## 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

11

1	NTRODUCED BY Rammer, Janelly	
2	NTRODUCED BY KAMMEY, yardley	
2		

4 A BILL FOR AN ACT ENTITLED: MAN ACT TO GENERALLY REVISE THE 5 PROVISIONS RELATING TO THE TAXATION OF SMALL BUSINESS 6 CORPORATIONS; AMENDING SECTIONS 15-31-201, 15-31-202,

15-31-205, AND 15-31-207, MCA; REPEALING SECTION 15-31-206,

MCA; AND PROVIDING AN APPLICABILITY DATE.\*

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

part, the term "small business corporation" means a

corporation doing pusiness in Montana and which does not

L5 have:

16

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21

- (a) more than 10 35 shareholders;
- (a) 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
  - (d) more than one class of stock.
- 22 (2) For purposes of this part, the term "electing
- 23 small pusiness 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.

3	united_States_Code_(Bankruptcy).**
4	Section 2. Section 15-31-202, HCA, is amended to read:
5	*15-31-202. Election by small business corporation.
6	(1) Except as provided in subsection (6) (11), 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 shaft-be under
10	this section is valid only if consented-toby all persons

(3) for purposes of this parts the term "estate" includes the estate of an individual under Title 11 of the

12 the\_election\_is\_made\_consent\_to\_the\_election. The An

who are shareholders in such corporation on the day on which

13 election under this section is effective+ for the taxable

14 <u>year of the corporation for which it is made and for all</u>

15 succeeding taxable years of the corporation until such

16 election is terminated under subsection (4) or (5).

17 fay--on--the--first--day--of-the-first-taxable-year-for

18 which-such-election-is-effectivey-if-such-election--is--made

19 on-or-before-such-first-dayş-or

20 fbj--on--the--day-on-which-the-election-is-madey-if-the

21 election-is-made-efter-such-first-days

2? (2)\_(3)\_An\_election\_under\_subsection\_(1)\_max\_\_be\_\_made

23 <u>by a small business corporation for any taxable year:</u>

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_xaac*
3	(b)_An_election_must_be_treated_as_made_for_tbe
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_the15thday
7	of the third month of the following taxable year; and:
8	(Al_on_one_or_more_days_in_sucb_taxable_year_before
9	the_day_on_which_the_election_was_made_the_corporation_did
10	not_meet_the_requirements_of_15=31=201(11:_or
11	(81_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_electioni_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_dax
.18	of_sucu_taxable_year.
19	f2f(2) If a small business corporation makes an
20	election under subsection (1). them:
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 $_{\pm}$ and $_{\Psi}$ with respect to such taxable years and all
25	succeeding taxable years, the provisions of this part apply

to such corporation; and
(b) with respect to the taxable years of a shareholde
of such corporation in which or with which the taxable year
of the corporation for which such election is in effect end
the provisions of this part apply to such shareholder, an
with respect to such taxable years and all succeeding
taxable years, the provisions of this part apply to suc
sharenolder.
(3)An-election-under-subsection-(1)-may-be-mode-by
smallhusiness-corporation-for-any-toxable-year-at-any-time
during-the-first-month-of-such-taxable-year-or-atanytime
duringthemonth-preceding-such-first-monthw-Such-election
must-be-made-in-accordancewithrulesprescribedbyth
department-of-revenue.
<pre>f4}Anefection-under-subsection-(1)-is-effective-for</pre>
the-taxable-year-of-the-corporation-for-which-it-is-made-on-
for-all-succeeding-taxable-years-of-thecorporationunless
itisterminatedywithrespect-to-any-such-taxable-years
under-subsection-(5)*
+5}toj-(+j-An-election-under-subsection-(+j-mode-by-
small-ousiness-corporation-terminates-if-any-person-whowas
notashareholderinsuch-corporation-at-the-time-of-the
initial-election-under-subsection-(1)-subsequently-becomes-

