

SENATE BILL NO. 322

INTRODUCED BY HALLIGAN, NORMAN, RAGER, BERG,
VAN VALKENBURG, DUSSAULT, KEMMIS, AZZARA

IN THE SENATE

January 29, 1981	Introduced and referred to Committee on Taxation. Fiscal note requested.
February 3, 1981	Fiscal note returned.
March 14, 1981	Committee recommend bill do pass as amended. Report adopted.
March 16, 1981	Bill printed and placed on members' desks.
March 17, 1981	Second reading, do pass.
March 18, 1981	Correctly engrossed.
March 19, 1981	Third reading, passed. Ayes, 46; Noes, 2. Transmitted to House.

IN THE HOUSE

March 20, 1981	Introduced and referred to Committee on Taxation.
April 11, 1981	Committee recommend bill be concurred in as amended. Report adopted.
April 16, 1981	Second reading, concurred in. On motion rules suspended and bill placed on third reading this day. Third reading, concurred in as amended. Ayes, 64; Noes, 32.

IN THE SENATE

April 17, 1981

Returned from House with amendments.

April 20, 1981

Second reading, amendments concurred in.

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

Third reading, amendments concurred in. Ayes, 47; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *322*
 2 INTRODUCED BY *Holligan Norman Hoge Berg*
 3 *Van Valkenburg* *Whitcomb* *Kennick* *Appert*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO STIMULATE THE
 5 PRODUCTION AND USE OF ORGANIC FERTILIZER AND SOIL AMENDMENTS
 6 IN MONTANA BY PROVIDING TAX INCENTIVES AND REQUIRING USE OF
 7 SUCH FERTILIZER AND SOIL AMENDMENTS IN CERTAIN INSTANCES;
 8 AMENDING SECTIONS 15-6-135, 15-30-121, AND 15-31-114, MCA."

9
 10 WHEREAS, Montana's predominantly agricultural economy
 11 is dependent on fertile soil; and

12 WHEREAS, saline seep has damaged 500,000 acres of our
 13 state and is continuing to claim more than 20,000 acres a
 14 year; and

15 WHEREAS, strip mining for coal is decreasing, at least
 16 temporarily, the acres of grazing land in the state; and

17 WHEREAS, erosion, overgrazing, and intensive cropping
 18 are depleting our soils faster than inorganic fertilizers
 19 can renew them; and

20 WHEREAS, organic matter properly aged and applied to
 21 the soil can dramatically increase the fertility of soil;
 22 and

23 WHEREAS, solid waste disposal by industry and
 24 municipalities is presently an expensive and potential
 25 environmentally hazardous undertaking; and

1 WHEREAS, the economic and environmental burden of
 2 disposing of such solid wastes may be partially offset
 3 through the use of such wastes by an active organic
 4 fertilizer processing industry in Montana; and

5 WHEREAS, tax incentives are needed to initially assist
 6 and stimulate the production and use of organic fertilizer
 7 and soil amendments produced from industrial and municipal
 8 wastes.

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Purpose. The purpose of
 12 [sections 1 through 5] is to promote the use of organic
 13 matter produced by Montana industries and municipalities to
 14 revitalize Montana lands and to assist in making organic
 15 fertilizer economically competitive with inorganic
 16 fertilizer.

17 NEW SECTION. Section 2. Definitions. As used in
 18 [sections 1 through 5], the following definitions apply:

19 (1) "Raw organic matter" means unprocessed plant or
 20 animal waste products.

21 (2) "Organic fertilizer" means raw organic matter that
 22 has been processed and aged for use in increasing soil
 23 condition and fertility, and includes both fertilizer and
 24 soil amendments as those terms are defined in 80-10-101.

25 NEW SECTION. Section 3. Deduction for purchase of

1 Montana produced organic fertilizer. In addition to all
 2 other deductions from adjusted gross individual income
 3 allowed in computing taxable income under Title 15, chapter
 4 30, or from gross corporate income allowed in computing net
 5 income under Title 15, chapter 31, part 1, a taxpayer may
 6 deduct a portion of his expenditure for organic fertilizer
 7 produced in Montana and used in Montana, in accordance with
 8 the following schedule:

9 (1) 100% of the first \$1,000 expended;

10 (2) 60% of the amount over \$1,000 and equal to or less
 11 than \$2,000 expended;

12 (3) 40% of the amount over \$2,000 and equal to or less
 13 than \$3,000 expended;

14 (4) 20% of the amount over \$3,000 and equal to or less
 15 than \$4,000 expended;

16 (5) 10% of the amount over \$4,000 expended.

17 NEW SECTION. Section 4. Procedure for obtaining
 18 benefit of deduction. The department of revenue shall
 19 prescribe the method by which a taxpayer may apply for tax
 20 treatment under [section 3].

21 NEW SECTION. Section 5. Use of organic fertilizer
 22 required -- when. Any department or agency of state
 23 government shall, in any reclamation, refurbishing,
 24 conditioning, or other treatment of land under its
 25 jurisdiction, use or require the use of organic fertilizer

1 as defined in [section 2] to the extent that use of such
 2 fertilizer is shown to be economically competitive with
 3 inorganic fertilizer.

4 Section 6. Section 15-6-135, MCA, is amended to read:

5 "15-6-135. Class five property -- description --
 6 taxable percentage. (1) Class five property includes:

7 (a) all property used and owned by cooperative rural
 8 electrical and cooperative rural telephone associations
 9 organized under the laws of Montana, except property owned
 10 by cooperative organizations described in subsection (1)(c)
 11 of 15-6-137;

12 (b) air and water pollution control equipment as
 13 defined in this section;

14 (c) truck campers, motor homes, and camping and travel
 15 trailers, including fifth-wheel trailers, owned by and
 16 actually used primarily by a person 60 years of age or older
 17 who:

18 (i) is retired from full employment; and

19 (ii) whose total income from all sources is not more
 20 than \$7,000 for a single person or \$8,000 for a married
 21 couple;

22 (d) new industrial property as defined in this
 23 section;

24 (e) any personal or real property used primarily in
 25 the production of gasohol during construction and for the

1 first 3 years of its operation;

2 ~~(f) any real property used primarily in a facility~~
 3 ~~operated for the production of organic fertilizer during~~
 4 ~~construction and for the first 3 years of operation of such~~
 5 ~~a facility.~~

6 (2) (a) "Air and water pollution equipment" means
 7 facilities, machinery, or equipment used to reduce or
 8 control water or atmospheric pollution or contamination by
 9 removing, reducing, altering, disposing, or storing
 10 pollutants, contaminants, wastes, or heat. The department of
 11 health and environmental sciences shall determine if such
 12 utilization is being made.

