

MONTANA
ASSOCIATION OF
COUNTIES

EXHIBIT 4
DATE 3.8.07
HB 463

2715 Skyway Drive
Helena, MT 59602-1213
(406) 444-4360
Fax (406) 442-5238
e-mail: maco@maco.cog.mt.us

DATE: March 5, 2007

FROM: Harold Blattie, Executive Director *HB*
Montana Association of Counties

TO: Members of the House Taxation Committee

RE: House Bill 463 – Revise taxation of new or expanded business
enterprise property

On February 23, 2007, I was asked to appear before you to advise you of the concerns MACo has with HB 463 as a result of closer reading and a better understanding of the bill. At the end of my testimony I was asked if I thought the bill could be salvaged, I declined to answer at that time because I was still not comfortable that we completely understood all of the implications of the proposed legislation. Since then I have spent a considerable amount of time reviewing the bill and consulting with MACo leadership. I also met with Jeff Martin who was very helpful in helping me step through the processes and the policy changes contained in the legislation.

Before I go into the specific concerns, I want to advise the committee that I made an incorrect statement when I appeared before you. I told you that the clawback provisions that MACo worked to put into law in 2005 was being repealed and not brought forward in the new language. Since then, I found that it is located Section 6 (2)(d). I apologize for the error.

The short answer to the question of can the bill be salvaged is yes, the bill could be amended to make it workable for counties. I have attached a section-by-section analysis of the bill highlighting MACo's concerns. In essence, the bill repeals Title 15, Chapter 24, Part 24 for "Value Added" tax abatements. To my knowledge this Part has never been used and that all previous tax abatements have been granted under Title 15, Chapter 24, Part 14 and others. No new abatements could be granted under Part 14. All new abatements would follow the process in the new sections of the bill.

Under provisions of the bill, two options are available to a taxpayer seeking tax abatements. Option 1 is front-loaded, providing a higher rate of tax abatement, but for a shorter period of time than is provided by Option 2, which would provide a lower rate of abatement but for a longer period of time.

Option 1 would grant abatements of 66.7% of all taxes for a period of three years. The abatement would include both state-wide education levies and local levies. Under this option approval of both the state and the local jurisdiction is required.

Option 2 would grant abatements of 50% of the local taxes only and would be for a period of ten years. The tax would be abated at 50% for the first five years, then phased-in over the next five, until full taxation was achieved in the tenth year. Under this option only local approval is required.

The major concern is that county property tax software has no ability to handle the process as is being set forth in the bill of adjusting the actual tax, rather than the taxable value. To be workable the abatement must be applied to the taxable value, not the actual tax.

Abatement of the tax, rather than of the taxable value would also appear in the determination of mill levies. Mill levies are determined using the process provided for in 15-10-420 MCA and are based upon certified taxable value provided by the Department of Revenue. If the tax amount is reduced after the mill levies have been determined, the result will be that an insufficient number of mills will be levied to generate the anticipated amount of tax revenue. This problem is most acute in the permissive levies for county-wide school transportation, county-wide teacher retirement, employee health insurance and other permissive levies. There will be insufficient revenue generated to fund those needs. In other, non-permissive funds, the revenue will be less than anticipated, resulting in reduced reserves at the end of the fiscal year. This problem will compound over time until reserves have been depleted. The system as set forth of reducing the tax bill, rather than the taxable value will create problems in local government budgeting because budgets will be based upon a false amount of anticipated revenue.

Under current law, new and expanding business equipment is taxed as Class 4 and 5 property, which is the same effective rate as Class 8, so there really is no incentive to be provided. We believe that to be an effective tool, there must be a meaningful reduction that can be granted so support the concept in the bill.

To be acceptable to counties, the bill must be amended to contain the following considerations:

1. All abatements must be applied to the taxable value, not the tax amount.
2. Language needs to be included to make it clear that the base amount and subsequent increases in taxable value are "New Property" for purposes of calculating mill levies pursuant to 15-10-420 MCA, otherwise the new property will offset the value of current property and there will be no increase in revenue as a result of this new property.

3. The construction permit requirement in Section 6 must be removed because most counties do not issue construction permits. A different "trigger" must be used to make it workable for counties.