accordance--with--rules--prescribed--by--the--departm.no--to

-	consent to determine of before the open day on which
2	he-acquires-the-stocks
3	fiff-If-the-person-acquiring-the-stock-is-the-estate-of
4	adecadentytheperiodundersubscction(5)(a)(i)for
5	affirmatively-refusing-to-consent-to-the-election-expires-on
6	the58thdayafterwhicheverofthefollowingis-the
7	earliert
.8	tx;the-day-on-which-the-executor-or-administratorof
9	the-estate-qualificat-or
10	td)thetastdayofthetaxableyearofthe
11	corporationy-in-which-the-decedent-died=
12	fifi)-Any-termination-of-an-electionundersubsection
13	t5)tatti)-by-reason-of-the-affirmative-refusal-of-any-person
14	toconsenttosuchelection-is-effective-for-the-taxable
15	year-of-the-corporationinwhichsuchpersonbecomesa
16	shareholderinthecorporationandforallsucceeding
17	taxeble-years-of-the-corporation*
18	<pre>fbjAn-election-under-subsection-(1)-made-byasmall</pre>
19	businesscorporationmaybe-revoked-by-it-for-any-taxable
20	year-after-the-first-taxable-year-for-which-the-electionis
21	effective=Anelectionmay-pe-revoked-only-if-all-persons
22	who-are-shareholders-in-the-corporation-on-the-day-onwhich
23	therevocationismadeconsenttotherevocationsA
24	revocation-under-this-paragraph-is-effectives
25	figfor-the-taxable-year-in-which-madey-if-made-before

1	the-close-of-the-first-month-of-such-taxable-year?
2	tity-for-the-taxable-year-following-the-taxable-year-in
3	which-madey-if-made-after-the-close-of-such-first-monthy-and
4	for-all-succeeding-taxable-years-ofthecorporationSuch
5	revocationmust-be-made-in-accordance-with-rules-prescribed
6	by-the-department*
7	tetAn-election-under-subsection-(i)-made-byaanti-
8	business-corporation-terminates-if-the-corporation-ceases-to
9	meetthedefinition-of-a-small-business-corporation-at-any
10	time-after-election-is-effective-under-subsection-(1)*
11	<pre>fd&gt;Such-termination-is-effective-for-the-taxable-year</pre>
12	of-the-corporation-in-which-the-corporation-ceases-tobea
13	smoltbusinesscorporationand-for-all-succeeding-taxable
14	years-of-the-corporation*
15	[4]_(a)_Aoelection_under_subsection_fl)_maybe
16	terminated_by_revocation.
17	(b)_An_election_way_be_revoked_only_if_shareholders
18	bolding_more_than_one=balf_of_the_shares_of_stock_of_the
19	corporation on the day on which the revocation is made
20	consent_to_the_revocation.
21	(cl_Except_as_provided_in_subsection_(4)(d):
22	(il_a_revocation_made_during_the_taxable_year_or_on_or
23	before the 15th_day_of_the_third_month_of_the_following_xear
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_xear.
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_bemade
8	in_accordance_with_rules_prescribed_by_the_department.
9	151_1al At any time on or after the first day of the
19	first_taxable_year_for_which_the_corporation_is_anelecting
11	small business corporation, the election must be terminated
12	if the corporation ceases to be a small business
13	<u>corporation</u> .
14	(b)_Any_termination_under_subsection_(5)(a)_is
15	effective_on_and_after_the_date_of_cessation.
16	(6)_Wolwithstanding_a_terminating_eyents_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_electionundersubsection(l)byany
21	corporation_was_terminated_under_subsection_15]:
22	(bl_tbe_department_determines_tbat_tbe_termination_was
2 <b>3</b>	inadvertent:
24	(cl_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_lagreetomakesuch
6	adjustments:consistentwiththetreatmentofthe
7	corporation as an electing small business corporation. as
8	may be required by the department with respect to such
9	period.
10	(6)171 If a small business corporation has made an
11	election under subsection (1) and if such election has been
12	terminated er-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 <u>small_business</u> 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	f87[9] Every electing <u>small_business</u> 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	<u>their_estate</u> shall be treated as owned-by one shareholder
6.	when-it*
7	(±)+s-community-property-of-a-husbandandwifetor
Ą	theincomefromwhichiscommunityincome;underthe
9	applicable-community-property-law-of-a-state;
10	{2}is-held-by-a-hasband-and-wifeasjointtenantsy
11	tenants-by-the-entiretyy-or-tenants-in-common;
12	(3)wasyonthedateofdeathof-a-spousey-stock
13	described~in-subsection-(1)-or-(2)-ond-isby-reason-of-such
14	destry-held-by-the-estate-of-thedeceasedspouseandthe
15	survivingspouseorbytheestatesaf-both-spouses-fby
16	reason-of-theirdeathsonthesamedate}inthesame
17	proportion-as-held-by-the-spouses-before-such-deatht-or
18	(+)wasyonthedateofthedeath-of-a-surviving
19	spousey-stock-described-in-subsection-(3)-and-isy-byreason
20	ofsuchdeathyheld-by-the-estates-of-both-spouses-in-the
21	same-proportion-as-held-by-the-spouses-before-their-deaths.M
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)	a trus	t all of	which	is treat	ed as	owned	by t	he
grantor :	under	sections	671	tnrough	678	of the	Intern	ıal
Revenue Co	ode <b>†</b> S	uch_a_tr	ıst_ma;	coatinu	e_to_b	e_a_sha	rebolo	ier
for_60_day	vs_afte	r_the_dea	atb_of_	the_gran	tor_uo	less_th	e_tcl	IST
isinclud	dable	in_the_gr	coss_es	tate_of_	the_gc	aotor.	ia_whi	cb
case_the_t	trust_m	ay_contic	ue_to_	be_a_sha	rebold	ec_foc_	<u>a_2-ye</u>	ar
period. It	e.gran	tor_or_ti	e_grad	tor's es	tate	is_tre	ated	as
the_space	ebolder.	inthe	case	of a tr	ust_de	scribed	_in_th	115
subsection	le.							

