

HOUSE BILL NO. 160

Introduced: 01/11/83

Referred to Committee on Taxation: 01/11/83

Hearing: 1/18/83

Died in Committee

1 House BILL NO. 160
 2 INTRODUCED BY Walshon

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RETURNING THE DEDUCTION
 5 FOR DEPRECIATION FOR INDIVIDUAL INCOME TAX AND CORPORATE
 6 LICENSE TAX PURPOSES TO THE DEDUCTION ALLOWED PRIOR TO THE
 7 ENACTMENT OF THE ACCELERATED COST RECOVERY SYSTEM BY THE
 8 FEDERAL GOVERNMENT IN PUBLIC LAW 97-34; AMENDING SECTIONS
 9 15-30-111 AND 15-31-114, MCA; AND PROVIDING AN APPLICABILITY
 10 DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

14 "15-30-111. Adjusted gross income. (1) Adjusted gross
 15 income shall ~~must~~ be the taxpayer's federal income tax
 16 adjusted gross income as defined in section 62 of the
 17 Internal Revenue Code of 1954 or as that section may be
 18 labeled or amended ~~except that the deduction for~~
 19 ~~depreciation must be based on the deduction allowed by~~
 20 ~~section 167 of the Internal Revenue Code of 1954 as that~~
 21 ~~section existed prior to the enactment of the accelerated~~
 22 ~~cost recovery system in P.L. 97-34. In and in addition,~~
 23 ~~adjusted gross income shall must~~ include the following:

24 (a) interest received on obligations of another state
 25 or territory or county, municipality, district, or other

1 political subdivision thereof;

2 (b) refunds received of federal income tax, to the
 3 extent the deduction of such tax resulted in a reduction of
 4 Montana income tax liability.

5 (2) Notwithstanding the provisions of the federal
 6 Internal Revenue Code of 1954 as labeled or amended,
 7 adjusted gross income does not include the following which
 8 are exempt from taxation under this chapter:

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

13 (b) interest income earned by a taxpayer age 65 or
 14 older in a taxable year up to and including \$800 for a
 15 taxpayer filing a separate return and \$1,600 for each joint
 16 return;

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

19 (d) all benefits, not in excess of \$360, received as
 20 an annuity, pension, or endowment under any private or
 21 corporate retirement plan or system;

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

24 (f) all benefits paid under The Public Employees'
 25 Retirement System Act which are specified as exempt from

INTRODUCED BILL

1 taxation by 19-3-105;

2 (g) all benefits paid under the highway patrol

3 retirement law which are specified as exempt from taxation

4 by 19-6-705;

5 (h) all Montana income tax refunds or credits thereof;

6 (i) all benefits paid under 19-11-602, 19-11-604, and

7 19-11-605 to retired and disabled firefighters, their

8 surviving spouses and orphans;

9 (j) all benefits paid by first- or second-class cities

10 for the policemen's retirement system provided for by Title

11 19, chapter 9;

12 (k) gain required to be recognized by a liquidating

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

14 (3) In the case of a shareholder of a corporation with

15 respect to which the election provided for under subchapter

16 S. of the Internal Revenue Code of 1954, as amended, is in

17 effect but with respect to which the election provided for

18 under 15-31-202, as amended, is not in effect, adjusted

19 gross income does not include any part of the corporation's

20 undistributed taxable income, net operating loss, capital

21 gains or other gains, profits, or losses required to be

22 included in the shareholder's federal income tax adjusted

23 gross income by reason of the said election under subchapter

24 S. However, the shareholder's adjusted gross income shall

25 include actual distributions from the corporation to the

1 extent they would be treated as taxable dividends if the

2 subchapter S. election were not in effect.

3 (4) A shareholder of a DISC that is exempt from the

4 corporation license tax under 15-31-102(1)(i) shall include

5 in his adjusted gross income the earnings and profits of the

6 DISC in the same manner as provided by federal law (section

7 995, Internal Revenue Code) for all periods for which the

8 DISC election is effective."

9 Section 2. Section 15-31-114, MCA, is amended to read:

10 "15-31-114. Deductions allowed in computing income. In

11 computing the net income, the following deductions shall be

12 allowed from the gross income received by such corporation

13 within the year from all sources:

14 (1) All the ordinary and necessary expenses paid or

15 incurred during the taxable year in the maintenance and

16 operation of its business and properties, including

17 reasonable allowance for salaries for personal services

18 actually rendered, subject to the limitation hereinafter

19 contained, rentals or other payments required to be made as

20 a condition to the continued use or possession of property

21 to which the corporation has not taken or is not taking

22 title or in which it has no equity. No deduction shall be

23 allowed for salaries paid upon which the recipient thereof

24 has not paid Montana state income tax; provided, however,

25 that where domestic corporations are taxed on income derived

1 from without the state, salaries of officers paid in
2 connection with securing such income shall be deductible.

