22 be computed with the modifications specified in paragraph
 23 (b) (ii) of this subsection and by determining the amount of
 24 the net operating loss deduction without regard to the net
 25 operating loss for the loss period or any taxable period

1 thereafter, and the net income so computed shall not be
 2 considered to be less than zero.

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

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

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

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

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

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

20 (e) Notwithstanding the provisions of section
 21 84-1508.1(c), R.C.M., 1947, interest shall not be paid with
 22 respect to a refund of tax resulting from a net operating
 23 loss carryback or carryover.

24 (f) The net operating loss deduction shall not be
 25 allowed with respect to taxable periods which ended on or

1 before December 31, 1970, but shall be allowed only with
2 respect to taxable periods beginning on or after January 1,
3 1971.

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

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

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

24 6.5. Taxes paid within the year except the following:
25 (a) Taxes imposed by this act.

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

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

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

8 Taxes deductible under this act shall be construed to
9 include taxes imposed by any county, school district or
10 municipality of this state other than those taxes
11 specifically excluded in this act."

12 Section 3. Section 84-1901, R.C.M. 1947, is amended to
13 read as follows:

14 "84-1901. Disposition of moneys from certain
15 designated license and other taxes. (1) The state treasurer
16 shall deposit to the credit of the state general fund all
17 moneys received by him from the collection of:

18 (a) automobile drivers' license fees under section
19 31-135;

20 (b) electric energy producers' license taxes under
21 sections 84-1601 to 84-1609, inclusive;

22 (c) metalliferous mines license taxes under sections
23 84-2001 to 84-2016, inclusive;

24 (d) telegraph license taxes under sections 84-2501 to
25 84-2508, inclusive;

1 (e) oil producers' license taxes under sections
2 84-2201 to 84-2211, inclusive;

3 (f) natural gas distributors' license taxes under
4 sections 84-2101 to 84-2110, inclusive;

5 (g) liquor license taxes under Title 4 ;

6 (h) telephone license taxes under sections 84-2601 to
7 84-2608, inclusive; and

8 (i) inheritance and estate taxes under Title 91,
9 chapter 44.

10 (2) Seventy-five percent (75%) of all moneys received
11 from the collection of income taxes under Title 84, chapter
12 49, 55% of all money received from the collection of
13 corporation license taxes under Title 84, chapter 15, and
14 corporation income tax, Title 84, chapter 61, shall be
15 deposited in the general fund subject to the prior pledge
16 and appropriation of such income tax and corporation license
17 tax collections for the payment of long-range building
18 program bonds. Twenty percent of the proceeds of the
19 corporation license tax is allocated to the earmarked
20 revenue fund to the credit of the local government account.
21 The remaining twenty-five percent (25%) of the proceeds of
22 the corporation license tax, corporation income tax, and
23 income tax shall be deposited to the credit of the earmarked
24 revenue fund for state equalization aid to the public
25 schools of Montana.

1 (3) The state treasurer shall also deposit to the
2 credit of the state general fund all moneys received by him
3 from the collection of license taxes, fees and from all
4 other sources under the operation of the Montana Beer Act,
5 sections 4-301 to 4-356, inclusive, and all net revenues and
6 receipts received by him from and under the operation of the
7 State Liquor Control Act, sections 4-101 to 4-237, inclusive
8 or as those sections may be renumbered or amended."

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

11 Local government account established. There is a local
12 government account within the earmarked revenue fund.

13 Section 5. There is a new R.C.M. section that reads as
14 follows:

15 Distribution of local government account. The
16 department of revenue shall, before July 1 each year, divide
17 the funds appropriated for the next fiscal year from the
18 local government account among the counties, cities, towns,
19 and school districts of the state, half according to their
20 shares of the general obligation bonded indebtedness of all
21 counties, cities, towns, and school districts in the state,
22 and half according to their shares of the total population
23 of their type of political subdivision in the state.

24 Section 6. Section 84-4905, R.C.M. 1947, is amended to
25 read as follows:

1 "84-4905. Adjusted gross income. (1) Adjusted gross
2 income shall be the taxpayer's federal income tax adjusted
3 gross income as defined in section 62 of the Internal
4 Revenue Code of 1954 or as that section may be labeled or
5 amended, and in addition shall include the following:

6 (a) Interest received on obligations of ~~another a~~
7 state or territory, or county, municipality, district, or
8 other political subdivision thereof:

9 (b) Refunds received of federal income tax, to the
10 extent the deduction of such tax resulted in a reduction of
11 Montana income tax liability.

12 (2) Adjusted gross income does not include the
13 following which are exempt from taxation under this act:

14 ~~(a) Interest income from obligations of the United~~
15 ~~States government, the state of Montana, county,~~
16 ~~municipality, district, or other political subdivision~~
17 ~~thereof.~~

18 ~~(b) (a)~~ All benefits received under the Federal
19 Employees Retirement Act not in excess of three thousand six
20 hundred dollars (\$3,600).

21 ~~(c) (b)~~ All benefits paid under the Montana Teachers
22 Retirement Act which are specified as exempt from taxation
23 by section 75-6215.

24 ~~(d) (c)~~ All benefits paid under the Montana Public
25 Employees Act which are specified as exempt from taxation by

1 section 68-1303.

2 ~~(e) (d)~~ All benefits paid under the Montana Highway
3 Patrol Retirement Act which are specified as exempt from
4 taxation by section 31-221.

5 ~~(f) (e)~~ Montana income tax refunds or credits thereof.

6 ~~(g) (f)~~ All benefits paid under sections 11-1925,
7 11-1926, and 11-1927 to retired and disabled firemen, their
8 surviving spouses and orphans.

