

SENATE BILL 339

Introduced by Gage, at al.

2/04	Introduced
2/04	Referred to Taxation
2/06	Fiscal Note Requested
2/09	Hearing
2/10	Fiscal Note Received
2/13	Fiscal Note Printed
3/03	Committee Report--Bill Passed as Amended
3/04	2nd Reading Passed
3/07	3rd Reading Passed

Transmitted to House

3/08	Referred to Taxation
3/28	Hearing
	Died in Committee

1 *State* BILL NO. 339
2 INTRODUCED BY *Rep. Halligan*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PORTIONS OF
5 THE MONTANA INDIVIDUAL INCOME TAX; ALLOWING CERTAIN
6 DEDUCTIONS FOR LOSSES ON RENTAL PROPERTY FOR TAXPAYERS
7 FILING JOINTLY; ALLOWING NONRESIDENTS TO EXCLUDE INTEREST
8 INCOME FROM INSTALLMENT SALES OF MONTANA PROPERTY;
9 CLARIFYING THE LIABILITY FOR TAXES OWED BY TAXPAYERS FILING
10 JOINTLY IN MONTANA; CLARIFYING THE TAX UPON WHICH PENALTY
11 AND INTEREST MUST BE PAID; CLARIFYING THE APPLICATION OF THE
12 MONTANA CORPORATION LICENSE TAX AS IT APPLIES TO A
13 CORPORATION ELECTING TO BE A SUBCHAPTER S CORPORATION UNDER
14 THE INTERNAL REVENUE CODE; CLARIFYING FOR A SUBCHAPTER S
15 CORPORATION THE APPLICATION OF THE TAX CREDIT FOR WIND
16 GENERATED ENERGY; AMENDING SECTIONS 15-30-111, 15-30-126,
17 15-30-131, 15-30-136, 15-30-141, 15-30-161, 15-30-321,
18 15-31-202, 15-31-204, 15-31-209, 15-32-402, AND 90-8-202,
19 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
20 RETROACTIVE APPLICABILITY DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 **Section 1.** Section 15-30-111, MCA, is amended to read:
24 "15-30-111. Adjusted gross income. (1) Adjusted gross
25 income shall be the taxpayer's federal income tax adjusted

1 gross income as defined in section 62 of the Internal
2 Revenue Code, ~~of 1954~~ or as that section may be labeled or
3 amended, and in addition shall include the following:

4 (a) interest received on obligations of another state
5 or territory or county, municipality, district, or other
6 political subdivision thereof;

7 (b) refunds received of federal income tax, to the
8 extent the deduction of such federal income tax resulted in
9 a reduction of Montana income tax liability; and

10 (c) that portion of a shareholder's income under
11 subchapter S of Chapter 1 of the Internal Revenue Code ~~of~~
12 1954 that has been reduced by any federal taxes paid by the
13 subchapter S corporation on the income.

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

18 (a) all interest income from obligations of the United
19 States government, the state of Montana, county,
20 municipality, district, or other political subdivision
21 thereof;

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

1 (c) all benefits, not in excess of \$3,600, received:
 2 (i) under the Federal Employees' Retirement Act;
 3 (ii) under the public employee retirement laws of a
 4 state other than Montana; or
 5 (iii) as an annuity, pension, or endowment under any
 6 private or corporate retirement plan or system;
 7 (d) all benefits paid under the teachers' retirement
 8 law which are specified as exempt from taxation by 19-4-706;
 9 (e) all benefits paid under The Public Employees'
 10 Retirement System Act which are specified as exempt from
 11 taxation by 19-3-105;
 12 (f) all benefits paid under the highway patrol
 13 retirement law which are specified as exempt from taxation
 14 by 19-6-705;
 15 (g) all Montana income tax refunds or credits thereof;
 16 (h) all benefits paid under 19-11-602, 19-11-604, and
 17 19-11-605 to retired and disabled firefighters, their
 18 surviving spouses and orphans or specified as exempt from
 19 taxation by 19-13-1003;
 20 (i) all benefits paid under the municipal police
 21 officers' retirement system that are specified as exempt
 22 from taxation by 19-9-1005;
 23 (j) gain required to be recognized by a liquidating
 24 corporation under 15-31-113(1)(a)(ii);
 25 (k) all tips covered by section 3402(k) of the

1 Internal Revenue Code ~~of-1954~~, as amended and applicable on
 2 January 1, 1983, received by persons for services rendered
 3 by them to patrons of premises licensed to provide food,
 4 beverage, or lodging;
 5 (l) all benefits received under the workers'
 6 compensation laws;
 7 (m) all health insurance premiums paid by an employer
 8 for an employee if attributed as income to the employee
 9 under federal law; and
 10 (n) all benefits paid under an optional retirement
 11 program that are specified as exempt from taxation by
 12 19-21-212.
 13 (3) In the case of a shareholder of a corporation with
 14 respect to which the election provided for under subchapter
 15 S- of the Internal Revenue Code ~~of-1954~~, as amended, is in
 16 effect but and with respect to which the election provided
 17 for under 15-31-202, as amended, is not also in effect,
 18 adjusted gross income does not include any part of the
 19 corporation's undistributed taxable income, net operating
 20 loss, capital gains or other gains, profits, or losses
 21 required to be included in the shareholder's federal income
 22 tax adjusted gross income by reason of the ~~said~~ election
 23 under subchapter S. However, the shareholder's adjusted
 24 gross income shall include actual distributions from the
 25 corporation to the extent they would be treated as taxable

dividends if the subchapter S election were not in effect.

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

(5) A taxpayer who, in determining federal adjusted gross income, has reduced his business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code, ~~of--1954--or~~ as that section may be labeled or amended, is allowed to deduct the amount of ~~such~~ the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(6) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when

they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(7) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(8) A person receiving benefits described in subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not exclude benefits described in subsection (2)(c) from adjusted gross income unless the benefits received under

1 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are
2 less than \$3,600, in which case the person may combine
3 benefits to exclude up to a total of \$3,600 from adjusted
4 gross income.

5 (9) Married taxpayers filing a joint federal return
6 who claim a deduction for rental losses attributable to
7 properties that they actively manage, as defined in section
8 469(i) of the Internal Revenue Code, as amended, may deduct
9 their losses to a maximum of \$12,500 for each spouse on a
10 Montana income tax return on which the taxpayers file
11 separately. (Subsection (2)(k) terminates on occurrence of
12 contingency--sec. 3, Ch. 634, L. 1983.)"

13 **Section 2.** Section 15-30-126, MCA, is amended to read:

14 "15-30-126. Small business corporation -- deduction
15 for donation of computer equipment to schools. A small
16 business corporation not electing to be taxed under the
17 provisions of 15-31-202 is allowed a deduction equal to the
18 fair market value, not to exceed 30% of the small business
19 corporation's net income, of a computer or other
20 sophisticated technological equipment or apparatus intended
21 for use with the computer donated to an elementary,
22 secondary, or accredited postsecondary school located in
23 Montana if:

24 (1) the contribution is made no later than 5 years
25 after the manufacture of the donated property is

1 substantially completed;

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

4 (3) the electing small business corporation receives a
5 written statement from the donee in which the donee agrees
6 to accept the property and representing that the use and
7 disposition of the property will be in accordance with the
8 provisions of subsection (2); and

9 (4) the deduction allowed in this section is in lieu
10 of the deduction allowed under 15-30-121 for charitable
11 contributions."

12 **Section 3.** Section 15-30-131, MCA, is amended to read:

13 "15-30-131. Nonresident and temporary resident
14 taxpayers -- adjusted gross income -- deductions. (1) In the
15 case of a taxpayer other than a resident of this state,
16 adjusted gross income includes the entire amount of adjusted
17 gross income from sources within this state but ~~shall~~ does
18 not include income from annuities, interest on bank
19 deposits, interest on bonds, notes, or other
20 interest-bearing obligations, or dividends on stock of
21 corporations except to the extent to which the ~~same shall be~~
22 interest or dividends are a part of income from any
23 business, trade, profession, or occupation carried on in
24 this state. ~~Interest income from installment sales of real~~
25 ~~or tangible commercial or business property located in~~

Montana-must-be-included-in-adjusted-gross-income. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.

(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.

(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.

(4) A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually incurred or expended in the state of Montana during the

course of his residency.

(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.

(6) Notwithstanding the provisions of subsections (2) and (3), any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954, as labeled or amended.

~~{7}--For--purposes-of-this-section,--"installment-sales" means-sales-in-which-the-buyer-agrees-to-pay-the--seller--in one-or-more-deferred-installments."~~

Section 4. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts -- exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political

1 subdivision thereof, but excluding interest income from
2 obligations of:

3 (i) the United States government or the state of
4 Montana;

5 (ii) a school district; or

6 (iii) a county, municipality, district, or other
7 political subdivision of the state;

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

10 (e) gain from sale or exchange of property, including
11 those gains that are excluded from gross income for federal
12 fiduciary income tax purposes by section 641(c) of the
13 Internal Revenue Code ~~of-1954~~, as amended;

14 (f) gross profit from trade or business; and

15 (g) refunds recovered on federal income tax, to the
16 extent the deduction of ~~such the~~ tax resulted in a reduction
17 of Montana income tax liability.

