

## SENATE BILL NO. 385

INTRODUCED BY MANGAN, MCKENNEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CAPITAL INVESTMENT FUNDS; PROVIDING THAT CAPITAL INVESTMENT FUNDS MUST BE APPROVED BY THE DEPARTMENT OF COMMERCE; PROVIDING THAT A CAPITAL INVESTMENT FUND MUST BE CREATED FOR THE SOLE PURPOSE OF MAKING INVESTMENTS IN PRIMARY BUSINESS SECTOR COMPANIES IN MONTANA; REQUIRING THAT A CAPITAL INVESTMENT FUND MUST BE A PRIVATE, FOR-PROFIT, LIMITED LIABILITY COMPANY; PROVIDING THAT THE SIZE OF A CAPITAL INVESTMENT FUND MUST BE AT LEAST \$1 MILLION BUT NOT MORE THAN \$10 MILLION; PROVIDING FOR A 50 PERCENT TAX CREDIT FOR INVESTMENTS IN PRIMARY BUSINESS SECTOR COMPANIES; PROVIDING THAT 10 PERCENT OF THE CAPITAL INVESTMENT FUND'S NET RETURN ON INVESTMENT MUST BE DEPOSITED IN THE STATE GENERAL FUND; PROVIDING THAT THE NET RETURN ON INVESTMENT IS ~~DEDUCTIBLE~~ EXCLUDED FROM GROSS INCOME FOR TAX PURPOSES; AMENDING SECTIONS 15-30-111, 15-31-113, 15-31-114, 90-8-101, 90-8-103, 90-8-104, 90-8-105, 90-8-106, 90-8-202, 90-8-301, 90-8-302, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 4 ~~6~~], unless the context requires otherwise, the following definitions apply:

- (1) "Capital investment fund" means a fund approved pursuant to [section 2].
- (2) "Department" means the department of commerce provided for in 2-15-1801.
- (3) "Net return on investment" means the return from an investment to the capital investment fund minus the amount of the investment.
- (4) "Primary business sector" means a business, ~~estimated to make at least 70% of its profits from sources outside of Montana, that is engaged in one or more of the following activities:~~
  - ~~(a) manufacturing;~~
  - ~~(b) agricultural, fishery, or forestry production and processing;~~
  - ~~(c) mineral production and processing, except for conventional oil and gas exploration;~~
  - ~~(d) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass~~

combustion devices, as defined in 15-32-102;

~~— (e) transportation;~~

~~— (f) research and development of products or processes associated with any of the activities enumerated in subsections (4)(a) through (4)(e); WHOSE PRINCIPAL HEADQUARTERS IS LOCATED IN MONTANA, THAT IS PROJECTED TO HAVE AT LEAST 35% OF ITS EMPLOYEES LOCATED IN MONTANA FOR THE FOLLOWING 3 YEARS, AND THAT IS ESTIMATED WITHIN 3 YEARS TO:~~

~~(A) RECEIVE AT LEAST 70% OF ITS GROSS REVENUE FROM SOURCES OUTSIDE THE STATE OF MONTANA; OR~~

~~(B) BE A MANUFACTURING COMPANY WITH AT LEAST 70% OF ITS SALES TO OTHER MONTANA COMPANIES THAT HAVE 70% OF SALES FROM SOURCES OUTSIDE MONTANA.~~

**NEW SECTION. Section 2. Capital investment funds.** (1) Private sector individuals or entities may create capital investment funds. A capital investment fund must be created for the sole purpose of making investments in primary business sector companies in Montana. A capital investment fund must be a private, for-profit, limited liability company, CORPORATION, OR PARTNERSHIP. The size of a capital investment fund must be at least \$1 million but not more than \$10 million.

