

SENATE BILL NO. 137

INTRODUCED BY NATHE

IN THE SENATE

JANUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
JANUARY 20, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 21, 1989	PRINTING REPORT.
JANUARY 23, 1989	ON MOTION, CONSIDERATION PASSED
	ON MOTION, BILL TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON TAXATION.
JANUARY 25, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 26, 1989	PRINTING REPORT.
JANUARY 27, 1989	SECOND READING, DO PASS.
JANUARY 28, 1989	ENGROSSING REPORT.
JANUARY 30, 1989	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
FEBRUARY 20, 1989	FIRST READING.
MARCH 31, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

APRIL 3, 1989

SECOND READING, CONCURRED IN.

APRIL 4, 1989

THIRD READING, CONCURRED IN.
AYES, 96; NOES, 0.

RETURNED TO SENATE.

IN THE SENATE

APRIL 5, 1989

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. 137
2 INTRODUCED BY NATHAN
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW AN ELECTION TO
5 FOREGO THE CARRYBACK OF A NET OPERATING LOSS AND APPLY A NET
6 OPERATING LOSS ONLY AS A CARRYFORWARD FOR THE PURPOSES OF
7 DETERMINING NET INCOME FOR CORPORATION LICENSE TAX OR
8 CORPORATION INCOME TAX; AMENDING SECTIONS 15-31-114 AND
9 15-31-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
10 AND A RETROACTIVE APPLICABILITY DATE."
11

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

13 **Section 1.** Section 15-31-114, MCA, is amended to read:

14 "15-31-114. Deductions allowed in computing income. In
15 computing the net income, the following deductions shall be
16 allowed from the gross income received by such corporation
17 within the year from all sources:

18 (1) All the ordinary and necessary expenses paid or
19 incurred during the taxable year in the maintenance and
20 operation of its business and properties, including
21 reasonable allowance for salaries for personal services
22 actually rendered, subject to the limitation hereinafter
23 contained, rentals or other payments required to be made as
24 a condition to the continued use or possession of property
25 to which the corporation has not taken or is not taking

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

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

22 (b) ~~††~~ There shall be allowed as a deduction for the
23 taxable period a net operating loss deduction determined
24 according to the provisions of ~~this subsection~~ [section 3].
25 ~~The net operating loss deduction is the aggregate of net~~

1 operating-loss-carryovers-to-such-taxable-period-plus-the
 2 net-operating-loss-carrybacks-to-such-taxable-period. The
 3 term "net operating loss" means the excess of the deductions
 4 allowed by this section, 15-31-114, over the gross income,
 5 with the modifications specified in (ii) of this subsection.
 6 If for any taxable period beginning after December 31, 1970,
 7 a net operating loss is sustained, such loss shall be a net
 8 operating loss carryback to each of the three taxable
 9 periods preceding the taxable period of such loss and shall
 10 be a net operating loss carryover to each of the five
 11 taxable periods following the taxable period of such loss. A
 12 net operating loss for any taxable period ending after
 13 December 31, 1975, in addition to being a net operating loss
 14 carryback to each of the three preceding taxable periods,
 15 shall be a net operating loss carryover to each of the seven
 16 taxable periods following the taxable period of such loss.
 17 The portion of such loss which shall be carried to each of
 18 the other taxable years shall be the excess, if any, of the
 19 amount of such loss over the sum of the net income for each
 20 of the prior taxable periods to which such loss was carried.
 21 For purposes of the preceding sentence, the net income for
 22 such prior taxable period shall be computed with the
 23 modifications specified in (ii)(B) of this subsection and by
 24 determining the amount of the net operating loss deduction
 25 without regard to the net operating loss for the loss period

1 or any taxable period thereafter, and the net income so
 2 computed shall not be considered to be less than zero.
 3 (ii) The modifications referred to in (i) of this
 4 subsection shall be as follows:
 5 (A) No net operating loss deduction shall be allowed.
 6 (B) The deduction for depletion shall not exceed the
 7 amount which would be allowable if computed under the cost
 8 method.
 9 (C) Any net operating loss carried over to any taxable
 10 years beginning after December 31, 1970, must be calculated
 11 under the provisions of this section effective for the
 12 taxable year for which the return claiming the net operating
 13 loss carryover is filed.
 14 (iii) A net operating loss deduction shall be allowed
 15 only with regard to losses attributable to the business
 16 carried on within the state of Montana.
 17 (iv) In the case of a merger of corporations, the
 18 surviving corporation shall not be allowed a net operating
 19 loss deduction for net operating losses sustained by the
 20 merged corporations prior to the date of merger. In the case
 21 of a consolidation of corporations, the new corporate entity
 22 shall not be allowed a deduction for net operating losses
 23 sustained by the consolidated corporations prior to the date
 24 of consolidation.
 25 (v) Notwithstanding the provisions of 15-31-531,

~~interest shall not be paid with respect to a refund of tax
resulting from a net operating loss carryback or carryover.
(vi) The net operating loss deduction shall not be
allowed with respect to taxable periods which ended on or
before December 31, 1970, but shall be allowed only with
respect to taxable periods beginning on or after January 1,
1971.~~

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

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

(5) (a) Taxes paid within the year, except the

following:

(i) Taxes imposed by this part.

