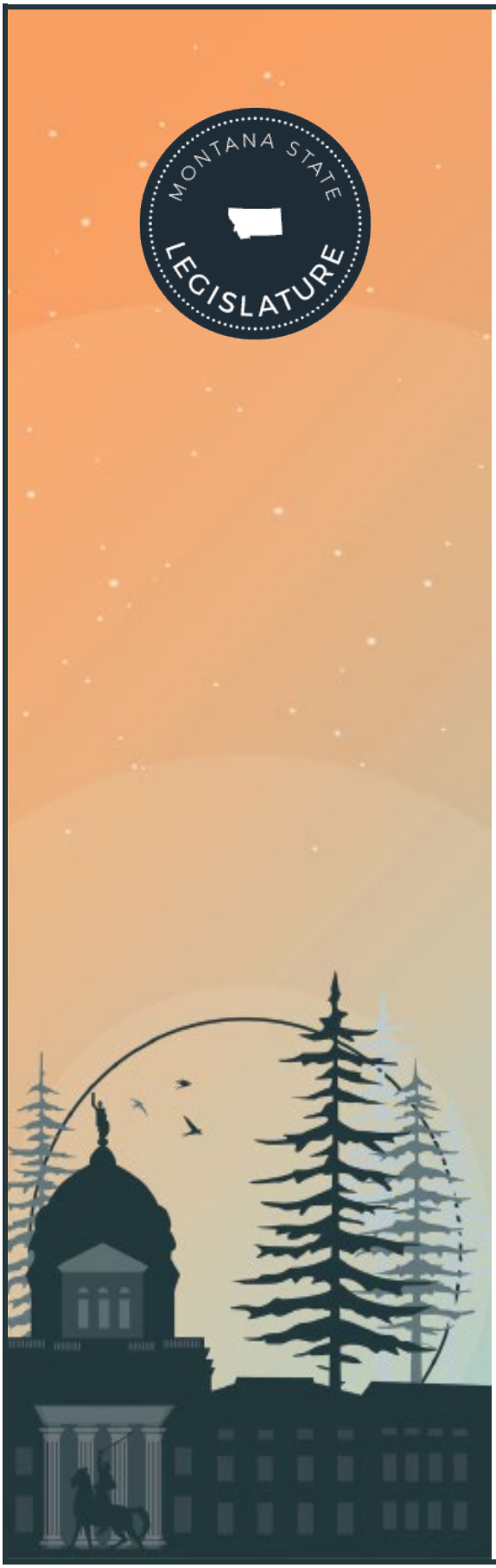

2023-2024 TAX CREDIT REVIEW FINAL REPORT

FINAL REPORT TO THE 69TH MONTANA LEGISLATURE

Revenue Interim Committee
Megan Moore
June 2024

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TABLE OF CONTENTS

Committee Reviews Four Credits in 2023-2024 Interim 1
Infrastructure Use Fee Tax Credit 1
Qualified Endowment Credit 6
Credit for Property Used to Collect or Process Reclaimable Material 9
Credit for Preservation of Historic Buildings 12
Appendix A: Revenue Interim Committee Members i

This report is a summary of the work of the Revenue Interim Committee, specific to the Revenue Interim Committee's 2023-2024 tax credit review as outlined in the Revenue Interim Committee's 2023-2024 work plan and section 15-30-2303, MCA. Committee members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Revenue Interim Committee in reaching its conclusions. To review additional information, including audio minutes and exhibits, visit the Revenue Interim Committee website: https://leg.mt.gov/committees/interim/ric.

A full report, including links to the documents referenced in this print report, is available at the Revenue Interim Committee website: https://leg.mt.gov/committees/interim/ric.

TAX CREDIT REVIEW FINAL REPORT

COMMITTEE REVIEWS FOUR CREDITS IN 2023-2024 INTERIM

Per section 15-30-2303, MCA, the Revenue Interim Committee reviewed four credits during the 2023-2024 interim.

Tax Credit	MCA Section	Credit Description	Committee Recommendation
Infrastructure use fee tax credit	17-6-316	Credit for business that pays infrastructure use fees for infrastructure built using a loan program for creation or expansion of a business in Montana	Retain credit with changes in LC 76
Qualified endowment credit	15-30-2327, 15-30-2328, 15-30-2329, 15-31-161, 15-31-162	Credit for charitable donations made to a qualified endowment	Retain credit
Recycling credit	Title 15, chapter 32, part 6	Credit for investment in property used to collect or process reclaimable material	Retain credit
Historic preservation credit	15-30-2342, 15-31-151	Credit for qualified rehabilitation expenditures for certified historic structure	Retain credit

INFRASTRUCTURE USE FEE TAX CREDIT

The infrastructure use fee tax credit is available to a business that pays infrastructure use fees for infrastructure built using a loan program that allows for the creation or expansion of a business in Montana.

