

SENATE BILL NO. 455

2/19 Introduced
2/20 Referred to Taxation
2/20 Fiscal Note Requested
2/25 Fiscal Note Received
3/06 Hearing
3/14 Committee Report-Bill Pass As Amended
3/18 2nd Reading Pass As Amended
3/20 3rd Reading Pass

Transmitted to House

3/21 Referred to Taxation
3/27 Hearing
3/30 Comm Report-Bill Concurred As Amended
4/03 2nd Reading Concurred As Amended
4/05 Fiscal Note Requested
4/08 Fiscal Note Received
4/17 Rereferred to Taxation
Died in Committee

1 *Senate* BILL NO. 455
 2 INTRODUCED BY *[Signature]*
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE
 6 DISTRIBUTION OF 80 PERCENT OF THE CORPORATION LICENSE AND
 7 INCOME TAXES COLLECTED FROM BANKS AND SAVINGS AND LOAN
 8 ASSOCIATIONS TO THE TAXING JURISDICTIONS IN THE COUNTY WHERE
 9 THE BANKS OR SAVINGS AND LOAN ASSOCIATIONS ARE LOCATED WITH
 10 A DISTRIBUTION OF A FLAT 8.86 PERCENT OF THE CORPORATION
 11 LICENSE AND INCOME TAXES TO BE DEPOSITED TO AND DISTRIBUTED
 12 BY THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM; REVISING THE
 13 CORPORATION LICENSE OR INCOME TAX BY PROVIDING THAT
 14 DEDUCTIONS ARE LIMITED TO THOSE SET FORTH IN SECTION
 15 15-31-114, MCA; PROVIDING FOR DEPRECIATION EXPENSES
 16 CALCULATED UNDER THE INTERNAL REVENUE CODE SECTION 168,
 17 ACCELERATED COST RECOVERY SYSTEM; PROVIDING THAT CERTAIN
 18 CORPORATIONS MAY FILE CONSOLIDATED RETURNS; PROVIDING FOR
 19 DISTRIBUTION OF COLLECTIONS FROM CONSOLIDATED RETURNS;
 20 AMENDING SECTIONS 7-6-302 THROUGH 7-6-304, 15-1-501,
 21 15-31-113, 15-31-114, 15-31-141, 17-5-408, AND 20-9-343,
 22 MCA; REPEALING SECTIONS 15-31-701 THROUGH 15-31-703, MCA;
 23 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
 24 APPLICABILITY DATE."
 25

1 WHEREAS, the Montana Supreme Court has developed a
 2 judicial doctrine that incorporates the deductions contained
 3 in the federal Internal Revenue Code into the definition of
 4 "net income" for Montana corporation license tax purposes;
 5 and
 6 WHEREAS, the Montana Legislature has enacted a
 7 definition of "net income" for purposes of the corporation
 8 license tax, and the effect of the judicial doctrine is to
 9 automatically include additional deductions as may be
 10 adopted by Congress without consideration or enactment by
 11 the Montana Legislature; and
 12 WHEREAS, the Montana Legislature should be allowed to
 13 enact deductions appropriate for Montana; and
 14 WHEREAS, the restrictions on filing consolidated tax
 15 returns without a deduction for dividends could place
 16 Montana corporations at a competitive disadvantage because
 17 corporations that operate both within and outside Montana
 18 are not subject to multiple taxation by Montana and can file
 19 combined tax returns pursuant to Title 15, chapter 31, part
 20 3, MCA.
 21 THEREFORE, one of the purposes of this act is to
 22 provide that only those deductions specifically set forth in
 23 Title 15, chapter 31, MCA, may be used in calculating "net
 24 income", and the deductions in the Internal Revenue Code do
 25 not apply unless specifically provided in Title 15, chapter



1 31, MCA. The Montana Legislature intends that Montana
2 corporations have the right to file consolidated tax returns
3 in order to avoid a competitive disadvantage with
4 corporations which do not operate exclusively in Montana.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 Section 1. Section 7-6-302, MCA, is amended to read:

8 "7-6-302. Local government block grant account created
9 -- source of funds. (1) There is a local government block
10 grant account within the state special revenue fund.

11 (2) Funds in this account must be used to provide
12 payments from the local government block grant program to
13 eligible jurisdictions.

14 (3) Thirty-three and one-third percent of the oil
15 severance tax collected under the provisions of 15-36-101,
16 8.86% of the corporation license and income taxes collected
17 under the provisions of Title 15, chapter 31, and all funds
18 appropriated to the account must be deposited in the
19 account."

20 Section 2. Section 7-6-303, MCA, is amended to read:

21 "7-6-303. Local government block grant program. (1)
22 The department of commerce shall administer the local
23 government block grant program and distribute funds from the
24 local government block grant account.

25 (2) The local government block grant program is

1 comprised of ~~three~~ four parts:

2 (a) a general purpose block grant for municipalities,
3 counties, school districts, and other jurisdictions;

4 (b) a grant for taxing jurisdictions consisting of
5 8.86% of the corporation license and income taxes;

6 ~~(b)(c)~~ a general services block grant for counties;
7 and

8 ~~(e)(d)~~ a general services block grant for
9 municipalities."

10 Section 3. Section 7-6-304, MCA, is amended to read:

11 "7-6-304. Division of block grant funds. The division
12 of funds within the local government block grant account is
13 as follows:

14 (1) Except as provided in 7-6-309(1) and subsection
15 (2), the general purpose block grant for municipalities,
16 counties, school districts, and other jurisdictions must be
17 funded, before any other distributions are made from the
18 account, in an amount sufficient to cover the reimbursements
19 required by 61-3-536.

20 (2) The portion of the block grant account consisting
21 of 8.86% of the corporation license and income taxes
22 collected under the provisions of Title 15, chapter 31, must
23 be distributed as provided in this subsection prior to
24 funding the general services block grants. The portion of
25 the account consisting of 8.86% of the corporation license

1 and income taxes must be allocated to all of the counties on
 2 a per capita basis. The counties shall allocate the amount
 3 received to each taxing jurisdiction in the county in the
 4 proportion that its mill levy for that fiscal year bears to
 5 the total mill levy of the taxing authorities of the county.

6 {2}(3) (a) The general services block grant for
 7 counties must be funded from a percentage of the remaining
 8 funds deposited in the account equal to the ratio of the
 9 unincorporated population to the state population.

10 (b) The general services block grant for
 11 municipalities must be funded from a percentage of the
 12 remaining funds deposited in the account equal to the ratio
 13 of the incorporated population to the total state
 14 population."

15 Section 4. Section 15-1-501, MCA, is amended to read:

16 "15-1-501. (Effective July 1, 1985--Applicable to tax
 17 years beginning after December 31, 1984) Disposition of
 18 moneys from certain designated license and other taxes. (1)
 19 The state treasurer shall deposit to the credit of the state
 20 general fund all moneys received by him from the collection
 21 of:

22 (a) automobile driver's license fees under subsections
 23 (1) through (6) of 61-5-111;

24 (b) electrical energy producer's license taxes under
 25 chapter 51;

1 (c) severance taxes allocated to the general fund
 2 under chapter 36;

3 (d) liquor license taxes under Title 16;

4 (e) telephone [company] license taxes under chapter
 5 53; and

6 (f) inheritance and estate taxes under Title 72,
 7 chapter 16.

8 (2) Seventy-five percent of all moneys received from
 9 the collection of income taxes under chapter 30 and 68.35%
 10 of all moneys received from the corporation license and
 11 income taxes under chapter 31,--except--as--provided--in
 12 15-31-7027, shall be deposited in the general fund subject to
 13 the prior pledge and appropriation of such income tax and
 14 corporation license tax collections for the payment of
 15 long-range building program bonds. An amount equal to 8.86%
 16 of all moneys received from the collection of corporation
 17 license and income taxes under chapter 31 shall be deposited
 18 into the local government block grant account within the
 19 state special revenue fund, subject to the prior pledge and
 20 appropriation of such corporation license tax collections
 21 for the payment of long-range building program bonds. The
 22 remaining 25% 22.79% of the proceeds of the corporation
 23 license tax,--excluding--that--allocated--to--the--counties--under
 24 15-31-7027, and the corporation income tax, and the remaining
 25 25% of the income tax shall be deposited to the credit of

1 the state special revenue fund for state equalization aid to
2 the public schools of Montana.

3 (3) The state treasurer shall also deposit to the
4 credit of the state general fund all moneys received by him
5 from the collection of license taxes, fees, and all net
6 revenues and receipts from all other sources under the
7 operation of the Montana Alcoholic Beverage Code.

8 (4) Thirty-three and one-third percent of the total
9 collections of the oil severance tax under chapter 36 shall
10 be deposited into the local government block grant account
11 within the state special revenue fund. After the
12 distribution provided for in 15-36-112, the remainder of the
13 oil severance tax collections shall be deposited in the
14 general fund."

15 Section 5. Section 15-31-113, MCA, is amended to read:

16 "15-31-113. Gross income and net income. (1) The term
17 "gross income" means all income recognized in determining
18 the corporation's gross income for federal income tax
19 purposes and:

20 (a) including:

21 (i) interest exempt from federal income tax;

22 (ii) the portion of gain from a liquidation of the
23 reporting corporation not recognized for federal corporate
24 income tax purposes pursuant to sections 331 through 337 of
25 the Internal Revenue Code (as those sections may be amended

1 or renumbered) attributable to stockholders, either
2 individual or corporate, not subject to Montana income or
3 license tax under Title 15, chapter 30 or chapter 31, as
4 appropriate, on the gain passing through to the stockholders
5 pursuant to federal law; and

6 (b) excluding gain recognized for federal tax purposes
7 as a shareholder of a liquidating corporation pursuant to
8 sections 331 through 337 of the Internal Revenue Code (as
9 those sections may be amended or renumbered) when the gain
10 is required to be recognized by the liquidating corporation
11 pursuant to subsection (1)(a)(ii) of this section.

12 (2) The term "net income" means the gross income of
13 the corporation less the only those deductions set forth in
14 15-31-114. It does not include any deductions allowed by the
15 Internal Revenue Code unless specifically provided for in
16 this chapter.

17 (3) No corporation is exempt from the corporation
18 license tax unless specifically provided for under
19 15-31-101(3) or 15-31-102. Any corporation not subject to or
20 liable for federal income tax but not exempt from the
21 corporation license tax under 15-31-101(3) or 15-31-102
22 shall compute gross income for corporation license tax
23 purposes in the same manner as a corporation that is subject
24 to or liable for federal income tax according to the
25 provisions for determining gross income in the federal

1 Internal Revenue Code in effect for the taxable year."

2 Section 6. Section 15-31-114, MCA, is amended to read:

3 "15-31-114. Deductions allowed in computing income. In
4 computing the net income, the following deductions shall be
5 allowed from the gross income received by such corporation
6 within the year from all sources:

7 (1) All the ordinary and necessary expenses paid or
8 incurred during the taxable year in the maintenance and
9 operation of its business and properties, including
10 reasonable allowance for salaries for personal services
11 actually rendered, subject to the limitation hereinafter
12 contained, rentals or other payments required to be made as
13 a condition to the continued use or possession of property
14 to which the corporation has not taken or is not taking
15 title or in which it has no equity. No deduction shall be
16 allowed for salaries paid upon which the recipient thereof
17 has not paid Montana state income tax; provided, however,
18 that where domestic corporations are taxed on income derived
19 from without the state, salaries of officers paid in
20 connection with securing such income shall be deductible.

21 (2) (a) All losses actually sustained and charged off
22 within the year and not compensated by insurance or
23 otherwise, including a reasonable allowance for the wear and
24 tear and obsolescence of property used in the trade or
25 business, such allowance to be determined according to the

1 provisions of section 167 or 168 of the Internal Revenue
2 Code in effect with respect to the taxable year. All
3 elections for depreciation shall be the same as the
4 elections made for federal income tax purposes. No deduction
5 shall be allowed for any amount paid out for any buildings,
6 permanent improvements, or betterments made to increase the
7 value of any property or estate, and no deduction shall be
8 made for any amount of expense of restoring property or
9 making good the exhaustion thereof for which an allowance is
10 or has been made.

11 (b) (i) There shall be allowed as a deduction for the
12 taxable period a net operating loss deduction determined
13 according to the provisions of this subsection. The net
14 operating loss deduction is the aggregate of net operating
15 loss carryovers to such taxable period plus the net
16 operating loss carrybacks to such taxable period. The term
17 "net operating loss" means the excess of the deductions
18 allowed by this section, 15-31-114, over the gross income,
19 with the modifications specified in (ii) of this subsection.
20 If for any taxable period beginning after December 31, 1970,
21 a net operating loss is sustained, such loss shall be a net
22 operating loss carryback to each of the three taxable
23 periods preceding the taxable period of such loss and shall
24 be a net operating loss carryover to each of the five
25 taxable periods following the taxable period of such loss. A

1 net operating loss for any taxable period ending after
 2 December 31, 1975, in addition to being a net operating loss
 3 carryback to each of the three preceding taxable periods,
 4 shall be a net operating loss carryover to each of the seven
 5 taxable periods following the taxable period of such loss.
 6 The portion of such loss which shall be carried to each of
 7 the other taxable years shall be the excess, if any, of the
 8 amount of such loss over the sum of the net income for each
 9 of the prior taxable periods to which such loss was carried.
 10 For purposes of the preceding sentence, the net income for
 11 such prior taxable period shall be computed with the
 12 modifications specified in (ii)(B) of this subsection and by
 13 determining the amount of the net operating loss deduction
 14 without regard to the net operating loss for the loss period
 15 or any taxable period thereafter, and the net income so
 16 computed shall not be considered to be less than zero.

17 (ii) The modifications referred to in (i) of this
 18 subsection shall be as follows:

19 (A) No net operating loss deduction shall be allowed.

20 (B) The deduction for depletion shall not exceed the
 21 amount which would be allowable if computed under the cost
 22 method.

23 (C) Any net operating loss carried over to any taxable
 24 years beginning after December 31, 1978, must be calculated
 25 under the provisions of this section effective for the

1 taxable year for which the return claiming the net operating
 2 loss carryover is filed.

3 (iii) A net operating loss deduction shall be allowed
 4 only with regard to losses attributable to the business
 5 carried on within the state of Montana.

6 (iv) In the case of a merger of corporations, the
 7 surviving corporation shall not be allowed a net operating
 8 loss deduction for net operating losses sustained by the
 9 merged corporations prior to the date of merger. In the case
 10 of a consolidation of corporations, the new corporate entity
 11 shall not be allowed a deduction for net operating losses
 12 sustained by the consolidated corporations prior to the date
 13 of consolidation.

14 (v) Notwithstanding the provisions of 15-31-531,
 15 interest shall not be paid with respect to a refund of tax
 16 resulting from a net operating loss carryback or carryover.

17 (vi) The net operating loss deduction shall not be
 18 allowed with respect to taxable periods which ended on or
 19 before December 31, 1970, but shall be allowed only with
 20 respect to taxable periods beginning on or after January 1,
 21 1971.

