

HOUSE BILL NO. 536

Introduced: 01/27/83

Referred to Committee on Taxation: 01/27/83

Hearing: 2/8/83

Died in Committee

1 House BILL NO. 536  
2 INTRODUCED BY Mr. [Signature]  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPOSE UPON BANKS  
5 AND SAVINGS AND LOAN ASSOCIATIONS A FINANCIAL INSTITUTIONS  
6 FRANCHISE TAX MEASURED BY GROSS RECEIPTS IN LIEU OF THE  
7 MONTANA CORPORATION LICENSE TAX; AMENDING SECTIONS  
8 15-31-101, 15-31-701, AND 15-31-702, MCA; AND PROVIDING A  
9 CONTINGENT EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

12        NEW SECTION. Section 1. Short title. This part may be  
13        cited as the "Financial Institutions Franchise Tax Act of  
14        1983".

15        NEW SECTION. Section 2. Purpose. It is the intent of  
16        this part that every bank and savings and loan association  
17        doing business in the state as a corporation within the  
18        provisions of 15-31-101 shall annually pay to the state  
19        treasurer a financial institutions franchise tax for such  
20        privilege.

21 NEW SECTION. Section 3. Definitions. As used in this  
22 part, the following definitions apply:

(1) "Gross receipts" means all gross income as defined in 15-31-113(1) and all other investment income exempt from federal taxation. Any expenses or losses used in the

1 computation of gross income as defined in 15-31-113(1) must  
2 be restored to gross receipts.

3           (2) "Taxable period" means the taxable year for  
4       federal income tax purposes of the bank or savings and loan  
5       association.

6        NEW SECTION. Section 4. Tax imposed -- rate --  
7        exceptions. (1) There is imposed upon every bank and savings  
8        and loan association for each taxable period a financial  
9        institutions franchise tax at the rate of 1% of all gross  
10       receipts.

11 (2) When a bank or savings and loan association  
12 changes its taxable period, it must promptly notify the  
13 department of revenue.

14 (3) To the extent that a bank or savings and loan  
15 association is a branch of a foreign bank or savings and  
16 loan association, this section applies only to the gross  
17 receipts received by the Montana branch or operation.

18        NEW SECTION.    Section 5.    Incorporation by reference.

19        The provisions of the following sections of this chapter are

20        incorporated into this part by reference and apply to this

21        part: 15-31-101, 15-31-102, 15-31-111, 15-31-123, 15-31-142,

22        15-31-143, 15-31-501 through 15-31-509, 15-31-521 through

23        15-31-544, and 15-31-551 through 15-31-554, except that

24        wherever the words "tax", "license tax", "license fee",

25        "corporation excise tax", or like words appear, referring to

the tax imposed under part 1 of this chapter, they mean, for purposes of this part, "financial institutions franchise tax"; and except that wherever the words "net income", "taxable income", "taxable net income", or like words appear, referring to the basis of the license tax computation, they mean, for purposes of this part, "gross receipts".

NEW SECTION. Section 6. Disposition of revenue. The revenue collected from the tax imposed by this part must be disbursed in accordance with 15-31-701 and 15-31-702.

Section 7. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States.

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Every corporation, except as hereinafter provided and except as provided in 33-2-705(6), engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on

business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana ~~corporation-license~~ financial institutions franchise tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 8. Section 15-31-701, MCA, is amended to read:

"15-31-701. Department of revenue — special duties for transmitting ~~corporation-license~~ financial institutions

1 ~~franchise~~ tax revenues collected from banks or savings and  
 2 loan associations to counties. (1) Within 30 days after  
 3 receiving ~~corporation--license~~ financial institutions  
 4 ~~franchise~~ tax returns and payments from banks or savings and  
 5 loan associations, the department of revenue shall transmit  
 6 to the county treasurer of the county in which the business  
 7 is located the revenues calculated under 15-31-702(1)(b).

8 (2) If the department of revenue determines, under the  
 9 provisions of 15-31-503 and 15-31-531, that a bank or  
 10 savings and loan association owes more taxes than shown on  
 11 the original return or has paid more than the tax, penalty,  
 12 or interest due in any year, it shall notify the bank or  
 13 savings and loan association. Additional payment is due  
 14 within 10 days after receipt of the final determination of  
 15 taxes due. County treasurers shall issue warrants for their  
 16 portion of the overpayment received and interest, as  
 17 provided in 15-31-531.

18 (3) The department shall continue to exercise all its  
 19 duties and powers outlined in this title with respect to  
 20 auditing returns and enforcing payment of the ~~corporation~~  
 21 ~~license financial institutions franchise~~ taxes owed by banks  
 22 and savings and loan associations. Any delinquent taxes  
 23 collected from the sale of property of a bank or savings and  
 24 loan association under the provisions of 15-31-525 shall be  
 25 transmitted to the county in which the corporation owing the

1 delinquent taxes is located. The only duties of the county  
 2 treasurers in this regard are issuing refunds and  
 3 distributing the taxes to local taxing jurisdictions."

4 Section 9. Section 15-31-702, MCA, is amended to read:

5 "15-31-702. Distribution of ~~corporation--license~~  
 6 financial institutions franchise taxes collected from banks  
 7 or savings and loan associations. (1) All ~~corporation~~  
 8 ~~license financial institutions franchise~~ taxes collected  
 9 from banks and savings and loan associations shall be  
 10 distributed in the following manner:

11 (a) 20% must be remitted to the state treasurer to be  
 12 allocated as provided in 15-1-501(2); and

13 (b) 80% must be allocated to the various taxing  
 14 jurisdictions within the county in which the bank or savings  
 15 and loan association is located.

