

SENATE BILL NO. 330

2/06 Introduced
2/06 Referred to Taxation
2/08 Fiscal Note Requested
2/14 Hearing
2/14 Fiscal Note Received
2/16 Hearing
3/11 Fiscal Note Requested
3/11 Committee Report-Bill Pass As Amended
3/14 Fiscal Note Received
3/18 2nd Reading Pass
3/20 3rd Reading pass

Transmitted to House

3/21 Referred to Taxation
3/25 Hearing
Died in Committee

1 *Manu* **SENATE** BILL NO. *330*

2 INTRODUCED BY *David HARR* *John* *McCallum* *John* *McCallum*

3 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE CERTAIN

4 INCOME DERIVED FROM SOURCES OUTSIDE THE UNITED STATES WHEN

5 ALLOCATING AND APPORTIONING INCOME FOR PURPOSES OF THE

6 CORPORATE LICENSE TAX; AMENDING SECTIONS 15-31-302 AND

7 15-31-312, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

9 Section 1. Section 15-31-302, MCA, is amended to read:

10 "15-31-302. Definitions. (1) "Business income" means

11 income arising from transactions and activity in the regular

12 course of the taxpayer's trade or business and includes

13 income from tangible and intangible property if the

14 acquisition, management, and disposition of the property

15 constitute integral parts of the taxpayer's regular trade or

16 business operations. The term does not include income

17 derived from sources outside the United States.

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

19 except:

20 (a) business income;

21 (b) rents and royalties from real or tangible personal

22 property, capital gains, interest, and fees received by a

23 domestic corporation from sources outside the United States

1 which were taxed in a foreign jurisdiction; and

2 (c) 85% of dividends received from sources outside the

3 United States to which no capital, management, research,

4 development, or other expenses may be attributed.

5 (3) "Commercial domicile" means the principal place

6 from which the trade or business of the taxpayer is directed

7 or managed.

8 (4) "Compensation" means wages, salaries, commissions,

9 and any other form of remuneration paid to employees for

10 personal services.

11 (5) "Sales" means all gross receipts of the taxpayer

12 not allocated under 15-31-304.

13 (6) "State" means any state of the United States, the

14 District of Columbia, the Commonwealth of Puerto Rico, any

15 territory or possession of the United States, and any

16 foreign country or any political subdivision thereof."

17 Section 2. Section 15-31-312, MCA, is amended to read:

18 "15-31-312. Apportionment formula -- relief

19 provisions. (1) If the allocation and apportionment

20 provisions of this part do not fairly represent the extent

21 of the taxpayer's business activity in this state, the

22 taxpayer may petition for or the tax administrator may

23 require, in respect to all or any part of the taxpayer's

24 business activity, if reasonable:

25 (a) separate accounting, provided the taxpayer's



1 activities in this state are separate and distinct from its
2 operations conducted outside this state and are not a part
3 of a unitary business operation conducted within and without
4 this state. For purposes of this part, a "unitary business"
5 is one in which the business conducted within the state is
6 dependent upon or contributory to the business conducted
7 outside this state or if the units of the business within
8 and without this state are closely allied and not capable of
9 separate maintenance as independent businesses.

10 ~~(2)(b)~~ the exclusions of any one or more of the
11 factors;

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

15 ~~(4)(d)~~ the employment of any other method to
16 effectuate an equitable allocation and apportionment of the
17 taxpayer's income.

18 (2) The term "business activity" as used in subsection
19 (1) does not include business activity conducted outside the
20 United States that results in income derived from sources
21 outside the United States."

22 NEW SECTION. Section 3. Applicability date. This act
23 applies to taxable years beginning after December 31, 1985.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 366-85

Form BD-15

In compliance with a written request received February 11, 19 85, there is hereby submitted a Fiscal Note for S.B. 330 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:

An act to exclude certain income derived from sources outside the United States when allocating and apportioning income for purposes of the corporate license tax.

ASSUMPTIONS:

- 1) Corporate license tax collections will be \$51.357M in FY 86 and \$55.308M in FY 87 (OBPP).
- 2) Corporate license tax collections from financial institutions will be \$5.686M and \$6.131M in FY 86 and FY 87 respectively.
- 3) The Department estimates that the proposal will reduce corporate tax collections by approximately \$10M annually.
- 4) The proposal will have no effect on tax liabilities of financial institutions.

