

HOUSE BILL NO. 415

INTRODUCED BY SIVERTSEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

January 22, 1981	Introduced and referred to Committee on Taxation.
January 23, 1981	Fiscal note requested.
January 27, 1981	Fiscal note returned.
February 6, 1981	Committee recommend bill do pass as amended. Report adopted.
February 9, 1981	Bill printed and placed on members' desks.  Second reading, do pass.
February 10, 1981	Correctly engrossed.
February 11, 1981	Third reading, passed. Ayes, 96; Noes, 0. Transmitted to Senate.

IN THE SENATE

February 12, 1981	Introduced and referred to Committee on Taxation.
April 3, 1981	Committee recommend bill be concurred in as amended. Report adopted.
April 4, 1981	Motion pass consideration.
April 6, 1981	Statement of intent adopted.  Second reading, concurred in.
April 8, 1981	Third reading, concurred in as amended. Ayes, 49; Noes, 0.

IN THE HOUSE

April 9, 1981

Returned from Senate with amendments and statement of intent.

April 10, 1981

Second reading, amendments concurred in.

On motion rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in. Ayes, 94; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 415  
2 INTRODUCED BY Amator

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT GAIN OR  
6 LOSS UPON A CORPORATE LIQUIDATION IS RECOGNIZED FOR STATE  
7 TAX PURPOSES BY THE LIQUIDATING CORPORATION IF ANY  
8 STOCKHOLDER OF THE CORPORATION IS NOT SUBJECT TO MONTANA  
9 INCOME TAX UNDER TITLE 15, CHAPTER 30 OR 31, AS APPROPRIATE;  
10 AMENDING SECTIONS 15-30-111, 15-30-121, 15-31-113, AND  
11 15-31-114, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

14 Section 1. Section 15-30-111, MCA, is amended to read:  
15 \*15-30-111. Adjusted gross income. (1) Adjusted gross  
16 income shall be the taxpayer's federal income tax adjusted  
17 gross income as defined in section 62 of the Internal  
18 Revenue Code of 1954 or as that section may be labeled or  
19 amended and in addition shall include the following:

- 20 (a) interest received on obligations of another state
- 21 or territory or county, municipality, district, or other
- 22 political subdivision thereof;
- 23 (b) refunds received of federal income tax, to the
- 24 extent the deduction of such tax resulted in a reduction of
- 25 Montana income tax liability.

1 (2) Adjusted gross income does not include the  
2 following which are exempt from taxation under this chapter:

- 3 (a) interest income from obligations of the United
- 4 States government, the state of Montana, county,
- 5 municipality, district, or other political subdivision
- 6 thereof;
- 7 (b) all benefits received under the Federal Employees'
- 8 Retirement Act not in excess of \$3,600;
- 9 (c) all benefits paid under the teachers' retirement
- 10 law which are specified as exempt from taxation by 19-4-706;
- 11 (d) all benefits paid under The Public Employees'
- 12 Retirement System Act which are specified as exempt from
- 13 taxation by 19-3-105;
- 14 (e) all benefits paid under the highway patrol
- 15 retirement law which are specified as exempt from taxation
- 16 by 19-6-705;
- 17 (f) all Montana income tax refunds or credits thereof;
- 18 (g) all benefits paid under 19-11-602, 19-11-604, and
- 19 19-11-605 to retired and disabled firefighters, their
- 20 surviving spouses and orphans;
- 21 (h) all benefits paid by first- or second-class cities
- 22 for the policemen's retirement system provided for by Title
- 23 19, chapter 9*1*;
- 24 (i) gain required to be recognized by a liquidating
- 25 corporation under 15-31-113(1)(a)(iii).

1 (3) In the case of a shareholder of a corporation with  
 2 respect to which the election provided for under subchapter  
 3 S. of the Internal Revenue Code of 1954, as amended, is in  
 4 effect but with respect to which the election provided for  
 5 under 15-31-202, as amended, is not in effect, adjusted  
 6 gross income does not include any part of the corporation's  
 7 undistributed taxable income, net operating loss, capital  
 8 gains or other gains, profits, or losses required to be  
 9 included in the shareholder's federal income tax adjusted  
 10 gross income by reason of the said election under subchapter  
 11 S. However, the shareholder's adjusted gross income shall  
 12 include actual distributions from the corporation to the  
 13 extent they would be treated as taxable dividends if the  
 14 subchapter S. election were not in effect."

15 Section 2. 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 (c) loss allowed to a liquidating corporation under

1 ~~15-31-114(2)(c):~~

2 (2) federal income tax paid within the taxable year;

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

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

17 (5) in the case of an individual, political  
 18 contributions determined in accordance with the provisions  
 19 of section 218(a) and (b) of the Internal Revenue Code that  
 20 were in effect for the taxable year ended December 31,  
 21 1978."