16 (2) The ~~corporation--license~~ financial institutions  
 17 ~~franchise~~ taxes distributed under subsection (1)(b) shall be  
 18 allocated to each taxing jurisdiction in the proportion that  
 19 its mill levy for that fiscal year bears to the total mill  
 20 levy of the taxing authorities of the district in which the  
 21 bank or savings and loan association is located.

22 (3) "Taxing jurisdictions" means, for the purposes of  
 23 this section, all taxing authorities within a county  
 24 permitted under state law to levy mills against the taxable  
 25 value of property in the taxing district in which the bank

1 or savings and loan association is located.

2 (4) If a return filed by a bank or savings and loan  
3 association involves branches or offices in more than one  
4 taxing jurisdiction, the department of revenue shall provide  
5 a method by rule for equitable distribution among those  
6 taxing jurisdictions."

7 NEW SECTION. Section 10. Codification instruction.  
8 Sections 1 through 6 are intended to be codified as an  
9 integral part of Title 15, chapter 31, part 7, and the  
10 provisions of Title 15, chapter 31, part 7, apply to  
11 sections 1 through 6.

12 NEW SECTION. Section 11. Contingent effective date --  
13 applicability date. This act is effective if and only if a  
14 final determination is reached in current pending  
15 litigation, and all potential appeals are exhausted or  
16 barred, that the interest income from certain federal  
17 obligations is not includable in the net income measurement  
18 base of the Montana corporation license tax, in which case  
19 and as of that time this act becomes effective. If this act  
20 becomes effective, it applies to taxable years beginning  
21 after December 31, 1982.

-End-

## STATE OF MONTANA

REQUEST NO. 281-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 19 83, there is hereby submitted a Fiscal Note for House Bill 536 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 OF PROPOSED LEGISLATION:

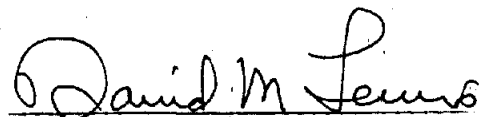
House Bill 536 imposes upon banks and savings and loan associations a financial institutions franchise tax measured by gross receipts in lieu of the Montana corporation license tax and provides a contingent effective date and an applicability date.

ASSUMPTIONS:

- 1) Corporation license tax estimates under current law for FY 84 and FY 85 were obtained from projections made by the Office of Budget and Program Planning.
- 2) Gross receipts of financial institutions are assumed to grow at 10% per year from a base of \$1,061.660 million in 1981.
- 3) Expenditures for administering the proposed financial institutions franchise tax include \$500 annually for forms and instructions; \$1,500 annually for data processing; and \$3,000 for data processing system development in FY 84.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
Corporation License Tax		
Under Current Law	\$ 41.904M	\$ 48.817M
Under Proposed Law	38.028M	44.941M
Estimated Decrease	<u>\$ ( 3.876M)</u>	<u>\$ (3.876M)</u>
Financial Institutions		
Under Current Law	\$ -0-	\$ -0-
Under Proposed Law	12.846M	14.131M
Estimated Increase	<u>\$ 12.846M</u>	<u>\$ 14.131M</u>

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-4-83

	<u>FY 84</u>	<u>FY 85</u>
<b>TOTAL REVENUE</b>		
Under Current Law	\$ 41.904M	\$ 48.817M
Under Proposed Law	50.874M	59.072M
Estimated Increase	<u>\$ 8.970M</u>	<u>\$ 10.255M</u>
<b>Operating Expenses</b>		
Under Current Law	\$ -0-	\$ -0-
Under Proposed Law	.005M	.002M
Estimated Increase	<u>\$ .005M</u>	<u>\$ .002M</u>
<b>NET EFFECT</b>		
Under Current Law	\$ 41.904M	\$ 48.817M
Under Proposed Law	50.869M	59.070M
Estimated Increase	<u>\$ 8.965M</u>	<u>\$ 10.253M</u>
<b>General Fund</b>		
Under Current Law	\$ 24.834M	\$ 29.258M
Under Proposed Law	25.977M	30.569M
Estimated Increase	<u>\$ 1.143M</u>	<u>\$ 1.311M</u>
<b>School Foundation</b>		
Under Current Law	\$ 9.701M	\$ 11.429M
Under Proposed Law	10.149M	11.942M
Estimated Increase	<u>\$ .448M</u>	<u>\$ .513M</u>
<b>Sinking Fund</b>		
Under Current Law	\$ 4.268M	\$ 5.029M
Under Proposed Law	4.466M	5.254M
Estimated Increase	<u>\$ .198M</u>	<u>\$ .225M</u>
<b>Local</b>		
Under Current Law	\$ 3.101M	\$ 3.101M
Under Proposed Law	10.277M	11.305M
Estimated Increase	<u>\$ 7.176M</u>	<u>\$ 8.204M</u>

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Given the 80% allocation of the franchise tax to local governments, revenues to local tax jurisdictions will increase by \$7.2 million in FY 84 and by \$8.2 million in FY 85.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The franchise tax will provide a reliable source of revenue for state funds and local taxing jurisdictions. The possibility that local governments and the state will have to provide refunds will be substantially reduced. Local taxing jurisdictions are the primary recipient of financial institutions taxes. If the assumed growth rate in gross receipts hold, then local jurisdictions will receive between \$25 million and \$30 million in the following biennium.

FISCAL NOTE 10:Y/2

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