

SENATE BILL 6

Introduced by Crippen

6/20	Introduced
6/20	Referred to Taxation
6/20	Fiscal Note Requested
6/21	Hearing
6/22	Fiscal Note Received
6/26	Fiscal Note Printed
6/26	Committee Report--Bill Passed as Amended
6/27	2nd Reading Passed
6/27	3rd Reading Passed

Transmitted to House

6/27	Referred to Taxation
6/29	Hearing
	Died in Committee

1  
2 INTRODUCED BY Senate BILL NO. 6  
3 BY REQUEST OF THE GOVERNOR

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING APPLICATION OF  
6 AN INFLATION FACTOR TO CAPITAL GAINS OR LOSSES FOR PURPOSES  
7 OF TAXATION; AMENDING SECTIONS 15-30-111 AND 15-31-304, MCA;  
8 AND PROVIDING AN APPLICABILITY DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Inflation factor allowed on  
12 gain or loss on sale or exchange of certain capital assets  
13 -- duty of department -- rulemaking. (1) Notwithstanding the  
14 provisions of 15-30-110, true gain rather than nominal gain  
15 must be used to determine the tax on the proceeds of the  
16 sale or exchange of certain capital assets.

17 (2) Adjusted gross income includes all capital gains  
18 or losses on the sale or exchange of capital assets  
19 occurring after [the effective date of this act], as capital  
20 gains are determined under subchapter P. of Chapter 1 of the  
21 Internal Revenue Code as it read on December 31, 1986, and  
22 as adjusted for inflation by the department.

23 (3) The inflation factor to be used by the department  
24 in adjusting capital gains or losses must be determined by  
25 dividing the consumer price index for June of the taxable

1 year by the consumer price index for June of 1988, or, if  
2 the asset was acquired after 1988, the consumer price index  
3 for June of the year in which the asset was acquired.

4 (4) Each year the department shall prepare and provide  
5 with the income tax forms the inflation adjustment factors  
6 to be used for all holding periods of capital assets.

7 (5) For capital assets held more than 1 year, the  
8 taxpayer may adjust the cost basis of the assets by the  
9 inflation adjustment factor for the appropriate holding  
10 period for a purchase or a sale of assets either for cash or  
11 under an installment agreement.

12 (6) The department shall adopt rules and provide forms  
13 for use by the taxpayer in making inflation adjustments of  
14 capital asset costs.

15 **Section 2.** Section 15-30-111, MCA, is amended to read:

16 "15-30-111. Adjusted gross income. (1) Adjusted gross  
17 income ~~shall--be~~ is the taxpayer's federal income tax  
18 adjusted gross income as defined in section 62 of the  
19 Internal Revenue Code of 1954 or as that section may be  
20 labeled or amended and in addition ~~shall--include~~ includes  
21 the following:

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

25 (b) refunds received of federal income tax, to the

1 extent the deduction of such tax resulted in a reduction of  
2 Montana income tax liability;

3 (c) that portion of a shareholder's income under  
4 subchapter S. of Chapter 1 of the Internal Revenue Code of  
5 1954, that has been reduced by any federal taxes paid by the  
6 subchapter S. corporation on the income; and

7 (d) depreciation or amortization taken on a title  
8 plant as defined in 33-25-105(15); and

9 (e) capital gains or losses as described in 15-30-110  
10 or in [section 1].

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

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

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

23 (c) all benefits, not in excess of \$3,600, received:

24 (i) under the Federal Employees' Retirement Act;

25 (ii) under the public employee retirement laws of a

1 state other than Montana; or

2 (iii) as an annuity, pension, or endowment under any  
3 private or corporate retirement plan or system;

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

6 (e) all benefits paid under The Public Employees'  
7 Retirement System Act which are specified as exempt from  
8 taxation by 19-3-105;

9 (f) all benefits paid under the highway patrol  
10 retirement law which are specified as exempt from taxation  
11 by 19-6-705;

12 (g) all Montana income tax refunds or credits thereof;

13 (h) all benefits paid under 19-11-602, 19-11-604, and  
14 19-11-605 to retired and disabled firefighters, their  
15 surviving spouses and orphans or specified as exempt from  
16 taxation by 19-13-1003;

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

20 (j) gain required to be recognized by a liquidating  
21 corporation under 15-31-113(1)(a)(ii);

22 (k) all tips covered by section 3402(k) of the  
23 Internal Revenue Code of 1954, as amended and applicable on  
24 January 1, 1983, received by persons for services rendered  
25 by them to patrons of premises licensed to provide food,

1 beverage, or lodging;

2 (l) all benefits received under the workers'  
3 compensation laws;

4 (m) all health insurance premiums paid by an employer  
5 for an employee if attributed as income to the employee  
6 under federal law;

7 (n) all benefits paid under an optional retirement  
8 program that are specified as exempt from taxation by  
9 19-21-212; and

10 (o) all money received because of a settlement  
11 agreement or judgment in a lawsuit brought against a  
12 manufacturer or distributor of "agent orange" for damages  
13 resulting from exposure to "agent orange".

14 (3) In the case of a shareholder of a corporation with  
15 respect to which the election provided for under subchapter  
16 S. of the Internal Revenue Code of 1954, as amended, is in  
17 effect but with respect to which the election provided for  
18 under 15-31-202, as amended, is not in effect, adjusted  
19 gross income does not include any part of the corporation's  
20 undistributed taxable income, net operating loss, capital  
21 gains or other gains, profits, or losses required to be  
22 included in the shareholder's federal income tax adjusted  
23 gross income by reason of the election under subchapter S.  
24 However, the shareholder's adjusted gross income shall  
25 include actual distributions from the corporation to the

1 extent they would be treated as taxable dividends if the  
2 subchapter S. election were not in effect.

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

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

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

1 federal taxable tier 1 railroad retirement benefits when  
2 they file separate Montana income tax returns. The federal  
3 base must be split equally on the Montana return.

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

23 (8) A person receiving benefits described in  
24 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not  
25 exclude benefits described in subsection (2)(c) from

1 adjusted gross income unless the benefits received under  
2 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are  
3 less than \$3,600, in which case the person may combine  
4 benefits to exclude up to a total of \$3,600 from adjusted  
5 gross income. (Subsection (2)(k) terminates on occurrence  
6 of contingency--sec. 3, Ch. 634, L. 1983.)"

7 **Section 3.** Section 15-31-304, MCA, is amended to read:

8 "15-31-304. Allocation of nonbusiness income. (1)  
9 Rents and royalties from real or tangible personal property,  
10 capital gains as described in [section 1], interest,  
11 dividends, or patent or copyright royalties, to the extent  
12 that they constitute nonbusiness income, ~~shall~~ must be  
13 allocated as provided in subsections (2) through (5) of this  
14 section.

15 (2) (a) Net rents and royalties from real property  
16 located in this state are allocable to this state.

