

SENATE BILL NO. 241

Introduced: 01/21/83

Referred to Committee on Taxation: 01/21/83

Hearing: 2/8/83

Report: 03/01/83, Do Pass, As Amended

2nd Reading: 03/03/83

3rd Reading: 03/04/83

Transmitted to House: 3/4/83

Referred to Committee on Taxation: 03/07/83

Hearing: 3/14/83

Died in House Committee

State BILL NO. *241*

INTRODUCED BY *Greg LaRue* *Kristal Gordon*
Jason Sapp

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE TAX CREDIT AVAILABLE FOR NEW OR EXPANDING MANUFACTURERS; AMENDING SECTIONS 15-31-124 THROUGH 15-31-127, MCA; DIRECTING THE AMENDMENT OF RULES 42.23.511 THROUGH 42.23.516 AND 42.23.518 THROUGH 42.23.522, ADMINISTRATIVE RULES OF MONTANA; REPEALING RULE 42.23.517, ADMINISTRATIVE RULES OF MONTANA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 15-31-124, MCA, is amended to read:

"15-31-124. New or expanded industry manufacturer credit -- definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by at least 30% or more at least five, whichever is less.

(3) "Manufacturing" "Manufacturer" means the any business that engages in a process of mechanical or chemical transformation of materials or substances into new products, as described in the standard industrial classification manual of 1972 by the office of management and budget of the

United States.

~~{4}--"New--corporation"--means--a--corporation--engaging--in--manufacturing--for--the--first--time--in--this--state--and--manufacturing--a--product--not--currently--manufactured--or--substantially--similar--to--a--product--currently--manufactured--by--that--corporation--or--any--affiliate--corporation--in--this--state;--it--does--not--include--reorganizing--an--existing--corporation--in--this--state--or--the--creation--of--a--parent--subsidiary--or--affiliate--of--which--50%--or--more--is--owned--or--controlled--by--the--same--person--corporation--or--associations"~~

Section 2. Section 15-31-125, MCA, is amended to read:

"15-31-125. Determination of tax credit. A new or expanding ~~manufacturing corporation~~ manufacturer may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: the first 3 years of operation of a new ~~corporation manufacturer~~ or the first 3 years of expansion of an expanding ~~corporation manufacturer~~, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201 may be allowed. In determining total wages for an expanding ~~corporation manufacturer~~, only those wages paid in support of the expansion are considered in ascertaining the credit. The payroll and number of jobs of the ~~corporation manufacturer~~ in the 12-month period immediately preceding the expansion are averaged to determine

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SB241

1 eligibility for the credit."

2 Section 3. Section 15-31-126, MCA, is amended to read:

3 "15-31-126. Limitation. This credit is available only
4 to those new and expanding ~~corporations~~ manufacturers that
5 provide jobs within the state of Montana."

6 Section 4. Section 15-31-127, MCA, is amended to read:

7 "15-31-127. Department duties. The department shall
8 determine the eligibility of a ~~corporation~~ manufacturer for
9 this credit, promulgate rules, prepare forms, maintain
10 records, and perform other duties necessary to carry out
11 15-31-124 through 15-31-127."

12 NEW SECTION. Section 5. Carryover. (1) The tax
13 credit provided for in 15-31-125 may not exceed the
14 manufacturer's tax liability for the taxable year.

15 (2) Any part of the tax credit allowed by 15-31-125
16 that was not taken because of the limitation contained in
17 subsection (1) may be carried forward for up to 10 taxable
18 years. The carryover may not result in a credit in excess of
19 the manufacturer's tax liability for any taxable year.

20 NEW SECTION. Section 6. New or expanded industry
21 credit -- definitions. As used in [sections 6 through 10],
22 the following definitions apply:

23 (1) "Department" means the department of revenue.

24 (2) "Expanding" means to expand or diversify a present
25 operation to increase total full-time jobs by at least 30%

1 or at least five, whichever is less.

2 (3) "Manufacturer" means any business that engages in a
3 process of mechanical or chemical transformation of
4 materials or substances into new products, as described in
5 the standard industrial classification manual of 1972 by the
6 office of management and budget of the United States.

7 NEW SECTION. Section 7. Determination of tax
8 credit. The individual liable for the payment of the tax
9 imposed by 15-30-103 on income derived from a new or
10 expanding manufacturer may receive a credit against the tax
11 imposed by 15-30-103. The amount of the credit is based on
12 a percentage of wages paid its new employees within this
13 state for a period of 3 years as follows: for the first 3
14 years of operation of a new manufacturer or the first 3
15 years of expansion of an expanding manufacturer, a credit of
16 1% of the total new wages paid in this state, as wages are
17 defined in 39-51-201. In determining total wages for an
18 expanding manufacturer, only those wages paid in support of
19 the expansion are considered in ascertaining the credit.
20 The payroll and number of jobs of the manufacturer in the
21 12-month period immediately preceding the expansion are
22 averaged to determine eligibility for the credit. If more
23 than one individual is liable for the payment of the tax
24 imposed by 15-30-103 on income derived from a new or
25 expanding manufacturer, the credit must be prorated among

1 the individuals who are liable for payment of the tax.

2 NEW SECTION. Section 8. Limitation. The credit
3 provided for in [section 7] is available only for new and
4 expanding manufacturers that provide jobs within the state
5 of Montana.

6 NEW SECTION. Section 9. Department duties. The
7 department shall determine the eligibility of an individual
8 for the credit provided for in [section 7], promulgate
9 rules, prepare forms, maintain records, and perform other
10 duties necessary to carry out [sections 6 through 10].

11 NEW SECTION. Section 10. Carryover. (1) The tax
12 credit provided for in [section 7] may not exceed the
13 individual's tax liability for the taxable year.

14 (2) Any part of the tax credit allowed by [section 7]
15 that was not taken because of the limitation contained in
16 subsection (1) may be carried forward for up to 10 taxable
17 years. The carryover may not result in a credit in excess
18 of the individual's tax liability for any taxable year.

19 Section 11. The Department of Revenue shall amend Rule
20 42.23.511, Administrative Rules of Montana, to read:

21 "42.23.511 CREDIT FOR NEW OR EXPANDING CORPORATIONS
22 MANUFACTURERS (1) Sections 15-31-124 through 15-31-127 and
23 [section 5], MCA, as amended, allow a tax credit equal to 1%
24 of wages paid by a new or expanding corporation
25 manufacturer. Any corporation manufacturer seeking credit

1 under 15-31-124 through 15-31-127, MCA, shall conclusively
2 demonstrate its eligibility to the department. The
3 department's decision shall be final.

4 (2) Each corporation manufacturer seeking a credit
5 under 15-31-124 through 15-31-127, MCA, shall show:

6 (a) ~~that it is a corporation preregistered pursuant to~~
7 ~~title 35, chapter 1, MCA, as amended~~ the manufacturer is
8 preregistered as a valid existing business under the laws of
9 this state;

10 (b) that it was registered for the first time during
11 the tax year for which the first credit is claimed or that
12 the industry meets the definition of expanding per
13 15-31-124, MCA, as amended; and

14 (c) ~~that the corporation is engaged in manufacturing~~
15 the applicant is a manufacturer as that term is defined in
16 15-31-124, MCA; ~~and~~

17 ~~(d) that the product manufactured is one which prior~~
18 ~~to its production by the corporation, was not then currently~~
19 ~~produced in this state."~~

20 Section 12. The Department of Revenue shall amend Rule
21 42.23.512, Administrative Rules of Montana, to read:

22 "42.23.512 PERIOD OF ELIGIBILITY (1) As used in this
23 section, period of eligibility means:

24 (a) in the case of a new corporation manufacturer, the
25 consecutive 3-year period during which a credit may be

1 claimed, commencing ~~from the initial act of doing business~~
 2 ~~in Montana with the start of manufacturing after all~~
 3 ~~planning, construction, and testing have been completed; or~~

4 (b) in the case of an expanding corporation
 5 ~~manufacturer~~, the consecutive 3-year period during which a
 6 credit may be claimed, commencing with preparation of
 7 ~~manufacture of the product~~ the start of expanded
 8 manufacturing following the completion of all planning,
 9 construction, and testing required for the expansion.

10 ~~{2}--A corporation seeking tax credit shall not be~~
 11 ~~allowed credit after the expiration of the period of~~
 12 ~~eligibility. This period is limited to the 3 consecutive~~
 13 ~~years following initial activity. A corporation may claim~~
 14 ~~credit for the first year and third or first and second~~
 15 ~~years of the 3-year periods.~~

16 ~~{3}{2}~~ Those periods of time before actual production
 17 of a new product, during which support, planning,
 18 construction of facilities, and other preparatory activities
 19 occur, ~~shall~~ may not be included in determining the period
 20 of eligibility."

21 Section 13. The Department of Revenue shall amend Rule
 22 42.23.513, Administrative Rules of Montana, to read:

23 "42.23.513. MANUFACTURING DEFINED {1}--A manufacturing
 24 corporation is one engaged in the mechanical or chemical
 25 transformation of materials or substances into new products.

1 ~~The manufacturing facilities are usually described as~~
 2 ~~plants, factories, or mills and characteristically use power~~
 3 ~~driven machines and materials handling equipment.~~
 4 ~~Corporations engaged in assembling component parts of~~
 5 ~~manufactured products are also considered to be~~
 6 ~~manufacturing, if the new product is neither a structure nor~~
 7 ~~other fixed improvement. Included in this definition is the~~
 8 ~~blending of materials such as lubricating oils, plastics,~~
 9 ~~resins, or liquids.~~

10 ~~{2}--The materials processed by manufacturing include~~
 11 ~~products of agriculture, forestry, fishing, mining, and~~
 12 ~~quarrying, as well as products of other manufacturers. The~~
 13 ~~new product may be "finished" in the sense that it is ready~~
 14 ~~for utilization or consumption or it may be "semifinished"~~
 15 ~~to become a raw material for another corporation engaged in~~
 16 ~~further manufacturing. For example, the product of the~~
 17 ~~copper smelter is the raw material used in electrolytic~~
 18 ~~refineries; refined copper is the raw material used by~~
 19 ~~copper wire mills; and copper wire is the raw material used~~
 20 ~~by certain electrical equipment manufacturers.~~

21 ~~{3}--The materials used by manufacturing establishments~~
 22 ~~may be purchased directly from the purchaser, obtained~~
 23 ~~through customary trade channels, or secured without~~
 24 ~~recourse to the market by transferring the product from one~~
 25 ~~establishment to another which is under the same ownership.~~

~~Manufacturing production is usually carried on for the wholesale markets for interplant transfers or to order for industrial users, rather than for direct sale to the domestic consumer.~~

~~(1)~~ In instances where a classification between manufacturing and other divisions of the 1972 Standard Industrial Classification Manual system is difficult, the department shall classify according to its best judgment. This decision shall be final.

