

HOUSE BILL NO. 859

INTRODUCED BY FAGG, HANNAH, WINSLOW, D. O'HARA, COZZENS, KEATING,
HAGER, VINGER, ANDREASON, KITSELMAN, J. O'HARA, OCHSNER,
CONOVER, CRIPPEN, DOVER, BURNETT, TEAGUE

IN THE HOUSE

March 26, 1981	Introduced and referred to Committee on Taxation.
March 30, 1981	On motion rules were suspended and bill allowed to be transmitted on the 75th legislative day.
March 31, 1981	Committee recommend bill do pass as amended. Report adopted.
April 2, 1981	Bill printed and placed on members' desks.
April 4, 1981	Second reading, do pass as amended. Transmittal date extended to the 76th legislative day.
April 6, 1981	Correctly engrossed. Third reading, passed. Ayes, 85; Noes, 10. Transmitted to Senate.

IN THE SENATE

April 7, 1981	By motion and consent bill allowed to be received and considered this session. Introduced and referred to Committee on Taxation.
April 14, 1981	Committee recommend bill be concurred in. Report adopted.

On motion taken from Committee on Bills and Journal and rereferred to Committee on Finance and Claims. Motion adopted.

April 16, 1981

Committee recommend bill be concurred in. Report adopted.

April 17, 1981

Second reading, concurred in.

On motion rules suspended. Bill placed on calendar for third reading this day.

Third reading, concurred in. Ayes, 40; Noes, 8.

IN THE HOUSE

April 20, 1981

Returned from Senate. Concurred in. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 859

Seating

INTRODUCED BY *FAGG James W. Wankel D. Steve Boggs*
Conner Andrewson Kitzelman J. Dan Burnett
Leagle Dehner Capri Paul Hoyer

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE DEDUCTION OF CHARITABLE CONTRIBUTIONS AND GIFTS MADE BY CORPORATIONS IN COMPUTING NET INCOME AND CORPORATE LICENSE TAX LIABILITY; AMENDING SECTION 15-31-114, MCA."

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 "net operating loss" means the excess of the deductions

1 allowed by this section, 15-31-114, over the gross income,
 2 with the modifications specified in (ii) of this subsection.
 3 If for any taxable period beginning after December 31, 1970,
 4 a net operating loss is sustained, such loss shall be a net
 5 operating loss carryback to each of the three taxable
 6 periods preceding the taxable period of such loss and shall
 7 be a net operating loss carryover to each of the five
 8 taxable periods following the taxable period of such loss. A
 9 net operating loss for any taxable period ending after
 10 December 31, 1975, in addition to being a net operating loss
 11 carryback to each of the three preceding taxable periods,
 12 shall be a net operating loss carryover to each of the seven
 13 taxable periods following the taxable period of such loss.
 14 The portion of such loss which shall be carried to each of
 15 the other taxable years shall be the excess, if any, of the
 16 amount of such loss over the sum of the net income for each
 17 of the prior taxable periods to which such loss was carried.
 18 For purposes of the preceding sentence, the net income for
 19 such prior taxable period shall be computed with the
 20 modifications specified in (ii)(B) of this subsection and by
 21 determining the amount of the net operating loss deduction
 22 without regard to the net operating loss for the loss period
 23 or any taxable period thereafter, and the net income so
 24 computed shall not be considered to be less than zero.

25 (ii) The modifications referred to in (i) of this

1 subsection shall be as follows:

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

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

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

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

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

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

25 (vi) The net operating loss deduction shall not be

1 allowed with respect to taxable periods which ended on or
2 before December 31, 1970, but shall be allowed only with
3 respect to taxable periods beginning on or after January 1,
4 1971.

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

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

22 (5) (a) Taxes paid within the year except the
23 following:

- 24 (i) Taxes imposed by this part.
25 (ii) Taxes assessed against local benefits of a kind

1 tending to increase the value of the property assessed.

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

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

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

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

12 ~~(7) Charitable contributions and gifts that qualify~~
13 ~~for deduction under section 170 of the Internal Revenue~~
14 ~~Code, as amended."~~

-End-

STATE OF MONTANA

REQUEST NO. 442-81

FISCAL NOTE

Form BD-15

In compliance with a written request received March 27, 19 81, there is hereby submitted a Fiscal Note for HOUSE BILL 859 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 for the deduction of charitable contributions and gifts made by corporations in computing net income and corporate license tax liability.

ASSUMPTION

The percentage decrease in Corporation License Tax collections due to this proposal would be 1.1% per year.

