

HOUSE BILL NO. 621

Introduced: 02/03/83

Referred to Committee on Taxation: 02/03/83

Hearing: 2/16/83

Report: 02/16/83, Do Pass

2nd Reading: 02/18/83, Do Pass

3rd Reading: 02/21/83, Do Pass

Transmitted to Senate: 2/21/83

Referred to Committee on Taxation: 3/1/83

Hearing: 3/10/83

Died in Senate Committee

1 *House* BILL NO. *621*
 2 INTRODUCED BY *Ramsey, Yardley*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 PROVISIONS RELATING TO THE TAXATION OF SMALL BUSINESS
 6 CORPORATIONS; AMENDING SECTIONS 15-31-201, 15-31-202,
 7 15-31-205, AND 15-31-207, MCA; REPEALING SECTION 15-31-206,
 8 MCA; AND PROVIDING AN APPLICABILITY DATE."

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

11 Section 1. Section 15-31-201, MCA, is amended to read:

12 "15-31-201. Definitions. (1) For purposes of this
 13 part, the term "small business corporation" means a
 14 corporation doing business in Montana and which does not
 15 have:

16 (a) more than ~~10~~ 25 shareholders;

17 (b) as a shareholder a person (other than an estate
 18 and other than a trust described in 15-31-207) who is not an
 19 individual;

20 (c) a nonresident alien as a shareholder; and

21 (d) more than one class of stock.

22 (2) For purposes of this part, the term "electing
 23 small business corporation" means, with respect to any
 24 taxable year, a small business corporation which has made an
 25 election under this part in effect for such taxable year.

1 (3) For purposes of this part, the term "estate"
 2 includes the estate of an individual under Title 11 of the
 3 United States Code (bankruptcy)."

4 Section 2. Section 15-31-202, MCA, is amended to read:

5 "15-31-202. Election by small business corporation.

6 (1) Except as provided in subsection (6) (7), any small
 7 business corporation may elect, in accordance with the
 8 provisions of this section, not to be subject to the taxes
 9 imposed by this chapter. ~~Such an election shall be under~~
 10 ~~this section is~~ valid only if consented to by all persons
 11 who are shareholders in such corporation ~~on the day on which~~
 12 ~~the election is made consent to the election. The an~~
 13 ~~election under this section is effective for the taxable~~
 14 ~~year of the corporation for which it is made and for all~~
 15 ~~succeeding taxable years of the corporation until such~~
 16 ~~election is terminated under subsection (4) or (5).~~

17 (a) ~~on the first day of the first taxable year for~~
 18 ~~which such election is effective, if such election is made~~
 19 ~~on or before such first day or~~

20 (b) ~~on the day on which the election is made, if the~~
 21 ~~election is made after such first day.~~

22 (2) (a) An election under subsection (1) may be made
 23 by a small business corporation for any taxable year:

24 (i) at any time during the preceding taxable year; or

25 (ii) at any time during the taxable year or on or

1 before the 15th day of the third month of the following
2 taxable year.

3 (b) An election must be treated as made for the
4 following taxable year if:

5 (i) an election under subsection (1) is made for any
6 taxable year during such year or on or before the 15th day
7 of the third month of the following taxable year; and:

8 (A) on one or more days in such taxable year before
9 the day on which the election was made the corporation did
10 not meet the requirements of 15-31-201(1); or

11 (B) one or more of the persons who held stock in the
12 corporation during such taxable year and before the election
13 was made did not consent to the election; or

14 (iii) (A) a small business corporation makes an election
15 under subsection (1) for any taxable year; and

16 (B) such election is made after the 15th day of the
17 third month of the taxable year or on or before the last day
18 of such taxable year.

19 (2)(3) If a small business corporation makes an
20 election under subsection (1), then:

21 (a) with respect to the taxable years of the
22 corporation for which such election is in effect, such
23 corporation is not subject to the taxes imposed by this
24 chapter, and, with respect to such taxable years and all
25 succeeding taxable years, the provisions of this part apply

1 to such corporation; and

2 (b) with respect to the taxable years of a shareholder
3 of such corporation in which or with which the taxable years
4 of the corporation for which such election is in effect end,
5 the provisions of this part apply to such shareholder, and
6 with respect to such taxable years and all succeeding
7 taxable years, the provisions of this part apply to such
8 shareholder.

9 (3) An election under subsection (1) may be made by a
10 small business corporation for any taxable year at any time
11 during the first month of such taxable year or at any time
12 during the month preceding such first month. Such election
13 must be made in accordance with rules prescribed by the
14 department of revenue.

15 (4) An election under subsection (1) is effective for
16 the taxable year of the corporation for which it is made and
17 for all succeeding taxable years of the corporation unless
18 it is terminated, with respect to any such taxable year,
19 under subsection (5).

20 (5) (a) An election under subsection (1) made by a
21 small business corporation terminates if any person who was
22 not a shareholder in such corporation at the time of the
23 initial election under subsection (1) subsequently becomes a
24 shareholder in such corporation and affirmatively refuses in
25 accordance with rules prescribed by the department to

1 consent--to-such-election-on-or-before-the-60th-day-on-which
2 he-acquires-the-stock.

3 (iii)-If-the-person-acquiring-the-stock-is-the-estate-of
4 a-decedent--the--period--under--subsection--(5)(a)(i)--for
5 affirmatively-refusing-to-consent-to-the-election-expires-on
6 the--58th--day--after--whichever--of--the--following--is-the
7 earlier:

8 (A)--the-day-on-which-the-executor-or-administrator--of
9 the-estate-qualifies--or

10 (B)--the--last--day--of--the--taxable--year--of--the
11 corporation--in-which-the-decedent-died.