18 (2) In computing net income, there are allowed as
19 deductions:

20 (a) interest expenses deductible for federal tax
21 purposes according to section 163 of the Internal Revenue
22 Code ~~of-1954~~, as amended;

23 (b) taxes paid or accrued within the taxable year,
24 including but not limited to federal income tax, but
25 excluding Montana income tax;

1 (c) that fiduciary's portion of depreciation or
2 depletion which is deductible for federal tax purposes
3 according to sections 167, 611, and 642 of the Internal
4 Revenue Code ~~of-1954~~, as amended;

5 (d) charitable contributions that are deductible for
6 federal tax purposes according to section 642(c) of the
7 Internal Revenue Code ~~of-1954~~, as amended;

8 (e) administrative expenses claimed for federal income
9 tax purposes, according to sections 212 and 642(g) of the
10 Internal Revenue Code ~~of--1954~~, as amended, if ~~such the~~
11 expenses were not claimed as a deduction in the
12 determination of Montana inheritance tax;

13 (f) losses from fire, storm, shipwreck, or other
14 casualty or from theft, to the extent not compensated for by
15 insurance or otherwise, that are deductible for federal tax
16 purposes according to section 165 of the Internal Revenue
17 Code ~~of-1954~~, as amended;

18 (g) net operating loss deductions allowed for federal
19 income tax under section 642(d) of the Internal Revenue Code
20 ~~of--1954~~, as amended, except estates may not claim losses
21 that are deductible on the decedent's final return;

22 (h) all benefits, not in excess of \$3,600, received:

23 (i) as federal employees' retirement;

24 (ii) as retirement from public employment in a state
25 other than Montana; or

(iii) as an annuity, pension, or endowment under private or corporate retirement plans or systems;

(i) all benefits paid under the Montana teachers' retirement system that are specified as exempt from taxation by 19-4-706;

(j) all benefits paid under the Montana Public Employees' Retirement System Act that are specified as exempt from taxation by 19-3-105;

(k) all benefits paid under the Montana highway patrolmen's retirement system that are specified as exempt from taxation by 19-6-705;

(l) Montana income tax refunds or credits thereof;

(m) all benefits paid under 19-11-602, 19-11-604, and 19-11-605 to retired and disabled firemen or their surviving spouses or children;

(n) all benefits paid under the municipal police officers' retirement system that are specified as exempt from taxation by 19-9-1005.

(3) In the case of a shareholder of a corporation with respect to which the election provided for under subchapter S- of the Internal Revenue Code of-1954, as amended, is in effect but and with respect to which the election provided for under 15-31-202 is not also in effect, net income does not include any part of the corporation's undistributed taxable income, net operating loss, capital gains or other

gains, profits, or losses required to be included in the shareholder's federal income tax net income by reason of the election under subchapter S. However, the shareholder's net income shall include actual distribution from the corporation to the extent it would be treated as taxable dividends if the subchapter S- election were not in effect.

(4) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such the year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(5) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

(6) A trust or estate excluding benefits under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not exclude benefits described in subsection (2)(h) from net income unless the benefits received under subsections (2)(i) through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in which case the trust or estate may combine benefits to exclude up to a total of \$3,600 from net income."

Section 5. Section 15-30-141, MCA, is amended to read:

"15-30-141. **Tax as personal debt.** Every tax imposed by this chapter and all increases, interest, and penalties thereon shall be from the time they are due and payable a personal debt from the person or fiduciary liable to pay the same to the state. Taxpayers who file a joint return are jointly and severally liable for the tax and any interest and penalty unless the department determines, based solely on the criteria in section 6013(e) of the Internal Revenue Code, as amended, that a spouse is relieved of liability."

Section 6. Section 15-30-161, MCA, is amended to read:

"15-30-161. **Purpose.** The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing not to be taxed under the provisions of 15-31-202, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 7. Section 15-30-321, MCA, is amended to read:

"15-30-321. **Penalties for violation of chapter.**

(1) (a) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5%

of any balance of tax unpaid with respect to ~~such~~ the return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than \$5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part.

(b) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be added to the tax a penalty of 10% of ~~said~~ the tax, but not less than \$5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% thereof of the tax, but ~~such~~ the additional amount shall in no case be less than \$25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder under this chapter, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return or statement or supplies any false or fraudulent information shall be liable to a penalty of not more than \$1,000, to be recovered by the attorney general in the name of the state by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall upon conviction be fined not to exceed \$1,000 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

(4) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(5) If the amount required to be shown as tax on a

return is less than the amount shown as tax on the return, subsection (1)(a), (1)(b), (2), or (3), as applicable, must be applied by substituting the lesser amount of tax."

Section 8. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation.

(1) A small business corporation may elect that has made a valid election under subchapter S of Chapter 1 of the Internal Revenue Code, as amended, is not to be subject to the taxes imposed by this chapter.

~~{2}--If--a--small--business--corporation--makes--an--election under--subsection--(1)--then:~~

~~{a}--with--respect--to--the--taxable--years--of--the corporation--for--which--such--election--is--in--effect,--such corporation--is--not--subject--to--the--taxes--imposed--by--this chapter--and,--with--respect--to--such--taxable--years--and--all succeeding--taxable--years,--the--provisions--of--this--part--apply to--such--corporation,--and~~

~~{b}--with--respect--to--the--taxable--years--of--a--shareholder of--such--corporation--in--which--or--with--which--the--taxable--years of--the--corporation--for--which--such--election--is--in--effect--end, the--provisions--of--this--part--apply--to--such--shareholder,--and with--respect--to--such--taxable--years--and--all--succeeding taxable--years,--the--provisions--of--this--part--apply--to--such shareholder;~~

~~{3}--An--election--under--subsection--(1)--must--be--made--in~~

1 ~~accordance with rules prescribed by the department of~~
2 ~~revenue.~~

3 (2) A small business corporation that has made a valid
4 election under subchapter S of Chapter 1 of the Internal
5 Revenue Code, as amended, shall file, by the 15th day of the
6 third month of its first taxable year, a copy of the
7 internal revenue service notification or other proof that a
8 valid federal election has been made. If proof of election
9 is not filed by the time the department receives the
10 corporation's first tax return, the department shall notify
11 the corporation that the proof of election is required
12 within 60 days of the date of the notice. If proof of
13 election is not received within 60 days or by a reasonable
14 extension date based upon a request by the taxpayer prior to
15 the expiration of the 60 days, the corporation is subject to
16 the taxes imposed by this chapter.

17 (3) A small business corporation that has made a valid
18 election under subchapter S of Chapter 1 of the Internal
19 Revenue Code, as amended, may elect to be subject to the
20 taxes imposed by this chapter by filing an election on a
21 form provided by the department. The form must have printed
22 on it a notification that making the election will subject
23 income to tax under both this chapter and chapter 30 of this
24 title. For tax years beginning on or after January 1, 1989,
25 but before March 1, 1990, the election must be filed by May

1 15, 1990. Thereafter, the election must be filed by the 15th
2 day of the third month of the taxable year for which the
3 election is to become effective. The election may be
4 revoked by the taxpayer by written notification to the
5 department. A revocation must be delivered to the department
6 by the 15th day of the third month of the taxable year for
7 which the revocation is to be effective.

8 (4) This election section is not effective unless the
9 corporate net income or loss of such--electing the
10 nonelecting small business corporation is included in the
11 stockholders' adjusted-gross income as defined in 15-30-111.

12 (5) Every electing nonelecting small business
13 corporation is required to pay the minimum fee of \$10
14 required by 15-31-204."

15 **Section 9.** Section 15-31-204, MCA, is amended to read:

16 "15-31-204. Minimum fee of qualifying corporations
17 unaffected. Notwithstanding the provisions of 15-31-121,
18 corporations electing and qualifying under 15-31-202 shall
19 pay a minimum fee of \$10."

20 **Section 10.** Section 15-31-209, MCA, is amended to
21 read:

22 "15-31-209. Termination and revocation. If the
23 election under the provisions of Subchapter-S subchapter S
24 of Chapter 1 of the Internal Revenue Code, as amended, is
25 either terminated or revoked for federal purposes, the

corporation must notify the department within 30 days of such termination or revocation. ~~The department may terminate an election at any time if it discovers the corporation does not qualify as a small business corporation as provided for under the provisions of Subchapter S of the Internal Revenue Code of 1954.~~ A corporation that does not have a valid federal election for the entire taxable year is subject to tax under this chapter."

Section 11. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial investment credit -- wind-generated electricity. (1) An individual, corporation, partnership, or small business corporation as defined in ~~15-31-201~~ subchapter S of Chapter 1 of the Internal Revenue Code, as amended, that makes an investment of \$5,000 or more in certain depreciable property qualifying under section 38 of the Internal Revenue Code ~~of 1954,~~ as amended, for a commercial system located in Montana which generates electricity by means of wind power is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

(a) manufacturing plants located in Montana that produce wind energy generating equipment;

(b) a new business facility or the expanded portion of an existing business facility for which the wind energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or

(c) the wind energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures that qualify under section 38 of the Internal Revenue Code ~~of 1954,~~ as amended, and that are associated with the purchase, installation, or upgrading of:

(a) generating equipment;

(b) safety devices and storage components;

(c) transmission lines necessary to connect with existing transmission facilities; and

(d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

Section 12. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital companies -- tax credit. (1) The board shall designate as

1 qualified Montana capital companies those certified
 2 companies that have been privately capitalized at a minimum
 3 level of \$200,000. A certified company seeking designation
 4 as a qualified Montana capital company must make written
 5 application to the board on forms provided by the board.
 6 The application must contain the information required by
 7 90-8-204 and such other information as the board requires.

8 (2) (a) The total amount of tax credits authorized for
 9 a single qualified company may not exceed \$1,500,000. In the
 10 event the capitalization of the company is later increased,
 11 the company may apply for authorization of additional tax
 12 credits within the foregoing limitation.

