

SENATE BILL NO. 414

INTRODUCED BY ELLIOTT, HAGER,
CRIPPEN, TOWE, HALLIGAN

IN THE SENATE

February 15, 1983	Introduced and referred to Committee on Taxation.
February 16, 1983	Fiscal Note requested.
February 17, 1983	Committee recommend bill do pass as amended. Report adopted.
February 18, 1983	Fiscal Note returned. Bill printed and placed on members' desks.
February 19, 1983	Second reading, do pass.
February 21, 1983	Correctly engrossed.
February 22, 1983	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 28, 1983	Introduced and referred to Committee on Taxation.
April 13, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
April 14, 1983	Second reading, concurred in.
April 15, 1983	Third reading, concurred in.

IN THE SENATE

April 15, 1983

Returned to Senate with amendments.

April 20, 1983

Second reading, amendments concurred in.

April 21, 1983

Third reading, amendments concurred in. Ayes, 50; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *414*
 2 INTRODUCED BY *Sen. Hager* *Sen. Holly*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO COUPLE MONTANA'S
 5 DEFINITION OF "SMALL BUSINESS CORPORATION" TO THE FEDERAL
 6 DEFINITION FOR PURPOSES OF THE CORPORATE LICENSE TAX;
 7 AMENDING SECTIONS 15-31-201 AND 15-31-202, MCA; REPEALING
 8 SECTIONS 15-31-205 THROUGH 15-31-207, MCA; AND PROVIDING AN
 9 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 15-31-201, MCA, is amended to read:

13 "15-31-201. Definitions. (1) For purposes of this
 14 part, the term "small business corporation" means a
 15 corporation doing business in Montana and which does not
 16 have:

17 ~~(a) more than 10 shareholders;~~

18 ~~(b) as a shareholder a person (other than an estate~~
 19 ~~and other than a trust described in 15-31-207) who is not an~~
 20 ~~individual;~~

21 ~~(c) a nonresident alien as a shareholder; and~~

22 ~~(d) more than one class of stock has made a valid~~
 23 ~~election under Subchapter S of Chapter 1 of the Internal~~
 24 ~~Revenue Code of 1954.~~

25 (2) For purposes of this part, the term "electing

1 small business corporation" means, with respect to any
 2 taxable year, a small business corporation which has made an
 3 election under ~~this part~~ under Subchapter S in effect for
 4 such taxable year."

5 Section 2. Section 15-31-202, MCA, is amended to read:

6 "15-31-202. Election by small business corporation.

7 ~~(1) Except as provided in subsection (6), any A small~~
 8 ~~business corporation may elect, in accordance with the~~
 9 ~~provisions of this section, not to be subject to the taxes~~
 10 ~~imposed by this chapter. Such election shall be valid only~~
 11 ~~if consented to by all persons who are shareholders in such~~
 12 ~~corporation. The election is effective:~~

13 ~~(a) on the first day of the first taxable year for~~
 14 ~~which such election is effective, if such election is made~~
 15 ~~on or before such first day; or~~

16 ~~(b) on the day on which the election is made, if the~~
 17 ~~election is made after such first day.~~

18 (2). If a small business corporation makes an election
 19 under subsection (1), then:

20 (a) with respect to the taxable years of the
 21 corporation for which such election is in effect, such
 22 corporation is not subject to the taxes imposed by this
 23 chapter and, with respect to such taxable years and all
 24 succeeding taxable years, the provisions of this part apply
 25 to such corporation; and

1 (b) with respect to the taxable years of a shareholder
2 of such corporation in which or with which the taxable years
3 of the corporation for which such election is in effect end,
4 the provisions of this part apply to such shareholder, and
5 with respect to such taxable years and all succeeding
6 taxable years, the provisions of this part apply to such
7 shareholder.

8 (3) An election under subsection (i) may be made by a
9 small business corporation for any taxable year at any time
10 during the first month of such taxable year or at any time
11 during the month preceding such first month. Such an
12 election under subsection (i) must be made in accordance
13 with rules prescribed by the department of revenue.