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

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

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

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

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

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

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

(8) In lieu of the deduction allowed under subsection (7), the taxpayer may deduct the fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated technological equipment or apparatus

1 intended for use with the computer donated to an elementary,
2 secondary, or accredited postsecondary school located in
3 Montana if:

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

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

9 (c) the taxpayer receives a written statement from the
10 donee in which the donee agrees to accept the property and
11 representing that the use and disposition of the property
12 will be in accordance with the provisions of (b) of this
13 subsection (8)."

14 **Section 2.** Section 15-31-406, MCA, is amended to read:

15 "15-31-406. License tax sections incorporated by
16 reference. The provisions of the following sections of this
17 chapter are incorporated into this part by reference and
18 made a part hereof:

19 (1) that part of 15-31-101 which defines the term
20 "corporation" and 15-31-102, which specifies the classes of
21 organizations whose income shall not be taxed;

22 (2) sections 15-31-111 through 15-31-114, 15-31-117,
23 15-31-118, 15-31-141, 15-31-142 [section 3], 15-31-301
24 through 15-31-313, 15-31-501 through 15-31-509, 15-31-525,
25 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543,

1 except that the term "gross income" shall be construed as
2 excluding the net amount of interest income from valid
3 obligations of the United States and except that wherever
4 the words "tax", "license tax", "license fee", "corporation
5 excise tax", or like words appear, referring to the tax
6 imposed under part 1 of this chapter, there shall be
7 substituted the words "income tax".

8 **NEW SECTION. Section 3. Net operating losses --**
9 **carryovers and carrybacks.** (1) The net operating loss
10 deduction is the aggregate of net operating loss carryovers
11 to the taxable period plus the net operating loss carrybacks
12 to the taxable period.

13 (2) The term "net operating loss" means the excess of
14 the deductions allowed by this section over the gross
15 income, with the modifications specified in subsection (6).

16 (3) If for any taxable period beginning after December
17 31, 1970, a net operating loss is sustained, the loss must
18 be a net operating loss carryback to each of the three
19 taxable periods preceding the taxable period of the loss and
20 must be a net operating loss carryover to each of the five
21 taxable periods following the taxable period of the loss.

22 (4) A net operating loss for any taxable period ending
23 after December 31, 1975, in addition to being a net
24 operating loss carryback to each of the three preceding
25 taxable periods, must be a net operating loss carryover to

1 each of the seven taxable periods following the taxable
2 period of the loss.

3 (5) Except as provided in subsection (11), the portion
4 of the loss that must be carried to each of the other
5 taxable years must be the excess, if any, of the amount of
6 the loss over the sum of the net income for each of the
7 prior taxable periods to which the loss was carried. For
8 purposes of the preceding sentence, the net income for the
9 prior taxable period must be computed with the modification
10 specified in subsection (6)(b) and by determining the amount
11 of the net operating loss deduction without regard to the
12 net operating loss for the loss period or any taxable period
13 thereafter, and the net income so computed may not be
14 considered to be less than zero.

15 (6) The modifications referred to in subsection (1)
16 are as follows:

17 (a) net operating loss deduction may not be allowed.

18 (b) The deduction for depletion may not exceed the
19 amount that would be allowable if computed under the cost
20 method.

21 (c) Any net operating loss carried over to any taxable
22 years beginning after December 31, 1978, must be calculated
23 under the provisions of this section effective for the
24 taxable year for which the return claiming the net operating
25 loss carryover is filed.

1 (7) A net operating loss deduction must be allowed
2 only with regard to losses attributable to the business
3 carried on within the state of Montana.

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

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

15 (10) The net operating loss deduction may not be
16 allowed with respect to taxable periods that ended on or
17 before December 31, 1970, but must be allowed only with
18 respect to taxable periods beginning on or after January 1,
19 1971.

