

SENATE BILL NO. 343

Introduced: 02/03/83

Referred to Committee on Taxation: 02/03/83
Died in Committee.

1 *Senate* BILL NO. *343*
2 INTRODUCED BY *Donovan Faugh*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 TAXATION OF CERTAIN CLASS FIVE PROPERTY AND PROPERTY
6 ELIGIBLE FOR TAX ABATEMENT; REVISING THE PROCEDURE FOR THE
7 PREPAYMENT OF TAXES; DIRECTING THE DEPARTMENT OF REVENUE TO
8 AMEND RULES 42.19.1211 THROUGH 42.19.1213 AND 42.19.1223,
9 ADMINISTRATIVE RULES OF MONTANA; AMENDING SECTIONS 15-6-135,
10 15-6-152, AND 15-16-201, MCA; AND REPEALING RULE 42.19.1224,
11 ADMINISTRATIVE RULES OF MONTANA."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 Section 1. Section 15-6-135, MCA, is amended to read:
15 "15-6-135. Class five property -- description --
16 taxable percentage. (1) Class five property includes:
17 (a) all property used and owned by cooperative rural
18 electrical and cooperative rural telephone associations
19 organized under the laws of Montana, except property owned
20 by cooperative organizations described in subsection (1)(c)
21 of 15-6-137;
22 (b) air and water pollution control equipment as
23 defined in this section;
24 (c) new industrial property as defined in this
25 section;

1 (d) any personal or real property used primarily in
2 the production of gasohol during construction and for the
3 first 3 years of its operation.
4 (2) (a) "Air and water pollution equipment" means
5 facilities, machinery, or equipment used to reduce or
6 control water or atmospheric pollution or contamination by
7 removing, reducing, altering, disposing, or storing
8 pollutants, contaminants, wastes, or heat. The department of
9 health and environmental sciences shall determine if such
10 utilization is being made.
11 (b) The department of health and environmental
12 sciences' determination as to air and water pollution
13 equipment may be appealed to the board of health and
14 environmental sciences and may not be appealed to either a
15 county tax appeal board or the state tax appeal board.
16 However, the appraised value of the equipment as determined
17 by the department of revenue may be appealed to the county
18 tax appeal board and the state tax appeal board.
19 (3) "New industrial property" means any new industrial
20 plant, including land, buildings, machinery, and fixtures,
21 used by new industries during the first 3 years of their
22 operation. The property may not have been assessed within
23 the state of Montana prior to July 1, 1961.
24 (4) (a) "New industry" means any person, corporation,
25 firm, partnership, association, or other group that

establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere including the expansion, reorganization, or merger 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.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions; or

(b) a plant that will create adverse impact on existing state, county, or municipal services or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years

or longer.

(6) Class five property is taxed at 3% of its market value."

Section 2. Section 15-6-152, MCA, is amended to read:

"15-6-152. Application for classification as new industrial property. (1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five shall make application to the department of revenue on a form provided by the department.

(2) The department of revenue shall promulgate rates for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the department makes an initial determination determines that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construction

~~periods. The maximum amount of prepayment shall be the amount of tax the owner would have paid on the property if it had not been classified under class five.~~

~~(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class-five qualification expires.~~

(2) New industrial property may not qualify for both the reduced taxation under class five and for the property tax abatement available under 15-24-1402.

Section 3. Section 15-16-201, MCA, is amended to read:

"15-16-201. Tax prepayment -- new industrial facilities. (1) If it is determined by the board of county commissioners of a county in which a new industrial facility, as defined in 15-6-135, is to be located that the new facility will create a substantial adverse impact on existing state, county, or municipal services, the person intending to construct or locate a major new industrial facility as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to as much as three times the estimated property tax due the year the facility is completed. The calculation of estimated tax must

take into account the reduced taxation on new or expanding industrial property available under 15-6-135 and 15-24-1402.

The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject ~~during the first 3 years and thereafter~~ to taxation as all other property similarly situated or as it may be reduced under the provisions of 15-6-135 or 15-24-1402, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility other than a large-scale mineral development as defined in 90-6-302(4) which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services."