14 (4) An election under subsection (i) is effective for
15 the taxable year of the corporation for which it is made and
16 for all succeeding taxable years of the corporation unless
17 it is terminated with respect to any such taxable year
18 under subsection (5).

19 (5) (a) (i) An election under subsection (i) made by a
20 small business corporation terminates if any person who was
21 not a shareholder in such corporation at the time of the
22 initial election under subsection (i) subsequently becomes a
23 shareholder in such corporation and affirmatively refuses in
24 accordance with rules prescribed by the department to
25 consent to such election on or before the 60th day on which

1 he acquires the stock.

2 (ii) If the person acquiring the stock is the estate of
3 a decedent, the period under subsection (5)(a)(i) for
4 affirmatively refusing to consent to the election expires on
5 the 60th day after whichever of the following is the
6 earlier:

7 (A) the day on which the executor or administrator of
8 the estate qualifies or

9 (B) the last day of the taxable year of the
10 corporation in which the decedent died.

11 (iii) Any termination of an election under subsection
12 (5)(a)(i) by reason of the affirmative refusal of any person
13 to consent to such election is effective for the taxable
14 year of the corporation in which such person becomes a
15 shareholder in the corporation and for all succeeding
16 taxable years of the corporation.

17 (b) An election under subsection (i) made by a small
18 business corporation may be revoked by it for any taxable
19 year after the first taxable year for which the election is
20 effective. An election may be revoked only if all persons
21 who are shareholders in the corporation on the day on which
22 the revocation is made consent to the revocation. A
23 revocation under this paragraph is effective.

24 (i) for the taxable year in which made, if made before
25 the close of the first month of such taxable year.

1 ~~{11} for the taxable year following the taxable year in~~
 2 ~~which made, if made after the close of such first month, and~~
 3 ~~for all succeeding taxable years of the corporation. Such~~
 4 ~~revocation must be made in accordance with rules prescribed~~
 5 ~~by the department.~~

6 ~~{c} An election under subsection {1} made by a small~~
 7 ~~business corporation terminates if the corporation ceases to~~
 8 ~~meet the definition of a small business corporation at any~~
 9 ~~time after election is effective under subsection {1}.~~

10 ~~{d} Such termination is effective for the taxable year~~
 11 ~~of the corporation in which the corporation ceases to be a~~
 12 ~~small business corporation and for all succeeding taxable~~
 13 ~~years of the corporation.~~

14 ~~{6} If a small business corporation has made an~~
 15 ~~election under subsection {1} and if such election has been~~
 16 ~~terminated or revoked under subsection {5}, such corporation~~
 17 ~~and any successor corporation are not eligible to make an~~
 18 ~~election under subsection {1} for any taxable year prior to~~
 19 ~~its fifth taxable year which begins after the first taxable~~
 20 ~~year for which such termination or revocation is effective~~
 21 ~~unless the department consents to such election.~~

22 ~~{7}{4}~~ This election is not effective unless the
 23 corporate net income or loss of such electing corporation is
 24 included in the stockholders' adjusted gross income as
 25 defined in 15-30-111.

1 ~~{8}{5}~~ Every electing corporation is required to pay
 2 the minimum fee of \$10 required by 15-31-204."

3 ~~NEW SECTION.~~ Section 3. Repealer. Sections 15-31-205
 4 through 15-31-207, MCA, are repealed.

5 ~~NEW SECTION.~~ Section 4. Effective and applicability
 6 dates. This act is effective on passage and approval and
 7 applies to taxable years beginning after December 31, 1982,
 8 and to all taxable years for which an amended return may, on
 9 the effective date of this act, still be filed.

-End-

STATE OF MONTANA

REQUEST NO. 432-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 414 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.

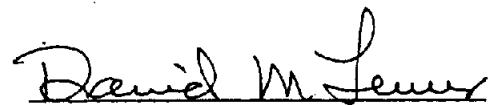
DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 414 couples Montana's definition of "small business corporation" to the federal definition for purposes of the corporate license tax; and provides an immediate effective date and an applicability date.

