

House BILL NO. 570

INTRODUCED BY Wiseman Fisher Egan

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114, AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-30-111, MCA, is amended to read:

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

(a)(i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof to the extent that the interest is exempt from taxation under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

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

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

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

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

(a)(i) all interest income from obligations of the United States government, the state of Montana,

1 county, municipality, district, or other political subdivision thereof and any other interest income that is
 2 exempt from taxation by the states under federal law;

3 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
 4 as that section may be amended or renumbered, that are attributable to the interest referred to in
 5 subsection (2)(a)(i);

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

8 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
 9 received as defined in 15-30-101;

10 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

11 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
 12 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess
 13 of \$30,000 as shown on the taxpayer's return;

14 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
 15 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
 16 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
 17 \$30,000 as shown on their joint return;

18 (d) all Montana income tax refunds or tax refund credits;

19 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

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

23 (g) all benefits received under the workers' compensation laws;

24 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
 25 the employee under federal law; and

26 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
 27 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

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

1 is effective.

2 (4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ business
3 deductions by an amount for wages and salaries for which a federal tax credit was elected under section
4 44B of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, is allowed to
5 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be
6 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or
7 small business corporation, the deduction must be made to determine the amount of income or loss of the
8 partnership or small business corporation.

9 (5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security
10 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the
11 federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad
12 retirement benefits when they file separate Montana income tax returns. The federal base must be split
13 equally on the Montana return.

14 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of
15 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross
16 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the
17 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
18 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
19 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
20 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
21 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
22 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable
23 to engage in any substantial gainful activity by reason of any medically determined physical or mental
24 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of
25 contingency--sec. 3, Ch. 634, L. 1983.)"

26

27 **Section 2.** Section 15-31-113, MCA, is amended to read:

28 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income
29 recognized in determining the corporation's gross income for federal income tax purposes and:

30 (a) including:

1 (i) interest exempt from federal income tax and exempt-interest dividends as defined in section
 2 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

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

8 (b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation
 9 pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as those sections may be amended~~
 10 or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to
 11 subsection (1)(a)(ii) of this section.

12 (2) The term "net income" means the gross income of the corporation less the deductions set forth
 13 in 15-31-114.

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

20
 21 **Section 3.** Section 15-31-114, MCA, is amended to read:

22 "**15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
 23 following deductions ~~shall be~~ are allowed from the gross income received by ~~such~~ the corporation within
 24 the year from all sources:

25 ~~(1)~~ (a) ~~All~~ all the ordinary and necessary expenses paid or incurred during the taxable year in the
 26 maintenance and operation of its business and properties, including reasonable allowance for salaries for
 27 personal services actually rendered, subject to the limitation ~~hereinafter~~ contained in this section, and
 28 rentals or other payments required to be made as a condition to the continued use or possession of property
 29 to which the corporation has not taken or is not taking title or in which it has no equity. ~~No~~ A deduction
 30 ~~shall be~~ is not allowed for salaries paid upon which the recipient ~~thereof~~ has not paid Montana state income

1 tax; ~~provided, however~~ However, that where when domestic corporations are taxed on income derived
 2 from ~~without outside~~ the state, salaries of officers paid in connection with securing ~~such the~~ income shall
 3 ~~be~~ are deductible.

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

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

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

22 ~~(4) (d)~~ The amount of interest paid within the year on its indebtedness incurred in the operation
 23 of the business from which its income is derived; but no interest shall. Interest may not be allowed as a
 24 deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property
 25 or for the conduct of business unless the income from ~~such the~~ the property or business would be taxable
 26 under this part.

27 ~~(5) (a) (e) (i)~~ Taxes taxes paid within the year, except the following:

28 ~~(i) (A)~~ Taxes taxes imposed by this part;

29 ~~(ii) (B)~~ Taxes taxes assessed against local benefits of a kind tending to increase the value of the
 30 property assessed;

1 ~~(iii)~~ (C) ~~Taxes~~ taxes on or according to or measured by net income or profits imposed by authority
2 of the government of the United States;

3 ~~(iv)~~ (D) ~~Taxes~~ taxes imposed by any other state or country upon or measured by net income or
4 profits.