17 (b) Net rents and royalties from tangible personal  
18 property are allocable to this state:

19 (i) if and to the extent that the property is utilized  
20 in this state; or

21 (ii) in their entirety if the taxpayer's commercial  
22 domicile is in this state and the taxpayer is not organized  
23 under the laws of or taxable in the state in which the  
24 property is utilized.

25 (c) The extent of utilization of tangible personal

1 property in a state is determined by multiplying the rents  
 2 and royalties by a fraction the numerator of which is the  
 3 number of days of physical location of the property in the  
 4 state during the rental or royalty period in the taxable  
 5 year and the denominator of which is the number of days of  
 6 physical location of the property everywhere during all  
 7 rental or royalty periods in the taxable year. If the  
 8 physical location of the property during the rental or  
 9 royalty period is unknown or unascertainable by the  
 10 taxpayer, tangible personal property is utilized in the  
 11 state in which the property was located at the time the  
 12 rental or royalty payer obtained possession.

13 (3) (a) Capital gains and losses, as described in  
 14 [section 1], from sales of real property located in this  
 15 state are allocable to this state.

16 (b) Capital gains and losses, as described in [section  
 17 1], from sales of tangible personal property are allocable  
 18 to this state if:

19 (i) the property had a situs in this state at the time  
 20 of the sale; or

21 (ii) the taxpayer's commercial domicile is in this  
 22 state and the taxpayer is not taxable in the state in which  
 23 the property had a situs.

24 (c) Capital gains and losses, as described in [section  
 25 1], from sales of intangible personal property are allocable

1 to this state if the taxpayer's commercial domicile is in  
 2 this state.

3 (4) Interest and dividends are allocable to this state  
 4 if the taxpayer's commercial domicile is in this state.

5 (5) (a) Patent and copyright royalties are allocable  
 6 to this state if and to the extent that:

7 (i) the patent or copyright is utilized by the payer  
 8 in this state; or

9 (ii) the patent or copyright is utilized by the payer  
 10 in a state in which the taxpayer is not taxable and the  
 11 taxpayer's commercial domicile is in this state.

12 (b) A patent is utilized in a state to the extent that  
 13 it, is employed in production, fabrication, manufacturing, or  
 14 other processing in the state or to the extent that a  
 15 patented product is produced in the state. If the basis of  
 16 receipts from patent royalties does not permit allocation to  
 17 states or if the accounting procedures do not reflect states  
 18 of utilization, the patent is utilized in the state in which  
 19 the taxpayer's commercial domicile is located.

20 (c) A copyright is utilized in a state to the extent  
 21 that printing or other publication originates in the state.  
 22 If the basis of receipts from copyright royalties does not  
 23 permit allocation to states or if the accounting procedures  
 24 do not reflect states of utilization, the copyright is  
 25 utilized in the state in which the taxpayer's commercial

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1 domicile is located."

2 NEW SECTION. **Section 4. Codification instruction.**

3 [Section 1] is intended to be codified as an integral part  
4 of Title 15, chapter 30, part 1, and the provisions of Title  
5 15, chapter 30, part 1, apply to [section 1].

6 NEW SECTION. **Section 5. Applicability.** [This act]  
7 applies to taxable years beginning after December 31, 1989.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for SB6, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing application of an inflation factor to capital gains or losses for purposes of taxation; and providing an applicability date.

ASSUMPTIONS:

1. Individual income tax collections are estimated to be \$256,617,000 in FY90, and \$274,732,000 in FY91 (HJR13).
2. The capital gains indexing provisions apply only to assets sold or purchased during or after calendar year 1988.
3. Based on IRS estimates of holding period distribution of securities and actual 1987 capital gains reported on Montana individual income tax returns, this proposal is estimated to reduce individual income tax revenue \$250,000 in FY91.
4. This bill applies to taxable years beginning after December 31, 1989. There is no impact in FY90.
5. There is no impact on Department of Revenue administrative expenditures.

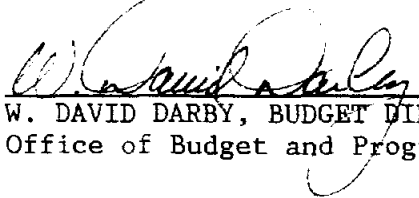
FISCAL IMPACT:

Revenue Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Individual Income Tax	\$256,617,000	\$256,617,000	\$ 0	\$274,732,000	\$274,482,000	\$(250,000)
<u>Fund Information:</u>						
General Fund	\$149,351,094	\$149,351,094	\$ 0	\$159,894,024	\$159,748,524	\$(145,500)
Foundation Program	81,604,206	81,604,206	0	87,364,776	87,285,276	(79,500)
Debt Service	25,661,700	25,661,700	0	27,473,200	27,448,200	(25,000)
Total	\$256,617,000	\$256,617,000	\$ 0	\$274,732,000	\$274,482,000	\$(250,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Given that some capital assets may be held for as long as 30 years, it will take that amount of time for this proposal to be fully phased in. Had this proposal been in effect for the past thirty years it is estimated that calendar year 1987 tax liabilities would have been reduced \$8.2 million.

 6/23/89  
W. DAVID DARBY, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

 6-23-89  
BRUCE D. CRIPPEN, PRIMARY SPONSOR DATE

Fiscal Note for SB6, as introduced

**SB 6**



APPROVED BY COMMITTEE  
ON TAXATION

1 SENATE BILL NO. 6  
2 INTRODUCED BY CRIPPEN  
3 BY REQUEST OF THE GOVERNOR  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING APPLICATION OF  
6 AN INFLATION FACTOR TO ~~CAPITAL--GAINS--OR--LOSSES~~ THE COST  
7 BASIS OF CAPITAL ASSETS FOR PURPOSES OF TAXATION; AMENDING  
8 SECTIONS 15-30-111, 15-30-136, 15-31-114, AND 15-31-304,  
9 MCA; AND PROVIDING AN APPLICABILITY DATE."

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

12 NEW SECTION. Section 1. Inflation factor allowed on  
13 gain or loss on sale or exchange of certain capital assets  
14 -- duty of department -- rulemaking. (1) ~~Notwithstanding the~~  
15 ~~provisions--of--15-30-110~~ FOR CAPITAL ASSETS SOLD AFTER  
16 DECEMBER 31, 1989, true gain rather than nominal gain must  
17 be used to determine the tax on the proceeds of the sale or  
18 exchange of certain capital assets.

19 (2) Adjusted gross income includes all capital gains  
20 or losses on the sale or exchange of capital assets  
21 occurring after [the effective date of this act], as capital  
22 gains are determined under subchapter P. of Chapter 1 of the  
23 Internal Revenue Code as it read on December 31, 1986, and  
24 as adjusted for inflation by the department.

25 (3) The inflation factor to be used by the department

1 in adjusting capital gains or losses must be determined by  
2 dividing the consumer price index for June of the taxable  
3 year by the consumer price index for June of 1988, or, if  
4 the asset was acquired after 1988, the consumer price index  
5 for June of the year in which the asset was acquired.