(2) A capital investment fund must have professional management and must be approved by the department. ~~Each capital investment fund must have an officer or employee of the department on its governing body.~~ IN DETERMINING WHETHER A CAPITAL INVESTMENT FUND HAS PROFESSIONAL MANAGEMENT, THE DEPARTMENT SHALL CONSIDER THE EXPERIENCE OF THE INVESTMENT MANAGER RELATED TO THE VENTURE CAPITAL INDUSTRY. THE DEPARTMENT MAY ONLY APPROVE INDIVIDUALS OR COMPANIES WITH DEMONSTRATED EXPERTISE AND SUCCESS IN THE MANAGEMENT OF INVESTMENTS IN VENTURE CAPITAL FUNDS. As a condition for approval, a capital investment fund shall agree to pay 10% of the net return on investment to the department for deposit in the state general fund.

(3) The allocation of tax credits and net return on investments among the members of the capital investment fund must be provided for in the documents creating the capital investment fund.

(4) THE CAPITAL INVESTMENT FUND SHALL PAY TO THE DEPARTMENT AN ANNUAL FEE OF 0.75% OF INITIAL CAPITALIZATION OR \$50,000, WHICHEVER IS LESS, FOR ADMINISTRATION OF [SECTIONS 1 THROUGH 6] AS LONG AS THE TOTAL OF THE FEES, ASSESSED ANNUALLY TO ALL FUNDS, DOES NOT EXCEED \$65,000 IN THE AGGREGATE.

**NEW SECTION. Section 3. Qualified investments -- tax credit.** A capital investment fund shall make investments in UNRELATED primary business sector companies in Montana THAT DO NOT DISPLACE OTHER SOURCES OF EQUITY OR DEBT FINANCING THAT ARE INCLUDED IN THE BALANCE SHEET OF THE COMPANY UNLESS THE DEPARTMENT

DETERMINES THE INVESTMENT FURTHERS THE PURPOSES OF THIS CHAPTER. The capital investment fund is entitled to a tax credit equal to 50% of the amount of the investment made in a primary business sector company in the tax year in which the investment is made AND ALLOCATED AS PROVIDED IN [SECTION 2(3)]. Tax credits must be claimed as provided in [section 4].

NEW SECTION. Section 4. Tax credit -- DISALLOWANCE AND recapture. (1) For tax years beginning on or after January 1, 2005, the members of a qualified capital investment fund ~~are entitled to the tax credits equal to 50% of the amount of the investment made in a primary business sector company in the tax year in which the investment is made. The credit may be taken~~ MAY CLAIM THEIR ALLOCATED SHARE OF THE TAX CREDIT PROVIDED IN [SECTION 3] against the tax liability imposed on the investor MEMBERS pursuant to Title 15, chapter 30 or 31.

(2) The tax credit allowed under ~~subsection (1)~~ [SECTION 3] is to be credited against the taxpayer's MEMBER'S income tax liability for the tax year in which the investment in a primary business sector company is made. If the amount of the tax credit exceeds the taxpayer's MEMBER'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 determined not to be a primary business sector, then the department shall proportionally reduce the amount of the credit by the amount by which the revenue generated by the business fails to meet the minimum 70% of its profits from sources outside of Montana. The department may use any procedure for the collection of unpaid taxes to recapture amounts owed for a prior credit.~~

THE CREDIT PROVIDED IN [SECTION 3] IS SUBJECT TO DISALLOWANCE AND RECAPTURE AS FOLLOWS:

(A) THE CREDIT IS DISALLOWED IN THE TAX YEAR CLAIMED IF:

(I) THE CREDIT IS CLAIMED FOR INVESTMENT IN A BUSINESS THAT:

(A) IS NOT ENGAGED IN ONE OR MORE OF THE REQUIRED ACTIVITIES; OR

(B) THE DEPARTMENT DETERMINES COULD NOT REASONABLY HAVE BEEN ESTIMATED TO MAKE AT LEAST 70%

OF ITS GROSS REVENUE FROM SOURCES OUTSIDE OF MONTANA; OR

(II) A MEMBER OF THE CAPITAL INVESTMENT FUND AND THE BUSINESS BEAR A RELATIONSHIP DESCRIBED IN

SECTION 267(B) OF THE INTERNAL REVENUE CODE, 26 U.S.C. 267(B).