5 ~~(b)~~ (ii) Taxes deductible under this part ~~shall~~ must be construed to include taxes imposed by any
6 county, school district, or municipality of this state.

7 ~~(6)~~ (f) ~~That~~ that portion of an energy-related investment allowed as a deduction under 15-32-103;

8 ~~(7)~~ (a) (g) (i) ~~Except~~ except as provided in subsection ~~(b)~~ (1)(g)(ii), charitable contributions and gifts
9 that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

10 ~~(b)~~ (ii) The public service commission ~~shall~~ may not allow in the rate base of a regulated corporation
11 the inclusion of contributions made under this subsection.

12 ~~(8)~~ (2) In lieu of the deduction allowed under subsection ~~(7)~~ (1)(g), the taxpayer may deduct the
13 fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
14 technological equipment or apparatus intended for use with the computer donated to an elementary,
15 secondary, or accredited postsecondary school located in Montana if:

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

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

20 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
21 the property and representing that the use and disposition of the property will be in accordance with the
22 provisions of ~~(b)~~ of this subsection ~~(8)~~ (2)(b).

23 (3) In the case of a regulated investment company or a fund of a regulated investment company,
24 as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
25 amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
26 Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
27 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
28 under this chapter when earned by the regulated investment company. For the purposes of computing the
29 deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
30 of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is

1 not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal
 2 Revenue Code of 1986, as those sections may be amended or renumbered."

3

4 **Section 4.** Section 15-31-119, MCA, is amended to read:

5 **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss
 6 deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss
 7 carrybacks to the taxable period.

8 (2) The term "net operating loss" means the excess of the deductions allowed by this section over
 9 the gross income, with the modifications specified in subsection (6).

10 (3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained,
 11 the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable
 12 period of the loss and must be a net operating loss carryover to each of the five taxable periods following
 13 the taxable period of the loss.

14 (4) A net operating loss for any taxable period ending after December 31, 1975, in addition to
 15 being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating
 16 loss carryover to each of the seven taxable periods following the taxable period of the loss.

17 (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of
 18 the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net
 19 income for each of the prior taxable periods to which the loss was carried. For purposes of ~~the preceding~~
 20 ~~sentence~~ this subsection, the net income for the prior taxable period must be computed with the
 21 modification specified in subsection (6)(b) and by determining the amount of the net operating loss
 22 deduction without regard to the net operating loss for the loss period or any taxable period ~~thereafter~~ after
 23 the loss period, and the net income so computed may not be considered to be less than zero.

24 (6) The modifications referred to in subsection (2) are as follows:

25 (a) The net operating loss deduction may not be allowed.

26 (b) The deduction for depletion may not exceed the amount that would be allowable if computed
 27 under the cost method.

28 (c) Any net operating loss carried over to any taxable ~~years beginning after December 31, 1978,~~
 29 year must be calculated under the provisions of this section effective for the taxable year for which the
 30 return claiming the net operating loss carryover is filed.

1 (7) A net operating loss deduction ~~must~~ may be allowed only with regard to losses attributable to
2 the business carried on within the state of Montana.

3 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net
4 operating loss deduction for net operating losses sustained by the merged corporations prior to the date
5 of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a
6 deduction for net operating losses sustained by the consolidated corporations prior to the date of
7 consolidation.

8 (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
9 of tax resulting from a net operating loss carryback or carryover.

10 (10) The net operating loss deduction ~~may not be allowed with respect to taxable periods that~~
11 ~~ended on or before December 31, 1970, but~~ must be allowed only with respect to taxable periods beginning
12 on or after January 1, 1971.

13 (11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
14 carryback period. If the election is made, the loss may be carried forward only. The election must be made
15 on or before the date on which the return is due, including any extension of the due date, for the tax year
16 of the net operating loss for which the election is to be in effect. The election is irrevocable for the year
17 made.

18 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not
19 allowed in the case of a regulated investment company or a fund of a regulated investment company, as
20 defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended
21 or renumbered."