13 (b) The department's determination [as to air
 14 pollution equipment] may be appealed to the board of health
 15 and environmental sciences and may not be appealed to either
 16 a county tax appeal board or the state tax appeal board.
 17 However, the appraised value of the equipment as determined
 18 by the department of revenue may be appealed to the county
 19 tax appeal board and the state tax appeal board.

20 (3) "New industrial property" means any new industrial
 21 plant, including land, buildings, machinery, and fixtures,
 22 used by new industries during the first 3 years of their
 23 operation. The property may not have been assessed within
 24 the state of Montana prior to July 1, 1961.

25 (4) (a) "New industry" means any person, corporation,

1 firm, partnership, association, or other group that
 2 establishes a new plant in Montana for the operation of a
 3 new industrial endeavor, as distinguished from a mere
 4 expansion, reorganization, or merger of an existing
 5 industry.

6 (b) New industry includes only those industries that:
 7 (i) manufacture, mill, mine, produce, process, or
 8 fabricate materials;

9 (ii) do similar work, employing capital and labor, in
 10 which materials unserviceable in their natural state are
 11 extracted, processed, or made fit for use or are
 12 substantially altered or treated so as to create commercial
 13 products or materials; or

14 (iii) engage in the mechanical or chemical
 15 transformation of materials or substances into new products
 16 in the manner defined as manufacturing in the 1972 Standard
 17 Industrial Classification Manual prepared by the United
 18 States office of management and budget.

19 (5) New industrial property does not include:

20 (a) property used by retail or wholesale merchants,
 21 commercial services of any type, agriculture, trades, or
 22 professions;

23 (b) a plant that will create adverse impact on
 24 existing state, county, or municipal services; or

25 (c) property used or employed in any industrial plant

1 that has been in operation in this state for 3 years or
2 longer.

3 (6) Class five property is taxed at 3% of its market
4 value."

5 Section 7. Section 15-30-121, MCA, is amended to read:
6 "15-30-121. Deductions allowed in computing net
7 income. In computing net income, there are allowed as
8 deductions:

9 (1) the items referred to in sections 161 and 211 of
10 the Internal Revenue Code of 1954, or as sections 161 and
11 211 shall be labeled or amended, subject to the following
12 exceptions which are not deductible:

13 (a) items provided for in 15-30-123;

14 (b) state income tax paid;

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

16 (3) child and dependent care expenses determined in
17 accordance with the provisions of section 214 of the
18 Internal Revenue Code of 1954 that were in effect for the
19 taxable year that began January 1, 1974. However, the
20 limitation set forth in section 214(e)(4) of the Internal
21 Revenue Code of 1954 as that section was in effect for the
22 taxable year that began January 1, 1974, applies only to
23 payments made to a child of the taxpayer who is under 19
24 years of age at the close of the taxable year and to
25 payments made to an individual with respect to whom a

1 deduction is allowable under 15-30-112(5) to the taxpayer or
2 the taxpayer's spouse.

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

5 (5) In the case of an individual, political
6 contributions determined in accordance with the provisions
7 of section 218(a) and (b) of the Internal Revenue Code that
8 were in effect for the taxable year ended December 31,
9 1978;

10 ~~(6) that portion of expenses for organic fertilizer~~
11 ~~allowed as a deduction under [section 3]."~~

12 Section 8. Section 15-31-114, MCA, is amended to read:

13 "15-31-114. Deductions allowed in computing income. In
14 computing the net income, the following deductions shall be
15 allowed from the gross income received by such corporation
16 within the year from all sources:

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

1 allowed for salaries paid upon which the recipient thereof
 2 has not paid Montana state income tax; provided, however,
 3 that where domestic corporations are taxed on income derived
 4 from without the state, salaries of officers paid in
 5 connection with securing such income shall be deductible.

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

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

1 operating loss carrybacks to such taxable period. The term
 2 "net operating loss" means the excess of the deductions
 3 allowed by this section, 15-31-114, over the gross income,
 4 with the modifications specified in (ii) of this subsection.
 5 If for any taxable period beginning after December 31, 1970,
 6 a net operating loss is sustained, such loss shall be a net
 7 operating loss carryback to each of the three taxable
 8 periods preceding the taxable period of such loss and shall
 9 be a net operating loss carryover to each of the five
 10 taxable periods following the taxable period of such loss. A
 11 net operating loss for any taxable period ending after
 12 December 31, 1975, in addition to being a net operating loss
 13 carryback to each of the three preceding taxable periods,
 14 shall be a net operating loss carryover to each of the seven
 15 taxable periods following the taxable period of such loss.
 16 The portion of such loss which shall be carried to each of
 17 the other taxable years shall be the excess, if any, of the
 18 amount of such loss over the sum of the net income for each
 19 of the prior taxable periods to which such loss was carried.
 20 For purposes of the preceding sentence, the net income for
 21 such prior taxable period shall be computed with the
 22 modifications specified in (ii)(B) of this subsection and by
 23 determining the amount of the net operating loss deduction
 24 without regard to the net operating loss for the loss period
 25 or any taxable period thereafter, and the net income so

1 computed shall not be considered to be less than zero.

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

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

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

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

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

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

24 (v) Notwithstanding the provisions of 15-31-531,
25 interest shall not be paid with respect to a refund of tax

1 resulting from a net operating loss carryback or carryover.

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

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

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

24 (5) (a) Taxes paid within the year except the
25 following:

- 1 (i) Taxes imposed by this part.
2 (ii) Taxes assessed against local benefits of a kind
3 tending to increase the value of the property assessed.
4 (iii) Taxes on or according to or measured by net
5 income or profits imposed by authority of the government of
6 the United States.
7 (iv) Taxes imposed by any other state or country upon
8 or measured by net income or profits.
9 (b) Taxes deductible under this part shall be
10 construed to include taxes imposed by any county, school
11 district, or municipality of this state.
12 (6) That portion of an energy-related investment
13 allowed as a deduction under 15-32-103.
14 ~~(7) That portion of expenses for organic fertilizer~~
15 ~~allowed as a deduction under [section 3]."~~

-End-

STATE OF MONTANA

REQUEST NO. 257-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, 19 81, there is hereby submitted a Fiscal Note for SENATE BILL 322 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.