12 (iii)-Any-termination-of-an-election--under--subsection
13 (5)(a)(i)--by-reason-of-the-affirmative-refusal-of-any-person
14 to--consent--to--such--election-is-effective-for-the-taxable
15 year-of-the-corporation--in--which--such--person--becomes--a
16 shareholder--in--the--corporation--and--for--all--succeeding
17 taxable-years-of-the-corporation.

18 (b)--An-election-under-subsection-(i)-made-by--a--small
19 business--corporation--may--be-revoked-by-it-for-any-taxable
20 year-after-the-first-taxable-year-for-which-the-election--is
21 effective--An-election--may-be-revoked-only-if-all-persons
22 who-are-shareholders-in-the-corporation-on-the-day-on--which
23 the--revocation--is--made--consent--to--the--revocations--A
24 revocation-under-this-paragraph-is-effective.

25 (i)--for-the-taxable-year-in-which-made-if-made-before

1 the-close-of-the-first-month-of-such-taxable-year.

2 (ii)-for-the-taxable-year-following-the-taxable-year-in
3 which-made-if-made-after-the-close-of-such-first-month--and
4 for-all-succeeding-taxable-years-of--the--corporation--Such
5 revocation--must-be-made-in-accordance-with-rules-prescribed
6 by-the-department.

7 (c)--An-election-under-subsection-(i)-made-by--a--small
8 business-corporation-terminates-if-the-corporation-ceases-to
9 meet--the--definition-of-a-small-business-corporation-at-any
10 time-after-election-is-effective-under-subsection-(i).

11 (d)--Such-termination-is-effective-for-the-taxable-year
12 of-the-corporation-in-which-the-corporation-ceases-to--be--a
13 small--business--corporation--and-for-all-succeeding-taxable
14 years-of-the-corporation.

15 (4) (a) An election under subsection (1) may be
16 terminated by revocation.

17 (b) An election may be revoked only if shareholders
18 holding more than one-half of the shares of stock of the
19 corporation on the day on which the revocation is made
20 consent to the revocation.

21 (c) Except as provided in subsection (4)(d):

22 (i) a revocation made during the taxable year or on or
23 before the 15th day of the third month of the following year
24 is effective on the first day of such taxable year; and

25 (ii) a revocation made during the taxable year but

1 after such 15th day is effective on the first day of the
2 following taxable year.

3 (d) If the revocation specifies a date for revocation
4 that is on or after the day on which the revocation is made,
5 the revocation is effective on and after the date so
6 specified.

7 (e) Any revocation under this subsection must be made
8 in accordance with rules prescribed by the department.

9 (f) (1) At any time on or after the first day of the
10 first taxable year for which the corporation is an electing
11 small business corporation, the election must be terminated
12 if the corporation ceases to be a small business
13 corporation.

14 (b) Any termination under subsection (5)(a) is
15 effective on and after the date of cessation.

16 (6) Notwithstanding a terminating event, a corporation
17 must be treated as continuing to be an electing small
18 business corporation during the period specified by the
19 department if:

20 (a) an election under subsection (1) by any
21 corporation was terminated under subsection (5);

22 (b) the department determines that the termination was
23 inadvertent;

24 (c) within a reasonable period of time after discovery
25 of the event resulting in the termination, steps were taken

1 so that the corporation is once more a small business
2 corporation; and

3 (d) the corporation and each person who was a
4 shareholder of the corporation at any time during the period
5 specified pursuant to this subsection agree to make such
6 adjustments consistent with the treatment of the
7 corporation as an electing small business corporation, as
8 may be required by the department with respect to such
9 period.

10 (6)(1) If a small business corporation has made an
11 election under subsection (1) and if such election has been
12 terminated or revoked under subsection (4) or (5), such the
13 corporation and or any successor corporation are is not
14 eligible to make an election under subsection (1) for any
15 taxable year prior to its fifth taxable year which that
16 begins after the first taxable year for which such
17 termination or revocation is effective unless the department
18 consents to such election.

19 (7)(1) This An election under subsection (1) is not
20 effective unless the corporate net income or loss of such
21 electing small business corporation is included in the
22 stockholders' adjusted gross income as defined in 15-30-111
23 in accordance with rules prescribed by the department.

24 (8)(2) Every electing small business corporation is
25 required to pay the minimum fee of \$10 required by

15-31-204."

Section 3. Section 15-31-205, MCA, is amended to read:

"15-31-205. Stock owned by husband and wife. For purposes of 15-31-201(1)(a), stock a husband and wife and their estate shall be treated as owned by one shareholder when it:

(1) is community property of a husband and wife for the income from which is community income; under the applicable community property law of a state;

(2) is held by a husband and wife as joint tenants; tenants by the entirety; or tenants in common;

(3) was, on the date of death of a spouse, stock described in subsection (1) or (2) and is, by reason of such death, held by the estate of the deceased spouse and the surviving spouse or by the estates of both spouses (by reason of their deaths on the same date) in the same proportion as held by the spouses before such death; or

(4) was, on the date of the death of a surviving spouse, stock described in subsection (3) and is, by reason of such death, held by the estates of both spouses in the same proportion as held by the spouses before their deaths."

Section 4. Section 15-31-207, MCA, is amended to read:

"15-31-207. Certain trusts permitted as shareholders. For purposes of 15-31-201(1), the following trusts may be shareholders:

(1) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code. Such a trust may continue to be a shareholder for 60 days after the death of the grantor unless the trust is includable in the gross estate of the grantor, in which case the trust may continue to be a shareholder for a 2-year period. The grantor or the grantor's estate is treated as the shareholder in the case of a trust described in this subsection.

(2) a trust created primarily to exercise the voting power of stock transferred to it. Each beneficiary of a trust described in this subsection is treated as a shareholder for purposes of 15-31-201(1)(a).

(3) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it. In the case of a trust described in this subsection, (2) each beneficiary of the trust the estate of the testator shall, for purposes of 15-31-201(1)(a), be treated as a shareholder."