13 (b) The total credits authorized for all companies may
 14 not exceed a total of \$1 million prior to June 30, 1985. The
 15 total credits authorized for all companies between July 1,
 16 1985, and June 30, 1987, may not exceed \$1 million plus any
 17 portion of the \$1 million available for authorization before
 18 June 30, 1985, that is allocated to qualified companies. The
 19 total credits authorized for all companies between July 1,
 20 1987, and June 30, 1989, may not exceed \$3 million plus any
 21 portion of the credits available for authorization before
 22 June 30, 1987, that is allocated to qualified companies.
 23 The total credits authorized for all companies between July
 24 1, 1989, and June 30, 1991, may not exceed \$3 million plus
 25 any portion of the credits available for authorization

1 before June 30, 1989, that is allocated to qualified
 2 companies.

3 (3) The credits shall be allocated to qualified
 4 companies in the order that completed applications for
 5 designation as qualified capital companies are received by
 6 the board, and the board shall certify to each such company
 7 its appropriate allocation.

8 (4) Investors in a qualified Montana capital company
 9 are entitled to the tax credits provided for in subsection
 10 (5). Funds invested in a certified company prior to
 11 designation as a qualified Montana capital company may, at
 12 the discretion of the investor, be placed in an escrow
 13 account in a Montana financial institution pending
 14 designation of the company as a qualified Montana capital
 15 company.

16 (5) Subject to the provisions of subsection (2), an
 17 individual, small business corporation, partnership, or
 18 corporate taxpayer who makes a capital investment in a
 19 qualified Montana capital company is entitled to a tax
 20 credit equal to 50% of the investment, up to a maximum
 21 credit of \$150,000 per taxpayer. The credit may be taken
 22 against the tax liability imposed on the investor pursuant
 23 to Title 15, chapter 30 or 31. The credit for investments
 24 by a small business corporation electing not to be taxed
 25 under 15-31-202 or a partnership may be claimed by the small

1 business corporation shareholders or the partners.

2 (6) The tax credit allowed under subsection (5) is to
3 be credited against the taxpayer's income tax liability for
4 the taxable year in which the investment in a qualified
5 Montana capital company is made. If the amount of the tax
6 credit exceeds the taxpayer's tax liability for the taxable
7 year, the amount of the credit which exceeds the tax
8 liability may be carried back or carried forward in
9 accordance with the provisions of section 46(b) of the
10 Internal Revenue Code, as amended.

11 (7) The tax credit provided for in this section is
12 available only to those taxpayers who invest in a qualified
13 Montana capital company within 4 years of July 1, 1987."

14 NEW SECTION. **Section 13.** Extension of authority. Any
15 existing authority to make rules on the subject of the
16 provisions of [this act] is extended to the provisions of
17 [this act].

18 NEW SECTION. **Section 14.** Code commissioner
19 instruction. Wherever the phrase "Subchapter S" appears in
20 Title 15, chapter 31, part 2, MCA, the code commissioner is
21 instructed to revise the phrase to read "subchapter S".

22 NEW SECTION. **Section 15.** Effective date. [This act]
23 is effective on passage and approval.

24 NEW SECTION. **Section 16.** Retroactive applicability.
25 [This act] applies retroactively, within the meaning of

1 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 SB339, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising portions of the Montana individual income tax; allowing certain deductions for losses on rental property for taxpayers filing jointly; allowing nonresidents to exclude interest income from installment sales of Montana property; clarifying the liability for taxes owed by taxpayers filing jointly in Montana; clarifying the tax upon which penalty and interest must be paid; clarifying the application of the Montana corporation license tax as it applies to a corporation electing to be a subchapter S corporation under the Internal Revenue Code; clarifying for a subchapter S corporation the application of the tax credit for wind generated energy; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

1. Individual income tax collections under current law will be \$239,124,000 in FY90, and \$254,428,000 in FY91 (REAC).
2. Allowing married taxpayers filing jointly at the federal level to deduct up to \$12,500 each for rental losses when filing separately for state tax purposes is estimated to reduce tax revenue approximately \$100,000 annually.
3. Allowing nonresidents to exclude interest income from installment sales of real or tangible commercial or business property located in Montana is estimated to reduce tax revenue \$250,000 annually.
4. Requiring that penalty payments be based on the smaller of tax liability as originally filed or as amended is estimated to reduce penalty payments \$100,000 annually.
5. There is no impact on corporation tax revenues or Department of Revenue expenditures.

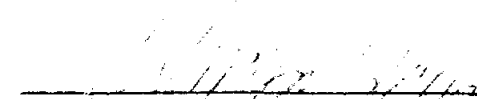
FISCAL IMPACT:Revenue Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Ind. Income Tax	\$239,124,000	\$238,674,000	(\$450,000)	\$254,428,000	\$253,978,000	(\$450,000)
<u>Fund Information:</u>						
General Fund	\$139,170,168	\$138,908,268	(\$261,900)	\$148,077,096	\$147,815,196	(\$261,900)
Foundation Program	76,041,432	75,898,332	(143,100)	80,908,104	80,765,004	(143,100)
Sinking Fund	23,912,400	23,867,400	(45,000)	25,442,800	25,397,800	(45,000)
Total	\$239,124,000	\$238,674,000	(\$450,000)	\$254,428,000	\$253,978,000	(\$450,000)



DATE 2/10/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING



DELWYN GAGE, PRIMARY SPONSOR

DATE 2/11/89

Fiscal Note for SB339, as introduced**SB 339**

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 339

INTRODUCED BY GAGE, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PORTIONS OF THE MONTANA INDIVIDUAL INCOME TAX; ALLOWING CERTAIN DEDUCTIONS FOR LOSSES ON RENTAL PROPERTY FOR TAXPAYERS FILING JOINTLY; ~~ALLOWING--NONRESIDENTS--TO--EXCLUDE--INTEREST--INCOME--FROM--INSTALLMENT--SALES--OF--MONTANA--PROPERTY;~~ CLARIFYING THE LIABILITY FOR TAXES OWED BY TAXPAYERS FILING JOINTLY IN MONTANA; CLARIFYING THE TAX UPON WHICH PENALTY AND INTEREST MUST BE PAID; CLARIFYING THE APPLICATION OF THE MONTANA CORPORATION LICENSE TAX AS IT APPLIES TO A CORPORATION ELECTING TO BE A SUBCHAPTER S CORPORATION UNDER THE INTERNAL REVENUE CODE; CLARIFYING FOR A SUBCHAPTER S CORPORATION THE APPLICATION OF THE TAX CREDIT FOR WIND GENERATED ENERGY; AMENDING SECTIONS 15-30-111, 15-30-126, ~~15-30-131,~~ 15-30-136, 15-30-141, 15-30-161, 15-30-321, 15-31-202, 15-31-204, 15-31-209, 15-32-402, AND 90-8-202, 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 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted

gross income as defined in section 62 of the Internal Revenue Code, ~~of 1954~~ or as that section may be labeled or amended, and in addition shall include the following:

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

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

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

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

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

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

1 (c) all benefits, not in excess of \$3,600, received:
 2 (i) under the Federal Employees' Retirement Act;
 3 (ii) under the public employee retirement laws of a
 4 state other than Montana; or
 5 (iii) as an annuity, pension, or endowment under any
 6 private or corporate retirement plan or system;
 7 (d) all benefits paid under the teachers' retirement
 8 law which are specified as exempt from taxation by 19-4-706;
 9 (e) all benefits paid under The Public Employees'
 10 Retirement System Act which are specified as exempt from
 11 taxation by 19-3-105;
 12 (f) all benefits paid under the highway patrol
 13 retirement law which are specified as exempt from taxation
 14 by 19-6-705;
 15 (g) all Montana income tax refunds or credits thereof;
 16 (h) all benefits paid under 19-11-602, 19-11-604, and
 17 19-11-605 to retired and disabled firefighters, their
 18 surviving spouses and orphans or specified as exempt from
 19 taxation by 19-13-1003;
 20 (i) all benefits paid under the municipal police
 21 officers' retirement system that are specified as exempt
 22 from taxation by 19-9-1005;
 23 (j) gain required to be recognized by a liquidating
 24 corporation under 15-31-113(1)(a)(ii);
 25 (k) all tips covered by section 3402(k) of the

1 Internal Revenue Code ~~of~~ 1954, as amended and applicable on
 2 January 1, 1983, received by persons for services rendered
 3 by them to patrons of premises licensed to provide food,
 4 beverage, or lodging;
 5 (l) all benefits received under the workers'
 6 compensation laws;
 7 (m) all health insurance premiums paid by an employer
 8 for an employee if attributed as income to the employee
 9 under federal law; and
 10 (n) all benefits paid under an optional retirement
 11 program that are specified as exempt from taxation by
 12 19-21-212.
 13 (3) In the case of a shareholder of a corporation with
 14 respect to which the election provided for under subchapter
 15 S of the Internal Revenue Code ~~of~~ 1954, as amended, is in
 16 effect ~~but~~ and with respect to which the election provided
 17 for under 15-31-202, as amended, is ~~net~~ also in effect,
 18 adjusted gross income does not include any part of the
 19 corporation's undistributed taxable income, net operating
 20 loss, capital gains or other gains, profits, or losses
 21 required to be included in the shareholder's federal income
 22 tax adjusted gross income by reason of the ~~said~~ election
 23 under subchapter S. However, the shareholder's adjusted
 24 gross income shall include actual distributions from the
 25 corporation to the extent they would be treated as taxable

1 dividends if the subchapter S election were not in effect.