20 (11) A taxpayer entitled to a carryback period for a
21 net operating loss may elect to forego the entire carryback
22 period. If the election is made, the loss may be carried
23 forward only. The election must be made on or before the
24 date on which the return is due, including any extension of
25 the due date, for the tax year of the net operating loss for

LC 0831/01

1 which the election is to be in effect. The election is
2 irrevocable for the year made.

3 NEW SECTION. **Section 4.** Extension of authority. Any
4 existing authority to make rules on the subject of the
5 provisions of [this act] is extended to the provisions of
6 [this act].

7 NEW SECTION. **Section 5.** Codification instruction.
8 [Section 3] is intended to be codified as an integral part
9 of Title 15, chapter 31, part 1, and the provisions of Title
10 15, chapter 31, apply to [section 3].

11 NEW SECTION. **Section 6.** Effective date -- retroactive
12 applicability. [This act] is effective on passage and
13 approval and applies retroactively, within the meaning of
14 1-2-109, to taxable years beginning after December 31, 1988.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB137, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act to allow an election to forego the carryback of a net operating loss and apply a net operating loss only as a carryforward for the purposes of determining net income for corporation license tax or corporation income tax; and providing an immediate effective date and a retroactive applicability date.

FISCAL IMPACT:

Revenue Impact:


It is assumed that financial institutions will be the main corporations that will opt for using the election under the proposed bill. But, other corporations may choose the proposed option if they have chosen a carryforward only option on federal taxes. An accurate estimate of the fiscal impact of this proposal is not feasible. There is no history of the percentage of corporations that would choose to forego the carryback of a net operating loss. It is apparent that this proposal has the potential to decrease the amount of prior year refunds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

County taxing jurisdictions may not have to refund revenue received in prior years from the corporation tax on financial institutions, if financial institutions in that county opt for the election under the proposed bill.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

Page 9, Line 15: This line makes reference to modifications referred to in subsection (1). Subsection (5) is the subsection that describes the modifications referred to on this line.


RAY SHACKLEFORD, BUDGET DIRECTOR 1/20/89 DATE
Office of Budget and Program Planning


DENNIS G. NATHE, PRIMARY SPONSOR DATE

Fiscal Note for SB137, as introduced

SB 137

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

SENATE BILL NO. 137

INTRODUCED BY NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW AN ELECTION TO FOREGO THE CARRYBACK OF A NET OPERATING LOSS AND APPLY A NET OPERATING LOSS ONLY AS A CARRYFORWARD FOR THE PURPOSES OF DETERMINING NET INCOME FOR CORPORATION LICENSE TAX OR CORPORATION INCOME TAX; AMENDING SECTIONS 15-31-114 AND 15-31-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-31-114, MCA, is amended to read:

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

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking

title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

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

(b) (i) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection [section 3].
~~The--net--operating--loss--deduction--is--the--aggregate--of--net~~

1 operating-loss-carryovers-to-such-taxable-period-plus-the
 2 net-operating-loss-carrybacks-to-such-taxable-period. The
 3 term "net-operating-loss" means the excess of the deductions
 4 allowed by this section, 15-31-114, over the gross income,
 5 with the modifications specified in (ii) of this subsection.
 6 If for any taxable period beginning after December 31, 1978,
 7 a net operating loss is sustained, such loss shall be a net
 8 operating loss carryback to each of the three taxable
 9 periods preceding the taxable period of such loss and shall
 10 be a net operating loss carryover to each of the five
 11 taxable periods following the taxable period of such loss. A
 12 net operating loss for any taxable period ending after
 13 December 31, 1975, in addition to being a net operating loss
 14 carryback to each of the three preceding taxable periods,
 15 shall be a net operating loss carryover to each of the seven
 16 taxable periods following the taxable period of such loss.
 17 The portion of such loss which shall be carried to each of
 18 the other taxable years shall be the excess, if any, of the
 19 amount of such loss over the sum of the net income for each
 20 of the prior taxable periods to which such loss was carried.
 21 For purposes of the preceding sentence, the net income for
 22 such prior taxable period shall be computed with the
 23 modifications specified in (ii)(B) of this subsection and by
 24 determining the amount of the net operating loss deduction
 25 without regard to the net operating loss for the loss period