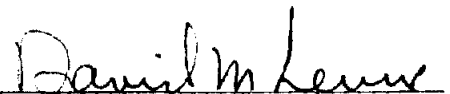
DESCRIPTION

An act to stimulate the production and use of organic fertilizers and soil amendments in Montana by providing tax incentives and requiring use of such fertilizer and soil amendments in certain instances.

FISCAL IMPACT

The Department of Revenue is unable to estimate the fiscal impact of this proposal. It is not believed that the impact of the preferential property tax treatment would be substantial, but the revenue effect of the proposed income tax deduction could be significant.

PREPARED BY THE DEPARTMENT OF REVENUE



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-81

Approved by Committee
on Taxation

SENATE BILL NO. 322

INTRODUCED BY HALLIGAN, NORMAN, HAGER, BERG,
VAN VALKENBURG, DUSSAULT, KEMMIS, AZZARA

A BILL FOR AN ACT ENTITLED: "AN ACT TO STIMULATE THE
PRODUCTION AND USE OF ORGANIC FERTILIZER AND SOIL AMENDMENTS
IN MONTANA BY ~~PROVIDING TAX INCENTIVES AND REQUIRING USE OF~~
~~SUCH FERTILIZER AND SOIL AMENDMENTS IN CERTAIN INSTANCES BY~~
PROVIDING TAX INCENTIVES; AMENDING SECTIONS ~~15-6-135~~
~~15-30-121~~ AND ~~15-31-114~~, MCA."

WHEREAS, Montana's predominantly agricultural economy
is dependent on fertile soil; and

WHEREAS, saline seep has damaged 500,000 acres of our
state and is continuing to claim more than 20,000 acres a
year; and

WHEREAS, strip mining for coal is decreasing, at least
temporarily, the acres of grazing land in the state; and

WHEREAS, erosion, overgrazing, and intensive cropping
are depleting our soils faster than inorganic fertilizers
can renew them; and

WHEREAS, organic matter properly aged and applied to
the soil can dramatically increase the fertility of soil;
and

WHEREAS, solid waste disposal by industry and

municipalities is presently an expensive and potential
environmentally hazardous undertaking; and

WHEREAS, the economic and environmental burden of
disposing of such solid wastes may be partially offset
through the use of such wastes by an active organic
fertilizer processing industry in Montana; and

WHEREAS, tax incentives are needed to initially assist
and stimulate the production and use of organic fertilizer
and soil amendments produced from industrial and municipal
wastes.

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

NEW SECTION. Section 1. Purpose. The purpose of
[sections 1 through 5] is to promote the use of organic
matter produced by Montana industries and municipalities to
revitalize Montana lands and to assist in making organic
fertilizer economically competitive with inorganic
fertilizer.

NEW SECTION. Section 2. Definitions. As used in
[sections 1 through 5], the following definitions apply:

(1) "Raw organic matter" means unprocessed plant or
animal waste products.

(2) "Organic fertilizer" means raw organic matter that
has been processed and aged for use in increasing soil
condition and fertility, and includes ~~both--fertilizer--and~~

1 soil amendments as those terms are THAT TERM IS defined in
2 80-10-101.

3 NEW SECTION. Section 3. Deduction for purchase of
4 Montana produced organic fertilizer. In addition to all
5 other deductions from adjusted gross individual income
6 allowed in computing taxable income under Title 15, chapter
7 30, or from gross corporate income allowed in computing net
8 income under Title 15, chapter 31, part 1, a taxpayer may
9 deduct a portion of his expenditure EXPENDITURES for organic
10 fertilizer produced in Montana and used in Montana in
11 accordance with the following schedule:

- 12 (1) 100% of the first \$1,000 expended;
- 13 (2) 60% of the amount over \$1,000 and equal to or less
14 than \$2,000 expended;
- 15 (3) 40% of the amount over \$2,000 and equal to or less
16 than \$3,000 expended;
- 17 (4) 20% of the amount over \$3,000 and equal to or less
18 than \$4,000 expended;
- 19 (5) 10% of the amount over \$4,000 expended.

20 NEW SECTION. Section 4. Procedure for obtaining
21 benefit of deductions. The department of revenue shall
22 prescribe the method by which a taxpayer may apply for tax
23 treatment under [section 3].

24 NEW SECTION. Section 5. Use of organic fertilizer
25 required when. Any department or agency of state

1 government shall in any reclamation, refurbishing,
2 conditioning, or other treatment of land under its
3 jurisdiction use or require the use of organic fertilizer
4 as defined in [section 2] to the extent that use of such
5 fertilizer is shown to be economically competitive with
6 inorganic fertilizer.

7 Section 6. Section 15-6-135, MCA, is amended to read:
8 "15-6-135. Class five property. Description of
9 taxable percentage. (1) Class five property includes:
10 (a) all property used and owned by cooperative rural
11 electrical and cooperative rural telephone associations
12 organized under the laws of Montana except property owned
13 by cooperative organizations described in subsection (1)(c)
14 of 15-6-137;

15 (b) air and water pollution control equipment as
16 defined in this section;

17 (c) truck campers, motor homes, and camping and travel
18 trailers, including fifth-wheel trailers, owned by and
19 actually used primarily by a person 60 years of age or older
20 who:

- 21 (i) is retired from full employment and
- 22 (ii) whose total income from all sources is not more
23 than \$7,000 for a single person or \$8,000 for a married
24 couple;
- 25 (d) new industrial property as defined in this

1 section†

2 (e) any person† or real property used primarily in
3 the production of gasohol† during construction and for the
4 first 3 years of its operation.†

5 (f) any real property used primarily in a facility
6 operated for the production of organic fertilizer during
7 construction and for the first 3 years of operation of such
8 a facility.†

9 (2) (a) "Air and water pollution equipment" means
10 facilities, machinery, or equipment used to reduce or
11 control water or atmospheric pollution or contamination by
12 removing, reducing, altering, disposing, or storing
13 pollutants, contaminants, wastes, or heat. The department of
14 health and environmental sciences shall determine if such
15 utilization is being made.†