6 (4) Each year the department shall prepare and provide  
7 with the income tax forms the inflation adjustment factors  
8 FACTOR to be used for ~~all-holding-periods-of-capital-assets~~  
9 THE PREVIOUS YEARS' HOLDING PERIOD.

10 (5) For capital assets held more than 1 year, the  
11 taxpayer may adjust the cost basis of the assets EACH YEAR  
12 by the inflation adjustment factor for the appropriate  
13 PREVIOUS YEARS' holding period ~~for-a-purchase-or-a-sale-of~~  
14 ~~assets-either-for-cash-or-under-an-installment-agreement.~~

15 (6) The department shall adopt rules and provide forms  
16 for use by the taxpayer in making inflation adjustments of  
17 capital asset costs.

18 (7) ON A SALE OR EXCHANGE OF AN ASSET EITHER FOR CASH  
19 OR UNDER AN INSTALLMENT AGREEMENT, THE TAXPAYER MAY USE THE  
20 COST BASIS AS ADJUSTED FOR INFLATION UNDER THIS SECTION.

21 (8) FOR PURPOSES OF THIS CHAPTER, "CAPITAL GAINS"  
22 EQUALS THE SELLING PRICE LESS THE MONTANA ADJUSTED BASIS.  
23 FOR AN ASSET ACQUIRED AFTER DECEMBER 31, 1989, THE ADJUSTED  
24 BASIS FOR MONTANA PURPOSES IS CALCULATED BY MULTIPLYING THE  
25 COST OF THE ASSET BY THE INFLATION FACTOR IN THE YEAR OF THE

1 SALE, LESS THE ACCUMULATED DEPRECIATION CALCULATED UNDER THE  
2 INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND LESS ANY  
3 DEPRECIATION TAKEN UNDER 15-30-111(2)(Q) OR 15-31-114(2)(B).

4 **Section 2.** Section 15-30-111, MCA, is amended to read:

5 "15-30-111. Adjusted gross income. (1) Adjusted gross  
6 income ~~shall--be~~ is the taxpayer's federal income tax  
7 adjusted gross income as defined in section 62 of the  
8 Internal Revenue Code of 1954 or as that section may be  
9 labeled or amended and in addition ~~shall--include~~ includes  
10 the following:

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

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

17 (c) that portion of a shareholder's income under  
18 subchapter S. of Chapter 1 of the Internal Revenue Code of  
19 1954, that has been reduced by any federal taxes paid by the  
20 subchapter S. corporation on the income; and AND

21 (d) depreciation or amortization taken on a title  
22 plant as defined in 33-25-105(15) ~~and~~

23 ~~(e)--capital-gains-or-losses-as-described-in--15-30-110~~  
24 ~~or-in-{section-1}.~~

25 (2) Notwithstanding the provisions of the federal

1 Internal Revenue Code of 1954, as labeled or amended,  
2 adjusted gross income does not include the following which  
3 are exempt from taxation under this chapter:

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

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

12 (c) all benefits, not in excess of \$3,600, received:

13 (i) under the Federal Employees' Retirement Act;

14 (ii) under the public employee retirement laws of a  
15 state other than Montana; or

16 (iii) as an annuity, pension, or endowment under any  
17 private or corporate retirement plan or system;

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

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

23 (f) all benefits paid under the highway patrol  
24 retirement law which are specified as exempt from taxation  
25 by 19-6-705;

1 (g) all Montana income tax refunds or credits thereof;

2 (h) all benefits paid under 19-11-602, 19-11-604, and  
3 19-11-605 to retired and disabled firefighters, their  
4 surviving spouses and orphans or specified as exempt from  
5 taxation by 19-13-1003;

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

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

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

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

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

21 (n) all benefits paid under an optional retirement  
22 program that are specified as exempt from taxation by  
23 19-21-212; and

24 (o) all money received because of a settlement  
25 agreement or judgment in a lawsuit brought against a

1 manufacturer or distributor of "agent orange" for damages  
2 resulting from exposure to "agent orange"; AND

3 (P) THE DIFFERENCE BETWEEN THE CAPITAL GAINS AND  
4 LOSSES INCLUDED IN THE FEDERAL ADJUSTED GROSS INCOME AND THE  
5 CAPITAL GAINS AND LOSSES AS CALCULATED IN [SECTION 1]; AND

6 (Q) FOR AN ASSET PURCHASED AND SOLD AFTER DECEMBER 31,  
7 1989, AND HELD FOR ITS ENTIRE FEDERAL DEPRECIABLE LIFE, AN  
8 ADDITIONAL DEPRECIATION EXPENSE IS ALLOWED FOR THE YEAR  
9 FOLLOWING THE FINAL YEAR OF FEDERAL DEPRECIATION. THE  
10 AMOUNT OF ADDITIONAL DEPRECIATION THAT MAY BE CLAIMED IN THE  
11 SUBSEQUENT YEAR IS CALCULATED BY MULTIPLYING THE ORIGINAL  
12 COST OF THE ASSET BY THE INFLATION FACTOR AS DEFINED IN  
13 [SECTION 1], LESS THE ACCUMULATED DEPRECIATION CLAIMED FOR  
14 THAT ASSET UNDER THE INTERNAL REVENUE CODE OF 1986, AS  
15 AMENDED.

16 (3) In the case of a shareholder of a corporation with  
17 respect to which the election provided for under subchapter  
18 S. of the Internal Revenue Code of 1954, as amended, is in  
19 effect but with respect to which the election provided for  
20 under 15-31-202, as amended, is not in effect, adjusted  
21 gross income does not include any part of the corporation's  
22 undistributed taxable income, net operating loss, capital  
23 gains or other gains, profits, or losses required to be  
24 included in the shareholder's federal income tax adjusted  
25 gross income by reason of the election under subchapter S.

1 However, the shareholder's adjusted gross income shall  
 2 include actual distributions from the corporation to the  
 3 extent they would be treated as taxable dividends if the  
 4 subchapter S. election were not in effect.

5 (4) A shareholder of a DISC that is exempt from the  
 6 corporation license tax under 15-31-102(1)(1) shall include  
 7 in his adjusted gross income the earnings and profits of the  
 8 DISC in the same manner as provided by federal law (section  
 9 995, Internal Revenue Code) for all periods for which the  
 10 DISC election is effective.

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

23 (6) Married taxpayers filing a joint federal return  
 24 who must include part of their social security benefits or  
 25 part of their tier 1 railroad retirement benefits in federal

1 adjusted gross income may split the federal base used in  
 2 calculation of federal taxable social security benefits or  
 3 federal taxable tier 1 railroad retirement benefits when  
 4 they file separate Montana income tax returns. The federal  
 5 base must be split equally on the Montana return.