The Montana Association of Counties is very willing to work with the bill sponsor, Representative Villa and your committee on amendments that will make HB 463 acceptable to counties.

2007 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 463

INTRODUCED BY D. VILLA

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING NEW BUSINESS PROPERTY TAX INCENTIVES; CREATING PROPERTY TAX INCENTIVES FOR NEW AND EXPANDING BUSINESS ENTERPRISE PROPERTY; ALLOWING STATE AND LOCAL GOVERNMENT TAX ABATEMENTS FOR NEW AND EXPANDING BUSINESS ENTERPRISE PROPERTY; REMOVING NEW INDUSTRIAL PROPERTY FROM CLASS FIVE PROPERTY; ELIMINATING CERTAIN PROVISIONS RELATED TO A MAJOR INDUSTRIAL FACILITY; RESTRICTING THE APPLICATION OF THE PROPERTY TAX ABATEMENT FOR NEW INDUSTRIAL PROPERTY; ELIMINATING THE PERSONAL PROPERTY TAX INCENTIVE FOR VALUE ADDED-MANUFACTURING; AMENDING SECTIONS 15-2-302, 15-6-134, 15-6-135, 15-24-1401, 20-1-208, AND 90-6-205, MCA; REPEALING SECTIONS 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, 15-24-2405, AND 20-9-407, MCA."

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

NEW SECTION. **Section 1. Purpose.** The purpose of [sections 1 through 6] is to permit local governments and the state of Montana to work **cooperatively** to generate good-paying jobs and economic growth by encouraging, through tax incentives, the creation and expansion of business enterprises that produce goods or services within the

state and then export those goods or services to customers located outside of Montana for use outside of the state.

NEW SECTION. Section 2. Definitions. For purposes of [sections 1 through 6], the following definitions apply:

(1) "Business enterprise" means a business that derives more than 50% of its annual gross revenue from sales outside of Montana or one that produces value-added products or commodities.

(2) "Expanding business enterprise" means a business enterprise that expands its existing operations on or after **January 1, 2008**, by employing at least 10 additional qualifying employees.

The date provided delays the applicability for one year. The committee might consider amending this date to January 2007, making the abatement available for the Fiscal Year 2008.

(3) "Expanding business enterprise property" means buildings, machinery, and fixtures owned by an expanding business enterprise and acquired on or after the date of expansion that are:

(a) necessary for the employment of qualifying employees; and

(b) utilized by the business enterprise throughout the qualifying period.

(4) "New business enterprise" means a business enterprise commencing initial operations within the state on or after January 1, 2008, and employing at least 10 qualifying employees.

(5) "New business enterprise property" means buildings, machinery, and fixtures owned by a new business enterprise that are:

(a) necessary for the employment of qualifying employees; and

(b) utilized by the business enterprise throughout the qualifying period.

(6) "Qualifying employee" means a permanent, full-time employee who is:

(a) paid the lesser of either the county average annual wage or the Montana average annual wage as determined by the department of labor and industry through its quarterly census of employment and wages program;

(b) necessary for the new or expanding business enterprise to produce value-added products or commodities; and

(c) employed during the entire applicable qualifying period.

(7) "Qualifying period" means:

(a) for the purposes of [sections 1 through 5]:

(i) the first **3 years** of a new business enterprise's operation; or

(ii) the first **3 years** of an expanding business enterprise's expanded operations; or

(b) for the purposes of [section 6], the time period during which the new or expanding business enterprise may qualify for the local tax abatement.

(8) (a) "Value-added products or commodities" means products or commodities that are manufactured, processed, produced, or created by changing the form of raw materials or intermediate products into more valuable products or commodities that are capable of being sold or traded in interstate commerce.

(b) The term does not include services, transportation, or sales unless they are incidental to the production of the product or commodity.

(c) (i) Examples of value-added products or commodities include but are not limited to processed foods, lumber products, matte, software, manufactured homes, processed dairy products, slaughter-ready and butchered livestock, refined petroleum products, and ethanol.

