

HOUSE BILL NO. 550

INTRODUCED BY J. ESSMANN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE NET OPERATING LOSS
5 DEDUCTION FOR CORPORATE INCOME TAX PURPOSES; REVISING THE CARRYBACK AND CARRYOVER
6 PERIODS; LIMITING A NET OPERATING LOSS CARRYBACK; AMENDING SECTION 15-31-119, MCA; AND
7 PROVIDING AN APPLICABILITY DATE."

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

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11 **Section 1.** Section 15-31-119, MCA, is amended to read:

12 **"15-31-119. Net operating losses -- carryovers and carrybacks -- limit.** (1) The net operating loss
13 deduction is the aggregate of net operating loss carryovers to the ~~taxable tax~~ period plus the net operating loss
14 carrybacks to the ~~taxable tax~~ period.

15 (2) The term "net operating loss" means the excess of the deductions allowed by this section over the
16 gross income, with the modifications specified in subsection (6).

17 (3) If for any ~~taxable tax~~ period ~~beginning after December 31, 1970~~ ending before January 1, 2018, a
18 net operating loss is sustained, the loss must be a net operating loss carryback to each of the three ~~taxable tax~~
19 periods preceding the ~~taxable tax~~ period of the loss and must be a net operating loss carryover to each of the ~~five~~
20 ~~taxable seven~~ tax periods following the ~~taxable tax~~ period of the loss.

21 (4) A net operating loss for any ~~taxable tax~~ period ~~ending~~ BEGINNING after December 31, ~~1975~~ 2017, in
22 addition to being a net operating loss carryback to each of the ~~three~~ ~~two~~ THREE preceding ~~taxable tax~~ periods,
23 must be a net operating loss carryover to each of the ~~seven~~ ~~taxable~~ 20 10 ~~tax~~ periods following the ~~taxable tax~~
24 period of the loss. A net operating loss carryback provided for in this subsection may not exceed \$500,000 per
25 tax period.

26 (5) Except as provided in subsection (11), the portion of the loss that must be carried to each of the other
27 ~~taxable tax~~ years must be the excess, if any, of the amount of the loss over the sum of the net income for each
28 of the prior ~~taxable tax~~ periods to which the loss was carried. For purposes of this subsection, the net income for
29 the prior ~~taxable tax~~ period must be computed with the modification specified in subsection (6)(b) and by
30 determining the amount of the net operating loss deduction without regard to the net operating loss for the loss

1 period or any ~~taxable tax~~ period after the loss period, and the net income so computed may not be considered
2 to be less than zero.

3 (6) The modifications referred to in subsection (2) are as follows:

4 (a) The net operating loss deduction may not be allowed.

5 (b) The deduction for depletion may not exceed the amount that would be allowable if computed under
6 the cost method.

7 (c) Any net operating loss carried over to any ~~taxable tax~~ year must be calculated under the provisions
8 of this section effective for the ~~taxable tax~~ year for which the return claiming the net operating loss carryover is
9 filed.

10 (7) A net operating loss deduction may be allowed only with regard to losses attributable to the business
11 carried on within the state of Montana.

12 (8) In the case of a merger of corporations, the surviving corporation may not be allowed a net operating
13 loss deduction for net operating losses sustained by the merged corporations prior to the date of merger. In the
14 case of a consolidation of corporations, the new corporate entity may not be allowed a deduction for net operating
15 losses sustained by the consolidated corporations prior to the date of consolidation.

16 (9) Notwithstanding the provisions of 15-31-531, interest may not be paid with respect to a refund of tax
17 resulting from a net operating loss carryback or carryover.

18 (10) The net operating loss deduction must be allowed with respect to ~~taxable tax~~ periods.

19 (11) ~~(A) EXCEPT AS PROVIDED IN SUBSECTION (11)(B), A TAXPAYER THAT CLAIMS A FEDERAL NET OPERATING~~
20 ~~LOSS CARRYBACK IS AUTOMATICALLY CONSIDERED TO HAVE ELECTED A STATE NET OPERATING LOSS CARRYBACK, AND~~
21 ~~A TAXPAYER THAT CLAIMS A FEDERAL NET OPERATING LOSS CARRYOVER IS AUTOMATICALLY CONSIDERED TO HAVE~~
22 ~~ELECTED A STATE NET OPERATING LOSS CARRYOVER. IF A TAXPAYER IS PERMITTED TO CLAIM A FEDERAL NET OPERATING~~
23 ~~LOSS CARRYBACK FOR A TERM GREATER THAN THE TWO PRECEDING TAX PERIODS, THEN THE TAXPAYER IS CONSIDERED~~
24 ~~TO HAVE ELECTED A 2-YEAR NET OPERATING LOSS CARRYBACK.~~

25 ~~(B) A taxpayer entitled to a carryback OR CARRYOVER period for a net operating loss may elect to forego~~
26 ~~the entire carryback period AUTOMATIC ELECTION IN SUBSECTION (11)(A) ENTIRE CARRYBACK PERIOD.~~ If the election
27 is made, the loss may be carried ~~BACK OR~~ forward ~~only AS ELECTED BY THE TAXPAYER ONLY.~~ The election must be
28 made on or before the date on which the return is due, including any extension of the due date, for the tax year
29 of the net operating loss for which the election is to be in effect. The election is irrevocable for the year made.

30 (12) Notwithstanding any other provision of this section, the net operating loss deduction is not allowed

1 in the case of a regulated investment company or a fund of a regulated investment company, as defined in section
2 851(a) or 851(b) of the Internal Revenue Code of 1986, as that section may be amended or renumbered."

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4 NEW SECTION. **Section 2. Applicability.** [This act] applies to tax years beginning after December 31,
5 2017.

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