

1 HB BILL NO. 222
2 INTRODUCED BY Thomas

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING CORPORATIONS
5 IN AN AFFILIATED GROUP TO FILE A CONSOLIDATED CORPORATION
6 INCOME TAX RETURN IF ALL CORPORATIONS ARE INCORPORATED IN
7 MONTANA, OWNED BY MONTANA RESIDENTS, AND FILING A
8 CONSOLIDATED FEDERAL RETURN; AMENDING SECTION 15-31-141,
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
10 RETROACTIVE APPLICABILITY DATE."
11

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

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

14 "15-31-141. Consolidated returns -- computation and
15 procedure -- prohibition on financial institutions. (1)
16 Corporations which are affiliated may not file a
17 consolidated return unless at least 80% of all classes of
18 stock of each corporation involved is owned directly or
19 indirectly by one or more members of the affiliated group.

20 (2) Corporations may not file a consolidated return
21 unless the operation of the affiliated group constitutes a
22 unitary business and, except for a unitary business
23 operation described in subsection (2)(b), permission to file
24 a consolidated return is given by the department of revenue.
25 For purposes of this section, a "unitary business operation"

1 means one in which:

2 (a) the business operations conducted by the
3 corporations in the affiliated group are interrelated or
4 interdependent to the extent that the net income of one
5 corporation cannot reasonably be determined without
6 reference to the operations conducted by the other
7 corporations; or

8 (b) all of the corporations in the affiliated group
9 are incorporated in Montana, all shareholders of those
10 corporations are Montana residents, and those corporations
11 have filed a consolidated federal return for the tax year.

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

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

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

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

22 (b) In accordance with subsection (5)(a), financial
 23 institutions are prohibited from filing consolidated returns
 24 under this section."

25 NEW SECTION. Section 2. Extension of authority. Any

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

4 NEW SECTION. Section 3. Effective date --
 5 applicability. (1) This act is effective on passage and
 6 approval.

7 (2) This act applies retroactively, within the meaning
 8 of 1-2-109, to taxable years beginning after December 31,
 9 1982.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB222, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing corporations in an affiliated group to file a consolidated corporation income tax return if all of the corporations are incorporated in Montana, owned by Montana residents, and filing a consolidated federal return; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

N/A

FISCAL IMPACT:

The proposal would allow some Montana corporations to file consolidated tax returns to reduce their corporate license tax payments (based on experience of requests). The number of corporations who would be allowed to file consolidated returns and the impact of the proposal depends on the pattern of ownership of corporate taxpayers. Estimates of the impact would require a special study, done with the cooperation of taxpayers, to get the needed ownership information. Such a study would take weeks to complete.

It is the judgement of the audit staff that the proposal would reduce corporate tax collections. However, without the study mentioned above it is impossible to estimate the magnitude of these losses.

The retroactive applicability date of the proposal, to tax years beginning after December 31, 1982, will greatly increase the impact of the proposal in the first years it is effective. Corporations who would benefit from the proposal can be expected to apply for refunds of a portion of their previous tax payments.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

N/A

David L. Hunter DATE 1/19/87
DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

Fred Thomas DATE 1-19-87
FRED THOMAS, PRIMARY SPONSOR

Fiscal Note for HB222, as introduced.

HB-222

APPROVED BY COMMITTEE
ON TAXATION

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16 consolidated return unless at least 80% of all classes of
17 stock of each corporation involved is owned directly or
18 indirectly by one or more members of the affiliated group.

19 (2) Corporations may not file a consolidated return
20 unless the operation of the affiliated group constitutes a
21 unitary business and, except for a unitary business
22 operation described in subsection (2)(b), permission to file
23 a consolidated return is given by the department of revenue.
24 For purposes of this section, a "unitary business operation"
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2 (a) the business operations conducted by the
3 corporations in the affiliated group are interrelated or
4 interdependent to the extent that the net income of one
5 corporation cannot reasonably be determined without
6 reference to the operations conducted by the other
7 corporations; or

8 (b) all of the corporations in the affiliated group
9 are incorporated AND OPERATE EXCLUSIVELY in Montana, all
10 shareholders of those corporations are Montana residents ARE
11 NOT MULTISTATE CORPORATIONS, and these--corporations have
12 filed a consolidated federal return for the tax year.

13 (3) THE ELECTION TO FILE A CONSOLIDATED RETURN IS
14 BINDING AS LONG AS THE AFFILIATED GROUP CONTINUES TO FILE A
15 FEDERAL CONSOLIDATED RETURN.

16 (3)(4) If the conditions of subsections (1) and (2) of
17 this section are met, the department may require
18 corporations to file a consolidated return when the
19 department considers a consolidated return necessary.

20 (4)(5) Any corporation liable to report under this
21 chapter and owning or controlling, either directly or
22 indirectly, at least 80% of all classes of stock of each
23 corporation involved may be required to make a consolidated
24 report showing the combined net income, such assets of the
25 corporation as are required for the purposes of this

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

17 ~~†5†(6)~~ (a) A majority of the corporation license tax
 18 collected from financial institutions is paid to local
 19 government areas in which each financial institution is
 20 located. However, consolidated returns for financial
 21 institutions do not reflect the true tax attributable to
 22 each local government. In addition, consolidated returns
 23 would permit financial institutions to offset income against
 24 losses of nonfinancial institutions, thereby distorting the
 25 true income of each financial organization.

1 (b) In accordance with subsection ~~†5†(a)†~~ (6)(A),
 2 financial institutions are prohibited from filing
 3 consolidated returns under this section."

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 5 existing authority of the department of revenue to make
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