1 or any taxable period thereafter, and the net income so
 2 computed shall not be considered to be less than zero.
 3 (ii) The modifications referred to in (i) of this
 4 subsection shall be as follows:
 5 (A) No net operating loss deduction shall be allowed.
 6 (B) The deduction for depletion shall not exceed the
 7 amount which would be allowable if computed under the cost
 8 method.
 9 (C) Any net operating loss carried over to any taxable
 10 years beginning after December 31, 1978, must be calculated
 11 under the provisions of this section effective for the
 12 taxable year for which the return claiming the net operating
 13 loss carryover is filed.
 14 (iii) A net operating loss deduction shall be allowed
 15 only with regard to losses attributable to the business
 16 carried on within the state of Montana.
 17 (iv) In the case of a merger of corporations, the
 18 surviving corporation shall not be allowed a net operating
 19 loss deduction for net operating losses sustained by the
 20 merged corporations prior to the date of merger. In the case
 21 of a consolidation of corporations, the new corporate entity
 22 shall not be allowed a deduction for net operating losses
 23 sustained by the consolidated corporations prior to the date
 24 of consolidation.
 25 (v) Notwithstanding the provisions of 15-31-531,

~~interest shall not be paid with respect to a refund of tax
resulting from a net operating loss carryback or carryover.~~

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

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

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

(5) (a) Taxes paid within the year, except the

following:

(i) Taxes imposed by this part.

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

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

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

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

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

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

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

(8) In lieu of the deduction allowed under subsection
(7), the taxpayer may deduct the fair market value, not to
exceed 30% of the taxpayer's net income, of a computer or
other sophisticated technological equipment or apparatus

1 intended for use with the computer donated to an elementary,
2 secondary, or accredited postsecondary school located in
3 Montana if:

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

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

9 (c) the taxpayer receives a written statement from the
10 donee in which the donee agrees to accept the property and
11 representing that the use and disposition of the property
12 will be in accordance with the provisions of (b) of this
13 subsection (8)."

14 **Section 2.** Section 15-31-406, MCA, is amended to read:

15 "15-31-406. License tax sections incorporated by
16 reference. The provisions of the following sections of this
17 chapter are incorporated into this part by reference and
18 made a part hereof:

19 (1) that part of 15-31-101 which defines the term
20 "corporation" and 15-31-102, which specifies the classes of
21 organizations whose income shall not be taxed;

22 (2) sections 15-31-111 through 15-31-114, 15-31-117,
23 15-31-118, 15-31-141, 15-31-142 [section 3], 15-31-301
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25 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543,

1 except that the term "gross income" shall be construed as
2 excluding the net amount of interest income from valid
3 obligations of the United States and except that wherever
4 the words "tax", "license tax", "license fee", "corporation
5 excise tax", or like words appear, referring to the tax
6 imposed under part 1 of this chapter, there shall be
7 substituted the words "income tax".

8 **NEW SECTION. Section 3. Net operating losses --**
9 **carryovers and carrybacks.** (1) The net operating loss
10 deduction is the aggregate of net operating loss carryovers
11 to the taxable period plus the net operating loss carrybacks
12 to the taxable period.

13 (2) The term "net operating loss" means the excess of
14 the deductions allowed by this section over the gross
15 income, with the modifications specified in subsection (6).

16 (3) If for any taxable period beginning after December
17 31, 1970, a net operating loss is sustained, the loss must
18 be a net operating loss carryback to each of the three
19 taxable periods preceding the taxable period of the loss and
20 must be a net operating loss carryover to each of the five
21 taxable periods following the taxable period of the loss.

22 (4) A net operating loss for any taxable period ending
23 after December 31, 1975, in addition to being a net
24 operating loss carryback to each of the three preceding
25 taxable periods, must be a net operating loss carryover to

each of the seven taxable periods following the taxable period of the loss.

(5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net income for each of the prior taxable periods to which the loss was carried. For purposes of the preceding sentence, the net income for the prior taxable period must be computed with the modification specified in subsection (6)(b) and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed may not be considered to be less than zero.

(6) The modifications referred to in subsection (1) are as follows:

(a) net operating loss deduction may not be allowed.

(b) The deduction for depletion may not exceed the amount that would be allowable if computed under the cost method.

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

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

(8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

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

(10) The net operating loss deduction may not be allowed with respect to taxable periods that ended on or before December 31, 1970, but must be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The election must be made on or before the date on which the return is due, including any extension of the due date, for the tax year of the net operating loss for

1 which the election is to be in effect. The election is
2 irrevocable for the year made.

3 NEW SECTION. **Section 4.** Extension of authority. Any
4 existing authority to make rules on the subject of the
5 provisions of [this act] is extended to the provisions of
6 [this act].

7 NEW SECTION. **Section 5.** Codification instruction.
8 [Section 3] is intended to be codified as an integral part
9 of Title 15, chapter 31, part 1, and the provisions of Title
10 15, chapter 31, apply to [section 3].

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12 applicability. [This act] is effective on passage and
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14 1-2-109, to taxable years beginning after December 31, 1988.