3 (2) (a) All losses actually sustained and charged off
4 within the year and not compensated by insurance or
5 otherwise, including a reasonable allowance for the wear and
6 tear and obsolescence of property used in the trade or
7 business, such allowance to be determined according to the
8 provisions of section 167 of the Internal Revenue Code in
9 ~~effect with respect to the taxable years. All elections for~~
10 ~~depreciation shall be the same as the elections made for~~
11 ~~federal income tax purposes as that section existed prior to~~
12 ~~the enactment of the accelerated cost recovery system in~~
13 ~~P.L. 97-24.~~ No deduction shall be allowed for any amount
14 paid out for any buildings, permanent improvements, or
15 betterments made to increase the value of any property or
16 estate, and no deduction shall be made for any amount of
17 expense of restoring property or making good the exhaustion
18 thereof for which an allowance is or has been made.

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

24 (i) Taxes imposed by this part.

25 (ii) Taxes assessed against local benefits of a kind

tending to increase the value of the property assessed.

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

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

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

(6) Light vehicle license fees, as provided by 61-3-532, paid within the year.

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

(8) (a) Except as provided in subsection (b), charitable contributions and gifts that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

(b) The public service commission shall not allow in the rate base of a regulated corporation the inclusion of contributions made under this subsection."

NEW SECTION. Section 3. Applicability date. This act applies to taxable years beginning after December 31, 1982.

-End-

STATE OF MONTANA

REQUEST NO. 089-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 13, 19 83, there is hereby submitted a Fiscal Note for House Bill 160 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 OF PROPOSED LEGISLATION:

House Bill 160 returns the deduction for depreciation for individual income tax and corporate license tax purposes to the deduction allowed prior to the enactment of the accelerated cost recovery system by the federal government in Public Law 97-34, and provides an applicability date.

ASSUMPTIONS:

- 1) Revenue projections for the 84-85 biennium which were made by the Office of Budget and Program Planning are the basis of comparison.
- 2) No increase in economic activity is assumed to occur as a result of the Accelerated Cost Recovery System (ACRS).
- 3) An equal dollar amount of assets, adjusted for inflation, are acquired each year. Inflation for depreciable property is assumed to be 10% per year.
- 4) No taxpayer would elect the straight line method for any class of property and would use the 150% DB rate for the appropriate asset class under ACRS.
- 5) The savings to be realized from TEFRA, based on asset basis reduction of 50% of investment tax credit, is not considered.
- 6) Tax savings are only for depreciable property assumed to be purchased in CY's 1983, 1984, and 1985.
- 7) Expenditures needed to administer the proposed law include: \$10,500 for producing additional forms, \$6,500 for additional data processing costs, \$185,544 for additional auditors, and \$44,000 for anticipated litigation resulting from the proposal, annually.

FISCAL IMPACT:

	<u>FY 1984</u>	<u>FY 1985</u>
<u>Revenue</u>		
Individual Income Tax		
Under Current Law	\$166.427 M	\$175,459 M
Under Proposed Law	167.750 M	177.673 M
Estimated Increase	\$ 1.323 M	\$ 2.214 M

ContinuedDaniel M. Lewis
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-21-83

	<u>FY 1984</u>	<u>FY 1985</u>
Corporation Licens/Income Taxes		
Under Current Law	\$ 41.904 M	\$ 48.817 M
Under Proposed Law	<u>44.263 M</u>	<u>55.359 M</u>
Estimated Increase	<u>\$ 2.359 M</u>	<u>\$ 6.542 M</u>
 TOTAL REVENUE		
Under Current Law	\$208.331 M	\$224.276 M
Under Proposed Law	<u>212.013 M</u>	<u>233.032 M</u>
Estimated Increase	<u>\$ 3.682 M</u>	<u>\$ 8.756 M</u>
 Additional Expenditures to Administer Proposed Law		
Personal Services	\$ 0.193 M	\$ 0.193 M
Operating Expenses	0.046 M	0.046 M
Capital Outlay	.008 M	.008 M
	<u>\$.247 M</u>	<u>\$.247 M</u>
 <u>Fund Information</u>		
General Fund (Net of Administrative Expenses)		
Under Current Law	\$131.347 M	\$141.552 M
Under Proposed Law	<u>133.421 M</u>	<u>146.831 M</u>
Estimated Increase	<u>\$ 2.074 M</u>	<u>\$ 5.279 M</u>
 School Equalization Account		
Under Current Law	\$ 51.308 M	\$ 55.294 M
Under Proposed Law	<u>52.215 M</u>	<u>57.453 M</u>
Estimated Increase	<u>\$.907 M</u>	<u>\$ 2.159 M</u>
 Long-Range Bond Building Sinking Fund		
Under Current Law	\$ 22.575 M	\$ 24.328 M
Under Proposed Law	<u>22.974 M</u>	<u>25.278 M</u>
Estimated Increase	<u>\$.399 M</u>	<u>\$.950 M</u>
 Allocation to Local Governments		
Under Current Law	\$ 3.101 M	\$ 3.101 M
Under Proposed Law	<u>3.156 M</u>	<u>3.222 M</u>
Estimated Increase	<u>\$.055 M</u>	<u>\$.121 M</u>

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

FY 86 savings are estimated to be \$14.319M. No quantitative estimates were derived beyond FY 86 but savings would likely stabilize in a year or two.