22 (3) In the case of mines, other natural deposits, oil
 23 and gas wells, and timber, a reasonable allowance for
 24 depletion and for depreciation of improvements; such
 25 reasonable allowance to be determined according to the

1 provisions of the Internal Revenue Code in effect for the
2 taxable year. All elections made under the Internal Revenue
3 Code with respect to capitalizing or expensing exploration
4 and development costs and intangible drilling expenses for
5 corporation license tax purposes shall be the same as the
6 elections made for federal income tax purposes.

7 (4) The amount of interest paid within the year on its
8 indebtedness incurred in the operation of the business from
9 which its income is derived; but no interest shall be
10 allowed as a deduction if paid on an indebtedness created
11 for the purchase, maintenance, or improvement of property or
12 for the conduct of business unless the income from such
13 property or business would be taxable under this part.

14 (5) (a) Taxes paid within the year, except the
15 following:

- 16 (i) Taxes imposed by this part.
- 17 (ii) Taxes assessed against local benefits of a kind
18 tending to increase the value of the property assessed.
- 19 (iii) Taxes on or according to or measured by net
20 income or profits imposed by authority of the government of
21 the United States.
- 22 (iv) Taxes imposed by any other state or country upon
23 or measured by net income or profits.

24 (b) Taxes deductible under this part shall be
25 construed to include taxes imposed by any county, school

1 district, or municipality of this state.

2 (6) Light vehicle license fees, as provided by
3 61-3-532, paid within the year.

4 (7) That portion of an energy-related investment
5 allowed as a deduction under 15-32-103.

6 (8) (a) Except as provided in subsection (b),
7 charitable contributions and gifts that qualify for
8 deduction under section 170 of the Internal Revenue Code, as
9 amended.

10 (b) The public service commission shall not allow in
11 the rate base of a regulated corporation the inclusion of
12 contributions made under this subsection.

13 (9) In lieu of the deduction allowed under subsection
14 (8), the taxpayer may deduct the fair market value, not to
15 exceed 30% of the taxpayer's net income, of a computer or
16 other sophisticated technological equipment or apparatus
17 intended for use with the computer donated to an elementary,
18 secondary, or accredited postsecondary school located in
19 Montana if:

20 (a) the contribution is made no later than 5 years
21 after the manufacture of the donated property is
22 substantially completed;

23 (b) the property is not transferred by the donee in
24 exchange for money, other property, or services; and

25 (c) the taxpayer receives a written statement from the

1 donee in which the donee agrees to accept the property and
 2 representing that the use and disposition of the property
 3 will be in accordance with the provisions of (b) of this
 4 subsection (9)."

5 Section 7. Section 15-31-141, MCA, is amended to read:

6 "15-31-141. Consolidated returns -- computation and
 7 procedure ~~---prohibition--on--financial--institutions.~~ (1)
 8 Corporations which are affiliated may not file a
 9 consolidated return unless if the following conditions are
 10 met:

11 (a) at least 80% of all classes of stock of each
 12 corporation involved is owned directly or indirectly by one
 13 or more members of the affiliated group;

14 (b) all members of the affiliated group are qualified
 15 to do business in Montana; and

16 (c) all members of the affiliated group operate
 17 exclusively within Montana.

18 ~~{2}--Corporations--may--not--file--a--consolidated--return~~
 19 ~~unless--the--operation--of--the--affiliated--group--constitutes--a~~
 20 ~~unitary--business--and--permission--to--file--a--consolidated~~
 21 ~~return--is--given--by--the--department--of--revenue--For--purposes~~
 22 ~~of--this--section,--a--"unitary--business--operation"--means--one--in~~
 23 ~~which--the--business--operations--conducted--by--the--corporations~~
 24 ~~in--the--affiliated--group--are--interrelated--or--interdependent~~
 25 ~~to--the--extent--that--the--net--income--of--one--corporation--cannot~~

1 ~~reasonably--be--determined--without--reference--to--the--operations~~
 2 ~~conducted--by--the--other--corporations.~~

3 ~~{3}{2}~~ If the conditions of subsections subsection (1)
 4 ~~and--{2}--of--this--section~~ are met, the department may require
 5 corporations to file a consolidated return when the
 6 department considers a consolidated return necessary.

7 ~~{4}{3}~~ Any corporation liable to report under this
 8 chapter and owning or controlling, either directly or
 9 indirectly, at least 80% of all classes of stock of each
 10 corporation involved may be required to make a consolidated
 11 report showing the combined net income, such assets of the
 12 corporation as are required for the purposes of this
 13 chapter, and such other information as the department may
 14 require, but excluding intercorporate stockholdings and
 15 intercorporate accounts. Any corporation liable to report
 16 under this chapter and owned or controlled, either directly
 17 or indirectly, by another corporation may be required to
 18 make a report consolidated with the owning company, showing
 19 the combined net income, such assets of the corporation as
 20 are required for the purposes of this chapter, and such
 21 other information as the department ~~may require,~~ but
 22 excluding intercorporate stockholdings and intercorporate
 23 accounts. In case it shall appear to the department that any
 24 arrangement exists in such a manner as to improperly reflect
 25 the business done, the segregable assets, or the entire net

1 income earned from business done in this state, the
2 department is authorized and empowered to equitably adjust
3 the tax in such manner as it may determine.

4 ~~{5}--(a)--A--majority--of--the--corporation--license--tax~~
5 ~~collected--from--financial--institutions--is--paid--to--local~~
6 ~~government--areas--in--which--each--financial--institution--is~~
7 ~~located;--However;--consolidated--returns--for--financial~~
8 ~~institutions--do--not--reflect--the--true--tax--attributable--to~~
9 ~~each--local--government;--In--addition;--consolidated--returns~~
10 ~~would--permit--financial--institutions--to--offset--income--against~~
11 ~~losses--of--nonfinancial--institutions;--thereby--distorting--the~~
12 ~~true--income--of--each--financial--organization;--~~

13 ~~{b)--in--accordance--with--subsection--(5)(a);--financial~~
14 ~~institutions--are--prohibited--from--filing--consolidated--returns~~
15 ~~under--this--section;--"~~

16 Section 8. Section 17-5-408, MCA, is amended to read:
17 "17-5-408. Percentage of income, corporation license,
18 and cigarette tax pledged. (1) The state pledges and
19 appropriates and directs to be credited as received to the
20 debt service account 11% of all money, ~~except as provided in~~
21 ~~15-31-702; received from the collection of the income tax~~
22 ~~referred to in 15-1-501 and 10.02% of all money received~~
23 ~~from the collection of the corporation license tax referred~~
24 ~~to in 15-1-501 and such additional amount of said taxes, if~~
25 any, as may at any time be needed to comply with the

1 principal and interest and reserve requirements stated in
2 17-5-405(4), provided that no more than 11% of such the
3 income tax collections or 10.02% of the corporation license
4 tax collections shall be deemed to be pledged for the
5 purpose of 17-5-403(2). The pledge and appropriation herein
6 made shall be and remain at all times a first and prior
7 charge upon all money received from the collection of said
8 taxes.

9 (2) The state pledges and appropriates and directs to
10 be credited to the debt service account 79.75% of all money
11 received from the collection of the 16-cent excise tax on
12 cigarettes which is levied, imposed, and assessed by
13 16-11-111. The state also pledges and appropriates and
14 directs to be credited as received to the debt service
15 account all money received from the collection of the taxes
16 on other tobacco products which are or may hereafter be
17 levied, imposed, and assessed by law for that purpose,
18 including the tax levied, imposed, and assessed by
19 16-11-202. Nothing herein shall impair or otherwise affect
20 the provisions and covenants contained in the resolutions
21 authorizing the presently outstanding long-range building
22 program bonds. Subject to the provisions of the preceding
23 sentence, the pledge and appropriation herein made shall be
24 and remain at all times a first and prior charge upon all
25 money received from the collection of all taxes referred to

1 in this subsection (2)."

2 Section 9. Section 20-9-343, MCA, is amended to read:

3 "20-9-343. Definition of and revenue for state
4 equalization aid. (1) As used in this title, the term "state
5 equalization aid" means those moneys deposited in the state
6 special revenue fund as required in this section plus any
7 legislative appropriation of moneys from other sources for
8 distribution to the public schools for the purpose of
9 equalization of the foundation program.

10 (2) The legislative appropriation for state
11 equalization aid shall be made in a single sum for the
12 biennium. The superintendent of public instruction has
13 authority to spend such appropriation, together with the
14 earmarked revenues provided in subsection (3), as required
15 for foundation program purposes throughout the biennium.

16 (3) The following shall be paid into the state special
17 revenue fund for state equalization aid to public schools of
18 the state:

19 (a) 25% of all moneys received from the collection of
20 income taxes under chapter 30 of Title 15;

21 (b) ~~25%~~ 22.79% of all moneys, ~~except as provided in~~
22 ~~§5-31-702,~~ received from the collection of corporation
23 license taxes under chapter 31 of Title 15, as provided by
24 15-1-501;

25 (c) 10% of the moneys received from the collection of

1 the severance tax on coal under chapter 35 of Title 15;

2 (d) 62 1/2% of the moneys received from the treasurer
3 of the United States as the state's shares of oil, gas, and
4 other mineral royalties under the federal Mineral Lands
5 Leasing Act, as amended;

6 (e) interest and income moneys described in 20-9-341
7 and 20-9-342;

8 (f) income from the local impact and education trust
9 fund account; and

10 (g) in addition to these revenues, the surplus
11 revenues collected by the counties for foundation program
12 support according to 20-9-331 and 20-9-333 shall be paid
13 into the same state special revenue fund.

14 (4) Any surplus revenue in the state equalization aid
15 account in the second year of a biennium may be used to
16 reduce the appropriation required for the next succeeding
17 biennium [or may be transferred to the state permissive
18 account if revenues in that fund are insufficient to meet
19 the state's permissive amount obligation]."

20 NEW SECTION. Section 10. Extension of authority. Any
21 existing authority of the department of revenue or the
22 department of commerce to make rules on the subject of the
23 provisions of this act is extended to the provisions of this
24 act.

25 NEW SECTION. Section 11. Intent of amendment. The

1 1983 Montana Code Annotated contains two versions of
2 15-1-501. One is a temporary version, and the other is
3 effective July 1, 1985. Section 15-1-501(2) of both versions
4 contains the same language. It is intended that the
5 amendment to 15-1-501 contained in section 4 of this act
6 amend both versions.

7 NEW SECTION. Section 12. Repealer. Sections 15-31-701
8 through 15-31-703, MCA, are repealed.

9 NEW SECTION. Section 13. Applicability date. This act
10 is applicable to taxable years beginning on or after January
11 1, 1985.

12 NEW SECTION. Section 14. Effective date. This act is
13 effective on passage and approval.

-End-

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN 487-85

Form BD-15

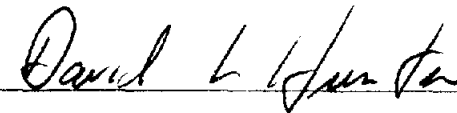
In compliance with a written request received February 20, 19 85, there is hereby submitted a Fiscal Note for S.B. 455 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act replacing the distribution of 80 percent of the corporation license and income taxes collected from banks and savings and loan associations to the taxing jurisdictions in the county where the banks or savings and loan associations are located with a distribution of a flat 8.86 percent of the corporation license and income taxes to be deposited to and distributed by the local government block grant program; revising the corporation license or income tax by providing that deductions are limited to those set forth in Section 15-31-114, MCA; providing for depreciation expenses calculated under the Internal Revenue Code Section 168, accelerated cost recovery system; providing that certain corporations may file consolidated returns; providing for distribution of collections from consolidated returns; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. Corporate license tax collections from financial institutions will be \$5.686 million in FY 86 and \$6.131 million in FY 87 (OBPP).
2. Total corporate license tax collections will be \$51.357 million and \$55.308 million in FY 86 and FY 87, respectively (OBPP).
3. Based on corporate audit experience, it is estimated that the elimination of Section 243, 244, and 245 deductions of the Internal Revenue Code will increase corporate tax collections by approximately \$2.5 million per year.
4. Allowing domestic corporations to file consolidated returns will reduce collections by approximately \$500,000 per year.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 25, 1985

FISCAL IMPACT:

| | <u>Under</u> <u>Current Law</u> | <u>FY 86</u> <u>Under</u> <u>Proposed Law</u> | <u>Estimated</u> <u>Increase</u> | <u>Under</u> <u>Current Law</u> | <u>FY 87</u> <u>Under</u> <u>Proposed Law</u> | <u>Increase</u> |
|-----------------------------|------------------------------------|---|-------------------------------------|------------------------------------|---|-----------------|
| Effect on Revenue: | | | | | | |
| Corporate License Tax | \$51,357,000 | \$53,357,000 | \$2,000,000 | \$55,380,000 | \$57,380,000 | \$2,000,000 |
| Fund Information: | | | | | | |
| General Fund | 29,957,120 | 31,123,138 | 1,166,018 | 32,304,000 | 33,469,754 | 1,165,754 |
| Earmarked Special | | | | | | |
| Revenue Account | 11,702,000 | 12,160,060 | 458,060 | 12,618,750 | 13,076,902 | 458,152 |
| Debt Service Account | 5,148,880 | 5,346,372 | 197,492 | 5,552,250 | 5,749,476 | 197,226 |
| Local Governments | 4,549,000 | -0- | (4,549,000) | 4,905,000 | -0- | (4,905,000) |
| Local Government | | | | | | |
| Block Grant Account | -0- | 4,727,430 | 4,727,430 | -0- | 5,083,868 | 5,083,868 |
| Net Local Government Impact | | | 178,430 | | | 178,868 |

TECHNICAL NOTE:

Section 14 of the bill states that this act is effective on passage and approval. This will require the Department of Revenue to immediately distribute additional FY 85 corporation tax revenues based on the new distribution. This will mean that the local government block grant account will receive funds in FY 85 that will need to be distributed by June 30, 1985. An effective date of July 1, 1985 would alleviate the dual distribution process in FY 85.

STATE OF MONTANA
FISCAL NOTE

REQUEST NO. FNN487-85 (Amended)

Form BD-15

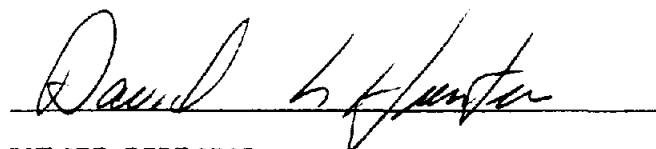
In compliance with a written request received April 4, 19 85, there is hereby submitted a Fiscal Note for S.B. 455 (Amended) pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

An act replacing the distribution of 80 percent of the corporation license and income taxes collected from banks and savings and loan associations to the taxing jurisdictions in the county where the banks or savings and loan associations are located with a distribution of a flat 8.86 percent of the corporation license and income taxes to be deposited to and distributed by the local government block grant program; revising the corporation license or income tax by providing that deductions are limited to those set forth in Section 15-31-114, MCA; providing for depreciation expenses calculated under the Internal Revenue Code Section 168, accelerated cost recovery system; providing that certain corporations may file consolidated returns; providing for distribution of collections from consolidated returns; and providing an immediate effective date and an applicability date.

