

SENATE BILL NO. 335

INTRODUCED BY TOWE, TURNAGE, FABREGA,
YARDLEY, WILLIAMS, MARKS, RAMIREZ, ABRAMS, THOMAS,
ASAY, BLAYLOCK, GOODOVER, MCCALLUM, KOLSTAD, HARRINGTON,
NEUMAN, ZABROCKI, DONALDSON, SEVERSON, CHRISTIAENS,
KITSELMAN, NORDTVEDT

IN THE SENATE

February 1, 1983	Introduced and referred to Committee on Taxation.
February 2, 1983	Fiscal Note requested.
February 8, 1983	Fiscal Note returned.
February 23, 1983	Committee recommend bill do pass. Report adopted.
February 28, 1983	Bill printed and placed on members' desks.
March 1, 1983	Second reading, do pass.
March 2, 1983	Correctly engrossed.
March 3, 1983	Third reading, passed. Ayes, 48; Noes, 0. Transmitted to House.

IN THE HOUSE

March 7, 1983	Introduced and referred to Committee on Taxation.
March 23, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1983	Second reading, concurred in as amended. Third reading, concurred in.

IN THE SENATE

March 29, 1983	Returned to Senate with amendments.
April 8, 1983	Second reading, amendments concurred in.
April 11, 1983	Third reading, amendments concurred in. Ayes, 50; Noes, 0.
	Sent to enrolling.
April 13, 1983	Correctly enrolled.
	Signed by President.
April 14, 1983	Signed by Speaker.
April 15, 1983	Delivered to Governor.
April 20, 1983	Returned from Governor with recommended amendments.
	Second reading, Governor's amendments not concurred in.

IN THE HOUSE

April 20, 1983	Governor's amendments transmitted to House.
April 21, 1983	On motion of April 20, 1983, Governor's amendments placed on second reading this day.
	Second reading, Governor's amendments concurred in.
	Third reading, Governor's amendments concurred in.

IN THE SENATE

April 21, 1983

On motion, Free Conference Committee requested and appointed.

Free Conference Committee reported.

Second reading, Free Conference Committee report rejected. Ayes 26; Noes, 23.

Free Conference Committee dissolved.

On motion, new Free Conference Committee requested and appointed.

New Free Conference Committee dissolved.

On motion, second new Free Conference Committee requested and appointed.

Second new Free Conference Committee reported.

Second reading, second new Free Conference Committee report rejected. Ayes, 35; Noes, 15.

Second new Free Conference Committee report rejected by House.

IN THE SENATE

April 21, 1983

Returned to Senate. Sent to enrolling.

Returned to Governor for further consideration.

1 *As Amended* BILL NO. 335
 2 INTRODUCED BY *Mr. Tamm* *Mr. Blaylock*
Mr. Williams *Mr. Ramsey* *Mr. Abner* *Mr. Brown* *Mr. Felt*
 3 *Mr. Blaylock* *Mr. Gordon* *Mr. Ball* *Mr. Felt*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DISALLOW DEDUCTIONS
 5 RELATED TO EXCLUDED INTEREST INCOME FOR MONTANA CORPORATION
 6 LICENSE TAX PURPOSES; TO APPLY THE DISALLOWANCE OF DEDUCTION
 7 RETROACTIVELY TO ALL TAXABLE PERIODS DURING WHICH SUCH
 8 INCOME IS EXCLUDED FROM GROSS INCOME; AND PROVIDING AN
 9 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

10
 11 WHEREAS, the Montana Corporation License Tax Act (Title
 12 15, chapter 31, part 1) was intended, after the enactment of
 13 Chapter 634, Laws of 1979, to require all corporations to
 14 report and pay a tax upon all income derived from
 15 obligations of the United States or its agencies or
 16 instrumentalities as permitted by Title 31, section 742,
 17 United States Code; and

18 WHEREAS, the Montana Supreme Court on September 23,
 19 1982 (petition for rehearing denied December 6, 1982),
 20 decided in the case cited below that such income must be
 21 excluded from the measure of the subject tax; and

22 WHEREAS, the Legislature disagrees with the Montana
 23 Supreme Court's decision in the case of First Federal
 24 Savings and Loan Association, a Federally Chartered
 25 Association, et al., Plaintiffs and Appellants v.

