HOUSE BILL NO. 94

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 CARRYOVER OF UNUSED INVESTMENT TAX CREDITS IF THE UNDERLYING INVESTMENT REMAINS IN MONTANA; AMENDING SECTION 15-31-123, MCA; AND PROVIDING EFFECTIVE DATES 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)~~(2) 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 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, 1997.

~~(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~~ tax year may not exceed ~~$500~~ 45% of the tax liability of the taxpayer.

(b) If the sum of credit carryovers 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~~. A recapture of the credit allowed by this section is not 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) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997.

(3) The department of revenue may proceed to adopt rules to implement [section 1], but the rules may not become effective prior to January 1, 1998.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0094, 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 carryover of unused investment tax credits if the underlying investment remains in Montana; and providing effective dates and an applicability date.

ASSUMPTIONS:
1. The legislation applies to tax years beginning after December 31, 1997.
2. For tax year 1995, Idaho had an identical investment tax credit as the one proposed by HB 0094. Idaho's investment tax credit was 3 percent up to 45 percent of the taxpayer's liability with a 7-year carryover period.
3. In Idaho, for returns processed in 1996, businesses (mostly corporations) claimed $27.8 million in investment tax credits and individuals claimed $7.7 million in investment tax credits (Idaho State Tax Commission).
4. Based on data from 1987 and 1992, Montana's total investment expenditure has been, on average, 65 percent of Idaho's total investment expenditure. Idaho's increasing investment expenditure in manufacturing is causing the ratio of Montana to Idaho investment expenditure to decrease significantly over time (U.S. Bureau of the Census).
5. The investment tax credit applies to subchapter S corporations, partnerships, and fiduciaries, etc. (see technical note number 2).
6. The ratio of investment tax credit claimed in Montana to that claimed in Idaho will be the same as the ratio of total investment expenditure in Montana to total investment expenditure in Idaho.
7. Prorated investment tax credits for Montana returns in tax year 1995, would have been $18.07 million for corporations and $5.01 million for individuals, for a total of $23.08 million.
8. The first full-year impact on individual income tax revenue will be FY99.
9. The first impact on corporate license tax revenue will be in May and June of 1999 when approximately 30 percent of corporate returns are filed. The impact on corporate license tax revenue in FY 99 will be $5.42 million (30 percent of $18.07 million). (See the section on long-range impacts below.)
10. There is no impact in FY 98 under this proposal.
11. The Corporation Tax Division of the Department of Revenue would incur a one-time cost of $1,600 computer programming changes and a yearly cost of $400 for the printing of an additional tax credit form.
12. The Income Tax Division of the Department of Revenue would incur keypunch, form and audit costs in addition to the cost of adding a new line to the income tax return. A grade 10 FTE would be required (0.50 FTE in FY99 for the last six months and 1.00 FTE each fiscal year thereafter). These costs would total $35,854 for FY99.

Dave Lewis 1-8-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Sam Kitzenberg 1-13-97
SAM KITZENBERG, PRIMARY SPONSOR DATE
Fiscal Note for HB0094, as introduced

HB 94

FISCAL IMPACT:	FY 98	FY 99
Expenditures:		
Corporate Tax:		
Forms	0	$400
Computer Programming Changes	0	$1,600
Individual Income Tax:		
FTE	0	0.50
Personnel Services	0	$11,848
Operations	0	$17,812
Equipment Costs	0	$6,194
Total	0	$35,854

	FY 98	FY 99
Revenues:		
Individual Income Tax	0	($5,010,000)
Corporation License Tax	0	($5,420,000)
Total	0	($10,430,000)
Net Impact:		
General Fund	0	($10,465,854)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:
Fiscal year 2000(FY00) would be the first year that the full effect on the corporation license tax is evident. The estimated negative revenue impact on corporate license tax collections for FY00, without carryovers, would be about $18 million; the negative impact on individual income tax, without carryovers, would be about $5 million; the total negative revenue impact for FY00 would be about $23 million, excluding carryovers.

TECHNICAL NOTES:

1. 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.

2. The bill does not define a "small business." A sole proprietorship, partnership, etc. may or may not be eligible for the investment tax credit.

3. It is not clear whether the tax credit is before or after other credits.