

HOUSE BILL 50

Introduced by Whalen, et al.

7/11	Introduced
7/11	Referred to Taxation
7/11	First Reading
7/11	Fiscal Note Requested
7/14	Fiscal Note Received
7/15	Hearing
	Died in Committee

1 House BILL NO. 50  
 2 INTRODUCED BY Whalen, Hiram, Member, etc.  
 3 Robert H. ...  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING THE CORPORATE  
 5 LICENSE TAX ON INSURANCE COMPANIES; AUTHORIZING THE  
 6 COMMISSIONER OF INSURANCE TO ADOPT RULES TO IMPLEMENT THE  
 7 TAX; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 15-1-501,  
 8 15-31-101, 15-31-113, 33-1-313, AND 33-2-705, MCA; AND  
 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE  
 10 APPLICABILITY DATE."

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

12 **Section 1.** Section 15-1-501, MCA, is amended to read:

13 **"15-1-501. (Temporary) Disposition of money from**  
 14 **certain designated license and other taxes. (1) The state**  
 15 **treasurer shall deposit to the credit of the state general**  
 16 **fund all money received by him from the collection of:**

17 (a) fees from driver's licenses, motorcycle  
 18 endorsements, and duplicate driver's licenses as provided in  
 19 61-5-121;

20 (b) electrical energy producer's license taxes under  
 21 chapter 51;

22 (c) severance taxes allocated to the general fund under  
 23 chapter 36;

24 (d) liquor license taxes under Title 16;

1 (e) telephone company license taxes under chapter 53;  
 2 and

3 (f) inheritance and estate taxes under Title 72,  
 4 chapter 16.

5 (2) All money received from the collection of income  
 6 taxes under chapter 30 of this title must be deposited as  
 7 follows:

8 (a) 62.8% of the taxes to the credit of the state  
 9 general fund;

10 (b) 8.7% of the taxes to the credit of the debt service  
 11 account for long-range building program bonds as described  
 12 in 17-5-408;

13 (c) 28.5% of the taxes to the credit of the state  
 14 special revenue fund for state equalization aid to the  
 15 public schools of Montana as described in 20-9-343; and

16 (d) all interest and penalties to the credit of the  
 17 state general fund.

18 (3) All money received from the collection of  
 19 corporation license and income taxes under chapter 31 of  
 20 this title, except as provided in 15-31-702 and subsection  
 21 (4) of this section, must be deposited as follows:

22 (a) 61% of the taxes to the credit of the state general  
 23 fund;

24 (b) 10.5% of the taxes to the credit of the debt  
 25 service account for long-range building program bonds as

1 described in 17-5-408;

2 (c) 28.5% of the taxes to the credit of the state  
3 special revenue fund for state equalization aid to the  
4 public schools of Montana as described in 20-9-343; and

5 (d) all interest and penalties to the credit of the  
6 state general fund.

7 {4} Pursuant to 15-31-101(5), a taxpayer shall pay an  
8 amount equal to the amount that the taxpayer would have paid  
9 under 33-2-705 had the taxpayer not been exempt from the tax  
10 under 33-2-705 by reason of paying a tax under 15-31-101(5).

11 ~~{4}~~{5} The state treasurer shall also deposit to the  
12 credit of the state general fund all money received by him  
13 from the collection of license taxes, fees, and all net  
14 revenues and receipts from all other sources under the  
15 operation of the Montana Alcoholic Beverage Code.

16 ~~{5}~~{6} After the distribution provided for in  
17 15-36-112, the remainder of the oil severance tax  
18 collections must be deposited in the general fund.

19 ~~{6}~~{7} All refunds of taxes must be attributed to the  
20 funds in which the taxes are deposited. All refunds of  
21 interest and penalties must be attributed to the funds in  
22 which the interest and penalties are deposited.

23 15-1-501. (Effective July 1, 1993) Disposition of money  
24 from certain designated license and other taxes. (1) The  
25 state treasurer shall deposit to the credit of the state

1 general fund all money received by him from the collection  
2 of:

3 (a) fees from driver's licenses, motorcycle  
4 endorsements, and duplicate driver's licenses as provided in  
5 61-5-121;

6 (b) electrical energy producer's license taxes under  
7 chapter 51;

8 (c) severance taxes allocated to the general fund under  
9 chapter 36;

10 (d) liquor license taxes under Title 16;

11 (e) telephone company license taxes under chapter 53;  
12 and

13 (f) inheritance and estate taxes under Title 72,  
14 chapter 16.

15 (2) All money received from the collection of income  
16 taxes under chapter 30 of this title must be deposited as  
17 follows:

18 (a) 59.5% of the taxes to the credit of the state  
19 general fund;

20 (b) 8.7% of the taxes to the credit of the debt service  
21 account for long-range building program bonds as described  
22 in 17-5-408;

23 (c) 31.8% of the taxes to the credit of the state  
24 special revenue fund for state equalization aid to the  
25 public schools of Montana as described in 20-9-343; and

1 (d) all interest and penalties to the credit of the  
2 state general fund.