FISCAL IMPACT

The proposal as amended will generate approximately \$300,000 of additional revenue by taxing portfolio type dividends, but will also create revenue losses by allowing additional consolidated returns. The number of consolidations is unknown, but we estimate that the \$300,000 gain will be offset. Thus, the bill as amended has no impact.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: April 8, 1985

REVISED F.N. SB 455

APPROVED BY COMMITTEE
ON TAXATION

1 SENATE BILL NO. 455
2 INTRODUCED BY TOWE
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE
6 DISTRIBUTION OF 80 PERCENT OF THE CORPORATION LICENSE AND
7 INCOME TAXES COLLECTED FROM BANKS AND SAVINGS AND LOAN
8 ASSOCIATIONS TO THE TAXING JURISDICTIONS IN THE COUNTY WHERE
9 THE BANKS OR SAVINGS AND LOAN ASSOCIATIONS ARE LOCATED WITH
10 A DISTRIBUTION OF A FLAT 8.86 PERCENT OF THE CORPORATION
11 LICENSE AND INCOME TAXES TO BE DEPOSITED TO AND DISTRIBUTED
12 BY THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM; PROVIDING FOR A
13 DIFFERENT DISTRIBUTION FORMULA FOR FISCAL YEARS 1986 AND
14 1987 TO INSURE THAT NO COUNTY RECEIVES LESS THAN 90 PERCENT
15 OF THE AMOUNT DISTRIBUTED TO IT IN 1983 AND 1984; REVISING
16 THE CORPORATION LICENSE OR INCOME TAX BY PROVIDING THAT
17 DEDUCTIONS ARE LIMITED TO THOSE SET FORTH IN SECTION
18 15-31-114, MCA, AND THOSE DEDUCTIONS PROVIDED FOR IN THE
19 INTERNAL REVENUE CODE, EXCEPT FOR CERTAIN DEDUCTIONS FOR
20 DIVIDENDS; PROVIDING FOR DEPRECIATION EXPENSES CALCULATED
21 UNDER THE INTERNAL REVENUE CODE SECTION 168, ACCELERATED
22 COST RECOVERY SYSTEM; PROVIDING THAT CERTAIN CORPORATIONS
23 MAY FILE CONSOLIDATED RETURNS; PROVIDING FOR DISTRIBUTION OF
24 COLLECTIONS FROM CONSOLIDATED RETURNS; AMENDING SECTIONS
25 7-6-302 THROUGH 7-6-304, 15-1-501, 15-31-113, 15-31-114,

1 15-31-141, 17-5-408, AND 20-9-343, MCA; REPEALING SECTIONS
2 15-31-701 THROUGH 15-31-703, MCA; AND PROVIDING AN IMMEDIATE
3 EFFECTIVE DATE AND AN APPLICABILITY DATE."
4

5 WHEREAS, the Montana Supreme Court has developed a
6 judicial doctrine that incorporates the deductions contained
7 in the federal Internal Revenue Code into the definition of
8 "net income" for Montana corporation license tax purposes;
9 and

10 WHEREAS, the Montana Legislature has enacted a
11 definition of "net income" for purposes of the corporation
12 license tax, and the effect of the judicial doctrine is to
13 automatically include additional deductions as may be
14 adopted by Congress without consideration or enactment by
15 the Montana Legislature; and

16 WHEREAS, the Montana Legislature should be allowed to
17 enact deductions appropriate for Montana; and

18 WHEREAS, the restrictions on filing consolidated tax
19 returns without a deduction for dividends could place
20 Montana corporations at a competitive disadvantage because
21 corporations that operate both within and outside Montana
22 are not subject to multiple taxation by Montana and can file
23 combined tax returns pursuant to Title 15, chapter 31, part
24 3, MCA.

25 THEREFORE, one of the purposes of this act is to

SECOND READING
SB 455

1 provide that only those deductions specifically set forth in
 2 Title 15, chapter 31, MCA, AND THOSE DEDUCTIONS PROVIDED FOR
 3 IN THE INTERNAL REVENUE CODE, EXCEPT FOR CERTAIN DEDUCTIONS
 4 FOR DIVIDENDS, may be used in calculating "net income"--and
 5 ~~the deductions in the internal revenue code do not apply~~
 6 ~~unless specifically provided in Title 15, chapter 31, MCA.~~
 7 The Montana Legislature intends that Montana corporations
 8 have the right to file consolidated tax returns in order to
 9 avoid a competitive disadvantage with corporations which do
 10 not operate exclusively in Montana.

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

13 Section 1. Section 7-6-302, MCA, is amended to read:

14 "7-6-302. Local government block grant account created
 15 -- source of funds. (1) There is a local government block
 16 grant account within the state special revenue fund.

17 (2) Funds in this account must be used to provide
 18 payments from the local government block grant program to
 19 eligible jurisdictions.

20 (3) Thirty-three and one-third percent of the oil
 21 severance tax collected under the provisions of 15-36-101,
 22 8.86% of the corporation license and income taxes collected
 23 under the provisions of Title 15, chapter 31, and all funds
 24 appropriated to the account must be deposited in the
 25 account."

1 Section 2. Section 7-6-303, MCA, is amended to read:

2 "7-6-303. Local government block grant program. (1)

3 The department of commerce shall administer the local
 4 government block grant program and distribute funds from the
 5 local government block grant account.

6 (2) The local government block grant program is
 7 comprised of ~~three~~ four parts:

8 (a) a general purpose block grant for municipalities,
 9 counties, school districts, and other jurisdictions;

10 (b) a grant for taxing jurisdictions consisting of
 11 8.86% of the corporation license and income taxes;

12 ~~(b)(c)~~ a general services block grant for counties;
 13 and

14 ~~(c)(d)~~ a general services block grant for
 15 municipalities."

16 Section 3. Section 7-6-304, MCA, is amended to read:

17 "7-6-304. Division of block grant funds. The division
 18 of funds within the local government block grant account is
 19 as follows:

20 (1) Except as provided in 7-6-309(1) and subsection
 21 (2), the general purpose block grant for municipalities,
 22 counties, school districts, and other jurisdictions must be
 23 funded, before any other distributions are made from the
 24 account, in an amount sufficient to cover the reimbursements
 25 required by 61-3-536.

1 (2) The portion of the block grant account consisting
 2 of 8.86% of the corporation license and income taxes
 3 collected under the provisions of Title 15, chapter 31, must
 4 be distributed as provided in this subsection prior to
 5 funding the general services block grants. The portion of
 6 the account consisting of 8.86% of the corporation license
 7 and income taxes must be allocated to all of the counties on
 8 a per capita basis. HOWEVER, FOR FISCAL YEARS 1986 AND 1987,
 9 NO COUNTY SHALL RECEIVE LESS THAN 90% OF THE AVERAGE ANNUAL
 10 AMOUNT OF CORPORATION LICENSE AND INCOME TAXES RECEIVED BY
 11 SUCH COUNTY FOR THE FISCAL YEARS 1983 AND 1984 FROM
 12 DISTRIBUTION PURSUANT TO 15-31-702. IF PER CAPITA
 13 DISTRIBUTION WOULD RESULT IN A COUNTY RECEIVING LESS THAN
 14 SUCH GUARANTEED 90%, THE PER CAPITA DISTRIBUTION OF 8.86%
 15 SHALL BE ADJUSTED ACCORDINGLY SO THAT NO COUNTY RECEIVES
 16 LESS THAN ITS GUARANTEED 90% FOR FISCAL YEARS 1986 AND 1987,
 17 PROVIDED SUFFICIENT REVENUES EXIST. THIS ADJUSTMENT SHALL
 18 BE MADE BY THE DEPARTMENT TO PRESERVE A PROPORTIONATE, PER
 19 CAPITA DISTRIBUTION AMONG THOSE COUNTIES RECEIVING MORE THAN
 20 THEIR 90% GUARANTEED AMOUNT. THE ADJUSTMENT SHALL ALSO NOT
 21 RESULT IN DISTRIBUTING MORE THAN 8.86% OF CORPORATION
 22 LICENSE AND INCOME TAXES TO ALL COUNTIES. The counties shall
 23 allocate the amount received to each taxing jurisdiction in
 24 the county in the proportion that its mill levy for that
 25 fiscal year bears to the total mill levy of the taxing

1 authorities of the county.

2 ~~(2)~~(3) (a) The general services block grant for
 3 counties must be funded from a percentage of the remaining
 4 funds deposited in the account equal to the ratio of the
 5 unincorporated population to the state population.

6 (b) The general services block grant for
 7 municipalities must be funded from a percentage of the
 8 remaining funds deposited in the account equal to the ratio
 9 of the incorporated population to the total state
 10 population."

11 Section 4. Section 15-1-501, MCA, is amended to read:

12 "15-1-501. (Effective July 1, 1985--Applicable to tax
 13 years beginning after December 31, 1984) Disposition of
 14 moneys from certain designated license and other taxes. (1)
 15 The state treasurer shall deposit to the credit of the state
 16 general fund all moneys received by him from the collection
 17 of:

18 (a) automobile driver's license fees under subsections
 19 (1) through (6) of 61-5-111;

20 (b) electrical energy producer's license taxes under
 21 chapter 51;

22 (c) severance taxes allocated to the general fund
 23 under chapter 36;

24 (d) liquor license taxes under Title 16;

25 (e) telephone [company] license taxes under chapter

1 53; and

2 (f) inheritance and estate taxes under Title 72,
3 chapter 16.

4 (2) Seventy-five percent of all moneys received from
5 the collection of income taxes under chapter 30 and 68.35%
6 of all moneys received from the corporation license and
7 income taxes under chapter 31~~7--except--as--provided--in~~
8 ~~15-31-702~~, shall be deposited in the general fund subject to
9 the prior pledge and appropriation of such income tax and
10 corporation license tax collections for the payment of
11 long-range building program bonds. An amount equal to 8.85%
12 of all moneys received from the collection of corporation
13 license and income taxes under chapter 31 shall be deposited
14 into the local government block grant account within the
15 state special revenue fund, subject to the prior pledge and
16 appropriation of such corporation license tax collections
17 for the payment of long-range building program bonds. The
18 remaining ~~25%~~ 22.79% of the proceeds of the corporation
19 license tax~~7--excluding-that-allocated-to-the-counties-under~~
20 ~~15-31-702~~, and the corporation income tax, and the remaining
21 25% of the income tax shall be deposited to the credit of
22 the state special revenue fund for state equalization aid to
23 the public schools of Montana.

24 (3) The state treasurer shall also deposit to the
25 credit of the state general fund all moneys received by him

1 from the collection of license taxes, fees, and all net
2 revenues and receipts from all other sources under the
3 operation of the Montana Alcoholic Beverage Code.

4 (4) Thirty-three and one-third percent of the total
5 collections of the oil severance tax under chapter 36 shall
6 be deposited into the local government block grant account
7 within the state special revenue fund. After the
8 distribution provided for in 15-36-112, the remainder of the
9 oil severance tax collections shall be deposited in the
10 general fund."

11 Section 5. Section 15-31-113, MCA, is amended to read:

12 "15-31-113. Gross income and net income. (1) The term
13 "gross income" means all income recognized in determining
14 the corporation's gross income for federal income tax
15 purposes and:

16 (a) including:

17 (i) interest exempt from federal income tax;

18 (ii) the portion of gain from a liquidation of the
19 reporting corporation not recognized for federal corporate
20 income tax purposes pursuant to sections 331 through 337 of
21 the Internal Revenue Code (as those sections may be amended
22 or renumbered) attributable to stockholders, either
23 individual or corporate, not subject to Montana income or
24 license tax under Title 15, chapter 30 or chapter 31, as
25 appropriate, on the gain passing through to the stockholders

1 pursuant to federal law; and

2 (b) excluding gain recognized for federal tax purposes
3 as a shareholder of a liquidating corporation pursuant to
4 sections 331 through 337 of the Internal Revenue Code (as
5 those sections may be amended or renumbered) when the gain
6 is required to be recognized by the liquidating corporation
7 pursuant to subsection (1)(a)(ii) of this section.

8 (2) The term "net income" means the gross income of
9 the corporation less the only those deductions set forth in
10 15-31-114: ~~it does not include any deductions allowed by the~~
11 ~~Internal Revenue Code unless specifically provided for in~~
12 ~~this chapter; AND THOSE DEDUCTIONS PROVIDED FOR IN THE~~
13 ~~INTERNAL REVENUE CODE, EXCEPT FOR THE SPECIAL DIVIDEND~~
14 ~~DEDUCTIONS PROVIDED FOR BY SECTIONS 243 A(1) AND (3), 244,~~
15 ~~AND 245 OF THE INTERNAL REVENUE CODE (OR AS THOSE SECTIONS~~
16 ~~MAY BE AMENDED OR RENUMBERED) WHICH ARE SPECIFICALLY DENIED~~
17 ~~AS DEDUCTIONS. THOSE DEDUCTIONS IN 15-31-114 THAT REFERENCE~~
18 ~~THE INTERNAL REVENUE CODE SHALL USE THE INTERNAL REVENUE~~
19 ~~CODE IN EFFECT FOR THE TAXABLE YEAR.~~

20 (3) No corporation is exempt from the corporation
21 license tax unless specifically provided for under
22 15-31-101(3) or 15-31-102. Any corporation not subject to or
23 liable for federal income tax but not exempt from the
24 corporation license tax under 15-31-101(3) or 15-31-102
25 shall compute gross income for corporation license tax

1 purposes in the same manner as a corporation that is subject
2 to or liable for federal income tax according to the
3 provisions for determining gross income in the federal
4 Internal Revenue Code in effect for the taxable year."

5 Section 6. Section 15-31-114, MCA, is amended to read:

6 "15-31-114. Deductions allowed in computing income. In
7 computing the net income, the following deductions shall be
8 allowed from the gross income received by such corporation
9 within the year from all sources:

10 (1) All the ordinary and necessary expenses paid or
11 incurred during the taxable year in the maintenance and
12 operation of its business and properties, including
13 reasonable allowance for salaries for personal services
14 actually rendered, subject to the limitation hereinafter
15 contained, rentals or other payments required to be made as
16 a condition to the continued use or possession of property
17 to which the corporation has not taken or is not taking
18 title or in which it has no equity. No deduction shall be
19 allowed for salaries paid upon which the recipient thereof
20 has not paid Montana state income tax; provided, however,
21 that where domestic corporations are taxed on income derived
22 from without the state, salaries of officers paid in
23 connection with securing such income shall be deductible.

24 (2) (a) All losses actually sustained and charged off
25 within the year and not compensated by insurance or

1 otherwise, including a reasonable allowance for the wear and
 2 tear and obsolescence of property used in the trade or
 3 business, such allowance to be determined according to the
 4 provisions of section 167 or 168 of the Internal Revenue
 5 Code in effect with respect to the taxable year. All
 6 elections for depreciation shall be the same as the
 7 elections made for federal income tax purposes. No deduction
 8 shall be allowed for any amount paid out for any buildings,
 9 permanent improvements, or betterments made to increase the
 10 value of any property or estate, and no deduction shall be
 11 made for any amount of expense of restoring property or
 12 making good the exhaustion thereof for which an allowance is
 13 or has been made.

