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House BILL NO. 612
William R. Ream

INTRODUCED BY

BY REQUEST OF THE HOUSE TAX COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE DISTRIBUTION OF CORPORATE LICENSE TAX PAYMENTS FROM BANKS AND SAVINGS AND LOAN ASSOCIATIONS TO COUNTIES TO PROVIDE FOR PAYMENTS BASED ON A 5-YEAR AVERAGE; AMENDING SECTIONS 15-31-141, 15-31-701, AND 15-31-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND AN APPLICABILITY DATE."

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

Section 1. Section 15-31-141, MCA, is amended to read:

"15-31-141. Consolidated returns -- computation and procedure -- ~~prohibition on financial institutions.~~ (1) Corporations ~~which~~ that are affiliated may not file a consolidated return unless at least 80% of all classes of stock of each corporation involved is owned directly or indirectly by one or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b), permission to file a consolidated return is given by the department ~~of revenue~~. For purposes of this section, a "unitary business operation" means one in which:

(a) the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations; or

(b) all of the corporations in the affiliated group are incorporated and operate exclusively in Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

(3) The election to file a consolidated return is binding as long as the affiliated group continues to file a federal consolidated return.

(4) If the conditions of subsections (1) and (2) ~~of this section~~ are met, the department may require corporations to file a consolidated return when the department considers a consolidated return necessary.

1 (5) Any corporation liable to report under this chapter and owning or controlling, either directly or
 2 indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a
 3 consolidated report showing the combined net income, ~~such the~~ the assets of the corporation ~~as that~~ that are
 4 required for the purposes of this chapter, and ~~such any~~ any other information ~~as that~~ that the department may
 5 require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to
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 7 be required to make a report consolidated with the owning company, showing the combined net income,
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 13 ~~to may~~ may equitably adjust the tax in ~~such a~~ a manner ~~as that~~ that it may determine.

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21 ~~(7)(6)~~ (a) When an affiliated group elects to file a consolidated return under the provisions of this
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 8 more than the tax, penalty, or interest due in any year, it shall notify the bank or savings and loan
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23 (2) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years after January 1,
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 24 **1997 DECEMBER 31, 1996.**

25 (3) [Sections 2 and 3] apply to revenue collected after July 1, 1997.

26 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0612, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act changing the distribution of corporate license tax payments from banks and savings and loan associations to counties to provide for payments based on a 5-year average; and providing an immediate effective date, a retroactive applicability date, and an applicability date.

ASSUMPTIONS:

1. Under current law financial institutions are prohibited from filing consolidated returns; under the proposal they would be allowed to do so.
2. Under current law 80% of the corporation license tax paid by a financial institution is allocated to taxing jurisdictions within the county in which the financial institution is located.
3. Under the proposal, in any given year total corporation license tax collections from financial institutions would be distributed to counties in which financial institutions are located based on a 5-year average percentage of total financial institution collections accruing to that county.

FISCAL IMPACT:

Expenditures:

This proposal has no impact on Department of Revenue expenditures.

Revenues:

In past years, financial institutions were not allowed to merge; in recent years financial institutions have been allowed to merge and have done so to the extent that they find beneficial. Consequently, assumption #1, above, will result in minimal negative revenue impacts.

Assumptions 2 and 3 do not change the amount of revenue accruing to the state general fund.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Assumptions 2 and 3 also do not change the total amount of revenue accruing to all counties and other local governments in the state. However, changing the allocation to counties to one based on a five-year history of average collections as a share of total collections will result in particular local governments receiving slightly more or less revenue under the proposal than they otherwise would have.

These small shifts in revenue flows to particular taxing jurisdictions represent the trade-off of gaining greater stability in revenue flows over time to all local government taxing jurisdictions as a result of allocating collections based on a five-year average percentage of collections history.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The proposal should provide for greater stability in the revenue flows to local governments in the long run.