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Section 1. Section 15-31-114, MCA, is amended to read:

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

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking

title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

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

(b) ~~There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this-subsection [section 3].~~
~~The--net--operating--loss--deduction--is--the--aggregate--of--net~~

1 operating-loss-carryovers-to-such-taxable-period-plus-the
 2 net-operating-loss-carrybacks-to-such-taxable-period. The
 3 term "net-operating-loss" means the excess of the deductions
 4 allowed by this section, 15-31-114, over the gross income,
 5 with the modifications specified in (ii) of this subsection.
 6 If for any taxable period beginning after December 31, 1970,
 7 a net operating loss is sustained, such loss shall be a net
 8 operating loss carryback to each of the three taxable
 9 periods preceding the taxable period of such loss and shall
 10 be a net operating loss carryover to each of the five
 11 taxable periods following the taxable period of such loss. A
 12 net operating loss for any taxable period ending after
 13 December 31, 1975, in addition to being a net operating loss
 14 carryback to each of the three preceding taxable periods,
 15 shall be a net operating loss carryover to each of the seven
 16 taxable periods following the taxable period of such loss.
 17 The portion of such loss which shall be carried to each of
 18 the other taxable years shall be the excess, if any, of the
 19 amount of such loss over the sum of the net income for each
 20 of the prior taxable periods to which such loss was carried.
 21 For purposes of the preceding sentence, the net income for
 22 such prior taxable period shall be computed with the
 23 modifications specified in (ii)(B) of this subsection and by
 24 determining the amount of the net operating loss deduction
 25 without regard to the net operating loss for the loss period

1 or any taxable period thereafter, and the net income so
 2 computed shall not be considered to be less than zero.
 3 (ii) The modifications referred to in (i) of this
 4 subsection shall be as follows:
 5 (A) No net operating loss deduction shall be allowed.
 6 (B) The deduction for depletion shall not exceed the
 7 amount which would be allowable if computed under the cost
 8 method.
 9 (C) Any net operating loss carried over to any taxable
 10 years beginning after December 31, 1970, must be calculated
 11 under the provisions of this section effective for the
 12 taxable year for which the return claiming the net operating
 13 loss carryover is filed.
 14 (iii) A net operating loss deduction shall be allowed
 15 only with regard to losses attributable to the business
 16 carried on within the state of Montana.
 17 (iv) In the case of a merger of corporations, the
 18 surviving corporation shall not be allowed a net operating
 19 loss deduction for net operating losses sustained by the
 20 merged corporations prior to the date of merger. In the case
 21 of a consolidation of corporations, the new corporate entity
 22 shall not be allowed a deduction for net operating losses
 23 sustained by the consolidated corporations prior to the date
 24 of consolidation.
 25 (v) Notwithstanding the provisions of 15-31-531,

1 ~~interest shall not be paid with respect to a refund of tax~~
 2 ~~resulting from a net operating loss carryback or carryover,~~
 3 ~~{vi} The net operating loss deduction shall not be~~
 4 ~~allowed with respect to taxable periods which ended on or~~
 5 ~~before December 31, 1970, but shall be allowed only with~~
 6 ~~respect to taxable periods beginning on or after January 1,~~
 7 ~~1971.~~

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

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

25 (5) (a) Taxes paid within the year, except the

1 following:

2 (i) Taxes imposed by this part.

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

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

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

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

13 (6) That portion of an energy-related investment
 14 allowed as a deduction under 15-32-103.

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

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

22 (8) In lieu of the deduction allowed under subsection
 23 (7), the taxpayer may deduct the fair market value, not to
 24 exceed 30% of the taxpayer's net income, of a computer or
 25 other sophisticated technological equipment or apparatus

1 intended for use with the computer donated to an elementary,
2 secondary, or accredited postsecondary school located in
3 Montana if:

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

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

9 (c) the taxpayer receives a written statement from the
10 donee in which the donee agrees to accept the property and
11 representing that the use and disposition of the property
12 will be in accordance with the provisions of (b) of this
13 subsection (8)."

14 **Section 2.** Section 15-31-406, MCA, is amended to read:

15 "15-31-406. License tax sections incorporated by
16 reference. The provisions of the following sections of this
17 chapter are incorporated into this part by reference and
18 made a part hereof:

19 (1) that part of 15-31-101 which defines the term
20 "corporation" and 15-31-102, which specifies the classes of
21 organizations whose income shall not be taxed;

22 (2) sections 15-31-111 through 15-31-114, 15-31-117,
23 15-31-118, 15-31-141, 15-31-142 [section 3], 15-31-301
24 through 15-31-313, 15-31-501 through 15-31-509, 15-31-525,
25 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543,

1 except that the term "gross income" shall be construed as
2 excluding the net amount of interest income from valid
3 obligations of the United States and except that wherever
4 the words "tax", "license tax", "license fee", "corporation
5 excise tax", or like words appear, referring to the tax
6 imposed under part 1 of this chapter, there shall be
7 substituted the words "income tax".