14 (b) (i) There shall be allowed as a deduction for the
 15 taxable period a net operating loss deduction determined
 16 according to the provisions of this subsection. The net
 17 operating loss deduction is the aggregate of net operating
 18 loss carryovers to such taxable period plus the net
 19 operating loss carrybacks to such taxable period. The term
 20 "net operating loss" means the excess of the deductions
 21 allowed by this section, 15-31-114, over the gross income,
 22 with the modifications specified in (ii) of this subsection.
 23 If for any taxable period beginning after December 31, 1970,
 24 a net operating loss is sustained, such loss shall be a net
 25 operating loss carryback to each of the three taxable

1 periods preceding the taxable period of such loss and shall
 2 be a net operating loss carryover to each of the five
 3 taxable periods following the taxable period of such loss. A
 4 net operating loss for any taxable period ending after
 5 December 31, 1975, in addition to being a net operating loss
 6 carryback to each of the three preceding taxable periods,
 7 shall be a net operating loss carryover to each of the seven
 8 taxable periods following the taxable period of such loss.
 9 The portion of such loss which shall be carried to each of
 10 the other taxable years shall be the excess, if any, of the
 11 amount of such loss over the sum of the net income for each
 12 of the prior taxable periods to which such loss was carried.
 13 For purposes of the preceding sentence, the net income for
 14 such prior taxable period shall be computed with the
 15 modifications specified in (ii)(B) of this subsection and by
 16 determining the amount of the net operating loss deduction
 17 without regard to the net operating loss for the loss period
 18 or any taxable period thereafter, and the net income so
 19 computed shall not be considered to be less than zero.

20 (ii) The modifications referred to in (i) of this
 21 subsection shall be as follows:

22 (A) No net operating loss deduction shall be allowed.

23 (B) The deduction for depletion shall not exceed the
 24 amount which would be allowable if computed under the cost
 25 method.

1 (C) Any net operating loss carried over to any taxable
2 years beginning after December 31, 1978, must be calculated
3 under the provisions of this section effective for the
4 taxable year for which the return claiming the net operating
5 loss carryover is filed.

6 (iii) A net operating loss deduction shall be allowed
7 only with regard to losses attributable to the business
8 carried on within the state of Montana.

9 (iv) In the case of a merger of corporations, the
10 surviving corporation shall not be allowed a net operating
11 loss deduction for net operating losses sustained by the
12 merged corporations prior to the date of merger. In the case
13 of a consolidation of corporations, the new corporate entity
14 shall not be allowed a deduction for net operating losses
15 sustained by the consolidated corporations prior to the date
16 of consolidation.

17 (v) Notwithstanding the provisions of 15-31-531,
18 interest shall not be paid with respect to a refund of tax
19 resulting from a net operating loss carryback or carryover.

20 (vi) The net operating loss deduction shall not be
21 allowed with respect to taxable periods which ended on or
22 before December 31, 1970, but shall be allowed only with
23 respect to taxable periods beginning on or after January 1,
24 1971.

25 (3) In the case of mines, other natural deposits, oil

1 and gas wells, and timber, a reasonable allowance for
2 depletion and for depreciation of improvements; such
3 reasonable allowance to be determined according to the
4 provisions of the Internal Revenue Code in effect for the
5 taxable year. All elections made under the Internal Revenue
6 Code with respect to capitalizing or expensing exploration
7 and development costs and intangible drilling expenses for
8 corporation license tax purposes shall be the same as the
9 elections made for federal income tax purposes.

10 (4) The amount of interest paid within the year on its
11 indebtedness incurred in the operation of the business from
12 which its income is derived; but no interest shall be
13 allowed as a deduction if paid on an indebtedness created
14 for the purchase, maintenance, or improvement of property or
15 for the conduct of business unless the income from such
16 property or business would be taxable under this part.

17 (5) (a) Taxes paid within the year, except the
18 following:

19 (i) Taxes imposed by this part.

20 (ii) Taxes assessed against local benefits of a kind
21 tending to increase the value of the property assessed.

22 (iii) Taxes on or according to or measured by net
23 income or profits imposed by authority of the government of
24 the United States.

25 (iv) Taxes imposed by any other state or country upon

1 or measured by net income or profits.

2 (b) Taxes deductible under this part shall be
3 construed to include taxes imposed by any county, school
4 district, or municipality of this state.

5 (6) Light vehicle license fees, as provided by
6 61-3-532, paid within the year.

7 (7) That portion of an energy-related investment
8 allowed as a deduction under 15-32-103.

9 (8) (a) Except as provided in subsection (b),
10 charitable contributions and gifts that qualify for
11 deduction under section 170 of the Internal Revenue Code, as
12 amended.

13 (b) The public service commission shall not allow in
14 the rate base of a regulated corporation the inclusion of
15 contributions made under this subsection.

16 (9) In lieu of the deduction allowed under subsection
17 (8), the taxpayer may deduct the fair market value, not to
18 exceed 30% of the taxpayer's net income, of a computer or
19 other sophisticated technological equipment or apparatus
20 intended for use with the computer donated to an elementary,
21 secondary, or accredited postsecondary school located in
22 Montana if:

23 (a) the contribution is made no later than 5 years
24 after the manufacture of the donated property is
25 substantially completed;

1 (b) the property is not transferred by the donee in
2 exchange for money, other property, or services; and

3 (c) the taxpayer receives a written statement from the
4 donee in which the donee agrees to accept the property and
5 representing that the use and disposition of the property
6 will be in accordance with the provisions of (b) of this
7 subsection (9)."

8 Section 7. Section 15-31-141, MCA, is amended to read:

9 "15-31-141. Consolidated returns -- computation and
10 procedure ~~---prohibition---on---financial---institutions.~~ (1)
11 Corporations which are affiliated may not file a
12 consolidated return unless if the following conditions are
13 met:

14 (a) at least 80% of all classes of stock of each
15 corporation involved is owned directly or indirectly by one
16 or more members of the affiliated group;

17 (b) all members of the affiliated group are qualified
18 to do business in Montana; and

19 (c) all members of the affiliated group operate
20 exclusively within Montana.

21 ~~{2}--Corporations may not file--a--consolidated--return~~
22 ~~unless--the--operation--of--the--affiliated--group--constitutes--a~~
23 ~~unitary--business--and--permission--to--file--a--consolidated~~
24 ~~return--is--given--by--the--department--of--revenue.--For--purposes~~
25 ~~of--this--section,--a--"unitary--business--operation"--means--one--in~~

1 ~~which the business operations conducted by the corporations~~
 2 ~~in the affiliated group are interrelated or interdependent~~
 3 ~~to the extent that the net income of one corporation cannot~~
 4 ~~reasonably be determined without reference to the operations~~
 5 ~~conducted by the other corporations:~~

6 ~~{3}{2}~~ If the conditions of subsections subsection (1)
 7 ~~and {2} of this section~~ are met, the department may require
 8 corporations to file a consolidated return when the
 9 department considers a consolidated return necessary.

10 ~~{4}{3}~~ Any corporation liable to report under this
 11 chapter and owning or controlling, either directly or
 12 indirectly, at least 80% of all classes of stock of each
 13 corporation involved may be required to make a consolidated
 14 report showing the combined net income, such assets of the
 15 corporation as are required for the purposes of this
 16 chapter, and such other information as the department may
 17 require, but excluding intercorporate stockholdings and
 18 intercorporate accounts. Any corporation liable to report
 19 under this chapter and owned or controlled, either directly
 20 or indirectly, by another corporation may be required to
 21 make a report consolidated with the owning company, showing
 22 the combined net income, such assets of the corporation as
 23 are required for the purposes of this chapter, and such
 24 other information as the department may require, but
 25 excluding intercorporate stockholdings and intercorporate

1 accounts. In case it shall appear to the department that any
 2 arrangement exists in such a manner as to improperly reflect
 3 the business done, the segregable assets, or the entire net
 4 income earned from business done in this state, the
 5 department is authorized and empowered to equitably adjust
 6 the tax in such manner as it may determine.

7 ~~{5}{a}~~ A majority of the corporation license tax
 8 collected from financial institutions is paid to local
 9 government areas in which each financial institution is
 10 located. However, consolidated returns for financial
 11 institutions do not reflect the true tax attributable to
 12 each local government. In addition, consolidated returns
 13 would permit financial institutions to offset income against
 14 losses of nonfinancial institutions, thereby distorting the
 15 true income of each financial organization.

16 ~~{b}~~ In accordance with subsection {5}{a}, financial
 17 institutions are prohibited from filing consolidated returns
 18 under this section."

19 Section 8. Section 17-5-408, MCA, is amended to read:
 20 "17-5-408. Percentage of income, corporation license,
 21 and cigarette tax pledged. (1) The state pledges and
 22 appropriates and directs to be credited as received to the
 23 debt service account 11% of all money, except as provided in
 24 15-31-702, received from the collection of the income tax
 25 referred to in 15-1-501 and 10.02% of all money received

1 from the collection of the corporation license tax referred
 2 to in 15-1-501 and such additional amount of said taxes, if
 3 any, as may at any time be needed to comply with the
 4 principal and interest and reserve requirements stated in
 5 17-5-405(4), provided that no more than 11% of such the
 6 income tax collections or 10.02% of the corporation license
 7 tax collections shall be deemed to be pledged for the
 8 purpose of 17-5-403(2). The pledge and appropriation herein
 9 made shall be and remain at all times a first and prior
 10 charge upon all money received from the collection of said
 11 taxes.

12 (2) The state pledges and appropriates and directs to
 13 be credited to the debt service account 79.75% of all money
 14 received from the collection of the 16-cent excise tax on
 15 cigarettes which is levied, imposed, and assessed by
 16 16-11-111. The state also pledges and appropriates and
 17 directs to be credited as received to the debt service
 18 account all money received from the collection of the taxes
 19 on other tobacco products which are or may hereafter be
 20 levied, imposed, and assessed by law for that purpose,
 21 including the tax levied, imposed, and assessed by
 22 16-11-202. Nothing herein shall impair or otherwise affect
 23 the provisions and covenants contained in the resolutions
 24 authorizing the presently outstanding long-range building
 25 program bonds. Subject to the provisions of the preceding

1 sentence, the pledge and appropriation herein made shall be
 2 and remain at all times a first and prior charge upon all
 3 money received from the collection of all taxes referred to
 4 in this subsection (2)."

5 Section 9. Section 20-9-343, MCA, is amended to read:
 6 "20-9-343. Definition of and revenue for state
 7 equalization aid. (1) As used in this title, the term "state
 8 equalization aid" means those moneys deposited in the state
 9 special revenue fund as required in this section plus any
 10 legislative appropriation of moneys from other sources for
 11 distribution to the public schools for the purpose of
 12 equalization of the foundation program.

13 (2) The legislative appropriation for state
 14 equalization aid shall be made in a single sum for the
 15 biennium. The superintendent of public instruction has
 16 authority to spend such appropriation, together with the
 17 earmarked revenues provided in subsection (3), as required
 18 for foundation program purposes throughout the biennium.

19 (3) The following shall be paid into the state special
 20 revenue fund for state equalization aid to public schools of
 21 the state:

22 (a) 25% of all moneys received from the collection of
 23 income taxes under chapter 30 of Title 15;

24 (b) 25% 22.79% of all moneys, ~~except as provided in~~
 25 ~~15-31-702~~, received from the collection of corporation

1 license taxes under chapter 31 of Title 15, as provided by
2 15-1-501;

3 (c) 10% of the moneys received from the collection of
4 the severance tax on coal under chapter 35 of Title 15;

5 (d) 62 1/2% of the moneys received from the treasurer
6 of the United States as the state's shares of oil, gas, and
7 other mineral royalties under the federal Mineral Lands
8 Leasing Act, as amended;

9 (e) interest and income moneys described in 20-9-341
10 and 20-9-342;

11 (f) income from the local impact and education trust
12 fund account; and

13 (g) in addition to these revenues, the surplus
14 revenues collected by the counties for foundation program
15 support according to 20-9-331 and 20-9-333 shall be paid
16 into the same state special revenue fund.

17 (4) Any surplus revenue in the state equalization aid
18 account in the second year of a biennium may be used to
19 reduce the appropriation required for the next succeeding
20 biennium [or may be transferred to the state permissive
21 account if revenues in that fund are insufficient to meet
22 the state's permissive amount obligation]."

23 NEW SECTION. Section 10. Extension of authority. Any
24 existing authority of the department of revenue or the
25 department of commerce to make rules on the subject of the

1 provisions of this act is extended to the provisions of this
2 act.

3 NEW SECTION. Section 11. Intent of amendment. The
4 1983 Montana Code Annotated contains two versions of
5 15-1-501. One is a temporary version, and the other is
6 effective July 1, 1985. Section 15-1-501(2) of both versions
7 contains the same language. It is intended that the
8 amendment to 15-1-501 contained in section 4 of this act
9 amend both versions.

10 NEW SECTION. Section 12. Repealer. Sections 15-31-701
11 through 15-31-703, MCA, are repealed.

12 NEW SECTION. Section 13. Applicability date. This act
13 is applicable to taxable years beginning on or after January
14 1, 1985.

15 NEW SECTION. Section 14. Effective date. This act is
16 effective ~~on-passage-and-approval~~ JULY 1, 1985.

-End-

1 SENATE BILL NO. 455

2 INTRODUCED BY TOWE

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE
6 DISTRIBUTION OF 80 PERCENT OF THE CORPORATION LICENSE AND
7 INCOME TAXES COLLECTED FROM BANKS AND SAVINGS AND LOAN
8 ASSOCIATIONS TO THE TAXING JURISDICTIONS IN THE COUNTY WHERE
9 THE BANKS OR SAVINGS AND LOAN ASSOCIATIONS ARE LOCATED WITH
10 A DISTRIBUTION OF A FLAT 8.86 PERCENT OF THE CORPORATION
11 LICENSE AND INCOME TAXES TO BE DEPOSITED TO AND DISTRIBUTED
12 BY THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM; PROVIDING FOR A
13 DIFFERENT DISTRIBUTION FORMULA FOR FISCAL YEARS 1986 AND
14 1987 TO INSURE THAT NO COUNTY RECEIVES LESS THAN 90 PERCENT
15 OF THE AMOUNT DISTRIBUTED TO IT IN 1983 AND 1984; REVISING
16 THE CORPORATION LICENSE OR INCOME TAX BY PROVIDING THAT
17 DEDUCTIONS ARE LIMITED TO THOSE SET FORTH IN SECTION
18 15-31-114, MCA, AND THOSE DEDUCTIONS PROVIDED FOR IN THE
19 INTERNAL REVENUE CODE, EXCEPT FOR CERTAIN DEDUCTIONS FOR
20 DIVIDENDS; PROVIDING FOR DEPRECIATION EXPENSES CALCULATED
21 UNDER THE INTERNAL REVENUE CODE SECTION 168, ACCELERATED
22 COST RECOVERY SYSTEM; PROVIDING THAT CERTAIN CORPORATIONS
23 MAY FILE CONSOLIDATED RETURNS; PROVIDING FOR DISTRIBUTION OF
24 COLLECTIONS FROM CONSOLIDATED RETURNS; AMENDING SECTIONS
25 7-6-302 THROUGH 7-6-304, 15-1-501, 15-31-113, 15-31-114,

1 15-31-141, 17-5-408, AND 20-9-343, MCA; REPEALING SECTIONS
2 15-31-701 THROUGH 15-31-703, MCA; AND PROVIDING AN IMMEDIATE
3 EFFECTIVE DATE AND AN APPLICABILITY DATE."

