



AN ACT EXEMPTING CERTAIN FIBER OPTIC OR COAXIAL CABLE FROM PROPERTY TAXATION; AMENDING SECTIONS 15-6-135, 15-6-156, AND 15-6-219, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the continuing prosperity of Montana relies upon its ability to embrace and adapt to accommodate modern economic and technological trends; and

WHEREAS, greater broadband accessibility and affordability is critical to any competitive economy of the 21st century; and

WHEREAS, this act ensures Montana's continuing prosperity by providing accessible and affordable broadband through incisive tax abatements.

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

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

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

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

capture equipment, only the market value of the enhancement is subject to the exemption under subsection (5)(b)(i).

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

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

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

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared

by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) (a) Except as provided in subsection ~~(5)(b)~~ (5)(b), class five property is taxed at 3% of its market value.

(b) (i) Air and water pollution control and carbon capture equipment placed in service after January 1, 2014, and that satisfies the criteria in subsection (2)(d) is exempt from taxation for a period of 10 years from the date of certification, after which the property is assessed at 100% of its taxable value.

(ii) (A) Except as provided in subsection (5)(b)(ii)(B), fiber optic or coaxial cable, as defined in 15-6-156, installed and placed in service on or after [the effective date of this act] is exempt from taxation for a period of 5 years starting from the date the fiber optic or coaxial cable was placed in service, after which the property exemption is phased out at a rate of 20% a year, with the property being assessed at 100% of its taxable value after a 10-year period. In order to maintain the exemption, the owner of fiber optic or coaxial cable must reinvest the tax savings from the exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from the date the owner first claimed the exemption provided for in this subsection (5)(b)(ii) without charging those costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the reinvested tax savings without charging those costs to the consumer must be equal to or greater than the value of the tax savings received from the tax incentive.

(B) Fiber optic or coaxial cable installed using federal funds received pursuant to section 9901 of the American Rescue Plan Act is not eligible for exemption from taxation under this section.

(C) An entity that claims a tax exemption under this subsection (5)(b)(ii) shall maintain adequate books and records demonstrating the investment the owner made when installing and placing in service fiber optic or coaxial cable in Montana. The property owners must make those records available to the department for inspection upon request.

(6) (a) The property taxes exempted from taxation by subsection (5)(b)(ii) are subject to termination or recapture if the department determines that the owner failed to install and place in service new coaxial or fiber cable in Montana as provided in subsection (5)(b)(ii), or otherwise violates the provisions of this section.

(b) Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of subsection (5)(b)(ii) was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.

(c) The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

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

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

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

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

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

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

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

(2) Class thirteen property does not include:

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

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

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

- (d) electrical generation facilities included in another class of property;
- (e) property owned by cooperative rural telephone associations and classified under 15-6-135;
- (f) property owned by organizations providing telecommunications services and classified under 15-6-135;
- (g) generation facilities that are exempt under 15-6-225; and
- (h) qualified data centers classified under 15-6-162.

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

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

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

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

(b) (i) "Fiber optic or coaxial cable" means any fiber optic or coaxial cable, including all capitalized costs associated with installing and placing in service the fiber optic or coaxial cable, and other property that is normally operated when installing and placing in service fiber optic or coaxial cable to deliver digital communication and access to the internet.

(ii) The term does not include routers, head-end equipment, central office equipment and other electronics, or hardware or software not directly associated with installing and placing in service fiber optic or coaxial cable or the buildings used to house equipment.

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

(b) (i) Except as provided in subsection (4)(b)(ii), fiber optic or coaxial cable, as defined in 15-6-156,

installed and placed in service on or after [the effective date of this act] is exempt from taxation for a period of 5 years starting from the date the fiber optic or coaxial cable was placed in service, after which the property exemption is phased out at a rate of 20% a year, with the property being assessed at 100% of its taxable value after a 10-year period. In order to maintain the exemption, the owner of fiber optic or coaxial cable must reinvest the tax savings from the exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from the date the owner first claimed the exemption provided for in this subsection (4)(b) without charging those costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the reinvested tax savings without charging those costs to the consumer must be equal to or greater than the value of the tax savings received from the tax incentive.

(ii) Fiber optic or coaxial cable installed using federal funds received pursuant to Section 9901 of the American Rescue Plan Act is not eligible for exemption from taxation under this section.

(iii) An entity that claims a tax exemption under this subsection (4)(b) shall maintain adequate books and records demonstrating the investment the owner made when installing and placing in service fiber optic or coaxial cable in Montana. The property owners must make those records available to the department for inspection upon request.