1 Department of Revenue, et al., Defendants and Respondents,
 2 Cause No. 81-528, and has filed, through its Revenue
 3 Oversight Committee, an Amicus Curiae brief in support of
 4 the position of the Department of Revenue; and

5 WHEREAS, the Department of Revenue is presently seeking
 6 to have the United States Supreme Court review the matter,
 7 and at this time other decisions are also being reviewed by
 8 the United States Supreme Court that might have a bearing on
 9 the issue of the taxability of such income; and

10 WHEREAS, in the interim uncertainty exists as to the
 11 taxability of such income and claims for refund of tax and
 12 returns of income will be made by corporations based upon
 13 the exclusion of such income; and

14 WHEREAS, the Legislature desires to maintain
 15 approximately the current level of revenue to state and
 16 local government; and

17 WHEREAS, immediate legislative action is necessary.

18 THEREFORE, it is the intent of the Legislature to
 19 proportionately reduce the allowable deductions to all
 20 corporations for all taxable periods for which interest
 21 income is excluded or claim for refund of tax is made upon
 22 such exclusion under claim of right under federal law.

23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 Section 1. Reduction of deductions related to excluded

1 income. (1) A corporation, taxable under Title 15, chapter
2 31, part 1, that excludes interest from gross income which
3 would be taxable except for federal law must adjust its
4 allowable deductions for all taxable periods for which
5 interest is excluded in the following manner:

6 (a) the total amount of interest excluded from gross
7 income by federal law must be determined;

8 (b) the total amount of all interest income from all
9 sources must be determined;

10 (c) the ratio of excluded interest income to all
11 interest income must be determined; and

12 (d) the total deductions allowable under 15-31-114
13 must be reduced by an amount determined by multiplying the
14 amount of deduction otherwise allowable by the ratio of
15 excluded interest to all interest income; however, the
16 product of this calculation may not exceed the amount of
17 excluded interest income.

18 (2) Allowable deductions must be reduced with respect
19 to all corporations that exclude interest income otherwise
20 taxable upon returns filed for all taxable periods for which
21 such exclusion is claimed and for all taxable periods for
22 which a claim for refund is made.

23 Section 2. Codification instruction. Section 1 is
24 intended to be codified as an integral part of Title 15,
25 chapter 31, part 1.

1 Section 3. Effective date -- applicability date. This
2 act is effective on passage and approval and applies
3 retroactively, within the meaning of 1-2-109, to taxable
4 periods beginning on and after December 31, 1978 (the
5 effective date of Chapter 634, Laws of 1979), for which a
6 corporation has excluded interest income based upon federal
7 law or for which a corporation has included interest income
8 and subsequently claims a refund of taxes paid based upon
9 federal law.

-End-

STATE OF MONTANA

REQUEST NO. 311-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 335 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 335 disallows deductions related to excluded interest income for Montana corporation license tax purposes.

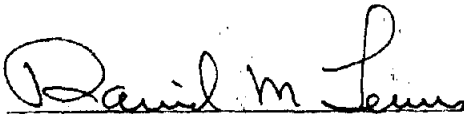
FISCAL IMPACT:

The fiscal impact of the proposed legislation would be to restore revenues which would otherwise be lost as a result of the Montana Supreme Court decision in the case of First Federal Savings and Loan Association, et al., v. Department of Revenue. The anticipated revenue loss associated with this case is \$9 million in corporation tax refunds immediately upon adverse final disposition of the case, and at least \$2 million to \$3 million annually in foregone tax receipts.

LOCAL IMPACT:

Local governments would face the greatest burden of a reduction in revenues, since 80% of the corporation tax received from financial institutions is distributed to local taxing jurisdictions.

