

HOUSE BILL NO. 948

3/26 Introduced
3/26 Referred to Taxation
3/28 Fiscal Note Requested
3/29 Hearing
3/29 Fiscal Note Received
Died in Committee

1 net income of such corporations and organizations allocable
 2 to Montana, with such net income increased by the amount of
 3 such personal property taxes. However, if any such
 4 corporation or organization sustains a net loss allocable to
 5 Montana, the personal property taxes required to be paid by
 6 such corporation or organization to this state or its
 7 political subdivisions during the preceding calendar year or
 8 fiscal years ended during such calendar year must be
 9 considered for the purpose of determining such ratio only to
 10 the extent which such personal property taxes exceed such
 11 net loss allocable to Montana.

12 (3) If it is judicially determined that the rate of
 13 tax on any taxpayer is higher than is authorized by law,
 14 such taxpayer is relieved of liability for any tax imposed
 15 by [section 3] only to the extent of the excess beyond that
 16 legally authorized.

17 NEW SECTION. Section 5. Franchise tax for year of
 18 dissolution or withdrawal. A financial institution
 19 dissolving or withdrawing from operation shall pay a tax for
 20 its taxable year of dissolution or withdrawal based on net
 21 income for the taxable year in which it ceased doing
 22 business, to be computed at the rate prescribed in [section
 23 4] for its taxable year of dissolution or withdrawal, unless
 24 such income has previously been included in the measure of
 25 tax for any taxable year. The tax for the taxable year of

1 dissolution or withdrawal may not be less than the rate
 2 specified in 15-31-121 of its net income for that taxable
 3 year.

4 NEW SECTION. Section 6. Offset for personal property
 5 taxes paid. (1) A financial institution may offset against
 6 the franchise tax the amounts paid during the taxable year
 7 to this state or to any county, city, town, or other
 8 political subdivisions of the state as personal property
 9 taxes.

10 (2) The offset allowed to any financial institution
 11 for any taxable year as provided in this section may, at the
 12 election of that financial institution be offset in whole or
 13 in part against its franchise tax for that taxable year or
 14 offset in whole or in part against its franchise tax in one
 15 or more of the next 4 succeeding years of its selection,
 16 until such time as the total amount of such offset is so
 17 utilized. However, for such purpose, offsets elected to be
 18 utilized against the franchise tax of a succeeding year must
 19 be applied in the order of their respective years of origin
 20 and prior to the application of the offset which might
 21 otherwise be allowable for amounts paid during that taxable
 22 year.

23 (3) However, the tax on financial corporations after
 24 the allowance of all offsets provided for in this section
 25 may in no case be less than the percentage specified in

1 15-31-121 of its net income for the preceding taxable year.

2 NEW SECTION. Section 7. Evidence in support of
3 offset. At the time of payment of the tax, each taxpayer
4 claiming an offset under [section 6] shall submit to the
5 department of revenue evidence, in such form as the
6 department shall prescribe, in support of the claim.

7 NEW SECTION. Section 8. Recapture of offset when
8 property taxes refunded. If personal property taxes are at
9 any time refunded to any taxpayer and the taxpayer has been
10 allowed an offset under [section 6] for such taxes against
11 any tax imposed under [section 3], the taxpayer shall pay a
12 tax not subject to offset in an amount equivalent to any
13 offset that has been allowed against any tax at any time
14 imposed under [section 3] on account of such refunded taxes.
15 The taxpayer shall report such refunded taxes in its return
16 for the taxable year in which the same are refunded. The tax
17 provided for in this section is due and payable on or before
18 the due date or the due date as extended by the department
19 of revenue, for filing the return.

20 NEW SECTION. Section 9. Receipt for property taxes
21 paid. Upon the request of a taxpayer the tax-collecting
22 officer of a county, city, or other political subdivision of
23 this state shall furnish an official receipt for personal
24 property taxes paid to him, setting forth a description of
25 such property, the assessed valuation thereof, the rate of

1 tax, the amount of taxes paid, and the beginning and ending
2 of the year for which the taxes are paid.