LOAN AND TAX CREDIT PROCESS

Loan
- Board of Investments makes loan to local or tribal government for infrastructure
- Loan must result in full-time employment of 15+ people or raise salaries and business incomes of existing employees and employers
- Money comes from Coal Tax Trust Fund

Use Fees
- Local or tribal government may charge fees for use of the infrastructure built with the loan

Tax Credit
- Business may claim credit against individual income or corporate income tax for use fees paid
- Credit may be carried back 3 years and forward 7 years
- Result is general fund subsidy for expansion of local infrastructure

INFRASTRUCTURE INCLUDES WATER, SEWER, ROADS, RAIL, UTILITIES, AND BUILDINGS

As provided in section 17-6-316, MCA, the loans for which an infrastructure use fee tax credit may be claimed "must be used to build infrastructure, as provided for in 7-15-4288(4), such as water systems, sewer systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana."

Senate Bill 388, enacted in 2021, revised tax increment financing laws by removing the list of infrastructure projects in section 7-15-4288, MCA,[1] and replacing it with a broader definition of "infrastructure" in section 7-15-4283, MCA.

LOAN REQUIREMENTS ADDRESS ECONOMY, JOB CREATION, AND INCOME

There are two requirements established in section 17-6-309, MCA, for a loan for which an infrastructure use fee tax credit may be claimed. The loan must:

- enhance economic development and create jobs in the basic sector of the economy; and
- result in the creation or expansion of a business estimated to employ at least 15 people in Montana on a permanent, full-time basis or raise salaries, wages, and business incomes of existing employees and employers.

If the loan does not meet the above requirements, section 17-6-316(2), MCA, requires any credits received for payment of use fees to be returned to the state.

LOANS REQUIRED TO CREATE JOBS OR INCREASE WAGES AND BUSINESS INCOME

Statute does not contain additional detail about how to measure whether a new or expanded business is estimated to employ at least 15 people. When considering the *size of the loan*, section 17-6-311, MCA, directs the Board of Investments (BOI) to consider the number of jobs to be created within a 4-year period. There is also no detail on how to determine whether an existing business raises salaries, wages, or business incomes.

LOANS LIMITED TO $80 MILLION

Section 17-6-311, MCA, provides an $80 million limit on total infrastructure loans that may be eligible for the tax credit for infrastructure use fees. Currently, $70.1 million of the $80 million is available.

There are two practical effects of the limit on infrastructure loans:

- **Setting the amount of coal severance tax trust fund revenue invested in the infrastructure loan program.** The coal severance tax trust fund is invested by BOI. The principal remains in the trust fund. Interest earned on the funds is distributed to various income funds for appropriation. Using a portion of the trust fund for infrastructure loans may result in higher or lower returns than if the money was otherwise

[1] The prior version of section 7-15-4288, MCA, is available at: https://leg.mt.gov/bills/2019/mca/title_0070/chapter_0150/part_0420/section_0880/0070-0150-0420-0880.html

invested by BOI. The current rate of return on infrastructure loans is 4.07% compared with the Trust Funds Investment Pool yield of 3.77%.[2]

- **Establishing a maximum general fund contribution.** The loan costs may be recouped through an infrastructure use fee that qualifies for a tax credit. Tax credits reduce general fund revenue.

STATUTE SILENT ON WHETHER INFRASTRUCTURE FEE MAY BE BUSINESS EXPENSE

Section 17-6-316(3), MCA, provides for the tax credit for the infrastructure use fee but does not address whether a taxpayer may deduct the infrastructure use fee as a business expense and claim the tax credit.

The Department of Revenue recommends that "all sections providing for a tax credit related to a business expenditure explicitly state if the deduction of underlying expenses is allowed as it is customarily done for federal business credits."[3]

PURPOSE: SUPPORT LOCAL INFRASTRUCTURE FOR NEW/EXPANDED BUSINESS

The 1995 Legislature enacted the infrastructure loan program and the infrastructure use fee tax credit. The law was a result of the coordination of two bills enacted during the 1995 legislative session.

When enacted, the purpose of the credit was to use state funds to support local infrastructure for new or expanded businesses that create jobs in Montana.