FISCAL IMPACT 11:M/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-8-83

Approved by committee
on Taxation

BILL NO. 335

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO DISALLOW DEDUCTIONS
RELATED TO EXCLUDED INTEREST INCOME FOR MONTANA CORPORATION

LICENSE TAX PURPOSES; TO APPLY THE DISALLOWANCE OF DEDUCTION
RETROACTIVELY TO ALL TAXABLE PERIODS DURING WHICH SUCH
INCOME IS EXCLUDED FROM GROSS INCOME; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Montana Corporation License Tax Act (Title
15, chapter 31, part 1) was intended, after the enactment of
Chapter 634, Laws of 1974, to require all corporations to
report and pay a tax upon all income derived from
obligations of the United States or its agencies or
instrumentalities as permitted by Title 31, section 742,
United States Code; and

WHEREAS, the Montana Supreme Court on September 23,
1982 (petition for rehearing denied December 6, 1982),
decided in the case cited below that such income must be
excluded from the measure of the subject tax; and

WHEREAS, the Legislature disagrees with the Montana
Supreme Court's decision in the case of First Federal
Savings and Loan Association, a Federally Chartered
Association, et al., Plaintiffs and Appellants v.

Department of Revenue, et al., Defendants and Respondents,
Cause No. 81-528, and has filed, through its Revenue
Oversight Committee, an Amicus Curiae brief in support of
the position of the Department of Revenue; and

WHEREAS, the Department of Revenue is presently seeking
to have the United States Supreme Court review the matter,
and at this time other decisions are also being reviewed by
the United States Supreme Court that might have a bearing on
the issue of the taxability of such income; and

WHEREAS, in the interim uncertainty exists as to the
taxability of such income and claims for refund of tax and
returns of income will be made by corporations based upon
the exclusion of such income; and

WHEREAS, the Legislature desires to maintain
approximately the current level of revenue to state and
local government; and

WHEREAS, immediate legislative action is necessary.

THEREFORE, it is the intent of the Legislature to
proportionately reduce the allowable deductions to all
corporations for all taxable periods for which interest
income is excluded or claim for refund of tax is made upon
such exclusion under claim of right under federal law.

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

Section 1. Reduction of deductions related to excluded

-2- SECOND READING

SB 335

income. (1) A corporation, taxable under Title 15, chapter 31, part 1, that excludes interest from gross income which would be taxable except for federal law must adjust its allowable deductions for all taxable periods for which interest is excluded in the following manner:

(a) the total amount of interest excluded from gross income by federal law must be determined;

(b) the total amount of all interest income from all sources must be determined;

(c) the ratio of excluded interest income to all interest income must be determined; and

(d) the total deductions allowable under 15-31-114 must be reduced by an amount determined by multiplying the amount of deduction otherwise allowable by the ratio of excluded interest to all interest income; however, the product of this calculation may not exceed the amount of excluded interest income.

(2) Allowable deductions must be reduced with respect to all corporations that exclude interest income otherwise taxable upon returns filed for all taxable periods for which such exclusion is claimed and for all taxable periods for which a claim for refund is made.

Section 2. Codification instruction. Section 1 is intended to be codified as an integral part of Title 15, chapter 31, part 1.

Section 3. Effective date -- applicability date. This act is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law.