FISCAL IMPACT:

If a significant number of regular corporations convert to small business status, a revenue loss could occur. Also, if multi-state corporations with fewer than 35 shareholders are eligible to claim the investment tax credit, there could be a potentially significant decrease in corporation license tax revenues. Retroactive adoption of the federal laws could cause an additional large revenue loss and severe administration problems. The magnitude of the potential fiscal impact cannot be estimated for the biennium.

FISCAL NOTE 14:0/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-83

Approved by committee
on Taxation

SENATE BILL NO. 414

INTRODUCED BY ELLIOTT, HAGER,

CRIPPEN, TOWE, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO COUPLE MONTANA'S
DEFINITION OF "SMALL BUSINESS CORPORATION" TO THE FEDERAL
DEFINITION FOR PURPOSES OF THE CORPORATE LICENSE TAX;
AMENDING SECTIONS 15-31-201 AND 15-31-202, MCA; REPEALING
SECTIONS 15-31-205 THROUGH 15-31-207, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definitions. (1) For purposes of this
part, the term "small business corporation" means a
corporation doing business in Montana and which does not
have:

(a) more than 10 shareholders;

(b) as a shareholder a person (other than an estate
and other than a trust described in 15-31-207) who is not an
individual;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock has made a valid
election under Subchapter S of Chapter 1 of the Internal
Revenue Code of 1954 AND THEREAFTER HAS FILED A COPY THEREOF

~~WITH THE DEPARTMENT.~~

(2) For purposes of this part, the term "electing
small business corporation" means, with respect to any
taxable year, a small business corporation which has made an
election under ~~this part~~ under Subchapter S in effect for
such taxable year."

Section 2. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation.

(1) ~~Except as provided in subsection (6), any a small
business corporation may elect, in accordance with the
provisions of this section, not to be subject to the taxes
imposed by this chapter. Such election shall be valid only
if consented to by all persons who are shareholders in such
corporation. The election is effective:~~

(a) ~~on the first day of the first taxable year for
which such election is effective, if such election is made
on or before such first day; or~~

(b) ~~on the day on which the election is made, if the
election is made after such first day.~~

(2) If a small business corporation makes an election
under subsection (1), then:

(a) with respect to the taxable years of the
corporation for which such election is in effect, such
corporation is not subject to the taxes imposed by this
chapter and, with respect to such taxable years and all

1 succeeding taxable years, the provisions of this part apply
2 to such corporation; and

3 (b) with respect to the taxable years of a shareholder
4 of such corporation in which or with which the taxable years
5 of the corporation for which such election is in effect end,
6 the provisions of this part apply to such shareholder, and
7 with respect to such taxable years and all succeeding
8 taxable years, the provisions of this part apply to such
9 shareholder.

10 (3) An election under subsection (1) may be made by a
11 small business corporation for any taxable year at any time
12 during the first month of such taxable year or at any time
13 during the month preceding such first month. Such an
14 election under subsection (1) must be made in accordance
15 with rules prescribed by the department of revenue.

16 (4) An election under subsection (1) is effective for
17 the taxable year of the corporation for which it is made and
18 for all succeeding taxable years of the corporation unless
19 it is terminated with respect to any such taxable year
20 under subsection (5).

21 (5) (a) (i) An election under subsection (1) made by a
22 small business corporation terminates if any person who was
23 not a shareholder in such corporation at the time of the
24 initial election under subsection (1) subsequently becomes a
25 shareholder in such corporation and affirmatively refuses in

1 accordance with rules prescribed by the department to
2 consent to such election on or before the 60th day on which
3 he acquires the stock.

4 (ii) If the person acquiring the stock is the estate of
5 a decedent, the period under subsection (5) (a) (i) for
6 affirmatively refusing to consent to the election expires on
7 the 60th day after whichever of the following is the
8 earlier:

9 (A) the day on which the executor or administrator of
10 the estate qualifies or

11 (B) the last day of the taxable year of the
12 corporation in which the decedent died.