3 NEW SECTION. Section 10. License tax sections
4 incorporated by reference. The provisions of 15-31-111
5 through 15-31-116, 15-31-141 through 15-31-143, 15-31-301
6 through 15-31-313, and Title 15, chapter 31, part 5, are
7 incorporated by reference and apply to [sections 1 through
8 9], and wherever in those provisions the words "tax",
9 "license tax", "license fee", "corporation excise tax" or
10 like words appear, referring to the tax imposed in part 1 of
11 this chapter, there is substituted the phrase "franchise
12 tax" for purposes of [sections 1 through 9].

13 Section 11. Section 15-31-101, MCA, is amended to
14 read:

15 "15-31-101. Organizations subject to tax. (1) The term
16 "corporation" includes associations, joint-stock companies,
17 common-law trusts and business trusts which do business in
18 an organized capacity, and all other corporations whether
19 created, organized, or existing under and pursuant to the
20 laws, agreements, or declarations of trust of any state,
21 country, or the United States.

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

25 (3) Every corporation, except as hereinafter provided,

1 and except as provided in 33-2-705(6) and except financial
 2 institutions taxed under [sections 1 through 10], engaged in
 3 business in the state of Montana shall annually pay to the
 4 state treasurer as a license fee for the privilege of
 5 carrying on business in this state such percentage or
 6 percentages of its total net income for the preceding
 7 taxable year at the rate hereinafter set forth. In the case
 8 of corporations having income from business activity which
 9 is taxable both within and without this state, the license
 10 fee shall be measured by the net income derived from or
 11 attributable to Montana sources as determined under part 3.
 12 This tax is due and payable on the 15th day of the 5th month
 13 following the close of the taxable year of the corporation;
 14 however, the tax becomes a lien as provided in this chapter
 15 on the last day of the taxable year in which the income was
 16 earned and is for the privilege of carrying on business in
 17 this state for the taxable year in which the income was
 18 earned.

19 ~~{4}--Every bank organized under the laws of the state~~
 20 ~~of Montana, of any other state, or of the United States and~~
 21 ~~every savings and loan association organized under the laws~~
 22 ~~of this state or of the United States is subject to the~~
 23 ~~Montana corporation license tax provided for under this~~
 24 ~~chapter. Per taxable years beginning on and after January 17~~
 25 ~~1977, this subsection is effective in accordance with Public~~

1 ~~Law 91-156, section 2 (12-U.S.C.-548)-"~~

2 Section 12. Section 15-31-403, MCA, is amended to
 3 read:

4 "15-31-403. Rate of tax imposed -- income from sources
 5 within state defined -- alternative tax. (1) There is hereby
 6 imposed upon every corporation for each taxable year an
 7 income tax at the rate specified in 15-31-121 and 15-31-122
 8 upon its net income derived from sources within this state
 9 for taxable years beginning after December 31, 1970, other
 10 than income for any period for which the corporation is
 11 subject to taxation under part 1 of this chapter or under
 12 [sections 1 through 10], according to or measured by its net
 13 income.

14 (2) Income from sources within this state includes
 15 income from tangible or intangible property located in or
 16 having a situs in this state and income from any activities
 17 carried on in this state, regardless of whether carried on
 18 in intrastate, interstate, or foreign commerce, but does not
 19 include interest paid on loans held by out-of-state
 20 financial institutions recognized as such in the state of
 21 their domicile, secured by mortgages, trust indentures, or
 22 other security interests on real or personal property
 23 located within the state, if the loan is originated by a
 24 lender doing business in Montana and assigned out-of-state
 25 and there is no activity conducted by the out-of-state

1 lender in Montana except periodic inspection of the
2 security.

3 (3) Pursuant to Article III, section 2, of the
4 Multistate Tax Compact, any corporation required to file a
5 return under this part and whose only activity in Montana
6 consists of making sales and which does not own or rent real
7 estate or tangible personal property within Montana and
8 whose annual gross volume of sales made in Montana does not
9 exceed \$100,000 may elect to pay a tax of 1/2 of 1% of
10 gross sales made in Montana during the taxable year. Such
11 tax shall be in lieu of the tax otherwise imposed under this
12 section. The gross volume of sales made in Montana during
13 the taxable year shall be determined according to Article
14 IV, sections 16 and 17, of the Multistate Tax Compact."

