

HOUSE BILL NO. 519

INTRODUCED BY BARNHART, HALLIGAN, SWANSON,
RYAN, ECK, REAM, HARPER

IN THE HOUSE

FEBRUARY 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 23, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
MARCH 2, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
MARCH 3, 1993	ENGROSSING REPORT.
MARCH 5, 1993	THIRD READING, PASSED. AYES, 85; NOES, 14.
MARCH 6, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 8, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
APRIL 3, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 12, 1993	SECOND READING, CONCURRED IN.
APRIL 13, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 3.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 15, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 16, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *519*
 2 INTRODUCED BY *B. Barakat, M. Haggan, Swanson*
of Ryan, Ed, B. Horn, Hager
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE
 5 DEFINITION OF RECYCLED MATERIAL THAT IS ELIGIBLE FOR A
 6 DEDUCTION FROM TAXABLE INCOME; PROVIDING THAT A TAX CREDIT
 7 FOR DEDUCTIBLE EQUIPMENT USED IN RECLAIMING MATERIAL MAY
 8 ALSO BE CLAIMED FOR RECLAIMING CERTAIN MATERIAL GENERATED BY
 9 THE TAXPAYER; AMENDING SECTIONS 15-32-601 AND 15-32-603,
 10 MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."
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12 STATEMENT OF INTENT

13 A statement of intent is included in this bill because
 14 [section 2] requires rulemaking by the department of
 15 revenue. The department is to conduct rulemaking to define
 16 the recycled materials that qualify for a tax deduction
 17 under 15-32-610.

18 The goal of amending 15-32-601 and of adopting rules to
 19 implement the amendment is to reduce solid waste and
 20 pollution. The greater the quantity of material reclaimed,
 21 the longer landfills will last and the less pollution they
 22 will create. The best way to reduce landfill material is to
 23 reclaim postconsumer material for reuse. The rules of the
 24 department should provide for using the maximum postconsumer
 25 reclaimed material content possible when defining the

1 reclaimed material eligible for additional tax deduction.

2 It is intended that the department keep abreast of the
 3 recycling industry and try to encourage maximum use of
 4 recycled materials through the use of the tax deduction. The
 5 department should define recycled material by the amount and
 6 type of reclaimable material, as defined in 15-32-601, that
 7 it contains. The amount of material may be measured by
 8 volume, weight, fiber content, or other applicable standard.
 9 Recycled material may also be defined by the type of
 10 reclaimed material it contains, such as postconsumer,
 11 de-inked, or other applicable type.

12 The amounts and types of reclaimed material should
 13 follow industry standards so that industry labeling, as
 14 certified by appropriate bodies, can be used by purchasers
 15 to ensure that the products they are purchasing meet
 16 departmental deductibility definitions.

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

19 **Section 1.** Section 15-32-601, MCA, is amended to read:

20 "15-32-601. (Temporary) Definitions. For the purposes
 21 of this part, unless otherwise required by the context, the
 22 following definitions apply:

23 (1) "Collect" means the collection and delivery of
 24 reclaimable materials to a recycling or reclaimable
 25 materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

{2}{3} "Reclaimable material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer. Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.

{3}{4} "Recycled material" means a substance that is produced from ~~at least 90%~~ reclaimed material as provided in [section 2]. (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

NEW SECTION. Section 2. Recycled material qualifying for deduction -- purpose -- rulemaking. (1) The purpose of providing a tax deduction for the purchase of recycled materials is to encourage the use of goods made from reclaimed materials, especially postconsumer materials, and to discourage consumption of the same goods made from new

materials. To achieve this goal, the definition of recycled material must be left to department of revenue expertise. Definitions cannot be legislatively enacted to achieve the purpose of this section because of rapid changes in technology, social awareness, and market economics. It is the intent of the legislature that the department revise, as often as it considers necessary to fulfill the purpose of this section, the definition of qualifying recycled material.

(2) The department shall by rule adopted pursuant to 15-32-611 specify recycled material that qualifies for the deduction authorized by 15-32-610. The department shall classify qualifying recycled material into different categories based upon the reclaimed material used in producing the recycled material, the ultimate use of the recycled material produced from the reclaimed material, and the amount and type of reclaimed material the recycled material must contain. In the definition of recycled material, the department may consider the point in the manufacturing and consumption cycle from which material was reclaimed and other factors contributing to precise definitions.