NEW SECTION. Section 5. Special rules with respect to stock and debt. For purposes of 15-31-201(1)(d), the following apply:

(1) A corporation may not be treated as having more than one class of stock solely because there are differences

1 in voting rights among the shares of common stock.

2 (2) Straight debt may not be treated as a second class
3 of stock. For purposes of this subsection, "straight debt"
4 means any written unconditional promise to pay on demand, on
5 a specified date, a sum certain in money if:

6 (a) the interest rate and interest payment dates are
7 not contingent on profits, the borrower's discretion, or
8 similar factors;

9 (b) there is no convertibility, directly or
10 indirectly, into stock; and

11 (c) the creditor is an individual, an estate, or a
12 trust described in 15-31-207 and is not a nonresident alien.

13 (3) Federal treasury regulations as may be adopted
14 must be referred to for the proper treatment of straight
15 debt for purposes of this part and for the coordination of
16 such treatment with other provisions of this title.

17 **NEW SECTION.** Section 6. Special rules for qualified
18 small business corporation trust. (1) A qualified trust must
19 be treated as a trust described in 15-31-207(1), and the
20 beneficiary of such trust must be treated as the owner of
21 that portion of the trust which consists of stock in a small
22 business corporation if the beneficiary makes the election
23 in subsection (2). A trust is a "qualified trust" for
24 purposes of this part if:

25 (a) it owns stock in one or more electing small

1 business corporations;

2 (b) all of the income of which is distributed or
3 required to be distributed currently to one individual who
4 is a citizen or resident of the United States; and

5 (c) its terms require that:

6 (i) during the life of the current income beneficiary
7 there may be only one income beneficiary of the trust;

8 (ii) any corpus distributed during the life of the
9 current income beneficiary in the trust may be distributed
10 only to such beneficiary;

11 (iii) the income interest of the current income
12 beneficiary of the trust terminates on the earlier of such
13 beneficiary's death or the termination of the trust; and

14 (iv) upon the termination of the trust during the life
15 of the current income beneficiary, the trust distributes all
16 of its assets to such beneficiary.

17 (2) A beneficiary of a qualified trust or his legal
18 representative may elect to have this section apply by
19 making an election in such manner, in such form, and at such
20 time as the department may prescribe. An election under this
21 subsection must be made separately with respect to each
22 electing small business corporation the stock of which is
23 held by the trust. If there is an election under this
24 subsection by any beneficiary, each successive beneficiary
25 must be treated as having made the election unless such

1 beneficiary affirmatively refuses to consent to such
2 election in such form and at such time as the department may
3 prescribe.

4 (3) An election made under subsection (2) may not be
5 revoked without the consent of the department.

6 (4) An election under subsection (2) may be effective
7 up to 60 days before the date of the election.

8 (5) If a qualified trust ceases to meet any
9 requirement under subsection (1), this section does not
10 apply to such trust as of the date it ceases to meet such
11 requirement.

12 ~~NEW_SECTION.~~ Section 7. Repealer. Section 15-31-206,
13 MCA, is repealed.

14 ~~NEW_SECTION.~~ Section 8. Codification instruction.
15 Sections 5 and 6 are intended to be codified as an integral
16 part of Title 15, chapter 31, part 2, and the provisions of
17 Title 15, chapter 31, part 2, apply to sections 5 and 6.

18 ~~NEW_SECTION.~~ Section 9. Applicability date. This act
19 applies to taxable years beginning after December 31, 1982.

STATE OF MONTANA

REQUEST NO. 322-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 7, 19 83, there is hereby submitted a Fiscal Note for House Bill 621 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.

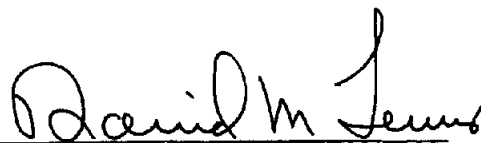
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 621 generally revises the provisions relating to the taxation of small business corporations; and provides an applicability date.

FISCAL IMPACT:

If a significant number of regular corporations convert to small business status, a revenue loss could occur. Also, if the multistate corporations with fewer than 35 shareholders are eligible to claim the investment tax credit, there could be a potentially significant decrease in corporation license tax revenues. The magnitude of the fiscal impact cannot be estimated for the biennium.

FISCAL IMPACT 11:CC/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-10-83

Approved by committee
on Taxation

1 House BILL NO. 621
2 INTRODUCED BY Ramsey, Handley
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 PROVISIONS RELATING TO THE TAXATION OF SMALL BUSINESS
6 CORPORATIONS; AMENDING SECTIONS 15-31-201, 15-31-202,
7 15-31-205, AND 15-31-207, MCA; REPEALING SECTION 15-31-206,
8 MCA; AND PROVIDING AN APPLICABILITY DATE."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 15-31-201, MCA, is amended to read:
12 "15-31-201. Definitions. (1) For purposes of this
13 part, the term "small business corporation" means a
14 corporation doing business in Montana and which does not
15 have:
16 (a) more than ~~10~~ 25 shareholders;
17 (b) as a shareholder a person (other than an estate
18 and other than a trust described in 15-31-207) who is not an
19 individual;
20 (c) a nonresident alien as a shareholder; and
21 (d) more than one class of stock.
22 (2) For purposes of this part, the term "electing
23 small business corporation" means, with respect to any
24 taxable year, a small business corporation which has made an
25 election under this part in effect for such taxable year.