(ii) Examples of products or commodities that are not valued-added include but are not limited to unprocessed grain, logs, Christmas trees, milled ore, residential or commercial construction affixed to real estate, raw milk, feeder cattle, crude oil, and natural gas.

NEW SECTION. Section 3. New and expanding business enterprise property tax abatement. (1) A new or expanding business enterprise may qualify for an abatement of the business enterprise's property tax liability pursuant to [section 4].

(2) If the abatement is granted, the qualifying new or expanding business enterprise property must be taxed at 33% of its taxable value for the qualifying period.

County tax billing software is programmed to accept a taxable value from the department of revenue. The software then calculates the tax bill by applying the appropriate number of mills to the taxable value. County tax billing software cannot adjust the amount of tax as is proposed in the above section.

To be workable, the language would need to be changed to make the adjustment to the taxable value, rather than reducing the tax. This language causes significant problems in determining mill levy limitations and property tax estimates. A taxing jurisdiction determines the number of mills to be levied based upon the certified taxable value provided by the department. All mills and property taxes are determined by the taxable value. By requiring the adjustment to be done to the actual tax bill, all mill

levy calculations will be incorrect because the taxable value is being overstated. In the case of permissive levies, the mills required will be suppressed resulting in an insufficient number of mills being levied.

Suggested language:

(2) If the abatement is granted, the taxable value of the qualifying new or expanding business enterprise property must be taxed at reduced to 33% of its taxable value for the qualifying period.

(3) The abatement applies to all mills levied against the qualifying property.

(4) Upon the termination of the qualifying period, the abatement ceases and the property for which the abatement had been granted must be taxed according to its classification.

(5) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 6].

Section 3 outlines ONE option that a taxpayer may select. Under this option, ALL taxes, (state and local) are abated to a rate of 33% during a three-year period and require approval of both the Department of Revenue (for state-wide education levies) and the local jurisdiction (all local levies). The dual approval is outlined in Section 4 of the bill. A taxpayer may select this option and in doing so is prohibited from receiving the abatement under Section 6 of this bill.

NEW SECTION. **Section 4. Application -- approval.** (1) In order for a taxpayer to receive the abatement described in [section 3], the taxpayer shall submit an application

for abatement to the department. The taxpayer shall submit a copy of the application to the governing body of the county, city, or town in which the property for which the abatement is requested is located. The application must be on a form prescribed by the department and must include a requirement that the applicant:

- (a) disclose any potential environmental impacts caused by the project; and
- (b) be in compliance with all federal and state environmental and health standards and permit requirements.

(2) The application must be accompanied by payroll, sales, and other records necessary to allow the department and the local governing body to determine the applicant's ability to qualify for the abatement.

(3) Following notice and opportunity for hearing, the governing body shall approve or deny the application. The governing body shall immediately notify the department and all taxing jurisdictions affected by the abatement of its decision.

(4) The governing body may prescribe additional criteria upon which it will approve or deny an application for abatement under this section.

(5) If the governing body denies the application, the application is considered to be denied in its entirety and the abatement will not be granted. The department is not required to further process the application.

(6) If the governing body approves the application, the department shall, upon receipt of the notice described in subsection (3) and a fee paid by the applicant in an amount determined by the department, process the application and grant or deny the abatement. The department shall notify the applicant and the governing body of its decision.

The above sections set forth the process for considering an abatement of all taxes, state and local and requires the approval of both the state, for state-wide education levies, and the local governing body, for local mills.

(7) (a) For purposes of determining whether a new business enterprise will qualify for the abatement in its initial year of operation, the department may consider, among other things, the business enterprise's projected or contracted sales for that year and whether the abatement is necessary for the investment to occur.

(b) If the department, determines that the business enterprise did not actually derive more than 50% of its annual gross revenue from sales of goods or services produced within the state to customers located outside of Montana for use outside of the state during the first full year of the business enterprise's operation, the business enterprise must be considered to be in default.

NEW SECTION. Section 5. Reporting -- default -- remedy. (1) A taxpayer who has been granted an abatement under [section 3] shall submit quarterly reports to the department, on a form prescribed by the department,. The reports must include payroll, sales, and other records necessary to allow the department, to determine the applicant's continuing qualification for the abatement.

