

SENATE BILL NO. 239

INTRODUCED BY J. ELLSWORTH

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A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN FIBER OPTIC OR COAXIAL CABLE FACILITIES FROM PROPERTY TAXATION; PROVIDING A DEFINITION; AMENDING SECTIONS 15-6-135, 15-6-156, AND 15-6-219, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

SECTION 1. 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 and carbon capture equipment as defined in this section;
- (c) new industrial property as defined in this section;
- (d) any personal or real property used primarily in the production of ethanol-blended gasoline during construction and for the first 3 years of its operation;
- (e) 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) machinery and equipment used in electrolytic reduction facilities;
- (g) 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 and carbon capture equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment certified as provided in subsections (2)(b) and (2)(c) and 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. This includes machinery, devices, or equipment used to capture carbon dioxide or other greenhouse gases. Reduction in pollutants obtained through

1 operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification
2 under this section.

3 (b) Requests for certification must be made on forms available from the department of revenue.
4 Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws,
5 orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

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

14 (d) To qualify for the exemption under subsection (5)(b)(i), the air and water pollution control and carbon
15 capture equipment must be placed into service after January 1, 2014, for the purposes of environmental benefit
16 or to comply with state or federal pollution control regulations. If the air or water pollution control and carbon
17 capture equipment enhances the performance of existing air and water pollution control and carbon capture
18 equipment, only the market value of the enhancement is subject to the exemption under subsection (5)(b)(i).

19 (e) Except as provided in subsection (2)(d), equipment that does not qualify for the exemption under
20 subsection (5)(b)(i) includes but is not limited to equipment placed into service to maintain, replace, or repair
21 equipment installed on or before January 1, 2014.

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

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

29 (b) New industrial property does not include:

30 (i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades,

- 1 or professions unless the business or profession meets the requirements of subsection (4)(b)(v);
- 2 (ii) a plant that will create adverse impact on existing state, county, or municipal services; or
- 3 (iii) property used or employed in an industrial plant that has been in operation in this state for 3 years
- 4 or longer.
- 5 (4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that
- 6 establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere
- 7 expansion, reorganization, or merger of an existing industry.
- 8 (b) New industry includes only those industries that:
- 9 (i) manufacture, mill, mine, produce, process, or fabricate materials;
- 10 (ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state
- 11 are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial
- 12 products or materials;
- 13 (iii) engage in the mechanical or chemical transformation of materials or substances into new products
- 14 in the manner defined as manufacturing in the North American Industry Classification System Manual prepared
- 15 by the United States office of management and budget;
- 16 (iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50%
- 17 or more of an industry's gross sales or receipts are earned from outside the state; or
- 18 (v) earn 50% or more of their annual gross income from out-of-state sales.
- 19 (5) (a) Except as provided in subsection (5)(b), class five property is taxed at 3% of its market value.
- 20 (b) (i) Air and water pollution control and carbon capture equipment placed in service after January 1,
- 21 2014, and that satisfies the criteria in subsection (2)(d) is exempt from taxation for a period of 10 years from the
- 22 date of certification, after which the property is assessed at 100% of its taxable value.
- 23 (ii) Fiber optic or coaxial cable facilities, as defined in 15-6-156, installed and placed in service on or after
- 24 [the effective date of this act] are exempt from taxation during installation and for a period of 5 years starting from
- 25 the date of deployment, after which the property exemption is phased out at a rate of 20% a year, with the
- 26 property being assessed at 100% of its taxable value after a 10-year period. In order to qualify for and maintain
- 27 the exemption, the owner of fiber optic or coaxial cable facilities must reinvest the tax savings from the exemption
- 28 for fiber optic or coaxial cable facilities within 2 years following the tax year in which the tax savings are received
- 29 by the owner of fiber optic or coaxial cable facilities without charging the costs to the consumer."
- 30

1 **Section 2.** Section 15-6-156, MCA, is amended to read:

2 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in
3 subsections (2)(a) through (2)(h), class thirteen property includes:

4 (a) electrical generation facilities, except wind generation facilities, biomass generation facilities, and
5 energy storage facilities classified under 15-6-157, of a centrally assessed electric power company;

6 (b) electrical generation facilities, except wind generation facilities, biomass generation facilities, and
7 energy storage facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an
8 entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

9 (c) noncentrally assessed electrical generation facilities, except wind generation facilities, biomass
10 generation facilities, and energy storage facilities classified under 15-6-157, owned or operated by any electrical
11 energy producer;

12 (d) allocations of centrally assessed telecommunications services companies; and

13 (e) dedicated communications infrastructure described in 15-6-162(5) for which construction commenced
14 after June 30, 2027, or for which the 15-year period provided for in 15-6-162(5)(c) has expired.

15 (2) Class thirteen property does not include:

16 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

17 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or
18 15-6-157;

19 (c) allocations of electric power company property under 15-6-141;

20 (d) electrical generation facilities included in another class of property;

21 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;

22 (f) property owned by organizations providing telecommunications services and classified under
23 15-6-135;

24 (g) generation facilities that are exempt under 15-6-225; and

25 (h) qualified data centers classified under 15-6-162.