(B) IF A BUSINESS IN WHICH AN INVESTMENT WAS MADE DOES NOT MAKE AT LEAST 70% OF ITS GROSS REVENUE FROM SOURCES OUTSIDE OF MONTANA DURING ANY TAX YEAR ON OR AFTER THE TAX YEAR IN WHICH THE CREDIT WAS CLAIMED, IN THE TAX YEAR OF THE CAPITAL INVESTMENT FUND ENDING ON OR AFTER THAT TAX YEAR OF BUSINESS, THE CAPITAL INVESTMENT FUND MUST:

(I) REDUCE, BUT NOT BELOW ZERO, THE AMOUNT OF ANY CREDIT TO WHICH IT IS OTHERWISE ENTITLED FOR THE TAX YEAR BY AN AMOUNT EQUAL TO THE CREDIT CLAIMED FOR THE BUSINESS THAT DID NOT MAKE AT LEAST 70% OF ITS GROSS REVENUE FROM SOURCES OUTSIDE OF MONTANA, MULTIPLIED BY A FRACTION, THE NUMERATOR OF WHICH IS 70 MINUS THE PERCENT OF ITS GROSS REVENUE FROM SOURCES OUTSIDE OF MONTANA AND THE DENOMINATOR OF WHICH IS 100 OR THE RECAPTURED AMOUNT;

(II) INCLUDE IN INCOME THE RECAPTURED AMOUNT MINUS THE CREDIT REDUCTION PROVIDED FOR IN SUBSECTION (3)(B)(I); AND

(III) ALLOCATE THE INCOME PROVIDED FOR IN SUBSECTION (3)(B)(II) TO THE MEMBERS OR THEIR SUCCESSORS IN THE SAME PERCENTAGE THE RECAPTURED CREDIT WAS ALLOCATED.

(C) THE CREDIT IS DISALLOWED IF A CAPITAL INVESTMENT FUND SELLS OR OTHERWISE TRANSFERS AN INTEREST IN A PRIMARY SECTOR BUSINESS FOR WHICH A CREDIT PROVIDED IN [SECTION 3] WAS CLAIMED WITHIN 2 YEARS FROM THE DATE OF THE INVESTMENT.

**NEW SECTION. SECTION 5. REPORTING, RECORDKEEPING, AND EXAMINATION. (1) EACH APPROVED CAPITAL INVESTMENT FUND SHALL REPORT TO THE DEPARTMENT ON A QUARTERLY BASIS:**

(A) THE NAME OF EACH INVESTOR IN THE CAPITAL INVESTMENT FUND WHO IS QUALIFIED TO RECEIVE A TAX CREDIT AND THE AMOUNT OF EACH INVESTOR'S INVESTMENT;

(B) THE AMOUNT OF ANY DISBURSEMENT MADE TO EACH INVESTOR IN THE CAPITAL INVESTMENT FUND;

(C) FINANCIAL RECORDS OF THE CAPITAL INVESTMENT FUND, INCLUDING AN INCOME STATEMENT AND A BALANCE SHEET; AND

(D) ALL QUALIFIED INVESTMENTS THAT THE COMPANY HAS MADE SINCE THE LAST QUARTERLY REPORT, ALONG WITH SUPPORTING DOCUMENTATION THAT THE INVESTMENT IS A QUALIFIED INVESTMENT, AS DESCRIBED IN [SECTIONS 1 THROUGH 6]. SUPPORTING DOCUMENTATION MUST INCLUDE INFORMATION THAT CONFIRMS THAT AT LEAST 70% OR MORE OF THE COMPANY'S SALES ARE FROM SOURCES OUTSIDE MONTANA.

