

HOUSE BILL NO. 709

Introduced: 02/10/83

Referred to Committee on Taxation: 02/10/83

Rereferred to Committee on Appropriations: 02/12/83

Hearing: 3/15/83

Died in Committee

1 House BILL NO. 709  
2 INTRODUCED BY Northwell  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR THE  
5 NONRECOGNITION OF CAPITAL GAIN WHEN PROCEEDS OF SALE OR  
6 EXCHANGE ARE INVESTED IN A MONTANA ENTERPRISE; ALLOWING FOR  
7 THE TAX ON THE GAIN AT A LATER DATE; AMENDING SECTIONS  
8 15-30-111 AND 15-31-113, MCA; AND PROVIDING AN IMMEDIATE  
9 EFFECTIVE DATE AND AN APPLICABILITY DATE."  
10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12 Section 1. Section 15-30-111, MCA, is amended to read:  
13 "15-30-111. Adjusted gross income. (1) ~~Adjusted Except~~  
14 ~~as provided in subsection (3),~~ adjusted gross income shall  
15 be the taxpayer's federal income tax adjusted gross income  
16 as defined in section 62 of the Internal Revenue Code of  
17 1954 or as that section may be labeled or amended and in  
18 addition shall include the following:  
19 (a) interest received on obligations of another state  
20 or territory or county, municipality, district, or other  
21 political subdivision thereof;  
22 (b) refunds received of federal income tax, to the  
23 extent the deduction of such tax resulted in a reduction of  
24 Montana income tax liability;  
25 ~~(c) the gain on the sale or exchange of a capital~~

1 ~~asset excluded from adjusted gross income under subsection~~  
2 ~~(3)(a) when one of the events described in subsection (3)(b)~~  
3 ~~occurs during the taxable year.~~  
4 (2) Notwithstanding the provisions of the federal  
5 Internal Revenue Code of 1954 as labeled or amended,  
6 adjusted gross income does not include the following which  
7 are exempt from taxation under this chapter:  
8 (a) all interest income from obligations of the United  
9 States government, the state of Montana, county,  
10 municipality, district, or other political subdivision  
11 thereof;  
12 (b) interest income earned by a taxpayer age 65 or  
13 older in a taxable year up to and including \$800 for a  
14 taxpayer filing a separate return and \$1,600 for each joint  
15 return;  
16 (c) all benefits received under the Federal Employees'  
17 Retirement Act not in excess of \$3,600;  
18 (d) all benefits, not in excess of \$360, received as  
19 an annuity, pension, or endowment under any private or  
20 corporate retirement plan or system;  
21 (e) all benefits paid under the teachers' retirement  
22 law which are specified as exempt from taxation by 19-4-706;  
23 (f) all benefits paid under The Public Employees'  
24 Retirement System Act which are specified as exempt from  
25 taxation by 19-3-105;

1 (g) all benefits paid under the highway patrol  
2 retirement law which are specified as exempt from taxation  
3 by 19-6-705;

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

5 (i) all benefits paid under 19-11-602, 19-11-604, and  
6 19-11-605 to retired and disabled firefighters, their  
7 surviving spouses and orphans;

8 (j) all benefits paid by first- or second-class cities  
9 for the policemen's retirement system provided for by Title  
10 19, chapter 9;

11 (k) gain required to be recognized by a liquidating  
12 corporation under 15-31-113(1)(a)(ii).

13 ~~(3) (a) "Adjusted gross income" does not include the~~  
14 ~~gain from the sale or exchange of a capital asset if, within~~  
15 ~~12 months of the sale or exchange, the proceeds of the sale~~  
16 ~~or exchange are reinvested in an enterprise with:~~

17 ~~(i) 50% or more of its payroll subject to Montana~~  
18 ~~income tax; and~~

19 ~~(ii) 50% or more of its taxable income subject to the~~  
20 ~~tax imposed by either chapter 30 or 31.~~

21 ~~(b) The basis of the capital asset is carried forward~~  
22 ~~as the basis of the reinvestment, and any gain shall be~~  
23 ~~recognized;~~

24 ~~(i) upon the sale or exchange of the reinvestment~~  
25 ~~property;~~

1 ~~(iii) if the taxpayer brings cash or other property out~~  
2 ~~of the enterprise in which the investment is made;~~

3 ~~(iii) upon the sale or exchange of the taxpayer's~~  
4 ~~interest in the enterprise in which the investment is made;~~  
5 ~~or~~

6 ~~(iv) if the proceeds of the sale or exchange are~~  
7 ~~invested directly or indirectly in real property.~~