2 (4) A shareholder of a DISC that is exempt from the
3 corporation license tax under 15-31-102(1)(1) shall include
4 in his adjusted gross income the earnings and profits of the
5 DISC in the same manner as provided by federal law (section
6 995, Internal Revenue Code) for all periods for which the
7 DISC election is effective.

8 (5) A taxpayer who, in determining federal adjusted
9 gross income, has reduced his business deductions by an
10 amount for wages and salaries for which a federal tax credit
11 was elected under section 44B of the Internal Revenue Code,
12 ~~of--1954--or~~ as that section may be labeled or amended, is
13 allowed to deduct the amount of ~~such~~ the wages and salaries
14 paid regardless of the credit taken. The deduction must be
15 made in the year the wages and salaries were used to compute
16 the credit. In the case of a partnership or small business
17 corporation, the deduction must be made to determine the
18 amount of income or loss of the partnership or small
19 business corporation.

20 (6) Married taxpayers filing a joint federal return
21 who must include part of their social security benefits or
22 part of their tier 1 railroad retirement benefits in federal
23 adjusted gross income may split the federal base used in
24 calculation of federal taxable social security benefits or
25 federal taxable tier 1 railroad retirement benefits when

1 they file separate Montana income tax returns. The federal
2 base must be split equally on the Montana return.

3 (7) A taxpayer receiving retirement disability
4 benefits who has not attained age 65 by the end of the
5 taxable year and who has retired as permanently and totally
6 disabled may exclude from adjusted gross income up to \$100
7 per week received as wages or payments in lieu of wages for
8 a period during which the employee is absent from work due
9 to the disability. If the adjusted gross income before this
10 exclusion and before application of the two-earner married
11 couple deduction exceeds \$15,000, the excess reduces the
12 exclusion by an equal amount. This limitation affects the
13 amount of exclusion, but not the taxpayer's eligibility for
14 the exclusion. If eligible, married individuals shall apply
15 the exclusion separately, but the limitation for income
16 exceeding \$15,000 is determined with respect to the spouses
17 on their combined adjusted gross income. For the purpose of
18 this subsection, permanently and totally disabled means
19 unable to engage in any substantial gainful activity by
20 reason of any medically determined physical or mental
21 impairment lasting or expected to last at least 12 months.

22 (8) A person receiving benefits described in
23 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
24 exclude benefits described in subsection (2)(c) from
25 adjusted gross income unless the benefits received under

subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than \$3,600, in which case the person may combine benefits to exclude up to a total of \$3,600 from adjusted gross income.

(9) Married taxpayers filing a joint federal return who claim a deduction for rental losses attributable to properties that they actively manage, as defined in section 469(i) of the Internal Revenue Code, as amended, may deduct their losses to a maximum of \$12,500 for each spouse on a Montana income tax return on which the taxpayers file separately. (Subsection (2)(k) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

Section 2. Section 15-30-126, MCA, is amended to read:

"15-30-126. Small business corporation -- deduction for donation of computer equipment to schools. A small business corporation not electing to be taxed under the provisions of 15-31-202 is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation'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:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is

substantially completed;

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

(3) the electing small business corporation 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 (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions."

Section 3. ~~Section 15-30-131, MCA, is amended to read:~~

~~"15-30-131. Nonresident and temporary resident taxpayers adjusted gross income deductions--(1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall does not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be interest or dividends are a part of income from any business, trade, profession, or occupation carried on in this state, interest income from installment sales of real or tangible commercial or business property located in~~

1 Montana must be included in adjusted gross income. Adjusted
2 gross income from sources within and without this state
3 shall be allocated and apportioned under rules prescribed by
4 the department.

5 {2} In the case of a taxpayer other than a resident of
6 this state who is a resident of a state that imposes a tax
7 on the income of natural persons residing within that state,
8 the deductions allowed in computing net income are
9 restricted to those directly connected with the production
10 of Montana income.

11 {3} In the case of a taxpayer other than a resident of
12 this state who is a resident of a state that does not impose
13 a tax on the income of natural persons residing within that
14 state, the deductions allowed in computing net income are
15 restricted to the greater of those directly relating to the
16 production of Montana income or a prorated amount of those
17 allowed under 15-30-121. For the purposes of this
18 subsection, deductions allowed under 15-30-121 apply only to
19 earned income and must be prorated according to the ratio
20 that the taxpayer's Montana earned income bears to his
21 federal earned income.

22 {4} A temporary resident shall be allowed those
23 deductions and the credit under 15-32-109 allowed a resident
24 to the extent that such deductions or credit were actually
25 incurred or expended in the state of Montana during the

1 course of his residency.

2 {5} For the purposes of this section, "earned income"
3 shall be defined as the same term is defined in section 43
4 of the Internal Revenue Code, or as that section may
5 subsequently be amended.

6 {6} Notwithstanding the provisions of subsections {2}
7 and {3}, any contribution made after December 31, 1982, to
8 the state of Montana or a political subdivision thereof
9 shall be an allowable deduction in computing net income.
10 The deduction is subject to the limitations set forth in
11 section 170 of the Internal Revenue Code of 1954, as amended
12 or amended.

13 {7} For purposes of this section, "installment sales"
14 means sales in which the buyer agrees to pay the seller in
15 one or more deferred installments.

16 **Section 3.** Section 15-30-136, MCA, is amended to read:
17 "15-30-136. Computation of income of estates or trusts
18 -- exemption. (1) Except as otherwise provided in this
19 chapter, "gross income" of estates or trusts means all
20 income from whatever source derived in the taxable year,
21 including but not limited to the following items:

22 (a) dividends;

23 (b) interest received or accrued, including interest
24 received on obligations of another state or territory or a
25 county, municipality, district, or other political

1 subdivision thereof, but excluding interest income from
2 obligations of:

3 (i) the United States government or the state of
4 Montana;

5 (ii) a school district; or

6 (iii) a county, municipality, district, or other
7 political subdivision of the state;

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

10 (e) gain from sale or exchange of property, including
11 those gains that are excluded from gross income for federal
12 fiduciary income tax purposes by section 641(c) of the
13 Internal Revenue Code ~~of-1954~~, as amended;

14 (f) gross profit from trade or business; and

15 (g) refunds recovered on federal income tax, to the
16 extent the deduction of ~~such the~~ tax resulted in a reduction
17 of Montana income tax liability.

18 (2) In computing net income, there are allowed as
19 deductions:

20 (a) interest expenses deductible for federal tax
21 purposes according to section 163 of the Internal Revenue
22 Code ~~of-1954~~, as amended;

23 (b) taxes paid or accrued within the taxable year,
24 including but not limited to federal income tax, but
25 excluding Montana income tax;

1 (c) that fiduciary's portion of depreciation or
2 depletion which is deductible for federal tax purposes
3 according to sections 167, 611, and 642 of the Internal
4 Revenue Code ~~of-1954~~, as amended;

5 (d) charitable contributions that are deductible for
6 federal tax purposes according to section 642(c) of the
7 Internal Revenue Code ~~of-1954~~, as amended;

8 (e) administrative expenses claimed for federal income
9 tax purposes, according to sections 212 and 642(g) of the
10 Internal Revenue Code ~~of--1954~~, as amended, if ~~such the~~
11 expenses were not claimed as a deduction in the
12 determination of Montana inheritance tax;

13 (f) losses from fire, storm, shipwreck, or other
14 casualty or from theft, to the extent not compensated for by
15 insurance or otherwise, that are deductible for federal tax
16 purposes according to section 165 of the Internal Revenue
17 Code ~~of-1954~~, as amended;

18 (g) net operating loss deductions allowed for federal
19 income tax under section 642(d) of the Internal Revenue Code
20 ~~of--1954~~, as amended, except estates may not claim losses
21 that are deductible on the decedent's final return;

22 (h) all benefits, not in excess of \$3,600, received:

23 (i) as federal employees' retirement;

24 (ii) as retirement from public employment in a state
25 other than Montana; or

1 (iii) as an annuity, pension, or endowment under
2 private or corporate retirement plans or systems;

3 (i) all benefits paid under the Montana teachers'
4 retirement system that are specified as exempt from taxation
5 by 19-4-706;

6 (j) all benefits paid under the Montana Public
7 Employees' Retirement System Act that are specified as
8 exempt from taxation by 19-3-105;

9 (k) all benefits paid under the Montana highway
10 patrolmen's retirement system that are specified as exempt
11 from taxation by 19-6-705;

12 (l) Montana income tax refunds or credits thereof;

13 (m) all benefits paid under 19-11-602, 19-11-604, and
14 19-11-605 to retired and disabled firemen or their surviving
15 spouses or children;

16 (n) all benefits paid under the municipal police
17 officers' retirement system that are specified as exempt
18 from taxation by 19-9-1005.

19 (3) In the case of a shareholder of a corporation with
20 respect to which the election provided for under subchapter
21 S- of the Internal Revenue Code ~~of 1954~~, as amended, is in
22 effect but and with respect to which the election provided
23 for under 15-31-202 is not also in effect, net income does
24 not include any part of the corporation's undistributed
25 taxable income, net operating loss, capital gains or other

1 gains, profits, or losses required to be included in the
2 shareholder's federal income tax net income by reason of the
3 election under subchapter S. However, the shareholder's net
4 income shall include actual distribution from the
5 corporation to the extent it would be treated as taxable
6 dividends if the subchapter S- election were not in effect.