16 (b) The department's determination (as to air
17 pollution equipment) may be appealed to the board of health
18 and environmental sciences and may not be appealed to either
19 a county tax appeal board or the state tax appeal board.†
20 However, the appraised value of the equipment as determined
21 by the department of revenue may be appealed to the county
22 tax appeal board and the state tax appeal board.†

23 (3) "New industrial property" means any new industrial
24 plant, including land, buildings, machinery, and fixtures,
25 used by new industries during the first 3 years of their

1 operation. The property may not have been assessed within
2 the state of Montana prior to July 1, 1961.†

3 (4) (a) "New industry" means any person, corporation,
4 firm, partnership, association, or other group that
5 establishes a new plant in Montana for the operation of a
6 new industrial endeavor, as distinguished from a mere
7 expansion, reorganization, or merger of an existing
8 industry.†

9 (b) New industry includes only those industries that†
10 (i) manufacture, mine, produce, process, or
11 fabricate materials†

12 (ii) do similar work employing capital and labor, in
13 which materials, unserviceable in their natural state, are
14 extracted, processed, or made fit for use, or are
15 substantially altered or treated so as to create commercial
16 products or materials,† or

17 (iii) engage in the mechanical or chemical
18 transformation of materials or substances into new products
19 in the manner defined as manufacturing in the 1972 Standard
20 Industrial Classification Manual prepared by the United
21 States office of management and budget.†

22 (5) New industrial property does not include†

23 (a) property used by retail or wholesale merchants,
24 commercial services of any type, agriculture, trades, or
25 professions.†

~~(b) a plant that will create adverse impact on existing state, county, or municipal services; or~~

~~(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer;~~

~~(6) Class five property is taxed at 3% of its market value."~~

Section 4. 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;

(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;

(6) that portion of expenses for organic fertilizer allowed as a deduction under [Section 3]."

Section 5. 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

1 a condition to the continued use or possession of property
 2 to which the corporation has not taken or is not taking
 3 title or in which it has no equity. No deduction shall be
 4 allowed for salaries paid upon which the recipient thereof
 5 has not paid Montana state income tax; provided, however,
 6 that where domestic corporations are taxed on income derived
 7 from without the state, salaries of officers paid in
 8 connection with securing such income shall be deductible.

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

24 (b) (i) There shall be allowed as a deduction for the
 25 taxable period a net operating loss deduction determined

1 according to the provisions of this subsection. The net
 2 operating loss deduction is the aggregate of net operating
 3 loss carryovers to such taxable period plus the net
 4 operating loss carrybacks to such taxable period. The term
 5 "net operating loss" means the excess of the deductions
 6 allowed by this section, 15-31-114, over the gross income,
 7 with the modifications specified in (ii) of this subsection.
 8 If for any taxable period beginning after December 31, 1970,
 9 a net operating loss is sustained, such loss shall be a net
 10 operating loss carryback to each of the three taxable
 11 periods preceding the taxable period of such loss and shall
 12 be a net operating loss carryover to each of the five
 13 taxable periods following the taxable period of such loss. A
 14 net operating loss for any taxable period ending after
 15 December 31, 1975, in addition to being a net operating loss
 16 carryback to each of the three preceding taxable periods,
 17 shall be a net operating loss carryover to each of the seven
 18 taxable periods following the taxable period of such loss.
 19 The portion of such loss which shall be carried to each of
 20 the other taxable years shall be the excess, if any, of the
 21 amount of such loss over the sum of the net income for each
 22 of the prior taxable periods to which such loss was carried.
 23 For purposes of the preceding sentence, the net income for
 24 such prior taxable period shall be computed with the
 25 modifications specified in (ii)(B) of this subsection and by

1 determining the amount of the net operating loss deduction
2 without regard to the net operating loss for the loss period
3 or any taxable period thereafter, and the net income so
4 computed shall not be considered to be less than zero.

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

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

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

11 (C) Any net operating loss carried over to any taxable
12 years beginning after December 31, 1978, must be calculated
13 under the provisions of this section effective for the
14 taxable year for which the return claiming the net operating
15 loss carryover is filed.

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

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

1 of consolidation.

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

5 (vi) The net operating loss deduction shall not be
6 allowed with respect to taxable periods which ended on or
7 before December 31, 1970, but shall be allowed only with
8 respect to taxable periods beginning on or after January 1,
9 1971.

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

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

1 property or business would be taxable under this part.

2 (5) (a) Taxes paid within the year except the
3 following:

4 (i) Taxes imposed by this part.

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

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

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

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

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

17 [7] That portion of expenses for organic fertilizer
18 allowed as a deduction under [section 3]."

-End-

SENATE BILL NO. 322

INTRODUCED BY HALLIGAN, NORMAN, HAGER, BERG,

VAN VALKENBURG, DUSSAULT, KEMMIS, AZZARA

A BILL FOR AN ACT ENTITLED: "AN ACT TO STIMULATE THE PRODUCTION AND USE OF ORGANIC FERTILIZER AND SOIL AMENDMENTS IN MONTANA BY PROVIDING TAX INCENTIVES AND REQUIRING USE OF SUCH FERTILIZER AND SOIL AMENDMENTS IN CERTAIN INSTANCES BY PROVIDING TAX INCENTIVES; AMENDING SECTIONS 15-6-135, 15-30-121, AND 15-31-114, MCA."

WHEREAS, Montana's predominantly agricultural economy is dependent on fertile soil; and

WHEREAS, saline seep has damaged 500,000 acres of our state and is continuing to claim more than 20,000 acres a year; and

WHEREAS, strip mining for coal is decreasing, at least temporarily, the acres of grazing land in the state; and

WHEREAS, erosion, overgrazing, and intensive cropping are depleting our soils faster than inorganic fertilizers can renew them; and

WHEREAS, organic matter properly aged and applied to the soil can dramatically increase the fertility of soil; and

WHEREAS, solid waste disposal by industry and

municipalities is presently an expensive and potential environmentally hazardous undertaking; and

WHEREAS, the economic and environmental burden of disposing of such solid wastes may be partially offset through the use of such wastes by an active organic fertilizer processing industry in Montana; and

WHEREAS, tax incentives are needed to initially assist and stimulate the production and use of organic fertilizer and soil amendments produced from industrial and municipal wastes.