SENATE BILL 100 AIMED TO ATTRACT MICRON TO BUTTE

Near the start of the 1995 legislative session, Boise, Idaho-based computer storage company Micron listed Butte among 13 cities being considered for a new Micron facility. Butte needed a new wastewater treatment plant to accommodate the Micron facility but could not finance the $16 million project.[4]

The infrastructure loan program and infrastructure use fee tax credit in Senate Bill 100 would allow Butte to finance the wastewater treatment plant and increase its standing in the competition for the Micron facility.

SB 100 would have allowed a loan of up to $20 million if the loan would "enhance economic development" and result in the creation of a business estimated to employ at least 2,000 people in Montana.

Testimony on SB 100 stressed the importance of the bill moving quickly through the legislative process.[5] The governor signed SB 100 on January 20, 1995, and the bill was effective immediately.

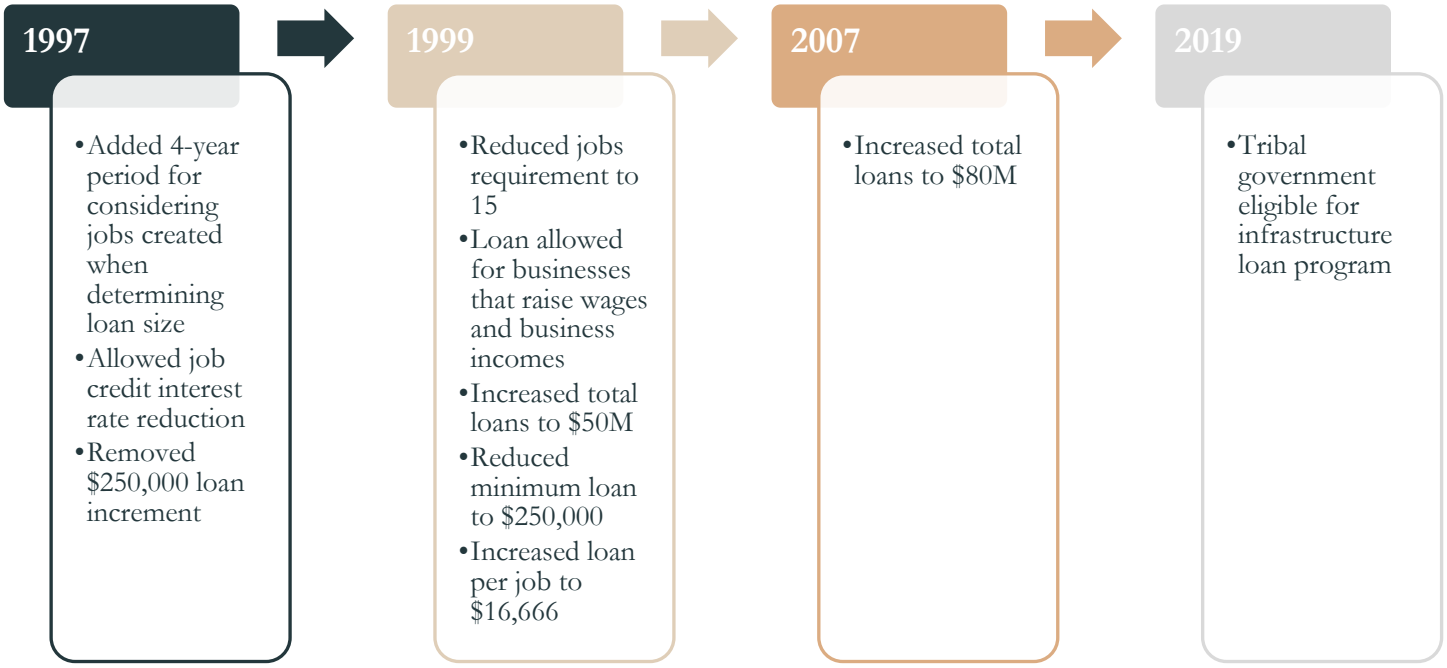
[2] Infrastructure loan yield is as of June 30, 2023. Email correspondence with Dan Villa, Executive Director, Board of Investments, Aug. 14, 2023.
[3] David Merrien, Memorandum: Infrastructure User Fee Credit (IUFC), Aug. 15, 2023.
[4] Sen. Tom Beck, bill sponsor, testimony on Senate Bill 100, Senate Business and Industry Committee, Jan. 13, 1995.
[5] Rep. Dan Harrington, testimony on Senate Bill 100, Senate Business and Industry Committee, Jan. 13, 1995.

HOUSE BILL 602 MADE PROGRAM AVAILABLE TO SMALLER BUSINESSES

After the rush to enact SB 100, the Legislature considered the infrastructure loan program and tax credit more thoroughly with the enactment of House Bill 602.