26 (3) ~~(a)~~ For the purposes of this section, the following definitions apply:

27 (a) (i) "electrical Electrical generation facilities" means any combination of a physically connected
28 generator or generators, associated prime movers, and other associated property, including appurtenant land
29 and improvements and personal property, that are normally operated together to produce electric power. The
30 term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil

1 or gas turbines, or turbine generators that are driven by falling water.

2 ~~(b)(ii)~~ The term does not include electrical generation facilities used for noncommercial purposes or
3 exclusively for agricultural purposes.

4 ~~(e)(iii)~~ The term also does not include a qualifying small power production facility, as that term is defined
5 in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of
6 electricity other than electric power from a small power production facility and classified under 15-6-134 and
7 15-6-138.

8 (b) (i) "Fiber optic OR COAXIAL CABLE facilities" means any fiber optic OR COAXIAL cable, including all
9 capitalized costs associated with construction and deployment of the fiber optic OR COAXIAL cable, and other
10 property that is normally operated in the installation and deployment of fiber optic OR COAXIAL CABLE facilities to
11 deliver digital communication and access to the internet.

12 (ii) THE TERM DOES NOT INCLUDE ROUTERS, HEAD-END EQUIPMENT, CENTRAL OFFICE EQUIPMENT AND OTHER
13 ELECTRONICS, AND HARDWARE OR SOFTWARE NOT DIRECTLY ASSOCIATED WITH THE INSTALLATION AND DEPLOYMENT OF
14 FIBER OPTIC OR COAXIAL CABLE FACILITIES.

15 ~~(4) Class (a)~~ Except as provided in subsection ~~(4)(b)~~, class thirteen property is taxed at 6% of its market
16 value.

17 (b) Fiber optic OR COAXIAL CABLE facilities installed and placed in service on or after [the effective date
18 of this act] are exempt from taxation during installation and for a period of 5 years starting from the date of
19 deployment, after which the property exemption is phased out at a rate of 20% per year, with the property being
20 assessed at 100% of its taxable value after a 10-year period. IN ORDER TO QUALIFY FOR AND MAINTAIN THE
21 EXEMPTION, THE OWNER OF FIBER OPTIC OR COAXIAL CABLE FACILITIES MUST REINVEST THE TAX SAVINGS FROM THE
22 EXEMPTION FOR FIBER OPTIC OR COAXIAL CABLE FACILITIES WITHIN 2 YEARS FOLLOWING THE TAX YEAR IN WHICH THE TAX
23 SAVINGS ARE RECEIVED BY THE OWNER OF FIBER OPTIC OR COAXIAL CABLE FACILITIES WITHOUT CHARGING THE COSTS
24 TO THE CONSUMER."

25
26 **Section 3.** Section 15-6-219, MCA, is amended to read:
27 **"15-6-219. Personal and other property exemptions.** The following categories of property are exempt
28 from taxation:

- 29 (1) harness, saddlery, and other tack equipment;
30 (2) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily

1 hand-held and that are used to:

2 (a) construct, repair, and maintain improvements to real property; or

3 (b) repair and maintain machinery, equipment, appliances, or other personal property;

4 (3) all household goods and furniture, including but not limited to clocks, musical instruments, sewing
5 machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes
6 or for furnishing or equipping the family residence;

7 (4) a bicycle or a moped, as defined in 61-8-102, used by the owner for personal transportation
8 purposes;

9 (5) items of personal property intended for rent or lease in the ordinary course of business if each item
10 of personal property satisfies all of the following:

11 (a) the acquired cost of the personal property is less than \$15,000;

12 (b) the personal property is owned by a business whose primary business income is from rental or lease
13 of personal property to individuals and no one customer of the business accounts for more than 10% of the total
14 rentals or leases during a calendar year; and

15 (c) the lease of the personal property is generally on an hourly, daily, weekly, semimonthly, or monthly
16 basis;

17 (6) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture,
18 launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and
19 launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that
20 are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

21 (7) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in
22 33-25-105;

23 (8) air and water pollution control and carbon capture equipment, as defined in 15-6-135, placed in
24 service after January 1, 2014; ~~and~~

25 (9) fiber optic OR COAXIAL CABLE facilities, as defined in 15-6-156, installed and placed in service on or
26 after [the effective date of this act], during installation and for a period of time starting from the date of deployment
27 as provided in 15-6-156. IF THE OWNER OF FIBER OPTIC OR COAXIAL CABLE FACILITIES REINVESTS THE TAX SAVINGS
28 FROM THE EXEMPTION FOR FIBER OPTIC OR COAXIAL CABLE FACILITIES WITHIN 2 YEARS FOLLOWING THE TAX YEAR IN
29 WHICH THE TAX SAVINGS ARE RECEIVED BY THE OWNER OF FIBER OPTIC OR COAXIAL CABLE FACILITIES WITHOUT CHARGING
30 THE COSTS TO THE CONSUMER; and