8 **NEW SECTION. Section 3. Net operating losses --**
9 **carryovers and carrybacks.** (1) The net operating loss
10 deduction is the aggregate of net operating loss carryovers
11 to the taxable period plus the net operating loss carrybacks
12 to the taxable period.

13 (2) The term "net operating loss" means the excess of
14 the deductions allowed by this section over the gross
15 income, with the modifications specified in subsection (6).

16 (3) If for any taxable period beginning after December
17 31, 1970, a net operating loss is sustained, the loss must
18 be a net operating loss carryback to each of the three
19 taxable periods preceding the taxable period of the loss and
20 must be a net operating loss carryover to each of the five
21 taxable periods following the taxable period of the loss.

22 (4) A net operating loss for any taxable period ending
23 after December 31, 1975, in addition to being a net
24 operating loss carryback to each of the three preceding
25 taxable periods, must be a net operating loss carryover to

1 each of the seven taxable periods following the taxable
2 period of the loss.

3 (5) Except as provided in subsection (11), the portion
4 of the loss that must be carried to each of the other
5 taxable years must be the excess, if any, of the amount of
6 the loss over the sum of the net income for each of the
7 prior taxable periods to which the loss was carried. For
8 purposes of the preceding sentence, the net income for the
9 prior taxable period must be computed with the modification
10 specified in subsection (6)(b) and by determining the amount
11 of the net operating loss deduction without regard to the
12 net operating loss for the loss period or any taxable period
13 thereafter, and the net income so computed may not be
14 considered to be less than zero.

15 (6) The modifications referred to in subsection (11)
16 (2) are as follows:

17 (a) net operating loss deduction may not be allowed.

18 (b) The deduction for depletion may not exceed the
19 amount that would be allowable if computed under the cost
20 method.

21 (c) Any net operating loss carried over to any taxable
22 years beginning after December 31, 1978, must be calculated
23 under the provisions of this section effective for the
24 taxable year for which the return claiming the net operating
25 loss carryover is filed.

1 (7) A net operating loss deduction must be allowed
2 only with regard to losses attributable to the business
3 carried on within the state of Montana.

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

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

15 (10) The net operating loss deduction may not be
16 allowed with respect to taxable periods that ended on or
17 before December 31, 1970, but must be allowed only with
18 respect to taxable periods beginning on or after January 1,
19 1971.

20 (11) A taxpayer entitled to a carryback period for a
21 net operating loss may elect to forego the entire carryback
22 period. If the election is made, the loss may be carried
23 forward only. The election must be made on or before the
24 date on which the return is due, including any extension of
25 the due date, for the tax year of the net operating loss for

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1 which the election is to be in effect. The election is
2 irrevocable for the year made.

3 NEW SECTION. **Section 4.** Extension of authority. Any
4 existing authority to make rules on the subject of the
5 provisions of [this act] is extended to the provisions of
6 [this act].

7 NEW SECTION. **Section 5.** Codification instruction.
8 [Section 3] is intended to be codified as an integral part
9 of Title 15, chapter 31, part 1, and the provisions of Title
10 15, chapter 31, apply to [section 3].

11 NEW SECTION. **Section 6.** Effective date -- retroactive
12 applicability. [This act] is effective on passage and
13 approval and applies retroactively, within the meaning of
14 1-2-109, to taxable years beginning after December 31, 1988.

-End-

SENATE BILL NO. 137

INTRODUCED BY NATHE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW AN ELECTION TO FOREGO THE CARRYBACK OF A NET OPERATING LOSS AND APPLY A NET OPERATING LOSS ONLY AS A CARRYFORWARD FOR THE PURPOSES OF DETERMINING NET INCOME FOR CORPORATION LICENSE TAX OR CORPORATION INCOME TAX; AMENDING SECTIONS 15-31-114 AND 15-31-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-31-114, MCA, is amended to read:

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

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking

title or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

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

(b) ~~{†}~~ There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of ~~this-subsection~~ [section 3]. ~~The--net--operating--loss--deduction--is--the--aggregate--of--net~~