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

25 (8) A person receiving benefits described in

1 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not  
 2 exclude benefits described in subsection (2)(c) from  
 3 adjusted gross income unless the benefits received under  
 4 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are  
 5 less than \$3,600, in which case the person may combine  
 6 benefits to exclude up to a total of \$3,600 from adjusted  
 7 gross income. (Subsection (2)(k) terminates on occurrence  
 8 of contingency--sec. 3, Ch. 634, L. 1983.)"

9 **SECTION 3. SECTION 15-30-136, MCA, IS AMENDED TO READ:**

10 "15-30-136. Computation of income of estates or trusts  
 11 -- exemption. (1) Except as otherwise provided in this  
 12 chapter, "gross income" of estates or trusts means all  
 13 income from whatever source derived in the taxable year,  
 14 including but not limited to the following items:

15 (a) dividends;

16 (b) interest received or accrued, including interest  
 17 received on obligations of another state or territory or a  
 18 county, municipality, district, or other political  
 19 subdivision thereof, but excluding interest income from  
 20 obligations of:

21 (i) the United States government or the state of  
 22 Montana;

23 (ii) a school district; or

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

1 (c) income from partnerships and other fiduciaries;  
 2 (d) gross rents and royalties;  
 3 (e) gain from sale or exchange of property, including  
 4 those gains that are excluded from gross income for federal  
 5 fiduciary income tax purposes by section 641(c) of the  
 6 Internal Revenue Code of 1954, as amended;  
 7 (f) gross profit from trade or business; and  
 8 (g) refunds recovered on federal income tax, to the  
 9 extent the deduction of such tax resulted in a reduction of  
 10 Montana income tax liability.

11 (2) In computing net income, there are allowed as  
 12 deductions:

13 (a) interest expenses deductible for federal tax  
 14 purposes according to section 163 of the Internal Revenue  
 15 Code of 1954, as amended;

16 (b) taxes paid or accrued within the taxable year,  
 17 including but not limited to federal income tax, but  
 18 excluding Montana income tax;

19 (c) that fiduciary's portion of depreciation or  
 20 depletion which is deductible for federal tax purposes  
 21 according to sections 167, 611, and 642 of the Internal  
 22 Revenue Code of 1954, as amended;

23 (d) charitable contributions that are deductible for  
 24 federal tax purposes according to section 642(c) of the  
 25 Internal Revenue Code of 1954, as amended;

1 (e) administrative expenses claimed for federal income  
2 tax purposes, according to sections 212 and 642(g) of the  
3 Internal Revenue Code of 1954, as amended, if such expenses  
4 were not claimed as a deduction in the determination of  
5 Montana inheritance tax;

6 (f) losses from fire, storm, shipwreck, or other  
7 casualty or from theft, to the extent not compensated for by  
8 insurance or otherwise, that are deductible for federal tax  
9 purposes according to section 165 of the Internal Revenue  
10 Code of 1954, as amended;

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

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

16 (i) as federal employees' retirement;

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

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

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

24 (j) all benefits paid under the Montana Public  
25 Employees' Retirement System Act that are specified as

1 exempt from taxation by 19-3-105;

2 (k) all benefits paid under the Montana highway patrol  
3 officers' retirement system that are specified as exempt  
4 from taxation by 19-6-705;

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

6 (m) all benefits paid under 19-11-602, 19-11-604, and  
7 19-11-605 to retired and disabled firemen or their surviving  
8 spouses or children;

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

12 (3) In the case of a shareholder of a corporation with  
13 respect to which the election provided for under subchapter  
14 S. of the Internal Revenue Code of 1954, as amended, is in  
15 effect but with respect to which the election provided for  
16 under 15-31-202 is not in effect, net income does not  
17 include any part of the corporation's undistributed taxable  
18 income, net operating loss, capital gains or other gains,  
19 profits, or losses required to be included in the  
20 shareholder's federal income tax net income by reason of the  
21 election under subchapter S. However, the shareholder's net  
22 income shall include actual distribution from the  
23 corporation to the extent it would be treated as taxable  
24 dividends if the subchapter S. election were not in effect.

25 (4) The following additional deductions shall be

1 allowed in deriving taxable income of estates and trusts:

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

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

7 (c) ~~the amount of 60% of the excess of the net~~  
8 ~~long-term capital gain over the net short-term capital loss~~  
9 ~~for the taxable year for an asset sold after December 31,~~  
10 ~~1989, the difference between the capital gains and losses~~  
11 ~~included in the federal fiduciary gross income and the~~  
12 ~~capital gains and losses as calculated in [section 1];~~

13 (d) for an asset purchased and sold after December 31,  
14 1989, and held for its entire federal depreciable life, an  
15 additional depreciation expense is allowed for the year  
16 following the final year of federal depreciation. The  
17 amount of additional depreciation that may be claimed in the  
18 subsequent year is calculated by multiplying the original  
19 cost of the asset by the inflation factor as defined in  
20 [section 1], less the accumulated depreciation claimed for  
21 that asset under the Internal Revenue Code of 1986, as  
22 amended.

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

25 (6) A trust or estate excluding benefits under

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

7 **SECTION 4. SECTION 15-31-114, MCA, IS AMENDED TO READ:**

8 **"15-31-114. Deductions allowed in computing income. In**  
9 **computing the net income, the following deductions shall be**  
10 **allowed from the gross income received by such corporation**  
11 **within the year from all sources:**

12 (1) All the ordinary and necessary expenses paid or  
13 incurred during the taxable year in the maintenance and  
14 operation of its business and properties, including  
15 reasonable allowance for salaries for personal services  
16 actually rendered, subject to the limitation hereinafter  
17 contained, rentals or other payments required to be made as  
18 a condition to the continued use or possession of property  
19 to which the corporation has not taken or is not taking  
20 title or in which it has no equity. No deduction shall be  
21 allowed for salaries paid upon which the recipient thereof  
22 has not paid Montana state income tax; provided, however,  
23 that where domestic corporations are taxed on income derived  
24 from without the state, salaries of officers paid in  
25 connection with securing such income shall be deductible.

1 (2) (a) All losses actually sustained and charged off  
 2 within the year and not compensated by insurance or  
 3 otherwise, including a reasonable allowance for the wear and  
 4 tear and obsolescence of property used in the trade or  
 5 business, such allowance to be determined according to the  
 6 provisions of section 167 of the Internal Revenue Code in  
 7 effect with respect to the taxable year. ~~All elections~~  
 8 Except as provided in subsection (2)(b), all elections for  
 9 depreciation shall be the same as the elections made for  
 10 federal income tax purposes. No deduction shall be allowed  
 11 for any amount paid out for any buildings, permanent  
 12 improvements, or betterments made to increase the value of  
 13 any property or estate, and no deduction shall be made for  
 14 any amount of expense of restoring property or making good  
 15 the exhaustion thereof for which an allowance is or has been  
 16 made. No depreciation or amortization deduction shall be  
 17 allowed on a title plant as defined in 33-25-105(15).