- 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(11)(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 subsettion: (2) each-beneficiary-of-the-trust the estate of
  19 the tastator shally--for--purposes--of-15-31-201(1)(to) be
  20 treated as a shareholder.
- 21 <u>NEW\_SECTION\*</u> Section 5. Special rules with respect to 22 stock and debt. For purposes of 15-31-201(1)(d), the 23 following apply:
- (1) A corporation may not be treated as having morethan one class of stock solely because there are differences

in voting rights among the shares of common stock.

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- (2) Straight debt may not be treated as a second class of stock. For purposes of this subsection, "straight debt" means any written unconditional promise to pay on demand, on a specified date, a sum certain in money if:
- (a) the interest rate and interest payment dates are 6 7 not contingent on profits, the borrower's discretion, or 3 similar factors;
  - (b) there is no convertibility, directly or indirectly, into stock; and
    - (c) the creditor is an individual, an estate, or a trust described in 15-31-207 and is not a nonresident alien.
    - (3) Federal treasury regulations as may be adopted must be referred to for the proper treatment of straight debt for purposes of this part and for the coordination of such treatment with other provisions of this title.
    - <u>MEM\_SECTION</u>. Section 6. Special rules for qualified small business corporation trust. (1) A qualified trust must pe treated as a trust described in 15-31-207(1), and the beneficiary of such trust must be treated as the owner of that portion of the trust which consists of stock in a small business corporation if the beneficiary makes the election in subsection (2). A trust is a "qualified trust" for purposes of this part if:
      - (a) it owns stock in one or more electing small

business corporations; 1

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- (b) all of the income of which is distributed or 2 4 required to be distributed currently to one individual who is a citizen or resident of the United States; and
  - (c) its terms require that:
  - (i) during the life of the current income beneficiary there may be only one income beneficiary of the trust;
- (ii) any corpus distributed during the life of the 8 current income beneficiary in the trust may be distributed only to such beneficiary:
  - (iii) the income interest of the current income beneficiary of the trust terminates on the earlier of such beneficiary's geath or the termination of the trust; and
  - (iv) upon the termination of the trust during the life of the current income beneficiary, the trust distributes all of its assets to such beneficiary.
  - (2) A beneficiary of a qualified trust or his legal representative may elect to have this section apply by making an election in such manner, in such form, and at such time as the department may prescribe. An election under this subsection must be made separately with respect to each electing small business corporation the stock of which is held by the trust. If there is an election under this subsection by any beneficiary, each successive beneficiary 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.
- (3) An election made under subsection (2) may not berevoked 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.
- 9 (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 <u>NEW\_SECTION</u> 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
- 18 <u>YEM\_SECTION</u>. Section 9. Applicability date. This act
  19 applies to taxable years beginning after December 31, 1982.

Title 15, chapter 31, part 2, apply to sections 5 and 6.