1 operating-loss-carryovers-to-such-taxable-period-plus-the
 2 net--operating--loss--carrybacks-to-such-taxable-period-The
 3 term-"net-operating-loss"-means-the-excess-of-the-deductions
 4 allowed-by-this-section,15-31-114,over-the-gross-income,
 5 with-the-modifications-specified-in-(ii)-of-this-subsection.
 6 If-for-any-taxable-period-beginning-after-December-31,1970,
 7 a-net-operating-loss-is-sustained,such-loss-shall-be-a-net
 8 operating-loss--carryback--to--each--of--the--three--taxable
 9 periods--preceding-the-taxable-period-of-such-loss-and-shall
 10 be-a-net-operating--loss--carryover--to--each--of--the--five
 11 taxable-periods-following-the-taxable-period-of-such-loss-A
 12 net--operating--loss--for--any--taxable--period-ending-after
 13 December-31,1975,in-addition-to-being-a-net-operating-loss
 14 carryback-to-each-of-the-three--preceding--taxable--periods,
 15 shall-be-a-net-operating-loss-carryover-to-each-of-the-seven
 16 taxable-periods--following-the-taxable-period-of-such-loss.
 17 The-portion-of-such-loss-which-shall-be-carried-to--each--of
 18 the--other-taxable-years-shall-be-the-excess,if-any,of-the
 19 amount-of-such-loss-over-the-sum-of-the-net-income-for--each
 20 of-the-prior-taxable-periods-to-which-such-loss-was-carried.
 21 For--purposes--of-the-preceding-sentence,the-net-income-for
 22 such--prior--taxable--period--shall--be--computed--with--the
 23 modifications-specified-in-(ii)(B)-of-this-subsection-and-by
 24 determining--the--amount-of-the-net-operating-loss-deduction
 25 without-regard-to-the-net-operating-loss-for-the-loss-period

1 or-any-taxable-period-thereafter,--and--the--net--income--so
 2 computed-shall-not-be-considered-to-be-less-than-zero.
 3 (ii)-The-modifications--referred--to--in--(i)--of-this
 4 subsection-shall-be-as-follows:
 5 (A)--No-net-operating-loss-deduction-shall-be--allowed;
 6 (B)--The-deduction--for-depletion-shall-not-exceed-the
 7 amount-which-would-be-allowable-if-computed-under--the--cost
 8 method;
 9 (C)--Any-net-operating-loss-carried-over-to-any-taxable
 10 years--beginning-after-December-31,1978,must-be-calculated
 11 under-the-provisions--of--this--section--effective--for--the
 12 taxable-year-for-which-the-return-claiming-the-net-operating
 13 loss-carryover-is-filed;
 14 (iii)-A-net--operating-loss-deduction-shall-be-allowed
 15 only-with-regard-to--losses--attributable--to--the--business
 16 carried-on-within-the-state-of-Montana;
 17 (iv)-In--the--case--of--a--merger--of-corporations,the
 18 surviving-corporation-shall-not-be-allowed-a--net--operating
 19 loss--deduction--for--net--operating-losses-sustained-by-the
 20 merged-corporations-prior-to-the-date-of-merger.-In-the-case
 21 of-a-consolidation-of-corporations,the-new-corporate-entity
 22 shall-not-be-allowed-a-deduction-for--net--operating--losses
 23 sustained-by-the-consolidated-corporations-prior-to-the-date
 24 of-consolidation;
 25 (v)--Notwithstanding--the--provisions--of--15-31-531,

1 ~~interest shall not be paid with respect to a refund of tax~~
 2 ~~resulting from a net operating loss carryback or carryover.~~
 3 ~~(vi) The net operating loss deduction shall not be~~
 4 ~~allowed with respect to taxable periods which ended on or~~
 5 ~~before December 31, 1970, but shall be allowed only with~~
 6 ~~respect to taxable periods beginning on or after January 1,~~
 7 ~~1971.~~

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

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

25 (5) (a) Taxes paid within the year, except the

1 following:

- 2 (i) Taxes imposed by this part.
- 3 (ii) Taxes assessed against local benefits of a kind
- 4 tending to increase the value of the property assessed.
- 5 (iii) Taxes on or according to or measured by net
- 6 income or profits imposed by authority of the government of
- 7 the United States.
- 8 (iv) Taxes imposed by any other state or country upon
- 9 or measured by net income or profits.

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

13 (6) That portion of an energy-related investment
 14 allowed as a deduction under 15-32-103.

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

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

22 (8) In lieu of the deduction allowed under subsection
 23 (7), the taxpayer may deduct the fair market value, not to
 24 exceed 30% of the taxpayer's net income, of a computer or
 25 other sophisticated technological equipment or apparatus

1 intended for use with the computer donated to an elementary,
2 secondary, or accredited postsecondary school located in
3 Montana if:

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

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

9 (c) the taxpayer receives a written statement from the
10 donee in which the donee agrees to accept the property and
11 representing that the use and disposition of the property
12 will be in accordance with the provisions of (b) of this
13 subsection (8)."