22 Section 3. Section 15-31-113, MCA, is amended to read:

23 "15-31-113. Gross income and net income. (1) The term  
 24 "gross income" means all income recognized in determining  
 25 the corporation's gross income for federal income tax

1 purposes ~~but shall include and:~~

2 (a) including:

3 (i) interest exempt from federal income tax;

4 (ii) gain from a liquidation of the reporting  
 5 corporation not recognized for federal corporate income tax  
 6 purposes pursuant to section 331 or 337 of the Internal  
 7 Revenue Code (as those sections may be amended or  
 8 renumbered) if the liquidated corporation has any  
 9 stockholder, either individual or corporate, not subject to  
 10 Montana income or license tax under Title 15, chapter 39 or  
 11 chapter 31, as appropriate, on the gain passing through to  
 12 the stockholder pursuant to federal law; and

13 (b) excluding gain recognized for federal tax purposes  
 14 as a shareholder of a liquidating corporation pursuant to  
 15 sections 331 or 337 of the Internal Revenue Code (as those  
 16 sections may be amended or renumbered) when the gain is  
 17 required to be recognized by the liquidating corporation  
 18 pursuant to subsection (1)(a)(iii) of this section.

19 (2) The term "net income" means the gross income of  
 20 the corporation less the deductions set forth in 15-31-114.

21 (3) No corporation is exempt from the corporation  
 22 license tax unless specifically provided for under  
 23 15-31-101(3) or 15-31-102. Any corporation not subject to or  
 24 liable for federal income tax but not exempt from the  
 25 corporation license tax under 15-31-101(3) or 15-31-102

1 shall compute gross income for corporation license tax  
 2 purposes in the same manner as a corporation that is subject  
 3 to or liable for federal income tax according to the  
 4 provisions for determining gross income in the federal  
 5 Internal Revenue Code in effect for the taxable year."

6 Section 4. Section 15-31-114, MCA, is amended to read:

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

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

25 (2) (a) All losses actually sustained and charged off

HB 415

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

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

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

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

- 23 (A) No net operating loss deduction shall be allowed.  
 24 (B) The deduction for depletion shall not exceed the  
 25 amount which would be allowable if computed under the cost

1 method.

2 (C) Any net operating loss carried over to any taxable  
3 years beginning after December 31, 1978, must be calculated  
4 under the provisions of this section effective for the  
5 taxable year for which the return claiming the net operating  
6 loss carryover is filed.

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

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

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

21 (vi) The net operating loss deduction shall not be  
22 allowed with respect to taxable periods which ended on or  
23 before December 31, 1970, but shall be allowed only with  
24 respect to taxable periods beginning on or after January 1,  
25 1971.

1 (c) (i) There is allowed a deduction to the liquidated  
2 corporation for a loss from a liquidation of the corporation  
3 not recognized for federal corporate tax purposes pursuant  
4 to sections 331 and 337 of the Internal Revenue Code (as  
5 those sections may be amended or renumbered) if the  
6 liquidated corporation has any stockholder, either  
7 individual or corporate, who would not have been subject to  
8 Montana income or license tax under Title 15, chapter 30 or  
9 31, as appropriate, on gain from the liquidation, had there  
10 been any, passing through to the stockholder pursuant to  
11 federal law.

12 (ii) Loss allowed to be taken as a deduction of a  
13 liquidating corporation under subsection (2)(c)(i) of this  
14 section may not be taken as a deduction by a corporate  
15 stockholder in the liquidating corporation.

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

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

8           (5) (a) Taxes paid within the year except the  
9 following:

10           (i) Taxes imposed by this part.

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

13           (iii) Taxes on or according to or measured by net  
14 income or profits imposed by authority of the government of  
15 the United States.

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

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

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

23           Section 5. Applicability. This act applies to tax  
24 years beginning after December 31, 1980.

-End-



---

STATE OF MONTANA

REQUEST NO. 205-81

FISCAL NOTE

Form BD-15

---

In compliance with a written request received January 23, 19 81, there is hereby submitted a Fiscal Note for HOUSE BILL 415 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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.

---

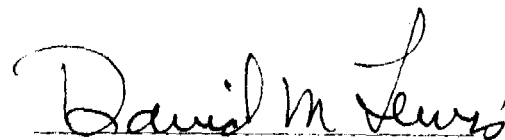
DESCRIPTION

An act to provide that gain or loss upon a corporate liquidation is recognized for state tax purposes by the liquidating corporation if any stockholder of the corporation is not subject to Montana Income Tax under Title 15.

FISCAL IMPACT

The fiscal impact of the proposed legislation cannot be estimated, but it could be significant. The loophole that the proposed legislation will eliminate has resulted in the loss of between one and two million dollars in corporate license tax and interest over the past three years. One single transaction resulted in the loss of at least \$742,000 in tax revenues to the state.