~~(2)~~ The following activities, although not always considered as manufacturing, are so classified:

- (a) milk bottling and pasteurizing;
- (b) fresh fish packaging;
- (c) apparel jobbing (assigning of materials to contract factories or shops for fabrication or other contract operations) as well as contracting on materials owned by others;
- (d) publishing;
- (e) ready-mixed concrete production;
- (f) leather converting;
- (g) logging;
- (h) wood preserving;
- (i) various service industries to the manufacturing trade, such as typesetting, engraving, plate printing, and preparation of electrotyping and stereotype plates, but not

blueprinting or photocopying services;

(j) electroplating, plating, metal heat treating, and polishing for the trade;

(k) lapidary work for the trade;

(l) fabricating of signs and advertising displays.

~~(6) There are also some manufacturing-type activities performed by corporations which are primarily engaged in activities covered by other divisions of the Standard Industrial Classification Manual of 1972 and are thus not classified as manufacturing. A few of the important examples are:~~

~~(a) agriculture, forestry, and fishing (Processing on farms is not considered manufacturing if the raw materials are grown on the farm and if the manufacturing activities are on a small scale without the extensive use of paid labor. Other exclusions are custom grist milling, threshing, and cotton ginning);~~

~~(b) mining with the dressing and beneficiating of ores; the breaking, washing, and grading of coals; the crushing and breaking of stones; and the crushing, grinding, or otherwise preparing of sand and gravel; and nonmetallic chemicals and fertilizer minerals other than barite classified as mining;~~

~~(c) construction (Fabricating operations performed at the site of a construction by contractors are not considered~~

1 manufacturing--The prefabrication of sheet metal, concrete
2 and--terrazzo--products--and--similar--construction--materials
3 shall--be--classified--as--manufacturing;;

4 (d)--wholesale--and--retail--trade--with--corporations
5 engaged--in--the--following--types--of--operations--included--in
6 wholesale--or--retail--trade;

7 (i)--cutting--and--selling--purchased--carcasses;

8 (ii)--preparing--feed--at--grain--elevators--and--farm--supply
9 stores;

10 (iii)--stemming--leaf--tobacco--at--wholesale
11 establishments;

12 (iv)--production--of--wiping--rag;;

13 (v)--breaking--of--bulk--and--redistribution--in--smaller
14 lots--including--packaging--repackaging--or--bottling--products
15 such--as--liquors--or--chemicals;

16 (vi)--primarily--selling--products--to--the--general--public
17 which--are--produced--on--the--same--premises--from--which--they--are
18 sold--such--as--bakeries--candy--stores--ice--cream--parlors--and
19 custom--tailors;

20 (e)--services--with--tire--retreading--and--rebuilding--sign
21 painting--and--lettering--ships--and--the--production--of--motion
22 picture--films--classified--as--services--and--with--repair
23 activities--with--the--following--exceptions--classified--as
24 services;

25 (i)--ship--and--boat--building--and--repair;

1 (ii)--the--rebuilding--of--machinery--and--equipment--on--a
2 factory--basis--and

3 (iii)--machine--shop--repair."

4 Section 14. The Department of Revenue shall amend Rule
5 42.23.514, Administrative Rules of Montana, to read:

6 "42.23.514. NEW CORPORATION MANUFACTURER (1) A new
7 corporation manufacturer is one:

8 (a)--which--has--never--done--business--in--Montana--in--any
9 corporation--prior--to--the--taxable--year--for--which--the--credit
10 is--claimed;--a--corporation--which--reported--or--should--have
11 reported--any--state--or--federal--agency--or--officer--authorized
12 to--collect--taxes--measured--by--net--income--shall--not--be
13 eligible;

14 (b)--which--manufactures--a--product--which--was--not
15 manufactured--in--Montana--prior--to--that--time which, on a
16 particular site within Montana, is either building a new
17 plant or reopening an existing plant with the effect of net
18 jobs new to the locality.

19 (2) A corporation manufacturer reorganized pursuant to
20 Title 35, chapter 1, MCA, as amended, shall not be eligible
21 for credit under 15-31-124 through 15-31-127 and [section
22 5], MCA.

23 (3)--No--credit--shall--be--allowed--if--50%--of--a
24 corporation's--stock--is--owned--or--controlled--by--the--same
25 individual--corporation--or--association--of--individuals--or

~~corporations. In this instance, the department presumes dependent corporate status if less than 50% of a corporation's stock is owned or controlled by the same individual or corporation or association of individuals or corporations. An applicant for credit under 15-31-124 through 15-31-127, MCA, shall demonstrate its independent corporate existence to the satisfaction of the department before credit may be granted.~~

~~(4) A corporation formed as a joint venture, combination, subsidiary, parent, affiliate, merger or any other kind of cooperative action between two or more corporations which cannot demonstrate an independent corporate existence shall not be accepted as a new corporation by the department for purposes of 15-31-124 through 15-31-127, MCA.~~

Section 15. The Department of Revenue shall amend Rule 42.23.515, Administrative Rules of Montana, to read:

"~~42.23.515 EXPANDING CORPORATION MANUFACTURER~~ (1) An expanding ~~corporation~~ manufacturer is one which:

(a) was registered to do business in Montana at least 1 year prior to claiming a credit under 15-31-124 through 15-31-127 and [section 5], MCA;

(b) has at all times prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, complied with the requirements of Title 35, chapter 1, MCA, as

amended; and

(c) has at all times prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, complied with the requirements of Title 15, chapter 31, MCA, as amended; and

~~(d) manufactures a product during the period of eligibility which was not manufactured in Montana prior to that time.~~

(2) Expanding means to enlarge the facilities or to diversify the products of a corporation which has done business in Montana at least 1 year prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, by increasing total full time jobs attributable to Montana by ~~30% or more~~ at least 30% or at least five, whichever is less. The increase shall be measured as a percentage increase of full time jobs held with the ~~corporation~~ manufacturer in Montana or attributable to Montana. The department shall recognize only full time jobs in determining eligibility for credit under 15-31-124 through 15-31-127 and [section 5], MCA."

Section 16. The Department of Revenue shall amend Rule 42.23.516, Administrative Rules of Montana, to read:

"~~42.23.516 COMPLIANCE WITH CERTAIN STATUTES REQUIRED~~

(1) A new or expanding ~~corporation~~ manufacturer which fails to comply with the provisions of Title 15, chapter 31, MCA,

1 as amended, and Title 35, chapter 1, MCA, as amended, during
 2 the period of eligibility shall lose its eligibility to
 3 claim credit under 15-31-124 through 15-31-127 and [section
 4 5], MCA."

5 Section 17. The Department of Revenue shall amend Rule
 6 42.23.518, Administrative Rules of Montana, to read:

7 "42.23.518 SUBMISSION OF EMPLOYEE LISTS (1) An
 8 expanding corporation manufacturer seeking credit under
 9 15-31-124 through 15-31-127 and [section 5], MCA, shall
 10 submit accurate employee lists to the department, so that
 11 the department may determine the percentage increase of new
 12 jobs in the taxable year for which credit is claimed.

13 (2) In applicable instances, an expanding corporation
 14 manufacturer shall submit 5 years of lists in order that an
 15 average employment figure be determined and the number of
 16 new employees discovered. If a corporation manufacturer has
 17 not done business for a 5-year period, employee lists for
 18 all years of operation shall be submitted. A new corporation
 19 manufacturer shall be exempt from this requirement.

20 (3) The lists shall include:

21 (a) all employees of the existing and expanded
 22 corporation manufacturer;

23 (b) their employment status clearly set out (whether
 24 full, half, or part-time);

25 (c) the position with the corporation firm;

1 (d) wages paid;

2 (e) the type of product produced by those employees
 3 employed by the expanded portion of the corporation firm;
 4 and

5 (f) the number of years the employee has been
 6 employed."

7 Section 18. The Department of Revenue shall amend Rule
 8 42.23.519, Administrative Rules of Montana, to read:

9 "42.23.519 DETERMINATION OF NEW JOBS (1) The intent of
 10 15-31-125, MCA, as amended, is to grant credit upon wages
 11 paid to new employees. The department shall determine from
 12 the information submitted if there has been at least a 20%
 13 increase in the number of jobs or an increase of at least
 14 five jobs and that these positions are filled by newly-hired
 15 personnel.

16 (2) The only employees which shall be counted in
 17 determination of credit are those who:

18 ~~(a) were not employed by the corporation manufacturer~~
 19 ~~within 5 years of expansion; and~~

20 ~~(b) are employed in production of the new product.~~

21 (3) Any employee who was employed by an existing
 22 corporation manufacturer shall not be counted as a new
 23 employee of the expanded corporation manufacturer if
 24 employment occurred within 5 years of the expansion.

25 ~~(4) No employee who was employed in existing~~

~~operations and who for any reason is employed in the expanded operations shall be counted for purposes of determining eligibility.~~

~~(5) Those employees who participated in the planning and preparation of the expansion of the corporation shall not be counted as new employees of the expandee corporations, unless in fact, these personnel can be shown to have been hired specifically for the expansion for which credit is claimed and that planning the expansion was the only activity assigned them.~~

Section 19. The Department of Revenue shall amend Rule 42.23.520, Administrative Rules of Montana, to read:

"42.23.520 DETERMINATION OF WAGES (1) In determining the amount of credit, the total amount of eligible wages paid new employees ~~producing the new product or products~~ shall be computed for the year in which the credit is claimed.