13 (iii) Any termination of an election under subsection
14 (5) (a) (i) by reason of the affirmative refusal of any person
15 to consent to such election is effective for the taxable
16 year of the corporation in which such person becomes a
17 shareholder in the corporation and for all succeeding
18 taxable years of the corporation.

19 (b) An election under subsection (1) made by a small
20 business corporation may be revoked by it for any taxable
21 year after the first taxable year for which the election is
22 effective. An election may be revoked only if all persons
23 who are shareholders in the corporation on the day on which
24 the revocation is made consent to the revocation. A
25 revocation under this paragraph is effective.

1 ~~{i}--for-the-taxable-year-in-which-made-if-made-before~~
 2 ~~the-close-of-the-first-month-of-such-taxable-year~~
 3 ~~{ii}--for-the-taxable-year-following-the-taxable-year-in~~
 4 ~~which-made-if-made-after-the-close-of-such-first-month-and~~
 5 ~~for-all-succeeding-taxable-years-of--the--corporation--Such~~
 6 ~~revocation--must-be-made-in-accordance-with-rules-prescribed~~
 7 ~~by-the-department~~
 8 ~~{c}--An-election-under-subsection-{i}-made-by--a--small~~
 9 ~~business-corporation-terminates-if-the-corporation-ceases-to~~
 10 ~~meet--the--definition-of-a-small-business-corporation-at-any~~
 11 ~~time-after-election-is-effective-under-subsection-{i}~~
 12 ~~{d}--Such-termination-is-effective-for-the-taxable-year~~
 13 ~~of-the-corporation-in-which-the-corporation-ceases-to--be--a~~
 14 ~~small--business--corporation--and-for-all-succeeding-taxable~~
 15 ~~years-of-the-corporation~~
 16 ~~{e}--if--a--small--business--corporation--has--made--an~~
 17 ~~election--under-subsection-{i}-and-if-such-election-has-been~~
 18 ~~terminated-or-revoked-under-subsection-{5},-such-corporation~~
 19 ~~and-any-successor-corporation-are-not-eligible--to--make--an~~
 20 ~~election--under-subsection-{i}-for-any-taxable-year-prior-to~~
 21 ~~its-fifth-taxable-year-which-begins-after-the-first--taxable~~
 22 ~~year--for--which-such-termination-or-revocation-is-effective~~
 23 ~~unless-the-department-consents-to-such-elections~~
 24 ~~{7}{4} This election is not effective unless the~~
 25 ~~corporate net income or loss of such electing corporation is~~

1 included in the stockholders' adjusted gross income as
 2 defined in 15-30-111.
 3 ~~{8}{15} Every electing corporation is required to pay~~
 4 ~~the minimum fee of \$10 required by 15-31-204."~~
 5 ~~NEW_SECTION. Section 3. Repealer. Sections 15-31-205~~
 6 ~~through 15-31-207, MCA, are repealed.~~
 7 ~~NEW_SECTION. Section 4. Effective and applicability~~
 8 ~~dates. This act is effective on passage and approval and~~
 9 ~~applies to taxable years beginning after December 31, 1982,~~
 10 ~~and-to-all-taxable-years-for-which-an-amended-return-may-on~~
 11 ~~the-effective-date-of-this-act--still--be--filed.~~

-End-

SENATE BILL NO. 414

INTRODUCED BY ELLIOTT, HAGER,

CRIPPEN, TONE, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO COUPLE MONTANA'S
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DEFINITION FOR PURPOSES OF THE CORPORATE LICENSE TAX;
AMENDING SECTIONS 15-31-201 AND 15-31-202, MCA; REPEALING
SECTIONS 15-31-205 THROUGH 15-31-207, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definitions. (1) For purposes of this
part, the term "small business corporation" means a
corporation doing business in Montana and which does not
have:

(a) more than 10 shareholders;

(b) as a shareholder a person (other than an estate
and other than a trust described in 15-31-207) who is not an
individual;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock has made a valid
election under Subchapter S of Chapter 1 of the Internal
Revenue Code of 1954 AND THEREAFTER HAS FILED A COPY THEREOF

~~WITH THE DEPARTMENT.~~

(2) For purposes of this part, the term "electing
small business corporation" means, with respect to any
taxable year, a small business corporation which has made an
election under this part under Subchapter S in effect for
such taxable year."