PREPARED BY THE DEPARTMENT OF REVENUE



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-27-81

---

Approved by Committee  
on Taxation

HOUSE BILL NO. 415

INTRODUCED BY SIVERTSEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT GAIN OR LOSS UPON A CORPORATE LIQUIDATION IS RECOGNIZED FOR STATE TAX PURPOSES BY THE LIQUIDATING CORPORATION IF ANY STOCKHOLDER OF THE CORPORATION IS NOT SUBJECT TO MONTANA INCOME TAX OR CORPORATE LICENSE TAX UNDER TITLE 15, CHAPTER 30 OR 31, AS APPROPRIATE; AMENDING SECTIONS 15-30-111, 15-30-121, 15-31-113, AND 15-31-114, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be amended or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of

Montana income tax liability.

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

(a) interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) all benefits received under the Federal Employees' Retirement Act not in excess of \$3,600;

(c) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(d) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(e) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(f) all Montana income tax refunds or credits thereof;

(g) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(h) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(i) gain required to be recognized by a liquidating

1 corporation under 15-31-113(1)(a)(ii).

2 (3) In the case of a shareholder of a corporation with  
 3 respect to which the election provided for under subchapter  
 4 S. of the Internal Revenue Code of 1954, as amended, is in  
 5 effect but with respect to which the election provided for  
 6 under 15-31-202, as amended, is not in effect, adjusted  
 7 gross income does not include any part of the corporation's  
 8 undistributed taxable income, net operating loss, capital  
 9 gains or other gains, profits, or losses required to be  
 10 included in the shareholder's federal income tax adjusted  
 11 gross income by reason of the said election under subchapter  
 12 S. However, the shareholder's adjusted gross income shall  
 13 include actual distributions from the corporation to the  
 14 extent they would be treated as taxable dividends if the  
 15 subchapter S. election were not in effect."

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

17 "15-30-121. Deductions allowed in computing net  
 18 income. In computing net income, there are allowed as  
 19 deductions:

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

- 24 (a) items provided for in 15-30-123;
- 25 (b) state income tax paid;

1 (c) loss allowed to a liquidating corporation under  
 2 15-31-114(2)(c);

3 (2) federal income tax paid within the taxable year;  
 4 (3) child and dependent care expenses determined in  
 5 accordance with the provisions of section 214 of the  
 6 Internal Revenue Code of 1954 that were in effect for the  
 7 taxable year that began January 1, 1974. However, the  
 8 limitation set forth in section 214(e)(4) of the Internal  
 9 Revenue Code of 1954 as that section was in effect for the  
 10 taxable year that began January 1, 1974, applies only to  
 11 payments made to a child of the taxpayer who is under 19  
 12 years of age at the close of the taxable year and to  
 13 payments made to an individual with respect to whom a  
 14 deduction is allowable under 15-30-112(5) to the taxpayer or  
 15 the taxpayer's spouse.

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

18 (5) in the case of an individual, political  
 19 contributions determined in accordance with the provisions  
 20 of section 218(a) and (b) of the Internal Revenue Code that  
 21 were in effect for the taxable year ended December 31,  
 22 1978."

23 Section 3. Section 15-31-113, MCA, is amended to read:

24 "15-31-113. Gross income and net income. (1) The term  
 25 "gross income" means all income recognized in determining

1 the corporation's gross income for federal income tax  
2 purposes ~~but shall include~~ and:

3 (a) including:

4 (i) interest exempt from federal income tax;

5 (ii) gain from a liquidation of the reporting  
6 corporation not recognized for federal corporate income tax  
7 purposes pursuant to section 331 or 337 of the Internal  
8 Revenue Code (as those sections may be amended or  
9 renumbered) if the liquidated corporation has any  
10 stockholder, either individual or corporate, not subject to  
11 Montana income or license tax under Title 15, chapter 30 or  
12 chapter 31, as appropriate, on the gain passing through to  
13 the stockholder pursuant to federal law; and

14 (b) excluding gain recognized for federal tax purposes  
15 as a shareholder of a liquidating corporation pursuant to  
16 sections 331 or 337 of the Internal Revenue Code (as those  
17 sections may be amended or renumbered) when the gain is  
18 required to be recognized by the liquidating corporation  
19 pursuant to subsection (1)(a)(ii) of this section.

20 (2) The term "net income" means the gross income of  
21 the corporation less the deductions set forth in 15-31-114.