4

5 WHEREAS, the Montana Supreme Court has developed a
6 judicial doctrine that incorporates the deductions contained
7 in the federal Internal Revenue Code into the definition of
8 "net income" for Montana corporation license tax purposes;
9 and

10 WHEREAS, the Montana Legislature has enacted a
11 definition of "net income" for purposes of the corporation
12 license tax, and the effect of the judicial doctrine is to
13 automatically include additional deductions as may be
14 adopted by Congress without consideration or enactment by
15 the Montana Legislature; and

16 WHEREAS, the Montana Legislature should be allowed to
17 enact deductions appropriate for Montana; and

18 WHEREAS, the restrictions on filing consolidated tax
19 returns without a deduction for dividends could place
20 Montana corporations at a competitive disadvantage because
21 corporations that operate both within and outside Montana
22 are not subject to multiple taxation by Montana and can file
23 combined tax returns pursuant to Title 15, chapter 31, part
24 3, MCA.

25 THEREFORE, one of the purposes of this act is to

1 provide that only those deductions specifically set forth in
 2 Title 15, chapter 31, MCA, AND THOSE DEDUCTIONS PROVIDED FOR
 3 IN THE INTERNAL REVENUE CODE, EXCEPT FOR CERTAIN DEDUCTIONS
 4 FOR DIVIDENDS, may be used in calculating "net income",--and
 5 ~~the deductions in the internal revenue code do not apply~~
 6 ~~unless specifically provided in title 15, chapter 31, MCA.~~
 7 The Montana Legislature intends that Montana corporations
 8 have the right to file consolidated tax returns in order to
 9 avoid a competitive disadvantage with corporations which do
 10 not operate exclusively in Montana.

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

13 Section 1. Section 7-6-302, MCA, is amended to read:

14 "7-6-302. Local government block grant account created
 15 -- source of funds. (1) There is a local government block
 16 grant account within the state special revenue fund.

17 (2) Funds in this account must be used to provide
 18 payments from the local government block grant program to
 19 eligible jurisdictions.

20 (3) Thirty-three and one-third percent of the oil
 21 severance tax collected under the provisions of 15-36-101,
 22 8.86% of the corporation license and income taxes collected
 23 under the provisions of Title 15, chapter 31, and all funds
 24 appropriated to the account must be deposited in the
 25 account."

1 Section 2. Section 7-6-303, MCA, is amended to read:

2 "7-6-303. Local government block grant program. (1)
 3 The department of commerce shall administer the local
 4 government block grant program and distribute funds from the
 5 local government block grant account.

6 (2) The local government block grant program is
 7 comprised of three four parts:

8 (a) a general purpose block grant for municipalities,
 9 counties, school districts, and other jurisdictions;

10 (b) a grant for taxing jurisdictions consisting of
 11 8.86% of the corporation license and income taxes;

12 ~~(b)(c)~~ a general services block grant for counties;
 13 and

14 ~~(c)(d)~~ a general services block grant for
 15 municipalities."

16 Section 3. Section 7-6-304, MCA, is amended to read:

17 "7-6-304. Division of block grant funds. The division
 18 of funds within the local government block grant account is
 19 as follows:

20 (1) Except as provided in 7-6-309(1) and subsection
 21 (2), the general purpose block grant for municipalities,
 22 counties, school districts, and other jurisdictions must be
 23 funded, before any other distributions are made from the
 24 account, in an amount sufficient to cover the reimbursements
 25 required by 61-3-536.

1 (2) The portion of the block grant account consisting
 2 of 8.86% of the corporation license and income taxes
 3 collected under the provisions of Title 15, chapter 31, must
 4 be distributed as provided in this subsection prior to
 5 funding the general services block grants. The portion of
 6 the account consisting of 8.86% of the corporation license
 7 and income taxes must be allocated to all of the counties on
 8 a per capita basis. HOWEVER, FOR FISCAL YEARS 1986 AND 1987,
 9 NO COUNTY SHALL RECEIVE LESS THAN 90% OF THE AVERAGE ANNUAL
 10 AMOUNT OF CORPORATION LICENSE AND INCOME TAXES RECEIVED BY
 11 SUCH COUNTY FOR THE FISCAL YEARS 1983 AND 1984 FROM
 12 DISTRIBUTION PURSUANT TO 15-31-702. IF PER CAPITA
 13 DISTRIBUTION WOULD RESULT IN A COUNTY RECEIVING LESS THAN
 14 SUCH GUARANTEED 90%, THE PER CAPITA DISTRIBUTION OF 8.86%
 15 SHALL BE ADJUSTED ACCORDINGLY SO THAT NO COUNTY RECEIVES
 16 LESS THAN ITS GUARANTEED 90% FOR FISCAL YEARS 1986 AND 1987,
 17 PROVIDED SUFFICIENT REVENUES EXIST. THIS ADJUSTMENT SHALL
 18 BE MADE BY THE DEPARTMENT TO PRESERVE A PROPORTIONATE, PER
 19 CAPITA DISTRIBUTION AMONG THOSE COUNTIES RECEIVING MORE THAN
 20 THEIR 90% GUARANTEED AMOUNT. THE ADJUSTMENT SHALL ALSO NOT
 21 RESULT IN DISTRIBUTING MORE THAN 8.86% OF CORPORATION
 22 LICENSE AND INCOME TAXES TO ALL COUNTIES. The counties shall
 23 allocate the amount received to each taxing jurisdiction in
 24 the county in the proportion that its mill levy for that
 25 fiscal year bears to the total mill levy of the taxing

1 authorities of the county.

2 ~~(2)~~(3) (a) The general services block grant for
 3 counties must be funded from a percentage of the remaining
 4 funds deposited in the account equal to the ratio of the
 5 unincorporated population to the state population.

6 (b) The general services block grant for
 7 municipalities must be funded from a percentage of the
 8 remaining funds deposited in the account equal to the ratio
 9 of the incorporated population to the total state
 10 population."

11 Section 4. Section 15-1-501, MCA, is amended to read:
 12 "15-1-501. (Effective July 1, 1985--Applicable to tax
 13 years beginning after December 31, 1984) Disposition of
 14 moneys from certain designated license and other taxes. (1)
 15 The state treasurer shall deposit to the credit of the state
 16 general fund all moneys received by him from the collection
 17 of:

18 (a) automobile driver's license fees under subsections
 19 (1) through (6) of 61-5-111;

20 (b) electrical energy producer's license taxes under
 21 chapter 51;

22 (c) severance taxes allocated to the general fund
 23 under chapter 36;

24 (d) liquor license taxes under Title 16;

25 (e) telephone [company] license taxes under chapter

1 53; and

2 (5) inheritance and estate taxes under Title 72,

3 chapter 16.

4 (2) ~~Seventy-five percent of all moneys received from~~

5 ~~the collection of income taxes under chapters 30 and 31, 35%~~

6 ~~of all moneys received from the corporation license and~~

7 ~~income taxes under chapter 31--except as provided in~~

8 ~~15-31-702, shall be deposited in the general fund subject to~~

9 ~~the prior pledge and appropriation of such income tax and~~

10 ~~corporation license tax collections for the payment of~~

11 ~~long-range building program bonds. An amount equal to 8.86%~~

12 ~~of all moneys received from the collection of corporation~~

13 ~~license and income taxes under chapter 31 shall be deposited~~

14 ~~into the local government block grant account within the~~

15 ~~state special revenue fund, subject to the prior pledge and~~

16 ~~appropriation of such corporation license tax collections~~

17 ~~for the payment of long-range building program bonds. The~~

18 ~~remaining 25% 22.79% of the proceeds of the corporation~~

19 ~~license tax--excluding that allocated to the counties under~~

20 ~~15-31-702, and the corporation income tax and the remaining~~

21 ~~25% of the income tax shall be deposited to the credit of~~

22 ~~the state special revenue fund for state equalization aid to~~

23 ~~the public schools of Montana.~~

24 (3) The state treasurer shall also deposit to the

25 credit of the state general fund all moneys received by him

1 from the collection of license taxes, fees, and all net

2 revenues and receipts from all other sources under the

3 operation of the Montana Alcoholic Beverage Code.

4 (4) Thirty-three and one-third percent of the total

5 collections of the oil severance tax under chapter 36 shall

6 be deposited into the local government block grant account

7 within the state special revenue fund. After the

8 distribution provided for in 15-36-112, the remainder of the

9 oil severance tax collections shall be deposited in the

10 general fund."

11 Section 5. Section 15-31-113, MCA, is amended to read:

12 "15-31-113. Gross income and net income. (1) The term

13 "gross income" means all income recognized in determining

14 the corporation's gross income for federal income tax

15 purposes and:

16 (a) including:

17 (i) interest exempt from federal income tax;

18 (ii) the portion of gain from a liquidation of the

19 reporting corporation not recognized for federal corporate

20 income tax purposes pursuant to sections 331 through 337 of

21 the Internal Revenue Code (as those sections may be amended

22 or renumbered); attributable to stockholders, either

23 individual or corporate, not subject to Montana income or

24 license tax under Title 15, chapter 38 or chapter 31, as

25 appropriate, or the gain passing through to the stockholders.

1 pursuant to federal law; and

2 (b) excluding gain recognized for federal tax purposes
3 as a shareholder of a liquidating corporation pursuant to
4 sections 331 through 337 of the Internal Revenue Code (as
5 those sections may be amended or renumbered) when the gain
6 is required to be recognized by the liquidating corporation
7 pursuant to subsection (1)(a)(ii) of this section.

8 (2) The term "net income" means the gross income of
9 the corporation less the only those deductions set forth in
10 15-31-114. It does not include any deductions allowed by the
11 Internal Revenue Code unless specifically provided for in
12 this chapter. AND THOSE DEDUCTIONS PROVIDED FOR IN THE
13 INTERNAL REVENUE CODE, EXCEPT FOR THE SPECIAL DIVIDEND
14 DEDUCTIONS PROVIDED FOR BY SECTIONS 243 A(1) AND (3), 244,
15 AND 245 OF THE INTERNAL REVENUE CODE (OR AS THOSE SECTIONS
16 MAY BE AMENDED OR RENUMBERED) OR ANY OTHER DEDUCTION FOR
17 DIVIDENDS, WHETHER PAID OR RECEIVED, AS PROVIDED BY THE
18 INTERNAL REVENUE CODE, WHICH ARE SPECIFICALLY DENIED AS
19 DEDUCTIONS. THOSE DEDUCTIONS IN 15-31-114 THAT REFERENCE THE
20 INTERNAL REVENUE CODE SHALL USE THE INTERNAL REVENUE CODE IN
21 EFFECT FOR THE TAXABLE YEAR.

22 (3) No corporation is exempt from the corporation
23 license tax unless specifically provided for under
24 15-31-101(3) or 15-31-102. Any corporation not subject to or
25 liable for federal income tax but not exempt from the

1 corporation license tax under 15-31-101(3) or 15-31-102
2 shall compute gross income for corporation license tax
3 purposes in the same manner as a corporation that is subject
4 to or liable for federal income tax according to the
5 provisions for determining gross income in the federal
6 Internal Revenue Code in effect for the taxable year."

7 Section 6. Section 15-31-114, MCA, is amended to read:

8 "15-31-114. Deductions allowed in computing income. In
9 computing the net income, the following deductions shall be
10 allowed from the gross income received by such corporation
11 within the year from all sources:

12 (1) All the ordinary and necessary expenses paid or
13 incurred during the taxable year in the maintenance and
14 operation of its business and properties, including
15 reasonable allowance for salaries for personal services
16 actually rendered, subject to the limitation hereinafter
17 contained, rentals or other payments required to be made as
18 a condition to the continued use or possession of property
19 to which the corporation has not taken or is not taking
20 title or in which it has no equity. No deduction shall be
21 allowed for salaries paid upon which the recipient thereof
22 has not paid Montana state income tax; provided, however,
23 that where domestic corporations are taxed on income derived
24 from without the state, salaries of officers paid in
25 connection with securing such income shall be deductible.

11 (2) (a) All losses actually sustained and charged off
 12 within the year and not compensated by insurance or
 13 otherwise, including a reasonable allowance for the wear and
 14 tear and obsolescence of property used in the trade or
 15 business, such allowance to be determined according to the
 16 provisions of section 167 or 158 of the Internal Revenue
 17 Code in effect with respect to the taxable year. All
 18 elections for depreciation shall be the same as the
 19 elections made for federal income tax purposes. No deduction
 20 shall be allowed for any amount paid out for any buildings,
 21 permanent improvements, or betterments made to increase the
 22 value of any property or estate, and no deduction shall be
 23 made for any amount of expense of restoring property or
 24 making good the exhaustion thereof for which an allowance is
 25 or has been made.

26 (b) (i) There shall be allowed as a deduction for the
 27 taxable period a net operating loss deduction determined
 28 according to the provisions of this subsection. The net
 29 operating loss deduction is the aggregate of net operating
 30 loss carryovers to such taxable period plus the net
 31 operating loss carryback to such taxable period. The term
 32 "net operating loss" means the excess of the deduction
 33 allowed by this section, 15-11-114, over the gross income,
 34 with the modifications specified in (ii) of this subsection.
 35 If for any taxable period beginning after December 31, 1970,

11 a net operating loss is sustained, such loss shall be a net
 12 operating loss carryback to each of the three taxable
 13 periods preceding the taxable period of such loss and shall
 14 be a net operating loss carryover to each of the five
 15 taxable periods following the taxable period of such loss. A
 16 net operating loss for any taxable period ending after
 17 December 31, 1975, in addition to being a net operating loss
 18 carryback to each of the three preceding taxable periods,
 19 shall be a net operating loss carryover to each of the seven
 20 taxable periods following the taxable period of such loss.
 21 The portion of such loss which shall be carried to each of
 22 the other taxable years shall be the excess, if any, of the
 23 amount of such loss over the sum of the net income for each
 24 of the prior taxable periods to which such loss was carried.
 25 For purposes of the preceding sentence, the net income for
 26 each prior taxable period shall be computed with the
 27 modifications specified in (ii)(B) of this subsection and by
 28 determining the amount of the net operating loss deduction
 29 without regard to the net operating loss for the loss period
 30 or any taxable period thereafter, and the net income so
 31 computed shall not be considered to be less than zero.

32 (ii) The modifications referred to in (i) of this
 33 subsection shall be as follows:

- 34 (A) No net operating loss deduction shall be allowed.
- 35 (B) The deduction for depletion shall not exceed the

1 amount which would be allowable if computed under the cost
2 method.

3 (C) Any net operating loss carried over to any taxable
4 years beginning after December 31, 1978, must be calculated
5 under the provisions of this section effective for the
6 taxable year for which the return claiming the net operating
7 loss carryover is filed.

