

1 SENATE BILL NO. 39

2 INTRODUCED BY J. ELLIOTT

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT CERTAIN INVESTMENT INCOME OF
 6 INSURANCE CORPORATIONS IS SUBJECT TO TAX; PROVIDING THAT INSURANCE COMPANIES THAT
 7 DERIVE INCOME FROM INVESTMENT ACTIVITIES UNRELATED TO THE ISSUANCE OF INSURANCE ARE
 8 SUBJECT TO THE CORPORATION LICENSE TAX ON THE INCOME DERIVED FROM THOSE ACTIVITIES;
 9 AMENDING SECTIONS 15-31-101, 15-31-111, 15-31-112, 15-31-113, 33-2-705, AND 33-2-707, MCA;
 10 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

11

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

13

14 **Section 1.** Section 15-31-101, MCA, is amended to read:

15 **"15-31-101. Organizations subject to tax -- exceptions.** (1) The term "corporation" includes
 16 associations, joint-stock companies, common-law trusts and business trusts ~~which that~~ do business in an
 17 organized capacity, and all other corporations whether created, organized, or existing under and pursuant
 18 to the laws, agreements, or declarations of trust of any state, country, or the United States.

19 (2) The terms "engaged in business" and "doing business" both mean actively engaging in any
 20 transaction for the purpose of financial or pecuniary gain or profit.

21 (3) (a) Except as provided in 15-31-103 ~~or 33-2-705(4)~~ or as may be otherwise specifically
 22 provided, ~~every~~ each corporation engaged in business in the state of Montana shall annually pay to the
 23 state treasurer as a license fee for the privilege of carrying on business in this state the percentage ~~or~~
 24 ~~percentages~~ of its total net income for the preceding ~~taxable-year~~ tax period ~~at the rate as~~ set forth in this
 25 chapter. In the case of ~~corporations~~ a corporation having income from business activity ~~which that~~ is
 26 taxable both within and outside of this state, the license fee must be measured by the net income derived
 27 from or attributable to Montana sources as determined under part 3.

28 (b) Except as provided in 15-31-502, ~~this~~ the tax is due and payable on the 15th day of the 5th
 29 month following the close of the ~~taxable-year~~ tax period of the corporation. However, the tax becomes
 30 a lien as provided in this chapter on the last day of the ~~taxable-year~~ tax period in which the income was

1 earned and is for the privilege of carrying on business in this state for the taxable year in which the income
2 was earned.

3 (4) ~~(a) Every~~ Except as provided in subsection (4)(b), each bank organized under the laws of the
4 state of Montana, of any other state, or of the United States and ~~every~~ each savings and loan association
5 organized under the laws of this state or of the United States is subject to the Montana corporation license
6 tax provided for under this chapter. ~~A foreign capital depository chartered under the laws of Montana is~~
7 ~~not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012.~~
8 ~~For taxable years beginning on and after January 1, 1972, this~~ This subsection ~~(4)(a)~~ is effective in
9 accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

10 (b) A foreign capital depository chartered under the laws of Montana is not subject to the Montana
11 corporation license tax provided for under this chapter until October 1, 2012.

12 (5) Each insurer, as defined in 33-1-201, engaged in business in the state of Montana shall
13 annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state
14 the percentage of its taxable investment income, as defined in 15-31-113, for the preceding tax period
15 as set forth in this chapter."

16

17 **Section 2.** Section 15-31-111, MCA, is amended to read:

18 **"15-31-111. Return to be filed.** (1) Each corporation subject to the license tax imposed under this
19 chapter shall for each tax period file a true and accurate return of its net income or, in the case of an
20 insurer, its taxable investment income for the tax period in the manner and form prescribed by the
21 department of revenue. The return must contain all of the facts, data, and information that are appropriate
22 and in the opinion of the department necessary to determine the correctness of the net income or the
23 taxable investment income of an insurer returned and to carry out the provisions of this chapter. The return
24 must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief
25 accounting officer.

26 (2) If the corporation is reporting on a calendar year basis, the return must be filed with the
27 department on or before May 15 following the close of the calendar year. If the corporation is reporting
28 on a fiscal year basis, the return must be filed with the department on or before the 15th day of the 5th
29 month following the close of its fiscal year.

30 (3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6

1 months following the date prescribed for filing of its tax return. The tax and interest must be paid when
2 the return is filed. Interest must be added to the tax due as provided in 15-31-510.

3 (b) The department may grant an additional extension of time for the filing of a return whenever
4 in its judgment good cause exists.

5 (4) Receivers, trustees in bankruptcy, or assignees operating the property or business of a
6 corporation subject to the license tax imposed by this chapter shall make the return in the same manner
7 and form as the corporation is required to make the return. Any license tax due on the basis of the return
8 is assessed and collected in the same manner as if assessed directly against the corporation of whose
9 business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee, or
10 assignee shall pay the tax out of the property of the corporation, prior to the claims of creditors or
11 stockholders."