-End-

1 *Sen. Bill No. 335*
 2 INTRODUCED BY *Sen. Terry J. Feltz*
Blaylock, Ramsey, Abrams, Thompson, Gordon, McCallum, Feltz, Harman, Zaboich, Dallas, Schum
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DISALLOW DEDUCTIONS
 5 RELATED TO EXCLUDED INTEREST INCOME FOR MONTANA CORPORATION
 6 LICENSE TAX PURPOSES; TO APPLY THE DISALLOWANCE OF DEDUCTION
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 8 INCOME IS EXCLUDED FROM GROSS INCOME; AND PROVIDING AN
 9 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
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 11 WHEREAS, the Montana Corporation License Tax Act (Title
 12 15, chapter 31, part 1) was intended, after the enactment of
 13 Chapter 634, Laws of 1979, to require all corporations to
 14 report and pay a tax upon all income derived from
 15 obligations of the United States or its agencies or
 16 instrumentalities as permitted by Title 31, section 742,
 17 United States Code; and
 18 WHEREAS, the Montana Supreme Court on September 23,
 19 1982 (petition for rehearing denied December 6, 1982),
 20 decided in the case cited below that such income must be
 21 excluded from the measure of the subject tax; and
 22 WHEREAS, the Legislature disagrees with the Montana
 23 Supreme Court's decision in the case of First Federal
 24 Savings and Loan Association, a Federally Chartered
 25 Association, et al., Plaintiffs and Appellants v.

1 Department of Revenue, et al., Defendants and Respondents,
 2 Cause No. 81-528, and has filed, through its Revenue
 3 Oversight Committee, an Amicus Curiae brief in support of
 4 the position of the Department of Revenue; and
 5 WHEREAS, the Department of Revenue is presently seeking
 6 to have the United States Supreme Court review the matter,
 7 and at this time other decisions are also being reviewed by
 8 the United States Supreme Court that might have a bearing on
 9 the issue of the taxability of such income; and
 10 WHEREAS, in the interim uncertainty exists as to the
 11 taxability of such income and claims for refund of tax and
 12 returns of income will be made by corporations based upon
 13 the exclusion of such income; and
 14 WHEREAS, the Legislature desires to maintain
 15 approximately the current level of revenue to state and
 16 local government; and
 17 WHEREAS, immediate legislative action is necessary.
 18 THEREFORE, it is the intent of the Legislature to
 19 proportionately reduce the allowable deductions to all
 20 corporations for all taxable periods for which interest
 21 income is excluded or claim for refund of tax is made upon
 22 such exclusion under claim of right under federal law.
 23
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 25 Section 1. Reduction of deductions related to excluded

1 income. (1) A corporation, taxable under Title 15, chapter
2 31, part 1, that excludes interest from gross income which
3 would be taxable except for federal law must adjust its
4 allowable deductions for all taxable periods for which
5 interest is excluded in the following manner:

6 (a) the total amount of interest excluded from gross
7 income by federal law must be determined;

8 (b) the total amount of all interest income from all
9 sources must be determined;

10 (c) the ratio of excluded interest income to all
11 interest income must be determined; and

12 (d) the total deductions allowable under 15-31-114
13 must be reduced by an amount determined by multiplying the
14 amount of deduction otherwise allowable by the ratio of
15 excluded interest to all interest income; however, the
16 product of this calculation may not exceed the amount of
17 excluded interest income.

18 (2) Allowable deductions must be reduced with respect
19 to all corporations that exclude interest income otherwise
20 taxable upon returns filed for all taxable periods for which
21 such exclusion is claimed and for all taxable periods for
22 which a claim for refund is made.

23 Section 2. Codification instruction. Section 1 is
24 intended to be codified as an integral part of Title 15,
25 chapter 31, part 1.

1 Section 3. Effective date -- applicability date. This
2 act is effective on passage and approval and applies
3 retroactively, within the meaning of 1-2-109, to taxable
4 periods beginning on and after December 31, 1978 (the
5 effective date of Chapter 634, Laws of 1979), for which a
6 corporation has excluded interest income based upon federal
7 law or for which a corporation has included interest income
8 and subsequently claims a refund of taxes paid based upon
9 federal law.

-End-

April 21

19 83

FREE CONFERENCE COMMITTEE
SENATE BILL 335
(Report No. 1, 9 A.M.)

Mr. President:

We, your Free Conference Committee on Senate Bill 335, met and considered:

Senate Bill 335, reference bill; and
Governor's Proposed Amendments of April 20, 1983.