22
23 **NEW SECTION. Section 5. Effective date -- retroactive applicability.** [This act] is effective on
24 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
25 December 31, 1994.

26 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB 570, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to the taxation of regulated investment companies and their shareholders; and providing an immediate effective date and a retroactive applicability date.

FISCAL IMPACT:

This bill has no impact on department expenditures.

Under current law, in terms of interest income from government obligations, only interest income from U.S. obligations, obligations of U.S. territories and possessions, and obligations of the state of Montana and political subdivisions thereof are excluded from Montana taxation. Interest income from obligations of other states and their political subdivisions are taxable. Under the assumption that language amending MCA 15-10-111(2)(a)(i) does not change this, there is no impact from this proposal on individual income tax. However, if the amending language is interpreted to mean that interest income from obligations of other states and their political subdivisions is to be excluded from taxation under Montana law there would be a substantial decrease in revenue from individual income tax under the proposal. (See Technical Note.)

Under current law a regulated investment company is not allowed a deduction for dividends paid to shareholders. Under this proposal, a regulated investment company may take a deduction for dividends it distributes to shareholders. Under this proposal there could be a loss in revenue from corporation income tax attributed to any regulated investment company that currently pays taxes in Montana on dividends paid out. This potential loss in revenue is expected to be minimal.

TECHNICAL NOTE:

This bill amends MCA 15-30-111. The language in the bill amending MCA 15-30-111(2)(a)(i) can be interpreted in two ways. The first interpretation can be taken to mean that all interest income on all government obligations (U.S., other states, etc.) is to be excluded from taxation. The second is that only interest from U.S. obligations and obligations of U.S. territories and possessions (e.g., Puerto Rico and U.S. Virgin Islands) are exempt from taxation by Montana. Under the first interpretation there would be a substantial loss in revenue from individual income tax under this bill.

THE CONCERNS RAISED IN THIS FISCAL NOTE HAVE BEEN RESOLVED THROUGH TECHNICAL AMENDMENTS WHICH WILL BE AVAILABLE AT COMMITTEE MEETINGS.

William Wiseman

Dave Lewis 2-27-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

William Wiseman 2/28/95
William Wiseman, PRIMARY SPONSOR DATE
Fiscal Note for HB 570, as introduced

HB 570

1 HOUSE BILL NO. 570

2 INTRODUCED BY WISEMAN, FISHER, EWER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT
5 COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114,
6 AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
7 APPLICABILITY DATE."

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11 **Section 1.** Section 15-30-111, MCA, is amended to read:

12 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal
13 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, ~~or~~ as that
14 section may be labeled or amended, ~~and in addition shall include~~ includes the following:

15 (a)(i) interest received on obligations of another state or territory or county, municipality, district,
16 or other political subdivision thereof EXCEPT to the extent that the interest is exempt from taxation BY
17 MONTANA under federal law;

18 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
19 as that section may be amended or renumbered, that are attributable to the interest referred to in
20 subsection (1)(a)(i);

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

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

26 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

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

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1 county, municipality, district, or other political subdivision thereof and any other interest income that is
 2 exempt from taxation by the states MONTANA under federal law;

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 5 subsection (2)(a)(i);

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 7 to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

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 12 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess
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 16 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
 17 \$30,000 as shown on their joint return;

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 21 applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises
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1 is effective.

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3 deductions by an amount for wages and salaries for which a federal tax credit was elected under section
4 44B of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, is allowed to
5 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be
6 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or
7 small business corporation, the deduction must be made to determine the amount of income or loss of the
8 partnership or small business corporation.

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10 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the
11 federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad
12 retirement benefits when they file separate Montana income tax returns. The federal base must be split
13 equally on the Montana return.

14 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of
15 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross
16 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the
17 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
18 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
19 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
20 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
21 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
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23 to engage in any substantial gainful activity by reason of any medically determined physical or mental
24 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of
25 contingency--sec. 3, Ch. 634, L. 1983.)"