(2) A taxpayer's taxable year may be used in place of the 12-month period mandated by 15-31-125, MCA, as amended, for determination of the credit. In cases where results from computation of differing periods of time are found to yield differing results, the smaller figure shall be accepted by the department."

Section 20. The Department of Revenue shall amend Rule 42.23.521, Administrative Rules of Montana, to read:

"42.23.521 AVAILABILITY OF TAX CREDIT (1) A claim for credit may be made first as a new corporation ~~or manufacturer and then, later, as expansion occurs,~~ as an expanding corporation ~~no corporation may qualify as both~~ if a corporation has been granted credit as a new corporation, it may not subsequently be granted credit as an expanding corporation manufacturer.

(2) A corporation manufacturer may claim credit due under 15-31-124 through 15-31-127 and [section 5], MCA, for more than one manufacturing facility; but in no case shall the department allow a claim for credit, if the total claim for credit exceeds total liability imposed by 15-31-101, 15-31-121, and 15-31-122, MCA, as amended.

(3) A corporation qualifying under 15-31-124 through 15-31-127 and [section 5], MCA, shall use any credit authorized as an offset to tax liability incurred during the period of eligibility. ~~Carryback and carryover provisions of 15-31-114(2), MCA, do not apply in taking this credit~~ Carryovers, however, are available as set forth in [section 5], MCA."

Section 21. The Department of Revenue shall amend Rule 42.23.522, Administrative Rules of Montana, to read:

"42.23.522 WHEN CREDIT MAY BE CLAIMED (1) ~~The credit available under 15-31-124 through 15-31-127, MCA, may be claimed for the taxable year the activity for which credit~~

~~is claimed occurred. Credit may not be accumulated, and if a corporation does not claim credit for which it is eligible during a taxable year, that credit is lost.~~

~~(2) Eligibility for the tax credit expires with the corporation's taxable year.~~

(3) A corporation manufacturer may use the credit available under 15-31-124 through 15-31-127 and [section 5], MCA, only when the corporation manufacturer actually manufactures products in this state. No claim will be recognized if a corporation completes all preparatory phases without manufacturing a product."

NEW SECTION Section 22. Repealer. Rule 42.23.517, Administrative Rules of Montana, is repealed.

NEW SECTION. Section 23. Applicability. This act applies to taxable years beginning after December 31, 1982.

NEW SECTION. Section 24. Codification instruction.
(1) Section 5 is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to section 5.

(2) Sections 6 through 10 are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 6 through 10.

-End-

STATE OF MONTANA

212-83

REQUEST NO.

FISCAL NOTE

Form BD 15

In compliance with a written request received January 24, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 241 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

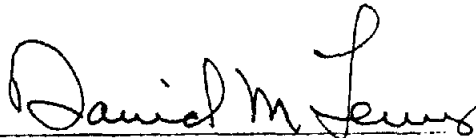
DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 241 generally revises the tax credit available for new or expanding manufacturers and provides an applicability date.

FISCAL IMPACT:

There is no data available to estimate the fiscal impact of the proposed legislation. The number of jobs and the payroll added by new or expanding employment cannot be estimated for the biennium. The bill expands the tax credit to individual income tax liabilities, which may have some additional impact on collections.

FISCAL NOTE 8:G/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-27-83

Approved by committee
on Taxation

SENATE BILL NO. 241

INTRODUCED BY LEE, FABREGA, KOLSTAD,

GOODOVER, IVERSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
TAX CREDIT AVAILABLE FOR NEW OR EXPANDING MANUFACTURERS
INDUSTRY; AMENDING SECTIONS 15-31-124 THROUGH 15-31-127,
MCA; DIRECTING THE AMENDMENT OF RULES 42.23.511 THROUGH
42.23.516 AND 42.23.518 THROUGH 42.23.522, ADMINISTRATIVE
RULES OF MONTANA; REPEALING RULE 42.23.517, ADMINISTRATIVE
RULES OF MONTANA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 15-31-124, MCA, is amended to read:

"15-31-124. New or expanded industry ~~manufacturers~~
INDUSTRY credit -- definitions. As used in 15-31-124 through
15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present
INDUSTRIAL operation to increase total full-time jobs by at
least 30% or more at least five jobs, whichever is less.

(3) "Manufacturing"---"~~Manufacturer~~"---means---the---any
~~business that engages in a process of mechanical or chemical~~
~~transformation of materials or substances into new products~~
~~as described in the standard industrial classification~~

~~manual of 1972 by the office of management and budget of the~~
~~United States (A) "NEW INDUSTRY" MEANS A PERSON,~~
~~CORPORATION, FIRM, PARTNERSHIP, ASSOCIATION, OR OTHER GROUP~~
~~THAT IS ESTABLISHED IN MONTANA FOR THE OPERATION OF A NEW~~
~~INDUSTRIAL ENTERPRISE, INCLUDING THE EXPANSION OF AN EXISTING~~
~~INDUSTRY.~~

~~(B) NEW INDUSTRY INCLUDES ONLY THOSE INDUSTRIES THAT:~~
~~(I) MANUFACTURE, MINE, PRODUCE, PROCESS, OR~~
~~FABRICATE MATERIALS;~~

~~(II) DO SIMILAR WORK, EMPLOYING CAPITAL AND LABOR, IN~~
~~WHICH MATERIALS UNSERVICEABLE IN THEIR NATURAL STATE ARE~~
~~EXTRACTED, PROCESSED, OR MADE FIT FOR USE OR ARE~~
~~SUBSTANTIALLY ALTERED OR TREATED SO AS TO CREATE COMMERCIAL~~
~~PRODUCTS OR MATERIALS; OR~~

~~(III) ENGAGE IN THE MECHANICAL OR CHEMICAL~~
~~TRANSFORMATION OF MATERIALS OR SUBSTANCES INTO NEW PRODUCTS~~
~~IN THE MANNER DEFINED AS MANUFACTURING IN THE 1972 STANDARD~~
~~INDUSTRIAL CLASSIFICATION MANUAL PREPARED BY THE UNITED~~
~~STATES OFFICE OF MANAGEMENT AND BUDGET.~~

~~(C) NEW INDUSTRY DOES NOT INCLUDE RETAIL OR WHOLESALE~~
~~MERCHANTS, COMMERCIAL SERVICES OF ANY TYPE, AGRICULTURE,~~
~~TRADES, OR PROFESSIONS.~~

~~(4) "New corporation" means a corporation engaging in~~
~~manufacturing for the first time in this state and~~
~~manufacturing a product not currently manufactured or~~

~~substantially-similar-to-a-product-currently-manufactured-by
that-corporation-or-any-affiliate-corporation-in-this-state
it-does-not-include-reorganizing-an-existing-corporation--in
this--state--or--the--creation--of--a-parenty-subsidiary-or
affiliate-of-which-50%-or-more-is-owned-or-controlled-by-the
same-persons-corporations-or-associations"~~

Section 2. Section 15-31-125, MCA, is amended to read:

"15-31-125. Determination of tax credit. A new or expanding manufacturing--corporation ~~manufacturer~~ INDUSTRY may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: the first 3 years of operation of a new corporation ~~manufacturer~~ INDUSTRY or the first 3 years of expansion of an expanding corporation ~~manufacturer~~ INDUSTRY, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201 may be allowed. In determining total wages for an expanding corporation ~~manufacturer~~ INDUSTRY, only those wages paid in support of the expansion are considered in ascertaining the credit. The ~~total~~ payroll and number of jobs ~~IN MONTANA~~ of the corporation ~~manufacturer~~ INDUSTRY in the 12-month ~~36-MONTH~~ period ~~OR THE PERIOD OF OPERATION OF THE INDUSTRY IN MONTANA, WHICHEVER IS LESS,~~ immediately preceding the expansion are averaged to determine eligibility for the credit."

Section 3. Section 15-31-126, MCA, is amended to read:
"15-31-126. Limitation. This credit is available only to those new and expanding corporations ~~manufacturers~~ that provide jobs ~~INDUSTRIES THAT INCREASE TOTAL FULL-TIME JOBS BY AT LEAST 30% OR AT LEAST FIVE JOBS, WHICHEVER IS LESS,~~ within the state of Montana."

Section 4. Section 15-31-127, MCA, is amended to read:

"15-31-127. Department duties. The department shall determine the eligibility of a corporation ~~manufacturer~~ ~~AN~~ INDUSTRY for this credit, promulgate rules, prepare forms, maintain records, and perform other duties necessary to carry out 15-31-124 through 15-31-127."

~~NEW SECTION.~~ Section 5. Carryover. (1) The tax credit provided for in 15-31-125 may not exceed the ~~manufacturer's~~ INDUSTRY'S tax liability for the taxable year.

(2) Any part of the tax credit allowed by 15-31-125 that was not taken because of the limitation contained in subsection (1) may be carried forward for up to 10 taxable years. The carryover may not result in a credit in excess of the ~~manufacturer's~~ INDUSTRY'S tax liability for any taxable year.

~~NEW SECTION.~~ Section 6. New or expanded industry credit -- definitions. As used in [sections 6 through 10], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by at least 30% or at least five jobs, whichever is less.

(3) "Manufacturer" means any business that engages in a process of mechanical or chemical transformation of materials or substances into new products as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(A) "NEW INDUSTRY" MEANS A PERSON, CORPORATION, FIRM, PARTNERSHIP, ASSOCIATION, OR OTHER GROUP THAT IS ESTABLISHED IN MONTANA FOR THE OPERATION OF A NEW INDUSTRIAL ENTERPRISE, INCLUDING THE EXPANSION OF AN EXISTING INDUSTRY.

(B) NEW INDUSTRY INCLUDES ONLY THOSE INDUSTRIES THAT:

(I) MANUFACTURE, MILL, MINE, PRODUCE, PROCESS, OR FABRICATE MATERIALS;

(II) DO SIMILAR WORK EMPLOYING CAPITAL AND LABOR, IN WHICH MATERIALS UNSERVICEABLE IN THEIR NATURAL STATE ARE EXTRACTED, PROCESSED, OR MADE FIT FOR USE OR ARE SUBSTANTIALLY ALTERED OR TREATED SO AS TO CREATE COMMERCIAL PRODUCTS OR MATERIALS; OR

(III) ENGAGE IN THE MECHANICAL OR CHEMICAL TRANSFORMATION OF MATERIALS OR SUBSTANCES INTO NEW PRODUCTS IN THE MANNER DEFINED AS MANUFACTURING IN THE 1972 STANDARD INDUSTRIAL CLASSIFICATION MANUAL PREPARED BY THE UNITED STATES OFFICE OF MANAGEMENT AND BUDGET.