We respectfully recommend as follows:

That the Senate and the House accede to the Governor's Proposed Amendments numbers 1 through 6; and

That the Senate and the House accede to the Governor's Proposed Amendment number 7 as amended in clerical instruction number 1; and

That this Free Conference Committee report be adopted.

CLERICAL INSTRUCTIONS FOR REFERENCE COPY (SALMON)

1) Governor's Proposed Amendment number 7 is amended to read:

"7. Page 5, lines 15 through 25.

Strike: section 6 in its entirety

Insert: "Section 14. Contingent effective dates - applicability dates. (1) Section 1 is effective on passage and approval and ~~if-and-only-if-a-final-determination-is-reached-in-current-pending-litigation,-and-all-potential-appeals-are-exhausted-or-barred,-that-the-interest-income-from-certain-federal-obligations-is-not-includable-in-the-net-income-measurement-base-of-the-Montana-corporation-license-tax.--if-section-1-becomes-effective-it~~ applies retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law.

(2) Sections 2 and 3 are effective on passage and approval. Section 2 applies to taxable periods beginning after December 31, 1982. Section 3 applies retroactively, within the meaning of 1-2-109, to taxable periods beginning after December 31, 1978.

(Continued on page 2)

April 21

19 83

(3) Sections 4 through 11 are effective if and only if the method of calculating the measure of the tax provided for in section 1 is finally held to be unconstitutional or invalid. If section 1 is finally held to be unconstitutional or invalid, sections 4 through 11 apply to taxable periods beginning January 1 of the calendar year in which section 1 is finally held unconstitutional or invalid. If section 1 is challenged in court and held by a final decision of the court to be constitutional and valid, and all potential appeals are exhausted or barred, then sections 4 through 11 are repealed."

FOR THE SENATE

Turnage
TURNAGE, CHAIR

B. S. Brown
BROWN

TOWE

FOR THE HOUSE

Yardley
YARDLEY, CHAIR

Neuman
NEUMAN

BERTELSEN

HOUSE TAXATION COMMITTEE
AMENDMENTS TO SB 335, Third Reading Copy, Blue
March 23, 1983

1. Title, line 8.

Following: "GROSS INCOME;"

Insert: "PROHIBITING CONSOLIDATED RETURNS FOR FINANCIAL INSTITUTIONS UNDER THE CORPORATE LICENSE TAX; REAFFIRMING THE INCLUSION OF STATE AND LOCAL BOND INCOME IN THE DEFINITION OF NET INCOME FOR CORPORATION LICENSE TAX PURPOSES;"

2. Title, line 9.

Following: "AND"

Strike: "AN"

Following: "APPLICABILITY"

Strike: "DATE"

Insert: "DATES"

3. Page 3, line 23.

Following: line 22

Insert: "Section 2. Consolidated returns prohibited. (1) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of non-financial institutions, thereby distorting the true income of each financial organization.

(2) In accordance with subsection (1), financial institutions are prohibited from filing consolidated returns under 15-31-141.

Section 3. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax."

Renumber: subsequent sections

4. Page 3, line 23.
Following: "instruction."
Strike: "Section 1 is"
Insert: "Sections 1 through 3 are"

5. Page 3, line 24.
Following: "as"
Strike: "an"
Following: "integral"
Strike: "part"
Insert: "parts"

6. Page 4, line 1.
Following: "applicability"
Strike: "date"
Insert: "dates"

7. Page 4, line 2.
Following: "approval"
Strike: "and applies"
Insert: ". Sections 1 and 3 of this act apply"

8. Page 4, line 9.
Following: "law."
Insert: "Section 2 of this act applies to taxable periods
beginning after December 31, 1982."

AND AS AMENDED
BE CONCURRED IN

HOUSE COMMITTEE OF THE WHOLE

March 26, 1983

Amendments to Senate Bill 335, Third reading, blue copy as follows:

1. Page 3, line 25.

Following: "part 1."