Section 2. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation.

(1) Except as provided in subsection (6), any small
business corporation may elect in accordance with the
provisions of this section not to be subject to the taxes
imposed by this chapter. Such election shall be valid only
if consented to by all persons who are shareholders in such
corporation. The election is effective:

(a) on the first day of the first taxable year for
which such election is effective, if such election is made
on or before such first day; or

(b) on the day on which the election is made, if the
election is made after such first day.

(2) If a small business corporation makes an election
under subsection (1), then:

(a) with respect to the taxable years of the
corporation for which such election is in effect, such
corporation is not subject to the taxes imposed by this
chapter and, with respect to such taxable years and all

succeeding taxable years, the provisions of this part apply to such corporation; and

(b) With respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this part apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such shareholder.

(3) An election under subsection (1) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year or at any time during the month preceding such first month. Such an election under subsection (1) must be made in accordance with rules prescribed by the department of revenue.

(4) An election under subsection (1) is effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation unless it is terminated with respect to any such taxable year under subsection (5).

(5) (a) (i) An election under subsection (1) made by a small business corporation terminates if any person who was not a shareholder in such corporation at the time of the initial election under subsection (1) subsequently becomes a shareholder in such corporation and affirmatively refuses in

accordance with rules prescribed by the department to consent to such election on or before the 60th day on which he acquires the stock

(ii) If the person acquiring the stock is the estate of a decedent, the period under subsection (5) (a) (i) for affirmatively refusing to consent to the election expires on the 60th day after whichever of the following is the earlier:

(A) the day on which the executor or administrator of the estate qualifies or

(B) the last day of the taxable year of the corporation in which the decedent died

(iii) Any termination of an election under subsection (5) (a) (i) by reason of the affirmative refusal of any person to consent to such election is effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(b) An election under subsection (1) made by a small business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph is effective

1 (i) -- for the taxable year in which made if made before
 2 the close of the first month of such taxable year
 3 (ii) -- for the taxable year following the taxable year in
 4 which made if made after the close of such first month and
 5 for all succeeding taxable years of the corporation. Such
 6 revocation must be made in accordance with rules prescribed
 7 by the department
 8 (c) -- An election under subsection (i) made by a small
 9 business corporation terminates if the corporation ceases to
 10 meet the definition of a small business corporation at any
 11 time after election is effective under subsection (i)
 12 (d) -- Such termination is effective for the taxable year
 13 of the corporation in which the corporation ceases to be a
 14 small business corporation and for all succeeding taxable
 15 years of the corporation
 16 (e) -- If a small business corporation has made an
 17 election under subsection (i) and if such election has been
 18 terminated or revoked under subsection (c) such corporation
 19 and any successor corporation are not eligible to make an
 20 election under subsection (i) for any taxable year prior to
 21 its fifth taxable year which begins after the first taxable
 22 year for which such termination or revocation is effective
 23 unless the department consents to such election
 24 (f) [4] This election is not effective unless the
 25 corporate net income or loss of such electing corporation is

1 included in the stockholders' adjusted gross income as
 2 defined in 15-30-111.
 3 (g) [5] Every electing corporation is required to pay
 4 the minimum fee of \$10 required by 15-31-204.
 5 NEW SECTION. Section 3. Repealer. Sections 15-31-205
 6 through 15-31-207, MCA, are repealed.
 7 NEW SECTION. Section 4. Effective and applicability
 8 dates. This act is effective on passage and approval and
 9 applies to taxable years beginning after December 31, 1982
 10 and to all taxable years for which an amended return may be
 11 the effective date of this act still be filed.

