SENATE BILL 247

Introduced by Mazurek

1/26	Introduced
1/26	Referred to Taxation
1/27	Fiscal Note Requested
2/02	Fiscal Note Received
2/04	Fiscal Note Printed
	Died in Committee

Senate BILL NO. 247

INTRODUCED BY Mazurek

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CORPORATE NET OPERATING LOSS DEDUCTION BY DELETING THE 3-YEAR CARRYBACK PERIOD AND EXTENDING THE CARRYOVER PERIOD BY 3 YEARS; AMENDING SECTION 15-31-114, MCA; AND PROVIDING AN 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~~ a 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 in this section, 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~~ may 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~~ outside the state, salaries of officers paid in connection with securing ~~such~~ the 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~~ The allowance ~~to~~ shall 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~~ may 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~~ may 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. The net operating loss deduction is the aggregate of net operating loss carryovers to ~~such~~ the taxable period plus the net

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operating loss carrybacks to ~~such~~ the taxable period. The term "net operating loss" means the excess of the deductions allowed by this section~~, 15-31-114,~~ over the gross income, with the modifications specified in subsection (2)(b)(ii) ~~of this subsection~~. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, ~~such~~ the loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of ~~such~~ the loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of ~~such~~ the loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven taxable periods following the taxable period of ~~such~~ the loss. A net operating loss for any taxable period ending after December 31, 1989, may not be carried back and shall be a net operating loss carryover to each of the 10 taxable periods following the taxable period of the loss. The portion of ~~such~~ the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of ~~such~~ the loss over the sum of the net income for each of the prior taxable periods to which ~~such~~ the loss was carried. For purposes of the preceding sentence, the net income for ~~such~~ the prior

taxable period shall be computed with the modifications specified in subsection (2)(b)(ii)(B) ~~of this subsection~~ 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 ~~shall~~ may not be considered to be less than zero.

(ii) The modifications referred to in subsection (2)(b)(i) ~~of this subsection~~ shall be as follows:

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

(B) The deduction for depletion ~~shall~~ may not exceed the amount which 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.

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

(iv) In the case of a merger of corporations, the surviving corporation ~~shall~~ 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 ~~shall~~ may not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(v) Notwithstanding the provisions of 15-31-531, interest ~~shall~~ may 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~~ may 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~~ The reasonable allowance ~~to~~ shall 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~~ may 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~~ the 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 (7)(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~~ may 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 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 5 years after the manufacture of the donated property is substantially completed;

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

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

NEW SECTION. **Section 2. Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 3. Applicability date.** [This act] applies to taxable years ending after December 31, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB247, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the corporate net operating loss deduction by deleting the 3-year carryback period and extending the carryover period by 3 years; and providing an applicability date.

ASSUMPTIONS:

1. The revenue from the corporation tax is estimated to be $49,207,000 in FY90 and $49,503,000 in FY91(REAC).
2. The estimate of annual refunds due to carryback of current year net operating losses is $750,000. (Department of Revenue)
3. Approximately 10.5% of the $750,000 in annual refunds accrue to financial corporations. (Department of Revenue)
4. Currently corporations which experience net operating losses exhaust the total loss over the three year carryback period. Under the proposal corporations will deduct an equal portion of the loss in each of the three carryforward tax years.
5. The proposal applies to corporations with a tax year ending after December 31, 1989. The due date for the tax returns of corporations with a tax year ending after December 31, 1989 will be June 15, 1990 or later. On the average, almost 100% of tax receipts (99.93%) have been received by May 30th of any fiscal year. Therefore, no revenue impact will occur during FY90.
6. There will be no impact on Department of Revenue expenditures.

FISCAL IMPACT:

Revenue Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Corporation Tax	$49,207,000	$49,207,000	$ 0	$49,503,000	$50,253,000	$ 750,000
Fund Information:						
General Fund	28,854,764	28,854,764	0	29,009,994	29,449,512	439,519
Foundation Program	11,271,392	11,271,392	0	11,332,029	11,503,716	171,687
Sinking Fund	4,959,413	4,959,413	0	4,986,093	5,061,635	75,542
Counties	4,121,431	4,121,431	0	4,174,885	4,238,137	63,252
Total	$49,207,000	$49,207,000	$ 0	$49,503,000	$50,253,000	$ 750,000

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The county governments would not have to refund corporation tax revenue received from financial corporations in their county for prior year tax receipts. In FY91 it is estimated that $63,252 would not have to be refunded.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It is estimated that refunds for the carryback of net operating losses will be $500,000 less for FY92, $250,000 less in FY93 and revenue neutral in FY94.

Ray Shackleford 2/2/89

RAY SHACKLEFORD, BUDGET DIRECTOR DATE

OFFICE OF BUDGET AND PROGRAM PLANNING

J Mazurek 2/3/89

JOSEPH P. MAZUREK, PRIMARY SPONSOR DATE

Fiscal Note for SB247, as introduced

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