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

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 5] is to promote the use of organic matter produced by Montana industries and municipalities to revitalize Montana lands and to assist in making organic fertilizer economically competitive with inorganic fertilizer.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Raw organic matter" means unprocessed plant or animal waste products.

(2) "Organic fertilizer" means raw organic matter that has been processed and aged for use in increasing soil condition and fertility, and includes both--fertilizer--and

1 soil amendments as those terms are THAT TERM IS defined in
2 80-10-101.

3 NEW SECTION. Section 3. Deduction for purchase of
4 Montana produced organic fertilizer. In addition to all
5 other deductions from adjusted gross individual income
6 allowed in computing taxable income under Title 15, chapter
7 30, or from gross corporate income allowed in computing net
8 income under Title 15, chapter 31, part 1, a taxpayer may
9 deduct a portion of his expenditure EXPENDITURES for organic
10 fertilizer produced in Montana and used in Montana in
11 accordance with the following schedule:

- 12 (1) 100% of the first \$1,000 expended;
- 13 (2) 60% of the amount over \$1,000 and equal to or less
14 than \$2,000 expended;
- 15 (3) 40% of the amount over \$2,000 and equal to or less
16 than \$3,000 expended;
- 17 (4) 20% of the amount over \$3,000 and equal to or less
18 than \$4,000 expended;
- 19 (5) 10% of the amount over \$4,000 expended.

20 NEW SECTION. Section 4. Procedure for obtaining
21 benefit of deductions. The department of revenue shall
22 prescribe the method by which a taxpayer may apply for tax
23 treatment under [section 3].

24 NEW SECTION. Section 5. Use of organic fertilizer
25 required when. Any department or agency of state

1 government shall, in any reclamation, refurbishing,
2 conditioning, or other treatment of land under its
3 jurisdiction, use or require the use of organic fertilizer
4 as defined in [section 2] to the extent that use of such
5 fertilizer is shown to be economically competitive with
6 inorganic fertilizers.

7 Section 6. Section 15-6-135, MCA, is amended to read:
8 "15-6-135. Class five property description and
9 taxable percentages. (1) Class five property includes:

- 10 (a) all property used and owned by cooperative rural
11 electrical and cooperative rural telephone associations
12 organized under the laws of Montana, except property owned
13 by cooperative organizations described in subsection (1)(c)
14 of 15-6-137;

15 (b) air and water pollution control equipment as
16 defined in this section;

17 (c) truck campers, motor homes, and camping and travel
18 trailers, including fifth wheel trailers, owned by and
19 actually used primarily by a person 68 years of age or older
20 who:

- 21 (i) is retired from full employment; and
- 22 (ii) whose total income from all sources is not more
23 than \$7,000 for a single person or \$8,000 for a married
24 couple;

25 (d) new industrial property as defined in this

1 section†

2 (e) ~~any person† or real property used primarily in~~
3 ~~the production of gasohol during construction and for the~~
4 ~~first 3 years of its operation;†~~

5 ~~(f) any real property used primarily in a facility~~
6 ~~operated for the production of organic fertilizer during~~
7 ~~construction and for the first 3 years of operation of such~~
8 ~~a facility;†~~

9 (2) (a) ~~"Air and water pollution equipment" means~~
10 ~~facilities, machinery or equipment used to reduce or~~
11 ~~control water or atmospheric pollution or contamination by~~
12 ~~removing, reducing, altering, disposing, or storing~~
13 ~~pollutants, contaminants, wastes or heat. The department of~~
14 ~~health and environmental sciences shall determine if such~~
15 ~~utilization is being made.~~

16 (b) ~~The department's determination (as to air~~
17 ~~pollution equipment) may be appealed to the board of health~~
18 ~~and environmental sciences and may not be appealed to either~~
19 ~~a county tax appeal board or the state tax appeal board.~~
20 ~~However, the appraised value of the equipment as determined~~
21 ~~by the department of revenue may be appealed to the county~~
22 ~~tax appeal board and the state tax appeal board.~~

23 (3) ~~"New industrial property" means any new industrial~~
24 ~~plant, including land, buildings, machinery, and fixtures,~~
25 ~~used by new industries during the first 3 years of their~~

1 operation. ~~The property may not have been assessed within~~
2 ~~the state of Montana prior to July 1, 1961.~~

3 (4) (a) ~~"New industry" means any person, corporation,~~
4 ~~firm, partnership, association, or other group that~~
5 ~~establishes a new plant in Montana for the operation of a~~
6 ~~new industrial endeavor, as distinguished from a mere~~
7 ~~expansion, reorganization, or merger of an existing~~
8 ~~industry.~~

9 (b) ~~New industry includes only those industries that:~~

10 (i) ~~manufacture, mine, produce, process, or~~
11 ~~fabricate materials;†~~

12 (ii) ~~do similar work employing capital and labor in~~
13 ~~which materials unserviceable in their natural state are~~
14 ~~extracted, processed, or made fit for use or are~~
15 ~~substantially altered or treated so as to create commercial~~
16 ~~products or materials;† or~~

17 (iii) ~~engage in the mechanical or chemical~~
18 ~~transformation of materials or substances into new products~~
19 ~~in the manner defined as manufacturing in the 1972 Standard~~
20 ~~Industrial Classification Manual prepared by the United~~
21 ~~States office of management and budget.~~

22 (5) ~~New industrial property does not include:~~

23 (a) ~~property used by retail or wholesale merchants,~~
24 ~~commercial services of any type, agriculturists, or~~
25 ~~professionists;†~~

1 ~~(b) a plant that will create adverse impact on~~
2 ~~existing state, county, or municipal services; or~~

3 ~~(c) property used or employed in any industrial plant~~
4 ~~that has been in operation in this state for 3 years or~~
5 ~~longer.~~

6 ~~(6) Class five property is taxed at 3% of its market~~
7 ~~value."~~

8 Section 4. Section 15-30-121, MCA, is amended to read:

9 "15-30-121. Deductions allowed in computing net
10 income. In computing net income, there are allowed as
11 deductions:

12 (1) the items referred to in sections 161 and 211 of
13 the Internal Revenue Code of 1954, or as sections 161 and
14 211 shall be labeled or amended, subject to the following
15 exceptions which are not deductible:

16 (a) items provided for in 15-30-123;

17 (b) state income tax paid;

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

19 (3) child and dependent care expenses determined in
20 accordance with the provisions of section 214 of the
21 Internal Revenue Code of 1954 that were in effect for the
22 taxable year that began January 1, 1974. However, the
23 limitation set forth in section 214(e)(4) of the Internal
24 Revenue Code of 1954 as that section was in effect for the
25 taxable year that began January 1, 1974, applies only to

1 payments made to a child of the taxpayer who is under 19
2 years of age at the close of the taxable year and to
3 payments made to an individual with respect to whom a
4 deduction is allowable under 15-30-112(5) to the taxpayer or
5 the taxpayer's spouse.