1 ~~(1) For purposes of this part, the term "estate"~~
2 ~~includes the estate of an individual under Title 11 of the~~
3 ~~United States Code (Bankruptcy)."~~
4 Section 2. Section 15-31-202, MCA, is amended to read:
5 "15-31-202. Election by small business corporation.
6 (1) Except as provided in subsection (6) (7), any small
7 business corporation may elect, in accordance with the
8 provisions of this section, not to be subject to the taxes
9 imposed by this chapter. Such ~~an~~ election ~~shall be under~~
10 ~~this section is valid only if consented to by all persons~~
11 ~~who are shareholders in such corporation on the day on which~~
12 ~~the election is made consent to the election. The an~~
13 ~~election under this section is effective for the taxable~~
14 ~~year of the corporation for which it is made and for all~~
15 ~~succeeding taxable years of the corporation until such~~
16 ~~election is terminated under subsection (4) or (5).~~
17 ~~(6) on the first day of the first taxable year for~~
18 ~~which such election is effective if such election is made~~
19 ~~on or before such first day or~~
20 ~~(6) on the day on which the election is made if the~~
21 ~~election is made after such first day.~~
22 (2) (a) An election under subsection (1) may be made
23 by a small business corporation for any taxable year:
24 (i) at any time during the preceding taxable year; or
25 (ii) at any time during the taxable year or on or

1 before the 15th day of the third month of the following
2 taxable year:

3 (b1) An election must be treated as made for the
4 following taxable year if:

5 (i) an election under subsection (1) is made for any
6 taxable year during such year or on or before the 15th day
7 of the third month of the following taxable year; and:

8 (A) on one or more days in such taxable year before
9 the day on which the election was made the corporation did
10 not meet the requirements of 15-31-201(1); or

11 (B) one or more of the persons who held stock in the
12 corporation during such taxable year and before the election
13 was made did not consent to the election; or

14 (ii) (A) a small business corporation makes an election
15 under subsection (1) for any taxable year; and

16 (B) such election is made after the 15th day of the
17 third month of the taxable year or on or before the last day
18 of such taxable year.

19 (2)(3) If a small business corporation makes an
20 election under subsection (1), then:

21 (a) with respect to the taxable years of the
22 corporation for which such election is in effect, such
23 corporation is not subject to the taxes imposed by this
24 chapter, and with respect to such taxable years and all
25 succeeding taxable years, the provisions of this part apply

1 to such corporation; and

2 (b) with respect to the taxable years of a shareholder
3 of such corporation in which or with which the taxable years
4 of the corporation for which such election is in effect end,
5 the provisions of this part apply to such shareholder, and
6 with respect to such taxable years and all succeeding
7 taxable years, the provisions of this part apply to such
8 shareholder.

9 (3) An election under subsection (1) may be made by a
10 small business corporation for any taxable year at any time
11 during the first month of such taxable year or at any time
12 during the month preceding such first month. Such election
13 must be made in accordance with rules prescribed by the
14 department of revenue.

15 (4) An election under subsection (1) is effective for
16 the taxable year of the corporation for which it is made and
17 for all succeeding taxable years of the corporation unless
18 it is terminated with respect to any such taxable year
19 under subsection (5).

20 (5) (a) (i) An election under subsection (1) made by a
21 small business corporation terminates if any person who was
22 not a shareholder in such corporation at the time of the
23 initial election under subsection (1) subsequently becomes a
24 shareholder in such corporation and affirmatively refuses in
25 accordance with rules prescribed by the department to

consent--to-such-election-on-or-before-the-60th-day-on-which
he-acquires-the-stock.

{i}-If-the-person-acquiring-the-stock-is-the-estate-of
a-decedent--the--period--under--subsection--(5){a}{i}--for
affirmatively-refusing-to-consent-to-the-election-expires-on
the--60th--day--after--whichever--of--the--following--is-the
earliest

{A}--the-day-on-which-the-executor-or-administrator--of
the-estate-qualifies--or

{B}--the--last--day--of--the--taxable--year--of--the
corporation--in-which-the-decedent-died.

{ii}-Any-termination-of-an-election--under--subsection
(5){a}{i}-by-reason-of-the-affirmative-refusal-of-any-person
to--consent--to--such--election-is-effective-for-the-taxable
year-of-the-corporation--in--which--such--person--becomes--a
shareholder--in--the--corporation--and--for--all--succeeding
taxable-years-of-the-corporation.

{b}-An-election-under-subsection-(i)-made-by--a--small
business--corporation--may--be-revoked-by-it-for-any-taxable
year-after-the-first-taxable-year-for-which-the-election--is
effective--An--election--may-be-revoked-only-if-all-persons
who-are-shareholders-in-the-corporation-on-the-day-on--which
the--revocation--is--made--consent--to--the--revocation--A
revocation-under-this-paragraph-is-effective

{i}--for-the-taxable-year-in-which-made--if-made-before

the-close-of-the-first-month-of-such-taxable-year.

{ii}-for-the-taxable-year-following-the-taxable-year-in
which-made--if-made-after-the-close-of-such-first-month--and
for-all-succeeding-taxable-years-of--the--corporation--Such
revocation--must-be-made-in-accordance-with-rules-prescribed
by-the-department.

{c}-An-election-under-subsection-(i)-made-by--a--small
business-corporation-terminates-if-the-corporation-ceases-to
meet--the--definition-of-a-small-business-corporation-at-any
time-after-election-is-effective-under-subsection-(i).

{d}-Such-termination-is-effective-for-the-taxable-year
of-the-corporation-in-which-the-corporation-ceases-to--be--a
small--business--corporation--and-for-all-succeeding-taxable
years-of-the-corporation.

(4) (a) An election under subsection (1) may be
terminated by revocation.

(b) An election may be revoked only if shareholders
holding more than one-half of the shares of stock of the
corporation on the day on which the revocation is made
consent to the revocation.

(c) Except as provided in subsection (4)(d):

(i) a revocation made during the taxable year or on or
before the 15th day of the third month of the following year
is effective on the first day of such taxable year; and

(ii) a revocation made during the taxable year but

1 after such 15th day is effective on the first day of the
2 following taxable year.