The default provisions in Section 5 are applicable ONLY to abatements granted pursuant to Section 3.

(2) The department, shall review the quarterly reports and make an annual determination regarding the taxpayer's continued qualification for the abatement.

(3) If, after a taxpayer has been granted the abatement under [section 3], the department determines that the taxpayer has failed to meet the annual qualification requirements for any year, the taxpayer must be considered to be in default.

(4) If a taxpayer is considered to be in default, the taxpayer forfeits the abatement. Upon default, the property must be taxed at 100% of its taxable value beginning January 1 of the year in which the taxpayer defaulted and any remaining abatement must be forfeited. The taxpayer is immediately liable for any additional taxes resulting from the default.

(5) A taxpayer that has forfeited any portion of its abatement due to default may not reapply for an abatement under [section 4].

NEW SECTION. Section 6. New or expanding business enterprise local tax abatement. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent a new business enterprise or expansion of an existing business enterprise, as designated in the approving resolution, must be taxed at 50% of their taxable value. Subject to 15-10-420, for each succeeding year, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

The language in this section creates the same concerns expressed about Section 3, related to county property tax billing software. Also note that many jurisdictions do not issue construction permits. Strictly interpreted this language would preclude granting an abatement to enterprises in jurisdictions that do not issue construction permits. This is a flaw in the bill. The reference to 15-10-420 is unclear as to how the increase in percentages in taxable value is related.

Section 15-10-420 imposes an overall revenue limitation on units of local government. Section 15-10-420 has no bearing on determinations of taxable value. If the purpose of this reference is to specify if the incremental change in taxable value is to be considered as "newly taxable" property for purposes of determining a jurisdiction's overall mill levy limitation, the language might be amended to specify that intent.

Suggested language: The increases in taxable value in [this section] is newly taxable property for determining mill levy limitations pursuant to 15-10-420.

15-10-420 (3) (a) For purposes of this section, newly taxable property includes:

- (i) annexation of real property and improvements into a taxing unit;

- (ii) construction, expansion, or remodeling of improvements;**
- (iii) transfer of property into a taxing unit;**
- (iv) subdivision of real property; and**
- (v) transfer of property from tax-exempt to taxable status.**
- (vi) increases in taxable value pursuant to [this section]**

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103, and a public hearing, the use of the tax rate schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

The notice provision referenced in this section is applicable to Conservation districts. General county and municipal notice requirements are found in Title 7, Chapter 1. Given that this section requires notice by a county or municipality, perhaps reference to Title 7, Chapter 1 may be more appropriate.

(b) **Subject to 15-10-420**, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied to a business enterprise that previously qualified for the benefits.

Same concern about reference to 15-10-420 as in subsection 1 above.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(d) Property taxes abated from the reduction in taxable value allowed by this section are subject to recapture by the local governing body if the property does not meet the requirements for new or expanding business enterprise property or the requirements of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

This section brings forward the clawback provision that is being eliminated by the repeal of 15-24-2404 that I incorrectly advised the committee was being repealed and not included in the new language.

(3) The taxpayer shall apply to the department, for the tax treatment allowed under subsection (1). The application must be accompanied by a fee established by the department,. The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. If the local governing body of the affected taxing jurisdiction has approved the application and the department, has determined that the investment would not occur without the abatement, the department, shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit

described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, 20-9-360, 20-25-423, or 20-25-439 or otherwise required under state law.

This section outlines the second option that may be applied for by a taxpayer. Under this option, only the locally assessed mills are abated and require only approval of the governing body. Since the statewide education levies are not affected, the state does not have approval or denial authority. The change in subsection (4) precludes the statewide education mill levies from being abated by a local government.

Under this option, the local taxes are abated at 50% for the first 5 years then phased-in over the next five years.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

(6) A taxpayer that has been granted an abatement pursuant to this section may not be granted an abatement pursuant to [section 3].

Subsection 6 precludes a taxpayer from being granted abatements under BOTH Section 3 and this section. A taxpayer must choose between having ALL taxes abated at a 33% rate for three years (Section 3) and having only the LOCALLY ASSESSED taxes being abated at 50% for the first five years then phased in over the next five years.