(3) In addition to the public participation provisions of Title 2, chapter 4, the department shall establish a register of interested persons and experts in the field of

1 recycling. Prior to proposing an administrative rule, the
2 department shall mail a notice to the interested persons of
3 the department's contemplated actions, soliciting their
4 views on possible solutions or courses of action. All
5 proposed and adopted rules must also be mailed to the
6 interested persons.

7 (4) The rules must specify the unit of measurement for
8 classifications of recycled materials. The measurement may
9 be based upon volume, weight, fiber content, or other
10 applicable standard.

11 (5) The department shall by rule designate one or more
12 agencies that are generally recognized in the industry to
13 certify the contents of recycled materials.

14 **Section 3.** Section 15-32-603, MCA, is amended to read:

15 "15-32-603. (Temporary) Credit for investment in
16 property used to collect or process reclaimable material or
17 to manufacture a product from reclaimed material. (1) The
18 following requirements must be met to be entitled to a tax
19 credit for investment in property to collect or process
20 reclaimable material or to manufacture a product from
21 reclaimed material:

22 (a) The investment must be for depreciable property
23 used primarily to collect or process reclaimable material or
24 to manufacture a product from reclaimed material.

25 (b) (i) The taxpayer claiming a credit must be a person

1 who, as an owner, including a contract purchaser or lessee,
2 or who pursuant to an agreement owns, leases, or has a
3 beneficial interest in a business that collects or processes
4 reclaimable material or that manufactures a product from
5 reclaimed material. For the purposes of this section, a
6 business qualifies as a business that collects reclaimable
7 material if it gathers reclaimable material for later sale
8 or processing for another business that has as its primary
9 business function the collection or processing of
10 reclaimable material or the manufacture of a product from
11 reclaimed material. The collection of reclaimable material
12 may be a minor or nonprofit part of a business otherwise
13 engaged in a retail trade or other business activity.

14 (ii) The taxpayer may but need not operate or conduct a
15 business that collects or processes reclaimable material or
16 manufactures a product from reclaimed material. If more than
17 one person has an interest in a business with qualifying
18 property, they may allocate all or any part of the
19 investment cost among themselves and their successors or
20 assigns.

21 (c) The business must be owned or leased during the tax
22 year by the taxpayer claiming the credit, except as
23 otherwise provided in subsection (1)(b), and must have been
24 collecting or processing reclaimable material or
25 manufacturing a product from reclaimed material during the

1 tax year for which the credit is claimed.

2 (d) The reclaimed material collected, processed, or
3 used to manufacture a product may not be an industrial waste
4 generated by the person claiming the tax credit unless:

5 (i) the person generating the waste historically has
6 disposed of the waste onsite or in a licensed landfill; and

7 (ii) standard industrial practice has not generally
8 included the reuse of the waste in the manufacturing
9 process.

10 (2) A credit under this section may be claimed by a
11 taxpayer for a business only if the qualifying property was
12 purchased on or after January 1, 1990, but before January 1,
13 1996.

14 (3) The credit provided by this section is not in lieu
15 of any depreciation or amortization deduction for the
16 investment or other tax incentive to which the taxpayer
17 otherwise may be entitled under Title 15.

18 (4) A tax credit otherwise allowable under this section
19 that is not used by the taxpayer in the taxable year may not
20 be carried forward to offset a taxpayer's tax liability for
21 any succeeding tax year.

22 (5) The taxpayer's adjusted basis for determining gain
23 or loss may not be further decreased by any tax credits
24 allowed under this section.

25 (6) If the taxpayer is a shareholder of an electing

1 small business corporation, the credit must be computed
2 using the shareholder's pro rata share of the corporation's
3 cost of investing in equipment necessary to collect or
4 process reclaimable material or to manufacture a product
5 from reclaimed material. In all other respects, the
6 allowance and effect of the tax credit apply to the
7 corporation as otherwise provided by law. (Terminates
8 December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

9 NEW SECTION. Section 4. Codification instruction.
10 [Section 2] is intended to be codified as an integral part
11 of Title 15, chapter 32, part 6, and the provisions of Title
12 15, chapter 32, part 6, apply to [section 2].

