

House Bill 46

In The House

January 6, 1981	Introduced and referred to Committee on Taxation.
January 7, 1981	Fiscal note requested.
January 12, 1981	Fiscal note returned.
April 23, 1981	Died in Committee.

1                    HOUSE BILL NO. 46  
 2 INTRODUCED BY NORDTVEDT  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN  
 5 ADJUSTMENT FOR INFLATION OF DEPRECIATION IN CALCULATING  
 6 INDIVIDUAL INCOME TAX LIABILITY; TO PROVIDE FOR THE  
 7 ADJUSTMENT FOR INFLATION OF THE DEPRECIATION ALLOWANCE TAKEN  
 8 IN DETERMINING CORPORATE TAX LIABILITY; AMENDING SECTIONS  
 9 15-30-101, 15-30-121, AND 15-31-114, MCA."  
 10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12        Section 1. Section 15-30-101, MCA, is amended to read:  
 13        "15-30-101. Definitions. For the purpose of this  
 14 chapter, unless otherwise required by the context, the  
 15 following definitions apply:  
 16        (1) "CPI" means the consumer price index, United States  
 17 city average, for all items using the 1967 base of 100 as  
 18 published for June each year by the bureau of labor  
 19 statistics of the United States department of labor or its  
 20 successor.  
 21        (2) "PIR" means price index ratios determined by  
 22 dividing the CPI as defined in subsection (1) for a taxable  
 23 year by the CPI for a number of previous years.  
 24        ~~(1)~~(3) "Department" means the department of revenue.  
 25        ~~(2)~~(4) "Dividend" means any distribution made by a

1 corporation out of its earnings or profits to its  
 2 shareholders or members, whether in cash or in other  
 3 property or in stock of the corporation, other than stock  
 4 dividends as herein defined. "Stock dividends" means new  
 5 stock issued, for surplus or profits capitalized, to  
 6 shareholders in proportion to their previous holdings.  
 7        ~~(3)~~(5) "Fiduciary" means a guardian, trustee, executor,  
 8 administrator, receiver, conservator, or any person, whether  
 9 individual or corporate, acting in any fiduciary capacity  
 10 for any person, trust, or estate.  
 11        ~~(4)~~(6) "Foreign country" or "foreign government" means  
 12 any jurisdiction other than the one embraced within the  
 13 United States, its territories and possessions.  
 14        ~~(5)~~(7) "Gross income" means the taxpayer's gross income  
 15 for federal income tax purposes as defined in section 61 of  
 16 the Internal Revenue Code of 1954 or as that section may be  
 17 labeled or amended, excluding unemployment compensation  
 18 included in federal gross income under the provisions of  
 19 section 85 of the Internal Revenue Code of 1954 as amended.  
 20        ~~(6)~~(8) "Information agents" includes all individuals,  
 21 corporations, associations, and partnerships, in whatever  
 22 capacity acting, including lessees or mortgagors of real or  
 23 personal property, fiduciaries, employers, and all officers  
 24 and employees of the state or of any municipal corporation  
 25 or political subdivision of the state, having the control,

1 receipt, custody, disposal, or payment of interest, rent,  
2 salaries, wages, premiums, annuities, compensations,  
3 remunerations, emoluments, or other fixed or determinable  
4 annual or periodical gains, profits, and income with respect  
5 to which any person or fiduciary is taxable under this  
6 chapter.

7 ~~(7)~~(9) "Knowingly" is as defined in 45-2-101.

8 ~~(8)~~(10) "Net income" means the adjusted gross income of  
9 a taxpayer less the deductions allowed by this chapter.

10 ~~(9)~~(11) "Paid", for the purposes of the deductions and  
11 credits under this chapter, means paid or accrued or paid or  
12 incurred, and the terms "paid or incurred" and "paid or  
13 accrued" shall be construed according to the method of  
14 accounting upon the basis of which the taxable income is  
15 computed under this chapter.

16 ~~(10)~~(12) "Purposely" is as defined in 45-2-101.

17 ~~(11)~~(13) "Received", for the purpose of computation of  
18 taxable income under this chapter, means received or accrued  
19 and the term "received or accrued" shall be construed  
20 according to the method of accounting upon the basis of  
21 which the taxable income is computed under this chapter.

22 ~~(12)~~(14) "Resident" applies only to natural persons and  
23 includes, for the purpose of determining liability to the  
24 tax imposed by this chapter with reference to the income of  
25 any taxable year, any person domiciled in the state of

1 Montana and any other person who maintains a permanent place  
2 of abode within the state even though temporarily absent  
3 from the state and has not established a residence  
4 elsewhere.

5 ~~(13)~~(15) "Taxable income" means the adjusted gross  
6 income of a taxpayer less the deductions and exemptions  
7 provided for in this chapter.

8 ~~(14)~~(16) "Taxable year" means the taxpayer's taxable  
9 year for federal income tax purposes.

10 ~~(15)~~(17) "Taxpayer" includes any person or fiduciary,  
11 resident or nonresident, subject to a tax imposed by this  
12 chapter and does not include corporations."