8 (iii) A net operating loss deduction shall be allowed
9 only with regard to losses attributable to the business
10 carried on within the state of Montana.

11 (iv) In the case of a merger of corporations, the
12 surviving corporation shall not be allowed a net operating
13 loss deduction for net operating losses sustained by the
14 merged corporations prior to the date of merger. In the case
15 of a consolidation of corporations, the new corporate entity
16 shall not be allowed a deduction for net operating losses
17 sustained by the consolidated corporations prior to the date
18 of consolidation.

19 (v) Notwithstanding the provisions of 15-31-531,
20 interest shall not be paid with respect to a refund of tax
21 resulting from a net operating loss carryback or carryover.

22 (vi) The net operating loss deduction shall not be
23 allowed with respect to taxable periods which ended on or
24 before December 31, 1970, but shall be allowed only with
25 respect to taxable periods beginning on or after January 1,

1 1971.

2 (3) In the case of mines, other natural deposits, oil
3 and gas wells, and timber, a reasonable allowance for
4 depletion and for depreciation of improvements; such
5 reasonable allowance to be determined according to the
6 provisions of the Internal Revenue Code in effect for the
7 taxable year. All elections made under the Internal Revenue
8 Code with respect to capitalizing or expensing exploration
9 and development costs and intangible drilling expenses for
10 corporation license tax purposes shall be the same as the
11 elections made for federal income tax purposes.

12 (4) The amount of interest paid within the year on its
13 indebtedness incurred in the operation of the business from
14 which its income is derived; but no interest shall be
15 allowed as a deduction if paid on an indebtedness created
16 for the purchase, maintenance, or improvement of property or
17 for the conduct of business unless the income from such
18 property or business would be taxable under this part.

19 (5) (a) Taxes paid within the year, except the
20 following:

- 21 (i) Taxes imposed by this part.
22 (ii) Taxes assessed against local benefits of a kind
23 tending to increase the value of the property assessed.
24 (iii) Taxes on or according to or measured by net
25 income or profits imposed by authority of the government of

11 the United States.

12 (14) Taxes imposed by any other state or country upon
13 or measured by net income or profits.

14 (15) Taxes deductible under this part shall be
15 construed to include taxes imposed by any county, school
16 district, or municipality of this state.

17 (16) Light vehicle license fees, as provided by
18 61-5-512, paid within the year.

19 (17) That portion of an energy-related investment
20 allowed as a deduction under 15-32-103.

21 (18) (a) Except as provided in subsection (b),
22 charitable contributions and gifts that qualify for
23 deduction under section 170 of the Internal Revenue Code, as
24 amended.

25 (b) The public service commission shall not allow in
the rate base of a regulated corporation the inclusion of
contributions made under this subsection.

(9) In lieu of the deduction allowed under subsection
(8), the taxpayer may deduct the fair market value, not to
exceed 13% of the taxpayer's net income, of a computer or
other sophisticated technological equipment or apparatus
intended for use with the computer donated to an elementary,
secondary, or accredited postsecondary school located in
Montana if:

(a) the contribution is made no later than 15 years

11 either the manufacture of the donated property is
12 substantially completed;

13 (b) the property is not transferred by the donee in
14 exchange for money, other property, or services; and

15 (c) the taxpayer receives a written statement from the
16 donee in which the donee agrees to accept the property and
17 representing that the use and disposition of the property
18 will be in accordance with the provisions of (b) of this
19 subsection (9)."

20 Section 7. Section 15-31-141, MCA, is amended to read:

21 "15-31-141. Consolidated returns -- computation and
22 procedure -- prohibition on affiliated institutions. (1)
23 Corporations which are affiliated may not file a
24 consolidated return unless if the following conditions are
25 met:

(a) 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;

(b) all members of the affiliated group are qualified
to do business in Montana; and

(c) all members of the affiliated group operate
exclusively within Montana.

(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

1 return--is--given-by-the-department-of-revenue--For-purposes
 2 of-this-section,-a-"unitary-business-operation"-means-one-in
 3 which-the-business-operations-conducted-by-the--corporations
 4 in--the--affiliated-group-are-interrelated-or-interdependent
 5 to-the-extent-that-the-net-income-of-one-corporation--cannot
 6 reasonably-be-determined-without-reference-to-the-operations
 7 conducted-by-the-other-corporations;

8 (3)(2) If the conditions of subsections subsection (1)
 9 and--(2)-of-this-section are met, the department may require
 10 corporations to file a consolidated return when the
 11 department considers a consolidated return necessary.

12 (4)(3) Any corporation liable to report under this
 13 chapter and owning or controlling, either directly or
 14 indirectly, at least 80% of all classes of stock of each
 15 corporation involved may be required to make a consolidated
 16 report showing the combined net income, such assets of the
 17 corporation as are required for the purposes of this
 18 chapter, and such other information as the department may
 19 require, but excluding intercorporate stockholdings and
 20 intercorporate accounts. Any corporation liable to report
 21 under this chapter and owned or controlled, either directly
 22 or indirectly, by another corporation may be required to
 23 make a report consolidated with the owning company, showing
 24 the combined net income, such assets of the corporation as
 25 are required for the purposes of this chapter, and such

1 other information as the department may require, but
 2 excluding intercorporate stockholdings and intercorporate
 3 accounts. In case it shall appear to the department that any
 4 arrangement exists in such a manner as to improperly reflect
 5 the business done, the segregable assets, or the entire net
 6 income earned from business done in this state, the
 7 department is authorized and empowered to equitably adjust
 8 the tax in such manner as it may determine.

9 (5)--(a)-A-majority--of--the--corporation--license--tax
 10 collected--from--financial--institutions--is--paid--to-local
 11 government-areas-in--which--each--financial--institution--is
 12 located;---However,---consolidated---returns--for--financial
 13 institutions-do-not-reflect-the--true--tax--attributable--to
 14 each--local--government,---in--addition,--consolidated-returns
 15 would-permit-financial-institutions-to-offset-income-against
 16 losses-of-nonfinancial-institutions,--thereby-distorting--the
 17 true-income-of-each-financial-organization;

18 (b)--In--accordance--with--subsection-(5)(a),-financial
 19 institutions-are-prohibited-from-filing-consolidated-returns
 20 under-this-section;"

21 Section 8. Section 17-5-408, MCA, is amended to read:
 22 "17-5-408. Percentage of income, corporation license,
 23 and cigarette tax pledged. (1) The state pledges and
 24 appropriates and directs to be credited as received to the
 25 debt service account 11% of all money,-except-as-provided-in

1 25-32-762, received from the collection of the income tax
 2 referred to in 15-1-501 and 10.02% of all money received
 3 from the collection of the corporation license tax referred
 4 to in 15-1-501 and such additional amount of said taxes, if
 5 any, as may at any time be needed to comply with the
 6 principal and interest and reserve requirements stated in
 7 17-5-405(4), provided that no more than 11% of such the
 8 income tax collections or 10.02% of the corporation license
 9 tax collections shall be deemed to be pledged for the
 10 purpose of 17-5-403(2). The pledge and appropriation herein
 11 made shall be and remain at all times a first and prior
 12 charge upon all money received from the collection of said
 13 taxes.

14 (2) The state pledges and appropriates and directs to
 15 be credited to the debt service account 79.75% of all money
 16 received from the collection of the 16-cent excise tax on
 17 cigarettes which is levied, imposed, and assessed by
 18 16-11-111. The state also pledges and appropriates and
 19 directs to be credited as received to the debt service
 20 account all money received from the collection of the taxes
 21 on other tobacco products which are or may hereafter be
 22 levied, imposed, and assessed by law for that purpose,
 23 including the tax levied, imposed, and assessed by
 24 16-11-202. Nothing herein shall impair or otherwise affect
 25 the provisions and covenants contained in the resolutions

1 authorizing the presently outstanding long-range building
 2 program bonds. Subject to the provisions of the preceding
 3 sentence, the pledge and appropriation herein made shall be
 4 and remain at all times a first and prior charge upon all
 5 money received from the collection of all taxes referred to
 6 in this subsection (2)."

7 Section 9. Section 20-9-343, MCA, is amended to read:
 8 "20-9-343. Definition of and revenue for state
 9 equalization aid. (1) As used in this title, the term "state
 10 equalization aid" means those moneys deposited in the state
 11 special revenue fund as required in this section plus any
 12 legislative appropriation of moneys from other sources for
 13 distribution to the public schools for the purpose of
 14 equalization of the foundation program.

15 (2) The legislative appropriation for state
 16 equalization aid shall be made in a single sum for the
 17 biennium. The superintendent of public instruction has
 18 authority to spend such appropriation, together with the
 19 earmarked revenues provided in subsection (1), as required
 20 for foundation program purposes throughout the biennium.

21 (3) The following shall be paid into the state special
 22 revenue fund for state equalization aid to public schools of
 23 the state:

24 (a) 25% of all moneys received from the collection of
 25 income taxes under chapter 30 of Title 15;

1 (b) ~~25%~~ 22.79% of all moneys ~~except as provided in~~
 2 ~~15-31-702~~ received from the collection of corporation
 3 license taxes under chapter 31 of Title 15, as provided by
 4 15-1-501;

5 (c) 10% of the moneys received from the collection of
 6 the severance tax on coal under chapter 35 of Title 15;

7 (d) 62 1/2% of the moneys received from the treasurer
 8 of the United States as the state's shares of oil, gas, and
 9 other mineral royalties under the federal Mineral Lands
 10 Leasing Act, as amended;

11 (e) interest and income moneys described in 20-9-341
 12 and 20-9-342;

13 (f) income from the local impact and education trust
 14 fund account; and

15 (g) in addition to these revenues, the surplus
 16 revenues collected by the counties for foundation program
 17 support according to 20-9-331 and 20-9-333 shall be paid
 18 into the same state special revenue fund.

19 (4) Any surplus revenue in the state equalization aid
 20 account in the second year of a biennium may be used to
 21 reduce the appropriation required for the next succeeding
 22 biennium [or may be transferred to the state permissive
 23 account if revenues in that fund are insufficient to meet
 24 the state's permissive amount obligation]."

25 NEW SECTION. Section 10. Extension of authority. Any

1 existing authority of the department of revenue or the
 2 department of commerce to make rules on the subject of the
 3 provisions of this act is extended to the provisions of this
 4 act.

5 NEW SECTION. Section 11. Intent of amendment. The
 6 1983 Montana Code Annotated contains two versions of
 7 15-1-501. One is a temporary version, and the other is
 8 effective July 1, 1985. Section 15-1-501(2) of both versions
 9 contains the same language. It is intended that the
 10 amendment to 15-1-501 contained in section 4 of this act
 11 amend both versions.

12 NEW SECTION. Section 12. Repealer. Sections 15-31-701
 13 through 15-31-703, MCA, are repealed.

14 NEW SECTION. Section 13. Applicability date. This act
 15 is applicable to taxable years beginning on or after January
 16 1, 1985.

17 NEW SECTION. Section 14. Effective date. This act is
 18 effective ~~on passage and approval~~ JULY 1, 1985.

-End-

HOUSE

STANDING COMMITTEE REPORT

Page 1 of 2.

March 29, 19 85

Page 2 of 2.
SB 455

March 29 19 85

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 455

third reading copy (blue color)

REVISING THE CORPORATION TAX CONCERNING NET INCOME & CONSOLIDATED RETURNS;

Respectfully report as follows: That SENATE Bill No. 455

be amended as follows:

1. Title, line 25.
Following: "7-6-304,"
Insert: "7-6-309,"

2. Page 5, lines 4 and 5.
Following: "subsection" on line 4
Strike: "prior to funding the general services block grants"
Insert: "independent of the funding of any other block grant"

3. Page 6.

Following: line 10

Insert: "Section 4. Section 7-6-309, MCA, is amended to read:

"7-6-309. Disposition and use of funds. Disbursements from the local government block grant account shall be made as follows:

(1) On October 1, 1983, a disbursement must be made from the general services block grant that is the lesser of:

(a) \$2 million; or

(b) one-third of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(2) On March 1, 1984, and March 1 of each succeeding year the reimbursement required by 61-3-536 must be distributed.

(3) On June 30, 1984, a disbursement must be made from the general services block grants for municipalities and counties that equals the amount which is the lesser of the difference between the account balance on that date and:

(a) \$3 million; or

(b) one-half of the total general fund appropriation to the account for the biennium ending June 30, 1985.

(4) ~~On~~ Except as provided in subsection (5), on June 30, 1985, and June 30 of each succeeding year, all funds remaining in the account must be distributed.

(5) On May 1, 1986, and May 1 of each succeeding year, the portion of the local government block grant account consisting of 8.86% of the corporate license and income tax must be distributed.

~~(5)~~ (6) The funds distributed by this part may be used for any purpose authorized by law."

AND AS AMENDED
BE CONCURRED IN

Jr 3/29

AS

(continued) Chairman.

Gerry Devlin
GERRY DEVLIN, Chairman.