Section 7. Section 15-2-302, MCA, is amended to read:

"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- ~~(b) classification of property as new industrial property;~~
- ~~(e)~~(b) any other tax, other than the property tax, imposed under this title; or
- ~~(d)~~(c) any other matter in which the appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file an answer with the board ~~an answer~~ within 30 days following filing of a complaint.

(4) The board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

Section 8. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property -- description -- taxable percentage. (1) Class four property includes:

- (a) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all land, except that specifically included in another class;

(b) subject to 15-6-222 and subsections (1)(f) and (1)(g) of this section, all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than \$15,000 for a single person or \$20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 700 lineal yards;

(e) subject to 15-6-222(1), all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

- (g) (i) commercial buildings and the parcels of land upon which they are situated; and
- (ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402, 15-24-1501, and 15-24-1502, **[section 3], and [section 6]**, property described in subsections (1)(a), (1)(b), and (1)(e) through (1)(g) of this section is taxed at:

This language moves the property subject to the abatements provided for in Sections 3 and 6 that was previously classified as Class 4 into Class 8. Because Class 8 is now taxed at virtually the same rate of 3% (3.01%), there is no reason for the property to be in a different class.

- (i) 3.22% of its taxable market value in tax year 2005;
- (ii) 3.14% of its taxable market value in tax year 2006;
- (iii) 3.07% of its taxable market value in tax year 2007; and
- (iv) **3.01%** of its taxable market value in tax years after 2007.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a) of its taxable market value multiplied by a percentage figure based on income and determined from the following table:

Income	Income	Percentage
Single Person	Married Couple	Multiplier
	Head of Household	
\$0 - \$ 6,000	\$0 - \$8,000	20%

\$6,001 - \$9,200 \$8,001 - \$14,000 50%

\$9,201 - \$15,000 \$14,001 - \$20,000 70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. DEPARTMENT of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 9. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property -- description -- taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(a);

(b) air and water pollution control equipment as defined in this section;

~~(c) new industrial property as defined in this section;~~

~~(d)~~(c) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

~~(e)~~(d) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

~~(f)~~(e) machinery and equipment used in electrolytic reduction facilities;

~~(g)~~(f) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial

compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

~~(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.~~

~~—(b) New industrial property does not include:~~

~~—(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);~~

~~—(ii) a plant that will create adverse impact on existing state, county, or municipal services; or~~

~~—(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.~~

~~—(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.~~

~~—(b) New industry includes only those industries that:~~

~~—(i) manufacture, mill, mine, produce, process, or fabricate materials;~~

~~—(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;~~

~~—(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;~~

~~—(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or~~

~~—(v) earn 50% or more of their annual gross income from out-of-state sales.~~

~~(5)(3) Class five property is taxed at 3% of its market value."~~

This section removes new property from Class 5 resulting in it being assessed as Class 8 property.

Section 10. Section 15-24-1401, MCA, is amended to read:

"15-24-1401. Definitions. The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, and before [the effective date of this act] at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales; or

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 15-6-225.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, and before [the

effective date of this act] at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial or expanding business enterprise property under ~~15-6-135~~ [section 3].

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section."

It appears that the intent of the amendments to this section are to preclude any future abatements to be granted after the effective date of the bill under Title 15, Chapter 24, Part 14, but preserves the rights prior to the effective date for abatements that have been granted. All new abatements considered will be required to use the new process provided for in this bill and that Part 14 will no longer be used for any future abatements. The taxpayer will select one of the options outlined earlier.

Section 11. Section 20-1-208, MCA, is amended to read:

"20-1-208. Educational impact statements. When a county superintendent of schools finds that a person ~~intends to construct or locate a major industrial facility, as defined in 20-9-407, or~~ intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require ~~such~~ the person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the ~~major industrial facility or~~ strip mine. The statement shall indicate:

(1) the number of persons to be employed during the construction or preparation and during the operation of the ~~major industrial facility or~~ strip mine and their anticipated residential distribution;

(2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the number of school-age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate."

This section removes the requirement to notify the County Superintendent of Schools of new major industrial facilities.