(2) AT LEAST ONCE EACH YEAR, THE DEPARTMENT SHALL EXAMINE THE BOOKS AND AFFAIRS OF EACH CAPITAL INVESTMENT FUND TO DETERMINE IF THE CAPITAL INVESTMENT FUND IS ABIDING BY THE PURPOSES OF [SECTIONS 1

THROUGH 6]. THE COST OF THE ANNUAL REVIEW MUST BE PAID BY EACH CAPITAL INVESTMENT FUND AND THE FEES ASSESSED MUST BE COMMENSURATE WITH THE COSTS OF THE DEPARTMENT FOR CONDUCTING THE REVIEW.

NEW SECTION. SECTION 6. CONFLICT OF INTEREST -- ARM'S-LENGTH TRANSACTIONS. A CAPITAL INVESTMENT FUND MAY NOT INVEST IN ANY BUSINESS VENTURE IN WHICH THE COMBINED OWNERSHIP OF THE BUSINESS VENTURE FOR ALL INVESTORS IN THE CAPITAL INVESTMENT FUND EXCEEDS 20% AT THE TIME OF THE DECISION TO INVEST.

**Section 7.** Section 15-30-111, MCA, is amended to read:

**"15-30-111. (Temporary) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is

exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with

15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes; ~~and~~

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) net return on investments among the members of the capital investment fund received pursuant to [sections 1 through 4 6].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal

base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)

**15-30-111. (Effective on occurrence of contingency) Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the



following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15);

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; and

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total

amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) contributions withdrawn from a family education savings account or earnings withdrawn from a family education savings account for qualified higher education expenses, as defined in 15-62-103, of a designated beneficiary;

(m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

(n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period;

(o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction is not provided for federal income tax purposes;

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

(r) net return on investments among the members of the capital investment fund received pursuant to [sections 1 through 4 6].

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(I) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds \$15,000, the excess reduces the exclusion by an equal

amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion.

(8) An individual who contributes to one or more accounts established under the Montana family education savings program may reduce adjusted gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The reduction in adjusted gross income under this subsection applies only with respect to contributions to an account of which the account owner, as defined in 15-62-103, is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of contributions that reduced adjusted gross income. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

**SECTION 8. SECTION 15-31-113, MCA, IS AMENDED TO READ:**

**"15-31-113. Gross income and net income.** (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:

(a) including:

(i) interest exempt from federal income tax and exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, as that section may be amended or renumbered;

(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, attributable to stockholders, either individual or corporate, not subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the

stockholders pursuant to federal law; and

(b) excluding:

(i) gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code, as those sections may be amended or renumbered, when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section; and

(ii) net return on investments of a capital investment fund received pursuant to [sections 1 through 6].

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) A corporation is not exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

~~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 tax 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 tax 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 tax 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 tax 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:~~

~~———(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:~~

~~———(4) There is allowed a deduction for net return on investments of a capital investment fund received pursuant to [sections 1 through 4]."~~

**Section 9.** Section 90-8-101, MCA, is amended to read:

**"90-8-101. Short title.** This Parts 1 through 3 of this chapter may be cited as the "Montana Capital Company Act"."

**Section 10.** Section 90-8-103, MCA, is amended to read:

**"90-8-103. Purpose.** (1) The purpose of parts 1 through 3 of this chapter is to promote the development of the human resources and the diversification of the economy of Montana. The venture capital generated by

parts 1 through 3 of this chapter must be used to encourage and assist the strengthening of the economy through loans, equity investments, and other business transactions for purposes of developing new small business and industry in Montana, rehabilitating existing small business and industry, and stimulating and assisting in the expansion of small business activities that promote and maintain the economic stability of the state by providing maximum opportunities for employment of Montanans and improving the standard of living of the people of Montana.