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

8 (5) in the case of an individual, political
9 contributions determined in accordance with the provisions
10 of section 218(a) and (b) of the Internal Revenue Code that
11 were in effect for the taxable year ended December 31,
12 1978;

13 (6) that portion of expenses for organic fertilizer
14 allowed as a deduction under [section 3]."

15 Section 5. Section 15-31-114, MCA, is amended to read:

16 "15-31-114. Deductions allowed in computing income. In
17 computing the net income, the following deductions shall be
18 allowed from the gross income received by such corporation
19 within the year from all sources:

20 (1) All the ordinary and necessary expenses paid or
21 incurred during the taxable year in the maintenance and
22 operation of its business and properties, including
23 reasonable allowance for salaries for personal services
24 actually rendered, subject to the limitation hereinafter
25 contained, rentals or other payments required to be made as

1 a condition to the continued use or possession of property
 2 to which the corporation has not taken or is not taking
 3 title or in which it has no equity. No deduction shall be
 4 allowed for salaries paid upon which the recipient thereof
 5 has not paid Montana state income tax; provided, however,
 6 that where domestic corporations are taxed on income derived
 7 from without the state, salaries of officers paid in
 8 connection with securing such income shall be deductible.

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

24 (b) (i) There shall be allowed as a deduction for the
 25 taxable period a net operating loss deduction determined

1 according to the provisions of this subsection. The net
 2 operating loss deduction is the aggregate of net operating
 3 loss carryovers to such taxable period plus the net
 4 operating loss carrybacks to such taxable period. The term
 5 "net operating loss" means the excess of the deductions
 6 allowed by this section, 15-31-114, over the gross income,
 7 with the modifications specified in (ii) of this subsection.
 8 If for any taxable period beginning after December 31, 1970,
 9 a net operating loss is sustained, such loss shall be a net
 10 operating loss carryback to each of the three taxable
 11 periods preceding the taxable period of such loss and shall
 12 be a net operating loss carryover to each of the five
 13 taxable periods following the taxable period of such loss. A
 14 net operating loss for any taxable period ending after
 15 December 31, 1975, in addition to being a net operating loss
 16 carryback to each of the three preceding taxable periods,
 17 shall be a net operating loss carryover to each of the seven
 18 taxable periods following the taxable period of such loss.
 19 The portion of such loss which shall be carried to each of
 20 the other taxable years shall be the excess, if any, of the
 21 amount of such loss over the sum of the net income for each
 22 of the prior taxable periods to which such loss was carried.
 23 For purposes of the preceding sentence, the net income for
 24 such prior taxable period shall be computed with the
 25 modifications specified in (ii)(B) of this subsection and by

1 determining the amount of the net operating loss deduction
2 without regard to the net operating loss for the loss period
3 or any taxable period thereafter, and the net income so
4 computed shall not be considered to be less than zero.

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

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

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

11 (C) Any net operating loss carried over to any taxable
12 years beginning after December 31, 1978, must be calculated
13 under the provisions of this section effective for the
14 taxable year for which the return claiming the net operating
15 loss carryover is filed.

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

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

1 of consolidation.

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

5 (vi) The net operating loss deduction shall not be
6 allowed with respect to taxable periods which ended on or
7 before December 31, 1970, but shall be allowed only with
8 respect to taxable periods beginning on or after January 1,
9 1971.

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

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

1 property or business would be taxable under this part.
2 (5) (a) Taxes paid within the year except the
3 following:
4 (i) Taxes imposed by this part.
5 (ii) Taxes assessed against local benefits of a kind
6 tending to increase the value of the property assessed.
7 (iii) Taxes on or according to or measured by net
8 income or profits imposed by authority of the government of
9 the United States.
10 (iv) Taxes imposed by any other state or country upon
11 or measured by net income or profits.
12 (b) Taxes deductible under this part shall be
13 construed to include taxes imposed by any county, school
14 district, or municipality of this state.
15 (6) That portion of an energy-related investment
16 allowed as a deduction under 15-32-103.
17 (7) That portion of expenses for organic fertilizer
18 allowed as a deduction under [section 3]."

-End-

1 SENATE BILL NO. 322
 2 INTRODUCED BY HALLIGAN, NORMAN, HAGER, BERG,
 3 VAN VALKENBURG, DUSSAULT, KEMMIS, AZZARA
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO STIMULATE THE
 6 PRODUCTION AND USE OF ORGANIC FERTILIZER AND SOIL AMENDMENTS
 7 IN MONTANA BY ~~PROVIDING TAX INCENTIVES AND REQUIRING USE OF~~
 8 ~~SUCH FERTILIZER AND SOIL AMENDMENTS IN CERTAIN INSTANCES BY~~
 9 PROVIDING TAX INCENTIVES; AMENDING SECTIONS ~~15-6-135~~
 10 ~~15-30-121~~ AND 15-31-114, MCA."
 11

12 WHEREAS, Montana's predominantly agricultural economy
 13 is dependent on fertile soil; and

14 WHEREAS, saline seep has damaged 500,000 acres of our
 15 state and is continuing to claim more than 20,000 acres a
 16 year; and

17 WHEREAS, strip mining for coal is decreasing, at least
 18 temporarily, the acres of grazing land in the state; and

19 WHEREAS, erosion, overgrazing, and intensive cropping
 20 are depleting our soils faster than inorganic fertilizers
 21 can renew them; and

22 WHEREAS, organic matter properly aged and applied to
 23 the soil can dramatically increase the fertility of soil;
 24 and

25 WHEREAS, solid waste disposal by industry and

1 municipalities is presently an expensive and potential
 2 environmentally hazardous undertaking; and

3 WHEREAS, the economic and environmental burden of
 4 disposing of such solid wastes may be partially offset
 5 through the use of such wastes by an active organic
 6 fertilizer processing industry in Montana; and

7 WHEREAS, tax incentives are needed to initially assist
 8 and stimulate the production and use of organic fertilizer
 9 and soil amendments produced from industrial and municipal
 10 wastes.
 11

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

13 NEW SECTION. Section 1. Purpose. The purpose of
 14 [sections 1 through 5] is to promote the use of organic
 15 matter produced by Montana industries and municipalities to
 16 revitalize Montana lands and to assist in making organic
 17 fertilizer economically competitive with inorganic
 18 fertilizer.

