House BILL NO. 237

INTRODUCED BY Kitzenberg

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A GENERAL INVESTMENT TAX CREDIT; PROVIDING THAT A 3 PERCENT CREDIT FOR QUALIFIED INVESTMENTS IS ALLOWED AGAINST INDIVIDUAL INCOME TAXES OR CORPORATE LICENSE TAXES; LIMITING THE INVESTMENT TAX CREDIT IN ANY 1 YEAR TO NO MORE THAN 45 PERCENT OF THE TAXPAYER'S TAX LIABILITY; PROVIDING FOR A 7-YEAR CARRYFORWARD OF UNUSED INVESTMENT TAX CREDITS IF THE UNDERLYING INVESTMENT REMAINS IN MONTANA; AMENDING SECTION 15-31-123, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-31-123, MCA, is amended to read:

"**15-31-123. Investment credit.** (1) The purpose of this section is to allow ~~small~~ businesses to take an investment credit, as provided for in subsection ~~(3)~~ (2), and to stimulate capital investment by the ~~small~~ business sector.

(2) ~~For the purposes of this section, "small business" means a business that does not have:~~

~~(a) more than 10 shareholders;~~

~~(b) a person who is not an individual (other than an estate or other than a trust described in subsection (8)) as a shareholder;~~

~~(c) a nonresident alien as a shareholder; and~~

~~(d) more than one class of stock.~~

~~(3)~~ There is allowed as a credit against the taxes imposed by 15-30-103, 15-31-101, 15-31-121, and 15-31-122 an amount equal to:

(a) ~~a percentage of the~~ the tax credit carryovers; and

(b) the tax credit for the tax year.

(3) An investment qualifies for a credit ~~allowed with respect to certain~~ if:

(a) it is depreciable property under ~~section 38~~ sections 46(c) and 48 of the Internal Revenue Code of ~~1954, as amended, or as section 38 may be renumbered or amended.~~ 1986, as those sections read prior to November 5, 1990, ~~However, rehabilitation costs as set forth under~~ subject to the limitations provided for certain regulated companies in section ~~46(a)(2)(F)~~46(f) of the Internal Revenue Code of ~~1954, or as section 46(a)(2)(F) may be renumbered or amended, are not to be included in the computation of the investment credit.~~ 1986, as that section read prior to November 5, 1990, and if the property is not a motor vehicle under 8,000 pounds gross weight; ~~The credit is allowed for the purchase and installation of certain qualified property defined by section 38 of the Internal Revenue Code of 1954, as amended, if the property meets all of the following qualifications:~~

~~(a)~~(b) it was placed in service in Montana; and

~~(b)~~(c) it was ~~used for the production of Montana income~~ acquired, constructed, reconstructed, erected, or placed into service after December 31, 1995.

~~(4) The amount of the credit allowed for the taxable year is 5% of the amount of credit determined under section 46(a)(2) of the Internal Revenue Code of 1954, as amended, or as section 46(a)(2) may be renumbered or amended.~~

~~(5)~~(4) (a) The amount of the credit for a tax year is 3% of the amount of qualified investments made during the tax year. ~~Notwithstanding the provisions of subsection (4), the~~ The investment credit allowed for ~~the taxable~~ a tax year may not exceed ~~$500~~ 45% of the tax liability of the taxpayer.

(b) If the sum of credit carryovers from the credit and the amount of credit for the tax year from the credit allowed by subsection (2) exceeds the limitation imposed by subsection (4)(a) for the current tax year, the excess attributable to the current tax year's credit is an investment credit carryover to the 7 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first, as long as the qualified investment property for which the unused credit was granted still remains in Montana.

~~(6)~~(5) If property for which an investment credit is claimed is used both inside and outside this state, only a portion of the credit is allowed. The credit must be apportioned according to a fraction the numerator of which is the number of days during the ~~taxable~~ tax year that the property was located in Montana and the denominator of which is the number of days during the ~~taxable~~ tax year that the taxpayer owned the property. The investment credit may be applied only to the tax liability of the taxpayer who purchases and places in service the property for which an investment credit is claimed.

~~(7)~~(6) The investment credit allowed by this section is subject to recapture as provided for in ~~section 47 of~~ the Internal Revenue Code ~~of 1954, as amended, or as section 47 may be renumbered or~~

~~amended~~. No recapture of the credit allowed by this section is required in regard to property ceasing to qualify by reason of an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code.

~~(8) (a) For purposes of subsection (2)(b), any of the following trusts may be a shareholder without disqualifying the business for the investment credit:~~

~~(i) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;~~

~~(ii) a trust created primarily to exercise the voting power of stock transferred to it;~~

~~(iii) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.~~

~~(b) In the case of a trust described in subsection (8)(a)(ii), each beneficiary of the trust shall be treated as a shareholder.~~

(7) If a small business corporation, as defined in 15-31-201, qualifies for the credit in this section, the credit must be attributed to the shareholders, using the proportion used to report the corporation's income or loss for Montana income tax purposes."

