

HB 768 INTRODUCED BY RAMIREZ, ET AL.  
REINSTATE CAPITAL GAINS TREATMENT FOR SALE OR  
EXCHANGE OF CAPITAL ASSET

2/14 INTRODUCED  
2/14 REFERRED TO TAXATION  
2/16 FISCAL NOTE REQUESTED  
2/21 FISCAL NOTE RECEIVED  
3/11 HEARING  
3/18 REVISED FISCAL NOTE REQUESTED  
3/19 TABLED IN COMMITTEE  
3/24 REVISED FISCAL NOTE RECEIVED

1 *House* BILL NO. *768*  
2 INTRODUCED BY *Ramirez Gilbert*  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT FOR INCOME  
5 TAX PURPOSES 60 PERCENT OF THE INCOME RECEIVED FROM THE SALE  
6 OR EXCHANGE OF A CAPITAL ASSET; AMENDING SECTION 15-30-111,  
7 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A  
8 RETROACTIVE APPLICABILITY DATE."  
9

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

11 Section 1. Section 15-30-111, MCA, is amended to read:

12 "15-30-111. Adjusted gross income. (1) Adjusted gross  
13 income shall be the taxpayer's federal income tax adjusted  
14 gross income as defined in section 62 of the Internal  
15 Revenue Code of 1954 or as that section may be labeled or  
16 amended and in addition shall include the following:

17 (a) interest received on obligations of another state  
18 or territory or county, municipality, district, or other  
19 political subdivision thereof;

20 (b) refunds received of federal income tax, to the  
21 extent the deduction of such tax resulted in a reduction of  
22 Montana income tax liability; and

23 (c) that portion of a shareholder's income under  
24 subchapter S. of Chapter 1 of the Internal Revenue Code of  
25 1954 that has been reduced by any federal taxes paid by the

1 subchapter S. corporation on the income.

2 (2) Notwithstanding the provisions of the federal  
3 Internal Revenue Code of 1954 as labeled or amended,  
4 adjusted gross income does not include the following which  
5 are exempt from taxation under this chapter:

6 (a) all interest income from obligations of the United  
7 States government, the state of Montana, county,  
8 municipality, district, or other political subdivision  
9 thereof;

10 (b) interest income earned by a taxpayer age 65 or  
11 older in a taxable year up to and including \$800 for a  
12 taxpayer filing a separate return and \$1,600 for each joint  
13 return;

14 (c) all benefits received under the Federal Employees'  
15 Retirement Act not in excess of \$3,600;

16 (d) all benefits, not in excess of \$360, received as  
17 an annuity, pension, or endowment under any private or  
18 corporate retirement plan or system;

19 (e) all benefits paid under the teachers' retirement  
20 law which are specified as exempt from taxation by 19-4-706;

21 (f) all benefits paid under The Public Employees'  
22 Retirement System Act which are specified as exempt from  
23 taxation by 19-3-105;

24 (g) all benefits paid under the highway patrol  
25 retirement law which are specified as exempt from taxation

1 by 19-6-705;

2 (h) all Montana income tax refunds or credits thereof;

3 (i) all benefits paid under 19-11-602, 19-11-604, and  
4 19-11-605 to retired and disabled firefighters, their  
5 surviving spouses and orphans;

6 (j) all benefits paid under the municipal police  
7 officers' retirement system that are specified as exempt  
8 from taxation by 19-9-1005;

9 (k) gain required to be recognized by a liquidating  
10 corporation under 15-31-113(1)(a)(ii);

11 (l) all tips covered by section 3402(k) of the  
12 Internal Revenue Code of 1954, as amended and applicable on  
13 January 1, 1983, received by persons for services rendered  
14 by them to patrons of premises licensed to provide food,  
15 beverage, or lodging;

16 (m) all benefits received under the workers'  
17 compensation laws; and

18 (n) all health insurance premiums paid by an employer  
19 for an employee if attributed as income to the employee  
20 under federal law; and

21 (o) 60% of net income derived from the sale or  
22 exchange of a capital asset (the excess of long-term capital  
23 gain over net short-term capital loss), as used in 26 U.S.C.  
24 1201, et seq.

25 (3) In the case of a shareholder of a corporation with

1 respect to which the election provided for under subchapter  
2 S. of the Internal Revenue Code of 1954, as amended, is in  
3 effect but with respect to which the election provided for  
4 under 15-31-202, as amended, is not in effect, adjusted  
5 gross income does not include any part of the corporation's  
6 undistributed taxable income, net operating loss, capital  
7 gains or other gains, profits, or losses required to be  
8 included in the shareholder's federal income tax adjusted  
9 gross income by reason of the said election under subchapter  
10 S. However, the shareholder's adjusted gross income shall  
11 include actual distributions from the corporation to the  
12 extent they would be treated as taxable dividends if the  
13 subchapter S. election were not in effect.

14 (4) A shareholder of a DISC that is exempt from the  
15 corporation license tax under 15-31-102(1)(1) shall include  
16 in his adjusted gross income the earnings and profits of the  
17 DISC in the same manner as provided by federal law (section  
18 995, Internal Revenue Code) for all periods for which the  
19 DISC election is effective.