3 (d) If the revocation specifies a date for revocation
4 that is on or after the day on which the revocation is made,
5 the revocation is effective on and after the date so
6 specified.

7 (e) Any revocation under this subsection must be made
8 in accordance with rules prescribed by the department.

9 (5) (a) At any time on or after the first day of the
10 first taxable year for which the corporation is an electing
11 small business corporation, the election must be terminated
12 if the corporation ceases to be a small business
13 corporation.

14 (b) Any termination under subsection (5)(a) is
15 effective on and after the date of cessation.

16 (6) Notwithstanding a terminating event, a corporation
17 must be treated as continuing to be an electing small
18 business corporation during the period specified by the
19 department if:

20 (a) an election under subsection (1) by any
21 corporation was terminated under subsection (5);

22 (b) the department determines that the termination was
23 inadvertent;

24 (c) within a reasonable period of time after discovery
25 of the event resulting in the termination, steps were taken

1 so that the corporation is once more a small business
2 corporation; and

3 (d) the corporation and each person who was a
4 shareholder of the corporation at any time during the period
5 specified pursuant to this subsection agree to make such
6 adjustments consistent with the treatment of the
7 corporation as an electing small business corporation as
8 may be required by the department with respect to such
9 period.

10 (6)(7) If a small business corporation has made an
11 election under subsection (1) and if such election has been
12 terminated or revoked under subsection (4) or (5), such the
13 corporation and or any successor corporation are is not
14 eligible to make an election under subsection (1) for any
15 taxable year prior to its fifth taxable year which that
16 begins after the first taxable year for which such
17 termination or revocation is effective unless the department
18 consents to such election.

19 (7)(8) This An election under subsection (1) is not
20 effective unless the corporate net income or loss of such
21 electing small business corporation is included in the
22 stockholders' adjusted gross income as defined in 15-30-111
23 in accordance with rules prescribed by the department.

24 (8)(9) Every electing small business corporation is
25 required to pay the minimum fee of \$10 required by

1 15-31-204."

2 Section 3. Section 15-31-205, MCA, is amended to read:

3 "15-31-205. Stock owned by husband and wife. For
4 purposes of 15-31-201(1)(a), stock a husband and wife and
5 their estate shall be treated as owned by one shareholder
6 when it:

7 (1) is community property of a husband and wife for
8 the income from which is community income under the
9 applicable community property law of a state;

10 (2) is held by a husband and wife as joint tenants,
11 tenants by the entirety, or tenants in common;

12 (3) was, on the date of death of a spouse, stock
13 described in subsection (1) or (2) and is, by reason of such
14 death, held by the estate of the deceased spouse and the
15 surviving spouse or by the estates of both spouses (by
16 reason of their deaths on the same date) in the same
17 proportion as held by the spouses before such death; or

18 (4) was, on the date of the death of a surviving
19 spouse, stock described in subsection (3) and is, by reason
20 of such death, held by the estates of both spouses in the
21 same proportion as held by the spouses before their deaths."

22 Section 4. Section 15-31-207, MCA, is amended to read:

23 "15-31-207. Certain trusts permitted as shareholders.
24 For purposes of 15-31-201(1), the following trusts may be
25 shareholders:

1 (1) a trust all of which is treated as owned by the
2 grantor under sections 671 through 678 of the Internal
3 Revenue Code. Such a trust may continue to be a shareholder
4 for 60 days after the death of the grantor unless the trust
5 is includable in the gross estate of the grantor, in which
6 case the trust may continue to be a shareholder for a 2-year
7 period. The grantor or the grantor's estate is treated as
8 the shareholder in the case of a trust described in this
9 subsection;

10 (2) a trust created primarily to exercise the voting
11 power of stock transferred to it. Each beneficiary of a
12 trust described in this subsection is treated as a
13 shareholder for purposes of 15-31-201(1)(a);

14 (3) any trust with respect to stock transferred to it
15 pursuant to the terms of a will, but only for the 60-day
16 period beginning on the day on which such stock is
17 transferred to it. In the case of a trust described in this
18 subsection, (2) each beneficiary of the trust the estate of
19 the testator shall, for purposes of 15-31-201(1)(a), be
20 treated as a shareholder."

21 NEW SECTION. Section 5. Special rules with respect to
22 stock and debt. For purposes of 15-31-201(1)(d), the
23 following apply:

24 (1) A corporation may not be treated as having more
25 than one class of stock solely because there are differences

1 in voting rights among the shares of common stock.

2 (2) Straight debt may not be treated as a second class
3 of stock. For purposes of this subsection, "straight debt"
4 means any written unconditional promise to pay on demand, on
5 a specified date, a sum certain in money if:

6 (a) the interest rate and interest payment dates are
7 not contingent on profits, the borrower's discretion, or
8 similar factors;

9 (b) there is no convertibility, directly or
10 indirectly, into stock; and

11 (c) the creditor is an individual, an estate, or a
12 trust described in 15-31-207 and is not a nonresident alien.

13 (3) Federal treasury regulations as may be adopted
14 must be referred to for the proper treatment of straight
15 debt for purposes of this part and for the coordination of
16 such treatment with other provisions of this title.

17 NEW SECTION. Section 6. Special rules for qualified
18 small business corporation trust. (1) A qualified trust must
19 be treated as a trust described in 15-31-207(1), and the
20 beneficiary of such trust must be treated as the owner of
21 that portion of the trust which consists of stock in a small
22 business corporation if the beneficiary makes the election
23 in subsection (2). A trust is a "qualified trust" for
24 purposes of this part if:

25 (a) it owns stock in one or more electing small

1 business corporations;

2 (b) all of the income of which is distributed or
3 required to be distributed currently to one individual who
4 is a citizen or resident of the United States; and

5 (c) its terms require that:

6 (i) during the life of the current income beneficiary
7 there may be only one income beneficiary of the trust;

8 (ii) any corpus distributed during the life of the
9 current income beneficiary in the trust may be distributed
10 only to such beneficiary;

11 (iii) the income interest of the current income
12 beneficiary of the trust terminates on the earlier of such
13 beneficiary's death or the termination of the trust; and

14 (iv) upon the termination of the trust during the life
15 of the current income beneficiary, the trust distributes all
16 of its assets to such beneficiary.