### STATE OF MONTANA

REQUEST NO. 322-83

#### FISCAL NOTE

Form BD-15

compliance with a written request received <u>February 7,</u> , 19 83, there is hereby submitted a Fiscal Note House Bill 621 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).	_
ackground information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members	į
the Legislature upon request.	
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# 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

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Approved by committee on Taxation

1 House BILL NO. 621
2 INTRODUCED BY Ranney, January

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

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

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

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

- (a) more than 10 35 shareholders;
- (b) as a shareholder a person (other than an estate and other than a trust described in 15-31-207) who is not an individual;
  - (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 parts the term "estate
2	includes the estate of an individual under litle 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) (II) 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-toby 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_tbe_corporation_until_such
16	election is terminated_under_subsection_(4)_or_(5).
17	{a}onthefirstdayof-the-first-taxable-year-for
18	which-such-election-is-effectivey-if-such-electionismade

(a)--on--the--first--day--of-the-first-taxable-year-for which-such-election-is-effectivey-if-such-election--is--made on-or-before-such-first-day+-or

20 (b)--on--the--day-on-which-the-election-is-madey-if-the
21 election-is-made-ofter-such-first-day\*

19

2? (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_xear.
3	(b)_An_election_must_be_treated_as_made_for_tbe
4	following_taxable_year_if:
5	fil_an_election_under_subsection_fll_is_made_for_any
6	taxable_year_during_such_year_or_oo_or_before_the15thday
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(11: 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	181 such election is made after the 15th day of the
17	third wonth of the taxable year or on or before the last day
18	of_such_taxable_year.
19	(2)(2) 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

to such corporation; and
(b) with respect to the taxable years of a shareholder
of such corporation in which or with which the taxable years
of the corporation for which such election is in effect end.
the provisions of this part apply to such shareholder, and
with respect to such taxable years and all succeeding
taxable years, the provisions of this part apply to such
sharenolder.
{3}An-election-under-subsection-(1)-may-be-mode-byo
smallbusiness-corporation-for-any-texable-year-at-any-time
during-the-first-month-of-such-taxable-year-or-atanytime
duringthemonth-preceding-such-first-monthy-Such-election
must-be-mode-in-accordancewithrulesprescribedbythe
department-of-revenue
(4)Anelection-under-subsection-(1)-is-effective-for
$\verb the-taxable-year-of-the-corporation-for-which-it-is-made-and \\$
for-all-succeeding-taxable-years-of-thecorporationunless
itisterminatedywithrespect-to-any-such-taxable-yeary
under-subsection-(5)+
f5}ta)-ti)-An-election-under-subsection-ti)-made-by-a
small-business-corporation-terminates-if-any-person-whowas
notashareholderinsuch-corporation-at-the-time-ef-the
initial-election-under-subsection-(1)-subsequently-becomes-a

succeeding taxable years, the provisions of this part apply

shareholder-in-such-corporation-and-affirmatively-refuses-in

accordance--with--rules--prescribed--by--the--department--to

1	698389550-38CU-616C£10U-0U-0L-D£10L6L£UE-0D£U-0D}_OU_MU1CU
2	he-acquires-the-stock+
3	fiff-if-the-person-acquiring-the-stock-is-the-estate-of
4	adecedentytheperiodundersubsection(5)ta)ti)for
5	affirmatively-refusing-to-consent-to-the-election-expires-on
6	the68thdayafterwhicheverofthefollowingis-the
7	eartier:
8	tajthe-day-on-which-the-executor-or-administratoraf
9	the-estate-quolifies;-or
10	t8)thelastdayofthetaxableyearofthe
11.	corporationy-in-which-the-decedent-died#
12	(iii)-Any-termination-of-an-electionundersubsection
13	<pre>+5&gt;ta}ti}-by-reason-of-the-affirmative-refusal-of-any-person</pre>
14	toconsenttosuchelection-is-effective-for-the-taxable
15	year-of-the-corporationinwhichsuchpersonbecomesa
16	shareholderinthecorporationandforallsucceeding
17	taxable-years-of-the-corporations
18	tbtAn-election-under-subsection-(1)-made-byasmall
19	businesscorporationmaybe-revoked-by-it-for-any-taxable
20	year-after-the-first-taxable-year-for-which-the-electionis
21	effective:knelectionmay-be-revoked-only-if-ell-persons
22	who-are-shareholders-in-the-corporation-on-the-day-onwhich
23	therevocationismadeconsenttotherevocationA
24	revocation-under-this-paragraph-is-effective:
25	tipfor-the-taxable-year-in-which-madey-if-made-before