20 (5) A taxpayer who, in determining federal adjusted  
21 gross income, has reduced his business deductions by an  
22 amount for wages and salaries for which a federal tax credit  
23 was elected under section 44B of the Internal Revenue Code  
24 of 1954 or as that section may be labeled or amended is  
25 allowed to deduct the amount of such wages and salaries paid

1 regardless of the credit taken. The deduction must be made  
 2 in the year the wages and salaries were used to compute the  
 3 credit. In the case of a partnership or small business  
 4 corporation, the deduction must be made to determine the  
 5 amount of income or loss of the partnership or small  
 6 business corporation.

7 (6) Married taxpayers filing a joint federal return  
 8 who must include part of their social security benefits or  
 9 part of their tier 1 railroad retirement benefits in federal  
 10 adjusted gross income may split the federal base used in  
 11 calculation of federal taxable social security benefits or  
 12 federal taxable tier 1 railroad retirement benefits when  
 13 they file separate Montana income tax returns. The federal  
 14 base must be split equally on the Montana return.

15 (7) A taxpayer receiving retirement disability  
 16 benefits who has not attained age 65 by the end of the  
 17 taxable year and who has retired as permanently and totally  
 18 disabled may exclude from adjusted gross income up to \$100  
 19 per week received as wages or payments in lieu of wages for  
 20 a period during which the employee is absent from work due  
 21 to the disability. If the adjusted gross income before this  
 22 exclusion and before application of the two-earner married  
 23 couple deduction exceeds \$15,000, the excess reduces the  
 24 exclusion by an equal amount. This limitation affects the  
 25 amount of exclusion, but not the taxpayer's eligibility for

1 the exclusion. If eligible, married individuals shall apply  
 2 the exclusion separately, but the limitation for income  
 3 exceeding \$15,000 is determined with respect to the spouses  
 4 on their combined adjusted gross income. For the purpose of  
 5 this subsection, permanently and totally disabled means  
 6 unable to engage in any substantial gainful activity by  
 7 reason of any medically determined physical or mental  
 8 impairment lasting or expected to last at least 12 months.  
 9 (Subsection (2)(1) terminates on occurrence of  
 10 contingency--sec. 3, Ch. 634, L. 1983.)"

11 NEW SECTION. Section 2. Extension of authority. Any  
 12 existing authority of the department of revenue to make  
 13 rules on the subject of the provisions of this act is  
 14 extended to the provisions of this act.

15 NEW SECTION. Section 3. Effective date --  
 16 applicability. This act is effective on passage and approval  
 17 and applies to taxable years beginning after December 31,  
 18 1986.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB768, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

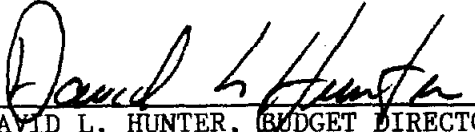
An act to exempt for income tax purposes 60 percent of the income received from the sale or exchange of a capital asset; providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Individual income tax revenues under current law are \$208,088,000 in FY88, and \$229,991,000 in FY89 (REAC).
2. Department of Revenue computer simulations indicate that the revenue gain stemming from the federal tax reform provision eliminating the capital gains exclusion is \$8.22 million in FY88, and \$16.44 million in FY89. Reinstating the 60 percent exclusion would decrease revenue estimates by the same amount under current law.

FISCAL IMPACT:

	FY88			FY89		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Revenue Impact:</u>						
Individual Income Tax	\$208,088,000	\$199,868,000	(\$8,220,000)	\$229,991,000	\$213,551,000	(\$16,440,000)
<u>Fund Information:</u>						
General Fund	\$133,176,320	\$127,915,520	(\$5,260,800)	\$147,194,240	\$136,672,640	(\$10,521,600)
Foundation Program	52,022,000	49,967,000	( 2,055,000)	57,497,750	53,387,750	( 4,110,000)
Debt Service Fund	22,889,680	21,985,480	( 904,200)	25,299,010	23,490,610	( 1,808,400)
TOTAL	\$208,088,000	\$199,868,000	(\$8,220,000)	\$229,991,000	\$213,551,000	(\$16,440,000)

 DATE 2/24/87  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

DATE \_\_\_\_\_  
 JACK RAMIREZ, PRIMARY SPONSOR

Fiscal Note for HB768, as introduced.

**HB 768**

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB768, as introduced with amendments.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to exempt for income tax purposes 60 percent of the income received from the sale or exchange of a capital asset; providing for the adjustment of capital gains for inflation; providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

Reliable data detailing the distribution and value of assets by holding period are not available for Montana. Consequently, reliable fiscal impacts can not be calculated at this time.

*David L. Hunter*

DATE 3/24/87

DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning

DATE

JACK RAMIREZ, PRIMARY SPONSOR

Fiscal Note for HB768, as introduced  
with amendments.

**HB 768**  
**#2**