14 **Section 2.** Section 15-31-406, MCA, is amended to read:

15 "15-31-406. License tax sections incorporated by
16 reference. The provisions of the following sections of this
17 chapter are incorporated into this part by reference and
18 made a part hereof:

19 (1) that part of 15-31-101 which defines the term
20 "corporation" and 15-31-102, which specifies the classes of
21 organizations whose income shall not be taxed;

22 (2) sections 15-31-111 through 15-31-114, 15-31-117,
23 15-31-118, 15-31-141, 15-31-142 [section 3], 15-31-301
24 through 15-31-313, 15-31-501 through 15-31-509, 15-31-525,
25 15-31-526, 15-31-531, 15-31-532, 15-31-541, and 15-31-543,

1 except that the term "gross income" shall be construed as
2 excluding the net amount of interest income from valid
3 obligations of the United States and except that wherever
4 the words "tax", "license tax", "license fee", "corporation
5 excise tax", or like words appear, referring to the tax
6 imposed under part 1 of this chapter, there shall be
7 substituted the words "income tax".

8 **NEW SECTION. Section 3. Net operating losses --**
9 **carryovers and carrybacks.** (1) The net operating loss
10 deduction is the aggregate of net operating loss carryovers
11 to the taxable period plus the net operating loss carrybacks
12 to the taxable period.

13 (2) The term "net operating loss" means the excess of
14 the deductions allowed by this section over the gross
15 income, with the modifications specified in subsection (6).

16 (3) If for any taxable period beginning after December
17 31, 1970, a net operating loss is sustained, the loss must
18 be a net operating loss carryback to each of the three
19 taxable periods preceding the taxable period of the loss and
20 must be a net operating loss carryover to each of the five
21 taxable periods following the taxable period of the loss.

22 (4) A net operating loss for any taxable period ending
23 after December 31, 1975, in addition to being a net
24 operating loss carryback to each of the three preceding
25 taxable periods, must be a net operating loss carryover to

1 each of the seven taxable periods following the taxable
2 period of the loss.

3 (5) Except as provided in subsection (11), the portion
4 of the loss that must be carried to each of the other
5 taxable years must be the excess, if any, of the amount of
6 the loss over the sum of the net income for each of the
7 prior taxable periods to which the loss was carried. For
8 purposes of the preceding sentence, the net income for the
9 prior taxable period must be computed with the modification
10 specified in subsection (6)(b) and by determining the amount
11 of the net operating loss deduction without regard to the
12 net operating loss for the loss period or any taxable period
13 thereafter, and the net income so computed may not be
14 considered to be less than zero.

15 (6) The modifications referred to in subsection (11)
16 (2) are as follows:

17 (a) net operating loss deduction may not be allowed.

18 (b) The deduction for depletion may not exceed the
19 amount that would be allowable if computed under the cost
20 method.

21 (c) Any net operating loss carried over to any taxable
22 years beginning after December 31, 1978, must be calculated
23 under the provisions of this section effective for the
24 taxable year for which the return claiming the net operating
25 loss carryover is filed.

1 (7) A net operating loss deduction must be allowed
2 only with regard to losses attributable to the business
3 carried on within the state of Montana.

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

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

15 (10) The net operating loss deduction may not be
16 allowed with respect to taxable periods that ended on or
17 before December 31, 1970, but must be allowed only with
18 respect to taxable periods beginning on or after January 1,
19 1971.

20 (11) A taxpayer entitled to a carryback period for a
21 net operating loss may elect to forego the entire carryback
22 period. If the election is made, the loss may be carried
23 forward only. The election must be made on or before the
24 date on which the return is due, including any extension of
25 the due date, for the tax year of the net operating loss for

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1 which the election is to be in effect. The election is
2 irrevocable for the year made.

3 NEW SECTION. **Section 4.** Extension of authority. Any
4 existing authority to make rules on the subject of the
5 provisions of [this act] is extended to the provisions of
6 [this act].

7 NEW SECTION. **Section 5.** Codification instruction.
8 [Section 3] is intended to be codified as an integral part
9 of Title 15, chapter 31, part 1, and the provisions of Title
10 15, chapter 31, apply to [section 3].

11 NEW SECTION. **Section 6.** Effective date -- retroactive
12 applicability. [This act] is effective on passage and
13 approval and applies retroactively, within the meaning of
14 1-2-109, to taxable years beginning after December 31, 1988.

-End-