19 NEW SECTION. Section 2. Definitions. As used in
 20 [sections 1 through 5], the following definitions apply:

21 (1) "Raw organic matter" means unprocessed plant or
 22 animal waste products.

23 (2) "Organic fertilizer" means raw organic matter that
 24 has been processed and aged for use in increasing soil
 25 condition and fertility, and includes ~~both--fertilizer--and~~

1 soil amendments as those terms are THAT TERM IS defined in
2 80-10-101.

3 NEW SECTION. Section 3. Deduction for purchase of
4 Montana produced organic fertilizer. In addition to all
5 other deductions from adjusted gross individual income
6 allowed in computing taxable income under Title 15, chapter
7 30, or from gross corporate income allowed in computing net
8 income under Title 15, chapter 31, part 1, a taxpayer may
9 deduct a portion of his expenditure EXPENDITURES for organic
10 fertilizer produced in Montana and used in Montana IF THE
11 EXPENDITURE WAS NOT OTHERWISE DEDUCTED IN COMPUTING TAXABLE
12 INCOME. in accordance with the following schedules:

- 13 (1) 100% of the first \$1,000 expended;
- 14 (2) 60% of the amount over \$1,000 and equal to or less
15 than \$2,000 expended;
- 16 (3) 40% of the amount over \$2,000 and equal to or less
17 than \$3,000 expended;
- 18 (4) 20% of the amount over \$3,000 and equal to or less
19 than \$4,000 expended;
- 20 (5) 10% of the amount over \$4,000 expended.

21 NEW SECTION. Section 4. Procedure for obtaining
22 benefit of deductions. The department of revenue shall
23 prescribe the method by which a taxpayer may apply for tax
24 treatment under [section 3].

25 NEW SECTION. Section 5. Use of organic fertilizer

1 required when. Any department or agency of state
2 government shall in any reclamation, refurbishing,
3 conditioning or other treatment of land under its
4 jurisdiction use or require the use of organic fertilizer
5 as defined in [section 2] to the extent that use of such
6 fertilizer is shown to be economically competitive with
7 inorganic fertilizers.

8 Section 6. Section 15-6-135, MCA, is amended to read:
9 "15-6-135. Class five property description
10 taxable percentages. (1) Class five property includes:

- 11 (a) all property used and owned by cooperative rural
12 electrical and cooperative rural telephone associations
13 organized under the laws of Montana, except property owned
14 by cooperative organizations described in subsection (1)(c)
15 of 15-6-137;

16 (b) air and water pollution control equipment as
17 defined in this section;

18 (c) truck campers, motor homes, and camping and travel
19 trailers, including fifth wheel trailers, owned by and
20 actually used primarily by a person 60 years of age or older
21 who:

- 22 (i) is retired from full employment; and
- 23 (ii) whose total income from all sources is not more
24 than \$7,000 for a single person or \$8,000 for a married
25 couple;

1 (d) ~~new industrial property as defined in this~~
2 ~~section~~

3 (e) ~~any personal or real property used primarily in~~
4 ~~the production of gasohol during construction and for the~~
5 ~~first 3 years of its operation~~

6 ~~(f) any real property used primarily in a facility~~
7 ~~operated for the production of organic fertilizer during~~
8 ~~construction and for the first 3 years of operation of such~~
9 ~~a facility~~

10 (2) (a) ~~"Air and water pollution equipment" means~~
11 ~~facilities, machinery, or equipment used to reduce or~~
12 ~~control water or atmospheric pollution or contamination by~~
13 ~~removing, reducing, altering, disposing, or storing~~
14 ~~pollutants, contaminants, wastes, or heat. The department of~~
15 ~~health and environmental sciences shall determine if such~~
16 ~~utilization is being made~~

17 (b) ~~The department's determination [as to air~~
18 ~~pollution equipment] may be appealed to the board of health~~
19 ~~and environmental sciences and may not be appealed to either~~
20 ~~a county tax appeal board or the state tax appeal boards.~~
21 ~~However, the appraised value of the equipment as determined~~
22 ~~by the department of revenue may be appealed to the county~~
23 ~~tax appeal board and the state tax appeal boards.~~

24 (3) ~~"New industrial property" means any new industrial~~
25 ~~plants, including tanks, buildings, machinery, and fixtures,~~

1 used by new industries during the first 3 years of their
2 operations. The property may not have been assessed within
3 the state of Montana prior to July 1, 1961.

4 (4) (a) ~~"New industry" means any person, corporation,~~
5 ~~firm, partnership, association, or other group that~~
6 ~~establishes a new plant in Montana for the operation of a~~
7 ~~new industrial endeavor as distinguished from a mere~~
8 ~~expansion, reorganization, or merger of an existing~~
9 ~~industry.~~

10 (b) ~~New industry includes only those industries that~~
11 (i) ~~manufacture, mine, produce, process, or~~
12 ~~fabricate materials;~~

13 (ii) ~~do similar work employing capital and labor in~~
14 ~~which materials unserviceable in their natural state are~~
15 ~~extracted, processed, or made fit for use or are~~
16 ~~substantially altered or treated so as to create commercial~~
17 ~~products or materials; or~~

18 (iii) ~~engage in the mechanical or chemical~~
19 ~~transformation of materials or substances into new products~~
20 ~~in the manner defined as manufacturing in the 1972 Standard~~
21 ~~Industrial Classification Manual prepared by the United~~
22 ~~States office of management and budget.~~