1	the-close-of-the-first-month-of-such-toxable-years
2	(ff)-for-the-taxable-year-following-the-taxable-year-i
3	which-madey-if-made-after-the-close-of-such-first-monthy-an
4	for-all-succeeding-taxable-years-ofthecorporationsSuc
5	revocationmust-be-made-in-accordance-with-rules-prescribe
6	by-the-department*
7	<pre>fej An-election-under-subsection-(i)-made-byasmal</pre>
8	business-corporation-terminates-if-the-corporation-causes-t
9	meetthedefinition-of-a-small-business-corporation-at-an
10	time-after-election-is-affective-under-subsection-fly
11	tdjSuch-termination-is-effective-for-the-taxable-yea
12,	of-the-corporation-in-which-the-corporation-ceases-tobe
13	amultbusinesscorporationand-for-all-succeeding-taxabl
14	years-of-the-corporation*
15	(4)_(a) An_election_under_subsection_(1)_maxb
16	terminated_by_revocation.
17	(b) An election may be revoked only if shareholder
18	bolding_more_than_one=balf_of_the_shares_of_stock_of_th
19	corporation on the day on which the revocation is made
20	cooseot_to_the_revocation.
21	<pre>(cl_Except_as_provided_iq_subsection_1411d):</pre>
22	(i) a revocation made during the taxable year or on o
23	before the 15th day of the third menth of the fellowing year
24	is_effective_on_the_first_day_of_such_taxable_weari_and

(ii) a revocation made during the taxable year but

ı	41.545-72050-7350-704x-12-511555135-50-705-11127-74X-85-705
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	specifieda
7	(el_Any_revocation_under_this_subsection_must_bemade
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_corporations_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)_Wotwithstanding_a_terminating_execta_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_f5li
22	(b)_the_department_determines_that_the_termination_was
23	inadxertenti
24	(cl_within_a_reasonable_geriod_of_time_after_discovery

1	so_that_the_corporation_is_once_more_a_small_busines
2	corporation:_and
3	(d) the corporation and each person who was
4	shareholder of the corporation at any time during the perio
5	specified_pursuant_to_this_subsection_agree_to_make_suc
6	adjustments. consistent with the treatment of th
7	corporation as an electing small business corporation. a
8	max_be_required_by_tbe_department_with_respect_to_suc
9	Berioq.
10	(6)(1) If a small business corporation has made a
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 no
14	eligible to make an election under subsection (1) for an
15	taxable year prior to its fifth taxable year wh <del>ich <u>tha</u></del>
16	begins after the first taxable year for which suc
17	termination or-revocation is effective unless the departmen
18	consents to such election.
19	f7†181 This An election under_subsection_[1] is no
20	effective unless the corporate met income or loss of suc
21	electing small_business corporation is included in the
22	stockholders' adjusted gross income as defined in 15-30-11
23	in_accordance_with_rules_prescribed_by_the_department.
24	(8)12) Every electing <u>small_busingss</u> corporation is
25	required to pay the minimum fee of \$10 required by

of the event resulting in the termination. steps were taken

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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-rt+
(1)is-community-property-of-a-husbandandwifefor
theincomefromwhichiscommunityincome)underthe
applicable-community-property-law-of-a-state;
€2†is-held-by-a-husband-and-wifeasjointtenantsy
tenants-by-the-entirety+-or-tenants-in-common;
(3)wasonthedateof-adeathof-a-spousestock
described-in-subsection-(1)-or-(2)-and-is-by-reason-of-such
deathy-held-by-the-estate-of-thedeceasedspouseandthe
survivingspouseorbytheestatesof-both-spouses-fby
reason-of-theirdeathsonthesamedate}inthesame
proportion-es-held-by-the-spouses-before-such-deathy-or
(+)wasyonthedateofthedeath-of-a-surviving
spousey-stock-described-in-subsection-(3)-and-isy-byreason
ofsuchdeathyheld-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:

15-31-204-\*

1	(1) a trust all of which is treated as owned by the
2	grantor under sections 671 through 678 of the Interna
3	Revenue Codeta_Such_a_trust_may_continue_to_ba_a_shareholde
4	for 60 days after the death of the grantor unless the trus
5	is_includable_in_the_gross_estate_of_the_grantor_in_which
6	case the trust way continue to be a shareholder for a 2-year
7	period. The grantor or the grantor's estate is treated as
8	the spaceholder 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 sharebolder for purposes of 15-31-201(11(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, the case of a trust described in this subsection, the case of a trust described in this subsection, the case of a trust described in this subsection, the case of a trust described in this subsection, the case of a trust described in this subsection, the case of a trust described in this subsection, the case of a trust described in this subsection, the case of a trust described in this subsection, the case of a trust described in this subsection, and the case of a trust described in this subsection, the case of a trust described in this subsection, and the case of a trust described in this subsection.
  - <u>NEW SECTION</u> 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

in voting rights among the shares of common stock.

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- 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.
  - (3) Federal treasury regulations as may be adopted must be referred to for the proper treatment of straight debt for purposes of this part and for the coordination of such treatment with other provisions of this title.
  - MEM\_SECTION: Section 6. Special rules for qualified small business corporation trust. (1) A qualified trust must be treated as a trust described in 15-31-207(1), and the beneficiary of such trust must be treated as the owner of that portion of the trust which consists of stock in a small business corporation if the beneficiary makes the election in subsection (2). A trust is a "qualified trust" for purposes of this part if:
  - (a) it owns stock in one or more electing small

business corporations;

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- 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:
  - (i) during the life of the current income beneficiary 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;
  - (iii) the income interest of the current income beneficiary of the trust terminates on the earlier of such beneficiary's death or the termination of the trust; and
  - (iv) upon the termination of the trust during the life of the current income beneficiary, the trust distributes all of its assets to such beneficiary.
    - representative may elect to have this section apply by making an election in such manner, in such form, and at such time as the department may prescribe. An election under this subsection must be made separately with respect to each electing small business corporation the stock of which is held by the trust. If there is an election under this subsection by any beneficiary, each successive beneficiary must be treated as having made the election unless such

- beneficiary affirmatively refuses to consent to such
  election in such form and at such time as the department may
  prescribe.
- 4 (3) An election made under subsection (2) may not be 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 YEW\_SECTIONs Section 7. Repealer. Section 15-31-206.
  13 MCA, is repealed.
- NEW\_SECTIONs Section 8s Codification instructions

  Sections 5 and 6 are intended to be codified as an integral

  part of Title 15, chapter 31, part 2, and the provisions of

  Title 15, chapter 31, part 2, apply to sections 5 and 6s
- 18 YEM\_SECTIONs Section 9. Applicability date. This act
  19 applies to taxable years beginning after December 31, 1982.

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1	House BILL NO. 621
2	INTRODUCED BY Amise Jane
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A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE PROVISIONS RELATING TO THE TAXATION OF SMALL BUSINESS CORPORATIONS: AMENDING SECTIONS 15-31-201, 15-31-202, 15-31-205, AND 15-31-207, MCA; REPEALING SECTION 15-31-206, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

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

- (a) wore than 10 15 shareholders;
- (b) as a shareholder a person (other than an estate and other than a trust described in 15-31-207) who is not an individual;
  - (c) a nonresident alien as a shareholder; and
- 21 (d) more than one class of stock.
- (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 parts 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) 171, 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
0	this_section_is valid only if consented-toby all persons
.1	who are shareholders in such corporation on the day on which
.2	the election is made consent to the election. The An
.3	election under this section is effective for the taxable
4	year_of_the_corporation_for_which_it_is_made_and_for_all
5	succeeding taxable years of the corporation until such
6	election is terminated_under_subsection_(4)_or_(5).
7	{a}onthefirstdayof-the-first-taxable-year-for
8	which-such-election-is-effectivey-if-such-electionismade

fb}--on--the--day-on-which-the-election-is-madey-if-the

(2) (a) An election under subsection (1) may be made

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

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

by a small business corporation for any taxable year:

on-or-before-such-first-dayt-or

election-is-made-after-such-first-days

1	before the 15th day of the third wonth of the following
2	raxaple_xeac*
3	(b) An election must be treated as made for the
4	following taxable year if:
5	fil an election under subsection (1) is made for any
6	taxable year_during_such_year_or_on_or_before_the_15tbday
7	of the third wonth of the following taxable year: and:
8	(Al_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_swcb_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 years and
16	(8) 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

