

HOUSE BILL NO. 613  
INTRODUCED BY M. LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CREATION OF ECONOMIC DEVELOPMENT CORPORATIONS; PROVIDING THAT THE PURPOSE OF ECONOMIC DEVELOPMENT CORPORATIONS IS TO MAKE QUALIFIED INVESTMENTS; ENUMERATING QUALIFIED INVESTMENTS; PROVIDING THAT EARNINGS ON A QUALIFIED INVESTMENT ARE TAX-EXEMPT IF THE EARNINGS ARE REINVESTED WITHIN 3 YEARS; AMENDING SECTION 15-31-114, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Economic development corporation.** (1) A group of persons may form an economic development corporation. The purpose of an economic development corporation is to make investments in Montana. An economic development corporation must be formed pursuant to Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to an economic development corporation.

(2) The legislature finds that the formation of an economic development corporation to make qualified investments as provided in [section 2] constitutes a public benefit to the people of Montana. The board of county commissioners of a county in which an economic development corporation intends to make a qualified investment may require the economic development corporation to notify the board. The board may review the proposed qualified investment in order to determine the public benefit to be achieved.

NEW SECTION. **Section 2. Qualified investments.** (1) An economic development corporation may make debt or equity investments only in a business that meets one of the following criteria:

- (a) the business is located in Montana and is engaged in one or more of the following activities:
- (i) manufacturing;
  - (ii) agricultural, fishery, or forestry production and processing;
  - (iii) mineral production and processing, including conventional oil and gas exploration;
  - (iv) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;
  - (v) transportation;
  - (vi) research and development of products or processes associated with any of the activities enumerated

in subsections (1)(a)(i) through (1)(a)(v);

(vii) wholesale or retail distribution activities;

(viii) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana;

(ix) tourism; and

(x) the production of energy using an alternative renewable energy source as defined in 90-4-102; or

(b) the business is a non-Montana business that will be relocated in Montana.

(2) An economic development corporation may enter into cooperative ventures with and make investments in a local economic development organization or a public economic development authority. Cooperative ventures and investments authorized in this subsection are qualified investments for the purpose of [section 3].

(3) An economic development corporation may not make a qualified investment in an entity that is owned or partially owned by an economic development corporation.

**NEW SECTION. Section 3. Tax exemption.** (1) Earnings on a qualified investment, as provided in [section 2], are exempt from taxation if the earnings are reinvested in other qualified investments within 3 years of receipt by an economic development corporation.

(2) Earnings on a qualified investment that are not reinvested within 3 years of receipt by an economic development corporation are taxable in the tax year following the expiration of the 3-year period for reinvestment.

**NEW SECTION. Section 4. Tax credit.** A person making an investment in an economic development corporation or a local economic development organization is eligible for a tax credit. The tax credit is equal to 50% of the amount of the investment made in an economic development corporation. Tax credits must be claimed as provided in [section 5].

**NEW SECTION. Section 5. Tax credit -- recapture.** (1) For tax years beginning on or after January 1, 2005, the members of an economic development corporation are entitled to the tax credits equal to 50% of the amount of the investment made in an economic development corporation in the tax year in which the investment is made. The credit may also be claimed for an investment in a local economic development organization. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30 or 31.

(2) The tax credit allowed under subsection (1) is to be credited against the taxpayer's income tax liability

for the tax year in which the investment in an economic development corporation is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount of the credit that exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current tax year plus the amount of credit, if any, carried forward from a previous tax year exceeds the taxpayer's tax liability for the current tax year, the excess must be carried back as a credit to the 3 preceding tax years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding tax years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 tax years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(3) If an investment for which a credit is claimed is disallowed, the department of revenue shall proportionally reduce the amount of the credit by the amount by which the investment is disallowed. The department of revenue may use any procedure for the collection of unpaid taxes to recapture amounts owed for a prior credit.

**Section 6.** Section 15-31-114, MCA, is amended to read:

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

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

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

which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

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

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

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

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

(A) taxes imposed by this part;

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

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

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

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

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

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

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

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

(i) earnings on qualified investments as provided in [section 2].

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

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

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

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

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

**NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 5].

**NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2003.

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