(C) NEW INDUSTRY DOES NOT INCLUDE RETAIL OR WHOLESALE MERCHANTS, COMMERCIAL SERVICES OF ANY TYPE, AGRICULTURE, TRADES, OR PROFESSIONS.

NEW SECTION. Section 7. Determination of tax credit. The individual liable for the payment of the tax imposed by 15-30-103 on income derived from a new or expanding manufacturer may receive a credit against the tax imposed by 15-30-103. The amount of the credit is based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: for the first 3 years of operation of a new manufacturer or the first 3 years of expansion of an expanding manufacturer, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201. In determining total wages for an expanding manufacturer, only those wages paid in support of the expansion are considered in ascertaining the credit. The INITIAL payroll and number of jobs IN MONTANA of the manufacturer in the 12-month 12-MONTH period OR THE PERIOD OF OPERATION OF THE INDUSTRY IN MONTANA, WHICHEVER IS LESS, immediately preceding the expansion are averaged to determine eligibility for the credit. If more than one individual is liable for the payment of the tax imposed by 15-30-103 on income derived from a new or expanding manufacturer, the credit must be prorated among the individuals who are liable for payment of the tax.

NEW SECTION. Section 8. Limitation. The credit provided for in [section 7] is available only for ~~ID THOSE~~ new and expanding ~~manufacturers-that-provide-jobs~~ **INDUSTRIES** ~~THAT INCREASE TOTAL FULL-TIME JOBS BY AT LEAST 30% OR AT LEAST FIVE JOBS, WHICHEVER IS LESS,~~ within the state of Montana.

NEW SECTION. Section 9. Department duties. The department shall determine the eligibility of an individual for the credit provided for in [section 7], promulgate rules, prepare forms, maintain records, and perform other duties necessary to carry out [sections 6 through 10].

NEW SECTION. Section 10. Carryover. (1) The tax credit provided for in [section 7] may not exceed the individual's tax liability for the taxable year.

(2) Any part of the tax credit allowed by [section 7] that was not taken because of the limitation contained in subsection (1) may be carried forward for up to 10 taxable years. The carryover may not result in a credit in excess of the individual's tax liability for any taxable year.

Section 11. The Department of Revenue shall amend Rule 42.23.511, Administrative Rules of Montana, to read:

"42.23.511. CREDIT FOR NEW OR EXPANDING CORPORATIONS MANUFACTURERS INDUSTRIES (1) Sections 15-31-124 through 15-31-127 and [section 5], MCA, as amended, allow a tax credit equal to 1% of wages paid by a new or expanding

~~corporation~~ **manufacturer INDUSTRY.** Any ~~corporation~~ **manufacturer INDUSTRY** seeking credit under 15-31-124 through 15-31-127, MCA, shall conclusively demonstrate its eligibility to the department. The department's decision shall be final.

(2) Each ~~corporation~~ **manufacturer INDUSTRY** seeking a credit under 15-31-124 through 15-31-127, MCA, shall show:

(a) ~~that it is a corporation preregistered pursuant to Title 35, chapter 17, MCA, as amended~~ **the manufacturer is preregistered as a valid existing business under the laws of this state;**

(b) that it was registered for the first time during the tax year for which the first credit is claimed or that the industry meets the definition of expanding per 15-31-124, MCA, as amended; and

(c) ~~that the corporation is engaged in manufacturing~~ **the applicant is a manufacturer NEW OR EXPANDING INDUSTRY** as that term is defined in 15-31-124, MCA; and

~~(d) that the product manufactured is one which prior to its production by the corporation was not then currently produced in this state."~~

Section 12. The Department of Revenue shall amend Rule 42.23.512, Administrative Rules of Montana, to read:

"42.23.512. PERIOD OF ELIGIBILITY (1) As used in this section, period of eligibility means:

1 (a) in the case of a new corporation ~~manufacturer~~
 2 ~~INDUSTRY~~, the consecutive 3-year period during which a
 3 credit may be claimed, commencing ~~from the initial act of~~
 4 ~~doing business in Montana with the start of manufacturing~~
 5 ~~GOING BUSINESS after all planning, construction, and testing~~
 6 ~~have been completed; or~~

7 (b) in the case of an expanding corporation
 8 ~~manufacturer INDUSTRY~~, the consecutive 3-year period during
 9 which a credit may be claimed, commencing with preparation
 10 of ~~manufacture of the product the start of expanded~~
 11 ~~manufacturing OPERATIONS following the completion of all~~
 12 ~~planning, construction, and testing required for the~~
 13 ~~expansion.~~

14 (2) ~~A corporation seeking tax credit shall not be~~
 15 ~~allowed credit after the expiration of the period of~~
 16 ~~eligibility. This period is limited to the 3 consecutive~~
 17 ~~years following initial activity. A corporation may claim~~
 18 ~~credit for the first year and third or first and second~~
 19 ~~years of the 3-year period.~~

20 (3)(2) Those periods of time before actual production
 21 of ~~a new product BEGINS~~, during which support, planning,
 22 construction of facilities, and other preparatory activities
 23 occur, ~~shall not~~ be included in determining the period
 24 of eligibility."

25 Section 13. The Department of Revenue shall amend Rule

1 42.23.513, Administrative Rules of Montana, to read:

2 "42.23.513. MANUFACTURING DEFINED (1) ~~A manufacturing~~
 3 ~~corporation is one engaged in the mechanical or chemical~~
 4 ~~transformation of materials or substances into new products.~~
 5 ~~The manufacturing facilities are usually described as~~
 6 ~~plants, factories, or mills and characteristically use power~~
 7 ~~driven machines and materials handling equipment.~~
 8 ~~Corporations engaged in assembling component parts of~~
 9 ~~manufactured products are also considered to be~~
 10 ~~manufacturing if the new product is neither a structure nor~~
 11 ~~other fixed improvement included in this definition is the~~
 12 ~~blending of materials such as lubricating oils, plastics,~~
 13 ~~resins, or liquors.~~

14 (2) ~~The materials processed by manufacturing include~~
 15 ~~products of agriculture, forestry, fishing, mining, and~~
 16 ~~quarrying, as well as products of other manufacturers. The~~
 17 ~~new product may be "finished" in the sense that it is ready~~
 18 ~~for utilization or consumption or it may be "semifinished"~~
 19 ~~to become a raw material for another corporation engaged in~~
 20 ~~further manufacturing. For example, the product of the~~
 21 ~~copper smelter is the raw material used in electrolytic~~
 22 ~~refineries; refined copper is the raw material used by~~
 23 ~~copper wire mills; and copper wire is the raw material used~~
 24 ~~by certain electrical equipment manufacturers.~~

25 (3) ~~The materials used by manufacturing establishments~~

1 may-be-purchased--directly--from--the--purchasers--obtained
 2 through--customary--trade--channels--or--secured--without
 3 recourse-to-the-market-by-transferring-the-product-from--one
 4 establishment--to-another-which-is-under-the-same-ownership
 5 Manufacturing-production--is--usually--carried--on--for--the
 6 wholesale--markets--for-interplant-transfers-or-to-order-for
 7 industrial-users--rather--than--for-direct-sale-to--the
 8 domestic-consumers

9 (4)(i) In instances where a classification between
 10 manufacturing-and-other-divisions-of-the-1972-Standard
 11 Industrial-Classification-Manual-system ELIGIBLE NEW AND
 12 EXPANDING INDUSTRIES AND OTHER BUSINESSES is difficult, the
 13 department shall classify according to its best judgment.
 14 This decision shall be final.

15 (5)(i) The following activities, although not always
 16 considered-as-manufacturing, are so classified:

- 17 (a) milk-bottling-and-pasteurizing
- 18 (b) fresh-fish-packaging
- 19 (c) apparel--jobbing--assigning--of--materials--to
 20 contract-factories--or--shops--for--fabrication--or--other
 21 contract-operations--as--well--as--contracting-on-materials
 22 owned-by-others
- 23 (d) publishing
- 24 (e) ready-mixed-concrete-production
- 25 (f) leather-converting

- 1 (g) logging
- 2 (h) wood-preserving
- 3 (i) various-service-industries--to--the--manufacturing
 4 trades--such--as--typesetting--engraving--plate-printing--and
 5 preparation-of-electrotyping-and-stereotype-plates--but--not
 6 blueprinting-or-photocopying-services
- 7 (j) electroplating--plating--metal-heat-treating--and
 8 polishing-for-the-trade
- 9 (k) lapidary-work-for-the-trade
- 10 (l) fabricating-of-signs-and-advertising-displays
- 11 (6) There are also some manufacturing-type activities
 12 performed--by--corporations--which--are--primarily-engaged-in
 13 activities--covered--by--other--divisions--of--the--Standard
 14 Industrial-Classification-Manual-of-1972--and--are--thus--not
 15 classified--as--manufacturing--A--few--of--the--important
 16 examples are:
- 17 (a) agriculture--forestry--and--fishing--(Processing-on
 18 farms-is-not-considered-manufacturing-if-the--raw--materials
 19 are--grown--on--the--farm--and--if--the--manufacturing-activities
 20 are--on--a--small--scale--without--the--extensive--use--of--paid
 21 labor--Other--exceptions--are--custom-grist-milling
 22 threshing--and--cotton-ginning)
- 23 (b) mining-with-the-dressing--and--beneficiating--of
 24 ore--the--breaking--washing--and--grading--of--coal--the
 25 crushing-and-breaking-of-stones--and--the--crushing--grinding

1 or--otherwise--preparing--of--sand--and--gravel--and--nonmetallic
2 chemical--and--fertilizer--minerals--other--than--barite
3 classified-as-mining;