22 (3) No corporation is exempt from the corporation  
23 license tax unless specifically provided for under  
24 15-31-101(3) or 15-31-102. Any corporation not subject to or  
25 liable for federal income tax but not exempt from the

1 corporation license tax under 15-31-101(3) or 15-31-102  
2 shall compute gross income for corporation license tax  
3 purposes in the same manner as a corporation that is subject  
4 to or liable for federal income tax according to the  
5 provisions for determining gross income in the federal  
6 Internal Revenue Code in effect for the taxable 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. 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 (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 (c) (i) There is allowed a deduction to the liquidated  
3 corporation for a loss from a liquidation of the corporation  
4 not recognized for federal corporate tax purposes pursuant  
5 to sections 331 and 337 of the Internal Revenue Code (as  
6 those sections may be amended or renumbered) if the  
7 liquidated corporation has any stockholder, either  
8 individual or corporate, who would not have been subject to  
9 Montana income or license tax under Title 15, chapter 30 or  
10 31, as appropriate, on gain from the liquidation, had there  
11 been any, passing through to the stockholder pursuant to  
12 federal law.

13 (ii) Loss allowed to be taken as a deduction of a  
14 liquidating corporation under subsection (2)(c)(i) of this  
15 section may not be taken as a deduction by a corporate  
16 stockholder in the liquidating corporation.

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

1 elections made for federal income tax purposes.

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

9 (5) (a) Taxes paid within the year except the  
10 following:

11 (i) Taxes imposed by this part.

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

14 (iii) Taxes on or according to or measured by net  
15 income or profits imposed by authority of the government of  
16 the United States.

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

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

22 (6) That portion of an energy-related investment  
23 allowed as a deduction under 15-32-103.\*

24 Section 5. Applicability. This act applies to tax  
25 years beginning after December 31, 1980.

-End-

## 1 HOUSE BILL NO. 415

2 INTRODUCED BY SIVERTSEN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT GAIN OR  
6 LOSS UPON A CORPORATE LIQUIDATION IS RECOGNIZED FOR STATE  
7 TAX PURPOSES BY THE LIQUIDATING CORPORATION IF ANY  
8 STOCKHOLDER OF THE CORPORATION IS NOT SUBJECT TO MONTANA  
9 INCOME TAX OR CORPORATE LICENSE TAX UNDER TITLE 15, CHAPTER  
10 30 OR 31, AS APPROPRIATE; AMENDING SECTIONS 15-30-111,  
11 15-30-121, 15-31-113, AND 15-31-114, MCA; AND PROVIDING AN  
12 APPLICABILITY DATE."  
13

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

15 Section 1. Section 15-30-111, MCA, is amended to read:

16 "15-30-111. Adjusted gross income. (1) Adjusted gross  
17 income shall be the taxpayer's federal income tax adjusted  
18 gross income as defined in section 62 of the Internal  
19 Revenue Code of 1954 or as that section may be labeled or  
20 amended and in addition shall include the following:

21 (a) interest received on obligations of another state  
22 or territory or county, municipality, district, or other  
23 political subdivision thereof;

24 (b) refunds received of federal income tax, to the  
25 extent the deduction of such tax resulted in a reduction of

1 Montana income tax liability.

2 (2) Adjusted gross income does not include the  
3 following which are exempt from taxation under this chapter:

4 (a) interest income from obligations of the United  
5 States government, the state of Montana, county,  
6 municipality, district, or other political subdivision  
7 thereof;

8 (b) all benefits received under the Federal Employees'  
9 Retirement Act not in excess of \$3,600;

10 (c) all benefits paid under the teachers' retirement  
11 law which are specified as exempt from taxation by 19-4-706;

12 (d) all benefits paid under The Public Employees'  
13 Retirement System Act which are specified as exempt from  
14 taxation by 19-3-105;

15 (e) all benefits paid under the highway patrol  
16 retirement law which are specified as exempt from taxation  
17 by 19-6-705;

18 (f) all Montana income tax refunds or credits thereof;

19 (g) all benefits paid under 19-11-602, 19-11-604, and  
20 19-11-605 to retired and disabled firefighters, their  
21 surviving spouses and orphans;

22 (h) all benefits paid by first- or second-class cities  
23 for the policemen's retirement system provided for by Title  
24 19, chapter 9*i*;

25 (i) gain required to be recognized by a liquidating



corporation under 15-31-113(1)(a)(ii).

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S. of the Internal Revenue Code of 1954, as amended, is in effect but with respect to which the election provided for under 15-31-202, as amended, is not in effect, adjusted gross income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other gains, profits, or losses required to be included in the shareholder's federal income tax adjusted gross income by reason of the said election under subchapter S. However, the shareholder's adjusted gross income shall include actual distributions from the corporation to the extent they would be treated as taxable dividends if the subchapter S. election were not in effect."