FISCAL IMPACT:

	Under Current Law	FY 86 Under Proposed Law	Difference	Under Current Law	FY 87 Under Proposed Law	Difference
Corporate License Tax						
Regular	\$ 45,671,000	\$ 45,671,000	\$ -0-	\$ 49,249,000	\$ 39,249,000	\$(10,000,000)
Financial Institutions	5,686,000	5,686,000	-0-	6,131,000	6,131,000	-0-
Fund Information						
General Fund	\$ 29,957,248	\$ 29,957,248	-0-	32,304,128	25,904,128	(6,400,000)
Earmarked Special						
Revenue Fund	11,702,050	11,702,050	-0-	12,618,800	10,118,800	(2,500,000)
Capital Project Fund	5,148,902	5,148,902	-0-	5,552,272	4,452,272	(1,100,000)
Local Governments	4,548,800	4,548,800	-0-	4,904,800	4,904,800	-0-

Because of current funding for the foundation and capital projects, the general fund will lose \$10 million per year beginning in FY 87.

David L. Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 14, 1985

SB330

STATE OF MONTANA
FISCAL NOTE

AMENDED
REQUEST NO. FNN 366-85

Form BD-15

In compliance with a written request received March 11, 19 85, there is hereby submitted a Fiscal Note for Senate Bill 330 Amended 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:

An act to exclude Foreign Parent Corporations when allocating and apportioning income for purposes of the corporate license tax.

ASSUMPTIONS:

1. Corporate license tax collections under current law are \$55,380,000 in FY1987 (OBPP). (FY1986 revenues are not affected.)
2. Corporation license tax collections from financial institutions are \$6,131,000 in FY1987.
3. The impact of amended Senate Bill 330 is estimated to be minimal, with a total impact not exceeding a reduction of approximately \$100,000 annually.
4. Financial institution corporation license tax revenues are not affected.

FISCAL IMPACT:

	<u>Under Current Law</u>	<u>FY1987 Under Proposed Law</u>	<u>Difference</u>
Corporate License Tax			
Regular	49,249,000	49,149,000	(100,000)
Financial Institutions	<u>6,131,000</u>	<u>6,131,000</u>	<u>0</u>
TOTAL REVENUE	55,380,000	55,280,000	(100,000)
Fund Information			
General Fund	32,304,128	32,240,128	(64,000)
School Foundation Program	12,618,800	12,593,800	(25,000)
Debt Service	5,552,272	5,541,272	(11,000)
Local Governments	4,904,800	4,904,800	0

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: March 14, 1985

APPROVED BY COMMITTEE
ON TAXATION
AS AMENDED

SENATE BILL NO. 330

INTRODUCED BY GOODOVER, HARP, THAYER, H. HAMMOND,
BOYLAN, E. SMITH, HARDING, SWIFT, SEVERSON, GAGE, HIMSL,
HALLIGAN, HAGER, RAMIREZ, ABRAMS, MILLER, PHILLIPS,
CAMPBELL, O'HARA, PATTERSON, THOFT, JONES,
B. WILLIAMS, HAYNE, STEPHENS, TVEIT, ELLISON,
KOEHNKE, HANSON, SIMON, WALLIN, PETERSON,
MARKS, REHBERG, NATHE, BERGENE, ASAY,
JACK MOORE, PINSONEAULT, KEATING, MCCALLUM, PECK,
STORY, DEVLIN, DANIELS, O'CONNELL, MOHAR

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE CERTAIN
INCOME--DERIVED--FROM--SOURCES--OUTSIDE--THE--UNITED--STATES
FOREIGN PARENT CORPORATIONS WHEN ALLOCATING AND APPORTIONING
INCOME FOR PURPOSES OF THE CORPORATE LICENSE TAX; AMENDING
SECTIONS ~~15-31-302~~ 15-31-301, 15-31-305, AND 15-31-312, MCA;
AND PROVIDING AN APPLICABILITY DATE."

