SENATE BILL 122

IN THE SENATE

January 16, 1979	Introduced and referred to Committee on Taxation.
January 17, 1979	Fiscal note requested.
January 23, 1979	Fiscal note returned.
	Printed and placed on members' desks.
	On motion, taken from Committee on Bills and rereferred to Committee on Taxation.
March 16, 1979	Committee recommend bill, do not pass.

Senate BILL NO. 122

INTRODUCED BY Towe Van Valkenburg Hafferman

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE DEDUCTION OF CHARITABLE CONTRIBUTIONS AND GIFTS IN COMPUTING NET INCOME FOR THE PAYMENT OF THE CORPORATION LICENSE TAX; AMENDING SECTION 15-31-114, MCA; AND PROVIDING AN APPLICABILITY AND EFFECTIVE DATE."

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

Section 1. Section 15-31-114, MCA, is amended to read:

"15-31-114. Deductions allowed in computing income. In computing the net income, the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

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

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

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

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

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"net operating loss" means the excess of the deductions allowed by this section, 15-31-114, over the gross income, with the modifications specified in (ii) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in (ii)(B) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

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

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

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

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

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

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

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

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

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

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

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

(i) Taxes imposed by this part.

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

(iii) Taxes on or according to or measured by net

income or profits imposed by authority of the government of the United States.

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

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

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

(8) Charitable contributions and gifts that qualify, and to the extent allowed, as a deduction from the gross income of a corporation under section 170 of the Internal Revenue Code, as amended."

Section 2. Applicability and effective date. This act is effective on passage and approval and applies to taxable years beginning after December 31, 1978.

-End-

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STATE OF MONTANA

REQUEST NO. 23-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 17, 19 79, there is hereby submitted a Fiscal Note for SB 122 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 provides for the deduction of charitable contributions and gifts in computing net income for the payment of the Corporation License Tax.

ASSUMPTIONS:

1) Actual Corporation License Tax collections during FY78 were $29.239 M.
2) Corporation License Tax collections are estimated to be $35.0 M in FY80 and $36.0 M in FY81.
3) The percentage decrease in Corporation License Tax collections due to this legislation should be about 1.1% for both FY80 and FY81.
4) No change in administrative expenses will be noted.

FISCAL IMPACT:

	FY80	FY81
Corp. Lic. Tax		
under current law	$ 35,000,000	$ 36,000,000
under proposed law	34,615,000	35,604,000
Total Decrease	($385,000)	($396,000)

FUND INFORMATION:

	FY80	FY81
General Fund	($246,400)	($253,440)
School Fund Program	(96,250)	(99,000)
Long-Range Building Sinking Account	(42,350)	(43,560)
	($385,000)	($396,000)

OTHER COMMENTS:

It is noted that revenues to the Public School Equalization Earmarked Revenue Account are used to support the Public School Foundation Program; therefore, any decrease in revenues to that accounting entity either (1) results in a decrease in the Foundation Program schedules, (2) requires additional support from other contributors to the Foundation Program (oil and gas royalties, corporation license tax, individual income tax, State General Fund appropriation, etc.), or (3) requires a state deficiency levy.

Richard L. Frazer for
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/23/79

OTHER COMMENTS (continued)

Also, for all practicable purposes, revenue decreases to the Long-range Building Sinking Account are decreases to the General Fund since collections in excess of debt service requirements are transferred to the General Fund.

LONG-RANGE EFFECTS:

Revenue from the Corporation License Tax would be about 1% less under the proposed law than it would be under current law.