12

13 **Section 3.** Section 15-31-112, MCA, is amended to read:

14 **"15-31-112. Taxable Tax period.** The license fee ~~shall~~ must be computed on the basis of the
15 corporation's total net income or, in the case of an insurer, its taxable investment income for the ~~taxable~~
16 tax period. The corporation's ~~taxable tax~~ period ~~shall be~~ is its ~~taxable tax~~ year for federal income tax
17 purposes. In the event a corporation changes its ~~taxable tax~~ year, it shall promptly notify the department
18 ~~of revenue.~~"

19

20 **Section 4.** Section 15-31-113, MCA, is amended to read:

21 **"15-31-113. Gross income and net income -- taxable investment income.** (1) The term "gross
22 income" means all income recognized in determining the corporation's gross income for federal income tax
23 purposes and:

24 (a) including:

25 (i) interest exempt from federal income tax and exempt-interest dividends as defined in section
26 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

27 (ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal
28 corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as
29 those sections may be amended or renumbered, attributable to stockholders, either individual or corporate,
30 not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate,

1 on the gain passing through to the stockholders pursuant to federal law; and

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

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

8 (3) The term "taxable investment income" means the sum of income derived from the following
9 sources:

10 (a) interest received or accrued from installment sales of real property or tangible commercial or
11 business personal property located in the state;

12 (b) interest received or accrued from any interest-bearing investment located in the state;

13 (c) dividends received or accrued from entities located in the state;

14 (d) net rents from real property and tangible personal property located in the state;

15 (e) net royalties to the extent that the property is used in the state. The extent of use in the state
16 is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of
17 physical location of the property in the state during the royalty period in the tax period and the
18 denominator of which is the number of days of physical location of the property everywhere during all
19 royalty periods in the tax period. If the physical location is unknown or unascertainable by the taxpayer,
20 the property is considered to be used in the state in which it was located at the time that the rental or
21 royalty payer obtained possession.

22 (f) patent royalties to the extent that the person paying them employs the patent in production,
23 fabrication, manufacturing, or other processing in the state, a patented product is produced in the state,
24 or the royalties were received or accrued from a person located in the state;

25 (g) net copyright royalties to the extent that printing or other publication originates in the state;

26 (h) receivables received or purchased from a person located in the state;

27 (i) other investment income received or accrued from a person located in the state;

28 (j) any lease, mortgage, or other instrument or agreement from which the insurer derives income
29 described in subsections (3)(a) through (3)(i);

30 (k) the alteration or termination of any instrument or agreement described in subsection (3)(j);

1 (l) income, gain, loss, deduction, or credit, or item of income, gain, loss, deduction, or credit, of
 2 an estate or trust with nexus with the state;

3 (m) gains from sales or exchanges of capital assets in the state; and

4 (n) any other income attributable to the state, including but not limited to lottery winnings, state
 5 and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

6 ~~(3)~~(4) A corporation is not exempt from the corporation license tax unless specifically provided
 7 for under 15-31-101(3) or 15-31-102. ~~Any~~ A corporation that is not subject to or liable for federal income
 8 tax but that is not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall
 9 compute gross income for corporation license tax purposes in the same manner as a corporation that is
 10 subject to or liable for federal income tax according to the provisions for determining gross income in the
 11 federal Internal Revenue Code in effect for the ~~taxable~~ tax year."

12

13 **Section 5.** Section 33-2-705, MCA, is amended to read:

14 **"33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and
 15 each formerly authorized insurer with respect to premiums received while an authorized insurer in this state
 16 shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the
 17 commissioner showing total direct premium income, including policy, membership, and other fees,
 18 premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or
 19 credits to payment of premiums for new or additional or extended or renewed insurance, charges for
 20 payment of premium in installments, and all other consideration for insurance from all kinds and classes
 21 of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an
 22 insurer other than a life insurer during the preceding calendar year on account of policies covering property,
 23 subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation
 24 of premium as to property, subjects, or risks in Montana insured under policies or contracts covering
 25 property, subjects, or risks located or resident in more than one state, after deducting from the total direct
 26 premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit
 27 premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for
 28 payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings
 29 coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title
 30 insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the

1 cash surrender values of policies. Considerations received on annuity contracts may not be included in total
2 direct premium income and are not subject to tax.

3 (2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay
4 to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

5 (3) That portion of the tax paid under this section by an insurer on account of premiums received
6 for fire insurance must be separately specified in the report as required by the commissioner, for
7 apportionment as provided by law. When insurance against fire is included with insurance of property
8 against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire
9 premium to the fire portion of the coverage as must be stated in the report and as may be approved or
10 accepted by the commissioner.

11 (4) With respect to authorized insurers, the premium tax provided by this section must be payment
12 in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school
13 taxes, licenses, fees, and excises of whatever kind or character, ~~excepting only~~ except for those
14 prescribed by this code, taxes on real and tangible personal property located in this state, ~~and~~ taxes
15 payable on taxable investment income under Title 15, chapter 31, and taxes payable under 50-3-109.

16 (5) The commissioner may suspend or revoke the certificate of authority of ~~any~~ an insurer that
17 fails to pay its taxes as required under this section.

18 (6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon
19 an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the
20 delinquent amount at the annual interest rate of 12%.

21 (7) The commissioner may by rule provide a quarterly schedule for payment of portions of the
22 premium tax under this section during the year in which tax liability is accrued."
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24 **Section 6.** Section 33-2-707, MCA, is amended to read:

25 **"33-2-707. Preemption of ~~taxing~~ taxation -- exceptions.** ~~The~~ Except as provided in Title 15,
26 chapter 31, and 33-2-705(4), the state of Montana hereby preempts the field of imposing imposition of
27 excise, privilege, franchise, income, license, and similar taxes, licenses, and fees upon insurers and their
28 general insurance producers and insurance producers as such and on the intangible property of insurers
29 or ~~such~~ insurance producers. ~~No~~ A county, city, municipality, district, school district, or other political
30 subdivision or agency in Montana ~~shall~~ may not levy upon insurers, or upon their general insurance

1 producers and insurance producers as such, any ~~such~~ tax, license, or fee additional to ~~such as those taxes,~~
2 licenses, or fees that are levied imposed by the legislature of ~~Montana~~ in this code."

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4 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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6 NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the
7 meaning of 1-2-109, to tax periods beginning after December 31, 2000.

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