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 6 not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on
 7 the gain passing through to the stockholders pursuant to federal law; and

8 (b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation
 9 pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as those sections may be amended~~
 10 or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to
 11 subsection (1)(a)(iii) of this section.

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 15 for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but
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 19 Code in effect for the taxable year."
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 6 property used in the trade or business, ~~such~~. The allowance ~~to be~~ is determined according to the provisions
 7 of section 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for
 8 depreciation ~~shall~~ must be the same as the elections made for federal income tax purposes. ~~No~~ A deduction
 9 ~~shall be~~ is not allowed for any amount paid out for any buildings, permanent improvements, or betterments
 10 made to increase the value of any property or estate, and ~~no~~ a deduction ~~shall~~ may not be made for any
 11 amount of expense of restoring property or making good the exhaustion ~~thereof~~ of property for which an
 12 allowance is or has been made. ~~No~~ A depreciation or amortization deduction ~~shall be~~ is not allowed on a
 13 title plant as defined in 33-25-105(15).

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

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

22 ~~(4) (d)~~ The amount of interest paid within the year on its indebtedness incurred in the operation
 23 of the business from which its income is derived, ~~but no interest shall~~. Interest may not be allowed as a
 24 deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property
 25 or for the conduct of business unless the income from ~~such~~ the property or business would be taxable
 26 under this part.

27 ~~(5) (a) (e) (i)~~ Taxes taxes paid within the year, except the following:

28 ~~(i) (A)~~ Taxes taxes imposed by this part;

29 ~~(ii) (B)~~ Taxes taxes assessed against local benefits of a kind tending to increase the value of the
 30 property assessed;

1 ~~(iii)~~ (C) Taxes taxes on or according to or measured by net income or profits imposed by authority
2 of the government of the United States;

3 ~~(iv)~~ (D) Taxes taxes imposed by any other state or country upon or measured by net income or
4 profits.

5 ~~(b)~~ (ii) Taxes deductible under this part shall must be construed to include taxes imposed by any
6 county, school district, or municipality of this state.

7 ~~(6)~~ (f) ~~That~~ that portion of an energy-related investment allowed as a deduction under 15-32-103;

8 ~~(7)~~ ~~(a)~~ (g) (i) ~~Except~~ except as provided in subsection ~~(b)~~ (1)(g)(ii), charitable contributions and gifts
9 that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

10 ~~(b)~~ (ii) The public service commission shall may not allow in the rate base of a regulated corporation
11 the inclusion of contributions made under this subsection.

12 ~~(8)~~ (2) In lieu of the deduction allowed under subsection ~~(7)~~ (1)(g), the taxpayer may deduct the
13 fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
14 technological equipment or apparatus intended for use with the computer donated to an elementary,
15 secondary, or accredited postsecondary school located in Montana if:

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

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

19 and

20 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
21 the property and representing that the use and disposition of the property will be in accordance with the
22 provisions of ~~(b)~~ of this subsection ~~(8)~~ (2)(b).

23 (3) In the case of a regulated investment company or a fund of a regulated investment company,
24 as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
25 amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
26 Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
27 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
28 under this chapter when earned by the regulated investment company. For the purposes of computing the
29 deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
30 of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is

1 not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal
2 Revenue Code of 1986, as those sections may be amended or renumbered."

3
4 **Section 4.** Section 15-31-119, MCA, is amended to read:

5 **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss
6 deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss
7 carrybacks to the taxable period.

8 (2) The term "net operating loss" means the excess of the deductions allowed by this section over
9 the gross income, with the modifications specified in subsection (6).

10 (3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained,
11 the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable
12 period of the loss and must be a net operating loss carryover to each of the five taxable periods following
13 the taxable period of the loss.

14 (4) A net operating loss for any taxable period ending after December 31, 1975, in addition to
15 being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating
16 loss carryover to each of the seven taxable periods following the taxable period of the loss.

17 (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of
18 the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net
19 income for each of the prior taxable periods to which the loss was carried. For purposes of ~~the preceding~~
20 ~~sentence~~ this subsection, the net income for the prior taxable period must be computed with the
21 modification specified in subsection (6)(b) and by determining the amount of the net operating loss
22 deduction without regard to the net operating loss for the loss period or any taxable period ~~thereafter~~ after
23 the loss period, and the net income so computed may not be considered to be less than zero.