 3-21-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



CHASE HIBBARD, PRIMARY SPONSOR DATE

Fiscal Note for HB0612, as introduced

HB 612

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7 PAYMENTS BASED ON A 5-YEAR AVERAGE; AMENDING SECTIONS 15-31-141, 15-31-701, AND
8 15-31-702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY
9 DATE, AND AN APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **Section 1.** Section 15-31-141, MCA, is amended to read:

14 **"15-31-141. Consolidated returns -- computation and procedure -- ~~prohibition on financial~~**
15 **~~institutions.~~** (1) Corporations ~~which~~ that are affiliated may not file a consolidated return unless at least 80%
16 of all classes of stock of each corporation involved is owned directly or indirectly by one or more members
17 of the affiliated group.

18 (2) Corporations may not file a consolidated return unless the operation of the affiliated group
19 constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b),
20 permission to file a consolidated return is given by the department ~~of revenue~~. For purposes of this section,
21 a "unitary business operation" means one in which:

22 (a) the business operations conducted by the corporations in the affiliated group are interrelated
23 or interdependent to the extent that the net income of one corporation cannot reasonably be determined
24 without reference to the operations conducted by the other corporations; or

25 (b) all of the corporations in the affiliated group ~~are incorporated and~~ operate exclusively in
26 Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

27 (3) The election to file a consolidated return is binding as long as the affiliated group continues to
28 file a federal consolidated return.

29 (4) If the conditions of subsections (1) and (2) ~~of this section~~ are met, the department may require
30 corporations to file a consolidated return when the department considers a consolidated return necessary.

1 (5) Any corporation liable to report under this chapter and owning or controlling, either directly or
 2 indirectly, at least 80% of all classes of stock of each corporation involved may be required to make a
 3 consolidated report showing the combined net income, ~~such the~~ assets of the corporation ~~as that~~ are
 4 required for the purposes of this chapter, and ~~such any~~ other information ~~as that~~ the department may
 5 require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to
 6 report under this chapter and owned or controlled, either directly or indirectly, by another corporation may
 7 be required to make a report consolidated with the owning company, showing the combined net income,
 8 ~~such the~~ assets of the corporation ~~as that~~ are required for the purposes of this chapter, and ~~such any~~ other
 9 information ~~as that~~ the department may require, but excluding intercorporate stockholdings and
 10 intercorporate accounts. ~~In case if it shall appear~~ appears to the department that any arrangement exists
 11 in ~~such a manner as to that~~ improperly reflect reflects the business done, the segregable assets, or the
 12 entire net income earned from business done in this state, the department ~~is authorized and empowered~~
 13 ~~to may~~ equitably adjust the tax in ~~such a manner as that~~ it may determine.

14 ~~(6) (a) A majority of the corporation license tax collected from financial institutions is paid to local~~
 15 ~~government areas in which each financial institution is located. However, consolidated returns for financial~~
 16 ~~institutions do not reflect the true tax attributable to each local government. In addition, consolidated~~
 17 ~~returns would permit financial institutions to offset income against losses of nonfinancial institutions,~~
 18 ~~thereby distorting the true income of each financial organization.~~

19 ~~(b) In accordance with subsection (6)(a), financial institutions are prohibited from filing consolidated~~
 20 ~~returns under this section.~~

21 ~~(7)(6)~~ (a) When an affiliated group elects to file a consolidated return under the provisions of this
 22 section, a corporation of the affiliated group shall file a separate return for any portion of its taxable year
 23 in which its income is not included in the consolidated return of the group. The separate return must be
 24 filed no later than the 15th day of the 5th month following the close of the taxable year for which a
 25 consolidated return of the affiliated group is filed.

26 (b) A 1-month to 6-month extension of time is automatically allowed for filing a return, ~~provided~~
 27 ~~that if~~ on or before the due date of the return, an application for an extension is made by the corporation.
 28 The application must be made on forms prescribed by the department."

29

30 **Section 2.** Section 15-31-701, MCA, is amended to read:

1 "15-31-701. Department ~~of revenue~~ -- special duties for transmitting corporation license tax
2 ~~revenues~~ revenue collected from banks or savings and loan associations to counties. (1) ~~Within 30 days~~
3 ~~after receiving corporation license tax returns and payments from banks or savings and loan associations,~~
4 ~~the~~ The department ~~of revenue~~ shall transmit to the county treasurer ~~of the county in which the business~~
5 ~~is located~~ the revenues revenue calculated under 15-31-702(1)(b).