23 (5) ~~New industrial property does not include:~~

24 (a) ~~property used by retail or wholesale merchants,~~
25 ~~commercial services of any type, agriculture, trades, or~~

1 professions;

2 ~~(b) a plant that will create adverse impact on~~
3 ~~existing state, county, or municipal services; or~~

4 ~~(c) property used or employed in any industrial plant~~
5 ~~that has been in operation in this state for 3 years or~~
6 ~~longer;~~

7 ~~(6) Class five property is taxed at 3% of its market~~
8 ~~value."~~

9 Section 4. Section 15-30-121, MCA, is amended to read:

10 "15-30-121. Deductions allowed in computing net
11 income. In computing net income, there are allowed as
12 deductions:

13 (1) the items referred to in sections 161 and 211 of
14 the Internal Revenue Code of 1954, or as sections 161 and
15 211 shall be labeled or amended, subject to the following
16 exceptions which are not deductible:

17 (a) items provided for in 15-30-123;

18 (b) state income tax paid;

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

20 (3) child and dependent care expenses determined in
21 accordance with the provisions of section 214 of the
22 Internal Revenue Code of 1954 that were in effect for the
23 taxable year that began January 1, 1974. However, the
24 limitation set forth in section 214(e)(4) of the Internal
25 Revenue Code of 1954 as that section was in effect for the

1 taxable year that began January 1, 1974, applies only to
2 payments made to a child of the taxpayer who is under 19
3 years of age at the close of the taxable year and to
4 payments made to an individual with respect to whom a
5 deduction is allowable under 15-30-112(5) to the taxpayer or
6 the taxpayer's spouse.

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

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

14 (6) that portion of expenses for organic fertilizer
15 allowed as a deduction under [section 3] WHICH WAS NOT
16 OTHERWISE DEDUCTED IN COMPUTING TAXABLE INCOME."

17 ~~Section 5. Section 15-31-114, MCA, is amended to read:~~

18 ~~"15-31-114. Deductions allowed in computing income~~
19 ~~in computing the net income, the following deductions shall~~
20 ~~be allowed from the gross income received by such~~
21 ~~corporation within the year from all sources:~~

22 ~~(1) All the ordinary and necessary expenses paid or~~
23 ~~incurred during the taxable year in the maintenance and~~
24 ~~operation of its business and properties, including~~
25 ~~reasonable allowance for salaries for personal services~~

1 actually rendered, subject to the limitation hereinafter
 2 contained, rents or other payments required to be made as
 3 a condition to the continued use or possession of property
 4 to which the corporation has not taken or is not taking
 5 title or in which it has no equity. No deduction shall be
 6 allowed for salaries paid upon which the recipient thereof
 7 has not paid Montana state income tax, provided, however,
 8 that where domestic corporations are taxed on income derived
 9 from without the state, salaries of officers paid in
 10 connection with securing such income shall be deductible.

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

1 (b)-(i) There shall be allowed as a deduction for the
 2 taxable period a net operating loss deduction determined
 3 according to the provisions of this subsection. The net
 4 operating loss deduction is the aggregate of net operating
 5 loss carryovers to such taxable period plus the net
 6 operating loss carrybacks to such taxable period. The term
 7 "net operating loss" means the excess of the deductions
 8 allowed by this section, 15-31-114, over the gross income,
 9 with the modifications specified in (ii) of this subsection,
 10 if for any taxable period beginning after December 31, 1970,
 11 a net operating loss is sustained, such loss shall be a net
 12 operating loss carryback to each of the three taxable
 13 periods preceding the taxable period of such loss and shall
 14 be a net operating loss carryover to each of the five
 15 taxable periods following the taxable period of such loss. A
 16 net operating loss for any taxable period ending after
 17 December 31, 1975, in addition to being a net operating loss
 18 carryback to each of the three preceding taxable periods,
 19 shall be a net operating loss carryover to each of the seven
 20 taxable periods following the taxable period of such loss.
 21 The portion of such loss which shall be carried to each of
 22 the other taxable years shall be the excess, if any, of the
 23 amount of such loss over the sum of the net income for each
 24 of the prior taxable periods to which such loss was carried.
 25 For purposes of the preceding sentence, the net income for

1 such prior taxable period shall be computed with the
 2 modifications specified in (ii)(B) of this subsection and by
 3 determining the amount of the net operating loss deduction
 4 without regard to the net operating loss for the loss period
 5 or any taxable period thereafter and the net income so
 6 computed shall not be considered to be less than zero.

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

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

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

13 (C) Any net operating loss carried over to any taxable
 14 years beginning after December 31, 1978, must be calculated
 15 under the provisions of this section effective for the
 16 taxable year for which the return claiming the net operating
 17 loss carryover is filed.

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

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

1 shall not be allowed a deduction for net operating losses
 2 sustained by the consolidated corporations prior to the date
 3 of consolidation.

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

7 (vi) The net operating loss deduction shall not be
 8 allowed with respect to taxable periods which ended on or
 9 before December 31, 1978, but shall be allowed only with
 10 respect to taxable periods beginning on or after January 1,
 11 1979.

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

22 (4) The amount of interest paid within the year on its
 23 indebtedness incurred in the operation of the business from
 24 which its income is derived, but no interest shall be
 25 allowed as a deduction if paid on an indebtedness created

1 for the purchase, maintenance, or improvement of property or
2 for the conduct of business unless the income from such
3 property or business would be taxable under this part.

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

6 (i) Taxes imposed by this part;
7 (ii) Taxes assessed against local benefits of a kind
8 tending to increase the value of the property assessed;

9 (iii) Taxes on or according to or measured by net
10 income or profits imposed by authority of the government of
11 the United States;

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

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

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

19 That portion of expenses for organic fertilizer
20 allowed as a deduction under [section 3] is

-End-

April 10, 1981

HOUSE COMMITTEE ON TAXATION AMENDMENTS TO SENATE BILL 322:

1. Page 3, line 10.

Following: "Montana"

Insert: " if the expenditure was not otherwise deducted in computing taxable income."

2. Page 8, line 14.

Following: "3]"

Insert: "which was not otherwise deducted in computing taxable income"

3. Page 8, line 15 through line 18 on page 13.

Following: line 14 on page 8

Strike: Section 5 in its entirety