Insert: "Section 5. Severability. If a part of this act is
invalid, all valid parts that are severable from the invalid part
remain in effect. If a part of this act is invalid in one or
more of its applications, the part remains in effect in all valid
applications that are severable from the invalid applications."

SENATE BILL NO. 335

INTRODUCED BY TOWE, TURNAGE, FABREGA,

YARDLEY, WILLIAMS, MARKS, RAMIREZ, ABRAMS, THOMAS,

ASAY, BLAYLOCK, GOODOVER, MCCALLUM, KOLSTAD, HARRINGTON,

NEUMAN, ZABROCKI, DONALDSON, SEVERSON, CHRISTIAENS,

KITSELMAN, NORDTVEDT

A BILL FOR AN ACT ENTITLED: "AN ACT TO DISALLOW DEDUCTIONS RELATED TO EXCLUDED INTEREST INCOME FOR MONTANA CORPORATION LICENSE TAX PURPOSES; TO APPLY THE DISALLOWANCE OF DEDUCTION RETROACTIVELY TO ALL TAXABLE PERIODS DURING WHICH SUCH INCOME IS EXCLUDED FROM GROSS INCOME; ~~PROHIBITING CONSOLIDATED RETURNS FOR FINANCIAL INSTITUTIONS UNDER THE CORPORATE LICENSE TAX; REAFFIRMING THE INCLUSION OF STATE AND LOCAL BOND INCOME IN THE DEFINITION OF NET INCOME FOR CORPORATION LICENSE TAX PURPOSES;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE DATES."

WHEREAS, the Montana Corporation License Tax Act (Title 15, chapter 31, part 1) was intended, after the enactment of Chapter 634, Laws of 1979, to require all corporations to report and pay a tax upon all income derived from obligations of the United States or its agencies or instrumentalities as permitted by Title 31, section 742, United States Code; and

WHEREAS, the Montana Supreme Court on September 23, 1982 (petition for rehearing denied December 6, 1982), decided in the case cited below that such income must be excluded from the measure of the subject tax; and

WHEREAS, the Legislature disagrees with the Montana Supreme Court's decision in the case of First Federal Savings and Loan Association, a Federally Chartered Association, et al., Plaintiffs and Appellants v. Department of Revenue, et al., Defendants and Respondents, Cause No. 81-528, and has filed, through its Revenue Oversight Committee, an AMICUS CURIAE brief in support of the position of the Department of Revenue; and

WHEREAS, the Department of Revenue is presently seeking to have the United States Supreme Court review the matter, and at this time other decisions are also being reviewed by the United States Supreme Court that might have a bearing on the issue of the taxability of such income; and

WHEREAS, in the interim uncertainty exists as to the taxability of such income and claims for refund of tax and returns of income will be made by corporations based upon the exclusion of such income; and

WHEREAS, the Legislature desires to maintain approximately the current level of revenue to state and local government; and

WHEREAS, immediate legislative action is necessary.

1 THEREFORE, it is the intent of the Legislature to
2 proportionately reduce the allowable deductions to all
3 corporations for all taxable periods for which interest
4 income is excluded or claim for refund of tax is made upon
5 such exclusion under claim of right under federal law.

6
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Reduction of deductions related to excluded
9 income. (1) A corporation, taxable under Title 15, chapter
10 31, part 1, that excludes interest from gross income which
11 would be taxable except for federal law must adjust its
12 allowable deductions for all taxable periods for which
13 interest is excluded in the following manner:

14 (a) the total amount of interest excluded from gross
15 income by federal law must be determined;

16 (b) the total amount of all interest income from all
17 sources must be determined;

18 (c) the ratio of excluded interest income to all
19 interest income must be determined; and

20 (d) the total deductions allowable under 15-31-114
21 must be reduced by an amount determined by multiplying the
22 amount of deduction otherwise allowable by the ratio of
23 excluded interest to all interest income; however, the
24 product of this calculation may not exceed the amount of
25 excluded interest income.