7 (4) The following additional deductions shall be
8 allowed in deriving taxable income of estates and trusts:

9 (a) any amount of income for the taxable year
10 currently required to be distributed to beneficiaries for
11 such the year;

12 (b) any other amounts properly paid or credited or
13 required to be distributed for the taxable year;

14 (c) the amount of 60% of the excess of the net
15 long-term capital gain over the net short-term capital loss
16 for the taxable year.

17 (5) The exemption allowed for estates and trusts is
18 that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

19 (6) A trust or estate excluding benefits under
20 subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not
21 exclude benefits described in subsection (2)(h) from net
22 income unless the benefits received under subsections (2)(i)
23 through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in
24 which case the trust or estate may combine benefits to
25 exclude up to a total of \$3,600 from net income."

Section 4. Section 15-30-141, MCA, is amended to read:

"15-30-141. **Tax as personal debt.** Every tax imposed by this chapter and all increases, interest, and penalties thereon shall be from the time they are due and payable a personal debt from the person or fiduciary liable to pay the same to the state. Taxpayers who file a joint return are jointly and severally liable for the tax and any interest and penalty unless the department determines, based solely on the criteria in section 6013(e) of the Internal Revenue Code, as amended, that a spouse is relieved of liability."

Section 5. Section 15-30-161, MCA, is amended to read:

"15-30-161. **Purpose.** The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing not to be taxed under the provisions of 15-31-202, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 6. Section 15-30-321, MCA, is amended to read:

"15-30-321. **Penalties for violation of chapter.**

(1) (a) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5%

of any balance of tax unpaid with respect to such the return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than \$5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part.

(b) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be added to the tax a penalty of 10% of ~~said the~~ tax, but not less than \$5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% ~~thereof~~ of the tax, but ~~such the~~ additional amount shall in no case be less than \$25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department ~~thereunder~~ under this chapter, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return or statement or supplies any false or fraudulent information shall be liable to a penalty of not more than \$1,000, to be recovered by the attorney general in the name of the state by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall upon conviction be fined not to exceed \$1,000 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

(4) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

~~(5) If the amount required to be shown as tax on a~~

~~return is less than the amount shown as tax on the return, subsection (1)(a), (1)(b), (2), or (3), as applicable, must be applied by substituting the lesser amount of tax.~~

(5) IN THE CASE OF AN AMENDED RETURN FILED WITHIN THE SAME CALENDAR YEAR AS THE ORIGINAL RETURN, IF THE AMOUNT OF TAX REQUIRED TO BE SHOWN IS LESS THAN THE TAX SHOWN ON THE ORIGINAL RETURN, SUBSECTION (1)(A), (1)(B), (2), OR (3), AS APPLICABLE, MUST BE APPLIED BY SUBSTITUTING THE LESSER AMOUNT OF TAX. THIS PROVISION DOES NOT APPLY TO A REDUCTION IN TAX RESULTING FROM THE CARRYBACK OF A NET OPERATING LOSS."

Section 7. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation.

(1) A small business corporation ~~may elect that has made a valid election under subchapter S of Chapter 1 of the Internal Revenue Code, as amended, is not to be subject to the taxes imposed by this chapter.~~

~~(2) If a small business corporation makes an election under subsection (1), then:~~

~~(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation is not subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such corporation; and~~

(b)--with-respect-to-the-taxable-years-of-a-shareholder of-such-corporation-in-which-or-with-which-the-taxable-years of-the-corporation-for-which-such-election-is-in-effect-end, the-provisions--of-this-part-apply-to-such-shareholder,-and with-respect--to--such--taxable--years--and--all--succeeding taxable--years,-the--provisions--of-this-part-apply-to-such shareholder:-

(3)--An-election-under-subsection-(1)-must-be--made--in accordance--with--rules--prescribed--by--the--department--of revenue:-

(2) A small business corporation that has made a valid election under subchapter S of Chapter 1 of the Internal Revenue Code, as amended, shall file, by the 15th day of the third month of its first taxable year, a copy of the internal revenue service notification or other proof that a valid federal election has been made. If proof of election is not filed by the time the department receives the corporation's first tax return, the department shall notify the corporation that the proof of election is required within 60 days of the date of the notice. If proof of election is not received within 60 days or by a reasonable extension date based upon a request by the taxpayer prior to the expiration of the 60 days, the corporation is subject to the taxes imposed by this chapter.

(3) A small business corporation that has made a valid

election under subchapter S of Chapter 1 of the Internal Revenue Code, as amended, may elect to be subject to the taxes imposed by this chapter by filing an election on a form provided by the department. The form must have printed on it a notification that making the election will subject income to tax under both this chapter and chapter 30 of this title. For tax years beginning on or after January 1, 1989, but before March 1, 1990, the election must be filed by May 15, 1990. Thereafter, the election must be filed by the 15th day of the third month of the taxable year for which the election is to become effective. The election may be revoked by the taxpayer by written notification to the department. A revocation must be delivered to the department by the 15th day of the third month of the taxable year for which the revocation is to be effective.

(4) This election section is not effective unless the corporate net income or loss of such--electing the nonelecting small business corporation is included in the stockholders' adjusted-gross income as-defined-in-15-30-111.

(5) Every electing nonelecting small business corporation is required to pay the minimum fee of \$10 required by 15-31-204."

Section 8. Section 15-31-204, MCA, is amended to read:

"15-31-204. Minimum fee of qualifying corporations unaffected. Notwithstanding the provisions of 15-31-121,

1 corporations electing and qualifying under 15-31-202 shall
2 pay a minimum fee of \$10."

3 **Section 9.** Section 15-31-209, MCA, is amended to read:

4 "15-31-209. Termination and revocation. If the
5 election under the provisions of ~~Subchapter-S~~ subchapter S
6 of Chapter 1 of the Internal Revenue Code, as amended, is
7 either terminated or revoked for federal purposes, the
8 corporation must notify the department within 30 days of
9 such termination or revocation. ~~The department may terminate~~
10 ~~an election at any time if it discovers the corporation does~~
11 ~~not qualify as a small business corporation as provided for~~
12 ~~under the provisions of Subchapter-S of the Internal Revenue~~
13 ~~Code of 1954.~~ A corporation that does not have a valid
14 federal election for the entire taxable year is subject to
15 tax under this chapter."

16 **Section 10.** Section 15-32-402, MCA, is amended to
17 read:

18 "15-32-402. Commercial investment credit --
19 wind-generated electricity. (1) An individual, corporation,
20 partnership, or small business corporation as defined in
21 ~~15-31-201~~ subchapter S of Chapter 1 of the Internal Revenue
22 Code, as amended, that makes an investment of \$5,000 or more
23 in certain depreciable property qualifying under section 38
24 of the Internal Revenue Code ~~of 1954,~~ as amended, for a
25 commercial system located in Montana which generates

1 electricity by means of wind power is entitled to a tax
2 credit against taxes imposed by 15-30-103 or 15-31-121 in an
3 amount equal to 35% of the eligible costs, to be taken as a
4 credit only against taxes due as a consequence of taxable or
5 net income produced by one of the following:

6 (a) manufacturing plants located in Montana that
7 produce wind energy generating equipment;

8 (b) a new business facility or the expanded portion of
9 an existing business facility for which the wind energy
10 generating equipment supplies, on a direct contract sales
11 basis, the basic energy needed; or

12 (c) the wind energy generating equipment in which the
13 investment for which a credit is being claimed was made.

14 (2) For purposes of determining the amount of the tax
15 credit that may be claimed under subsection (1), eligible
16 costs include only those expenditures that qualify under
17 section 38 of the Internal Revenue Code ~~of 1954,~~ as amended,
18 and that are associated with the purchase, installation, or
19 upgrading of:

20 (a) generating equipment;

21 (b) safety devices and storage components;

22 (c) transmission lines necessary to connect with
23 existing transmission facilities; and

24 (d) transmission lines necessary to connect directly
25 to the purchaser of the electricity when no other

1 transmission facilities are available.

2 (3) Eligible costs under subsection (2) must be
3 reduced by the amount of any grants provided by the state or
4 federal government for the system."

5 **Section 11.** Section 90-8-202, MCA, is amended to read:

6 "90-8-202. Designation of qualified Montana capital
7 companies -- tax credit. (1) The board shall designate as
8 qualified Montana capital companies those certified
9 companies that have been privately capitalized at a minimum
10 level of \$200,000. A certified company seeking designation
11 as a qualified Montana capital company must make written
12 application to the board on forms provided by the board.
13 The application must contain the information required by
14 90-8-204 and such other information as the board requires.

15 (2) (a) The total amount of tax credits authorized for
16 a single qualified company may not exceed \$1,500,000. In the
17 event the capitalization of the company is later increased,
18 the company may apply for authorization of additional tax
19 credits within the foregoing limitation.

20 (b) The total credits authorized for all companies may
21 not exceed a total of \$1 million prior to June 30, 1985. The
22 total credits authorized for all companies between July 1,
23 1985, and June 30, 1987, may not exceed \$1 million plus any
24 portion of the \$1 million available for authorization before
25 June 30, 1985, that is allocated to qualified companies. The

1 total credits authorized for all companies between July 1,
2 1987, and June 30, 1989, may not exceed \$3 million plus any
3 portion of the credits available for authorization before
4 June 30, 1987, that is allocated to qualified companies.
5 The total credits authorized for all companies between July
6 1, 1989, and June 30, 1991, may not exceed \$3 million plus
7 any portion of the credits available for authorization
8 before June 30, 1989, that is allocated to qualified
9 companies.