to such corporation; and
(b) with respect to the taxable years of a shareholder
of such corporation in which or with which the taxable years
of the corporation for which such election is in effect end
the provisions of this part apply to such shareholder, and
with respect to such taxable years and all succeeding
taxable years, the provisions of this part apply to such
shareholder.
<pre>f3}An-election-under-subsection-fig-may-be-made-by</pre>
smallbusiness-corporation-for-any-taxable-year-at-any-time
during-the-first-month-of-such-texable-year-or-atanytime
duringthemonth-preceding-such-first-monthSuch-election
must-be-made-in-accordancewithrulesprescribedbythe
department-of-revenue:
(4)Anelection-under-subsection-(1)-is-effective-for
the-taxable-year-of-the-corporation-for-which-it-is-made-and
for-all-succeeding-taxable-years-of-thecorporationunless
itisterminatedwithrespect-to-any-such-texable-years
under-subsection-(5)*
(5)(a)-(i)-An-election-under-subsection-(i)-made-by-
small-business-corporation-terminates-if-any-person-whowas
notashareholderinsuch-corporation-at-the-time-of-the
initial-election-under-subsection-(1)-subsequently-becomes-s
shorehelder-in-such-corporation-and-affirmatively-refuses-in

accordance--with--rules--prescribed--by--the--department--to

1	consentto-such-election-on-or-bofore-the-60th-day-on-which
2	he-acquires-the-stock-
3	f+++-if-the-person-acquiring-the-stock-is-the-estate-of
4	adecedentytheperiodundersubsection(5)(a)(i)for
5	offirmatively-refusing-to-consent-to-the-election-expires-on
6	the58thdayafterwhicheverofthefollowingis-the
7	eartiere
8	tajehe-day-on-which-the-executor-or-administratorof
9	the-estate-qualifies;-or
10	(8)thelostdayofthetaxableyearofthe
11	corporation;-in-which-the-decedent-died
12	(+++)-Any-termination-of-an-electionundersubsection
13	{5}tap{+}-by-reason-of-the-affirmative-refusel-of-any-person
14	toconsenttosuchelection-is-effective-for-the-taxable
15	year-of-the-corporationinwhichsuchpersonbecomesa
16	shareholderinthecorporationandforallsucceeding
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18	(b)An-election-under-subsection-(1)-made-byasmall
19	businesscorporationmaybe-revoked-by-it-for-any-taxable
20	year-after-the-first-taxable-year-for-which-the-electionis
21	effectivesAnelectionmay-be-revoked-only-if-all-persons
22	who-are-shareholders-in-the-corporation-on-the-day-onwhich
23	therevocationismadeconsonttotherevocationA
24	revocation-under-this-paragraph-is-effective+
25	{+}for-the-taxable-year-in-which-made;-if-made-before

1	the-close-of-the-first-month-of-such-taxable-years
2	<pre>f++j-for-the-taxable-year-following-the-taxable-year-i</pre>
3	which-madey-if-made-after-the-close-of-such-first-monthy-an
4	for-all-succeeding-texable-years-ofthecorporationSuc
5	revocationmust-be-made-in-accordance-with-rules-prescribe
6	by-the-departments
7	tcjAn-election-under-subsection-tij-made-byasmai
8	business-corporation-terminates-if-the-corporation-ceases-t
9	meetthedefinition-of-a-small-business-corporation-at-an
10	time-after-election-is-affective-under-subsection-(1)+
11	(d)Such-termination-is-effective-far-the-taxable-yea
12	of-the-corporation-in-which-the-c <del>orporatio</del> n-ceases-tobe
13	smallbusinesscorporationand-for-all-succeeding-taxabl
14	years-of-the-corporation*
15	(4) (a) An election under subsection (1) may be
16	terminated_by_revocation.
17	(b) An election way be revoked only if shareholder
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	(il 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

(ii) a revocation made during the taxable year but

	91 F2F" 7AFA" "75FA" "A32" Y3"ZFTZFPTTZ AAT PRETTTY P-MAS" AT "PRE
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	(el_Any_revocation_under_this_subsection_must_bemade
8	in_accordance_with_rules_prescribed_by_the_department.
9	151_(a) At any time on or after the first day of the
10	first_taxable_year_for_which_the_corporation_is_aoelecting
11	small_business_corporation: the election must be terminated
12	if the corporation ceases to be a small business
13	corporations
14	(b)_Anyterminationundersubsection_(5)1a)_is
15	effective_on_and_after_the_date_of_cessation.
16	(6)_Motwithstanding_a_terminating_event= a_corporation
17	sust 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	ipadverteoti
24	(cl_within_a_reasonable_period_of_time_after_discovery
25	of the event resulting in the tageination, steps were taken