1 (2) Allowable deductions must be reduced with respect
2 to all corporations that exclude interest income otherwise
3 taxable upon returns filed for all taxable periods for which
4 such exclusion is claimed and for all taxable periods for
5 which a claim for refund is made.

6 THERE IS A NEW MCA SECTION THAT READS:

7 Section 2. Consolidated returns prohibited. (1) A
8 majority of the corporation license tax collected from
9 financial institutions is paid to local government areas in
10 which each financial institution is located. However,
11 consolidated returns for financial institutions do not
12 reflect the true tax attributable to each local government.
13 In addition, consolidated returns would permit financial
14 institutions to offset income against losses of nonfinancial
15 institutions, thereby distorting the true income of each
16 financial organization.

17 (2) In accordance with subsection (1), financial
18 institutions are prohibited from filing consolidated returns
19 under 15-31-141.

20 THERE IS A NEW MCA SECTION THAT READS:

21 Section 3. Reaffirmation of bond income inclusion in
22 definition of net income for corporation license tax
23 purposes. Notwithstanding the provisions of any other law,
24 the income from bonds or other obligations issued by any
25 state or political subdivision of a state are included in

gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax.

Section 4. Codification instruction. ~~Section--1--is~~ SECTIONS 1 THROUGH 3 ARE intended to be codified as an integral part PART 1 of Title 15, chapter 31, part 1.

SECTION 5. SEVERABILITY. IF A PART OF THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

Section 6. Effective date -- applicability date DATES. This act is effective on passage and approval and applies. SECTIONS 1 AND 3 OF THIS ACT APPLY retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law. SECTION 2 OF THIS ACT APPLIES TO TAXABLE PERIODS BEGINNING AFTER DECEMBER 31, 1982.

-End-

GOVERNOR'S PROPOSED AMENDMENTS
TO SENATE BILL NO. 335
REFERENCE BILL

1. Title, line 10.

Following: "PURPOSES;"

Insert: "TO IMPOSE A CONTINGENT FINANCIAL INSTITUTIONS FRANCHISE TAX
MEASURED BY DEPOSITS;"

2. Title, line 16.

Following: "PURPOSES;"

Insert: "AMENDING SECTIONS 15-31-101, 15-31-701; AND 15-31-702, MCA;"

3. Title, line 16.

Following: "PROVIDING"

Strike: "AN IMMEDIATE"

4. Title, line 17.

Following: "EFFECTIVE"

Strike: "DATE"

Insert: "DATES"

5. Page 5, line 6.

Following: line 5

Insert: "NEW SECTION Section 4. Purpose. It is the intent of
this act that every bank and savings and loan association doing
business within the state as a corporation or association within
the provisions of 15-31-101 shall annually pay to the state treas-
urer a financial institutions franchise tax for the privilege of
conducting business in this state in corporate form. Since finan-
cial institutions possess proportionately greater amounts of
intangible assets which are not subject to property tax compared
to nonfinancial corporations, it is the intent of the Legislature
to equalize overall tax burdens within the state, as well as the
total tax burden between financial institutions and other corpora-
tions by enacting this tax.

NEW SECTION Section 5. Definitions. As used in this part, the fol-
lowing definitions apply:

(1) (a) Except as provided in subsection (b), "total deposits"
means the average total deposits for a taxable period of a bank or
savings and loan association as reported to state or federal regu-
lators on the consolidated report of condition in which are exhib-
ited in detail and under appropriate schedules, the resources and
liabilities of a bank or savings and loan association on those
past days designated by the comptroller of currency of the United
States for reports of national banking associations or for banks
required to report to the department of commerce on those past
days specified in 32-1-231.

(b) Total deposits include all demand deposits and time deposits,
including but not limited to those deposits that are insured by
the federal savings and loan insurance corporation and federal
deposit insurance corporation, except deposits of the United
States government or its agencies or for the state of Montana or
its agencies or political subdivision.