10 (3) The credits shall be allocated to qualified
11 companies in the order that completed applications for
12 designation as qualified capital companies are received by
13 the board, and the board shall certify to each such company
14 its appropriate allocation.

15 (4) Investors in a qualified Montana capital company
16 are entitled to the tax credits provided for in subsection
17 (5). Funds invested in a certified company prior to
18 designation as a qualified Montana capital company may, at
19 the discretion of the investor, be placed in an escrow
20 account in a Montana financial institution pending
21 designation of the company as a qualified Montana capital
22 company.

23 (5) Subject to the provisions of subsection (2), an
24 individual, small business corporation, partnership, or
25 corporate taxpayer who makes a capital investment in a

1 qualified Montana capital company is entitled to a tax
 2 credit equal to 50% of the investment, up to a maximum
 3 credit of \$150,000 per taxpayer. The credit may be taken
 4 against the tax liability imposed on the investor pursuant
 5 to Title 15, chapter 30 or 31. The credit for investments
 6 by a small business corporation electing not to be taxed
 7 under 15-31-202 or a partnership may be claimed by the small
 8 business corporation shareholders or the partners.

9 (6) The tax credit allowed under subsection (5) is to
 10 be credited against the taxpayer's income tax liability for
 11 the taxable year in which the investment in a qualified
 12 Montana capital company is made. If the amount of the tax
 13 credit exceeds the taxpayer's tax liability for the taxable
 14 year, the amount of the credit which exceeds the tax
 15 liability may be carried back or carried forward in
 16 accordance with the provisions of section 46(b) of the
 17 Internal Revenue Code, as amended.

18 (7) The tax credit provided for in this section is
 19 available only to those taxpayers who invest in a qualified
 20 Montana capital company within 4 years of July 1, 1987."

21 NEW SECTION. Section 12. Extension of authority. Any
 22 existing authority to make rules on the subject of the
 23 provisions of [this act] is extended to the provisions of
 24 [this act].

25 NEW SECTION. Section 13. Code commissioner

1 instruction. Wherever the phrase "Subchapter S" appears in
 2 Title 15, chapter 31, part 2, MCA, the code commissioner is
 3 instructed to revise the phrase to read "subchapter S".

4 NEW SECTION. Section 14. Effective date. [This act]
 5 is effective on passage and approval.

6 NEW SECTION. Section 15. Retroactive applicability.
 7 [This act] applies retroactively, within the meaning of
 8 1-2-109, to taxable years beginning after December 31, 1988.

-End-

SENATE BILL NO. 339

INTRODUCED BY GAGE, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PORTIONS OF THE MONTANA INDIVIDUAL INCOME TAX; ALLOWING CERTAIN DEDUCTIONS FOR LOSSES ON RENTAL PROPERTY FOR TAXPAYERS FILING JOINTLY; ~~ALLOWING--NONRESIDENTS-TO-EXCLUDE-INTEREST~~ ~~INCOME--FROM--INSTALLMENT---SALES---OF---MONTANA---PROPERTY;~~ CLARIFYING THE LIABILITY FOR TAXES OWED BY TAXPAYERS FILING JOINTLY IN MONTANA; CLARIFYING THE TAX UPON WHICH PENALTY AND INTEREST MUST BE PAID; CLARIFYING THE APPLICATION OF THE MONTANA CORPORATION LICENSE TAX AS IT APPLIES TO A CORPORATION ELECTING TO BE A SUBCHAPTER S CORPORATION UNDER THE INTERNAL REVENUE CODE; CLARIFYING FOR A SUBCHAPTER S CORPORATION THE APPLICATION OF THE TAX CREDIT FOR WIND GENERATED ENERGY; AMENDING SECTIONS 15-30-111, 15-30-126, ~~15-30-131,~~ 15-30-136, 15-30-141, 15-30-161, 15-30-321, 15-31-202, 15-31-204, 15-31-209, 15-32-402, AND 90-8-202, 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 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted

gross income as defined in section 62 of the Internal Revenue Code, ~~of-1954-or~~ as that section may be labeled or amended, and in addition shall include the following:

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

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

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

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

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

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

1 (c) all benefits, not in excess of \$3,600, received:
 2 (i) under the Federal Employees' Retirement Act;
 3 (ii) under the public employee retirement laws of a
 4 state other than Montana; or
 5 (iii) as an annuity, pension, or endowment under any
 6 private or corporate retirement plan or system;
 7 (d) all benefits paid under the teachers' retirement
 8 law which are specified as exempt from taxation by 19-4-706;
 9 (e) all benefits paid under The Public Employees'
 10 Retirement System Act which are specified as exempt from
 11 taxation by 19-3-105;
 12 (f) all benefits paid under the highway patrol
 13 retirement law which are specified as exempt from taxation
 14 by 19-6-705;
 15 (g) all Montana income tax refunds or credits thereof;
 16 (h) all benefits paid under 19-11-602, 19-11-604, and
 17 19-11-605 to retired and disabled firefighters, their
 18 surviving spouses and orphans or specified as exempt from
 19 taxation by 19-13-1003;
 20 (i) all benefits paid under the municipal police
 21 officers' retirement system that are specified as exempt
 22 from taxation by 19-9-1005;
 23 (j) gain required to be recognized by a liquidating
 24 corporation under 15-31-113(1)(a)(ii);
 25 (k) all tips covered by section 3402(k) of the

1 Internal Revenue Code ~~of~~-1954, as amended and applicable on
 2 January 1, 1983, received by persons for services rendered
 3 by them to patrons of premises licensed to provide food,
 4 beverage, or lodging;
 5 (l) all benefits received under the workers'
 6 compensation laws;
 7 (m) all health insurance premiums paid by an employer
 8 for an employee if attributed as income to the employee
 9 under federal law; and
 10 (n) all benefits paid under an optional retirement
 11 program that are specified as exempt from taxation by
 12 19-21-212.
 13 (3) In the case of a shareholder of a corporation with
 14 respect to which the election provided for under subchapter
 15 S of the Internal Revenue Code ~~of~~-1954, as amended, is in
 16 effect but and with respect to which the election provided
 17 for under 15-31-202, as amended, is not also in effect,
 18 adjusted gross income does not include any part of the
 19 corporation's undistributed taxable income, net operating
 20 loss, capital gains or other gains, profits, or losses
 21 required to be included in the shareholder's federal income
 22 tax adjusted gross income by reason of the ~~said~~ election
 23 under subchapter S. However, the shareholder's adjusted
 24 gross income shall include actual distributions from the
 25 corporation to the extent they would be treated as taxable

1 dividends if the subchapter S election were not in effect.

2 (4) A shareholder of a DISC that is exempt from the
3 corporation license tax under 15-31-102(1)(1) shall include
4 in his adjusted gross income the earnings and profits of the
5 DISC in the same manner as provided by federal law (section
6 995, Internal Revenue Code) for all periods for which the
7 DISC election is effective.

8 (5) A taxpayer who, in determining federal adjusted
9 gross income, has reduced his business deductions by an
10 amount for wages and salaries for which a federal tax credit
11 was elected under section 44B of the Internal Revenue Code,
12 of--1954--or as that section may be labeled or amended, is
13 allowed to deduct the amount of such the wages and salaries
14 paid regardless of the credit taken. The deduction must be
15 made in the year the wages and salaries were used to compute
16 the credit. In the case of a partnership or small business
17 corporation, the deduction must be made to determine the
18 amount of income or loss of the partnership or small
19 business corporation.

20 (6) Married taxpayers filing a joint federal return
21 who must include part of their social security benefits or
22 part of their tier 1 railroad retirement benefits in federal
23 adjusted gross income may split the federal base used in
24 calculation of federal taxable social security benefits or
25 federal taxable tier 1 railroad retirement benefits when

1 they file separate Montana income tax returns. The federal
2 base must be split equally on the Montana return.

3 (7) A taxpayer receiving retirement disability
4 benefits who has not attained age 65 by the end of the
5 taxable year and who has retired as permanently and totally
6 disabled may exclude from adjusted gross income up to \$100
7 per week received as wages or payments in lieu of wages for
8 a period during which the employee is absent from work due
9 to the disability. If the adjusted gross income before this
10 exclusion and before application of the two-earner married
11 couple deduction exceeds \$15,000, the excess reduces the
12 exclusion by an equal amount. This limitation affects the
13 amount of exclusion, but not the taxpayer's eligibility for
14 the exclusion. If eligible, married individuals shall apply
15 the exclusion separately, but the limitation for income
16 exceeding \$15,000 is determined with respect to the spouses
17 on their combined adjusted gross income. For the purpose of
18 this subsection, permanently and totally disabled means
19 unable to engage in any substantial gainful activity by
20 reason of any medically determined physical or mental
21 impairment lasting or expected to last at least 12 months.

22 (8) A person receiving benefits described in
23 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not
24 exclude benefits described in subsection (2)(c) from
25 adjusted gross income unless the benefits received under

subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are less than \$3,600, in which case the person may combine benefits to exclude up to a total of \$3,600 from adjusted gross income.

(9) Married taxpayers filing a joint federal return who claim a deduction for rental losses attributable to properties that they actively manage, as defined in section 469(i) of the Internal Revenue Code, as amended, may deduct their losses to a maximum of \$12,500 for each spouse on a Montana income tax return on which the taxpayers file separately. (Subsection (2)(k) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

Section 2. Section 15-30-126, MCA, is amended to read:

"15-30-126. Small business corporation -- deduction for donation of computer equipment to schools. A small business corporation not electing to be taxed under the provisions of 15-31-202 is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation'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:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is

substantially completed;

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

(3) the electing small business corporation 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 (2); and

(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions."