13 NEW SECTION. Section 5. Retroactive applicability.
14 [This act] applies retroactively, within the meaning of
15 1-2-109, to tax years beginning after December 31, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0519, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act clarifying the definition of recycled material that is eligible for a deduction from taxable income; providing that a tax credit for deductible equipment used in reclaiming material may also be claimed for reclaiming certain material generated by the taxpayer; and providing a retroactive applicability date.

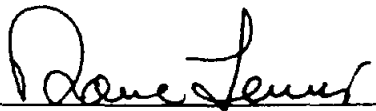
ASSUMPTIONS:

1. The Department of Health and Environmental Sciences would provide any necessary technical assistance to the Department of Revenue.
2. The bill expands eligibility for the recycling credit against individual income and corporation license taxes by allowing a person generating industrial waste to reclaim that material if the person historically has disposed of the waste onsite or in a licensed landfill, and standard industrial practice has not included the reuse of the waste.

FISCAL IMPACT:

Revenues:

A minor revenue loss to the general fund. The information necessary to determine the extent of revenue loss from this provision is unavailable at this time.

 2-12-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-13-93
BEVERLY BARNHART, PRIMARY SPONSOR DATE

Fiscal Note for HB0519, as introduced.

HB 519

APPROVED BY COMMITTEE
ON TAXATION

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3 beneficial interest in a business that collects or processes
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11 taxpayer for a business only if the qualifying property was
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1 small business corporation, the credit must be computed
2 using the shareholder's pro rata share of the corporation's
3 cost of investing in equipment necessary to collect or
4 process reclaimable material or to manufacture a product
5 from reclaimed material. In all other respects, the
6 allowance and effect of the tax credit apply to the
7 corporation as otherwise provided by law. (Terminates
8 December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

9 NEW SECTION. Section 4. Codification instruction.
10 [Section 2] is intended to be codified as an integral part
11 of Title 15, chapter 32, part 6, and the provisions of Title
12 15, chapter 32, part 6, apply to [section 2].

13 NEW SECTION. Section 5. Retroactive applicability.
14 [This act] applies retroactively, within the meaning of
15 1-2-109, to tax years beginning after December 31, 1992.

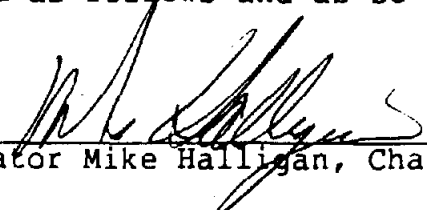
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 519 (third reading copy -- blue), respectfully report that House Bill No. 519 be amended as follows and as so amended be concurred in.

Signed: 

Senator Mike Halligan, Chair

That such amendments read:

1. Title, line 9.

Following: "TAXPAYER;"

Insert: "INCREASING THE DEDUCTION ALLOWED FOR PURCHASE OF
RECYCLED MATERIAL TO 10 PERCENT FROM 5 PERCENT;"

Strike: "AND"

Insert: ", "

Following: "15-32-603,"

Insert: "AND 15-32-610,"

2. Page 8.

Following: line 8

Insert: "Section 4. Section 15-32-610, MCA, is amended to read:

"15-32-610. (Temporary) Deduction for purchase of recycled material. In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to ~~5%~~ 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

Renumber: subsequent sections

-END-

1 HOUSE BILL NO. 519

2 INTRODUCED BY BARNHART, HALLIGAN, SWANSON,

3 RYAN, ECK, REAM, HARPER

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE
6 DEFINITION OF RECYCLED MATERIAL THAT IS ELIGIBLE FOR A
7 DEDUCTION FROM TAXABLE INCOME; PROVIDING THAT A TAX CREDIT
8 FOR DEDUCTIBLE EQUIPMENT USED IN RECLAIMING MATERIAL MAY
9 ALSO BE CLAIMED FOR RECLAIMING CERTAIN MATERIAL GENERATED BY
10 THE TAXPAYER; INCREASING THE DEDUCTION ALLOWED FOR PURCHASE
11 OF RECYCLED MATERIAL TO 10 PERCENT FROM 5 PERCENT; AMENDING
12 SECTIONS 15-32-601 AND, 15-32-603, AND 15-32-610, MCA; AND
13 PROVIDING A RETROACTIVE APPLICABILITY DATE."

14

15 STATEMENT OF INTENT

16 A statement of intent is included in this bill because
17 [section 2] requires rulemaking by the department of
18 revenue. The department is to conduct rulemaking to define
19 the recycled materials that qualify for a tax deduction
20 under 15-32-610.