9 ~~(h) (g)~~ All benefits paid by first or second class
10 cities for the policemen's retirement system provided for by
11 the Metropolitan Police Law.

12 (3) In the case of a shareholder of a corporation with
13 respect to which the election provided for under subchapter
14 S. of the Internal Revenue Code of 1954, as amended, is in
15 effect, but with respect to which the election provided for
16 under section 84-1501.2, as amended, is not in effect,
17 adjusted gross income does not include any part of the
18 corporation's undistributed taxable income, net operating
19 loss, capital gains or other gains, profits or losses
20 required to be included in the shareholder's federal income
21 tax adjusted gross income by reason of the said election
22 under subchapter S. However, the shareholder's adjusted
23 gross income shall include actual distribution from the
24 corporation to the extent they would be treated as taxable
25 dividends if the subchapter S. election were not in effect."

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

3 "84-202. Exemptions from taxation. (1) (a) The
4 property of the United States, the state, counties, cities,
5 towns, school districts, municipal corporations, public
6 libraries, buildings with land they occupy and furnishings
7 therein owned by a church and used for actual religious
8 worship and for residences of the clergy, together with
9 adjacent land reasonably necessary for convenient use of
10 such buildings owned by a church, such other property as is
11 used exclusively for agricultural and horticultural
12 societies, for educational purposes, hospitals and places of
13 burial not used or held for private or corporate profit, and
14 institutions of purely public charity, evidence of debt
15 secured by mortgages of record upon real or personal
16 property in the state of Montana, and public art galleries
17 and public observatories not used or held for private or
18 corporate profit, are exempt from taxation, but no more land
19 than is necessary for such purpose is exempt.

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

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

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

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

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

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

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

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

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

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

1 harvest.

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

5 (6) Moneys and credits and shares of stock in banking
 6 corporations are exempt from taxation.

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

10 Section 8. Repealer. Sections 84-304 through 84-308
 11 and 84-4601 through 84-4605, R.C.M. 1947, are repealed.

12 Section 9. There is a section that reads as follows:
 13 Codification instruction. Before this bill is enrolled,
 14 the code commissioner shall delete all references to Class
 15 Six property and 84-308 which appear in 84-301, 84-302, and
 16 84-401.

17 Section 10. Severability. If a part of this act is
 18 invalid, all valid parts that are severable from the invalid
 19 part remain in effect. If a part of this act is invalid in
 20 one or more of its applications, the part remains in effect
 21 in all valid applications that are severable from the
 22 invalid applications.

23 Section 11. Effective date. This act applies to all
 24 taxable years beginning after June 30, 1977.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 434 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

This bill eliminates the exemptions from taxable income for interest income derived from obligations of the United States or of the state of Montana or any political subdivision or municipality thereof; increasing the rate of corporation license tax, distributes a portion of the tax yield thus increased to local governments; abolishes the bank shares tax; exempts bank shares from taxation; and provides an effective date.

FISCAL IMPACT

Senate Bill 434 is so all encompassing that it best to sort the fiscal impact of the bill out into separate sections. The first section pertains to corporation license tax, the second section pertains to income tax, and the third pertains to property tax.

Corporation License Tax

The first portion dealing with corporation license tax raises the corporation license tax rate from 6 3/4% to 7 1/4%. This is an increase of 7.4%; however, since approximately 5,000 corporations pay the \$50 minimum fee, it is felt the impact will be to raise corporation license tax collections by 7%. This raises corporation license tax collections from \$26.5M to \$28.355M in FY 78 and raises FY 79 collections from \$28M to \$29.96M in FY 79.

The second portion, dealing with corporation license tax, removes the deduction of interest income from Montana municipal, county and state bonds. The direct impact is to increase corporation license tax collections by \$250,000, but the indirect effect is more pronounced. By removing Montana bonds as a deduction the statute becomes non-discriminatory, thereby allowing the state to tax interest on Federal bonds for corporation license tax purposes. This would increase corporation license tax collections by \$1.6M each fiscal year the bill is in effect. When combined with the increase in the tax rate, corporation license tax collections increase by \$3.705M in FY 78 to \$30.205M and increase by \$3.846 in FY 79 to \$31.846M.

The final section pertaining to corporation license tax changes the allocation percentages of the revenue from corporation license tax. Currently 64% of the revenue goes into the general fund, 11% goes into the long range building fund, and 25% goes into the state equalization aid fund. This bill keeps the school equalization aid at 25%, the building fund at 11%, lowers the general fund to 44% and allocates the remaining 20% to a local government revenue fund.

(CONTINUED ON PAGE 2)

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

STATE OF MONTANA

REQUEST NO. 496-77

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Income Tax

This bill attempts to eliminate the exemption from state taxes of interest income from obligations of the United States Government, Montana municipalities, and the state of Montana. The impact is impossible to measure, since no data pertaining to this income is currently available. It appears that this elimination from exemption is in direct conflict with 31 U.S.C. 742 which states that interest income from obligations of the United States is not to be taxed for income tax purposes.

Property Tax

This bill exempts from property taxation shares of banking stock. In FY 76 banking stock had taxable value of \$23,876,318. This bill would completely eliminate this taxable value from the property tax base of the state. Bank stock amounted to 1.72% of the state's tax base in FY 76. Assuming a 6 mill state levy, the state would have lost \$143,000 in FY 76 if this bill had been in effect. However, assuming a 250 mill levy for local governments, since almost all banks are in cities, local governments would have lost almost \$6M had this bill been in effect in FY 76.

PREPARED BY DEPARTMENT OF REVENUE


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-14-77