~~Section 3. Section 15-30-131, MCA, is amended to read:~~

~~"15-30-131. Nonresident and temporary resident taxpayers adjusted gross income deductions. (1) In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be interest or dividends are a part of income from any business, trade, profession, or occupation carried on in this state, interest income from installment sales of real or tangible commercial or business property located in~~

1 Montana must be included in adjusted gross income. Adjusted
2 gross income from sources within and without this state
3 shall be allocated and apportioned under rules prescribed by
4 the department.

5 {2}--In the case of a taxpayer other than a resident of
6 this state who is a resident of a state that imposes a tax
7 on the income of natural persons residing within that state,
8 the deductions allowed in computing net income are
9 restricted to those directly connected with the production
10 of Montana income.

11 {3}--In the case of a taxpayer other than a resident of
12 this state who is a resident of a state that does not impose
13 a tax on the income of natural persons residing within that
14 state, the deductions allowed in computing net income are
15 restricted to the greater of those directly relating to the
16 production of Montana income or a prorated amount of those
17 allowed under 15-30-121. For the purposes of this
18 subsection, deductions allowed under 15-30-121 apply only to
19 earned income and must be prorated according to the ratio
20 that the taxpayer's Montana earned income bears to his
21 federal earned income.

22 {4}--A temporary resident shall be allowed those
23 deductions and the credit under 15-32-109 allowed a resident
24 to the extent that such deductions or credit were actually
25 incurred or expended in the state of Montana during the

1 course of his residency.

2 {5}--For the purposes of this section, "earned income"
3 shall be defined as the same term is defined in section 43
4 of the Internal Revenue Code, or as that section may
5 subsequently be amended.

6 {6}--Notwithstanding the provisions of subsections (2)
7 and (3), any contribution made after December 31, 1982, to
8 the state of Montana or a political subdivision thereof
9 shall be an allowable deduction in computing net income.
10 The deduction is subject to the limitations set forth in
11 section 170 of the Internal Revenue Code of 1954, as amended
12 or amended.

13 {7}--For purposes of this section, "installment sales"
14 means sales in which the buyer agrees to pay the seller in
15 one or more deferred installments.

16 **Section 3.** Section 15-30-136, MCA, is amended to read:

17 "15-30-136. Computation of income of estates or trusts
18 -- exemption. (1) Except as otherwise provided in this
19 chapter, "gross income" of estates or trusts means all
20 income from whatever source derived in the taxable year,
21 including but not limited to the following items:

22 (a) dividends;

23 (b) interest received or accrued, including interest
24 received on obligations of another state or territory or a
25 county, municipality, district, or other political

1 subdivision thereof, but excluding interest income from
2 obligations of:

3 (i) the United States government or the state of
4 Montana;

5 (ii) a school district; or

6 (iii) a county, municipality, district, or other
7 political subdivision of the state;

8 (c) income from partnerships and other fiduciaries;

9 (d) gross rents and royalties;

10 (e) gain from sale or exchange of property, including
11 those gains that are excluded from gross income for federal
12 fiduciary income tax purposes by section 641(c) of the
13 Internal Revenue Code ~~of-1954~~, as amended;

14 (f) gross profit from trade or business; and

15 (g) refunds recovered on federal income tax, to the
16 extent the deduction of ~~such the~~ tax resulted in a reduction
17 of Montana income tax liability.

18 (2) In computing net income, there are allowed as
19 deductions:

20 (a) interest expenses deductible for federal tax
21 purposes according to section 163 of the Internal Revenue
22 Code ~~of-1954~~, as amended;

23 (b) taxes paid or accrued within the taxable year,
24 including but not limited to federal income tax, but
25 excluding Montana income tax;

1 (c) that fiduciary's portion of depreciation or
2 depletion which is deductible for federal tax purposes
3 according to sections 167, 611, and 642 of the Internal
4 Revenue Code ~~of-1954~~, as amended;

5 (d) charitable contributions that are deductible for
6 federal tax purposes according to section 642(c) of the
7 Internal Revenue Code ~~of-1954~~, as amended;

8 (e) administrative expenses claimed for federal income
9 tax purposes, according to sections 212 and 642(g) of the
10 Internal Revenue Code ~~of--1954~~, as amended, if ~~such the~~
11 expenses were not claimed as a deduction in the
12 determination of Montana inheritance tax;

13 (f) losses from fire, storm, shipwreck, or other
14 casualty or from theft, to the extent not compensated for by
15 insurance or otherwise, that are deductible for federal tax
16 purposes according to section 165 of the Internal Revenue
17 Code ~~of-1954~~, as amended;

18 (g) net operating loss deductions allowed for federal
19 income tax under section 642(d) of the Internal Revenue Code
20 ~~of--1954~~, as amended, except estates may not claim losses
21 that are deductible on the decedent's final return;

22 (h) all benefits, not in excess of \$3,600, received:

23 (i) as federal employees' retirement;

24 (ii) as retirement from public employment in a state
25 other than Montana; or

1 (iii) as an annuity, pension, or endowment under
2 private or corporate retirement plans or systems;

3 (i) all benefits paid under the Montana teachers'
4 retirement system that are specified as exempt from taxation
5 by 19-4-706;

6 (j) all benefits paid under the Montana Public
7 Employees' Retirement System Act that are specified as
8 exempt from taxation by 19-3-105;

9 (k) all benefits paid under the Montana highway
10 patrolmen's retirement system that are specified as exempt
11 from taxation by 19-6-705;

12 (l) Montana income tax refunds or credits thereof;

13 (m) all benefits paid under 19-11-602, 19-11-604, and
14 19-11-605 to retired and disabled firemen or their surviving
15 spouses or children;

16 (n) all benefits paid under the municipal police
17 officers' retirement system that are specified as exempt
18 from taxation by 19-9-1005.

19 (3) In the case of a shareholder of a corporation with
20 respect to which the election provided for under subchapter
21 S- of the Internal Revenue Code of 1954, as amended, is in
22 effect but and with respect to which the election provided
23 for under 15-31-202 is not also in effect, net income does
24 not include any part of the corporation's undistributed
25 taxable income, net operating loss, capital gains or other

1 gains, profits, or losses required to be included in the
2 shareholder's federal income tax net income by reason of the
3 election under subchapter S. However, the shareholder's net
4 income shall include actual distribution from the
5 corporation to the extent it would be treated as taxable
6 dividends if the subchapter S- election were not in effect.

7 (4) The following additional deductions shall be
8 allowed in deriving taxable income of estates and trusts:

9 (a) any amount of income for the taxable year
10 currently required to be distributed to beneficiaries for
11 such the year;

12 (b) any other amounts properly paid or credited or
13 required to be distributed for the taxable year;

14 (c) the amount of 60% of the excess of the net
15 long-term capital gain over the net short-term capital loss
16 for the taxable year.

17 (5) The exemption allowed for estates and trusts is
18 that exemption provided in 15-30-112(2)(a) and 15-30-112(8).

19 (6) A trust or estate excluding benefits under
20 subsections (2)(i) through (2)(k), (2)(m), or (2)(n) may not
21 exclude benefits described in subsection (2)(h) from net
22 income unless the benefits received under subsections (2)(i)
23 through (2)(k), (2)(m), or (2)(n) are less than \$3,600, in
24 which case the trust or estate may combine benefits to
25 exclude up to a total of \$3,600 from net income."

Section 4. Section 15-30-141, MCA, is amended to read:

"15-30-141. **Tax as personal debt.** Every tax imposed by this chapter and all increases, interest, and penalties thereon shall be from the time they are due and payable a personal debt from the person or fiduciary liable to pay the same to the state. Taxpayers who file a joint return are jointly and severally liable for the tax and any interest and penalty unless the department determines, based solely on the criteria in section 6013(e) of the Internal Revenue Code, as amended, that a spouse is relieved of liability."

Section 5. Section 15-30-161, MCA, is amended to read:

"15-30-161. **Purpose.** The purpose of 15-30-162 is to allow individuals, estates, and trusts, including those owning an interest in partnerships and in small business corporations electing not to be taxed under the provisions of 15-31-202, to take the investment credit as provided for in 15-30-162 in order to stimulate capital investment by the small business sector."

Section 6. Section 15-30-321, MCA, is amended to read:

"15-30-321. **Penalties for violation of chapter.**

(1) (a) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5%

of any balance of tax unpaid with respect to ~~such~~ the return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than \$5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part.

(b) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be added to the tax a penalty of 10% of ~~said~~ the tax, but not less than \$5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.

(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% ~~thereof~~ of the tax, but ~~such~~ the additional amount shall in no case be less than \$25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder under this chapter, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent, purposely or knowingly makes, renders, or signs any false or fraudulent return or statement or supplies any false or fraudulent information shall be liable to a penalty of not more than \$1,000, to be recovered by the attorney general in the name of the state by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall upon conviction be fined not to exceed \$1,000 or be imprisoned not to exceed 1 year, or both, at the discretion of the court.

(4) With respect to the imposition of a civil penalty, evidence produced by the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.

(5) If the amount required to be shown as tax on a

return is less than the amount shown as tax on the return, subsection (1)(a), (1)(b), (2), or (3), as applicable, must be applied by substituting the lesser amount of tax.