18 (b) For an asset purchased and sold after December 31,  
 19 1989, and held for its entire federal depreciable life, an  
 20 additional depreciation expense is allowed for the year  
 21 following the final year of federal depreciation. The  
 22 amount of additional depreciation that may be claimed in the  
 23 subsequent year is calculated by multiplying the original  
 24 cost of the asset by the inflation factor as defined in  
 25 [section 1], less the accumulated depreciation claimed for

1 that asset under the Internal Revenue Code of 1986, as  
 2 amended.

3 ~~(b)~~(c) There shall be allowed as a deduction for the  
 4 taxable period a net operating loss deduction determined  
 5 according to the provisions of 15-31-119.

6 (3) For an asset sold after December 31, 1989, the  
 7 difference between the capital gains and losses included in  
 8 the federal adjusted gross income and the capital gains and  
 9 losses as calculated in [section 1].

10 ~~(3)~~(4) In the case of mines, other natural deposits,  
 11 oil and gas wells, and timber, a reasonable allowance for  
 12 depletion and for depreciation of improvements; such  
 13 reasonable allowance to be determined according to the  
 14 provisions of the Internal Revenue Code in effect for the  
 15 taxable year. All elections made under the Internal Revenue  
 16 Code with respect to capitalizing or expensing exploration  
 17 and development costs and intangible drilling expenses for  
 18 corporation license tax purposes shall be the same as the  
 19 elections made for federal income tax purposes.

20 ~~(4)~~(5) The amount of interest paid within the year on  
 21 its indebtedness incurred in the operation of the business  
 22 from which its income is derived; but no interest shall be  
 23 allowed as a deduction if paid on an indebtedness created  
 24 for the purchase, maintenance, or improvement of property or  
 25 for the conduct of business unless the income from such



1 property or business would be taxable under this part.

2 †5†(6) (a) Taxes paid within the year, except the  
3 following:

4 (i) Taxes imposed by this part.

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

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

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

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

15 †6†(7) That portion of an energy-related investment  
16 allowed as a deduction under 15-32-103.

17 †7†(8) (a) Except as provided in subsection (8)(b),  
18 charitable contributions and gifts that qualify for  
19 deduction under section 170 of the Internal Revenue Code, as  
20 amended.

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

24 †8†(9) In lieu of the deduction allowed under  
25 subsection †7†(8), the taxpayer may deduct the fair market

1 value, not to exceed 30% of the taxpayer's net income, of a  
2 computer or other sophisticated technological equipment or  
3 apparatus intended for use with the computer donated to an  
4 elementary, secondary, or accredited postsecondary school  
5 located in Montana if:

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

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

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

16 **Section 5.** Section 15-31-304, MCA, is amended to read:

17 "15-31-304. Allocation of nonbusiness income. (1)  
18 Rents and royalties from real or tangible personal property,  
19 capital gains as described in [section 1], interest,  
20 dividends, or patent or copyright royalties, to the extent  
21 that they constitute nonbusiness income, ~~shall~~ must be  
22 allocated as provided in subsections (2) through (5) of this  
23 section.

24 (2) (a) Net rents and royalties from real property  
25 located in this state are allocable to this state.

1 (b) Net rents and royalties from tangible personal  
2 property are allocable to this state:

3 (i) if and to the extent that the property is utilized  
4 in this state; or

5 (ii) in their entirety if the taxpayer's commercial  
6 domicile is in this state and the taxpayer is not organized  
7 under the laws of or taxable in the state in which the  
8 property is utilized.

9 (c) The extent of utilization of tangible personal  
10 property in a state is determined by multiplying the rents  
11 and royalties by a fraction the numerator of which is the  
12 number of days of physical location of the property in the  
13 state during the rental or royalty period in the taxable  
14 year and the denominator of which is the number of days of  
15 physical location of the property everywhere during all  
16 rental or royalty periods in the taxable year. If the  
17 physical location of the property during the rental or  
18 royalty period is unknown or unascertainable by the  
19 taxpayer, tangible personal property is utilized in the  
20 state in which the property was located at the time the  
21 rental or royalty payer obtained possession.

22 (3) (a) Capital gains and losses, as described in  
23 [section 1], from sales of real property located in this  
24 state are allocable to this state.

25 (b) Capital gains and losses, as described in [section

1 1], from sales of tangible personal property are allocable  
2 to this state if:

3 (i) the property had a situs in this state at the time  
4 of the sale; or

5 (ii) the taxpayer's commercial domicile is in this  
6 state and the taxpayer is not taxable in the state in which  
7 the property had a situs.

8 (c) Capital gains and losses, as described in [section  
9 1], from sales of intangible personal property are allocable  
10 to this state if the taxpayer's commercial domicile is in  
11 this state.

12 (4) Interest and dividends are allocable to this state  
13 if the taxpayer's commercial domicile is in this state.

14 (5) (a) Patent and copyright royalties are allocable  
15 to this state if and to the extent that:

16 (i) the patent or copyright is utilized by the payer  
17 in this state; or

18 (ii) the patent or copyright is utilized by the payer  
19 in a state in which the taxpayer is not taxable and the  
20 taxpayer's commercial domicile is in this state.

21 (b) A patent is utilized in a state to the extent that  
22 it is employed in production, fabrication, manufacturing, or  
23 other processing in the state or to the extent that a  
24 patented product is produced in the state. If the basis of  
25 receipts from patent royalties does not permit allocation to

1 states or if the accounting procedures do not reflect states  
2 of utilization, the patent is utilized in the state in which  
3 the taxpayer's commercial domicile is located.

4 (c) A copyright is utilized in a state to the extent  
5 that printing or other publication originates in the state.  
6 If the basis of receipts from copyright royalties does not  
7 permit allocation to states or if the accounting procedures  
8 do not reflect states of utilization, the copyright is  
9 utilized in the state in which the taxpayer's commercial  
10 domicile is located."

11 NEW SECTION. Section 6. Codification instruction.  
12 [Section 1] is intended to be codified as an integral part  
13 of Title 15, chapter 30, part 1, and the provisions of Title  
14 15, chapter 30, part 1, apply to [section 1].

15 NEW SECTION. Section 7. Applicability. [This act]  
16 applies to taxable years beginning after December 31, 1989.

-End-

1                   SENATE BILL NO. 6  
2                   INTRODUCED BY CRIPPEN  
3                   BY REQUEST OF THE GOVERNOR  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING APPLICATION OF  
6 AN INFLATION FACTOR TO ~~CAPITAL GAINS OR LOSSES~~ THE COST  
7 BASIS OF CAPITAL ASSETS FOR PURPOSES OF TAXATION; AMENDING  
8 SECTIONS 15-30-111, 15-30-136, 15-31-114, AND 15-31-304,  
9 MCA; AND PROVIDING AN APPLICABILITY DATE."

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

12       NEW SECTION. Section 1. Inflation factor allowed on  
13 gain or loss on sale or exchange of certain capital assets  
14 -- duty of department -- rulemaking. (1) ~~Notwithstanding the~~  
15 ~~provisions of 15-30-110~~ FOR CAPITAL ASSETS SOLD AFTER  
16 DECEMBER 31, 1989, true gain rather than nominal gain must  
17 be used to determine the tax on the proceeds of the sale or  
18 exchange of certain capital assets.