24 (6) The modifications referred to in subsection (2) are as follows:

25 (a) The net operating loss deduction may not be allowed.

26 (b) The deduction for depletion may not exceed the amount that would be allowable if computed
27 under the cost method.

28 (c) Any net operating loss carried over to any taxable ~~years beginning after December 31, 1978,~~
29 year must be calculated under the provisions of this section effective for the taxable year for which the
30 return claiming the net operating loss carryover is filed.

1 (7) A net operating loss deduction ~~must~~ may be allowed only with regard to losses attributable to
 2 the business carried on within the state of Montana.

3 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net
 4 operating loss deduction for net operating losses sustained by the merged corporations prior to the date
 5 of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a
 6 deduction for net operating losses sustained by the consolidated corporations prior to the date of
 7 consolidation.

8 (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
 9 of tax resulting from a net operating loss carryback or carryover.

10 (10) The net operating loss deduction ~~may not be allowed with respect to taxable periods that~~
 11 ~~ended on or before December 31, 1970, but~~ must be allowed only with respect to taxable periods beginning
 12 on or after January 1, 1971.

13 (11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
 14 carryback period. If the election is made, the loss may be carried forward only. The election must be made
 15 on or before the date on which the return is due, including any extension of the due date, for the tax year
 16 of the net operating loss for which the election is to be in effect. The election is irrevocable for the year
 17 made.

18 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not
 19 allowed in the case of a regulated investment company or a fund of a regulated investment company, as
 20 defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended
 21 or renumbered."

22

23 **NEW SECTION.** **Section 5. Effective date -- retroactive applicability.** [This act] is effective on
 24 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
 25 December 31, 1994.

26

-END-

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HOUSE BILL NO. 570

INTRODUCED BY WISEMAN, FISHER, EWER

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114, AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 570

2 INTRODUCED BY WISEMAN, FISHER, EWER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAXATION OF REGULATED INVESTMENT
5 COMPANIES AND THEIR SHAREHOLDERS; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114,
6 AND 15-31-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
7 APPLICABILITY DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 15-30-111, MCA, is amended to read:

12 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ is the taxpayer's federal
13 income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, ~~or~~ as that
14 section may be labeled or amended, and in addition ~~shall include~~ includes the following:

15 (a)(i) interest received on obligations of another state or territory or county, municipality, district,
16 or other political subdivision thereof EXCEPT to the extent that the interest is exempt from taxation BY
17 MONTANA under federal law;

18 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
19 as that section may be amended or renumbered, that are attributable to the interest referred to in
20 subsection (1)(a)(i);

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

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

26 (d) depreciation or amortization taken on a title plant as defined in 33-25-105(15).

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

30 (a)(i) all interest income from obligations of the United States government, the state of Montana,

1 county, municipality, district, or other political subdivision thereof and any other interest income that is
 2 exempt from taxation by the state MONTANA under federal law;

3 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986,
 4 as that section may be amended or renumbered, that are attributable to the interest referred to in
 5 subsection (2)(a)(i);

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

8 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
 9 received as defined in 15-30-101;

10 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

11 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
 12 amount of the exclusion provided in (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess
 13 of \$30,000 as shown on the taxpayer's return;

14 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
 15 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided
 16 in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of
 17 \$30,000 as shown on their joint return;

18 (d) all Montana income tax refunds or tax refund credits;

19 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

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

23 (g) all benefits received under the workers' compensation laws;

24 (h) all health insurance premiums paid by an employer for an employee if attributed as income to
 25 the employee under federal law; and

26 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against
 27 a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

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

1 is effective.

2 (4) A taxpayer who, in determining federal adjusted gross income, has reduced his business
3 deductions by an amount for wages and salaries for which a federal tax credit was elected under section
4 44B of the Internal Revenue Code of 1954, ~~or~~ as that section may be labeled or amended, is allowed to
5 deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be
6 made in the year the wages and salaries were used to compute the credit. In the case of a partnership or
7 small business corporation, the deduction must be made to determine the amount of income or loss of the
8 partnership or small business corporation.