(2) ~~This~~ Parts 1 through 3 of this chapter ~~is~~ are aimed at:

(a) increasing the availability of development capital in order to encourage and assist in the creation, development, and expansion of small businesses based in Montana;

(b) aiding those businesses to which risk and equity financing are not readily or fully available through traditional sources, including those owned and operated by women and minorities;

(c) developing, preserving, diversifying, expanding, and strengthening the agricultural, industrial, and business base of Montana's economy, particularly for those small businesses ~~utilizing~~ using the state's technical, managerial, and research resources in domestic and international markets; and

(d) providing the residents of Montana with greater opportunities to invest and participate in the economic development and potential of the state."

**Section 11.** Section 90-8-104, MCA, is amended to read:

**"90-8-104. Definitions.** As used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under parts 1 through 3 of this chapter.

(2) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce.

(4) "Montana business" means a business that is located or principally based within Montana.

(5) "Qualified investment" means an investment that does not violate any of the provisions of parts 1



through 3 of this chapter, that does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of parts 1 through 3 of this chapter, and that is:

- (a) a debt or equity financing of a Montana business that meets both of the following criteria:
    - (i) the business is engaged in one or more of the following activities:
      - (A) manufacturing;
      - (B) agricultural, fishery, or forestry production and processing;
      - (C) mineral production and processing, except for conventional oil and gas exploration;
      - (D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;
      - (E) transportation;
      - (F) research and development of products or processes associated with any of the activities enumerated in subsections (5)(a)(i)(A) through (5)(a)(i)(E);
      - (G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;
      - (H) 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;
      - (I) tourism; and
      - (J) the production of energy using an alternative renewable energy source as defined in 90-4-102; and
    - (ii) the business is a small business as defined in rules adopted by the department and is a small business pursuant to the regulations promulgated by the United States small business administration at 13 CFR 121, et seq.;
  - (b) a debt or equity financing of a business outside Montana if the investment is likely to produce a qualified investment in Montana, as long as the investment does not exceed 25% of the capital base of the capital company; or
  - (c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.
- (6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.
- (7) "Qualified Montana small business investment capital company" means a certified Montana small

business investment capital company that has been designated as a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

**Section 12.** Section 90-8-105, MCA, is amended to read:

**"90-8-105. Rulemaking.** The department may adopt rules to implement the provisions of parts 1 through 3 of this chapter."

**Section 13.** Section 90-8-106, MCA, is amended to read:

**"90-8-106. Fees.** The department may charge fees commensurate with costs for the administration of parts 1 through 3 of this chapter. Fees for the administration of parts 1 through 3 of this chapter must be assessed to each qualified Montana capital company that is not a small business investment company that is licensed and regulated by the United States small business administration, in a ratio proportionate to the tax credits allocated to the capital company divided by the total tax credits allocated to all qualified Montana capital companies."

**Section 14.** Section 90-8-202, MCA, is amended to read:

**"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana small business investment capital company -- tax credit.** (1) The department shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000; or

(b) a qualified Montana small business investment capital company a certified Montana small business investment capital company once it has been privately capitalized at a minimum level of \$500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as a qualified Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

(3) (a) The total amount of tax credits authorized for a single qualified capital company or a qualified Montana small business investment capital company may not exceed \$1,500,000, except that a qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991. In the event the capitalization of a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to a qualified Montana small business investment capital company, and the department shall certify the allocation to the company.

(c) If the legislature provides additional tax credits under parts 1 through 3 of this chapter after June 30, 1991, or if tax credits become available by reversion to the department by a capital company or by a qualified Montana small business investment capital company, those additional or reverted tax credits must be allocated by the department to qualified capital companies or to a qualified Montana small business investment capital company in accordance with parts 1 through 3 of this chapter and the rules of the department.

(5) Investors in a qualified Montana capital company or in a qualified Montana small business investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as a qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as a qualified Montana small business investment capital company.

(6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or a qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital companies of \$150,000 per taxpayer, except that, as applied to a qualified small business investment capital company, the maximum tax credit is \$250,000 per taxpayer and the tax credit limitation relating to a capital investment in a

qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation defined in 15-30-1101 or a partnership may be claimed by the small business corporation shareholders or the partners.

