

SENATE BILL NO. 70

INTRODUCED BY D. WANZENRIED

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE CARRYBACK OF A NET OPERATING LOSS FOR CORPORATION LICENSE TAX PURPOSES; 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 period plus the net operating loss carrybacks to the taxable 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 period beginning after December 31, 1970, a net operating loss is sustained, the loss must be a net operating loss carryback to each of the three taxable periods preceding the taxable period of the loss and must be a net operating loss carryover to each of the five taxable periods following the taxable period of the loss.~~

~~(4)(3) A net operating loss for any taxable period ending after December 31, 1975, and beginning before January 1, 2011, in addition to being is a net operating loss carryback to each of the three preceding taxable periods, must be and a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss.~~

(4) If a net operating loss is sustained for any taxable period beginning after December 31, 2010, the loss is a net operating loss carryover to each of the seven taxable periods following the taxable period of the loss.

(5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other taxable 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 periods to which the loss was carried. For purposes of this subsection, the net income for the prior taxable period must be computed with the modification specified in subsection (6)(b) and by determining

1 the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any
2 taxable period after the loss period, and the net income so computed may not be considered to be less than zero.

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

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

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

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

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

11 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating
12 loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the
13 case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating
14 losses sustained by the consolidated corporations prior to the date of consolidation.

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

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

18 (11) A taxpayer entitled to a carryback period for a net operating loss as provided in subsection (3) may
19 elect to forego the entire carryback period. If the election is made, the loss may be carried forward only. The
20 election must be made on or before the date on which the return is due, including any extension of the due date,
21 for the tax year of the net operating loss for which the election is to be in effect. The election is irrevocable for the
22 year made.

23 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not allowed
24 in the case of a regulated investment company or a fund of a regulated investment company, as defined in section
25 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or renumbered."

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

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29 **NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the
30 meaning of 1-2-109, to tax periods beginning after December 31, 2010.

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