

HOUSE BILL 314

IN THE HOUSE

January 23, 1979

Introduced and referred to
Committee on Taxation.

1 House BILL NO. 314
 2 INTRODUCED BY Rachet
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND CLARIFY
 6 THE LAW PROVIDING FOR TAX INCENTIVES FOR ENERGY CONSERVATION
 7 AND THE USE OF ALTERNATIVE ENERGY SOURCES; AMENDING SECTIONS
 8 15-30-121, 15-31-114, 15-32-102 THROUGH 15-32-105,
 9 15-32-201, AND 15-32-202, MCA; REPEALING SECTION 15-32-106,
 10 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

12 Section 1. Section 15-32-102, MCA, is amended to read:
 13 "15-32-102. Definitions. As used in this part the
 14 following definitions apply:
 15

16 (1) "Building" means a single or multiple dwelling,
 17 including a mobile home, or a building used for commercial,
 18 industrial, or agricultural purposes, which is enclosed with
 19 walls and a roof.

20 (2) "~~Capital investment~~" means ~~any material or~~
 21 ~~equipment purchased and installed in a building or land with~~
 22 ~~or without improvements.~~ "Cost" means the installed cost of
 23 an improvement.

24 (3) "~~Energy conservation purpose~~" means ~~one or more of~~
 25 ~~the following results of an investment reducing the waste~~

1 ~~or dissipation of energy or reducing the amount of energy~~
 2 ~~required to accomplish a given quantity of work~~
 3 "Improvement made for the purpose of conserving energy"
 4 means installation of the following items:
 5 (a) in a building substantially completed or in use on
 6 January 1, 1977:
 7 (i) insulation for floors, walls, ceilings, and roofs;
 8 (ii) insulation for pipes and ducts located in
 9 nonheated areas;
 10 (iii) insulation for hot water heaters;
 11 (iv) insulated siding having an insulating factor
 12 substantially in excess of regular siding material;
 13 (v) storm doors, storm windows, and triple-glazed
 14 windows;
 15 (vi) insulated exterior doors;
 16 (vii) caulking and weatherstripping;
 17 (viii) glass fireplace doors;
 18 (ix) devices limiting the flow from hot water faucets;
 19 (x) clock-driven or computer-actuated regulatory
 20 devices for heating and cooling systems;
 21 (b) in a building not substantially complete on
 22 January 1, 1977:
 23 (i) insulation for floors, walls, ceilings, and roofs
 24 that exceeds requirements needed to conform with the
 25 criteria set forth in the state code for energy conservation

1 in new building construction:
 2 (ii) insulation for pipes and ducts located in
 3 nonheated areas;
 4 (iii) insulation for hot water heaters;
 5 (iv) storm doors, storm windows, and triple-glazed
 6 windows;
 7 (v) insulated exterior doors;
 8 (vi) glass fireplace doors;
 9 (vii) devices limiting the flow from hot water faucets;
 10 (viii) clock-driven or computer-actuated regulatory
 11 devices for heating and cooling systems;
 12 ~~(4) "Recognized nonfossil forms of energy generation"~~
 13 ~~means a system for the utilization of solar heat, wind,~~
 14 ~~solid wastes, or the decomposition of organic wastes for~~
 15 ~~capturing energy or converting energy sources into usable~~
 16 ~~sources, for the production of electric power from solid~~
 17 ~~wood wastes, and also means a small system for the~~
 18 ~~utilization of water power by means of an impoundment not~~
 19 ~~over 20 acres in surface area."~~

20 Section 2. Section 15-32-103, MCA, is amended to read:
 21 "15-32-103. Deduction for energy-conserving
 22 investments improvements. (1) In addition to all other
 23 deductions from adjusted gross individual income allowed in
 24 computing taxable income under chapter 30 or from gross
 25 corporate income allowed in computing net income under

1 chapter 31, part 1, a taxpayer may deduct a portion of his
 2 ~~expenditure for a capital investment in a building for an~~
 3 ~~energy conservation purpose, the cost of an improvement made~~
 4 ~~for the purpose of conserving energy~~ in accordance with the
 5 following schedule:

6	7	8	9
If the installation or	investment improvement	is made in a residential	building:
		is made in a building	not used as a residence:
10	100% of first \$1,000 expended	100% of first \$2,000 expended	
11	50% of next \$1,000 expended	50% of next \$2,000 expended	
12	20% of next \$1,000 expended	20% of next \$2,000 expended	
13	10% of next \$1,000 expended	10% of next \$2,000 expended	

14 (2) This tax treatment ~~is subject to approval of the~~
 15 ~~department of an application as provided in 15-32-106 and~~
 16 ~~may not be claimed for so much of the expenditure and~~
 17 ~~capital investment as is any part of the cost of the~~
 18 ~~improvement~~ financed by a state, federal, or private grant
 19 for energy conservation."

20 Section 3. Section 15-32-104, MCA, is amended to read:
 21 "15-32-104. Limitations on deduction. Tax treatment
 22 under 15-32-103 is limited to:

- 23 (1) ~~capital investments~~ improvements made after
 24 January 1, 1975;
 25 (2) persons and firms not primarily engaged in the

1 provision of gas or electricity derived from fossil fuel
2 extraction or conventional hydroelectric development; and

3 (3) a ceiling of \$100,000 in tax savings per year to
4 any one person or firm."

5 Section 4. Section 15-32-105, MCA, is amended to read:

6 "15-32-105. Application to new construction -- rules.

7 It is the intent of the legislature that no deduction under
8 this part be allowed for ~~capital investment for an energy~~
9 ~~conservation practice~~ an improvement made for the purpose of
10 conserving energy in the new construction of a building if
11 that ~~capital investment improvement~~ would have been made
12 under established standards of new construction. The
13 department of revenue shall adopt rules to implement this
14 legislative intent. Such rules shall be based on the best
15 currently available methods of analysis, including those of
16 the national bureau of standards, the department of housing
17 and urban development, and other federal agencies and
18 professional societies and materials developed by the
19 department. Provisions shall be made for an annual updating
20 of rules and standards as required."

21 Section 5. Section 15-32-201, MCA, is amended to read:

22 "15-32-201. ~~Amount of credit to whom available~~
23 Credit for alternative energy sources. (1) In this section
24 alternative energy sources are solar energy, geothermal
25 energy, decomposition of organic wastes, solid wastes, and

1 the impoundment of water with a surface area not exceeding
2 20 acres.

3 (2) A resident individual taxpayer who completes
4 ~~installation of an energy~~ installs a system using a
5 ~~recognized nonfossil form of energy generation as defined~~
6 ~~in 15-32-102, utilizing an alternative energy source~~ in such
7 ~~the taxpayer's principal dwelling prior to December 31,~~
8 ~~1982, or who acquires title to a dwelling prior to December~~
9 ~~31, 1982, which dwelling is to be used as the taxpayer's~~
10 ~~principal dwelling and which is equipped with an energy a~~
11 ~~system utilizing an alternative energy source~~ for which the
12 credit allowed by this part has never been claimed, ~~is~~
13 ~~entitled to may~~ claim a tax credit ~~in an amount~~ equal to 10%
14 of the first \$1,000 and 5% of the next \$3,000 of the cost of
15 ~~such the~~ system, including installation costs, less grants
16 received or, against the taxpayer's income tax liability
17 pursuant to chapter 30. ~~if~~ If the federal government
18 provides for a tax credit substantially similar in kind (not
19 in amount), then the taxpayer may claim a tax credit in an
20 ~~amount~~ equal to 5% of the first \$1,000 and 2 1/2% of the
21 next \$3,000 of the cost of such ~~the~~ system, including
22 installation costs, less grants received, against the income
23 tax liability ~~imposed against such taxpayer~~ pursuant to
24 chapter 30."

25 Section 6. Section 15-32-202, MCA, is amended to read:

1 "15-32-202. Taxable years in which credit may be
2 claimed -- carry-over ~~CARRYOVER~~. The tax credit is to be
3 deducted from the taxpayer's income tax liability for the
4 taxable year in during which the energy system was acquired
5 placed in service by the taxpayer. If the amount of the tax
6 credit exceeds the taxpayer's income tax liability for the
7 taxable year, the amount which exceeds the tax liability may
8 be carried over for deduction from the taxpayer's income tax
9 liability in the next succeeding taxable year or years until
10 the total amount of the tax credit has been deducted from
11 tax liability. Notwithstanding the foregoing provision, no
12 tax credit may be carried over for deduction after the
13 fourth taxable year succeeding the taxable year in which the
14 energy system was acquired placed in service."