Section 12. Section 90-6-205, MCA, is amended to read:

"90-6-205. Coal board -- general powers. The board may:

- (1) retain professional consultants and advisors;
- (2) adopt rules governing its proceedings;
- (3) consider applications for grants from available funds; and
- (4) award grants, subject to 90-6-207, from available funds:

(a) to local governmental units, state agencies, and governing bodies of federally recognized Indian tribes to assist local governmental units and federally recognized Indian tribes in meeting the local impact of coal development or a major decline in coal mining or in the operation of coal-using energy complexes by enabling them to adequately provide governmental services and facilities that are needed as a direct consequence of an increase or decrease in coal development or in the consumption of coal by a coal-using energy complex; and

(b) notwithstanding the provisions of 90-6-207, to the DEPARTMENT of transportation, established in 2-15-2501, to expedite the construction, repair, and maintenance of deficient sections of highway within the area designated in 90-6-210 if the deficiency is the direct result of increased traffic accompanying the development of coal resources; ~~and~~

~~(5) award a grant to a local governmental unit for the purpose of paying for part or all of the credit that the local governmental unit is obligated to give to a major new industrial facility that has prepaid property taxes under 15-16-201. The board shall award the grant in accordance with 90-6-206."~~

Removes the ability of the Coal Board to make grants to local governments to assist in offsetting prepaid taxes because the enabling section is being repealed.

NEW SECTION. Section 13. Repealer. Sections 15-6-192, 15-16-201, 15-24-2401, 15-24-2402, 15-24-2403, 15-24-2404, 15-24-2405, and 20-9-407, MCA, are repealed.

NEW SECTION. Section 14. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [sections 1 through 6].

NEW SECTION. Section 15. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

This bill does not have an effective date included so would go into effect October 1, 2007 if passed. This would make the abatements available for tax year 2008 and applicable to taxes assessed in FY-09. We would like to suggest adding an effective Date of July 1, 2007 and amending Section 2, subsection 2 to January 2007, which would make the abatements available next year.

- END -

Latest Version of HB 463 (HB0463.01)

Processed for the Web on January 25, 2007 (4:35pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

[Status of this Bill](#) | [2007 Legislature](#) | [Leg. Branch Home](#)

[This bill in WP 5.1](#) | [All versions of all bills \(WP 5.1 format\)](#)

[Authorized print version w/line numbers \(PDF format\)](#)

[[NEW SEARCH](#)]

Prepared by Montana Legislative Services

(406) 444-3064

Sections being repealed by HB 463

Part 24

Value-Added Manufacturing

Part Compiler's Comments:

Effective Date -- Applicability: Section 7, Ch. 786, L. 1991, provided: "[This act] is effective on passage and approval [approved May 17, 1991] and applies to tax years beginning after December 31, 1991."

15-24-2401. Purpose. The purpose of this part is to encourage value-added manufacturing in Montana by providing a taxable value decrease for a 7-year period for qualifying personal property of expanding industries that process Montana raw materials or use Montana semifinished products in manufacturing.

History: En. Sec. 1, Ch. 786, L. 1991.

15-24-2402. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Expansion" means that after December 31, 1991, the industry has added qualifying property within the jurisdiction either in the first tax year in which the taxable value decrease provided for in 15-24-2403 is to be received or in the preceding tax year. Expansion does not include property that:

(a) has qualified for the tax exemption under 15-24-1402; or
(b) will create an adverse impact on existing state, county, or municipal services.

(2) "Industry" is a firm that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget and that engages in the:

(a) processing of Montana raw materials, such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or

(b) processing of semifinished products produced in Montana that are used by the industry as a raw material in further manufacturing.

(3) "Qualifying employee" means a person:

(a) whose job was created as a result of expansion; and

(b) whose position pays not less than three-quarters of the amount of the average wage as determined by the quarterly statistical report published by the DEPARTMENT of labor and industry.

(4) "Qualifying property" means machinery and equipment that result in the hiring of qualifying employees used for the manufacture or processing of products described in subsection (2).