4 (c)--construction--(fabricating-operations-performed-at
5 the-site-of-a-construction-by-contractors-are-not-considered
6 manufacturing--The-prefabrication-of-sheet-metal--concrete
7 and-terrazzo-products--and--similar--construction--materials
8 shall-be-classified-as-manufacturing);

9 (d)--wholesale--and--retail--trade--with--corporations
10 engaged-in-the-following-types--of--operations--included--in
11 wholesale-or-retail-trade:

12 (i)--cutting-and-selling-purchased-carasses;

13 (ii)--preparing-feed-at-grain-elevators-and-farm-supply
14 stores;

15 (iii)--stemming--leaf--tobacco--at--wholesale
16 establishments;

17 (iv)--production-of-wiping-rags;

18 (v)--breaking-of-bulk--and--redistribution--in--smaller
19 lots--including-packaging--repackaging--or--bottling-products
20 such-as-liquors-or-chemicals;

21 (vi)--primarily--selling-products-to-the-general-public
22 which-are-produced-on-the-same-premises-from-which-they--are
23 sold--such-as-bakeries--candy-stores--ice-cream-parlors--and
24 custom-tailors;

25 (e)--services-with-tire-retreading-and-rebuilding--sign

1 painting--and--lettering-ships--and-the-production-of-motion
2 picture-films--classified--as--services--and--with--repair
3 activities--with--the--following--exceptions--classified-as
4 services:

5 (i)--ship-and-boat-building-and-repair;

6 (ii)--the-rebuilding-of-machinery-and-equipment--on--a
7 factory-base--and

8 (iii)--machine-shop-repairs."

9 Section 14. The Department of Revenue shall amend Rule
10 42.23.514, Administrative Rules of Montana, to read:

11 "42.23.514. NEW CORPORATION--MANUFACTURER INDUSTRY--
12 ELIGIBILITY (i)--A-new-corporation manufacturer--is-one:

13 (a)--which-has-never-done-business-in-Montana--in-any
14 corporation--prior--to-the-taxable-year-for-which-the-credit
15 is-claimed--a-corporation--which-reported--or--should-have
16 reported--any--state-or-federal-agency-or-officer-authorized
17 to-collect--taxes--measured-by-net-income--shall--not--be
18 eligible;

19 (b)--which--manufactures--a-product--which--was--not
20 manufactured-in-Montana-prior--to--that--time which--is--an--
21 particular--site--within--Montana--is--either--building-a-new
22 plant-or-reopening-an-existing-plant-with-the-effect-of-net
23 jobs-new-to-the-locality;

24 (2) A corporation manufacturer BUSINESS OR INDUSTRY
25 reorganized pursuant to Title 35, chapter 1, MCA, as

amended, shall not be eligible for credit under 15-31-124 through 15-31-127 and [section 5], MCA.

~~{3}--No--credit--shall--be--allowed---if---50%---of---a corporation's--stock--is--owned--or--controlled--by--the--same individualy--corporationy--or--association--of--individuals--or corporationsy---in--this--instancey--the--department--presumes dependent--corporate--statusy---if--less--than--50%---of---a corporation's--stock--is--owned--or--controlled--by--the--same individual--or--corporation--or--association--of--individuals--or corporationsy---an--applicant--for--credit--under--15-31-124 through-15-31-127y-MCAy-shall--demonstrate--its--independent corporate--existence--to--the--satisfaction--of--the--department before--credit--may--be--grantedy~~

~~{4}--A--corporation--formed---as---a---joint---venturer combinationy--subsidiaryy--parenty-affiliatery--mergery--or--any other--kind--of--cooperative--action--between--two--or--more corporations---which---cannot---demonstrate--an--independent corporate--existence--shall--not--be--accepted--as---a---new corporation--by--the--department--for--purposes--of--15-31-124 through-15-31-127y-MCAy"~~

Section 15. The Department of Revenue shall amend Rule 42.23.515, Administrative Rules of Montana, to read:

~~"42.23.515 EXPANDING CORPORATION MANUFACTURER INDUSTRY~~
~~==ELIGIBILITY (1) An expanding corporation manufacturer~~
~~INDUSTRY is one which:~~

(a) was registered to do business in Montana at least 1 year prior to claiming a credit under 15-31-124 through 15-31-127 and [section 5], MCA;

(b) has at all times prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, complied with the requirements of Title 35, chapter 1, MCA, as amended; and

(c) has at all times prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, complied with the requirements of Title 15, chapter 31, MCA, as amended; and

~~{d}--manufactures--a--product--during--the--period---of eligibility--which--was--not--manufactured--in--Montana--prior--to that--time.~~

(2) Expanding means to enlarge the facilities or to diversify the products of a corporation which has done business in Montana at least 1 year prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, by increasing total full time jobs attributable to Montana by ~~30% or more at least 30% or at least five jobs, whichever is less.~~ The increase shall be measured as a percentage increase of full time jobs held with the corporation ~~manufacturer INDUSTRY~~ in Montana or attributable to Montana. The department shall recognize only full time jobs in determining eligibility for credit under 15-31-124 through

1 15-31-127 and [section 5], MCA."

2 Section 16. The Department of Revenue shall amend Rule
3 42.23.516, Administrative Rules of Montana, to read:

4 "42.23.516. COMPLIANCE WITH CERTAIN STATUTES REQUIRED

5 (1) A new or expanding corporation ~~manufacturer~~ INDUSTRY
6 which fails to comply with the provisions of Title 15,
7 chapter 31, MCA, as amended, and Title 35, chapter 1, MCA,
8 as amended, during the period of eligibility shall lose its
9 eligibility to claim credit under 15-31-124 through
10 15-31-127 and [section 5], MCA."

11 Section 17. The Department of Revenue shall amend Rule
12 42.23.518, Administrative Rules of Montana, to read:

13 "42.23.518. SUBMISSION OF EMPLOYEE LISTS (1) An
14 expanding corporation ~~manufacturer~~ INDUSTRY seeking credit
15 under 15-31-124 through 15-31-127 and [section 5], MCA,
16 shall submit accurate employee lists to the department, so
17 that the department may determine the percentage increase of
18 new jobs in the taxable year for which credit is claimed.

19 (2) In applicable instances, an expanding corporation
20 ~~manufacturer~~ INDUSTRY shall submit 5 years of lists in order
21 that an average employment figure be determined and the
22 number of new employees discovered. If a--corporation
23 ~~manufacturer~~ AN INDUSTRY has not done business for a 5-year
24 period, employee lists for all years of operation shall be
25 submitted. A new corporation ~~manufacturer~~ INDUSTRY shall be

1 exempt from this requirement.

2 (3) The lists shall include:

3 (a) all employees of the existing and expanded
4 corporation ~~manufacturer~~ INDUSTRY;

5 (b) their employment status clearly set out (whether
6 full, half, or part-time);

7 (c) the position with the corporation ~~firm~~;

8 (d) wages paid;

9 (e) the type of product produced by those employees
10 employed by the expanded portion of the corporation ~~firm~~;
11 and

12 (f) the number of years the employee has been
13 employed."

14 Section 18. The Department of Revenue shall amend Rule
15 42.23.519, Administrative Rules of Montana, to read:

16 "42.23.519. DETERMINATION OF NEW JOBS (1) The intent of
17 15-31-125, MCA, as amended, is to grant credit upon wages
18 paid to new employees. The department shall determine from
19 the information submitted if there has been at least a 30%
20 increase in the number of jobs or an increase of at least
21 five jobs and that these positions are filled by newly-hired
22 personnel.

23 (2) The only employees which shall be counted in
24 determination of credit are those who*

25 (a) were not employed by the corporation ~~manufacturer~~

INDUSTRY within 5 years of expansion; and

~~(b) are employed in production of the new product.~~

(3) Any employee who was employed by an existing corporation ~~manufacturer~~ INDUSTRY shall not be counted as a new employee of the expanded corporation ~~manufacturer~~ INDUSTRY if employment occurred within 5 years of the expansion.

~~(4) No employee who was employed in existing operations and who for any reason is employed in the expanded operations shall be counted for purposes of determining eligibility.~~

~~(5) Those employees who participated in the planning and preparation of the expansion of the corporation shall not be counted as new employees of the expandee corporations unless in fact these personnel can be shown to have been hired specifically for the expansion for which credit is claimed and that planning the expansion was the only activity assigned them.~~

Section 19. The Department of Revenue shall amend Rule 42.23.520, Administrative Rules of Montana, to read:

"42.23.520. DETERMINATION OF WAGES (1) In determining the amount of credit, the total amount of eligible wages paid new employees producing the new product or products shall be computed for the year in which the credit is claimed.

(2) A taxpayer's taxable year may be used in place of the 12-month period mandated by 15-31-125, MCA, as amended, for determination of the credit. In cases where results from computation of differing periods of time are found to yield differing results, the smaller figure shall be accepted by the department."

Section 20. The Department of Revenue shall amend Rule 42.23.521, Administrative Rules of Montana, to read:

"42.23.521. AVAILABILITY OF TAX CREDIT (1) A claim for credit may be made first as a new corporation or ~~manufacturer~~ INDUSTRY and then, later, as expansion occurs as an expanding corporation; no corporation may qualify as both if a corporation has been granted credit as a new corporation; it may not subsequently be granted credit as an expanding corporation ~~manufacturer~~ INDUSTRY.

(2) A corporation ~~manufacturer~~ AN INDUSTRY may claim credit due under 15-31-124 through 15-31-127 and [section 5], MCA, for more than one manufacturing facility; but in no case shall the department allow a claim for credit, if the total claim for credit exceeds total liability imposed by 15-31-101, 15-31-121, and 15-31-122, MCA, as amended.

(3) A corporation AN INDUSTRY qualifying under 15-31-124 through 15-31-127 and [section 5], MCA, shall use any credit authorized as an offset to tax liability incurred during the period of eligibility. Carryback and carryover

provisions of 15-31-124(2) MCA do not apply in taking this credit carryovers, however, are available as set forth in [section 5], MCA."