6 (2) If the department ~~of revenue~~ determines, under the provisions of 15-31-503 and 15-31-531,
7 that a bank or savings and loan association owes more taxes than shown on the original return or has paid
8 more than the tax, penalty, or interest due in any year, it shall notify the bank or savings and loan
9 association pursuant to 15-1-211. Review may be sought pursuant to 15-1-211. ~~County treasurers shall~~
10 ~~issue warrants for their portion of the overpayment received and interest, as provided in 15-31-531.~~

11 (3) The department shall continue to exercise all its duties and powers outlined in this title with
12 respect to auditing returns and enforcing payment of the corporation license taxes owed by banks and
13 savings and loan associations. ~~Any delinquent taxes collected from the sale of property of a bank or savings~~
14 ~~and loan association under the provisions of 15-31-525 shall be transmitted to the county in which the~~
15 ~~corporation owing the delinquent taxes is located.~~ The only ~~duties~~ duty of the county treasurers in this
16 regard ~~are issuing refunds and~~ is distributing the taxes received pursuant to 15-31-702(1)(b) to local taxing
17 jurisdictions."

18
19 **Section 3.** Section 15-31-702, MCA, is amended to read:

20 "15-31-702. **Distribution of corporation license taxes collected from banks or savings and loan**
21 **associations.** (1) All corporation license taxes, interest, and penalties collected from banks and savings and
22 loan associations must, in accordance with the provisions of 15-1-501, be distributed in the following
23 manner:

24 (a) ~~20%~~ Twenty percent must be allocated as provided in 15-1-501(3); ~~and,~~

25 (b) ~~80%~~ Eighty percent is statutorily appropriated, as provided in 17-7-502, for allocation to the
26 various taxing jurisdictions within the county in which ~~the~~ a bank or savings and loan association is located.

27 (2) The corporation license taxes, interest, and penalties distributed under subsection (1)(b) must
28 be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the
29 total mill levy of the taxing authorities of the district in which the bank or savings and loan association is
30 located.

1 (3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a
2 county permitted under state law to levy mills against the taxable value of property in the taxing district
3 in which the bank or savings and loan association is located.

4 (4) If a return filed by a bank or savings and loan association involves branches or offices in more
5 than one taxing jurisdiction, the department ~~of revenue~~ shall provide a method by rule for equitable
6 distribution among those taxing jurisdictions.

7 (5) All corporation license taxes paid from consolidated returns in which 50% or more of the
8 income is from banks or savings and loan associations must be distributed as provided in subsection (1).

9 (6) (a) The department shall annually distribute to each county having a bank or savings and loan
10 association a percentage of the total amount collected pursuant to subsection (1), including penalties,
11 interest, or additional taxes from assessments and less any refunds, from July 1 of the previous year
12 through June 30 of the current year. The distribution must be sent to each county treasurer for distribution
13 to the taxing jurisdictions in each district on or before August 1 of each year.

14 (b) The percentage for distribution must be calculated by taking an average of the ratios of total
15 bank tax liability within a school district to total bank tax liability for all school districts in which a bank or
16 savings and loan association is located in each of the 5 years preceding the current year. The total tax
17 liability must be computed for each year by including all returns filed during that year and all amended
18 returns and adjustments to tax filings made by the department during that year, no matter to which tax year
19 the amended return actually applied."

20
21 **NEW SECTION. Section 4. Effective date -- applicability -- retroactive applicability.** (1) [This act]
22 is effective on passage and approval.

23 (2) [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years after ~~January 1,~~
24 ~~1997~~ **DECEMBER 31, 1996.**

25 (3) [Sections 2 and 3] apply to revenue collected after July 1, 1997.

26 -END-

1 HOUSE BILL NO. 612

2 INTRODUCED BY HIBBARD, STORY, REAM

3 BY REQUEST OF THE HOUSE TAX COMMITTEE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE DISTRIBUTION OF CORPORATE LICENSE TAX
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19 constitutes a unitary business and, except for a unitary business operation described in subsection (2)(b),
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21 a "unitary business operation" means one in which:

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23 or interdependent to the extent that the net income of one corporation cannot reasonably be determined
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26 Montana, are not multistate corporations, and have filed a consolidated federal return for the tax year.

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 5 require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to
 6 report under this chapter and owned or controlled, either directly or indirectly, by another corporation may
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