-End-

HOUSE TAXATION COMMITTEE
AMENDMENTS TO SB 414, THIRD READING COPY, BLUE
April 12, 1983

1. Page 2, line 1.

Following: "DEPARTMENT"

Insert: "on or before the 15th day of the third month of the taxable year for which the election is to become effective"

2. Page 2, line 6.

Following: "year"

Insert: "and has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective"

3. Page 6, line 5.

Following: line 4

Insert: "NEW SECTION. Section 3. Failure to file - disqualification. If a corporation does not file a copy of the federal Subchapter S election on or before the 15th day of the third month of the taxable year, the corporation shall not qualify as a small business corporation under this part for the taxable year.

New Section. Section 4. Termination and revocation. If the election under the provisions of Subchapter S is either terminated or revoked for federal purposes, the corporation must notify the department within 30 days of such termination or revocation. The department may terminate an election at any time if it discovers the corporation does not qualify as a small business corporation as provided for under the provisions of Subchapter S of the Internal Revenue Code of 1954."

Renumber: subsequent sections

AND AS AMENDED
BE CONCURRED IN

SENATE BILL NO. 414

INTRODUCED BY ELLIOTT, HAGER,

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(a) more than 10 shareholders;

(b) as a shareholder a person (other than an estate
 and other than a trust described in 15-31-207) who is not an
 individual;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock has made a valid
 election under Subchapter S of Chapter 1 of the Internal
 Revenue Code of 1954 AND THEREAFTER HAS FILED A COPY THEREOF

WITH THE DEPARTMENT ON OR BEFORE THE 15TH DAY OF THE THIRD
 MONTH OF THE TAXABLE YEAR FOR WHICH THE ELECTION IS TO
 BECOME EFFECTIVE.

(2) For purposes of this part, the term "electing
 small business corporation" means, with respect to any
 taxable year, a small business corporation which has made an
 election under this part under Subchapter S in effect for
 such taxable year AND HAS FILED A COPY OF SUCH ELECTION WITH
 THE DEPARTMENT ON OR BEFORE THE 15TH DAY OF THE THIRD MONTH
 OF THE TAXABLE YEAR FOR WHICH THE ELECTION IS TO BECOME
 EFFECTIVE."

Section 2. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation.

(1) Except as provided in subsection (6), any a small
 business corporation may elect in accordance with the
 provisions of this section not to be subject to the taxes
 imposed by this chapter. Such election shall be valid only
 if consented to by all persons who are shareholders in such
 corporation. The election is effective

(a) on the first day of the first taxable year for
 which such election is effective if such election is made
 on or before such first day; or

(b) on the day on which the election is made if the
 election is made after such first day.

(2) If a small business corporation makes an election

1 under subsection (1), then:

2 (a) with respect to the taxable years of the
3 corporation for which such election is in effect, such
4 corporation is not subject to the taxes imposed by this
5 chapter and, with respect to such taxable years and all
6 succeeding taxable years, the provisions of this part apply
7 to such corporation; and

8 (b) with respect to the taxable years of a shareholder
9 of such corporation in which or with which the taxable years
10 of the corporation for which such election is in effect end,
11 the provisions of this part apply to such shareholder, and
12 with respect to such taxable years and all succeeding
13 taxable years, the provisions of this part apply to such
14 shareholder.

15 (3) An election under subsection (1) may be made by a
16 small business corporation for any taxable year at any time
17 during the first month of such taxable year or at any time
18 during the month preceding such first month. Such an
19 election under subsection (1) must be made in accordance
20 with rules prescribed by the department of revenue.

21 (4) An election under subsection (1) is effective for
22 the taxable year of the corporation for which it is made and
23 for all succeeding taxable years of the corporation unless
24 it is terminated with respect to any such taxable year
25 under subsection (5).