3 (3) All money received from the collection of  
4 corporation license and income taxes under chapter 31 of  
5 this title, except as provided in 15-31-702 and subsection  
6 (4) of this section, must be deposited as follows:

7 (a) 61% of the taxes to the credit of the state general  
8 fund;

9 (b) 10.5% of the taxes to the credit of the debt  
10 service account for long-range building program bonds as  
11 described in 17-5-408;

12 (c) 28.5% of the taxes to the credit of the state  
13 special revenue fund for state equalization aid to the  
14 public schools of Montana as described in 20-9-343; and

15 (d) all interest and penalties to the credit of the  
16 state general fund.

17 (4) Pursuant to 15-31-101(5), a taxpayer shall pay an  
18 amount equal to the amount that the taxpayer would have paid  
19 under 33-2-705 had the taxpayer not been exempt from the tax  
20 under 33-2-705 by reason of paying a tax under 15-31-101(5).

21 ~~(4)~~(5) The state treasurer shall also deposit to the  
22 credit of the state general fund all money received by him  
23 from the collection of license taxes, fees, and all net  
24 revenues and receipts from all other sources under the  
25 operation of the Montana Alcoholic Beverage Code.

1 ~~(5)~~(6) After the distribution provided for in  
2 15-36-112, the remainder of the oil severance tax  
3 collections must be deposited in the general fund.

4 ~~(6)~~(7) All refunds of taxes must be attributed to the  
5 funds in which the taxes are deposited. All refunds of  
6 interest and penalties must be attributed to the funds in  
7 which the interest and penalties are deposited."

8 **Section 2.** Section 15-31-101, MCA, is amended to read:

9 "15-31-101. Organizations subject to tax. (1) The term  
10 "corporation" includes associations, joint-stock companies,  
11 common-law trusts and business trusts which do business in  
12 an organized capacity, and all other corporations whether  
13 created, organized, or existing under and pursuant to the  
14 laws, agreements, or declarations of trust of any state,  
15 country, or the United States.

16 (2) The terms "engaged in business" and "doing  
17 business" both mean actively engaging in any transaction for  
18 the purpose of financial or pecuniary gain or profit.

19 (3) Except as provided in 15-31-103 and subsection (5)  
20 of this section ~~or 33-2-705~~ ~~(4)~~ or as may be otherwise  
21 specifically provided, every corporation engaged in business  
22 in the state of Montana shall annually pay to the state  
23 treasurer as a license fee for the privilege of carrying on  
24 business in this state such percentage or percentages of its  
25 total net income for the preceding taxable year at the rate

hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

(5) An insurance company not exempt from the license tax under 15-31-102 shall pay the license tax imposed by this section if the amount of the license tax exceeds the amount of the tax on net premiums due under 33-2-705. An insurance company that pays the tax imposed by this section

is exempt from the tax imposed by 33-2-705. The license tax on insurance companies must be collected by the commissioner of insurance, and for purposes of this subsection, any references in this title to the collection of taxes by the department or department of revenue means collection by the commissioner of insurance.

(6) An offset against premium taxes allowed under 33-10-230 must be counted as a deduction against the tax imposed by subsection (5) of this section."

**Section 3.** Section 15-31-113, MCA, is amended to read:

"15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholders pursuant to federal law; and

1 (b) excluding gain recognized for federal tax purposes  
2 as a shareholder of a liquidating corporation pursuant to  
3 sections 331 through 337 of the Internal Revenue Code (as  
4 those sections may be amended or renumbered) when the gain  
5 is required to be recognized by the liquidating corporation  
6 pursuant to subsection (1)(a)(ii) of this section.

7 (2) The Except as provided in subsection (4), the term  
8 "net income" means the gross income of the corporation less  
9 the deductions set forth in 15-31-114.

10 (3) No corporation is exempt from the corporation  
11 license tax unless specifically provided for under  
12 15-31-101(3) or 15-31-102. Any corporation not subject to or  
13 liable for federal income tax but not exempt from the  
14 corporation license tax under 15-31-101(3) or 15-31-102  
15 shall compute gross income for corporation license tax  
16 purposes in the same manner as a corporation that is subject  
17 to or liable for federal income tax according to the  
18 provisions for determining gross income in the federal  
19 Internal Revenue Code in effect for the taxable year.

20 (4) The net income of each insurance company taxable  
21 under 15-31-101(5) is the gross income, as determined under  
22 this section, plus the allocated investment income as  
23 determined by rules adopted by the commissioner of  
24 insurance. The commissioner of insurance shall adopt rules  
25 determining the allocation of investment income and the

1 allocation of expenses as each relates to business generated  
2 in Montana.

3 (5) For purposes of determining net income under  
4 subsection (4), net income does not include annuity income  
5 excluded under 33-2-705."