17 (2) A beneficiary of a qualified trust or his legal
18 representative may elect to have this section apply by
19 making an election in such manner, in such form, and at such
20 time as the department may prescribe. An election under this
21 subsection must be made separately with respect to each
22 electing small business corporation the stock of which is
23 held by the trust. If there is an election under this
24 subsection by any beneficiary, each successive beneficiary
25 must be treated as having made the election unless such

1 beneficiary affirmatively refuses to consent to such
2 election in such form and at such time as the department may
3 prescribe.

4 (3) An election made under subsection (2) may not be
5 revoked without the consent of the department.

6 (4) An election under subsection (2) may be effective
7 up to 60 days before the date of the election.

8 (5) If a qualified trust ceases to meet any
9 requirement under subsection (1), this section does not
10 apply to such trust as of the date it ceases to meet such
11 requirement.

12 **NEW_SECTION.** Section 7. Repealer. Section 15-31-206,
13 MCA, is repealed.

14 **NEW_SECTION.** Section 8. Codification instruction.
15 Sections 5 and 6 are intended to be codified as an integral
16 part of Title 15, chapter 31, part 2, and the provisions of
17 Title 15, chapter 31, part 2, apply to sections 5 and 6.

18 **NEW_SECTION.** Section 9. Applicability date. This act
19 applies to taxable years beginning after December 31, 1982.

1 House BILL NO. 621
 2 INTRODUCED BY Ramirez Goodley
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 PROVISIONS RELATING TO THE TAXATION OF SMALL BUSINESS
 6 CORPORATIONS; AMENDING SECTIONS 15-31-201, 15-31-202,
 7 15-31-205, AND 15-31-207, MCA; REPEALING SECTION 15-31-206,
 8 MCA; AND PROVIDING AN APPLICABILITY DATE."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 15-31-201, MCA, is amended to read:
 12 "15-31-201. Definitions. (1) For purposes of this
 13 part, the term "small business corporation" means a
 14 corporation doing business in Montana and which does not
 15 have:
 16 (a) more than ~~20~~ 35 shareholders;
 17 (b) as a shareholder a person (other than an estate
 18 and other than a trust described in 15-31-207) who is not an
 19 individual;
 20 (c) a nonresident alien as a shareholder; and
 21 (d) more than one class of stock.
 22 (2) For purposes of this part, the term "electing
 23 small business corporation" means, with respect to any
 24 taxable year, a small business corporation which has made an
 25 election under this part in effect for such taxable year.

1 ~~(3) For purposes of this part, the term "estate"~~
 2 ~~includes the estate of an individual under Title 11 of the~~
 3 ~~United States Code (Bankruptcy)."~~
 4 Section 2. Section 15-31-202, MCA, is amended to read:
 5 "15-31-202. Election by small business corporation.
 6 (1) Except as provided in subsection ~~(6)~~ (7), any small
 7 business corporation may elect, in accordance with the
 8 provisions of this section, not to be subject to the taxes
 9 imposed by this chapter. Such ~~an~~ election shall be under
 10 ~~this section is valid only if consented to by all persons~~
 11 ~~who are shareholders in such corporation on the day on which~~
 12 ~~the election is made consent to the election. The an~~
 13 ~~election under this section is effective for the taxable~~
 14 ~~year of the corporation for which it is made and for all~~
 15 ~~succeeding taxable years of the corporation until such~~
 16 ~~election is terminated under subsection (4) or (5).~~
 17 ~~(a) on the first day of the first taxable year for~~
 18 ~~which such election is effective, if such election is made~~
 19 ~~on or before such first day or~~
 20 ~~(b) on the day on which the election is made, if the~~
 21 ~~election is made after such first day.~~
 22 ~~(2) (a) An election under subsection (1) may be made~~
 23 ~~by a small business corporation for any taxable year:~~
 24 ~~(i) at any time during the preceding taxable year; or~~
 25 ~~(ii) at any time during the taxable year or on or~~

1 before the 15th day of the third month of the following
2 taxable year.

3 (b) An election must be treated as made for the
4 following taxable year if:

5 (i) an election under subsection (1) is made for any
6 taxable year during such year or on or before the 15th day
7 of the third month of the following taxable year; and:

8 (A) on one or more days in such taxable year before
9 the day on which the election was made the corporation did
10 not meet the requirements of 15-31-201(1); or

11 (B) one or more of the persons who held stock in the
12 corporation during such taxable year and before the election
13 was made did not consent to the election; or

14 (ii) (A) a small business corporation makes an election
15 under subsection (1) for any taxable year; and

16 (B) such election is made after the 15th day of the
17 third month of the taxable year or on or before the last day
18 of such taxable year.

19 (2)(3) If a small business corporation makes an
20 election under subsection (1), then:

21 (a) with respect to the taxable years of the
22 corporation for which such election is in effect, such
23 corporation is not subject to the taxes imposed by this
24 chapter, and, with respect to such taxable years and all
25 succeeding taxable years, the provisions of this part apply

1 to such corporation; and

2 (b) with respect to the taxable years of a shareholder
3 of such corporation in which or with which the taxable years
4 of the corporation for which such election is in effect end,
5 the provisions of this part apply to such shareholder, and
6 with respect to such taxable years and all succeeding
7 taxable years, the provisions of this part apply to such
8 shareholder.