19       (2) Adjusted gross income includes all capital gains  
20 or losses on the sale or exchange of capital assets  
21 occurring after [the effective date of this act], as capital  
22 gains are determined under subchapter P. of Chapter 1 of the  
23 Internal Revenue Code as it read on December 31, 1986, and  
24 as adjusted for inflation by the department.

25       (3) The inflation factor to be used by the department

1 in adjusting capital gains or losses must be determined by  
2 dividing the consumer price index for June of the taxable  
3 year by the consumer price index for June of 1988, or, if  
4 the asset was acquired after 1988, the consumer price index  
5 for June of the year in which the asset was acquired.

6       (4) Each year the department shall prepare and provide  
7 with the income tax forms the inflation adjustment factors  
8 FACTOR to be used for ~~all holding periods of capital assets~~  
9 THE PREVIOUS YEARS' HOLDING PERIOD.

10       (5) For capital assets held more than 1 year, the  
11 taxpayer may adjust the cost basis of the assets EACH YEAR  
12 by the inflation adjustment factor for the appropriate  
13 PREVIOUS YEARS' holding period ~~for a purchase or a sale of~~  
14 ~~assets either for cash or under an installment agreement.~~

15       (6) The department shall adopt rules and provide forms  
16 for use by the taxpayer in making inflation adjustments of  
17 capital asset costs.

18       (7) ON A SALE OR EXCHANGE OF AN ASSET EITHER FOR CASH  
19 OR UNDER AN INSTALLMENT AGREEMENT, THE TAXPAYER MAY USE THE  
20 COST BASIS AS ADJUSTED FOR INFLATION UNDER THIS SECTION.

21       (8) FOR PURPOSES OF THIS CHAPTER, "CAPITAL GAINS"  
22 EQUALS THE SELLING PRICE LESS THE MONTANA ADJUSTED BASIS.  
23 FOR AN ASSET ACQUIRED AFTER DECEMBER 31, 1989, THE ADJUSTED  
24 BASIS FOR MONTANA PURPOSES IS CALCULATED BY MULTIPLYING THE  
25 COST OF THE ASSET BY THE INFLATION FACTOR IN THE YEAR OF THE

THIRD READING  
SB 6

1 SALE, LESS THE ACCUMULATED DEPRECIATION CALCULATED UNDER THE  
 2 INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND LESS ANY  
 3 DEPRECIATION TAKEN UNDER 15-30-111(2)(Q) OR 15-31-114(2)(B).

4 **Section 2.** Section 15-30-111, MCA, is amended to read:

5 "15-30-111. Adjusted gross income. (1) Adjusted gross  
 6 income ~~shall be~~ is the taxpayer's federal income tax  
 7 adjusted gross income as defined in section 62 of the  
 8 Internal Revenue Code of 1954 or as that section may be  
 9 labeled or amended and in addition ~~shall include~~ includes  
 10 the following:

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

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

17 (c) that portion of a shareholder's income under  
 18 subchapter S. of Chapter 1 of the Internal Revenue Code of  
 19 1954, that has been reduced by any federal taxes paid by the  
 20 subchapter S. corporation on the income; and AND

21 (d) depreciation or amortization taken on a title  
 22 plant as defined in 33-25-105(15); and

23 ~~(e) capital gains or losses as described in 15-30-110~~  
 24 ~~or in section 11.~~

25 (2) Notwithstanding the provisions of the federal

1 Internal Revenue Code of 1954, as labeled or amended,  
 2 adjusted gross income does not include the following which  
 3 are exempt from taxation under this chapter:

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

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

12 (c) all benefits, not in excess of \$3,600, received:

13 (i) under the Federal Employees' Retirement Act;

14 (ii) under the public employee retirement laws of a  
 15 state other than Montana; or

16 (iii) as an annuity, pension, or endowment under any  
 17 private or corporate retirement plan or system;

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

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

23 (f) all benefits paid under the highway patrol  
 24 retirement law which are specified as exempt from taxation  
 25 by 19-6-705;

1 (g) all Montana income tax refunds or credits thereof;

2 (h) all benefits paid under 19-11-602, 19-11-604, and  
3 19-11-605 to retired and disabled firefighters, their  
4 surviving spouses and orphans or specified as exempt from  
5 taxation by 19-13-1003;

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

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

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

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

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

21 (n) all benefits paid under an optional retirement  
22 program that are specified as exempt from taxation by  
23 19-21-212; and

24 (o) all money received because of a settlement  
25 agreement or judgment in a lawsuit brought against a

1 manufacturer or distributor of "agent orange" for damages  
2 resulting from exposure to "agent orange"; AND

3 (P) THE DIFFERENCE BETWEEN THE CAPITAL GAINS AND  
4 LOSSES INCLUDED IN THE FEDERAL ADJUSTED GROSS INCOME AND THE  
5 CAPITAL GAINS AND LOSSES AS CALCULATED IN [SECTION 1]; AND

6 (Q) FOR AN ASSET PURCHASED AND SOLD AFTER DECEMBER 31,  
7 1989, AND HELD FOR ITS ENTIRE FEDERAL DEPRECIABLE LIFE, AN  
8 ADDITIONAL DEPRECIATION EXPENSE IS ALLOWED FOR THE YEAR  
9 FOLLOWING THE FINAL YEAR OF FEDERAL DEPRECIATION. THE  
10 AMOUNT OF ADDITIONAL DEPRECIATION THAT MAY BE CLAIMED IN THE  
11 SUBSEQUENT YEAR IS CALCULATED BY MULTIPLYING THE ORIGINAL  
12 COST OF THE ASSET BY THE INFLATION FACTOR AS DEFINED IN  
13 [SECTION 1], LESS THE ACCUMULATED DEPRECIATION CLAIMED FOR  
14 THAT ASSET UNDER THE INTERNAL REVENUE CODE OF 1986, AS  
15 AMENDED.

16 (3) In the case of a shareholder of a corporation with  
17 respect to which the election provided for under subchapter  
18 S. of the Internal Revenue Code of 1954, as amended, is in  
19 effect but with respect to which the election provided for  
20 under 15-31-202, as amended, is not in effect, adjusted  
21 gross income does not include any part of the corporation's  
22 undistributed taxable income, net operating loss, capital  
23 gains or other gains, profits, or losses required to be  
24 included in the shareholder's federal income tax adjusted  
25 gross income by reason of the election under subchapter S.

1 However, the shareholder's adjusted gross income shall  
 2 include actual distributions from the corporation to the  
 3 extent they would be treated as taxable dividends if the  
 4 subchapter S. election were not in effect.