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

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. The term does not include income
derived from sources outside the United States.~~

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

~~(a) business income;~~

~~(b) rents and royalties from real or tangible personal
property, capital gains, interest, and fees received by a
domestic corporation from sources outside the United States
which were taxed in a foreign jurisdiction; and~~

~~(c) 85% of dividends received from sources outside the
United States to which no capital, management, research,
development, or other expenses may be attributed.~~

~~(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, any
territory or possession of the United States, and any
foreign country or any political subdivision thereof."~~



1 SECTION 1. SECTION 15-31-301, MCA, IS AMENDED TO READ:

2 "15-31-301. Corporations subject to allocation and
3 apportionment. (1) Any corporation having income from
4 business activity which is taxable both within and without
5 this state shall allocate and apportion its net income as
6 provided in this part.

7 (2) A corporation engaged in a unitary business within
8 and without Montana must apportion its business income as
9 provided for under 15-31-305. A business is unitary when the
10 operation of the business within the state is dependent upon
11 or contributory to the operation of the business outside the
12 state or if the units of the business within and without the
13 state are closely allied and not capable of separate
14 maintenance as independent businesses. In combining
15 corporations engaged in a unitary business within and
16 without Montana, the income, expenses, and activities of a
17 parent corporation, incorporated under the laws of a foreign
18 country, shall not be considered in calculating the tax.
19 However, to the extent such parent corporations are subject
20 to tax as separate corporate entities, such corporations
21 remain subject to tax as provided for in this chapter.

22 (3) A corporation not engaged in a unitary business
23 must allocate its business income by means of separate
24 accounting methods, provided its books and records are so
25 kept that the income and expenses attributable to business

1 operations within the state can be properly segregated from
2 total income and expense. If the corporation's books and
3 records do not permit such proper segregation, its business
4 income must be apportioned according to the provisions of
5 15-31-305."

6 SECTION 2. SECTION 15-31-305, MCA, IS AMENDED TO READ:

7 "15-31-305. Apportionment of business income. All
8 business income shall be apportioned to this state by
9 multiplying the income by a fraction, the numerator of which
10 is the property factor plus the payroll factor plus the
11 sales factor and the denominator of which is 3. Neither the
12 income nor the factors of a foreign parent corporation shall
13 be considered for purposes of these calculations unless such
14 corporation is subject to tax in this state as a separate
15 taxable entity."

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

17 "15-31-312. Apportionment formula -- relief
18 provisions. (1) If the allocation and apportionment
19 provisions of this part do not fairly represent the extent
20 of the taxpayer's business activity in this state, the
21 taxpayer may petition for or the tax administrator may
22 require, in respect to all or any part of the taxpayer's
23 business activity, if reasonable:

24 ~~††~~(a) separate accounting, provided the taxpayer's
25 activities in this state are separate and distinct from its

1 operations conducted outside this state and are not a part
 2 of a unitary business operation conducted within and without
 3 this state. For purposes of this part, a "unitary business"
 4 is one in which the business conducted within the state is
 5 dependent upon or contributory to the business conducted
 6 outside this state or if the units of the business within
 7 and without this state are closely allied and not capable of
 8 separate maintenance as independent businesses.

9 {2}(b) the exclusions of any one or more of the
 10 factors;

11 {3}(c) the inclusion of one or more additional factors
 12 which will fairly represent the taxpayer's business activity
 13 in this state; or

14 {4}(d) the employment of any other method to
 15 effectuate an equitable allocation and apportionment of the
 16 taxpayer's income.

17 (2) The term "business activity" as used in subsection
 18 (1) does not include business activity-conducted-outside-the
 19 United--States--that--results-in-income-derived-from-sources
 20 outside-the-United-States ACTIVITIES OF A FOREIGN PARENT
 21 CORPORATION UNLESS SUCH CORPORATION IS SUBJECT TO TAX IN
 22 MONTANA AS A SEPARATE ENTITY."