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

NEW SECTION Section 6. Tax imposed - - - rate - - exceptions.

(1) There is imposed upon every bank and savings and loan associ-
ation for each taxable period a financial institutions franchise
tax at the rate of .09% of total deposits.

(2) When a bank or savings and loan association changes its tax-
able periods, it must promptly notify the department of revenue.

(3) To the extent that a bank or savings and loan association is
a branch of a foreign bank or savings and loan association, this
section applies only to the total deposits received by the Montana
branch or operation.

(4) The rate of tax imposed under this section may not be less
than 0.075% nor more than 0.125% of total deposits without approv-
al of two-thirds of each house of the legislature.

NEW SECTION Section 7. Incorporation by reference. The provisions
of the following sections of this chapter are incorporated into
this part by reference and are made a part hereof: sections
15-31-101, 15-31-102, 15-31-111, 15-31-123, 15-31-142, 15-31-143,
15-31-501 through 15-31-509, 15-31-521 through 15-31-544, and
15-31-551 through 15-31-554, except that wherever the words "tax",
"license tax", "license fee", "corporation excise tax", or like
words appear, referring to the tax imposed under part 1 of this
chapter, there shall be substituted the words "financial institu-
tions franchise tax", and except that wherever the words "net
income", "taxable income", "taxable net income", or like words
appear, referring to the basis against which the measure of the
license tax computation is made, there shall be substituted the
words "total deposits".

Section 8. Section 15-31-101, MCA is amended to read:

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

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

(3) Every corporation, except as hereinafter provided and except as provided in 33-2-705(6), engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3.

This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

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

NEW SECTION Section 9. Disposition of revenue. The revenue collected from the tax imposed by this part must be disbursed in accordance with 15-31-701 and 15-31-702.

Section 10. Section 15-31-701, MCA is amended to read:

"15-31-701. Department of Revenue - - special duties for transmitting ~~corporation license~~ tax financial institutions franchise tax revenues collected from banks or savings and loan associations to counties.

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

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

(3) The department shall continue to exercise all its duties and powers outlined in this title with respect to auditing returns and enforcing payment of the ~~corporation license~~ financial institutions franchise taxes owed by banks and savings and loan associations. Any delinquent taxes collected from the sale of property of a bank or savings and loan association under the provision of 15-31-525 shall be transmitted to the county in which the corporation owing the delinquent taxes is located. The only duties of the county treasurers in this regard are issuing refunds and distributing the taxes to local taxing jurisdictions."

Section 11. Section 15-31-702, MCA, is amended to read:

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

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

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

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

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

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

Renumber: subsequent sections

6. Page 5, line 7.
Following: "THROUGH"

Strike: "3"

Insert: "7 and section 9"

7. Page 5, lines 15 through 25.

Strike: section 6 in its entirety

Insert: "Section 14. Contingent effective dates - applicability dates. (1) Section 1 is effective if and only if a final determination is reached in current pending litigation, and all potential appeals are exhausted or barred, that the interest income from certain federal obligations is not includable in the net income measurement base of the Montana corporation license tax. If section 1 becomes

effective it applies retroactively, within the meaning of 1-2-109, to taxable periods beginning on and after December 31, 1978 (the effective date of Chapter 634, Laws of 1979), for which a corporation has excluded interest income based upon federal law or for which a corporation has included interest income and subsequently claims a refund of taxes paid based upon federal law.

(2) Sections 2 and 3 are effective on passage and approval. Section 2 applies to taxable periods beginning after December 31, 1982. Section 3 applies retroactively, within the meaning of 1-2-109, to taxable periods beginning after December 31, 1978.

(3) Sections 4 through 11 are effective if and only if the method of calculating the measure of the tax provided for in section 1 is finally held to be unconstitutional or invalid. If section 1 is finally held to be unconstitutional or invalid, sections 4 through 11 apply to taxable periods beginning January 1 of the calendar year in which section 1 is finally held unconstitutional or invalid."