Section 21. The Department of Revenue shall amend Rule 42.23.522, Administrative Rules of Montana, to read:

"42.23.522. WHEN CREDIT MAY BE CLAIMED (1) The credit available under 15-31-124 through 15-31-127, MCA, may be claimed for the taxable year the activity for which credit is claimed occurred. Credit may not be accumulated, and if a corporation does not claim credit for which it is eligible during a taxable year, that credit is lost.

(2) Eligibility for the tax credit expires with the corporation's taxable year.

(3) A corporation ~~manufacturer~~ AN INQUIRY may use the credit available under 15-31-124 through 15-31-127 and [section 5], MCA, only when the corporation ~~manufacturer~~ INQUIRY actually manufactures products COMMENCES OPERATIONS in this state. No claim will be recognized if a corporation AN INQUIRY completes all preparatory phases without manufacturing a product COMMENCING OPERATIONS.

(2) IF A NEW OR EXPANDING MANUFACTURER CEASES TO OPERATE, EITHER TEMPORARILY OR PERMANENTLY, UNDER NORMAL CONDITIONS THE 3-YEAR PERIOD OF ELIGIBILITY FOR THE CREDIT CONTINUES UNTIL ITS NORMAL EXPIRATION DATE. IF ANOTHER TREATMENT WOULD BE BENEFICIAL TO THE NEW INDUSTRY OR A

SUCCESSOR INDUSTRY: APPLICATION FOR THIS TREATMENT MUST BE MADE TO THE DEPARTMENT DIRECTOR."

NEW SECTION Section 22. Repealer. Rule 42.23.517, Administrative Rules of Montana, is repealed.

NEW SECTION Section 23. Applicability. This act applies to taxable years beginning after December 31, 1982.

NEW SECTION Section 24. Codification instruction. (1) Section 5 is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to section 5.

(2) Sections 6 through 10 are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 6 through 10.

-End-

1 STATEMENT OF INTENT

2 SENATE BILL 241

3

4 This act makes major changes to the provisions relating
5 to the corporate license tax credit for new and expanding
6 manufacturers and makes the credits available to qualified
7 individual income taxpayers. The Department of Revenue has
8 existing rulemaking authority with respect to the corporate
9 license tax and has adopted rules which are more restrictive
10 than the legislature intended. This act therefore directs
11 the Department of Revenue to amend its existing rules to
12 make them less restrictive.

13 This act authorizes the Department of Revenue to adopt
14 rules to implement sections 6 through 10 of the act.
15 Sections 6 through 10 are the provisions of the act which
16 relate to the individual income taxpayer. It is the intent
17 of the legislature that the rules adopted pursuant to the
18 rulemaking authority granted in this act be essentially the
19 same as the rules which implement the corporate license tax
20 provisions as they relate to new and expanding
21 manufacturers.

THIRD READING

SB241

SENATE BILL NO. 241

INTRODUCED BY LEE, FABREGA, KOLSTAD,

GOODOVER, IVERSON, GAGE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE TAX CREDIT AVAILABLE FOR NEW OR EXPANDING MANUFACTURERS INDUSTRY; AMENDING SECTIONS 15-31-124 THROUGH 15-31-127, MCA; DIRECTING THE AMENDMENT OF RULES 42.23.511 THROUGH 42.23.516 AND 42.23.518 THROUGH 42.23.522, ADMINISTRATIVE RULES OF MONTANA; REPEALING RULE 42.23.517, ADMINISTRATIVE RULES OF MONTANA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 15-31-124, MCA, is amended to read:

"15-31-124. New or expanded industry ~~manufacturer~~ INDUSTRY credit -- definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present INDUSTRIAL operation to increase total full-time jobs by at least 30% or more at least five JOBS, whichever is less.

(3) "Manufacturing" ~~--- "Manufacturer" --- means --- the --- any business --- that --- engages --- in --- a --- process --- of --- mechanical --- or --- chemical transformation --- of --- materials --- or --- substances --- into --- new --- products --- as --- described --- in --- the --- standard --- industrial --- classification~~

~~manual of 1972 by the office of management and budget of the United --- States. (A) "NEW INDUSTRY" MEANS A PERSON, CORPORATION, FIRM, PARTNERSHIP, ASSOCIATION, OR OTHER GROUP THAT IS ESTABLISHED IN MONTANA FOR THE OPERATION OF A NEW INDUSTRIAL ENDEAVOR, INCLUDING THE EXPANSION OF AN EXISTING INDUSTRY.~~

~~(B) NEW INDUSTRY INCLUDES ONLY THOSE INDUSTRIES THAT: (I) MANUFACTURE, MILL, MINE, PRODUCE, PROCESS, OR FABRICATE MATERIALS;~~

~~(II) DO SIMILAR WORK, EMPLOYING CAPITAL AND LABOR, IN WHICH MATERIALS UNSERVICEABLE IN THEIR NATURAL STATE ARE EXTRACTED, PROCESSED, OR MADE FIT FOR USE OR ARE SUBSTANTIALLY ALTERED OR TREATED SO AS TO CREATE COMMERCIAL PRODUCTS OR MATERIALS; OR~~

~~(III) ENGAGE IN THE MECHANICAL OR CHEMICAL TRANSFORMATION OF MATERIALS OR SUBSTANCES INTO NEW PRODUCTS IN THE MANNER DEFINED AS MANUFACTURING IN THE 1972 STANDARD INDUSTRIAL CLASSIFICATION MANUAL PREPARED BY THE UNITED STATES OFFICE OF MANAGEMENT AND BUDGET.~~

~~(C) NEW INDUSTRY DOES NOT INCLUDE RETAIL OR WHOLESALE MERCHANTS, COMMERCIAL SERVICES OF ANY TYPE, AGRICULTURE, TRADES, OR PROFESSIONS.~~

~~(4) --- "New corporation" means a corporation engaging in manufacturing for the first time in this state and manufacturing a product not currently manufactured or~~

~~substantially similar to a product currently manufactured by that corporation or any affiliate corporation in this state; it does not include reorganizing an existing corporation in this state or the creation of a parent subsidiary or affiliate of which 50% or more is owned or controlled by the same person corporation or association."~~

Section 2. Section 15-31-125, MCA, is amended to read:

"15-31-125. Determination of tax credit. A new or expanding manufacturing corporation ~~manufacturer~~ INDUSTRY may receive a license tax credit based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: the first 3 years of operation of a new corporation ~~manufacturer~~ INDUSTRY or the first 3 years of expansion of an expanding corporation ~~manufacturer~~ INDUSTRY, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201 may be allowed. In determining total wages for an expanding corporation ~~manufacturer~~ INDUSTRY, only those wages paid in support of the expansion are considered in ascertaining the credit. The TOTAL payroll and number of jobs IN MONTANA of the corporation ~~manufacturer~~ INDUSTRY in the ~~12-month~~ 36-MONTH period OR THE PERIOD OF OPERATION OF THE INDUSTRY IN MONTANA, WHICHEVER IS LESS, immediately preceding the expansion are averaged to determine eligibility for the credit."

Section 3. Section 15-31-126, MCA, is amended to read:
"15-31-126. Limitation. This credit is available only to those new and expanding corporations ~~manufacturers~~ that provide jobs INDUSTRIES THAT INCREASE TOTAL FULL-TIME JOBS BY AT LEAST 30% OR AT LEAST FIVE JOBS, WHICHEVER IS LESS, within the state of Montana."

Section 4. Section 15-31-127, MCA, is amended to read:

"15-31-127. Department duties. The department shall determine the eligibility of a corporation ~~manufacturer~~ AN INDUSTRY for this credit, promulgate rules, prepare forms, maintain records, and perform other duties necessary to carry out 15-31-124 through 15-31-127."

NEW SECTION. Section 5. Carryover. (1) The tax credit provided for in 15-31-125 may not exceed the ~~manufacturer's~~ INDUSTRY'S tax liability for the taxable year.

(2) Any part of the tax credit allowed by 15-31-125 that was not taken because of the limitation contained in subsection (1) may be carried forward for up to 10 taxable years. The carryover may not result in a credit in excess of the ~~manufacturer's~~ INDUSTRY'S tax liability for any taxable year.

NEW SECTION. Section 6. New or expanded industry credit -- definitions. As used in [sections 6 through 10], the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by at least 30% or at least five JOBS, whichever is less.

(3) "Manufacturer" means any business that engages in a process of mechanical or chemical transformation of materials or substances into new products as described in the standard industrial classification manual of 1972 by the office of management and budget of the United States.

(A) "NEW INDUSTRY" MEANS A PERSON, CORPORATION, FIRM, PARTNERSHIP, ASSOCIATION, OR OTHER GROUP THAT IS ESTABLISHED IN MONTANA FOR THE OPERATION OF A NEW INDUSTRIAL ENDEAVOR, INCLUDING THE EXPANSION OF AN EXISTING INDUSTRY.

(B) NEW INDUSTRY INCLUDES ONLY THOSE INDUSTRIES THAT:

(I) MANUFACTURE, MILL, MINE, PRODUCE, PROCESS, OR FABRICATE MATERIALS;

(II) DO SIMILAR WORK, EMPLOYING CAPITAL AND LABOR, IN WHICH MATERIALS UNSERVICEABLE IN THEIR NATURAL STATE ARE EXTRACTED, PROCESSED, OR MADE FIT FOR USE OR ARE SUBSTANTIALLY ALTERED OR TREATED SO AS TO CREATE COMMERCIAL PRODUCTS OR MATERIALS; OR

(III) ENGAGE IN THE MECHANICAL OR CHEMICAL TRANSFORMATION OF MATERIALS OR SUBSTANCES INTO NEW PRODUCTS IN THE MANNER DEFINED AS MANUFACTURING IN THE 1972 STANDARD INDUSTRIAL CLASSIFICATION MANUAL PREPARED BY THE UNITED STATES OFFICE OF MANAGEMENT AND BUDGET.

(C) NEW INDUSTRY DOES NOT INCLUDE RETAIL OR WHOLESALE MERCHANTS, COMMERCIAL SERVICES OF ANY TYPE, AGRICULTURE, TRADES, OR PROFESSIONS.

NEW SECTION. Section 7. Determination of tax credit.