9 (3) An election under subsection (1) may be made by a
10 small business corporation for any taxable year at any time
11 during the first month of such taxable year or at any time
12 during the month preceding such first month. Such election
13 must be made in accordance with rules prescribed by the
14 department of revenue.

15 (4) An election under subsection (1) is effective for
16 the taxable year of the corporation for which it is made and
17 for all succeeding taxable years of the corporation unless
18 it is terminated with respect to any such taxable year
19 under subsection (5).

20 (5) (a) (i) An election under subsection (1) made by a
21 small business corporation terminates if any person who was
22 not a shareholder in such corporation at the time of the
23 initial election under subsection (1) subsequently becomes a
24 shareholder in such corporation and affirmatively refuses in
25 accordance with rules prescribed by the department to

1 consent--to--such--election--on--or--before--the--60th--day--on--which
 2 he--acquires--the--stock
 3 (iii)--If--the--person--acquiring--the--stock--is--the--estate--of
 4 a--decedent--the--period--under--subsection--(5)(a)(i)--for
 5 affirmatively--refusing--to--consent--to--the--election--expires--on
 6 the--60th--day--after--whichever--of--the--following--is--the
 7 earlier:
 8 (A)--the--day--on--which--the--executor--or--administrator--of
 9 the--estate--qualifies--or
 10 (B)--the--last--day--of--the--taxable--year--of--the
 11 corporation--in--which--the--decedent--died
 12 (iii)--Any--termination--of--an--election--under--subsection
 13 (5)(a)(i)--by--reason--of--the--affirmative--refusal--of--any--person
 14 to--consent--to--such--election--is--effective--for--the--taxable
 15 year--of--the--corporation--in--which--such--person--becomes--a
 16 shareholder--in--the--corporation--and--for--all--succeeding
 17 taxable--years--of--the--corporation
 18 (b)--An--election--under--subsection--(i)--made--by--a--small
 19 business--corporation--may--be--revoked--by--it--for--any--taxable
 20 year--after--the--first--taxable--year--for--which--the--election--is
 21 effective--An--election--may--be--revoked--only--if--all--persons
 22 who--are--shareholders--in--the--corporation--on--the--day--on--which
 23 the--revocation--is--made--consent--to--the--revocations--A
 24 revocation--under--this--paragraph--is--effective
 25 (i)--for--the--taxable--year--in--which--made--if--made--before

1 the--close--of--the--first--month--of--such--taxable--year
 2 (ii)--for--the--taxable--year--following--the--taxable--year--in
 3 which--made--if--made--after--the--close--of--such--first--month--and
 4 for--all--succeeding--taxable--years--of--the--corporation--Such
 5 revocation--must--be--made--in--accordance--with--rules--prescribed
 6 by--the--department
 7 (c)--An--election--under--subsection--(i)--made--by--a--small
 8 business--corporation--terminates--if--the--corporation--ceases--to
 9 meet--the--definition--of--a--small--business--corporation--at--any
 10 time--after--election--is--effective--under--subsection--(i)
 11 (d)--Such--termination--is--effective--for--the--taxable--year
 12 of--the--corporation--in--which--the--corporation--ceases--to--be--a
 13 small--business--corporation--and--for--all--succeeding--taxable
 14 years--of--the--corporation
 15 (4) (a) An election under subsection (1) may be
 16 terminated by revocation.
 17 (b) An election may be revoked only if shareholders
 18 holding more than one-half of the shares of stock of the
 19 corporation on the day on which the revocation is made
 20 consent to the revocation.
 21 (c) Except as provided in subsection (4)(d),
 22 (i) a revocation made during the taxable year or on or
 23 before the 15th day of the third month of the following year
 24 is effective on the first day of such taxable year; and
 25 (ii) a revocation made during the taxable year but

1 after such 15th day is effective on the first day of the
2 following taxable year.

3 (d) If the revocation specifies a date for revocation
4 that is on or after the day on which the revocation is made,
5 the revocation is effective on and after the date so
6 specified.

7 (e) Any revocation under this subsection must be made
8 in accordance with rules prescribed by the department.

9 (5) (a) At any time on or after the first day of the
10 first taxable year for which the corporation is an electing
11 small business corporation, the election must be terminated
12 if the corporation ceases to be a small business
13 corporation.

14 (b) Any termination under subsection (5)(a) is
15 effective on and after the date of cessation.

16 (6) Notwithstanding a terminating event, a corporation
17 must be treated as continuing to be an electing small
18 business corporation during the period specified by the
19 department if:

20 (a) an election under subsection (1) by any
21 corporation was terminated under subsection (5);

22 (b) the department determines that the termination was
23 inadvertent;

24 (c) within a reasonable period of time after discovery
25 of the event resulting in the termination, steps were taken

1 so that the corporation is once more a small business
2 corporation; and

3 (d) the corporation and each person who was a
4 shareholder of the corporation at any time during the period
5 specified pursuant to this subsection agree to make such
6 adjustments consistent with the treatment of the
7 corporation as an electing small business corporation as
8 may be required by the department with respect to such
9 period.

10 (6)(7) If a small business corporation has made an
11 election under subsection (1) and if such election has been
12 terminated or revoked under subsection (4) or (5), such the
13 corporation and or any successor corporation are is not
14 eligible to make an election under subsection (1) for any
15 taxable year prior to its fifth taxable year which that
16 begins after the first taxable year for which such
17 termination or revocation is effective unless the department
18 consents to such election.

19 (7)(8) This An election under subsection (1) is not
20 effective unless the corporate net income or loss of such
21 electing small business corporation is included in the
22 stockholders' adjusted gross income as defined in 15-30-111
23 in accordance with rules prescribed by the department.

24 (8)(9) Every electing small business corporation is
25 required to pay the minimum fee of \$10 required by

1 15-31-204."