23 NEW SECTION. SECTION 4. EXTENSION OF AUTHORITY. ANY
 24 EXISTING AUTHORITY OF THE DEPARTMENT OF REVENUE TO MAKE
 25 RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT IS

1 EXTENDED TO THE PROVISIONS OF THIS ACT. RULEMAKING MAY BEGIN
 2 UPON PASSAGE AND APPROVAL.

3 NEW SECTION. Section 5. Applicability date. This act
 4 applies to taxable years beginning after December 31, 1985.

-End-

SENATE BILL NO. 330

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A BILL FOR AN ACT ENTITLED: "AN ACT TO EXCLUDE CERTAIN INCOME--DERIVED--FROM--SOURCES--OUTSIDE--THE--UNITED--STATES FOREIGN PARENT CORPORATIONS WHEN ALLOCATING AND APPORTIONING INCOME FOR PURPOSES OF THE CORPORATE LICENSE TAX; AMENDING SECTIONS 15-31-302, 15-31-301, 15-31-305, AND 15-31-312, MCA; AND PROVIDING AN APPLICABILITY DATE."

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constitute integral parts of the taxpayer's regular trade or business operations. The term does not include income derived from sources outside the United States.

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

(a) business income;

(b) rents and royalties from real or tangible personal property, capital gains, interest, and fees received by a domestic corporation from sources outside the United States which were taxed in a foreign jurisdiction; and

(c) 85% of dividends received from sources outside the United States to which no capital, management, research, development, or other expenses may be attributed;

(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, any territory or possession of the United States, and any foreign country or any political subdivision thereof."

THIRD READING



1 SECTION 1. SECTION 15-31-301, MCA, IS AMENDED TO READ:

2 "15-31-301. Corporations subject to allocation and
3 apportionment. (1) Any corporation having income from
4 business activity which is taxable both within and without
5 this state shall allocate and apportion its net income as
6 provided in this part.

7 (2) A corporation engaged in a unitary business within
8 and without Montana must apportion its business income as
9 provided for under 15-31-305. A business is unitary when the
10 operation of the business within the state is dependent upon
11 or contributory to the operation of the business outside the
12 state or if the units of the business within and without the
13 state are closely allied and not capable of separate
14 maintenance as independent businesses. In combining
15 corporations engaged in a unitary business within and
16 without Montana, the income, expenses, and activities of a
17 parent corporation, incorporated under the laws of a foreign
18 country, shall not be considered in calculating the tax.
19 However, to the extent such parent corporations are subject
20 to tax as separate corporate entities, such corporations
21 remain subject to tax as provided for in this chapter.

22 (3) A corporation not engaged in a unitary business
23 must allocate its business income by means of separate
24 accounting methods, provided its books and records are so
25 kept that the income and expenses attributable to business

1 operations within the state can be properly segregated from
2 total income and expense. If the corporation's books and
3 records do not permit such proper segregation, its business
4 income must be apportioned according to the provisions of
5 15-31-305."

6 SECTION 2. SECTION 15-31-305, MCA, IS AMENDED TO READ:

7 "15-31-305. Apportionment of business income. All
8 business income shall be apportioned to this state by
9 multiplying the income by a fraction, the numerator of which
10 is the property factor plus the payroll factor plus the
11 sales factor and the denominator of which is 3. Neither the
12 income nor the factors of a foreign parent corporation shall
13 be considered for purposes of these calculations unless such
14 corporation is subject to tax in this state as a separate
15 taxable entity."

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18 provisions. (1) If the allocation and apportionment
19 provisions of this part do not fairly represent the extent
20 of the taxpayer's business activity in this state, the
21 taxpayer may petition for or the tax administrator may
22 require, in respect to all or any part of the taxpayer's
23 business activity, if reasonable:

24 ††(a) separate accounting, provided the taxpayer's
25 activities in this state are separate and distinct from its

1 operations conducted outside this state and are not a part
 2 of a unitary business operation conducted within and without
 3 this state. For purposes of this part, a "unitary business"
 4 is one in which the business conducted within the state is
 5 dependent upon or contributory to the business conducted
 6 outside this state or if the units of the business within
 7 and without this state are closely allied and not capable of
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9 ~~+2+~~(b) the exclusions of any one or more of the
 10 factors;

11 ~~+3+~~(c) the inclusion of one or more additional factors
 12 which will fairly represent the taxpayer's business activity
 13 in this state; or

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 15 effectuate an equitable allocation and apportionment of the
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 2 UPON PASSAGE AND APPROVAL.

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 4 applies to taxable years beginning after December 31, 1985.

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