1	so that the corporation is once more a small busines
2	corporation:_aod
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5	specified pursuant to this subsection agree to make suc
6	adjustments: consistent with the treatment of th
7	corporation as an election small business corporations a
8	may be required by the department with respect to suc
9	period.
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5	taxable year prior to its fifth taxable year which tha
6	begins after the first taxable year for which suc
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9	(7)(8) This An election under subsection (1) is no
o	effective unless the corporate net income or loss of suc
1	electing small business corporation is included in the
2	stockholders* adjusted gross income as defined in 15-30-11
3	in_accordance_with_rules_prescribed_by_the_department.
4	(8)(9) Every electing small business corporation i
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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
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6	when-it+
7	(±)
6	theincomefromwhichiscommunityincome)underthe
9	applicable-community-property-law-of-a-state;
10	f2}is-held-by-a-husband-and-wifeasjeinttenantsy
11	tenants-by-the-entiretys-or-tenants-in-commons
12	(3)wasyonthedateofdeathof-a-spousey-stock
13	described-in-subsection-(1)-or-(2)-and-isy-by-resson-of-such
14	deathy-held-by-the-estate-of-thedeceasedspouseandthe
15	survivingspouseorbytheestatesaf-both-spouses-fby
16	reason-of-theirdeathsonthesamedate;inthesame
17	proportion-as-held-by-the-spouses-before-such-death;-or
18	t+)wasyonthedateofthedeath-of-a-surviving
19	spousey-stock-described-in-subsection-{3}-and-isy-byreason
20	ofsuchdeathyheld-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:

15-21-204-#

(1) a trust all of which is treated as owned by the
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Revenue Codeta Such a trust way continue to be a shareholder
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is includable in the gross estate of the grantor. in which
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the_shareholder_in_the_case_of_a_trust_described_in_this
subsections

- (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).
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- 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

in voting rights among the shares of common stock.

- (2) Straight debt may not be treated as a second class of stock. For purposes of this subsection, "straight debt" means any written unconditional promise to pay on demand, on a specified date, a sum certain in money if:
- (a) the interest rate and interest payment dates are not contingent on profits, the borrower's discretion, or similar factors;
- (b) there is no convertibility, directly or Indirectly, into stock; and
- (c) the creditor is an individual, an estate, or a trust described in 15-31-207 and is not a nonresident alien.
- (3) Federal treasury regulations as may be adopted must be referred to for the proper treatment of straight debt for purposes of this part and for the coordination of such treatment with other provisions of this title.
- NEW SECTION. Section 6. Special rules for qualified small business corporation trust. (1) A qualified trust must be treated as a trust described in 15-31-207(1), and the beneficiary of such trust must be treated as the owner of that portion of the trust which consists of stock in a small business corporation if the beneficiary makes the election in subsection (2). A trust is a "qualified trust" for purposes of this part if:
  - (a) it owns stock in the or more electing small

1 business corporations;

- 2 (b) all of the income of which is distributed or required to be distributed currently to one individual who is a citizen or resident of the United States; and
- 5 (c) its terms require that:
  - (i) during the life of the current income beneficiary there may be only one income beneficiary of the trust;
  - (ii) any corpus distributed during the life of the current income beneficiary in the trust may be distributed only to such beneficiary;
  - (iii) the Income interest of the current income beneficiary of the trust terminates on the earlier of such beneficiary's death or the termination of the trust; and
  - (iv) upon the termination of the trust during the life of the current income beneficiary, the trust distributes all of its assets to such beneficiary.
  - (2) A beneficiary of a qualified trust or his legal representative may elect to have this section apply by making an election in such manner, in such form, and at such time as the department may prescribe. An election under this subsection must be made separately with respect to each electing small business corporation the stock of which is held by the trust. If there is an election under this subsection by any beneficiary, each successive beneficiary must be treated as having made the election unless such

- 1 beneficiary affirmatively refuses to consent to such
- Z 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 MEM\_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 YEW\_SECTION: Section 9. Applicability date. This act
- 19 applies to taxable years beginning after December 31, 1982.