15 Section 13. Section 15-31-701, MCA, is amended to
16 read:

17 "15-31-701. Department of revenue -- special duties
18 for transmitting ~~corporation-license~~ franchise tax revenues
19 collected from ~~banks--or--savings--and--loan--associations~~
20 financial institutions to counties. (1) Within 30 days after
21 receiving ~~corporation--license~~ franchise tax returns and
22 payments from ~~banks--or--savings--and--loan--associations~~
23 financial institutions, the department of revenue shall
24 transmit to the county treasurer of the county in which the
25 business is located the revenues calculated under

1 15-31-702(1)(b).

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

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

24 Section 14. Section 15-31-702, MCA, is amended to
25 read:

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

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

9 (b) 80% must be allocated to the various taxing
10 jurisdictions within the county in which the ~~bank-or-savings~~
11 ~~and-loan-association~~ financial institution is located.

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

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

25 (4) If a return filed by a ~~bank-or-savings-and-loan~~

1 association financial institution involves branches or
2 offices in more than one taxing jurisdiction, the department
3 of revenue shall provide a method by rule for equitable
4 distribution among those taxing jurisdictions."

5 NEW SECTION. Section 15. Extension of authority. Any
6 existing authority of the department of revenue to make
7 rules on the subject of the provisions of this act is
8 extended to the provisions of this act.

9 NEW SECTION. Section 16. Codification instruction.
10 Sections 1 through 10 are intended to be codified as an
11 integral part of Title 15, chapter 31.

12 NEW SECTION. Section 17. Coordination instruction. If
13 Senate Bill No. 455, repealing sections 15-31-701 through
14 15-31-703, MCA, is passed and approved, the following
15 section is enacted and is intended to be codified with
16 sections 1 through 10 as an integral part of Title 15,
17 chapter 31, and any reference in this act to "[sections 1
18 through 10]" or "[sections 1 through 9]" include the
19 following section and the code commissioner shall change
20 such internal references accordingly:

21 "Distribution of franchise tax proceeds. Proceeds of
22 the franchise tax imposed by [section 3] must be distributed
23 in the same manner as corporation license and income tax
24 proceeds."

25 NEW SECTION. Section 18. Effective date --

LC 1839/01

1 applicability. This act is effective January 1, 1986, and
2 applies to taxable years beginning after December 31, 1985.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN524-85

Form BD-15

In compliance with a written request received March 28, 19 85, there is hereby submitted a Fiscal Note for H.B. 948 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

An act imposing a franchise tax on financial institutions, based on net income at a rate calculated to equal but not exceed the corporate license and personal property taxes imposed on other corporations and organizations; allowing an offset for personal property taxes paid by a financial institution; and providing an effective date and applicability date.

ASSUMPTIONS

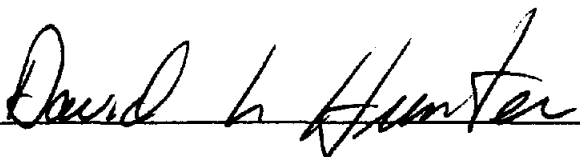
1. Total taxable value of personal property attributable to all corporations is \$248,944,595.
2. The weighted average mill levy is 191.965 mills.
3. Regular corporation license tax revenue was \$31,282,144 in FY1984.
4. Financial institutions corporation license tax was \$4,114,096 in FY1984.
5. The total taxable value of financial institutions personal property is \$15,927,080.

FISCAL IMPACT

Based on FY1984 data, financial institutions would have incurred an increased tax liability of approximately \$3,227,520 in FY1984 if the proposed legislation had been in effect. The impact on future fiscal years will depend, among other things, on the course of mill levies and the taxable value of regular corporation and financial institutions personal property.

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES

Revenue to local government would have been approximately \$2,582,016 higher had the proposed legislation been in effect in FY1984.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: March 29, 1985
HB 948