

## HOUSE BILL NO. 644

INTRODUCED BY J. SONJU

A BILL FOR AN ACT ENTITLED: "AN ACT CONFORMING MONTANA LAW TO THE INTERNAL REVENUE CODE RELATING TO NET OPERATING LOSSES; AMENDING SECTION 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 15-31-119, MCA, is amended to read:

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

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

(3) If for any taxable tax period ~~beginning after December 31, 1970;~~ ENDING BEFORE JANUARY 1, 2007, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable tax periods preceding the taxable tax period of the loss and must be a net operating loss carryover to each of the ~~five~~ SEVEN taxable tax periods following the taxable tax period of the loss.

(4) A net operating loss for any taxable tax period ending after December 31, ~~1975,~~ in addition to being a net operating loss carryback to each of the three preceding taxable periods, must be a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss 2006, must be carried back and carried forward in accordance with section 172 of the Internal Revenue Code, 26 U.S.C. 172.

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

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

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

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

(c) Any net operating loss carried over to any ~~taxable~~ tax year must be calculated under the provisions of this section effective for the ~~taxable~~ tax year for which the return claiming the net operating loss carryover is filed.

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

(8) In the case of a merger of corporations, the surviving corporation ~~may~~ is not ~~be~~ allowed a net operating loss deduction for net operating losses sustained by the ~~merged~~ acquired corporations prior to the date of merger. In the case of a consolidation of corporations, the new corporate entity ~~may~~ is not ~~be~~ allowed a deduction for net operating losses sustained by the acquired consolidated corporations prior to the date of consolidation. A net operating loss deduction is allowed to the acquiring or parent corporation for ITS net operating losses sustained prior to the merger or consolidation.

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

(10) The net operating loss deduction must be allowed with respect to ~~taxable~~ tax periods.

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

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

**NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years ending after December 31, 2006.

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