9 (5) Married taxpayers filing a joint federal return who ~~must~~ include part of their social security
10 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the
11 federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad
12 retirement benefits when they file separate Montana income tax returns. The federal base must be split
13 equally on the Montana return.

14 (6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of
15 the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross
16 income up to \$100 per week received as wages or payments in lieu of wages for a period during which the
17 employee is absent from work due to the disability. If the adjusted gross income before this exclusion and
18 before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the
19 exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's
20 eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
21 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined
22 adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable
23 to engage in any substantial gainful activity by reason of any medically determined physical or mental
24 impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of
25 contingency--sec. 3, Ch. 634, L. 1983.)"

26

27 **Section 2.** Section 15-31-113, MCA, is amended to read:

28 **"15-31-113. Gross income and net income.** (1) The term "gross income" means all income
29 recognized in determining the corporation's gross income for federal income tax purposes and:

30 (a) including:

1 (i) interest exempt from federal income tax and exempt-interest dividends as defined in section
 2 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

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

8 (b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation
 9 pursuant to sections 331 through 337 of the Internal Revenue Code, ~~as those sections may be amended~~
 10 or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to
 11 subsection (1)(a)(ii) of this section.

12 (2) The term "net income" means the gross income of the corporation less the deductions set forth
 13 in 15-31-114.

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

20

21 **Section 3.** Section 15-31-114, MCA, is amended to read:

22 "**15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
 23 following deductions ~~shall be~~ are allowed from the gross income received by ~~such~~ the corporation within
 24 the year from all sources:

25 ~~(+) (a)~~ (a) ~~All~~ all the ordinary and necessary expenses paid or incurred during the taxable year in the
 26 maintenance and operation of its business and properties, including reasonable allowance for salaries for
 27 personal services actually rendered, subject to the limitation ~~hereinafter~~ contained in this section, and
 28 rentals or other payments required to be made as a condition to the continued use or possession of property
 29 to which the corporation has not taken or is not taking title or in which it has no equity. ~~No~~ A deduction
 30 ~~shall be~~ is not allowed for salaries paid upon which the recipient ~~thereof~~ has not paid Montana state income

1 tax; ~~provided, however~~ However, that where when domestic corporations are taxed on income derived
 2 from ~~without outside~~ the state, salaries of officers paid in connection with securing ~~such the~~ income shall
 3 be are deductible.

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

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

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

22 ~~(4) (d)~~ The amount of interest paid within the year on its indebtedness incurred in the operation
 23 of the business from which its income is derived; ~~but no interest shall.~~ Interest may not be allowed as a
 24 deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property
 25 or for the conduct of business unless the income from ~~such the~~ property or business would be taxable
 26 under this part.

27 ~~(5) (a) (e) (i)~~ ~~Taxes taxes~~ paid within the year, except the following:

28 ~~(i) (A)~~ ~~Taxes taxes~~ imposed by this part;

29 ~~(ii) (B)~~ ~~Taxes taxes~~ assessed against local benefits of a kind tending to increase the value of the
 30 property assessed;

1 ~~(iii)~~ (C) ~~Taxes~~ taxes on or according to or measured by net income or profits imposed by authority
2 of the government of the United States;

3 ~~(iv)~~ (D) ~~Taxes~~ taxes imposed by any other state or country upon or measured by net income or
4 profits.

5 ~~(b)~~ (ii) Taxes deductible under this part ~~shall~~ must be construed to include taxes imposed by any
6 county, school district, or municipality of this state.

7 ~~(6)~~ (f) ~~That~~ that portion of an energy-related investment allowed as a deduction under 15-32-103;

8 ~~(7)~~ ~~(a)~~ (g) (i) ~~Except~~ except as provided in subsection ~~(b)~~ (1)(g)(ii), charitable contributions and gifts
9 that qualify for deduction under section 170 of the Internal Revenue Code, as amended.