The individual liable for the payment of the tax imposed by 15-30-103 on income derived from a new or expanding manufacturer may receive a credit against the tax imposed by 15-30-103. The amount of the credit is based on a percentage of wages paid its new employees within this state for a period of 3 years as follows: for the first 3 years of operation of a new manufacturer or the first 3 years of expansion of an expanding manufacturer, a credit of 1% of the total new wages paid in this state, as wages are defined in 39-51-201. In determining total wages for an expanding manufacturer, only those wages paid in support of the expansion are considered in ascertaining the credit. The total payroll and number of jobs IN MONTANA of the manufacturer in the 12-month 36-MONTH period OR THE PERIOD OF OPERATION OF THE INDUSTRY IN MONTANA, WHICHEVER IS LESS, immediately preceding the expansion are averaged to determine eligibility for the credit. If more than one individual is liable for the payment of the tax imposed by 15-30-103 on income derived from a new or expanding manufacturer, the credit must be prorated among the individuals who are liable for payment of the tax.

1 NEW SECTION. Section 8. Limitation. The credit
2 provided for in [section 7] is available only for ID THOSE
3 new and expanding manufacturers-that-provide-jobs INDUSTRIES
4 THAT INCREASE TOTAL FULL-TIME JOBS BY AT LEAST 30% OR AT
5 LEAST FIVE JOBS, WHICHEVER IS LESS, within the state of
6 Montana.

7 NEW SECTION. Section 9. Department duties. The
8 department shall determine the eligibility of an individual
9 for the credit provided for in [section 7], promulgate
10 rules, prepare forms, maintain records, and perform other
11 duties necessary to carry out [sections 6 through 10].

12 NEW SECTION. Section 10. Carryover. (1) The tax
13 credit provided for in [section 7] may not exceed the
14 individual's tax liability for the taxable year.

15 (2) Any part of the tax credit allowed by [section 7]
16 that was not taken because of the limitation contained in
17 subsection (1) may be carried forward for up to 10 taxable
18 years. The carryover may not result in a credit in excess
19 of the individual's tax liability for any taxable year.

20 Section 11. The Department of Revenue shall amend Rule
21 42.23.511, Administrative Rules of Montana, to read:

22 "42.23.511 CREDIT FOR NEW OR EXPANDING CORPORATIONS
23 MANUFACTURERS INDUSTRIES (1) Sections 15-31-124 through
24 15-31-127 and [section 5], MCA, as amended, allow a tax
25 credit equal to 1% of wages paid by a new or expanding

1 corporation manufacturer INDUSTRY. Any corporation
2 manufacturer INDUSTRY seeking credit under 15-31-124 through
3 15-31-127, MCA, shall conclusively demonstrate its
4 eligibility to the department. The department's decision
5 shall be final.

6 (2) Each corporation manufacturer INDUSTRY seeking a
7 credit under 15-31-124 through 15-31-127, MCA, shall show:

8 (a) that it is a corporation preregistered pursuant to
9 Title 35, chapter 14, MCA, as amended the manufacturer is
10 preregistered as a valid existing business under the laws of
11 this state;

12 (b) that it was registered for the first time during
13 the tax year for which the first credit is claimed or that
14 the industry meets the definition of expanding per
15 15-31-124, MCA, as amended; and

16 (c) that the corporation is engaged in manufacturing
17 the applicant is a manufacturer NEW OR EXPANDING INDUSTRY as
18 that term is defined in 15-31-124, MCA; and

19 (d) that the product manufactured is one which prior
20 to its production by the corporation was not then currently
21 produced in this state."

22 Section 12. The Department of Revenue shall amend Rule
23 42.23.512, Administrative Rules of Montana, to read:

24 "42.23.512 PERIOD OF ELIGIBILITY (1) As used in this
25 section, period of eligibility means:

(a) in the case of a new corporation ~~manufacturer~~ INDUSTRY, the consecutive 3-year period during which a credit may be claimed, commencing ~~from the initial act of doing business in Montana with the start of manufacturing~~ DOING BUSINESS after all planning, construction, and testing have been completed; or

(b) in the case of an expanding corporation ~~manufacturer~~ INDUSTRY, the consecutive 3-year period during which a credit may be claimed, commencing with preparation ~~of manufacture of the product~~ the start of expanded manufacturing OPERATIONS following the completion of all planning, construction, and testing required for the expansion.

~~{2}--A corporation seeking tax credit shall not be allowed credit after the expiration of the period of eligibility. This period is limited to the 3 consecutive years following initial activity. A corporation may claim credit for the first year and third or first and second years of the 3-year periods.~~

~~{3}{2}~~ Those periods of time before actual production ~~of a new product~~ BEGINS, during which support, planning, construction of facilities, and other preparatory activities occur, ~~shall not~~ may not be included in determining the period of eligibility."

Section 13. The Department of Revenue shall amend Rule

42.23.513, Administrative Rules of Montana, to read:

~~"42.23.513 MANUFACTURING DEFINED {1}--A manufacturing corporation is one engaged in the mechanical or chemical transformation of materials or substances into new products. The manufacturing facilities are usually described as plants, factories, or mills and characteristically use power driven machines and materials handling equipments. Corporations engaged in assembling component parts of manufactured products are also considered to be manufacturing if the new product is neither a structure nor other fixed improvements. Included in this definition is the blending of materials such as lubricating oils, plastics, resins, or liquors.~~

~~{2}--The materials processed by manufacturing include products of agriculture, forestry, fishing, mining, and quarrying, as well as products of other manufacturers. The new product may be "finished" in the sense that it is ready for utilization or consumption or it may be "semifinished" to become a raw material for another corporation engaged in further manufacturing. For example, the product of the copper smelter is the raw material used in electrolytic refineries; refined copper is the raw material used by copper wire mills; and copper wire is the raw material used by certain electrical equipment manufacturers.~~

~~{3}--The materials used by manufacturing establishments~~

1 may-be-purchased--directly--from--the--purchasers--obtained
 2 through---customary---trade--channels--or---secured--without
 3 recourse-to-the-market-by-transferring-the-product-from--one
 4 establishment--to-another-which-is-under-the-same-ownership
 5 Manufacturing-production--is-usually--carried-on--for--the
 6 wholesale--markets--for-interplant-transfers--or-to-order-for
 7 industrial--users--rather--than--for--direct--sale--to--the
 8 domestic-consumers

9 {4} In instances where a classification between
 10 manufacturing-and--other--divisions--of--the--1972--Standard
 11 Industrial--Classification--Manual--system ELIGIBLE NEW AND
 12 EXPANDING INDUSTRIES AND OTHER BUSINESSES is difficult, the
 13 department shall classify according to its best judgment.
 14 This decision shall be final.

15 {5} The following activities, although not always
 16 considered-as-manufacturing--are-so-classified:

- 17 {a}--milk-bottling-and-pasteurizing
- 18 {b}--fresh-fish-packaging
- 19 {c}--apparel---jobbing---(assigning--of--materials--to
- 20 contract--factories--or--shops--for--fabrication--or--other
- 21 contract--operations)--as-well--as--contracting-on-materials
- 22 owned-by-others
- 23 {d}--publishing
- 24 {e}--ready-mixed-concrete-production
- 25 {f}--leather-converting

- 1 {g}--logging
- 2 {h}--wood-preserving
- 3 {i}--various-service-industries--to--the--manufacturing
- 4 trades--such--as--typesetting--engraving--plate-printing--and
- 5 preparation-of-electrotyping-and-stereotype-plates--but--not
- 6 blueprinting-or-photocopying-services
- 7 {j}--electroplating--plating--metal-heat-treating--and
- 8 polishing-for-the-trade
- 9 {k}--lapidary-work-for-the-trade
- 10 {l}--fabricating-of-signs-and-advertising-displays
- 11 {m}--There-are-also-some-manufacturing-type--activities
- 12 performed--by--corporations--which--are--primarily-engaged-in
- 13 activities--covered--by--other--divisions--of--the--Standard
- 14 Industrial--Classification--Manual--of--1972--and--are--thus--not
- 15 classified--as--manufacturing--A-few--of--the--important
- 16 examples-are:
- 17 {a}--agriculture--forestry--and--fishing--(Processing-on
- 18 farms-is-not-considered-manufacturing-if-the--raw--materials
- 19 are--grown--on--the--farm--and--if--the--manufacturing-activities
- 20 are-on-a-small-scale--without--the--extensive--use--of--paid
- 21 labor---Other---exclusions---are---custom--grist--milling
- 22 threshing--and--cotton-ginning)
- 23 {b}--mining--with--the--dressing--and--beneficiating--of
- 24 ores--the--breaking--washing--and--grading--of--coal--the
- 25 crushing-and-breaking-of-stones--and--the--crushing--grinding

1 or--otherwise--preparing--of--sand--and--gravel--and--nonmetallic
2 chemical--and--fertilizer--minerals--other--than--barite
3 classified--as--mining;

4 (c)--construction--(fabricating--operations--performed--at
5 the--site--of--a--construction--by--contractors--are--not--considered
6 manufacturing--The--prefabrication--of--sheet--metal--concrete
7 and--terrazzo--products--and--similar--construction--materials
8 shall--be--classified--as--manufacturing);

9 (d)--wholesale--and--retail--trade--with--corporations
10 engaged--in--the--following--types--of--operations--included--in
11 wholesale--or--retail--trade:

12 (i)--cutting--and--selling--purchased--carcasses;

13 (ii)--preparing--feed--at--grain--elevators--and--farm--supply
14 stores;

15 (iii)--stemming--leaf--tobacco--at--wholesale
16 establishments;

17 (iv)--production--of--wiping--rags;

18 (v)--breaking--of--bulk--and--redistribution--in--smaller
19 lots--including--packaging--repackaging--or--bottling--products
20 such--as--liquors--or--chemicals;

21 (vi)--primarily--selling--products--to--the--general--public
22 which--are--produced--on--the--same--premises--from--which--they--are
23 sold--such--as--bakeries--candy--stores--ice--cream--parlors--and
24 custom--tailors;

25 (e)--services--with--tire--retreading--and--rebuilding--sign

1 painting--and--lettering--ships--and--the--production--of--motion
2 picture--films--classified--as--services--and--with--repair
3 activities--with--the--following--exceptions--classified--as
4 services:

5 (i)--ship--and--boat--building--and--repair;

6 (ii)--the--rebuilding--of--machinery--and--equipment--on--a
7 factory--basis--and

8 (iii)--machine--shop--repairs.