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

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

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

- (a) items provided for in 15-30-123;
- (b) state income tax paid;

(c) loss allowed to a liquidating corporation under 15-31-114(2)(c);

(2) federal income tax paid within the taxable year;

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

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

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

Section 3. Section 15-31-113, MCA, is amended to read:

"15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining

1 the corporation's gross income for federal income tax  
2 purposes ~~but shall include and:~~

3 (a) including:

4 (i) interest exempt from federal income tax;

5 (ii) gain from a liquidation of the reporting  
6 corporation not recognized for federal corporate income tax  
7 purposes pursuant to section 331 or 337 of the Internal  
8 Revenue Code (as those sections may be amended or  
9 renumbered); if the liquidated corporation has any  
10 stockholder, either individual or corporate, not subject to  
11 Montana income or license tax under Title 15, chapter 30 or  
12 chapter 31, as appropriate, on the gain passing through to  
13 the stockholder pursuant to federal law; and

14 (b) excluding gain recognized for federal tax purposes  
15 as a shareholder of a liquidating corporation pursuant to  
16 sections 331 or 337 of the Internal Revenue Code (as those  
17 sections may be amended or renumbered) when the gain is  
18 required to be recognized by the liquidating corporation  
19 pursuant to subsection (1)(a)(ii) of this section.

20 (2) The term "net income" means the gross income of  
21 the corporation less the deductions set forth in 15-31-114.

22 (3) No corporation is exempt from the corporation  
23 license tax unless specifically provided for under  
24 15-31-101(3) or 15-31-102. Any corporation not subject to or  
25 liable for federal income tax but not exempt from the

1 corporation license tax under 15-31-101(3) or 15-31-102  
2 shall compute gross income for corporation license tax  
3 purposes in the same manner as a corporation that is subject  
4 to or liable for federal income tax according to the  
5 provisions for determining gross income in the federal  
6 Internal Revenue Code in effect for the taxable 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. 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 (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 (C) (i) There is allowed a deduction to the liquidated  
3 corporation for a loss from a liquidation of the corporation  
4 not recognized for federal corporate tax purposes pursuant  
5 to sections 331 and 337 of the Internal Revenue Code (as  
6 those sections may be amended or renumbered) if the  
7 liquidated corporation has any stockholder, either  
8 individual or corporate, who would not have been subject to  
9 Montana income or license tax under Title 15, chapter 30 or  
10 31, as appropriate, on gain from the liquidation, had there  
11 been any, passing through to the stockholder pursuant to  
12 federal law.

13 (ii) Loss allowed to be taken as a deduction of a  
14 liquidating corporation under subsection (2)(c)(i) of this  
15 section may not be taken as a deduction by a corporate  
16 stockholder in the liquidating corporation.

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

1 elections made for federal income tax purposes.

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

9 (5) (a) Taxes paid within the year except the  
10 following:

11 (i) Taxes imposed by this part.

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

14 (iii) Taxes on or according to or measured by net  
15 income or profits imposed by authority of the government of  
16 the United States.

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

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

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

24 Section 5. Applicability. This act applies to tax  
25 years beginning after December 31, 1980.

~~End~~

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 415

3  
4 House Bill 415 is intended to address a problem that  
5 arises under the Montana individual income tax laws and  
6 corporation license and income tax laws due to the  
7 relationship between the Montana adjusted gross income under  
8 the federal income tax laws. Under present law the  
9 liquidation of a corporation holding property in Montana can  
10 cause gain on the sale of the property to pass through to  
11 the stockholders of the corporation. If the stockholders are  
12 not subject to Montana tax on this gain passing through, the  
13 state loses the revenue on what is essentially a state  
14 transaction, namely the sale of Montana property. This  
15 result occurs because of operation of the federal tax laws  
16 relating to corporation liquidations. House Bill 415  
17 addresses this situation by requiring the liquidating  
18 corporation to recognize that portion of the gain from a  
19 corporate liquidation under sections 331 or 337 of the  
20 Internal Revenue Code that passes through to stockholders,  
21 either individual or corporate, who are not subject to  
22 Montana tax, either individual income tax or corporate  
23 license tax, on the gain passed through pursuant to federal  
24 law. Because the provisions of House Bill 415 require  
25 recognition of gain at the corporate level, it is also

1 necessary to remove this gain from the income of the  
2 stockholders, in order to avoid the possibility of double  
3 taxation.

4 For the example we have a corporation L that owns  
5 property in Montana. The stockholders of L are an  
6 out-of-state corporation, S; an out-of-state individual, I;  
7 and a resident individual, R, each with an equal interest.  
8 Corporation L sells the property with a gain of \$3,000,000  
9 and liquidates pursuant to sections 331 through 337 of the  
10 Internal Revenue Code. Under present law, R, as a resident,  
11 would pay tax on \$1,000,000, but S and I would not be  
12 subject to Montana tax on the \$1,000,000 passing through to  
13 them pursuant to federal law. Corporation L would not be  
14 subject to Montana tax. Under House Bill 415, R would remain  
15 subject to tax on \$1,000,000, but Corporation L would now  
16 become subject to tax on the \$2,000,000 (that portion of the  
17 gain passing through to persons not subject to Montana  
18 income or license tax).

