

SENATE BILL NO. 138
INTRODUCED BY COBB

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO ALTERNATIVE ENERGY AND ENERGY CONSERVATION TAX POLICY; PROVIDING THAT GENERATION FACILITIES THAT HAVE 1 MEGAWATT OR GREATER CAPACITY POWERED BY AN ALTERNATIVE RENEWABLE ENERGY SOURCE ARE NOT EXEMPT FROM PROPERTY TAXES UNDER THE GENERAL PROPERTY TAX EXEMPTION LAWS BUT CONTINUE TO BE SUBJECT TO NEW AND EXPANDING INDUSTRY PROPERTY TAX INCENTIVES; REVISING THE DEDUCTION FOR ENERGY-CONSERVATION INVESTMENTS AND THE CREDITS FOR ENERGY-CONSERVING EXPENDITURES BY ELIMINATING THE TAX SAVING CEILING FOR THE DEDUCTION AND THE CARRYFORWARD PROVISION OF THE CREDIT; PROVIDING THAT PROPERTY PURCHASED UNDER THE COMMERCIAL OR NET METERING SYSTEM INVESTMENT CREDIT DOES NOT HAVE TO QUALIFY AS SPECIAL DEPRECIABLE PROPERTY UNDER THE INTERNAL REVENUE CODE OF 1954; AMENDING SECTIONS 15-6-225, 15-32-104, 15-32-109, AND 15-32-402, 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 15-6-225, MCA, is amended to read:

"15-6-225. Energy equipment exemption. (1) ~~(a) Except as provided in subsection (1)(b), the machinery Machinery and equipment used in a qualifying ~~generation facilities built and operated after July 1, 2001, are exempt from taxation.~~~~

~~————(b) A generation facility that has a nameplate capacity of less than 1 megawatt of electrical energy is exempt from taxation for 5 years after the generation of electricity begins.~~

(2) (a) For the purposes of this section, "generation facility" includes any combination of a generator or generators, associated prime movers, and other associated machinery and equipment that are normally operated together to produce electric power, but does not include the owner's business improvements and personal property.

(b) To qualify for the exemption under this section, the generation facilities must be powered by an alternative renewable energy source, as defined in 90-4-102."

Section 2. Section 15-32-104, MCA, is amended to read:

"15-32-104. Limitations on deduction and credit. Tax treatment under 15-32-103 and 15-32-109 is limited to:

- ~~_____ (1) capital investments made after January 1, 1975;~~
- ~~_____ (2) persons and firms not primarily engaged in the provision of gas or electricity derived from fossil fuel extraction or conventional hydroelectric development; and~~
- ~~_____ (3) a ceiling of \$100,000 in tax savings per year to any one person or firm."~~

Section 3. Section 15-32-109, MCA, is amended to read:

"15-32-109. Credit for energy-conserving expenditures. (1) Subject to the restrictions of ~~subsections subsection (2) and (3)~~, a resident individual taxpayer may take a credit against the taxpayer's tax liability under chapter 30 for 25% of the taxpayer's expenditure for a capital investment in the physical attributes of a building or the installation of a water, heating, or cooling system in the building, so long as either type of investment is for an energy conservation purpose, in an amount not to exceed \$500.

(2) The credit ~~or the sum of the credits~~ under subsection (1):

- (a) may not exceed the taxpayer's tax liability; and
- (b) is subject to the provisions of 15-32-104.

~~(3) The credit allowed under this section may be used as a carryforward against taxes imposed under chapter 30 for the 7 succeeding tax years. The entire amount of the credit not used in the year that it was earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year."~~

Section 4. Section 15-32-402, MCA, is amended to read:

"15-32-402. Commercial or net metering system investment credit -- alternative energy systems.

(1) An individual, corporation, partnership, or small business corporation as defined in 15-30-1101 that makes an investment of \$5,000 or more in ~~certain depreciable~~ property ~~qualifying that is depreciable~~ under ~~section 38~~ of the Internal Revenue Code of 1954, ~~as amended~~, for a commercial system or a net metering system, as defined in 69-8-103, that is located in Montana and that generates energy by means of an alternative renewable energy source, as defined in 90-4-102, is entitled to a tax credit against taxes imposed by 15-30-103 or 15-31-121 in an amount equal to 35% of the eligible costs, to be taken as a credit only against taxes due as a consequence of taxable or net income produced by one of the following:

- (a) manufacturing plants located in Montana that produce alternative energy generating equipment;
- (b) a new business facility or the expanded portion of an existing business facility for which the alternative energy generating equipment supplies, on a direct contract sales basis, the basic energy needed; or
- (c) the alternative energy generating equipment in which the investment for which a credit is being claimed was made.

(2) For purposes of determining the amount of the tax credit that may be claimed under subsection (1), eligible costs include only those expenditures ~~that qualify under section 38 of the Internal Revenue Code of 1954, as amended,~~ and that are associated with the purchase, installation, or upgrading of:

- (a) generating equipment;
- (b) safety devices and storage components;
- (c) transmission lines necessary to connect with existing transmission facilities; and
- (d) transmission lines necessary to connect directly to the purchaser of the electricity when no other transmission facilities are available.

(3) Eligible costs under subsection (2) must be reduced by the amount of any grants provided by the state or federal government for the system."

NEW SECTION. SECTION 5. COORDINATION INSTRUCTION. (1) IF HOUSE BILL NO. 391 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 2 OF HOUSE BILL NO. 391], AMENDING 15-32-402, IS VOID.

(2) IF SENATE BILL NO. 146 AND [THIS ACT] ARE BOTH PASSED AND APPROVED THEN:

(A) [SECTION 4 OF SENATE BILL NO. 146], AMENDING 15-32-402, IS VOID; AND

(B) THE REFERENCE TO 90-4-102 IN [SECTION 4 OF THIS ACT], AMENDING 15-32-402, IS CHANGED TO 15-6-225.

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Retroactive applicability. [Sections 1 and 4] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2001.

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