

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT DISALLOWING THE DEDUCTION OF MANAGEMENT FEES PAID
5 TO AFFILIATED ENTITIES OR RELATED PARTIES; PROVIDING AN EXCEPTION UNDER CERTAIN
6 CIRCUMSTANCES; AMENDING SECTION 15-31-114, MCA; AND PROVIDING AN APPLICABILITY DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **NEW SECTION. Section 1. Disallowance of management fees paid to affiliated entities or related**
11 **parties.** (1) A corporation subject to the tax imposed by this chapter may not deduct management fees directly
12 or indirectly paid to, accrued or incurred to, or in connection, directly or indirectly, with one or more direct or
13 indirect transactions with:

- 14 (a) one or more related members;
- 15 (b) a foreign corporation; or
- 16 (c) an entity that would be included in the affiliated group based upon ownership interest if it were
17 organized as a corporation.

18 (2) The disallowance of the deduction provided in subsection (1) does not apply if:

- 19 (a) the corporation and recipient are both included in the same consolidated Montana corporation income
20 tax return for the relevant taxable year;
- 21 (b) the corporation makes a disclosure and establishes by a preponderance of the evidence that the
22 transaction giving rise to the management fees between the corporation and the recipient was made at a
23 commercially reasonable rate and at terms comparable to an arm's-length transaction; or
- 24 (c) the corporation and the department agree in writing to the application or use of an alternative method
25 of apportionment under 15-31-312.

26 (3) As used in this section, the following definitions apply:

- 27 (a) "Foreign corporation" means a corporation that is organized under the laws of a country other than
28 the United States and that would be a related member if it were a domestic corporation.
- 29 (b) "Management fees" includes but is not limited to expenses and costs paid for services pertaining to
30 accounts receivable and payable, services pertaining to employee benefit plans, insurance, legal, payroll, data



1 processing, purchasing, tax, financial, securities, accounting, and reporting and compliance services, or similar
2 services, only to the extent that the amounts are allowed as a deduction or cost in determining taxable net income
3 before application of the net operating loss deduction for the taxable year provided under chapter 1 of the Internal
4 Revenue Code.

5 (c) "Related member" means a person that, with respect to the corporation during all or any portion of
6 the tax year, is:

7 (i) a person or corporation that has, directly or indirectly, at least 50% of the equity ownership interest
8 in the taxpayer, as determined under section 318 of the Internal Revenue Code, 26 U.S.C. 318;

9 (ii) a component member as defined in section 1563(b) of the Internal Revenue Code, 26 U.S.C. 1563(b);

10 (iii) a person to or from whom there is attribution of stock ownership in accordance with section 1563(e)
11 of the Internal Revenue Code, 26 U.S.C. 1563(e); or

12 (iv) a person that, notwithstanding its form of organization, bears the same relationship to the taxpayer
13 as a person described in subsections (3)(c)(i) through (3)(c)(iii).

14

15 **Section 2.** Section 15-31-114, MCA, is amended to read:

16 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the following
17 deductions are allowed from the gross income received by the corporation within the year from all sources:

18 (a) all the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance
19 and operation of its business and properties, including reasonable allowance for salaries for personal services
20 actually rendered, subject to the limitation contained in section 1 and this section, and rentals or other payments
21 required to be made as a condition to the continued use or possession of property to which the corporation has
22 not taken or is not taking title or in which it has no equity. A deduction is not allowed for salaries paid upon which
23 the recipient has not paid Montana state income tax. However, when domestic corporations are taxed on income
24 derived from outside the state, salaries of officers paid in connection with securing the income are deductible.

25 (b) (i) all losses actually sustained and charged off within the year and not compensated by insurance
26 or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the
27 trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue
28 Code in effect with respect to the taxable year. All elections for depreciation must be the same as the elections
29 made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings,
30 permanent improvements, or betterments made to increase the value of any property or estate, and a deduction

1 may not be made for any amount of expense of restoring property or making good the exhaustion of property for
2 which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant
3 as defined in 33-25-105(15).

4 (ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined
5 according to the provisions of 15-31-119.

6 (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance
7 for depletion and for depreciation of improvements. The reasonable allowance must be determined according
8 to the provisions of the Internal Revenue Code in effect for the taxable year. All elections made under the Internal
9 Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling
10 expenses for corporation license tax purposes must be the same as the elections made for federal income tax
11 purposes.

12 (d) the amount of interest paid within the year on its indebtedness incurred in the operation of the
13 business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness
14 created for the purchase, maintenance, or improvement of property or for the conduct of business unless the
15 income from the property or business would be taxable under this part.

16 (e) (i) taxes paid within the year, except the following:

17 (A) taxes imposed by this part;

18 (B) taxes assessed against local benefits of a kind tending to increase the value of the property
19 assessed;

20 (C) taxes on or according to or measured by net income or profits imposed by authority of the
21 government of the United States;

22 (D) taxes imposed by any other state or country upon or measured by net income or profits.

23 (ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school
24 district, or municipality of this state.

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

26 (g) (i) except as provided in subsection (1)(g)(ii) or (1)(g)(iii), charitable contributions and gifts that qualify
27 for deduction under section 170 of the Internal Revenue Code, 26 U.S.C. 170, as amended.

28 (ii) The public service commission may not allow in the rate base of a regulated corporation the inclusion
29 of contributions made under this subsection.

30 (iii) A deduction is not allowed for a charitable contribution using a charitable gift annuity unless the

1 annuity is a qualified charitable gift annuity as defined in 33-20-701.

2 (h) per capita livestock fees imposed pursuant to 15-24-921, 15-24-922, 81-6-104, 81-6-204, 81-6-209,
3 81-7-118, or 81-7-201.

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

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

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

11 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept the
12 property and representing that the use and disposition of the property will be in accordance with the provisions
13 of subsection (2)(b).

14 (3) In the case of a regulated investment company or a fund of a regulated investment company, as
15 defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, 26 U.S.C. 851(a) or 851(g), as that
16 section may be amended or renumbered, there is allowed a deduction for dividends paid, as defined in section
17 561 of the Internal Revenue Code of 1986, 26 U.S.C. 561, as that section may be amended or renumbered,
18 except that the deduction for dividends is not allowed with respect to dividends attributable to any income that
19 is not subject to tax under this chapter when earned by the regulated investment company. For the purposes of
20 computing the deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue
21 Code of 1986, 26 U.S.C. 852(b)(7) and 855, as those sections may be amended or renumbered, apply. A
22 regulated investment company is not allowed a deduction for dividends received as defined in sections 243
23 through 245 of the Internal Revenue Code of 1986, 26 U.S.C. 243 through 245, as those sections may be
24 amended or renumbered."

25

26 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
27 integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

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29 **NEW SECTION. Section 4. Applicability.** [This act] applies to tax years beginning after December 31,
30 2007.

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