AS
000000
xxxxxx

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

4-3-85
DATE
5:55 PM
TIME

MR. CHAIRMAN: I MOVE TO AMEND SENATE BILL No. 455 *the*

third reading copy (blue) as follows:
Color

1. Page 9, line 16.
Following: "RENUMBERED)"
Insert: "unless such dividends are received from affiliated
companies which are 80% or more controlled,"

COMMITTEE OF THE WHOLE AMENDMENT

HOUSE

4-2-85
DATE
1:45
TIME

MR. CHAIRMAN: I MOVE TO AMEND SENATE BILL No. 455

THIRD reading copy (BLUE) as follows:
Color

1. Page 5, line 12.
Following: "15-31-702"
Insert: ", as that section read on January 1, 1985"

AS
ADOPT
REJECT

Dave Brown

Rep. Dave Brown

ADOPT
REJECT *GA*

Rep. Bob Gilbert

Rep. Gilbert

HOUSE

COMMITTEE OF THE WHOLE AMENDMENT

4031115P.CW

4-3-85
DATE

11:15
TIME

MR. CHAIRMAN: I MOVE TO AMEND Senate Bill No. 455

third reading copy (blue) as follows:
Color

1. Title, lines 13 and 14.
Strike: "FOR FISCAL YEARS 1986 AND 1987"
2. Title, line 14.
Strike: "90"
Insert: "100"
3. Page 5, line 8.
Strike: "FOR FISCAL YEARS 1986 AND 1987,"
4. Page 5, line 9.
Strike: "90"
Insert: "100"
5. Page 5, line 14.
Strike: "90"
Insert: "100"
6. Page 5, line 16.
Strike: "90 FOR FISCAL YEARS 1986 AND 1987"
Insert: "100"
5. Page 5, line 20.
Strike: "90"
Insert: "100"

KKF
ADOPT
REJECT

REP. KEENAN
Rep. Keenan

1 SENATE BILL NO. 455
 2 INTRODUCED BY TOWE
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT REPLACING THE
 6 DISTRIBUTION OF 80 PERCENT OF THE CORPORATION LICENSE AND
 7 INCOME TAXES COLLECTED FROM BANKS AND SAVINGS AND LOAN
 8 ASSOCIATIONS TO THE TAXING JURISDICTIONS IN THE COUNTY WHERE
 9 THE BANKS OR SAVINGS AND LOAN ASSOCIATIONS ARE LOCATED WITH
 10 A DISTRIBUTION OF A FLAT 8.86 PERCENT OF THE CORPORATION
 11 LICENSE AND INCOME TAXES TO BE DEPOSITED TO AND DISTRIBUTED
 12 BY THE LOCAL GOVERNMENT BLOCK GRANT PROGRAM; PROVIDING FOR A
 13 DIFFERENT DISTRIBUTION FORMULA FOR--FISCAL--YEARS--1986--AND
 14 1987 TO INSURE THAT NO COUNTY RECEIVES LESS THAN 90 100
 15 PERCENT OF THE AMOUNT DISTRIBUTED TO IT IN 1983 AND 1984;
 16 REVISING THE CORPORATION LICENSE OR INCOME TAX BY PROVIDING
 17 THAT DEDUCTIONS ARE LIMITED TO THOSE SET FORTH IN SECTION
 18 15-31-114, MCA, AND THOSE DEDUCTIONS PROVIDED FOR IN THE
 19 INTERNAL REVENUE CODE, EXCEPT FOR CERTAIN DEDUCTIONS FOR
 20 DIVIDENDS; PROVIDING FOR DEPRECIATION EXPENSES CALCULATED
 21 UNDER THE INTERNAL REVENUE CODE SECTION 168, ACCELERATED
 22 COST RECOVERY SYSTEM; PROVIDING THAT CERTAIN CORPORATIONS
 23 MAY FILE CONSOLIDATED RETURNS; PROVIDING FOR DISTRIBUTION OF
 24 COLLECTIONS FROM CONSOLIDATED RETURNS; AMENDING SECTIONS
 25 7-6-302 THROUGH 7-6-304, 7-6-309, 15-1-501, 15-31-113,

1 15-31-114, 15-31-141, 17-5-408, AND 20-9-343, MCA; REPEALING
 2 SECTIONS 15-31-701 THROUGH 15-31-703, MCA; AND PROVIDING AN
 3 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
 4

5 WHEREAS, the Montana Supreme Court has developed a
 6 judicial doctrine that incorporates the deductions contained
 7 in the federal Internal Revenue Code into the definition of
 8 "net income" for Montana corporation license tax purposes;
 9 and

10 WHEREAS, the Montana Legislature has enacted a
 11 definition of "net income" for purposes of the corporation
 12 license tax, and the effect of the judicial doctrine is to
 13 automatically include additional deductions as may be
 14 adopted by Congress without consideration or enactment by
 15 the Montana Legislature; and

16 WHEREAS, the Montana Legislature should be allowed to
 17 enact deductions appropriate for Montana; and

18 WHEREAS, the restrictions on filing consolidated tax
 19 returns without a deduction for dividends could place
 20 Montana corporations at a competitive disadvantage because
 21 corporations that operate both within and outside Montana
 22 are not subject to multiple taxation by Montana and can file
 23 combined tax returns pursuant to Title 15, chapter 31, part
 24 3, MCA.

25 THEREFORE, one of the purposes of this act is to

1 provide that only those deductions specifically set forth in
 2 Title 15, chapter 31, MCA, AND THOSE DEDUCTIONS PROVIDED FOR
 3 IN THE INTERNAL REVENUE CODE, EXCEPT FOR CERTAIN DEDUCTIONS
 4 FOR DIVIDENDS, may be used in calculating "net income"~~7~~ and
 5 ~~the deductions in the Internal Revenue Code do not apply~~
 6 ~~unless specifically provided in Title 15, chapter 31, MCA.~~
 7 The Montana Legislature intends that Montana corporations
 8 have the right to file consolidated tax returns in order to
 9 avoid a competitive disadvantage with corporations which do
 10 not operate exclusively in Montana.

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

13 Section 1. Section 7-6-302, MCA, is amended to read:

14 "7-6-302. Local government block grant account created
 15 -- source of funds. (1) There is a local government block
 16 grant account within the state special revenue fund.

17 (2) Funds in this account must be used to provide
 18 payments from the local government block grant program to
 19 eligible jurisdictions.

20 (3) Thirty-three and one-third percent of the oil
 21 severance tax collected under the provisions of 15-36-101,
 22 8.86% of the corporation license and income taxes collected
 23 under the provisions of Title 15, chapter 31, and all funds
 24 appropriated to the account must be deposited in the
 25 account."

1 Section 2. Section 7-6-303, MCA, is amended to read:

2 "7-6-303. Local government block grant program. (1)
 3 The department of commerce shall administer the local
 4 government block grant program and distribute funds from the
 5 local government block grant account.

6 (2) The local government block grant program is
 7 comprised of ~~three~~ four parts:

8 (a) a general purpose block grant for municipalities,
 9 counties, school districts, and other jurisdictions;

10 (b) a grant for taxing jurisdictions consisting of
 11 8.86% of the corporation license and income taxes;

12 (c) ~~a~~ a general services block grant for counties;
 13 and

14 (d) ~~a~~ a general services block grant for
 15 municipalities."

16 Section 3. Section 7-6-304, MCA, is amended to read:

17 "7-6-304. Division of block grant funds. The division
 18 of funds within the local government block grant account is
 19 as follows:

20 (1) Except as provided in 7-6-309(1) and subsection
 21 (2), the general purpose block grant for municipalities,
 22 counties, school districts, and other jurisdictions must be
 23 funded, before any other distributions are made from the
 24 account, in an amount sufficient to cover the reimbursements
 25 required by 61-3-536.

1 (2) The portion of the block grant account consisting
 2 of 8.86% of the corporation license and income taxes
 3 collected under the provisions of Title 15, chapter 31, must
 4 be distributed as provided in this subsection prior to
 5 funding the general services block grants INDEPENDENT OF THE
 6 FUNDING OF ANY OTHER BLOCK GRANT. The portion of the account
 7 consisting of 8.86% of the corporation license and income
 8 taxes must be allocated to all of the counties on a per
 9 capita basis. HOWEVER, FOR FISCAL YEARS 1986 AND 1987, NO
 10 COUNTY SHALL RECEIVE LESS THAN 90% 100% OF THE AVERAGE
 11 ANNUAL AMOUNT OF CORPORATION LICENSE AND INCOME TAXES
 12 RECEIVED BY SUCH COUNTY FOR THE FISCAL YEARS 1983 AND 1984
 13 FROM DISTRIBUTION PURSUANT TO 15-31-702, AS THAT SECTION
 14 READ ON JANUARY 1, 1985. IF PER CAPITA DISTRIBUTION WOULD
 15 RESULT IN A COUNTY RECEIVING LESS THAN SUCH GUARANTEED 90%
 16 100%, THE PER CAPITA DISTRIBUTION OF 8.86% SHALL BE ADJUSTED
 17 ACCORDINGLY SO THAT NO COUNTY RECEIVES LESS THAN ITS
 18 GUARANTEED 90% FOR FISCAL YEARS 1986 AND 1987 100%, PROVIDED
 19 SUFFICIENT REVENUES EXIST. THIS ADJUSTMENT SHALL BE MADE BY
 20 THE DEPARTMENT TO PRESERVE A PROPORTIONATE, PER CAPITA
 21 DISTRIBUTION AMONG THOSE COUNTIES RECEIVING MORE THAN THEIR
 22 90% 100% GUARANTEED AMOUNT. THE ADJUSTMENT SHALL ALSO NOT
 23 RESULT IN DISTRIBUTING MORE THAN 8.86% OF CORPORATION
 24 LICENSE AND INCOME TAXES TO ALL COUNTIES. The counties shall
 25 allocate the amount received to each taxing jurisdiction in

1 the county in the proportion that its mill levy for that
 2 fiscal year bears to the total mill levy of the taxing
 3 authorities of the county.

4 ~~(2)~~(3) (a) The general services block grant for
 5 counties must be funded from a percentage of the remaining
 6 funds deposited in the account equal to the ratio of the
 7 unincorporated population to the state population.

8 (b) The general services block grant for
 9 municipalities must be funded from a percentage of the
 10 remaining funds deposited in the account equal to the ratio
 11 of the incorporated population to the total state
 12 population."

13 SECTION 4. SECTION 7-6-309, MCA, IS AMENDED TO READ:
 14 "7-6-309. Disposition and use of funds. Disbursements
 15 from the local government block grant account shall be made
 16 as follows:

17 (1) On October 1, 1983, a disbursement must be made
 18 from the general services block grant that is the lesser of:

19 (a) \$2 million; or
 20 (b) one-third of the total general fund appropriation
 21 to the account for the biennium ending June 30, 1985.

22 (2) On March 1, 1984, and March 1 of each succeeding
 23 year the reimbursement required by 61-3-536 must be
 24 distributed.

25 (3) On June 30, 1984, a disbursement must be made from

1 the general services block grants for municipalities and
2 counties that equals the amount which is the lesser of the
3 difference between the account balance on that date and:

- 4 (a) \$3 million dollars; or
5 (b) one-half of the total general fund appropriation
6 to the account for the biennium ending June 30, 1985.

7 (4) ~~On~~ Except as provided in subsection (5), on June
8 30, 1985, and June 30 of each succeeding year, all funds
9 remaining in the account must be distributed.

10 (5) On May 1, 1986, and May 1 of each succeeding year,
11 the portion of the local government block grant account
12 consisting of 8.86% of the corporate license and income tax
13 must be distributed.

14 ~~(5)(6)~~ The funds distributed by this part may be used
15 for any purpose authorized by law."

16 Section 5. Section 15-1-501, MCA, is amended to read:

17 "15-1-501. (Effective July 1, 1985--Applicable to tax
18 years beginning after December 31, 1984) Disposition of
19 moneys from certain designated license and other taxes. (1)
20 The state treasurer shall deposit to the credit of the state
21 general fund all moneys received by him from the collection
22 of:

- 23 (a) automobile driver's license fees under subsections
24 (1) through (6) of 61-5-111;
25 (b) electrical energy producer's license taxes under

1 chapter 51;

2 (c) severance taxes allocated to the general fund
3 under chapter 36;

4 (d) liquor license taxes under Title 16;

5 (e) telephone [company] license taxes under chapter
6 53; and

7 (f) inheritance and estate taxes under Title 72,
8 chapter 16.

9 (2) Seventy-five percent of all moneys received from
10 the collection of income taxes under chapter 30 and 68.35%
11 of all moneys received from the corporation license and
12 income taxes under chapter 31,--except--as--provided--in
13 15-31-702, shall be deposited in the general fund subject to
14 the prior pledge and appropriation of such income tax and
15 corporation license tax collections for the payment of
16 long-range building program bonds. An amount equal to 8.86%
17 of all moneys received from the collection of corporation
18 license and income taxes under chapter 31 shall be deposited
19 into the local government block grant account within the
20 state special revenue fund, subject to the prior pledge and
21 appropriation of such corporation license tax collections
22 for the payment of long-range building program bonds. The
23 remaining 25% 22.79% of the proceeds of the corporation
24 license tax,--excluding--that--allocated--to--the--counties--under
25 15-31-702, and the corporation income tax, and the remaining

1 25% of the income tax shall be deposited to the credit of
 2 the state special revenue fund for state equalization aid to
 3 the public schools of Montana.

4 (3) The state treasurer shall also deposit to the
 5 credit of the state general fund all moneys received by him
 6 from the collection of license taxes, fees, and all net
 7 revenues and receipts from all other sources under the
 8 operation of the Montana Alcoholic Beverage Code.

9 (4) Thirty-three and one-third percent of the total
 10 collections of the oil severance tax under chapter 36 shall
 11 be deposited into the local government block grant account
 12 within the state special revenue fund. After the
 13 distribution provided for in 15-36-112, the remainder of the
 14 oil severance tax collections shall be deposited in the
 15 general fund."

16 Section 6. Section 15-31-113, MCA, is amended to read:

17 "15-31-113. Gross income and net income. (1) The term
 18 "gross income" means all income recognized in determining
 19 the corporation's gross income for federal income tax
 20 purposes and:

21 (a) including:

22 (i) interest exempt from federal income tax;

23 (ii) the portion of gain from a liquidation of the
 24 reporting corporation not recognized for federal corporate
 25 income tax purposes pursuant to sections 331 through 337 of

1 the Internal Revenue Code (as those sections may be amended
 2 or renumbered) attributable to stockholders, either
 3 individual or corporate, not subject to Montana income or
 4 license tax under Title 15, chapter 30 or chapter 31, as
 5 appropriate, on the gain passing through to the stockholders
 6 pursuant to federal law; and

7 (b) excluding gain recognized for federal tax purposes
 8 as a shareholder of a liquidating corporation pursuant to
 9 sections 331 through 337 of the Internal Revenue Code (as
 10 those sections may be amended or renumbered) when the gain
 11 is required to be recognized by the liquidating corporation
 12 pursuant to subsection (1)(a)(ii) of this section.

13 (2) The term "net income" means the gross income of
 14 the corporation less the only those deductions set forth in
 15 15-31-114; it does not include any deductions allowed by the
 16 Internal Revenue Code unless specifically provided for in
 17 this chapter; AND THOSE DEDUCTIONS PROVIDED FOR IN THE
 18 INTERNAL REVENUE CODE, EXCEPT FOR THE SPECIAL DIVIDEND
 19 DEDUCTIONS PROVIDED FOR BY SECTIONS 243 A(1) AND (3), 244,
 20 AND 245 OF THE INTERNAL REVENUE CODE (OR AS THOSE SECTIONS
 21 MAY BE AMENDED OR RENUMBERED) UNLESS SUCH DIVIDENDS ARE
 22 RECEIVED FROM AFFILIATED COMPANIES WHICH ARE 80% OR MORE
 23 CONTROLLED, OR ANY OTHER DEDUCTION FOR DIVIDENDS, WHETHER
 24 PAID OR RECEIVED, AS PROVIDED BY THE INTERNAL REVENUE CODE,
 25 WHICH ARE SPECIFICALLY DENIED AS DEDUCTIONS. THOSE

1 DEDUCTIONS IN 15-31-114 THAT REFERENCE THE INTERNAL REVENUE
 2 CODE SHALL USE THE INTERNAL REVENUE CODE IN EFFECT FOR THE
 3 TAXABLE YEAR.

4 (3) No corporation is exempt from the corporation
 5 license tax unless specifically provided for under
 6 15-31-101(3) or 15-31-102. Any corporation not subject to or
 7 liable for federal income tax but not exempt from the
 8 corporation license tax under 15-31-101(3) or 15-31-102
 9 shall compute gross income for corporation license tax
 10 purposes in the same manner as a corporation that is subject
 11 to or liable for federal income tax according to the
 12 provisions for determining gross income in the federal
 13 Internal Revenue Code in effect for the taxable year."