5 (4) A shareholder of a DISC that is exempt from the  
 6 corporation license tax under 15-31-102(1)(1) shall include  
 7 in his adjusted gross income the earnings and profits of the  
 8 DISC in the same manner as provided by federal law (section  
 9 995, Internal Revenue Code) for all periods for which the  
 10 DISC election is effective.

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

23 (6) Married taxpayers filing a joint federal return  
 24 who must include part of their social security benefits or  
 25 part of their tier 1 railroad retirement benefits in federal

1 adjusted gross income may split the federal base used in  
 2 calculation of federal taxable social security benefits or  
 3 federal taxable tier 1 railroad retirement benefits when  
 4 they file separate Montana income tax returns. The federal  
 5 base must be split equally on the Montana return.

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

25 (8) A person receiving benefits described in

1 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) may not  
 2 exclude benefits described in subsection (2)(c) from  
 3 adjusted gross income unless the benefits received under  
 4 subsections (2)(d) through (2)(f), (2)(h), or (2)(i) are  
 5 less than \$3,600, in which case the person may combine  
 6 benefits to exclude up to a total of \$3,600 from adjusted  
 7 gross income. (Subsection (2)(k) terminates on occurrence  
 8 of contingency--sec. 3, Ch. 634, L. 1983.)"

9 **SECTION 3. SECTION 15-30-136, MCA, IS AMENDED TO READ:**

10 "15-30-136. Computation of income of estates or trusts  
 11 -- exemption. (1) Except as otherwise provided in this  
 12 chapter, "gross income" of estates or trusts means all  
 13 income from whatever source derived in the taxable year,  
 14 including but not limited to the following items:

15 (a) dividends;

16 (b) interest received or accrued, including interest  
 17 received on obligations of another state or territory or a  
 18 county, municipality, district, or other political  
 19 subdivision thereof, but excluding interest income from  
 20 obligations of:

21 (i) the United States government or the state of  
 22 Montana;

23 (ii) a school district; or

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

1 (c) income from partnerships and other fiduciaries;  
 2 (d) gross rents and royalties;  
 3 (e) gain from sale or exchange of property, including  
 4 those gains that are excluded from gross income for federal  
 5 fiduciary income tax purposes by section 641(c) of the  
 6 Internal Revenue Code of 1954, as amended;  
 7 (f) gross profit from trade or business; and  
 8 (g) refunds recovered on federal income tax, to the  
 9 extent the deduction of such tax resulted in a reduction of  
 10 Montana income tax liability.

11 (2) In computing net income, there are allowed as  
 12 deductions:

13 (a) interest expenses deductible for federal tax  
 14 purposes according to section 163 of the Internal Revenue  
 15 Code of 1954, as amended;

16 (b) taxes paid or accrued within the taxable year,  
 17 including but not limited to federal income tax, but  
 18 excluding Montana income tax;

19 (c) that fiduciary's portion of depreciation or  
 20 depletion which is deductible for federal tax purposes  
 21 according to sections 167, 611, and 642 of the Internal  
 22 Revenue Code of 1954, as amended;

23 (d) charitable contributions that are deductible for  
 24 federal tax purposes according to section 642(c) of the  
 25 Internal Revenue Code of 1954, as amended;



1 (e) administrative expenses claimed for federal income  
2 tax purposes, according to sections 212 and 642(g) of the  
3 Internal Revenue Code of 1954, as amended, if such expenses  
4 were not claimed as a deduction in the determination of  
5 Montana inheritance tax;

6 (f) losses from fire, storm, shipwreck, or other  
7 casualty or from theft, to the extent not compensated for by  
8 insurance or otherwise, that are deductible for federal tax  
9 purposes according to section 165 of the Internal Revenue  
10 Code of 1954, as amended;

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

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

16 (i) as federal employees' retirement;

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

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

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

24 (j) all benefits paid under the Montana Public  
25 Employees' Retirement System Act that are specified as

1 exempt from taxation by 19-3-105;

2 (k) all benefits paid under the Montana highway patrol  
3 officers' retirement system that are specified as exempt  
4 from taxation by 19-6-705;

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

6 (m) all benefits paid under 19-11-602, 19-11-604, and  
7 19-11-605 to retired and disabled firemen or their surviving  
8 spouses or children;

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

12 (3) In the case of a shareholder of a corporation with  
13 respect to which the election provided for under subchapter  
14 S. of the Internal Revenue Code of 1954, as amended, is in  
15 effect but with respect to which the election provided for  
16 under 15-31-202 is not in effect, net income does not  
17 include any part of the corporation's undistributed taxable  
18 income, net operating loss, capital gains or other gains,  
19 profits, or losses required to be included in the  
20 shareholder's federal income tax net income by reason of the  
21 election under subchapter S. However, the shareholder's net  
22 income shall include actual distribution from the  
23 corporation to the extent it would be treated as taxable  
24 dividends if the subchapter S. election were not in effect.

25 (4) The following additional deductions shall be

1 allowed in deriving taxable income of estates and trusts:

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

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

7 (c) ~~the amount of 60% of the excess of the net~~  
8 ~~long-term capital gain over the net short-term capital loss~~  
9 ~~for the taxable year~~ for an asset sold after December 31,  
10 1989, the difference between the capital gains and losses  
11 included in the federal fiduciary gross income and the  
12 capital gains and losses as calculated in [section 1];

13 (d) for an asset purchased and sold after December 31,  
14 1989, and held for its entire federal depreciable life, an  
15 additional depreciation expense is allowed for the year  
16 following the final year of federal depreciation. The  
17 amount of additional depreciation that may be claimed in the  
18 subsequent year is calculated by multiplying the original  
19 cost of the asset by the inflation factor as defined in  
20 [section 1], less the accumulated depreciation claimed for  
21 that asset under the Internal Revenue Code of 1986, as  
22 amended.

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

25 (6) A trust or estate excluding benefits under

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

7 **SECTION 4. SECTION 15-31-114, MCA, IS AMENDED TO READ:**

8 "15-31-114. Deductions allowed in computing income. In  
9 computing the net income, the following deductions shall be  
10 allowed from the gross income received by such corporation  
11 within the year from all sources:

12 (1) All the ordinary and necessary expenses paid or  
13 incurred during the taxable year in the maintenance and  
14 operation of its business and properties, including  
15 reasonable allowance for salaries for personal services  
16 actually rendered, subject to the limitation hereinafter  
17 contained, rentals or other payments required to be made as  
18 a condition to the continued use or possession of property  
19 to which the corporation has not taken or is not taking  
20 title or in which it has no equity. No deduction shall be  
21 allowed for salaries paid upon which the recipient thereof  
22 has not paid Montana state income tax; provided, however,  
23 that where domestic corporations are taxed on income derived  
24 from without the state, salaries of officers paid in  
25 connection with securing such income shall be deductible.