2 Section 3. Section 15-31-205, MCA, is amended to read:

3 "15-31-205. Stock owned by husband and wife. For
4 purposes of 15-31-201(1)(a), stock a husband and wife and
5 their estate shall be treated as owned by one shareholder
6 when it:

7 (1) ~~is community property of a husband and wife for~~
8 ~~the income from which is community income} under the~~
9 ~~applicable community property law of a state;~~

10 (2) ~~is held by a husband and wife as joint tenants~~
11 ~~tenants by the entirety or tenants in common~~

12 (3) ~~was on the date of death of a spouse, stock~~
13 ~~described in subsection (1) or (2) and is by reason of such~~
14 ~~death held by the estate of the deceased spouse and the~~
15 ~~surviving spouse or by the estates of both spouses (by~~
16 ~~reason of their deaths on the same date) in the same~~
17 ~~proportion as held by the spouses before such death; or~~

18 (4) ~~was on the date of the death of a surviving~~
19 ~~spouse, stock described in subsection (3) and is by reason~~
20 ~~of such death held by the estates of both spouses in the~~
21 ~~same proportion as held by the spouses before their deaths."~~

22 Section 4. Section 15-31-207, MCA, is amended to read:

23 "15-31-207. Certain trusts permitted as shareholders.
24 For purposes of 15-31-201(1), the following trusts may be
25 shareholders:

1 (1) a trust all of which is treated as owned by the
2 grantor under sections 671 through 678 of the Internal
3 Revenue Code. Such a trust may continue to be a shareholder
4 for 60 days after the death of the grantor unless the trust
5 is includable in the gross estate of the grantor, in which
6 case the trust may continue to be a shareholder for a 2-year
7 period. The grantor or the grantor's estate is treated as
8 the shareholder in the case of a trust described in this
9 subsection.

10 (2) a trust created primarily to exercise the voting
11 power of stock transferred to it. Each beneficiary of a
12 trust described in this subsection is treated as a
13 shareholder for purposes of 15-31-201(1)(a).

14 (3) any trust with respect to stock transferred to it
15 pursuant to the terms of a will, but only for the 60-day
16 period beginning on the day on which such stock is
17 transferred to it. In the case of a trust described in this
18 subsection, (2), each beneficiary of the trust the estate of
19 the testator shall, for purposes of 15-31-201(1)(a), be
20 treated as a shareholder."

21 NEW SECTION. Section 5. Special rules with respect to
22 stock and debt. For purposes of 15-31-201(1)(d), the
23 following apply:

24 (1) A corporation may not be treated as having more
25 than one class of stock solely because there are differences

1 in voting rights among the shares of common stock.

2 (2) Straight debt may not be treated as a second class
3 of stock. For purposes of this subsection, "straight debt"
4 means any written unconditional promise to pay on demand, on
5 a specified date, a sum certain in money if:

6 (a) the interest rate and interest payment dates are
7 not contingent on profits, the borrower's discretion, or
8 similar factors;

9 (b) there is no convertibility, directly or
10 indirectly, into stock; and

11 (c) the creditor is an individual, an estate, or a
12 trust described in 15-31-207 and is not a nonresident alien.

13 (3) Federal treasury regulations as may be adopted
14 must be referred to for the proper treatment of straight
15 debt for purposes of this part and for the coordination of
16 such treatment with other provisions of this title.

17 NEW SECTION. Section 6. Special rules for qualified
18 small business corporation trust. (1) A qualified trust must
19 be treated as a trust described in 15-31-207(1), and the
20 beneficiary of such trust must be treated as the owner of
21 that portion of the trust which consists of stock in a small
22 business corporation if the beneficiary makes the election
23 in subsection (2). A trust is a "qualified trust" for
24 purposes of this part if:

25 (a) it owns stock in one or more electing small

1 business corporations;

2 (b) all of the income of which is distributed or
3 required to be distributed currently to one individual who
4 is a citizen or resident of the United States; and

5 (c) its terms require that:

6 (i) during the life of the current income beneficiary
7 there may be only one income beneficiary of the trust;

8 (ii) any corpus distributed during the life of the
9 current income beneficiary in the trust may be distributed
10 only to such beneficiary;

11 (iii) the income interest of the current income
12 beneficiary of the trust terminates on the earlier of such
13 beneficiary's death or the termination of the trust; and

14 (iv) upon the termination of the trust during the life
15 of the current income beneficiary, the trust distributes all
16 of its assets to such beneficiary.

17 (2) A beneficiary of a qualified trust or his legal
18 representative may elect to have this section apply by
19 making an election in such manner, in such form, and at such
20 time as the department may prescribe. An election under this
21 subsection must be made separately with respect to each
22 electing small business corporation the stock of which is
23 held by the trust. If there is an election under this
24 subsection by any beneficiary, each successive beneficiary
25 must be treated as having made the election unless such

1 beneficiary affirmatively refuses to consent to such
2 election in such form and at such time as the department may
3 prescribe.

4 (3) An election made under subsection (2) may not be
5 revoked without the consent of the department.

6 (4) An election under subsection (2) may be effective
7 up to 60 days before the date of the election.

8 (5) If a qualified trust ceases to meet any
9 requirement under subsection (1), this section does not
10 apply to such trust as of the date it ceases to meet such
11 requirement.

12 **NEW_SECTION.** Section 7. Repealer. Section 15-31-206,
13 MCA, is repealed.

14 **NEW_SECTION.** Section 8. Codification Instruction.
15 Sections 5 and 6 are intended to be codified as an integral
16 part of Title 15, chapter 31, part 2, and the provisions of
17 Title 15, chapter 31, part 2, apply to sections 5 and 6.

18 **NEW_SECTION.** Section 9. Applicability date. This act
19 applies to taxable years beginning after December 31, 1982.