14 Section 7. Section 15-31-114, MCA, is amended to read:

15 "15-31-114. Deductions allowed in computing income. In
 16 computing the net income, the following deductions shall be
 17 allowed from the gross income received by such corporation
 18 within the year from all sources:

19 (1) All the ordinary and necessary expenses paid or
 20 incurred during the taxable year in the maintenance and
 21 operation of its business and properties, including
 22 reasonable allowance for salaries for personal services
 23 actually rendered, subject to the limitation hereinafter
 24 contained, rentals or other payments required to be made as
 25 a condition to the continued use or possession of property

1 to which the corporation has not taken or is not taking
 2 title or in which it has no equity. No deduction shall be
 3 allowed for salaries paid upon which the recipient thereof
 4 has not paid Montana state income tax; provided, however,
 5 that where domestic corporations are taxed on income derived
 6 from without the state, salaries of officers paid in
 7 connection with securing such income shall be deductible.

8 (2) (a) All losses actually sustained and charged off
 9 within the year and not compensated by insurance or
 10 otherwise, including a reasonable allowance for the wear and
 11 tear and obsolescence of property used in the trade or
 12 business, such allowance to be determined according to the
 13 provisions of section 167 or 168 of the Internal Revenue
 14 Code in effect with respect to the taxable year. All
 15 elections for depreciation shall be the same as the
 16 elections made for federal income tax purposes. No deduction
 17 shall be allowed for any amount paid out for any buildings,
 18 permanent improvements, or betterments made to increase the
 19 value of any property or estate, and no deduction shall be
 20 made for any amount of expense of restoring property or
 21 making good the exhaustion thereof for which an allowance is
 22 or has been made.

23 (b) (i) There shall be allowed as a deduction for the
 24 taxable period a net operating loss deduction determined
 25 according to the provisions of this subsection. The net

1 operating loss deduction is the aggregate of net operating
 2 loss carryovers to such taxable period plus the net
 3 operating loss carrybacks to such taxable period. The term
 4 "net operating loss" means the excess of the deductions
 5 allowed by this section, 15-31-114, over the gross income,
 6 with the modifications specified in (ii) of this subsection.
 7 If for any taxable period beginning after December 31, 1970,
 8 a net operating loss is sustained, such loss shall be a net
 9 operating loss carryback to each of the three taxable
 10 periods preceding the taxable period of such loss and shall
 11 be a net operating loss carryover to each of the five
 12 taxable periods following the taxable period of such loss. A
 13 net operating loss for any taxable period ending after
 14 December 31, 1975, in addition to being a net operating loss
 15 carryback to each of the three preceding taxable periods,
 16 shall be a net operating loss carryover to each of the seven
 17 taxable periods following the taxable period of such loss.
 18 The portion of such loss which shall be carried to each of
 19 the other taxable years shall be the excess, if any, of the
 20 amount of such loss over the sum of the net income for each
 21 of the prior taxable periods to which such loss was carried.
 22 For purposes of the preceding sentence, the net income for
 23 such prior taxable period shall be computed with the
 24 modifications specified in (ii)(B) of this subsection and by
 25 determining the amount of the net operating loss deduction

1 without regard to the net operating loss for the loss period
 2 or any taxable period thereafter, and the net income so
 3 computed shall not be considered to be less than zero.

4 (ii) The modifications referred to in (i) of this
 5 subsection shall be as follows:

6 (A) No net operating loss deduction shall be allowed.

7 (B) The deduction for depletion shall not exceed the
 8 amount which would be allowable if computed under the cost
 9 method.

10 (C) Any net operating loss carried over to any taxable
 11 years beginning after December 31, 1978, must be calculated
 12 under the provisions of this section effective for the
 13 taxable year for which the return claiming the net operating
 14 loss carryover is filed.

15 (iii) A net operating loss deduction shall be allowed
 16 only with regard to losses attributable to the business
 17 carried on within the state of Montana.

18 (iv) In the case of a merger of corporations, the
 19 surviving corporation shall not be allowed a net operating
 20 loss deduction for net operating losses sustained by the
 21 merged corporations prior to the date of merger. In the case
 22 of a consolidation of corporations, the new corporate entity
 23 shall not be allowed a deduction for net operating losses
 24 sustained by the consolidated corporations prior to the date
 25 of consolidation.

1 (v) Notwithstanding the provisions of 15-31-531,
2 interest shall not be paid with respect to a refund of tax
3 resulting from a net operating loss carryback or carryover.

4 (vi) The net operating loss deduction shall not be
5 allowed with respect to taxable periods which ended on or
6 before December 31, 1970, but shall be allowed only with
7 respect to taxable periods beginning on or after January 1,
8 1971.

9 (3) In the case of mines, other natural deposits, oil
10 and gas wells, and timber, a reasonable allowance for
11 depletion and for depreciation of improvements; such
12 reasonable allowance to be determined according to the
13 provisions of the Internal Revenue Code in effect for the
14 taxable year. All elections made under the Internal Revenue
15 Code with respect to capitalizing or expensing exploration
16 and development costs and intangible drilling expenses for
17 corporation license tax purposes shall be the same as the
18 elections made for federal income tax purposes.

19 (4) The amount of interest paid within the year on its
20 indebtedness incurred in the operation of the business from
21 which its income is derived; but no interest shall be
22 allowed as a deduction if paid on an indebtedness created
23 for the purchase, maintenance, or improvement of property or
24 for the conduct of business unless the income from such
25 property or business would be taxable under this part.

1 (5) (a) Taxes paid within the year, except the
2 following:

3 (i) Taxes imposed by this part.

4 (ii) Taxes assessed against local benefits of a kind
5 tending to increase the value of the property assessed.

6 (iii) Taxes on or according to or measured by net
7 income or profits imposed by authority of the government of
8 the United States.

9 (iv) Taxes imposed by any other state or country upon
10 or measured by net income or profits.

11 (b) Taxes deductible under this part shall be
12 construed to include taxes imposed by any county, school
13 district, or municipality of this state.

14 (6) Light vehicle license fees, as provided by
15 61-3-532, paid within the year.

16 (7) That portion of an energy-related investment
17 allowed as a deduction under 15-32-103.

18 (8) (a) Except as provided in subsection (b),
19 charitable contributions and gifts that qualify for
20 deduction under section 170 of the Internal Revenue Code, as
21 amended.

22 (b) The public service commission shall not allow in
23 the rate base of a regulated corporation the inclusion of
24 contributions made under this subsection.

25 (9) In lieu of the deduction allowed under subsection

1 (8), the taxpayer may deduct the fair market value, not to
 2 exceed 30% of the taxpayer's net income, of a computer or
 3 other sophisticated technological equipment or apparatus
 4 intended for use with the computer donated to an elementary,
 5 secondary, or accredited postsecondary school located in
 6 Montana if:

7 (a) the contribution is made no later than 5 years
 8 after the manufacture of the donated property is
 9 substantially completed;

10 (b) the property is not transferred by the donee in
 11 exchange for money, other property, or services; and

12 (c) the taxpayer receives a written statement from the
 13 donee in which the donee agrees to accept the property and
 14 representing that the use and disposition of the property
 15 will be in accordance with the provisions of (b) of this
 16 subsection (9)."

17 Section 8. Section 15-31-141, MCA, is amended to read:

18 "15-31-141. Consolidated returns -- computation and
 19 procedure ~~---prohibition--on--financial-institutions.~~ (1)
 20 Corporations which are affiliated may not file a
 21 consolidated return unless if the following conditions are
 22 met:

23 (a) at least 80% of all classes of stock of each
 24 corporation involved is owned directly or indirectly by one
 25 or more members of the affiliated group;

1 (b) all members of the affiliated group are qualified
 2 to do business in Montana; and

3 (c) all members of the affiliated group operate
 4 exclusively within Montana.

5 ~~{2}--Corporations-may-not-file--a--consolidated--return~~
 6 ~~unless--the--operation-of-the-affiliated-group-constitutes-a~~
 7 ~~unitary-business--and--permission--to--file--a--consolidated~~
 8 ~~return--is--given-by-the-department-of-revenue--For-purposes~~
 9 ~~of-this-section,-a-"unitary-business-operation"-means-one-in~~
 10 ~~which-the-business-operations-conducted-by-the--corporations~~
 11 ~~in--the--affiliated-group-are-interrelated-or-interdependent~~
 12 ~~to-the-extent-that-the-net-income-of-one-corporation--cannot~~
 13 ~~reasonably-be-determined-without-reference-to-the-operations~~
 14 ~~conducted-by-the-other-corporations-~~

15 ~~{3}{2}~~ If the conditions of subsections subsection (1)
 16 ~~and--{2}-of-this-section~~ are met, the department may require
 17 corporations to file a consolidated return when the
 18 department considers a consolidated return necessary.

19 ~~{4}{3}~~ Any corporation liable to report under this
 20 chapter and owning or controlling, either directly or
 21 indirectly, at least 80% of all classes of stock of each
 22 corporation involved may be required to make a consolidated
 23 report showing the combined net income, such assets of the
 24 corporation as are required for the purposes of this
 25 chapter, and such other information as the department may

1 require, but excluding intercorporate stockholdings and
 2 intercorporate accounts. Any corporation liable to report
 3 under this chapter and owned or controlled, either directly
 4 or indirectly, by another corporation may be required to
 5 make a report consolidated with the owning company, showing
 6 the combined net income, such assets of the corporation as
 7 are required for the purposes of this chapter, and such
 8 other information as the department may require, but
 9 excluding intercorporate stockholdings and intercorporate
 10 accounts. In case it shall appear to the department that any
 11 arrangement exists in such a manner as to improperly reflect
 12 the business done, the segregable assets, or the entire net
 13 income earned from business done in this state, the
 14 department is authorized and empowered to equitably adjust
 15 the tax in such manner as it may determine.

16 ~~{5}--(a)--A-majority--of--the--corporation--license--tax~~
 17 ~~collected--from--financial--institutions--is--paid--to--local~~
 18 ~~government--areas--in--which--each--financial--institution--is~~
 19 ~~located;---However,---consolidated---returns--for--financial~~
 20 ~~institutions--do--not--reflect--the--true--tax--attributable--to~~
 21 ~~each--local--government;---in--addition,--consolidated--returns~~
 22 ~~would--permit--financial--institutions--to--offset--income--against~~
 23 ~~losses--of--nonfinancial--institutions;---thereby--distorting--the~~
 24 ~~true--income--of--each--financial--organization;~~

25 ~~{b}--in--accordance--with--subsection--(5)(a);---financial~~

1 ~~institutions--are--prohibited--from--filing--consolidated--returns~~
 2 ~~under--this--section;---~~

3 Section 9. Section 17-5-408, MCA, is amended to read:
 4 "17-5-408. Percentage of income, corporation license,
 5 and cigarette tax pledged. (1) The state pledges and
 6 appropriates and directs to be credited as received to the
 7 debt service account 11% of all money, ~~except as provided in~~
 8 ~~15-31-702,~~ received from the collection of the income tax
 9 referred to in 15-1-501 and 10.02% of all money received
 10 from the collection of the corporation license tax referred
 11 to in 15-1-501 and such additional amount of said taxes, if
 12 any, as may at any time be needed to comply with the
 13 principal and interest and reserve requirements stated in
 14 17-5-405(4), provided that no more than 11% of such the
 15 income tax collections or 10.02% of the corporation license
 16 tax collections shall be deemed to be pledged for the
 17 purpose of 17-5-403(2). The pledge and appropriation herein
 18 made shall be and remain at all times a first and prior
 19 charge upon all money received from the collection of said
 20 taxes.

21 (2) The state pledges and appropriates and directs to
 22 be credited to the debt service account 79.75% of all money
 23 received from the collection of the 16-cent excise tax on
 24 cigarettes which is levied, imposed, and assessed by
 25 16-11-111. The state also pledges and appropriates and

1 directs to be credited as received to the debt service
 2 account all money received from the collection of the taxes
 3 on other tobacco products which are or may hereafter be
 4 levied, imposed, and assessed by law for that purpose,
 5 including the tax levied, imposed, and assessed by
 6 16-11-202. Nothing herein shall impair or otherwise affect
 7 the provisions and covenants contained in the resolutions
 8 authorizing the presently outstanding long-range building
 9 program bonds. Subject to the provisions of the preceding
 10 sentence, the pledge and appropriation herein made shall be
 11 and remain at all times a first and prior charge upon all
 12 money received from the collection of all taxes referred to
 13 in this subsection (2)."

14 Section 10. Section 20-9-343, MCA, is amended to read:

15 "20-9-343. Definition of and revenue for state
 16 equalization aid. (1) As used in this title, the term "state
 17 equalization aid" means those moneys deposited in the state
 18 special revenue fund as required in this section plus any
 19 legislative appropriation of moneys from other sources for
 20 distribution to the public schools for the purpose of
 21 equalization of the foundation program.

22 (2) The legislative appropriation for state
 23 equalization aid shall be made in a single sum for the
 24 biennium. The superintendent of public instruction has
 25 authority to spend such appropriation, together with the

1 earmarked revenues provided in subsection (3), as required
 2 for foundation program purposes throughout the biennium.

3 (3) The following shall be paid into the state special
 4 revenue fund for state equalization aid to public schools of
 5 the state:

6 (a) 25% of all moneys received from the collection of
 7 income taxes under chapter 30 of Title 15;

8 (b) ~~25%~~ 22.79% of all moneys, ~~except as provided in~~
 9 ~~15-31-702~~, received from the collection of corporation
 10 license taxes under chapter 31 of Title 15, as provided by
 11 15-1-501;

12 (c) 10% of the moneys received from the collection of
 13 the severance tax on coal under chapter 35 of Title 15;

14 (d) 62 1/2% of the moneys received from the treasurer
 15 of the United States as the state's shares of oil, gas, and
 16 other mineral royalties under the federal Mineral Lands
 17 Leasing Act, as amended;

18 (e) interest and income moneys described in 20-9-341
 19 and 20-9-342;

20 (f) income from the local impact and education trust
 21 fund account; and

22 (g) in addition to these revenues, the surplus
 23 revenues collected by the counties for foundation program
 24 support according to 20-9-331 and 20-9-333 shall be paid
 25 into the same state special revenue fund.

1 (4) Any surplus revenue in the state equalization aid
2 account in the second year of a biennium may be used to
3 reduce the appropriation required for the next succeeding
4 biennium (or may be transferred to the state permissive
5 account if revenues in that fund are insufficient to meet
6 the state's permissive amount obligation)."

7 NEW SECTION. Section 11. Extension of authority. Any
8 existing authority of the department of revenue or the
9 department of commerce to make rules on the subject of the
10 provisions of this act is extended to the provisions of this
11 act.

12 NEW SECTION. Section 12. Intent of amendment. The
13 1983 Montana Code Annotated contains two versions of
14 15-1-501. One is a temporary version, and the other is
15 effective July 1, 1985. Section 15-1-501(2) of both versions
16 contains the same language. It is intended that the
17 amendment to 15-1-501 contained in section 4 of this act
18 amend both versions.

19 NEW SECTION. Section 13. Repealer. Sections 15-31-701
20 through 15-31-703, MCA, are repealed.

21 NEW SECTION. Section 14. Applicability date. This act
22 is applicable to taxable years beginning on or after January
23 1, 1985.

24 NEW SECTION. Section 15. Effective date. This act is
25 effective ~~on-passage-and-approval~~ JULY 1, 1985.

-End-

-23-

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