Section 4. The Department of Revenue is directed to amend Rule 42.19.1211, Administrative Rules of Montana, to read:

"42.19.1211 PERIOD OF CLASSIFICATION AS NEW INDUSTRIAL PROPERTY

(1) The classification as new industrial property becomes operative as to all qualifying property on the first assessment date falling on or after the date of commencement of operations and continues for each taxable year thereafter for which the assessment date falls within the 3-year period beginning on the date of commencement of such operations.

~~(2) Once the 3-year period begins to run starting on the date operations commence, the period runs to its expiration unaffected by additions of property to the industrial user expansion of operations or changes in operations other than changes that would disqualify the unit from classification as new industrial property or cessation or curtailment of the operations. An expansion of industrial property occurring during the 3-year period, if qualifying under 15-6-125, must be treated as new industrial property. The classification as new industrial property becomes operative on the first assessment date on or after the date of commencement of operations of the expansion.~~

(3) Prior to and after the 3-year period of classification as new industrial property, the property in

question is taxable as other similar property.

(4) The taxable year is considered to be the calendar year and the assessment date within any given calendar year is January 1 for all qualifying property other than migratory personal property. Migratory personal property coming into Montana after the regular assessment date has an assessment date on the date the property comes to rest and becomes a part of the general property within any county of the state, but not less than 30 days after entry into Montana."

Section 5. The Department of Revenue is directed to amend Rule 42.19.1212, Administrative Rules of Montana, to read:

"42.19.1212 COMMENCEMENT OF OPERATIONS

(1) The date of commencement of operations is the date when the new industrial plant ~~or expansion thereof~~ first begins to function as an organized unit and for its primary purpose, even if the operation is only for limited production or upon a limited scale."

Section 6. The Department of Revenue is directed to amend Rule 42.19.1213, Administrative Rules of Montana, to read:

"42.19.1213 CHANGES IN OPERATIONS

~~(1) As a new industry adds to its plant and properties during the 3-year period provided for in 15-6-125, the~~

1 additional property, if it otherwise qualifies, is also
2 classified as new industrial property for the remainder of
3 the period. 264

4 (2)(11) Classification as new industrial property
5 ceases upon sale; transfer; change of possession; or other
6 change in ownership, possession, or control of such
7 property, unless prior to such action, application is made
8 by the transferee for continuation as new industrial
9 property and the application is granted by the department.
10 The loss of classification as new industrial property does
11 not apply to transactions such as the mortgaging of the
12 property or otherwise using the property as security when
13 there is no change in ownership or possession.

14 (3)(12) If a qualified new industry ceases to operate
15 as a new industry under the provisions of 15-6-135, MCA, the
16 classification as new industrial property terminates.

17 (4)(13) If a qualified new industry ceases to operate,
18 either temporarily or permanently, the 3-year period
19 continues until its normal expiration date, regardless of
20 subsequent commencement of new operations. There is no
21 tacking of periods following cessation of operation on
22 application for classification as new industrial property
23 may not be granted unless the new operation is substantially
24 different from the former operation under normal
25 conditions, the 3-year period continues until its normal

1 expiration date. If another treatment would be beneficial to
2 the new industry or a successor industry, application for
3 this treatment must be made to the department director."

4 Section 7. The Department of Revenue is directed to
5 amend Rule 42.19.1223, Administrative Rules of Montana, to
6 read:

7 "42.19.1223 PROCESSING OF APPLICATION

8 (1) Upon receipt of an application for classification
9 as new industrial property, the department reviews the
10 application to determine whether it qualifies under
11 15-6-135, MCA. If from this review the department determines
12 that the proposed operation will employ 100 or more
13 individuals, either during construction or operation, then
14 the department notifies all affected local governments and
15 conducts public hearings on the question of adverse impact.
16 The hearings are held in the affected locality. The department
17 may schedule other hearings on the application if considered
18 necessary.

19 (2) The department decision on the application is made
20 in writing and sent to the applicant. An applicant who is
21 dissatisfied with the department's decision may appeal to
22 the state tax appeal board.

23 (3) The department's final decision on the application
24 is sent to all affected county assessors."

25 NEW SECTION. Section 8. Repealer. Rule 42.19.1224,

LC 0827/01

1 Administrative Rules of Montana, is repealed.

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