FISCAL IMPACT

	FY 82	FY 83
Corporation Tax		
Under current law	\$45.700 M	\$46.400 M
Under proposed law	<u>45.197 M</u>	<u>45.890 M</u>
Estimated Decrease	(\$ 0.503 M)	(\$ 0.510 M)

FUND INFORMATION

General Fund		
Under current law	\$27.259 M	\$27.677 M
Under proposed law	<u>26.959 M</u>	<u>27.373 M</u>
Estimated Decrease	(\$ 0.300 M)	(\$ 0.304 M)
Earmarked Revenue Account		
School Foundation		
Under current law	\$10.648 M	\$10.811 M
Under proposed law	<u>10.531 M</u>	<u>10.692 M</u>
Estimated Decrease	(\$ 0.117 M)	(\$ 0.119 M)
Sinking Fund *		
Under current law	\$ 4.685 M	\$ 4.757 M
Under proposed law	<u>4.633 M</u>	<u>4.705 M</u>
Estimated Decrease	(\$ 0.052 M)	(\$ 0.052 M)
FPGCA-Local Governments		
Under current law	\$ 3.108 M	\$ 3.155 M
Under proposed law	<u>3.074 M</u>	<u>3.120 M</u>
Estimated Decrease	(\$ 0.034 M)	(\$ 0.035 M)

* A portion of this account may be transferred to the General Fund as Long Range Bond Excess.

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4-1-81

PREPARED BY THE DEPARTMENT OF REVENUE

Approved by Committee
on Taxation

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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
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provisions of section 167 of the Internal Revenue Code in
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(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

1 loss carryovers to such taxable period plus the net
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 18 the other taxable years shall be the excess, if any, of the
 19 amount of such loss over the sum of the net income for each
 20 of the prior taxable periods to which such loss was carried.
 21 For purposes of the preceding sentence, the net income for
 22 such prior taxable period shall be computed with the
 23 modifications specified in (ii)(B) of this subsection and by
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 25 without regard to the net operating loss for the loss period

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

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9 (C) Any net operating loss carried over to any taxable
 10 years beginning after December 31, 1978, must be calculated
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14 (iii) A net operating loss deduction shall be allowed
 15 only with regard to losses attributable to the business
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15 and development costs and intangible drilling expenses for
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10 (b) Taxes deductible under this part shall be
11 construed to include taxes imposed by any county, school
12 district, or municipality of this state.

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

15 ~~(7) Charitable EXCEPT AS PROVIDED IN SUBSECTION (7),~~
16 ~~CHARITABLE contributions and gifts that qualify for~~
17 ~~deduction under section 170 of the Internal Revenue Code, as~~
18 ~~amended.~~

19 ~~(8) THE PUBLIC SERVICE COMMISSION SHALL NOT ALLOW IN~~
20 ~~THE RATE BASE OF A REGULATED CORPORATION THE INCLUSION OF~~
21 ~~CONTRIBUTIONS MADE UNDER SUBSECTION (7)."~~

-End-

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2 INTRODUCED BY FAGG, HANNAH, WINSLOW,
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 19 loss deduction for net operating losses sustained by the
 20 merged corporations prior to the date of merger. In the case
 21 of a consolidation of corporations, the new corporate entity
 22 shall not be allowed a deduction for net operating losses
 23 sustained by the consolidated corporations prior to the date
 24 of consolidation.

25 (v) Notwithstanding the provisions of 15-31-531,

1 interest shall not be paid with respect to a refund of tax
 2 resulting from a net operating loss carryback or carryover.

3 (vi) The net operating loss deduction shall not be
 4 allowed with respect to taxable periods which ended on or
 5 before December 31, 1970, but shall be allowed only with
 6 respect to taxable periods beginning on or after January 1,
 7 1971.

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

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

25 (5) (a) Taxes paid within the year except the

1 following:

2 (i) Taxes imposed by this part.

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

5 (iii) Taxes on or according to or measured by net
 6 income or profits imposed by authority of the government of
 7 the United States.

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

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

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

15 (7) (A) Charitable EXCEPT AS PROVIDED IN SUBSECTION
 16 ~~477~~ (B), CHARITABLE contributions and gifts that qualify for
 17 deduction under section 170 of the Internal Revenue Code, as
 18 amended.

19 ~~487~~(B) THE PUBLIC SERVICE COMMISSION SHALL NOT ALLOW
 20 IN THE RATE BASE OF A REGULATED CORPORATION THE INCLUSION OF
 21 CONTRIBUTIONS MADE UNDER SUBSECTION (7)."

-End-