1 (5) (a) (i) An election under subsection (1) made by a
2 small business corporation terminates if any person who was
3 not a shareholder in such corporation at the time of the
4 initial election under subsection (1) subsequently becomes a
5 shareholder in such corporation and affirmatively refuses in
6 accordance with rules prescribed by the department to
7 consent to such election on or before the 60th day on which
8 he acquires the stock.

9 (ii) If the person acquiring the stock is the estate of
10 a decedent, the period under subsection (5) (a) (i) for
11 affirmatively refusing to consent to the election expires on
12 the 60th day after whichever of the following is the
13 earliest:

14 (A) the day on which the executor or administrator of
15 the estate qualifies; or

16 (B) the last day of the taxable year of the
17 corporation in which the decedent died.

18 (iii) Any termination of an election under subsection
19 (5) (a) (i) by reason of the affirmative refusal of any person
20 to consent to such election is effective for the taxable
21 year of the corporation in which such person becomes a
22 shareholder in the corporation and for all succeeding
23 taxable years of the corporation.

24 (b) An election under subsection (1) made by a small
25 business corporation may be revoked by it for any taxable

1 year after the first taxable year for which the election is
 2 effective. An election may be revoked only if all persons
 3 who are shareholders in the corporation on the day on which
 4 the revocation is made consent to the revocation. A
 5 revocation under this paragraph is effective
 6 (i) for the taxable year in which made if made before
 7 the close of the first month of such taxable year
 8 (ii) for the taxable year following the taxable year in
 9 which made if made after the close of such first month and
 10 for all succeeding taxable years of the corporation. Such
 11 revocation must be made in accordance with rules prescribed
 12 by the department.
 13 (c) An election under subsection (i) made by a small
 14 business corporation terminates if the corporation ceases to
 15 meet the definition of a small business corporation at any
 16 time after election is effective under subsection (i).
 17 (d) Such termination is effective for the taxable year
 18 of the corporation in which the corporation ceases to be a
 19 small business corporation and for all succeeding taxable
 20 years of the corporation.
 21 (6) If a small business corporation has made an
 22 election under subsection (i) and if such election has been
 23 terminated or revoked under subsection (5) such corporation
 24 and any successor corporation are not eligible to make an
 25 election under subsection (i) for any taxable year prior to

1 its fifth taxable year which begins after the first taxable
 2 year for which such termination or revocation is effective
 3 unless the department consents to such election.
 4 (7)(4) This election is not effective unless the
 5 corporate net income or loss of such electing corporation is
 6 included in the stockholders' adjusted gross income as
 7 defined in 15-30-111.
 8 (8)(5) Every electing corporation is required to pay
 9 the minimum fee of \$10 required by 15-31-204.
 10 HERE IS A NEW MCA SECTION THAT READS:
 11 Section 3. Failure to file -- disqualification. If a
 12 corporation does not file a copy of the federal Subchapter S
 13 election on or before the 15th day of the third month of the
 14 taxable year, the corporation shall not qualify as a small
 15 business corporation under this part for the taxable year.
 16 HERE IS A NEW MCA SECTION THAT READS:
 17 Section 4. Termination and revocation. If the election
 18 under the provisions of Subchapter S is either terminated or
 19 revoked for federal purposes, the corporation must notify
 20 the department within 30 days of such termination or
 21 revocation. The department may terminate an election at any
 22 time if it discovers the corporation does not qualify as a
 23 small business corporation as provided for under the
 24 provisions of Subchapter S of the Internal Revenue Code of
 25 1954.

1 **NEW SECTION.** Section 5. Repealer. Sections 15-31-205
2 through 15-31-207, MCA, are repealed.

3 **NEW SECTION.** Section 6. Effective and applicability
4 dates. This act is effective on passage and approval and
5 applies to taxable years beginning after December 31, 1982,
6 ~~and to all taxable years for which an amended return may be~~
7 ~~filed on or after the effective date of this act.~~

-End-