History: En. Sec. 2, Ch. 786, L. 1991; amd. Sec. 30, Ch. 51, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 51 in definition of industry in introductory clause after "manufacturing in the" substituted "North American Industry Classification System Manual" for "1987 Standard Industrial Classification Manual". Amendment effective March 15, 1999.

15-24-2403. Expanding industry taxable value decrease -- application -- approval -- reports. (1) After December 31, 1991, an existing industry with qualifying property that represents an expansion of the industry is entitled to receive a decrease in the tax rate for class eight property if the property results in the hiring of full-time qualifying employees for each year in which the taxable value decrease is in effect.

(2) A person, firm, or other group seeking to qualify its property for the taxable value decrease under subsection (1) shall apply to the DEPARTMENT of revenue on a form provided by the DEPARTMENT. The application must include:

- (a) the description of the personal property that may qualify for the taxable value decrease;
- (b) the date on which the qualifying property is intended to be operational;
- (c) the rate of pay and number of existing employees and new employees to be used in the operation of the qualifying property;
- (d) a statement that the new employees are in addition to the existing workforce of the industry and the specific responsibilities of each new employee; and
- (e) a statement that all the applicant's taxes are paid in full.

(3) The DEPARTMENT shall make an initial determination as to whether the industry qualifies for the taxable value decrease.

(4) (a) If the DEPARTMENT determines that the property qualifies for a taxable value decrease, the governing body of the affected county, consolidated government, incorporated city or town, or school district shall give due notice as defined in 76-15-103 and hold a public hearing. Each governing body may either approve or disapprove the grant of taxable value decrease. A governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The resolution provided for in subsection (4)(a) must include the document that grants approval of the application that was submitted to the DEPARTMENT by the taxpayer seeking the taxable value decrease.

(5) The tax reduction described in subsection (1) applies to:

- (a) the number of mills levied and assessed by each governing body approving the benefit over which the governing body has sole discretion; and
- (b) statewide levies if the governing body approving the tax reduction is a county, consolidated government, or incorporated city or town.

(6) The number of new employees used by the DEPARTMENT to calculate the taxable value decrease in subsection (7) must be determined by the wages paid to qualifying employees. A qualifying employee paid the amount of the average wage as determined by the quarterly statistical report published by the DEPARTMENT of labor and industry is considered one new employee. Qualifying employees are considered equivalent new employees if they are paid three-quarters of the average wage or more. The qualifying employee is the equivalent of a new employee in the same fraction that his wages are to the average wage, but a qualifying employee may not be considered more than two new employees.

(7) (a) Qualifying property is entitled to a decrease in the taxable rate of class eight property based upon a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate. The reduced taxable value rate is determined by calculating the inverse of the number of equivalent new employees divided by the number of existing employees and multiplying the product of that calculation by the decimal equivalent of the tax rate for class eight property.

(b) For each year that the taxable value decrease is in effect, the taxpayer shall report by March 1 to the DEPARTMENT, on forms prescribed by the DEPARTMENT, the wages of and the number of qualifying employees that are used in the operation of the qualifying property for which the taxable value decrease was granted.

History: En. Sec. 3, Ch. 786, L. 1991.

15-24-2404. Exclusion from other property tax reductions or exemptions -- recapture. (1) If a taxable value decrease is taken pursuant to this part, other property tax reductions or exemptions, including but not limited to those provided in 15-6-135, 15-24-1402, and 15-24-1501, are not allowed for the qualifying property.

(2) **Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this part. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.**

History: En. Sec. 4, Ch. 786, L. 1991; amd. Sec. 7, Ch. 597, L. 2005.

Compiler's Comments:

2005 Amendment: Chapter 597 inserted (2) providing for the recapture of property tax abatements if certain requirements are not met, the calculation of the amount to be recaptured, and the distribution of the amount recaptured and establishing when recapture is not allowed and when a recapture may be canceled in whole or in part; and made minor changes in style. Amendment effective October 1, 2005.

15-24-2405. Rules. The DEPARTMENT of revenue shall prescribe rules necessary to carry out the purposes of this part.

History: En. Sec. 5, Ch. 786, L. 1991.