15 Section 7. Section 15-30-121, MCA, is amended to read:
16 "15-30-121. Deductions allowed in computing net
17 income. In computing net income, there are allowed as
18 deductions:

19 (1) the items referred to in sections 161 and 211 of
20 the Internal Revenue Code of 1954, or as sections 161 and
21 211 shall be labeled or amended, subject to the following
22 exceptions which are not deductible:

- 23 (a) items provided for in 15-30-123;
24 (b) state income tax paid;
25 (2) federal income tax paid within the taxable year;

1 (3) child and dependent care expenses determined in
2 accordance with the provisions of section 214 of the
3 Internal Revenue Code of 1954 that were in effect for the
4 taxable year that began January 1, 1974;

5 (4) that portion of an energy-related investment
6 improvement allowed as a deduction under 15-32-103."

7 Section 8. Section 15-31-114, MCA, is amended to read:
8 "15-31-114. Deductions allowed in computing income. In
9 computing the net income, the following deductions shall be
10 allowed from the gross income received by such corporation
11 within the year from all sources:

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

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

16 (b) (i) There shall be allowed as a deduction for the
 17 taxable period a net operating loss deduction determined
 18 according to the provisions of this subsection. The net
 19 operating loss deduction is the aggregate of net operating
 20 loss carryovers to such taxable period plus the net
 21 operating loss carrybacks to such taxable period. The term
 22 "net operating loss" means the excess of the deductions
 23 allowed by this section, 15-31-114, over the gross income,
 24 with the modifications specified in (ii) of this subsection.
 25 If for any taxable period beginning after December 31, 1970,

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

22 (ii) The modifications referred to in (i) of this
 23 subsection shall be as follows:

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

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

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

6 (iv) In the case of a merger of corporations, the
7 surviving corporation shall not be allowed a net operating
8 loss deduction for net operating losses sustained by the
9 merged corporations prior to the date of merger. In the case
10 of a consolidation of corporations, the new corporate entity
11 shall not be allowed a deduction for net operating losses
12 sustained by the consolidated corporations prior to the date
13 of consolidation.

14 (v) Notwithstanding the provisions of 15-31-531,
15 interest shall not be paid with respect to a refund of tax
16 resulting from a net operating loss carryback or carryover.

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

22 (3) In the case of mines, other natural deposits, oil
23 and gas wells, and timber, a reasonable allowance for
24 depletion and for depreciation of improvements; such
25 reasonable allowance to be determined according to the

1 provisions of the Internal Revenue Code in effect for the
2 taxable year. All elections made under the Internal Revenue
3 Code with respect to capitalizing or expensing exploration
4 and development costs and intangible drilling expenses for
5 corporation license tax purposes shall be the same as the
6 elections made for federal income tax purposes.

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

14 (5) Interest income from obligations of the state or
15 any political subdivision or municipality of the state.

16 (6) (a) Taxes paid within the year except the
17 following:

18 (i) Taxes imposed by this part.

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

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

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

1 (b) Taxes deductible under this part shall be
2 construed to include taxes imposed by any county, school
3 district, or municipality of this state.

4 (7) That portion of an energy-related investment
5 ~~improvement~~ allowed as a deduction under 15-32-103."

6 Section 9. Repealer. Section 15-32-106, MCA, is
7 repealed.

8 Section 10. Effective date. This act is effective on
9 passage and approval and applies to taxable years beginning
10 after December 31, 1978.

-End-

STATE OF MONTANA

REQUEST NO. 448-79

FISCAL NOTE

Form BD-15

In compliance with a written request received March 9, 19 79, there is hereby submitted a Fiscal Note for House Bill 314 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 proposed bill revises and clarifies the law providing for tax incentives for energy conservation and the use of alternative energy sources.

FISCAL IMPACT

No Fiscal Impact.

(Prepared by the Department of Revenue)

Richard L. Tracy
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/13/79