8 ~~(4)(4) In the case of a shareholder of a corporation~~  
9 ~~with respect to which the election provided for under~~  
10 ~~subchapter S. of the Internal Revenue Code of 1954, as~~  
11 ~~amended, is in effect but with respect to which the election~~  
12 ~~provided for under 15-31-202, as amended, is not in effect,~~  
13 ~~adjusted gross income does not include any part of the~~  
14 ~~corporation's undistributed taxable income, net operating~~  
15 ~~loss, capital gains or other gains, profits, or losses~~  
16 ~~required to be included in the shareholder's federal income~~  
17 ~~tax adjusted gross income by reason of the said election~~  
18 ~~under subchapter S. However, the shareholder's adjusted~~  
19 ~~gross income shall include actual distributions from the~~  
20 ~~corporation to the extent they would be treated as taxable~~  
21 ~~dividends if the subchapter S. election were not in effect.~~

22 ~~(4)(5) A shareholder of a DISC that is exempt from the~~  
23 ~~corporation license tax under 15-31-102(1)(1) shall include~~  
24 ~~in his adjusted gross income the earnings and profits of the~~  
25 ~~DISC in the same manner as provided by federal law (section~~

995, Internal Revenue Code) for all periods for which the DISC election is effective."

Section 2. Section 15-31-113, MCA, is amended to read:

"15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

~~(iii) the gain on the sale or exchange of a capital asset excluded from gross income under subsection (1)(b)(iii)(A) when one of the events described in subsection (1)(b)(iii)(B) occurs during the taxable year; and~~

(b) excluding gain:

(i) recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to

sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section; and

~~(iii) (A) from the sale or exchange of a capital asset if, within 12 months of the sale or exchange, the proceeds of the sale or exchange are reinvested in an enterprise with:~~

~~(i) 50% or more of its payroll subject to Montana income tax; and~~

~~(ii) 50% or more of its taxable income subject to the tax imposed by either chapter 30 or 31;~~

~~(B) the basis of the capital asset is carried forward as the basis of the reinvestment, and any gain shall be recognized;~~

~~(i) upon the sale or exchange of the reinvestment property;~~

~~(ii) if the taxpayer brings cash or other property out of the enterprise in which the investment is made;~~

~~(iii) upon the sale or exchange of the taxpayer's interest in the enterprise in which the investment is made; or~~

~~(iv) if the proceeds of the sale or exchange are invested directly or indirectly in real property.~~

(2) The term "net income" means the gross income of

1 the corporation less the deductions set forth in 15-31-114.  
 2 (3) No corporation is exempt from the corporation  
 3 license tax unless specifically provided for under  
 4 15-31-101(3) or 15-31-102. Any corporation not subject to or  
 5 liable for federal income tax but not exempt from the  
 6 corporation license tax under 15-31-101(3) or 15-31-102  
 7 shall compute gross income for corporation license tax  
 8 purposes in the same manner as a corporation that is subject  
 9 to or liable for federal income tax according to the  
 10 provisions for determining gross income in the federal  
 11 Internal Revenue Code in effect for the taxable year."

12 **NEW SECTION.** Section 3. Effective date --  
 13 applicability date. This act is effective on passage and  
 14 approval and applies to taxable years beginning after  
 15 December 31, 1982.

-End-

## STATE OF MONTANA

REQUEST NO. 410-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 15, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 709 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:

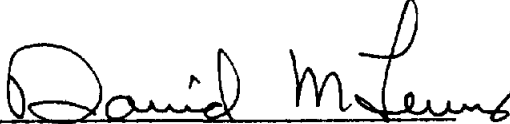
House Bill 709 allows for the nonrecognition of capital gain when proceeds of sale or exchange are invested in a Montana enterprise; allows for the tax on the gain at a later date; and provides an immediate effective date and an applicability date.

ASSUMPTIONS:

- 1) Individual income tax collection projections are as stated by the Office of Budget and Program Planning for FY84 and FY85.
- 2) Capital gains income is as indicated in the Montana income tax analysis for calendar year 1981 - \$392,094,189. However, \$180,509,639 is associated with filers who pay no tax.
- 3) Capital gains income will remain constant in FY84 and FY85.
- 4) The effective tax rate for Montana taxpayers that have capital gains income is 6.25% (1981 Montana actual) for FY84 and FY85.
- 5) At most, 20% of the net capital gains income is reinvested according to the criteria of this proposal.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Total Revenue from Individual Income Tax Collections		
Under Current Law	\$166.427M	\$175.459M
Under Proposed Law	<u>163.782M</u>	<u>172.814M</u>
Estimated Decrease	<u>(2.645M)</u>	<u>(2.645M)</u>
General Fund		
Under Current Law	106.513M	112.294M
Under Proposed Law	<u>104.820M</u>	<u>110.601M</u>
Estimated Decrease	<u>(1.693M)</u>	<u>(1.693M)</u>

Continued


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-83

	<u>FY84</u>	<u>FY85</u>
School Equalization		
Under Current Law	\$41.607M	\$43.865M
Under Proposed Law	<u>40.946M</u>	<u>43.204M</u>
Estimated Decrease	<u>(.661M)</u>	<u>(.661M)</u>
Sinking Fund		
Under Current Law	18.307M	19.300M
Under Proposed Law	<u>18.016M</u>	<u>19.010M</u>
Estimated Decrease	<u>(.291M)</u>	<u>(.290M)</u>