Compiler's Comments:

1991 Statement of Intent: The statement of intent attached to Ch. 786, L. 1991, provided: "A statement of intent is required for this bill because the DEPARTMENT of revenue is granted authority to adopt rules for the administration of this bill.

The legislature contemplates that rules adopted by the DEPARTMENT should, at a minimum, provide the following:

(1) guidelines for information that must be contained in the application for taxable value decrease;

(2) the forms to be used by a firm to apply for the taxable value decrease and to report employment associated with the use of qualifying property;

(3) the procedures to ensure that a taxpayer receiving a taxable value decrease under this bill does not receive any other property tax reduction for qualifying property;

(4) the definition of terms and establishment of procedures that are appropriate for the efficient administration of the taxable value decrease;

(5) procedures for the annual recomputation of numbers of existing employees and numbers of new employees;

(6) criteria the DEPARTMENT intends to use to safeguard the faithful reporting of existing and new employees to deter taxpayers from using temporary measures or other artifices to deflate the number of existing employees or inflate the number of new employees contrary to the spirit of the program; and

(7) procedures for the DEPARTMENT to review the specific responsibilities of each new employee to ensure that the employee is a qualifying employee."

Part 25. Trucks and Truck Tractors (Repealed)

15-6-192. Application for classification as new industrial property.

(1) Any person, firm, or other group seeking to qualify its property for classification as new industrial property under class five shall make application to the DEPARTMENT of revenue on a form provided by the DEPARTMENT.

(2) The DEPARTMENT of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location of the industrial property is contemplated.

(3) If the DEPARTMENT makes an initial determination that the industrial property qualifies as new industrial property under class five, it shall publish notice of and hold a public hearing to determine whether the property should retain this classification.

(4) Local taxing authority officials may waive their objections to the property's classification in class five if the owner of the new industrial property agrees to prepay property taxes on the property during the construction period. The maximum amount of prepayment shall be the amount of tax the owner would have paid on the property if it had not been classified under class five.

(5) If a new industrial facility qualifies under class five, its property tax payment may not be reduced for reimbursement of its prepaid taxes as provided in 15-16-201 until the class five qualification expires.

History: En. Sec. 13, Ch. 693, L. 1979; Sec. 15-6-152, MCA 1997; redes. 15-6-192 by Code Commissioner, 1999.

Administrative Rules:

ARM 42.19.1211 through 42.19.1213 and 42.19.1221 through 42.19.1224
New industrial property.

Collateral References:

Moneys, Solvent Credits, and Industrial Facilities Taxation, 1974 Interim Report, Montana Legislative Council.

20-9-407. Industrial facility agreement for bond issue in excess of maximum. (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the 45% limitation prescribed in 20-9-406. Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in this section by a maximum of 45% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the DEPARTMENT of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the DEPARTMENT's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be entitled, after all the current

indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

History: En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(3) thru (5); amd. Sec. 26, Ch. 693, L. 1979; amd. Sec. 3, Ch. 15, L. 1985.

Compiler's Comments:

1985 Amendment: In (1) substituted "45%" for "29%" in two places; and in (2) substituted "20-9-406" for "this section".

Commissioner Correction: In subsection (1), "this section" was changed to "20-9-406" by the Code Commissioner, 1979. Sections 20-9-406 and 20-9-407 were enacted as part of one section and were split during recodification. The internal reference to "this section" was overlooked and has now been corrected.

Cross References:

ANB defined, 20-1-101.

Educational impact statements, 20-1-208.

Calculation of average number belonging, 20-9-311.

MACo
2715 Skyway Drive
Helena MT 59602-1213

(406) 444.4370
FAX: (406) 442-5238

VIDEO TRANSACTION REPORT

Sent to: **Phone Number: (404) 475-7149**
Teresa Shrestha
5885 Cumming Hwy., Suite 108-215
Sugar Hill, GA 30518

Date checked out: 3/6/07

Date due:3/23/07

Video Number

Video Name

SP 5

SAFETY RESPONSIBILITY

Video Number

Video Name

PP 2

PROTECTIVE EQUIPMENT

Video Number

Video Name

OS 20

SELF CARE

Due to the high volume of requests, videos must be returned on time. Thank you.

Fran Monro