10 ~~(b)~~ (ii) The public service commission ~~shall~~ may not allow in the rate base of a regulated corporation
11 the inclusion of contributions made under this subsection.

12 ~~(8)~~ (2) In lieu of the deduction allowed under subsection ~~(7)~~ (1)(g), the taxpayer may deduct the
13 fair market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
14 technological equipment or apparatus intended for use with the computer donated to an elementary,
15 secondary, or accredited postsecondary school located in Montana if:

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

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

20 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
21 the property and representing that the use and disposition of the property will be in accordance with the
22 provisions of ~~(b)~~ of this subsection ~~(8)~~ (2)(b).

23 (3) In the case of a regulated investment company or a fund of a regulated investment company,
24 as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
25 amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
26 Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
27 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
28 under this chapter when earned by the regulated investment company. For the purposes of computing the
29 deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
30 of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is

1 not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal
2 Revenue Code of 1986, as those sections may be amended or renumbered."

3

4 **Section 4.** Section 15-31-119, MCA, is amended to read:

5 **"15-31-119. Net operating losses -- carryovers and carrybacks.** (1) The net operating loss
6 deduction is the aggregate of net operating loss carryovers to the taxable period plus the net operating loss
7 carrybacks to the taxable period.

8 (2) The term "net operating loss" means the excess of the deductions allowed by this section over
9 the gross income, with the modifications specified in subsection (6).

10 (3) If for any taxable period beginning after December 31, 1970, a net operating loss is sustained,
11 the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable
12 period of the loss and must be a net operating loss carryover to each of the five taxable periods following
13 the taxable period of the loss.

14 (4) A net operating loss for any taxable period ending after December 31, 1975, in addition to
15 being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating
16 loss carryover to each of the seven taxable periods following the taxable period of the loss.

17 (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of
18 the other taxable years must be the excess, if any, of the amount of the loss over the sum of the net
19 income for each of the prior taxable periods to which the loss was carried. For purposes of ~~the preceding~~
20 ~~sentence~~ this subsection, the net income for the prior taxable period must be computed with the
21 modification specified in subsection (6)(b) and by determining the amount of the net operating loss
22 deduction without regard to the net operating loss for the loss period or any taxable period ~~thereafter~~ after
23 the loss period, and the net income so computed may not be considered to be less than zero.

24 (6) The modifications referred to in subsection (2) are as follows:

25 (a) The net operating loss deduction may not be allowed.

26 (b) The deduction for depletion may not exceed the amount that would be allowable if computed
27 under the cost method.

28 (c) Any net operating loss carried over to any taxable ~~years beginning after December 31, 1978,~~
29 year must be calculated under the provisions of this section effective for the taxable year for which the
30 return claiming the net operating loss carryover is filed.

1 (7) A net operating loss deduction ~~must~~ may be allowed only with regard to losses attributable to
2 the business carried on within the state of Montana.

3 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net
4 operating loss deduction for net operating losses sustained by the merged corporations prior to the date
5 of merger. In the case of a consolidation of corporations, the new corporate entity may not be allowed a
6 deduction for net operating losses sustained by the consolidated corporations prior to the date of
7 consolidation.

8 (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund
9 of tax resulting from a net operating loss carryback or carryover.

10 (10) The net operating loss deduction ~~may not be allowed with respect to taxable periods that~~
11 ~~ended on or before December 31, 1970, but~~ must be allowed only with respect to taxable periods beginning
12 on or after January 1, 1971.

13 (11) A taxpayer entitled to a carryback period for a net operating loss may elect to forego the entire
14 carryback period. If the election is made, the loss may be carried forward only. The election must be made
15 on or before the date on which the return is due, including any extension of the due date, for the tax year
16 of the net operating loss for which the election is to be in effect. The election is irrevocable for the year
17 made.

18 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not
19 allowed in the case of a regulated investment company or a fund of a regulated investment company, as
20 defined in section 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended
21 or renumbered."

22

23 NEW SECTION. Section 5. Effective date -- retroactive applicability. [This act] is effective on
24 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after
25 December 31, 1994.

26

-END-