(7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's income tax liability or coal severance tax liability for the ~~taxable tax~~ year in which the investment in a qualified Montana capital company or a qualified Montana small business investment capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the ~~taxable tax~~ year, the amount of the credit which 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 ~~taxable tax~~ year plus the amount of credit, if any, carried forward from a previous ~~taxable tax~~ year exceeds the taxpayer's tax liability for the current ~~taxable tax~~ year, the excess must be carried back as a credit to the 3 preceding ~~taxable tax~~ years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding ~~taxable tax~~ years.

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

(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in a qualified Montana small business investment capital company within 4 years of July 1, 1991.

(9) (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6) by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than \$150,000, or not more than \$250,000 in the case of a qualified Montana small business investment capital company, in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for donation of stock in a qualified Montana small business investment capital company."

**Section 15.** Section 90-8-301, MCA, is amended to read:

**"90-8-301. Qualified investments -- penalty -- extension permissible.** (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit ~~must~~ shall use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the department approves the amended application;

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the department approves the amended application; and

(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the department approves the amended application.

(2) A qualified Montana small business investment capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) of its capital base raised through investments for which tax credits were taken:

(i) 30% within 3 years of the date on which the certified company was designated as a qualified Montana small business investment capital company by the department or within 3 years of its designation as a small business investment corporation by the small business administration, whichever is later;

(ii) 50% within 4 years of the date on which the certified company was designated as a qualified Montana small business investment capital company by the department or within 4 years after its designation as a small business investment corporation by the small business administration, whichever is later; and

(iii) 70% within 5 years of the date on which the certified company was designated as a qualified Montana small business investment capital company by the department or within 5 years after its designation as a small business investment corporation by the small business administration, whichever is later; or

(b) of its capital base, in the case of capital raised through a loan from the small business administration pursuant to 13 CFR 107, as provided under parts 1 through 3 of this chapter except as provided in subsection (2)(a).

(3) Following each annual examination, the department shall notify the department of revenue of any companies that are not in compliance with this section.

(4) (a) Except as provided in subsection (4)(b), a qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) or a qualified Montana small business investment capital company that fails to make qualified investments pursuant to subsection (2) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the investors investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to a qualified Montana capital company or to a qualified Montana small business investment capital company. The department of revenue may abate the penalty if a capital company or a Montana small business investment capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

(b) A company that has been licensed as a small business investment company whose securities are guaranteed by the United States small business administration pursuant to Title III of the Small Business Investment Act of 1958 may not be required to pay the penalty until all amounts due under the terms of the guarantee of the securities are paid in full.

(5) The department of revenue may grant an extension of time in which to make qualified investments pursuant to subsection (1) or (2) upon application by a capital company or a Montana small business investment capital company showing reasonable cause for an extension.

(6) The department of revenue shall deposit any amount received under this section to the credit of the state general fund.

(7) A capital company may invest tax credit funds in an existing profitable business only if a substantial portion of the investment is to be used for expansion of the business. The department may limit the amount of the investment to be counted toward the investment percentage criteria set forth in this section to the amount to be used for the expansion of the business."

**Section 16.** Section 90-8-302, MCA, is amended to read:

**"90-8-302. Restriction on investment.** In addition to the requirements of 90-8-301, no more than 50% of the equity raised by a Montana capital company or by a Montana small business investment capital company subject to any lower percentage prescribed by the regulations promulgated by the United States small business administration that govern small business investment companies may be invested in any one business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of parts 1 through 3 of this chapter may be invested in any one business."

**Section 17.** Section 90-8-312, MCA, is amended to read:

**"90-8-312. Investment reporting and recordkeeping.** (1) Each qualified Montana capital company and each qualified Montana small business investment capital company shall report to the department on a quarterly basis:

(a) the name of each investor in the qualified Montana capital company or in the qualified Montana small business investment capital company who has applied for a tax credit;

(b) the amount of each investor's investment;

(c) the amount of the tax credit allowed to the investor and the date on which the investment was made;

and

(d) any other information determined by the department.