9 Section 14. The Department of Revenue shall amend Rule
10 42.23.514, Administrative Rules of Montana, to read:

11 "42.23.514. NEW CORPORATION--MANUFACTURER INDUSTRY --
12 ELIGIBILITY (i)--A new corporation manufacturer is one:

13 (a)--which--has--never--done--business--in--Montana--in--any
14 corporation--prior--to--the--taxable--year--for--which--the--credit
15 is--claimed--a--corporation--which--reported--or--should--have
16 reported--any--state--or--federal--agency--or--officer--authorized
17 to--collect--taxes--measured--by--net--income--shall--not--be
18 eligible;

19 (b)--which--manufactures--a--product--which--was--not
20 manufactured--in--Montana--prior--to--that--time which--on--a
21 particular--site--within--Montana--is--either--building--a--new
22 plant--or--reopening--an--existing--plant--with--the--effect--of--net
23 jobs--new--to--the--locality;

24 (2) A corporation manufacturer BUSINESS OR INDUSTRY
25 reorganized pursuant to Title 35, chapter 1, MCA, as

amended, shall not be eligible for credit under 15-31-124 through 15-31-127 and [section 5], MCA.

~~{3}--No--credit--shall--be--allowed---if---50%---of---a corporation's--stock--is--owned--or--controlled--by--the--same individualy--corporationy--or--association--of--individuals--or corporations---in--this--instancey--the--department--presumes dependant--corporate--status---if--less--than--50%---of---a corporation's--stock--is--owned--or--controlled--by--the--same individual--or--corporation--or--association--of--individuals--or corporationsy---an--applicant--for--credit--under--15-31-124 through-15-31-127y-MCAy-shall--demonstrate--its--independent corporate--existence--to--the-satisfaction-of-the-department before-credit-may-be-granted.~~

~~{4}--A--corporation--formed---as---a---joint---venturey combinationy--subsidiaryy--parenty--affiliatyy--mergery--or--any other--kind--of--cooperative--action--between--two--or--more corporations---which---cannot---demonstrate--an--independent corporate--existence--shall--not--be--accepted--as---a---new corporation--by--the--department--for--purposes-of-15-31-124 through-15-31-127y-MCA="~~

Section 15. The Department of Revenue shall amend Rule 42.23.515, Administrative Rules of Montana, to read:

~~"42.23.515 EXPANDING CORPORATION MANUFACTURER INDUSTRY~~
~~== ELIGIBILITY (1) An expanding corporation manufacturer~~
~~INDUSTRY is one which:~~

(a) was registered to do business in Montana at least 1 year prior to claiming a credit under 15-31-124 through 15-31-127 and [section 5], MCA;

(b) has at all times prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, complied with the requirements of Title 35, chapter 1, MCA, as amended; and

(c) has at all times prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, complied with the requirements of Title 15, chapter 31, MCA, as amended; and

~~{d}--manufactures--a--product--during--the--period---of eligibility--which--was--not--manufactured--in--Montana--prior--to that--time.~~

(2) Expanding means to enlarge the facilities or to diversify the products of a corporation which has done business in Montana at least 1 year prior to claiming credit under 15-31-124 through 15-31-127 and [section 5], MCA, by increasing total full time jobs attributable to Montana by 30% or more at least 30% or at least five JOBS, whichever is less. The increase shall be measured as a percentage increase of full time jobs held with the corporation manufacturer INDUSTRY in Montana or attributable to Montana. The department shall recognize only full time jobs in determining eligibility for credit under 15-31-124 through

15-31-127 and [section 5], MCA."

Section 16. The Department of Revenue shall amend Rule 42.23.516, Administrative Rules of Montana, to read:

"42.23.516. COMPLIANCE WITH CERTAIN STATUTES REQUIRED

(1) A new or expanding corporation manufacturer INDUSTRY which fails to comply with the provisions of Title 15, chapter 31, MCA, as amended, and Title 35, chapter 1, MCA, as amended, during the period of eligibility shall lose its eligibility to claim credit under 15-31-124 through 15-31-127 and [section 5], MCA."

Section 17. The Department of Revenue shall amend Rule 42.23.518, Administrative Rules of Montana, to read:

"42.23.518. SUBMISSION OF EMPLOYEE LISTS (1) An expanding corporation manufacturer INDUSTRY seeking credit under 15-31-124 through 15-31-127 and [section 5], MCA, shall submit accurate employee lists to the department, so that the department may determine the percentage increase of new jobs in the taxable year for which credit is claimed.

(2) In applicable instances, an expanding corporation manufacturer INDUSTRY shall submit 5 years of lists in order that an average employment figure be determined and the number of new employees discovered. If a--corporation manufacturer AN INDUSTRY has not done business for a 5-year period, employee lists for all years of operation shall be submitted. A new corporation manufacturer INDUSTRY shall be

exempt from this requirement.

(3) The lists shall include:

(a) all employees of the existing and expanded corporation manufacturer INDUSTRY;

(b) their employment status clearly set out (whether full, half, or part-time);

(c) the position with the corporation firm;

(d) wages paid;

(e) the type of product produced by those employees employed by the expanded portion of the corporation firm; and

(f) the number of years the employee has been employed."

Section 18. The Department of Revenue shall amend Rule 42.23.519, Administrative Rules of Montana, to read:

"42.23.519. DETERMINATION OF NEW JOBS (1) The intent of 15-31-125, MCA, as amended, is to grant credit upon wages paid to new employees. The department shall determine from the information submitted if there has been at least a 30% increase in the number of jobs or an increase of at least five jobs and that these positions are filled by newly-hired personnel.

(2) The only employees which shall be counted in determination of credit are those who+

te) were not employed by the corporation manufacturer

INDUSTRY within 5 years of expansions and

~~(b) are employed in production of the new product.~~

(3) Any employee who was employed by an existing corporation ~~manufacturer~~ INDUSTRY shall not be counted as a new employee of the expanded corporation ~~manufacturer~~ INDUSTRY if employment occurred within 5 years of the expansion.

~~(4) No employee who was employed in existing operations and who for any reason is employed in the expanded operations shall be counted for purposes of determining eligibility.~~

~~(5) These employees who participated in the planning and preparation of the expansion of the corporation shall not be counted as new employees of the expanded corporation unless in fact these personnel can be shown to have been hired specifically for the expansion for which credit is claimed and that planning the expansion was the only activity assigned them.~~

Section 19. The Department of Revenue shall amend Rule 42.23.520, Administrative Rules of Montana, to read:

"42.23.520. DETERMINATION OF WAGES (1) In determining the amount of credit, the total amount of eligible wages paid new employees producing the new product or products shall be computed for the year in which the credit is claimed.

(2) A taxpayer's taxable year may be used in place of the 12-month period mandated by 15-31-125, MCA, as amended, for determination of the credit. In cases where results from computation of differing periods of time are found to yield differing results, the smaller figure shall be accepted by the department."

Section 20. The Department of Revenue shall amend Rule 42.23.521, Administrative Rules of Montana, to read:

"42.23.521. AVAILABILITY OF TAX CREDIT (1) A claim for credit may be made first as a new corporation or ~~manufacturer~~ INDUSTRY and then, later, as expansion occurs, as an expanding corporation; no corporation may qualify as both; if a corporation has been granted credit as a new corporation, it may not subsequently be granted credit as an expanding corporation ~~manufacturer~~ INDUSTRY.

(2) A corporation ~~manufacturer~~ AN INDUSTRY may claim credit due under 15-31-124 through 15-31-127 and [section 5], MCA, for more than one manufacturing facility; but in no case shall the department allow a claim for credit, if the total claim for credit exceeds total liability imposed by 15-31-101, 15-31-121, and 15-31-122, MCA, as amended.

(3) A corporation AN INDUSTRY qualifying under 15-31-124 through 15-31-127 and [section 5], MCA, shall use any credit authorized as an offset to tax liability incurred during the period of eligibility. Carryback and carryover

provisions of 15-31-114(2), MCA, do not apply in taking this credit carryovers, however, are available as set forth in [section 5], MCA."

Section 21. The Department of Revenue shall amend Rule 42.23.522, Administrative Rules of Montana, to read:

"42.23.522. WHEN CREDIT MAY BE CLAIMED (1) The credit available under 15-31-124 through 15-31-127, MCA, may be claimed for the taxable year the activity for which credit is claimed occurred. Credit may not be accumulated and if a corporation does not claim credit for which it is eligible during a taxable year that credit is lost.

(2) Eligibility for the tax credit expires with the corporation's taxable year.

(3) A corporation manufacturer (1) AN INDUSTRY may use the credit available under 15-31-124 through 15-31-127 and [section 5], MCA, only when the corporation manufacturer INDUSTRY actually manufactures products COMMENCES OPERATIONS in this state. No claim will be recognized if a corporation AN INDUSTRY completes all preparatory phases without manufacturing a product COMMENCING OPERATIONS.

(2) IF A NEW OR EXPANDING MANUFACTURER CEASES TO OPERATE, EITHER TEMPORARILY OR PERMANENTLY, UNDER NORMAL CONDITIONS THE 3-YEAR PERIOD OF ELIGIBILITY FOR THE CREDIT CONTINUES UNTIL ITS NORMAL EXPIRATION DATE. IF ANOTHER TREATMENT WOULD BE BENEFICIAL TO THE NEW INDUSTRY OR A

SUCCESSOR INDUSTRY, APPLICATION FOR THIS TREATMENT MUST BE MADE TO THE DEPARTMENT DIRECTOR."

NEW SECTION Section 22. Repealer. Rule 42.23.517, Administrative Rules of Montana, is repealed.

NEW SECTION. Section 23. Applicability. This act applies to taxable years beginning after December 31, 1982.

NEW SECTION. Section 24. Codification Instruction. (1) Section 5 is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to section 5.

(2) Sections 6 through 10 are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 6 through 10.

-End-