SENATE BILL NO. 46

INTRODUCED BY W. MCKAMEY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING PROPERTY TAX LAWS TO REMOVE NEW INDUSTRIAL PROPERTY FROM CLASS FIVE; AMENDING SECTIONS 15-6-135, 15-24-1401, AND 20-9-407, MCA; AND REPEALING SECTION 15-6-192, MCA.”

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 -- exemption.** (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)~~(c) 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)~~(d) 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)~~(e) machinery and equipment used in electrolytic reduction facilities; and

~~(g)~~(f) 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)~~ (3)(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)~~ (3)(b)(i).

(e) Except as provided in subsection (2)(d), equipment that does not qualify for the exemption under subsection ~~(5)(b)(i)~~ (3)(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 Montana 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)~~(3) (a) Except as provided in subsection ~~(5)(b)~~ (3)(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.

(ii) (A) Except as provided in subsection ~~(5)(b)(ii)(B)~~ (3)(b)(ii)(B), fiber optic or coaxial cable, as defined in 15-6-156, installed and placed in service on or after July 1, 2021, 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 shall 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)~~ (3)(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)~~ (3)(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 shall make those records available to the department for inspection upon request.

~~(6)~~(4) (a) The property taxes exempted from taxation by subsection ~~(5)(b)(ii)~~ (3)(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)~~ (3)(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)~~ (3)(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 cancelled, 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 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added or will add at least $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into 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;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

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

(e) earns 50% or more of its annual gross income from out-of-state sales;

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 15-6-225;

(g) operates a qualified data center or dedicated communications infrastructure classified under 15-6-162; or

(h) operates a green hydrogen facility, green hydrogen pipeline, or green hydrogen storage system as defined in 15-6-163.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested or will invest at least $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. ~~New industry does not include property treated as new industrial property~~

~~under 15-6-135.~~

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section."

Section 3. Section 20-9-407, MCA, is amended to read:

"**20-9-407. Industrial facility agreement for bond issue in excess of maximum.** ~~(1) In a school district within which a new major industrial facility that seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the limitation prescribed in 20-9-406. Under an agreement, the school district may, with the approval of the voters, issue bonds that exceed the limitation prescribed in this section by a maximum of 100% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation must be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value must be printed on each ballot used to vote on a bond issue proposed under this section.~~

~~(2)~~(1) Pursuant to ~~the~~ an agreement between ~~the~~ a new major industrial facility and ~~the~~ a school district and as a precondition to qualifying as class five property under 15-6-135(1)(c) before the amendment of 15-6-135 in [this act], the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, as much of the principal and interest on the bonds provided for under former subsection (1) of this section before the amendment in [this act] as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in former subsection (1) of this section before the amendment in [this act], the new major industrial facility is entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit must as a total amount be equal to the amount that the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

~~(3)~~(2) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

NEW SECTION. **Section 4. Repealer.** The following section of the Montana Code Annotated is repealed:

15-6-192. Application for classification as new industrial property.

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