6 **Section 4.** Section 33-1-313, MCA, is amended to read:

7 "33-1-313. Rules -- notice, hearing, and penalty. (1)  
8 The commissioner may make reasonable rules necessary for or  
9 as an aid to effectuation of any provision of this code and  
10 15-31-113(4). No such rule shall extend, modify, or conflict  
11 with any law of this state or the reasonable implications  
12 thereof. Any such rule affecting persons or matters other  
13 than the personnel or the internal affairs of the  
14 commissioner's office shall be made or amended only after a  
15 hearing thereon of which notice was given as required by  
16 33-1-703. If reasonably possible the commissioner shall set  
17 forth the proposed rule or amendment in or with the notice  
18 of hearing. No such rule or amendment as to which a hearing  
19 is required shall be effective until it has been on file as  
20 a public record in the commissioner's office for at least 10  
21 days.

22 (2) In addition to any other penalty provided, willful  
23 violation of any such rule shall subject the violator to  
24 such administrative penalties as may be applicable under  
25 this code as for violation of the provision as to which such

1 rule relates."

2 **Section 5.** Section 33-2-705, MCA, is amended to read:

3 "33-2-705. Report on premiums and other consideration  
 4 -- tax. (1) Each authorized insurer and each formerly  
 5 authorized insurer with respect to premiums so received  
 6 while an authorized insurer in this state shall file with  
 7 the commissioner, on or before March 1 each year, a report  
 8 in form as prescribed by the commissioner showing total  
 9 direct premium income, including policy, membership, and  
 10 other fees, premiums paid by application of dividends,  
 11 refunds, savings, savings coupons, and similar returns or  
 12 credits to payment of premiums for new or additional or  
 13 extended or renewed insurance, charges for payment of  
 14 premium in installments, and all other consideration for  
 15 insurance from all kinds and classes of insurance, whether  
 16 designated as a premium or otherwise, received by a life  
 17 insurer or written by an insurer other than a life insurer  
 18 during the preceding calendar year on account of policies  
 19 covering property, subjects, or risks located, resident, or  
 20 to be performed in Montana, with proper proportionate  
 21 allocation of premium as to such property, subjects, or  
 22 risks in Montana insured under policies or contracts  
 23 covering property, subjects, or risks located or resident in  
 24 more than one state, after deducting from such total direct  
 25 premium income applicable cancellations, returned premiums,

1 the unabsorbed portion of any deposit premium, the amount of  
 2 reduction in or refund of premiums allowed to industrial  
 3 life policyholders for payment of premiums direct to an  
 4 office of the insurer, all policy dividends, refunds,  
 5 savings, savings coupons, and other similar returns paid or  
 6 credited to policyholders with respect to such policies. As  
 7 to title insurance, "premium" includes the total charge for  
 8 such insurance. No deduction shall be made of the cash  
 9 surrender values of policies. Considerations received on  
 10 annuity contracts shall not be included in total direct  
 11 premium income and shall not be subject to tax.

12 (2) Coincident with the filing of the tax report  
 13 referred to in subsection (1) above, each such insurer shall  
 14 pay to the commissioner a tax upon such net premiums  
 15 computed at the rate of 2 3/4%.

16 (3) That portion of the tax paid hereunder by an  
 17 insurer on account of premiums received for fire insurance  
 18 shall be separately specified in the report as required by  
 19 the commissioner, for apportionment as provided by law.  
 20 Where insurance against fire is included with insurance of  
 21 property against other perils at an undivided premium, the  
 22 insurer shall make such reasonable allocation from such  
 23 entire premium to the fire portion of the coverage as shall  
 24 be stated in such report and as may be approved or accepted  
 25 by the commissioner.

1 (4) With respect to authorized insurers the premium tax  
 2 provided by this section shall be payment in full and in  
 3 lieu of all other demands for any and all state, county,  
 4 city, district, municipal, and school taxes, licenses, fees,  
 5 and excises of whatever kind or character, excepting only  
 6 those prescribed by this code, taxes on real and tangible  
 7 personal property located in this state, and taxes payable  
 8 under 15-31-101 or 50-3-109.

9 (5) The commissioner may suspend or revoke the  
 10 certificate of authority of any insurer which fails to pay  
 11 its taxes as required under 15-31-101 or this section.

12 (6) In addition to the penalty provided for in  
 13 subsection (5), the commissioner may impose upon an insurer  
 14 who fails to pay the tax required under this section a fine  
 15 of \$100 a day for each day the tax remains unpaid past the  
 16 due date or 1% of the amount owed in tax, whichever is  
 17 greater.

18 (7) The commissioner may by rule provide a quarterly  
 19 schedule for payment of portions of the premium tax under  
 20 this section during the year in which such tax liability is  
 21 accrued."

22 NEW SECTION. Section 6. Appropriation. The first  
 23 \$70,000 collected under 15-31-101(5) in the fiscal year  
 24 ending June 30, 1993, is appropriated from the state general  
 25 fund to the commissioner of insurance to be used to

1 administer the collection of the tax imposed by  
 2 15-31-101(5).

3 NEW SECTION. Section 7. Retroactive applicability.  
 4 [This act] applies retroactively, within the meaning of  
 5 1-2-109, to taxable years beginning after December 31, 1991.

6 NEW SECTION. Section 8. Effective date. [This act] is  
 7 effective on passage and approval.

-End-