## HOUSE BILL NO. 415

INTRODUCED BY SIVERTSEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT A PORTION OF THE GAIN OR LOSS UPON A CORPORATE LIQUIDATION IS RECOGNIZED FOR STATE TAX PURPOSES BY THE LIQUIDATING CORPORATION IF ANY STOCKHOLDER OF THE CORPORATION IS NOT SUBJECT TO MONTANA INCOME TAX OR CORPORATE LICENSE TAX UNDER TITLE 15, CHAPTER 30 OR 31, AS APPROPRIATE; AMENDING SECTIONS 15-30-111, ~~15-30-121~~, AND 15-31-113, ~~AND 15-31-114~~, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition shall include the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of

Montana income tax liability.

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

(a) interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) all benefits received under the Federal Employees' Retirement Act not in excess of \$3,600;

(c) all benefits paid under the teachers' retirement law which are specified as exempt from taxation by 19-4-706;

(d) all benefits paid under The Public Employees' Retirement System Act which are specified as exempt from taxation by 19-3-105;

(e) all benefits paid under the highway patrol retirement law which are specified as exempt from taxation by 19-6-705;

(f) all Montana income tax refunds or credits thereof;

(g) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firefighters, their surviving spouses and orphans;

(h) all benefits paid by first- or second-class cities for the policemen's retirement system provided for by Title 19, chapter 9;

(i) gain required to be recognized by a liquidating

1 corporation under 15-31-113(1)(a)(ii).

2 (3) In the case of a shareholder of a corporation with  
3 respect to which the election provided for under subchapter  
4 S. of the Internal Revenue Code of 1954, as amended, is in  
5 effect but with respect to which the election provided for  
6 under 15-31-202, as amended, is not in effect, adjusted  
7 gross income does not include any part of the corporation's  
8 undistributed taxable income, net operating loss, capital  
9 gains or other gains, profits, or losses required to be  
10 included in the shareholder's federal income tax adjusted  
11 gross income by reason of the said election under subchapter  
12 S. However, the shareholder's adjusted gross income shall  
13 include actual distributions from the corporation to the  
14 extent they would be treated as taxable dividends if the  
15 subchapter S. election were not in effect."

16 Section 2. Section 15-30-121, MCA, is amended to read:  
17 "15-30-121. Deductions allowed in computing net  
18 income. In computing net income, there are allowed as  
19 deductions:

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

- 24 (a) items provided for in 15-30-123;
- 25 (b) state income tax paid;

1 ~~(c) loss allowed to a liquidating corporation under~~  
2 ~~15-31-114(f)(c);~~

3 ~~(2) federal income tax paid within the taxable year~~  
4 ~~(3) child and dependent care expenses determined in~~  
5 ~~accordance with the provisions of section 214 of the~~  
6 ~~Internal Revenue Code of 1954 that were in effect for the~~  
7 ~~taxable year that began January 1, 1974. However, the~~  
8 ~~limitation set forth in section 214(e)(4) of the Internal~~  
9 ~~Revenue Code of 1954 as that section was in effect for the~~  
10 ~~taxable year that began January 1, 1974, applies only to~~  
11 ~~payments made to a child of the taxpayer who is under 19~~  
12 ~~years of age at the close of the taxable year and to~~  
13 ~~payments made to an individual with respect to whom a~~  
14 ~~deduction is allowable under 15-30-112(5) to the taxpayer or~~  
15 ~~the taxpayer's spouse;~~

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

18 ~~(5) in the case of an individual, political~~  
19 ~~contributions determined in accordance with the provisions~~  
20 ~~of section 218(a) and (b) of the Internal Revenue Code that~~  
21 ~~were in effect for the taxable year ended December 31,~~  
22 ~~1978."~~

23 Section 2. Section 15-31-113, MCA, is amended to read:  
24 "15-31-113. Gross income and net income. (1) The term  
25 "gross income" means all income recognized in determining



1 the corporation's gross income for federal income tax  
2 purposes ~~but shall include~~ and:

3 (a) including:

4 (i) interest exempt from federal income tax;  
5 (ii) THE PORTION OF gain from a liquidation of the  
6 reporting corporation not recognized for federal corporate  
7 income tax purposes pursuant to section 331 or THROUGH 337  
8 of the Internal Revenue Code (as those sections may be  
9 amended or renumbered) if the liquidated corporation has any  
10 stockholder ATTRIBUTABLE TO STOCKHOLDERS, either individual  
11 or corporate, not subject to Montana income or license tax  
12 under Title 15, chapter 30 or chapter 31, as appropriate, on  
13 the gain passing through to the stockholder STOCKHOLDERS  
14 pursuant to federal law; and

15 (b) excluding gain recognized for federal tax purposes  
16 as a shareholder of a liquidating corporation pursuant to  
17 sections 331 or THROUGH 337 of the Internal Revenue Code (as  
18 those sections may be amended or renumbered) when the gain  
19 is required to be recognized by the liquidating corporation  
20 pursuant to subsection (1)(a)(ii) of this section.

