SENATE BILL NO. 375

Introduced: 02/05/83

Referred to Committee on Taxation: 02/05/83
Hearing: 2/12/83
Report: 3/2/83, Do Not Pass. Report Adopted.
Bill Killed.

Senate BILL NO. 375

INTRODUCED BY Turnage Keating

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE INCOME DERIVED FROM SOURCES OUTSIDE THE UNITED STATES WHEN ALLOCATING AND APPORTIONING INCOME FOR PURPOSES OF THE CORPORATE LICENSE TAX; AMENDING SECTIONS 15-31-141, 15-31-302, AND 15-31-312, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 15-31-141, MCA, is amended to read:

"15-31-141. Consolidated returns -- computation and procedure. (1) Corporations which are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and permission to file a consolidated return is given by the department of revenue. For purposes of this section, a "unitary business operation" means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.

(3) If the conditions of subsections (1) and (2) of this section are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(4) Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this chapter and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the department may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the department that any arrangement exists in such a manner as to improperly reflect

the business done, the segregable assets, or the entire net income earned from business done in this state, the department is authorized and empowered to equitably adjust the tax in such manner as it may determine.

(5) The department of revenue may not require and no corporation may elect to file a consolidated return that includes a combination or consolidation of an affiliated group of a controlled foreign or other United States domestic corporations the income of which is derived from sources outside the United States."

Section 2. Section 15-31-302, MCA, is amended to read:

"15-31-302. Definitions. (1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations but does not include income from sources outside the United States.

(2) "Nonbusiness income" means all income other than:

(a) business income; and

(b) income from sources outside the United States.

(3) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(4) "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(5) "Sales" means all gross receipts of the taxpayer not allocated under 15-31-304.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States~~, and any foreign country~~ or political subdivision thereof."

Section 3. Section 15-31-312, MCA, is amended to read:

"15-31-312. Apportionment formula -- relief provisions. If the allocation and apportionment provisions of this part do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity except business activity conducted outside the United States that results in income derived from sources outside the United States, if reasonable:

(1) separate accounting, provided the taxpayer's activities in this state are separate and distinct from its operations conducted outside this state and are not a part of a unitary business operation conducted within and without this state. For purposes of this part, a "unitary business" is one in which the business conducted within the state is

dependent upon or contributory to the business conducted outside this state or if the units of the business within and without this state are closely allied and not capable of separate maintenance as independent businesses.

(2) the exclusions of any one or more of the factors;

(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income."

NEW SECTION. Section 4. Applicability date. This act applies to taxable years beginning after December 31, 1983.

-End-

STATE OF MONTANA

REQUEST NO. 346-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 11, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 375 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 375 excludes income derived from sources outside the United States when allocating and apportioning income for purposes of the corporate license tax; and provides an applicability date.

ASSUMPTIONS:

1) Revenues from the corporation license tax is projected by the Office of Budget and Program Planning.
2) Financial institutions in Montana derive more of their income from foreign sources.

FISCAL IMPACT:

	FY 84	FY 85
Corporation License Tax		
Under Current Law	$ 41,904,000	$ 48,817,000
Under Proposed Law	35,904,000 - 36,904,000	42,817,000 - 43,817,000
Estimated Decrease	(5,000,000 - 6,000,000)	(5,000,000 - 6,000,000)
General Fund		
Under Current Law	$ 24,835,000	$ 29,259,000
Under Proposed Law	20,995,000 - 21,635,000	25,419,000 - 26,059,000
Estimated Decrease	(3,200,000 - 3,840,000)	(3,200,000 - 3,840,000)
School Foundation		
Under Current Law	$ 9,701,000	$ 11,429,000
Under Proposed Law	8,201,000 - 8,451,000	9,929,000 - 10,179,000
Estimated Decrease	(1,250,000 - 1,500,000)	(1,250,000 - 1,500,000)

Continued

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-11-83

	FY 84	FY 85
Sinking Fund		
Under Current Law	$ 4,268,000	$ 5,029,000
Under Proposed Law	3,608,000 - 3,718,000	4,369,000 - 4,479,000
Estimated Decrease	(550,000 - 660,000)	(550,000 - 660,000)
Local Government		
Under Current Law	$ 3,100,000	$ 3,100,000
Under Proposed Law	3,100,000	3,100,000
Estimated Change	-0-	-0-

COMMENT:

The following audit collections resulted from inclusion of income from foreign sources in the taxable base of multinational corporations:

FY 81	$12,615,573*
FY 82	2,949,285
First Half of FY 83	2,430,649

*Include a single audit collection of $8,009,095.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

Page 3, Line 18: The proposed new wording would be easier to interpret if it were added as a complete sentence: "Business income does not include income from sources outside the United States."

FISCAL IMPACT 12:AA/2

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