(2) The department shall provide the information contained in subsection (1) to the department of revenue on a quarterly basis.

(3) The department shall provide each investor in a qualified Montana capital company and each investor in a qualified Montana small business investment capital company with a certificate authorizing the tax credit, and the certificate must be submitted with each tax return requesting a credit under 90-8-202.

(4) Each qualified Montana capital company and each qualified Montana small business investment capital company shall report to the department on a quarterly basis all qualified investments that the company has made. The department shall share the information with the department of revenue, in order that the provisions of 90-8-301 may be complied with.

(5) Each qualified Montana capital company shall report to the department all proposed investments to be made from its capital base. The capital company may not make the proposed investment unless the department determines, within 10 days of submission of a report satisfactory to the department, that the proposed investment is qualified under parts 1 through 3 of this chapter."

**Section 18.** Section 90-8-313, MCA, is amended to read:

**"90-8-313. Examination.** (1) At least once a year, the department shall examine the books and affairs of each Montana capital company and of each qualified Montana small business investment capital company. The examination must address the methods of operation and conduct of the business of the Montana capital company or of the Montana small business investment capital company to determine if the company is abiding by the purposes of parts 1 through 3 of this chapter and that the funds received by the company have been invested within the time limits required for a qualified Montana capital company or for a qualified Montana small business investment capital company in 90-8-301.

(2) The department may examine under oath any of the officers, directors, agents, employees, or investors of a Montana capital company regarding the affairs and business of the company. The department may issue subpoenas and administer oaths. Refusal to obey such a subpoena may at once be reported to the district court of the district in which the company is located, and the court shall enforce obedience to the subpoena in the manner provided by law.

(3) The cost of the annual review must be paid by each Montana capital company or by each Montana small business investment capital company in accordance with reasonable fees assessed by the department."

**Section 19.** Section 90-8-321, MCA, is amended to read:

**"90-8-321. Decertification.** (1) (a) If the examination conducted pursuant to 90-8-313 discloses that a Montana capital company or a Montana small business investment capital company is not in compliance with the provisions of parts 1 through 3 of this chapter, the department may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 must be included in the claims to be paid.

(b) If a company has any fixed or contingent obligations to the United States small business administration or its designee:

(i) the department may not exercise the powers granted in Title 32, chapter 1, part 5, without the prior written consent of the United States small business administration; and

(ii) the proceeds from any liquidation, including the collection of any unfunded commitments, must be applied first toward the payment of all sums that may be due the United States small business administration as holder or guarantor of any security issued by the company.

(2) If in the discretion of the department the action allowed under subsection (1) is not required to protect the company's investors, the department may place the company on notice that it will lose its certification as a



Montana capital company or as a Montana small business investment capital company within a specified period of time if the company does not come into compliance with the provisions of parts 1 through 3 of this chapter. The department shall automatically decertify a Montana capital company or a Montana small business investment capital company that is assessed a penalty under 90-8-301(4).

(3) As long as the department acts in good faith, the department and its employees and agents may not be held civilly or criminally liable or liable upon their official bonds for action taken under this section or for any failure to act under it.

(4) A Montana capital company or a Montana small business investment capital company may apply to the department for decertification.

(5) The department has the power to decertify any capital company not in compliance with parts 1 through 3 of this chapter.

(6) The department shall decertify a capital company once the capital company has met the investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has been invested in qualified investments and after at least 5 years have elapsed since the date the capital company was qualified."

NEW SECTION. Section 20. Codification instruction. [Sections 1 through 4 6] are intended to be codified as an integral part of Title 90, chapter 8, and the provisions of Title 90, chapter 8, apply to [sections 1 through 4 6].

NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 2003.

- END -