NEW SECTION. **Section 2. Effective date -- applicability -- adoption of rules.** (1) [Section 1] is effective January 1, 1996, and applies to tax years beginning after December 31, 1995.

(2) The department of revenue may proceed to adopt rules to implement [section 1], but the rules may not become effective prior to January 1, 1996.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0237, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act providing for a general investment tax credit; providing that a 3 percent credit for qualified investments is allowed against individual income taxes or corporate license taxes; limiting the investment tax credit in any 1 year to no more than 45 percent of the taxpayer's tax liability; providing for a 7-year carryforward of unused investment tax credits if the underlying investment remains in Montana; and providing a delayed effective date and an applicability date.

ASSUMPTIONS:
1. This legislation applies to tax years beginning January 1, 1996.
2. The State of Idaho has a similar 3% investment tax credit currently in place; differences in the Idaho law and the proposed legislation are that Idaho law excludes from the credit investment expenditures to replace technically obsolete property, a 5-year carryover period instead of a proposed 7-year period, and a current year cap of 50% of tax liability rather than a proposed 45%.
3. The 7-year carryover versus the 5-year period in Idaho (a 40% increase) would tend to increase the negative revenue impact of the proposed law over time as compared with the impact of the current Idaho legislation; the proposed 45% cap versus the 50% cap (a 10% decrease) would have the opposite effect; it is assumed that these two effects cancel each other out (MDOR).
4. If the Idaho law did not have the technical obsolescence exclusion, the additional investment credits claimed would be about $2.2 million (Idaho State Tax Commission).
5. For Idaho returns processed during 1994, individuals claimed $6.723 million in investment tax credits and businesses (primarily corporations) claimed $17.859 million in investment tax credits; these figures include some carryovers (Idaho State Tax Commission).
6. Investment expenditures in Montana are approximately 83% of expenditures in Idaho (U.S. Bureau of the Census and MDOR).
7. Investment credits claimed under the proposed law will follow the same percentage pattern, Montana versus Idaho, as investment expenditures.
8. Prorated investment tax credits for hypothetical Montana returns processed in 1994, assuming the provisions of the Idaho legislation, would have been $5.58 million for individuals and $14.823 million for corporations or a total of $20.403 million; the individual income tax share of the total being 27% (5.58/20.403) and the corporation license tax share being 73% (14.823/20.403) (MDOR).

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Dave Lewis 1-23-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Sam Kitzenberg 1-24-95
SAM KITZENBERG, PRIMARY SPONSOR DATE
Fiscal Note for HB0237, as introduced

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ASSUMPTIONS: (continued)

9. The prorated, 83 percent, share of the Idaho technical obsolescence exclusion that is not part of the Montana proposed legislation is $1.826 million; this in turn is assumed to be divided between individuals and corporations using the 27% and 73% shares, yielding $0.493 million and $1.333 million respectively (MDOR).
10. The first year of credits with a negative impact on collections for the individual income tax will be FY97 (tax year 1996); the first effect on the corporate license tax with be in connection with returns filed in May and June 1997 (part of FY97), for calendar year 1996 returns (due May 15, 1997) and tax year February 1, 1996--January 31, 1997 returns (due June 15, 1997).
11. 30 percent of corporate license tax collections are related to returns filed in May and June of a specific fiscal year; 30 percent of $14.823 million is $4.447 million and 30 percent of $1.333 million is $0.4 million or a total of $4.847 million (MDOR).
12. No growth in Idaho and the derived Montana investment credits is assumed from 1994, since the Idaho data include some carryovers that are not relevant to Montana until FY98.
13. Total FY97 negative revenue impacts including credits for investments replacing technically obsolete property are $6.073 (5.58 + .493) million for the individual income tax and $4.847 million for the corporation license tax; no FY96 impact is relevant because of the delayed effective date of the proposed legislation (MDOR).

FISCAL IMPACT:

Expenditures:

There is no impact of this legislation on Department of Revenue expenditures.

Revenues:

	FY96 Difference	FY97 Difference
Individual Income Tax	0	($6,073,000)
Corporation License Tax	0	(4,847,000)
Total	0	($10,920,000)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

FY98 will be the first year that the full effect on the corporation license tax will be evident; the estimated negative revenue impact on corporate license tax collections for FY98 is about $16 million and approximately $6.5 million (including carryovers) for the individual income tax, or a total of around $22.5 million. This amount would tend to increase over time.

TECHNICAL NOTE:

The current investment tax credit section for the individual income tax, 15-30-162, was not amended by this legislation. Therefore, in certain instances, an individual or unincorporated business could claim a double credit on the same property. This could be fixed by eliminating the reference to 15-30-103 that was inserted in 15-31-123, and amending 15-30-162 in a parallel manner to what the bill reads now.