21 (2) The term "net income" means the gross income of  
22 the corporation less the deductions set forth in 15-31-114.

23 (3) No corporation is exempt from the corporation  
24 license tax unless specifically provided for under  
25 15-31-101(3) or 15-31-102. Any corporation not subject to or

1 liable for federal income tax but not exempt from the  
2 corporation license tax under 15-31-101(3) or 15-31-102  
3 shall compute gross income for corporation license tax  
4 purposes in the same manner as a corporation that is subject  
5 to or liable for federal income tax according to the  
6 provisions for determining gross income in the federal  
7 Internal Revenue Code in effect for the taxable year."

8 ~~Section 4. Section 15-31-114, MCA, is amended to read:~~  
9 ~~"15-31-114. Deductions allowed in computing income~~  
10 ~~in computing the net income, the following deductions shall~~  
11 ~~be allowed from the gross income received by such~~  
12 ~~corporation within the year from all sources:~~

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

1 connection with securing such income shall be deductible  
 2 (2) (a) All losses actually sustained and charged off  
 3 within the year and not compensated by insurance or  
 4 otherwise including a reasonable allowance for the wear and  
 5 tear and obsolescence of property used in the trade or  
 6 business such allowance to be determined according to the  
 7 provisions of section 167 of the Internal Revenue Code in  
 8 effect with respect to the taxable year. All elections for  
 9 depreciation shall be the same as the elections made for  
 10 federal income tax purposes. No deduction shall be allowed  
 11 for 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) (i) 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 15-31-114, over the gross income  
 25 with the modifications specified in (ii) of this subsection.

1 if for any taxable period beginning after December 31, 1970,  
 2 a net operating loss is sustained, such loss shall be a net  
 3 operating loss carryback to each of the three taxable  
 4 periods preceding the taxable period of such loss and shall  
 5 be a net operating loss carryover to each of the five  
 6 taxable periods following the taxable period of such loss. A  
 7 net operating loss for any taxable period ending after  
 8 December 31, 1975, in addition to being a net operating loss  
 9 carryback to each of the three preceding taxable periods,  
 10 shall be a net operating loss carryover to each of the seven  
 11 taxable periods following the taxable period of such loss.  
 12 The portion of such loss which shall be carried to each of  
 13 the other taxable years shall be the excess, if any, of the  
 14 amount of such loss over the sum of the net income for each  
 15 of the prior taxable periods to which such loss was carried.  
 16 For purposes of the preceding sentence, the net income for  
 17 such prior taxable period shall be computed with the  
 18 modifications specified in (ii)(B) of this subsection and by  
 19 determining the amount of the net operating loss deduction  
 20 without regard to the net operating loss for the loss period  
 21 or any taxable period thereafter, and the net income so  
 22 computed shall not be considered to be less than zero.  
 23 (ii) The modifications referred to in (i) of this  
 24 subsection shall be as follows:  
 25 (A) No net operating loss deduction shall be allowed

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

4        ~~(E) Any net operating loss carried over to any taxable~~  
 5 ~~years beginning after December 31, 1978, must be calculated~~  
 6 ~~under the provisions of this section effective for the~~  
 7 ~~taxable year for which the return claiming the net operating~~  
 8 ~~loss carryover is filed.~~

9        ~~(iii) 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        ~~(iv) 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, in the case~~  
 16 ~~of a consolidation of corporations, the new corporate entity~~  
 17 ~~shall not be allowed a deduction for net operating losses~~  
 18 ~~sustained by the consolidated corporations prior to the date~~  
 19 ~~of consolidation.~~

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

23        ~~(vi) The net operating loss deduction shall not be~~  
 24 ~~allowed with respect to taxable periods which ended on or~~  
 25 ~~before December 31, 1978, but shall be allowed only with~~

1        ~~respect to taxable periods beginning on or after January 1,~~  
 2 ~~1971.~~

3        ~~(c) (i) There is allowed a deduction to the liquidated~~  
 4 ~~corporation for a loss from a liquidation of the corporation~~  
 5 ~~not recognized for federal corporate tax purposes pursuant~~  
 6 ~~to sections 331 and 337 of the Internal Revenue Code (as~~  
 7 ~~those sections may be amended or renumbered) if the~~  
 8 ~~liquidated corporation has any stockholder, either~~  
 9 ~~individual or corporate, who would not have been subject to~~  
 10 ~~Montana income or license tax under title 15, chapter 30, or~~  
 11 ~~31, as appropriate, on gain from the liquidation, had there~~  
 12 ~~been any passing through to the stockholder pursuant to~~  
 13 ~~federal laws.~~