13 Section 2. Section 15-30-121, MCA, is amended to read:

14 "15-30-121. Deductions allowed in computing net income.  
15 In computing net income, there are allowed as deductions:

16 (1) the items referred to in sections 161 and 211 of  
17 the Internal Revenue Code of 1954, or as sections 161 and  
18 211 shall be labeled or amended, subject to section 3 and  
19 the following exceptions which are not deductible:

- 20 (a) items provided for in 15-30-123;  
21 (b) state income tax paid;  
22 (2) federal income tax paid within the taxable year;  
23 (3) child and dependent care expenses determined in  
24 accordance with the provisions of section 214 of the  
25 Internal Revenue Code of 1954 that were in effect for the

1 taxable year that began January 1, 1974. However, the  
 2 limitation set forth in section 214(e)(4) of the Internal  
 3 Revenue Code of 1954 as that section was in effect for the  
 4 taxable year that began January 1, 1974, applies only to  
 5 payments made to a child of the taxpayer who is under 19  
 6 years of age at the close of the taxable year and to  
 7 payments made to an individual with respect to whom a  
 8 deduction is allowable under 15-30-112(5) to the taxpayer or  
 9 the taxpayer's spouse.

10 (4) that portion of an energy-related investment  
 11 allowed as a deduction under 15-32-103;

12 (5) in the case of an individual, political  
 13 contributions determined in accordance with the provisions  
 14 of section 218(a) and (b) of the Internal Revenue Code that  
 15 were in effect for the taxable year ended December 31,  
 16 1978."

17 NEW SECTION. Section 3. Method of determining amount  
 18 of deduction allowed for depreciation -- test for taking  
 19 depreciation adjusted for inflation. (1) The provisions of  
 20 section 167 of the Internal Revenue Code apply in the  
 21 computation of net income for purposes of tax liability in  
 22 Montana, except that the amount of depreciation allowed  
 23 under the provisions may be adjusted for inflation according  
 24 to subsection 3 if total indebtedness on all depreciable  
 25 property used by a taxpayer in a trade or business or held

1 for the production of income is less than the total combined  
 2 adjusted basis of such property or properties.

3 (2) No adjustment for inflation may be taken if the  
 4 total indebtedness on all depreciable property used in a  
 5 trade or business or held for the production of income  
 6 exceeds the total combined adjusted basis of the property or  
 7 properties.

8 (3) The amount of depreciation adjusted for inflation  
 9 is calculated as follows:

10 (a) The federal depreciation taken for each item of  
 11 property is added together to yield total federal  
 12 depreciation.

13 (b) To yield an inflation adjusted depreciation for  
 14 each item, the federal depreciation taken for each item of  
 15 property is multiplied by the PIR for the year in which the  
 16 taxpayer purchased the property.

17 (c) The inflation adjusted depreciation determined in  
 18 subsection (3)(b) above for each item of property is added  
 19 together to yield a total inflation adjusted depreciation.

20 (d) The difference between the total inflation adjusted  
 21 depreciation in subsection (3)(c) and total federal  
 22 depreciation in subsection (3)(a) is multiplied by a  
 23 fraction to yield an additional depreciation which may be  
 24 added to the federal depreciation.

25 (e) The fraction used in subsection (3)(d) above is as

1 follows: (total adjusted basis of all property being  
2 depreciated minus total indebtedness on this property)/total  
3 adjusted basis.

4 (f) Total indebtedness is determined by averaging total  
5 indebtedness on the last day of each quarter of the taxable  
6 year.

7 Section 4. 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 [section 5].~~ All  
8 elections for depreciation shall be the same as the  
9 elections made for federal income tax purposes. No deduction  
10 shall be allowed for any amount paid out for any buildings,  
11 permanent improvements, or betterments made to increase the  
12 value of any property or estate, and no deduction shall be  
13 made for any amount of expense of restoring property or  
14 making good the exhaustion thereof for which an allowance is  
15 or has been 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 (C) Any net operating loss carried over to any taxable  
 4 years beginning after December 31, 1978, must be calculated  
 5 under the provisions of this section effective for the  
 6 taxable year for which the return claiming the net operating  
 7 loss carryover is filed.

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

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

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

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

1 1971.

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

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

19 (5) (a) Taxes paid within the year except the  
20 following:

- 21 (i) Taxes imposed by this part.  
22 (ii) Taxes assessed against local benefits of a kind  
23 tending to increase the value of the property assessed.  
24 (iii) 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 (iv) Taxes imposed by any other state or country upon or  
3 measured by net income or profits.

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

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

9 NEW SECTION. Section 5. Method of determining  
10 allowance for depreciation. The allowance for depreciation  
11 is determined according to the provisions of section 167 of  
12 the Internal Revenue Code in effect for the taxable year  
13 except that the amount of depreciation allowed under these  
14 provisions may be adjusted for inflation if the test under  
15 [section 3] is met. The calculation for the adjusted  
16 depreciation is the same as in [section 3].

17 NEW SECTION. Section 6. Department to provide PIR  
18 tables. (1) The department shall provide a table showing the  
19 PIR as defined in 15-30-101 for each of the previous 20  
20 years to each corporation required to file a return.

21 (2) The department shall provide the PIR tables to a  
22 taxpayer upon request.

23 Section 7. Codification instructions. (1) Section 3 is  
24 intended to be codified as an integral part of Title 15,  
25 chapter 30, part 1, and the provisions of Title 15, chapter

1 30, part 1, apply to section 3.

2 (2) Sections 5 and 6 are intended to be codified as an  
3 integral part of Title 15, chapter 31, part 1, and the  
4 provisions of Title 15, chapter 31, part 1, apply to  
5 sections 5 and 6.

6 Section 8. Date of applicability. Sections 1 through 6  
7 apply to taxable years beginning after December 31, 1981.

-End-

HB46



STATE OF MONTANA

REQUEST NO. 43-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 7, 19 81, there is hereby submitted a Fiscal Note for House Bill 46 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

An act to provide an adjustment for inflation of depreciation in calculating individual income tax liability; to provide for the adjustment for inflation of the depreciation allowance taken in determining corporate tax liability.

FISCAL IMPACT

There are no data available to estimate the fiscal impact of this proposal.

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-10-81