(5) IN THE CASE OF AN AMENDED RETURN FILED WITHIN THE SAME CALENDAR YEAR AS THE ORIGINAL RETURN, IF THE AMOUNT OF TAX REQUIRED TO BE SHOWN IS LESS THAN THE TAX SHOWN ON THE ORIGINAL RETURN, SUBSECTION (1)(A), (1)(B), (2), OR (3), AS APPLICABLE, MUST BE APPLIED BY SUBSTITUTING THE LESSER AMOUNT OF TAX. THIS PROVISION DOES NOT APPLY TO A REDUCTION IN TAX RESULTING FROM THE CARRYBACK OF A NET OPERATING LOSS."

Section 7. Section 15-31-202, MCA, is amended to read:

"15-31-202. Election by small business corporation.

(1) A small business corporation may elect that has made a valid election under subchapter S of Chapter 1 of the Internal Revenue Code, as amended, is not to be subject to the taxes imposed by this chapter.

(2) If a small business corporation makes an election under subsection (1), then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation is not subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this part apply to such corporation; and

(b)--with-respect-to-the-taxable-years-of-a-shareholder of-such-corporation-in-which-or-with-which-the-taxable-years of-the-corporation-for-which-such-election-is-in-effect-end, the--provisions--of-this-part-apply-to-such-shareholder,-and with-respect--to--such--taxable--years--and--all--succeeding taxable--years,--the--provisions--of-this-part-apply-to-such shareholder-.

(3)--An-election-under-subsection-(1)-must-be--made--in accordance--with--rules--prescribed--by--the--department--of revenue-.

(2) A small business corporation that has made a valid election under subchapter S of Chapter 1 of the Internal Revenue Code, as amended, shall file, by the 15th day of the third month of its first taxable year, a copy of the internal revenue service notification or other proof that a valid federal election has been made. If proof of election is not filed by the time the department receives the corporation's first tax return, the department shall notify the corporation that the proof of election is required within 60 days of the date of the notice. If proof of election is not received within 60 days or by a reasonable extension date based upon a request by the taxpayer prior to the expiration of the 60 days, the corporation is subject to the taxes imposed by this chapter.

(3) A small business corporation that has made a valid

election under subchapter S of Chapter 1 of the Internal Revenue Code, as amended, may elect to be subject to the taxes imposed by this chapter by filing an election on a form provided by the department. The form must have printed on it a notification that making the election will subject income to tax under both this chapter and chapter 30 of this title. For tax years beginning on or after January 1, 1989, but before March 1, 1990, the election must be filed by May 15, 1990. Thereafter, the election must be filed by the 15th day of the third month of the taxable year for which the election is to become effective. The election may be revoked by the taxpayer by written notification to the department. A revocation must be delivered to the department by the 15th day of the third month of the taxable year for which the revocation is to be effective.

(4) This election section is not effective unless the corporate net income or loss of such--electing the nonelecting small business corporation is included in the stockholders' adjusted-gross income as-defined-in-15-30-111.

(5) Every electing nonelecting small business corporation is required to pay the minimum fee of \$10 required by 15-31-204."

Section 8. Section 15-31-204, MCA, is amended to read:

"15-31-204. Minimum fee of qualifying corporations unaffected. Notwithstanding the provisions of 15-31-121,

1 corporations ~~electing-and~~ qualifying under 15-31-202 shall
2 pay a minimum fee of \$10."

3 **Section 9.** Section 15-31-209, MCA, is amended to read:

4 "15-31-209. Termination and revocation. If the
5 election under the provisions of Subchapter S subchapter S
6 of Chapter 1 of the Internal Revenue Code, as amended, is
7 either terminated or revoked for federal purposes, the
8 corporation must notify the department within 30 days of
9 such termination or revocation. ~~The department may terminate~~
10 ~~an election at any time if it discovers the corporation does~~
11 ~~not qualify as a small business corporation as provided for~~
12 ~~under the provisions of Subchapter S of the Internal Revenue~~
13 ~~Code of 1954.~~ A corporation that does not have a valid
14 federal election for the entire taxable year is subject to
15 tax under this chapter."

16 **Section 10.** Section 15-32-402, MCA, is amended to
17 read:

18 "15-32-402. Commercial investment credit --
19 wind-generated electricity. (1) An individual, corporation,
20 partnership, or small business corporation as defined in
21 ~~15-31-201~~ subchapter S of Chapter 1 of the Internal Revenue
22 Code, as amended, that makes an investment of \$5,000 or more
23 in certain depreciable property qualifying under section 38
24 of the Internal Revenue Code ~~of 1954,~~ as amended, for a
25 commercial system located in Montana which generates

1 electricity by means of wind power is entitled to a tax
2 credit against taxes imposed by 15-30-103 or 15-31-121 in an
3 amount equal to 35% of the eligible costs, to be taken as a
4 credit only against taxes due as a consequence of taxable or
5 net income produced by one of the following:

6 (a) manufacturing plants located in Montana that
7 produce wind energy generating equipment;

8 (b) a new business facility or the expanded portion of
9 an existing business facility for which the wind energy
10 generating equipment supplies, on a direct contract sales
11 basis, the basic energy needed; or

12 (c) the wind energy generating equipment in which the
13 investment for which a credit is being claimed was made.

14 (2) For purposes of determining the amount of the tax
15 credit that may be claimed under subsection (1), eligible
16 costs include only those expenditures that qualify under
17 section 38 of the Internal Revenue Code ~~of 1954,~~ as amended,
18 and that are associated with the purchase, installation, or
19 upgrading of:

20 (a) generating equipment;

21 (b) safety devices and storage components;

22 (c) transmission lines necessary to connect with
23 existing transmission facilities; and

24 (d) transmission lines necessary to connect directly
25 to the purchaser of the electricity when no other

1 transmission facilities are available.

2 (3) Eligible costs under subsection (2) must be
3 reduced by the amount of any grants provided by the state or
4 federal government for the system."

5 **Section 11.** Section 90-8-202, MCA, is amended to read:

6 "90-8-202. Designation of qualified Montana capital
7 companies -- tax credit. (1) The board shall designate as
8 qualified Montana capital companies those certified
9 companies that have been privately capitalized at a minimum
10 level of \$200,000. A certified company seeking designation
11 as a qualified Montana capital company must make written
12 application to the board on forms provided by the board.
13 The application must contain the information required by
14 90-8-204 and such other information as the board requires.

15 (2) (a) The total amount of tax credits authorized for
16 a single qualified company may not exceed \$1,500,000. In the
17 event the capitalization of the company is later increased,
18 the company may apply for authorization of additional tax
19 credits within the foregoing limitation.

20 (b) The total credits authorized for all companies may
21 not exceed a total of \$1 million prior to June 30, 1985. The
22 total credits authorized for all companies between July 1,
23 1985, and June 30, 1987, may not exceed \$1 million plus any
24 portion of the \$1 million available for authorization before
25 June 30, 1985, that is allocated to qualified companies. The

1 total credits authorized for all companies between July 1,
2 1987, and June 30, 1989, may not exceed \$3 million plus any
3 portion of the credits available for authorization before
4 June 30, 1987, that is allocated to qualified companies.
5 The total credits authorized for all companies between July
6 1, 1989, and June 30, 1991, may not exceed \$3 million plus
7 any portion of the credits available for authorization
8 before June 30, 1989, that is allocated to qualified
9 companies.

10 (3) The credits shall be allocated to qualified
11 companies in the order that completed applications for
12 designation as qualified capital companies are received by
13 the board, and the board shall certify to each such company
14 its appropriate allocation.

15 (4) Investors in a qualified Montana capital company
16 are entitled to the tax credits provided for in subsection
17 (5). Funds invested in a certified company prior to
18 designation as a qualified Montana capital company may, at
19 the discretion of the investor, be placed in an escrow
20 account in a Montana financial institution pending
21 designation of the company as a qualified Montana capital
22 company.

23 (5) Subject to the provisions of subsection (2), an
24 individual, small business corporation, partnership, or
25 corporate taxpayer who makes a capital investment in a

1 qualified Montana capital company is entitled to a tax
 2 credit equal to 50% of the investment, up to a maximum
 3 credit of \$150,000 per taxpayer. The credit may be taken
 4 against the tax liability imposed on the investor pursuant
 5 to Title 15, chapter 30 or 31. The credit for investments
 6 by a small business corporation electing not to be taxed
 7 under 15-31-202 or a partnership may be claimed by the small
 8 business corporation shareholders or the partners.

9 (6) The tax credit allowed under subsection (5) is to
 10 be credited against the taxpayer's income tax liability for
 11 the taxable year in which the investment in a qualified
 12 Montana capital company is made. If the amount of the tax
 13 credit exceeds the taxpayer's tax liability for the taxable
 14 year, the amount of the credit which exceeds the tax
 15 liability may be carried back or carried forward in
 16 accordance with the provisions of section 46(b) of the
 17 Internal Revenue Code, as amended.

18 (7) The tax credit provided for in this section is
 19 available only to those taxpayers who invest in a qualified
 20 Montana capital company within 4 years of July 1, 1987."

21 NEW SECTION. Section 12. Extension of authority. Any
 22 existing authority to make rules on the subject of the
 23 provisions of [this act] is extended to the provisions of
 24 [this act].

25 NEW SECTION. Section 13. Code commissioner

1 instruction. Wherever the phrase "Subchapter S" appears in
 2 Title 15, chapter 31, part 2, MCA, the code commissioner is
 3 instructed to revise the phrase to read "subchapter S".

4 NEW SECTION. Section 14. Effective date. [This act]
 5 is effective on passage and approval.

6 NEW SECTION. Section 15. Retroactive applicability.
 7 [This act] applies retroactively, within the meaning of
 8 1-2-109, to taxable years beginning after December 31, 1988.

-End-