1 (2) (a) All losses actually sustained and charged off  
 2 within the year and not compensated by insurance or  
 3 otherwise, including a reasonable allowance for the wear and  
 4 tear and obsolescence of property used in the trade or  
 5 business, such allowance to be determined according to the  
 6 provisions of section 167 of the Internal Revenue Code in  
 7 effect with respect to the taxable year. ~~All elections~~  
 8 Except as provided in subsection (2)(b), all elections for  
 9 depreciation shall be the same as the elections made for  
 10 federal income tax purposes. No deduction shall be allowed  
 11 for any amount paid out for any buildings, permanent  
 12 improvements, or betterments made to increase the value of  
 13 any property or estate, and no deduction shall be made for  
 14 any amount of expense of restoring property or making good  
 15 the exhaustion thereof for which an allowance is or has been  
 16 made. No depreciation or amortization deduction shall be  
 17 allowed on a title plant as defined in 33-25-105(15).

18 (b) For an asset purchased and sold after December 31,  
 19 1989, and held for its entire federal depreciable life, an  
 20 additional depreciation expense is allowed for the year  
 21 following the final year of federal depreciation. The  
 22 amount of additional depreciation that may be claimed in the  
 23 subsequent year is calculated by multiplying the original  
 24 cost of the asset by the inflation factor as defined in  
 25 [section 1], less the accumulated depreciation claimed for

1 that asset under the Internal Revenue Code of 1986, as  
 2 amended.

3 ~~(b)~~(c) There shall be allowed as a deduction for the  
 4 taxable period a net operating loss deduction determined  
 5 according to the provisions of 15-31-119.

6 (3) For an asset sold after December 31, 1989, the  
 7 difference between the capital gains and losses included in  
 8 the federal adjusted gross income and the capital gains and  
 9 losses as calculated in [section 1].

10 ~~(3)~~(4) In the case of mines, other natural deposits,  
 11 oil and gas wells, and timber, a reasonable allowance for  
 12 depletion and for depreciation of improvements; such  
 13 reasonable allowance to be determined according to the  
 14 provisions of the Internal Revenue Code in effect for the  
 15 taxable year. All elections made under the Internal Revenue  
 16 Code with respect to capitalizing or expensing exploration  
 17 and development costs and intangible drilling expenses for  
 18 corporation license tax purposes shall be the same as the  
 19 elections made for federal income tax purposes.

20 ~~(4)~~(5) The amount of interest paid within the year on  
 21 its indebtedness incurred in the operation of the business  
 22 from which its income is derived; but no interest shall be  
 23 allowed as a deduction if paid on an indebtedness created  
 24 for the purchase, maintenance, or improvement of property or  
 25 for the conduct of business unless the income from such

1 property or business would be taxable under this part.

2 †5†(6) (a) Taxes paid within the year, except the  
3 following:

4 (i) Taxes imposed by this part.

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

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

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

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

15 †6†(7) That portion of an energy-related investment  
16 allowed as a deduction under 15-32-103.

17 †7†(8) (a) Except as provided in subsection (8)(b),  
18 charitable contributions and gifts that qualify for  
19 deduction under section 170 of the Internal Revenue Code, as  
20 amended.

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

24 †8†(9) In lieu of the deduction allowed under  
25 subsection †7† (8), the taxpayer may deduct the fair market

1 value, not to exceed 30% of the taxpayer's net income, of a  
2 computer or other sophisticated technological equipment or  
3 apparatus intended for use with the computer donated to an  
4 elementary, secondary, or accredited postsecondary school  
5 located in Montana if:

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

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

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

16 **Section 5.** Section 15-31-304, MCA, is amended to read:

17 "15-31-304. Allocation of nonbusiness income. (1)  
18 Rents and royalties from real or tangible personal property,  
19 capital gains as described in [section 1], interest,  
20 dividends, or patent or copyright royalties, to the extent  
21 that they constitute nonbusiness income, ~~shall~~ must be  
22 allocated as provided in subsections (2) through (5) of this  
23 section.

24 (2) (a) Net rents and royalties from real property  
25 located in this state are allocable to this state.

1 (b) Net rents and royalties from tangible personal  
2 property are allocable to this state:

3 (i) if and to the extent that the property is utilized  
4 in this state; or

5 (ii) in their entirety if the taxpayer's commercial  
6 domicile is in this state and the taxpayer is not organized  
7 under the laws of or taxable in the state in which the  
8 property is utilized.

9 (c) The extent of utilization of tangible personal  
10 property in a state is determined by multiplying the rents  
11 and royalties by a fraction the numerator of which is the  
12 number of days of physical location of the property in the  
13 state during the rental or royalty period in the taxable  
14 year and the denominator of which is the number of days of  
15 physical location of the property everywhere during all  
16 rental or royalty periods in the taxable year. If the  
17 physical location of the property during the rental or  
18 royalty period is unknown or unascertainable by the  
19 taxpayer, tangible personal property is utilized in the  
20 state in which the property was located at the time the  
21 rental or royalty payer obtained possession.

22 (3) (a) Capital gains and losses, as described in  
23 [section 1], from sales of real property located in this  
24 state are allocable to this state.

25 (b) Capital gains and losses, as described in [section

1 1], from sales of tangible personal property are allocable  
2 to this state if:

3 (i) the property had a situs in this state at the time  
4 of the sale; or

5 (ii) the taxpayer's commercial domicile is in this  
6 state and the taxpayer is not taxable in the state in which  
7 the property had a situs.

8 (c) Capital gains and losses, as described in [section  
9 1], from sales of intangible personal property are allocable  
10 to this state if the taxpayer's commercial domicile is in  
11 this state.

12 (4) Interest and dividends are allocable to this state  
13 if the taxpayer's commercial domicile is in this state.

14 (5) (a) Patent and copyright royalties are allocable  
15 to this state if and to the extent that:

16 (i) the patent or copyright is utilized by the payer  
17 in this state; or

18 (ii) the patent or copyright is utilized by the payer  
19 in a state in which the taxpayer is not taxable and the  
20 taxpayer's commercial domicile is in this state.

21 (b) A patent is utilized in a state to the extent that  
22 it is employed in production, fabrication, manufacturing, or  
23 other processing in the state or to the extent that a  
24 patented product is produced in the state. If the basis of  
25 receipts from patent royalties does not permit allocation to

1 states or if the accounting procedures do not reflect states  
2 of utilization, the patent is utilized in the state in which  
3 the taxpayer's commercial domicile is located.

4 (c) A copyright is utilized in a state to the extent  
5 that printing or other publication originates in the state.  
6 If the basis of receipts from copyright royalties does not  
7 permit allocation to states or if the accounting procedures  
8 do not reflect states of utilization, the copyright is  
9 utilized in the state in which the taxpayer's commercial  
10 domicile is located."

11 NEW SECTION. Section 6. Codification instruction.  
12 [Section 1] is intended to be codified as an integral part  
13 of Title 15, chapter 30, part 1, and the provisions of Title  
14 15, chapter 30, part 1, apply to [section 1].

15 NEW SECTION. Section 7. Applicability. [This act]  
16 applies to taxable years beginning after December 31, 1989.

-End-