(5) (a) The property taxes exempted from taxation by subsection (4)(b) are subject to termination or recapture if the department determines that the owner failed to install and place in service new coaxial or fiber cable in Montana as provided in subsection (4)(b), or otherwise violates the provisions of this section.

(b) Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of this section was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.

(c) The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer."

Section 3. Section 15-6-219, MCA, is amended to read:

"15-6-219. Personal and other property exemptions. (1) The following categories of property are exempt from taxation:

- ~~(1)~~(a) harness, saddlery, and other tack equipment;
- ~~(2)~~(b) the first \$15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:
 - ~~(a)~~(i) construct, repair, and maintain improvements to real property; or
 - ~~(b)~~(ii) repair and maintain machinery, equipment, appliances, or other personal property;
 - ~~(3)~~(c) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;
 - ~~(4)~~(d) a bicycle or a moped, as defined in 61-8-102, used by the owner for personal transportation purposes;
 - ~~(5)~~(e) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:
 - ~~(a)~~(i) the acquired cost of the personal property is less than \$15,000;
 - ~~(b)~~(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and
 - ~~(c)~~(iii) the lease of the personal property is generally on an hourly, daily, weekly, semimonthly, or monthly basis;
 - ~~(6)~~(f) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;
 - ~~(7)~~(g) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;
 - ~~(8)~~(h) air and water pollution control and carbon capture equipment, as defined in 15-6-135, placed in

service after January 1, 2014;

~~(9)(i)~~ a house trailer, manufactured home, or mobile home that receives an exemption from the department based on abandonment, as provided in 15-6-242; ~~and~~

(j) fiber optic or coaxial cable, as defined in 15-6-156, installed and placed in service on or after [the effective date of this act], for a period of 5 years starting from the date placed in service as provided in 15-6-156, if the owner of fiber optic or coaxial cable reinvests the tax savings from the exemption by installing and placing in service new fiber optic or coaxial cable in Montana within 2 years from the date the owner first claimed the exemption provided for in this subsection (1)(j) without charging those costs to the consumer. The cost of installing or placing into service fiber optic or coaxial cable with the reinvested tax savings without charging those costs to the consumer must be equal to or greater than the value of the tax savings received from the tax incentive. An entity that claims a tax exemption under this subsection (1)(j) shall maintain adequate books and records demonstrating the investment the owner made when installing and placing in service fiber optic or coaxial cable in Montana. The property owners must make those records available to the department for inspection upon request.

~~(10)(k)~~ personal property used in the manufacture of ammunition components as provided in 30-20-204.

(2) (a) The property taxes exempted from taxation by subsection (1)(j) are subject to termination or recapture if the department determines that the owner failed to install and place in service new coaxial or fiber cable in Montana as provided for in subsection (1)(j), or otherwise violates the provisions of this section.

(b) Upon notice from the department that the owner's exemption has terminated, any local governing body may recapture taxes previously exempted in that jurisdiction, plus interest and penalties for nonpayment of property taxes as provided in 15-16-102, during any tax year in which an exemption under the provisions of this section was improper. Any recapture must occur within 10 years after the end of the calendar year in which the exemption was first claimed.

(c) The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer. (Subsection ~~(10)~~ (1)(k) terminates December 31, 2024--sec. 16, Ch. 440, L. 2015.)"

Section 4. Fiber optic or coaxial cable abatement -- review and comment by local taxing

jurisdictions. The department shall establish a page on its website to enable:

- (1) owners of fiber optic or coaxial cable intending to take advantage of the tax abatement provisions in 15-6-135, 15-6-156, and 15-6-219 to notify local governing bodies of the location or locations in which they intend to place in service fiber optic or coaxial cable; and
- (2) local governing bodies to post comments on such projects identified by owners of fiber optic or coaxial cable as provided in subsection (1).

Section 5. Effective date. [This act] is effective July 1, 2021.

Section 6. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 4].

Section 7. Applicability. [This act] applies to fiber optic or coaxial cable facilities placed in service on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
SB 51, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 51

INTRODUCED BY J. ELLSWORTH

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

AN ACT EXEMPTING CERTAIN FIBER OPTIC OR COAXIAL CABLE FROM PROPERTY TAXATION;
AMENDING SECTIONS 15-6-135, 15-6-156, AND 15-6-219, MCA; AND PROVIDING AN EFFECTIVE DATE
AND AN APPLICABILITY DATE.