14        ~~(ii) Loss allowed to be taken as a deduction of a~~  
 15 ~~liquidating corporation under subsection (2)(c)(i) of this~~  
 16 ~~section may not be taken as a deduction by a corporate~~  
 17 ~~stockholder in the liquidating corporation.~~

18        ~~(3) In the case of mines, other natural deposits, oil~~  
 19 ~~and gas wells, and timber, a reasonable allowance for~~  
 20 ~~depletion and for depreciation of improvements, such~~  
 21 ~~reasonable allowance to be determined according to the~~  
 22 ~~provisions of the Internal Revenue Code in effect for the~~  
 23 ~~taxable year. All elections made under the Internal Revenue~~  
 24 ~~Code with respect to capitalizing or expensing exploration~~  
 25 ~~and development costs and intangible drilling expenses for~~

1 corporation license tax purposes shall be the same as the  
 2 elections made for federal income tax purposes.

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

10 (5) (a) Taxes paid within the year except the  
 11 following:

12 (i) Taxes imposed by this part.  
 13 (ii) Taxes assessed against local benefits of a kind  
 14 tending to increase the value of the property assessed.

15 (iii) Taxes on or according to or measured by net  
 16 income or profits imposed by authority of the government of  
 17 the United States.

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

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

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

25 Section 3. Applicability. This act applies to tax

1 years beginning after December 31, 1980.

-End-

April 6, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendment to House Bill 415, third reading copy, as follows:

That the following Statement of Intent be adopted regarding House Bill 415:

STATEMENT OF INTENT RE: HB 415

House bill 415 is intended to address a problem that arises under the Montana individual income tax laws and corporation license and income tax laws due to the relationship between the Montana adjusted gross income under the federal income tax laws. Under present law the liquidation of a corporation holding property in Montana can cause gain on the sale of the property to pass through to the stockholders of the corporation. If the stockholders are not subject to Montana tax on this gain passing through, the state loses the revenue on what is essentially a state transaction, namely the sale of Montana property. This result occurs because of operation of the federal tax laws relating to corporation liquidations. House bill 415 addresses this situation by requiring the liquidating corporation to recognize that portion of the gain from a corporate liquidation under sections 331 or 337 of the Internal Revenue Code that passes through to stockholders, either individual or corporate, who are not subject to Montana tax, either individual income tax or corporate license tax, on the gain passed through pursuant to federal law. Because the provisions of house bill 415 require recognition of gain at the corporate level, it is also necessary to remove this gain from the income of the stockholders, in order to avoid the possibility of double taxation.

For the example we have a corporation L that owns property in Montana. The stockholders of L are an out-of-state corporation, S; an out-of-state individual, I; and a resident individual, R, each with an equal interest. Corporation L sells the property with a gain of \$3,000,000 and liquidates pursuant to sections 331 through 337 of the Internal Revenue Code. Under present law, R, as a resident, would pay tax on \$1,000,000, but S and I would not be subject to Montana tax on the \$1,000,000 passing through to them pursuant to federal law. Corporation L would not be subject to Montana tax. Under house bill 415, R would remain subject to tax on \$1,000,000, but Corporation L would now become subject to tax on the \$2,000,000 (that portion of the gain passing through to persons not subject to Montana income or license tax).

April 3, 1981

SENATE STANDING COMMITTEE REPORT  
(Taxation)

That House Bill No. 415 be amended as follows:

1. Title, line 5.  
Following: "THAT"  
Insert: "A PORTION OF THE"  
Following: "GAIN"  
Strike: "OR"
2. Title, line 6.  
Following: line 5  
Strike: "LOSS"
3. Title, line 10  
Following: "15-30-111"  
Strike: ", "
4. Title, line 11.  
Following: line 10  
Strike: "15-30-121,"  
Insert: "AND"  
Following: "15-31-113,"  
Strike: "AND 15-31-114,"
5. Page 3, line 16 through page 4, line 22  
Strike: Section 2 in its entirety  
Re-number: subsequent sections
6. Page 5, line 5.  
Following: "(ii)"  
Insert: "the portion of"
7. Page 5, line 7.  
Following: "331"  
Strike: "or"  
Insert: "through"
8. Page 5, lines 9 and 10.  
Following: "renumbered)"  
Strike: "if the liquidated corporation has any stockholder"  
Insert: "attributable to stockholders"
9. Page 5, line 13.  
Following: "the"  
Strike: "stockholder"  
Insert: "stockholders"
10. Page 5, line 16.  
Following: "331"  
Strike: "or"  
Insert: "through"
11. Page 6, line 7 through page 11, line 23  
Strike: Section 4 in its entirety  
Re-number: subsequent section