21 The goal of amending 15-32-601 and of adopting rules to
22 implement the amendment is to reduce solid waste and
23 pollution. The greater the quantity of material reclaimed,
24 the longer landfills will last and the less pollution they
25 will create. The best way to reduce landfill material is to

1 reclaim postconsumer material for reuse. The rules of the
2 department should provide for using the maximum postconsumer
3 reclaimed material content possible when defining the
4 reclaimed material eligible for additional tax deduction.

5 It is intended that the department keep abreast of the
6 recycling industry and try to encourage maximum use of
7 recycled materials through the use of the tax deduction. The
8 department should define recycled material by the amount and
9 type of reclaimable material, as defined in 15-32-601, that
10 it contains. The amount of material may be measured by
11 volume, weight, fiber content, or other applicable standard.
12 Recycled material may also be defined by the type of
13 reclaimed material it contains, such as postconsumer,
14 de-inked, or other applicable type.

15 The amounts and types of reclaimed material should
16 follow industry standards so that industry labeling, as
17 certified by appropriate bodies, can be used by purchasers
18 to ensure that the products they are purchasing meet
19 departmental deductibility definitions.

20

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

22 **Section 1.** Section 15-32-601, MCA, is amended to read:

23 "15-32-601. (Temporary) Definitions. For the purposes
24 of this part, unless otherwise required by the context, the
25 following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

~~(2)~~(3) "Reclaimable material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer. Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.

~~(3)~~(4) "Recycled material" means a substance that is produced from ~~at least 90%~~ reclaimed material as provided in [section 2]. (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

NEW SECTION. Section 2. Recycled material qualifying for deduction -- purpose -- rulemaking. (1) The purpose of providing a tax deduction for the purchase of recycled

materials is to encourage the use of goods made from reclaimed materials, especially postconsumer materials, and to discourage consumption of the same goods made from new materials. To achieve this goal, the definition of recycled material must be left to department of revenue expertise. Definitions cannot be legislatively enacted to achieve the purpose of this section because of rapid changes in technology, social awareness, and market economics. It is the intent of the legislature that the department revise, as often as it considers necessary to fulfill the purpose of this section, the definition of qualifying recycled material.

(2) The department shall by rule adopted pursuant to 15-32-611 specify recycled material that qualifies for the deduction authorized by 15-32-610. The department shall classify qualifying recycled material into different categories based upon the reclaimed material used in producing the recycled material, the ultimate use of the recycled material produced from the reclaimed material, and the amount and type of reclaimed material the recycled material must contain. In the definition of recycled material, the department may consider the point in the manufacturing and consumption cycle from which material was reclaimed and other factors contributing to precise definitions.

(3) In addition to the public participation provisions of Title 2, chapter 4, the department shall establish a register of interested persons and experts in the field of recycling. Prior to proposing an administrative rule, the department shall mail a notice to the interested persons of the department's contemplated actions, soliciting their views on possible solutions or courses of action. All proposed and adopted rules must also be mailed to the interested persons.

(4) The rules must specify the unit of measurement for classifications of recycled materials. The measurement may be based upon volume, weight, fiber content, or other applicable standard.

(5) The department shall by rule designate one or more agencies that are generally recognized in the industry to certify the contents of recycled materials.

Section 3. Section 15-32-603, MCA, is amended to read:

"15-32-603. (Temporary) Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material. (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property

used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as

otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit unless:

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property was purchased on or after January 1, 1990, but before January 1, 1996.

(3) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(4) A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

(5) The taxpayer's adjusted basis for determining gain

or loss may not be further decreased by any tax credits allowed under this section.

(6) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law. (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

SECTION 4. SECTION 15-32-610, MCA, IS AMENDED TO READ:

"15-32-610. (Temporary) Deduction for purchase of recycled material. In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 5% 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

NEW SECTION. Section 5. Codification instruction.

[Section 2] is intended to be codified as an integral part

1 of Title 15, chapter 32, part 6, and the provisions of Title
2 15, chapter 32, part 6, apply to [section 2].

3 NEW SECTION. **Section 6.** Retroactive applicability.
4 [This act] applies retroactively, within the meaning of
5 1-2-109, to tax years beginning after December 31, 1992.

-End-