The testimony on HB 602 outlined the reasons for the bill and why HB 602 revised provisions contained in SB 100. Local governments were unable to afford infrastructure necessary for expanding businesses under existing programs and rate structures. The bill reduced the required jobs created from 2,000 to 50 to allow flexibility and to benefit smaller businesses.[6]

LEGISLATIVE HISTORY



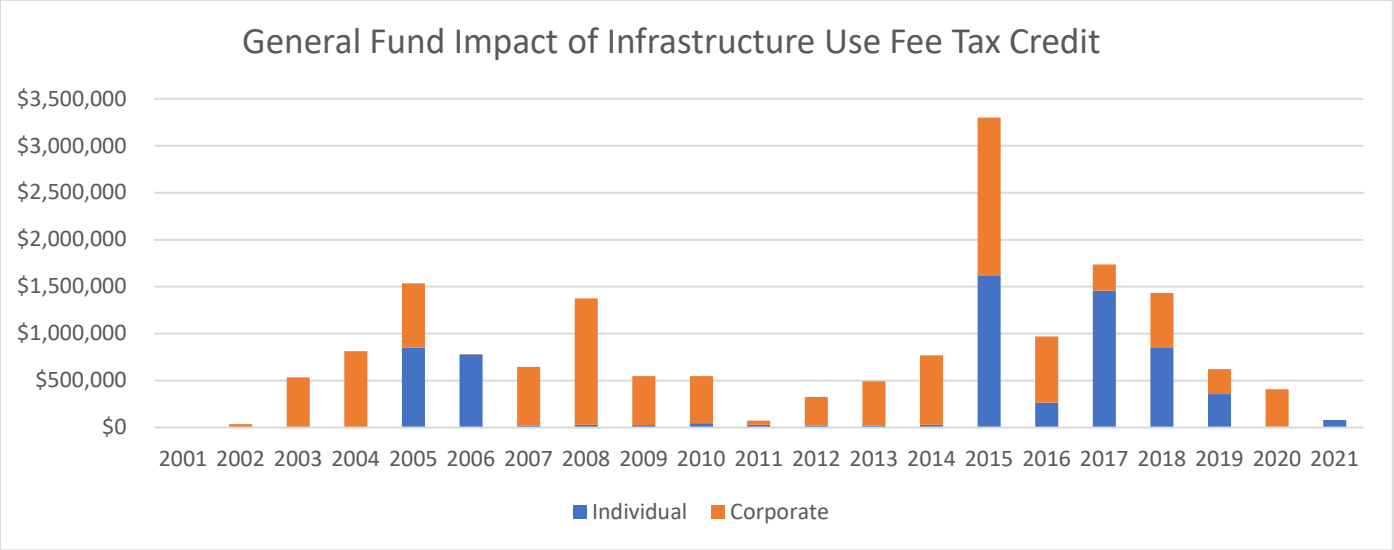
TAXPAYER USE OF INFRASTRUCTURE FEE CREDITS

Since the creation of the infrastructure loan program in 1995, the Board of Investments (BOI) has made 19 loans totaling $51.1 million. The borrowers include cities, counties, a consolidated city-county, economic development authorities, airport authorities, and a port authority.

The total of credits claimed is likely to remain low because the credit is only available to a business that pays infrastructure fees for infrastructure expanded through the BOI loan program and creates jobs or increases wages or business incomes. There are currently eight outstanding loans.

[6] Rep. Sam Kitzenberg, bill sponsor, and Rick Jones, Department of Commerce, testimony on House Bill 602, House Business and Labor Committee, March 21, 1995.

Since 2001, taxpayers filing individual income tax returns claimed credits totaling $6.5 million, while corporations claimed $10.5 million.[7]



COMMITTEE RECOMMENDS RETAINING CREDIT WITH A FEW CHANGES

The Revenue Interim Committee recommends retaining the infrastructure use fee tax credit with some changes. The Committee requested a committee bill, LC 76, that does three things:

- **Removes the provision that allows an infrastructure loan to a business that increases salaries, wages, and business incomes of existing employees and employers.** Current law does not include detail on how to determine whether an existing business meets this requirement, and BOI has not made any infrastructure loans based on this provision.
- **Prohibits claiming the infrastructure fee as a credit and a deduction**.
- **Removes examples of infrastructure projects** and relies on the definition used for tax increment financing.

[7] Data is provided by the Department of Revenue and is unavailable for individuals in 2003 and 2004 and for corporations in 2021.

QUALIFIED ENDOWMENT CREDIT

The qualified endowment credit is available to individual income and corporate income taxpayers for charitable donations made to a qualified endowment. A **qualified endowment** is a permanent, irrevocable fund held by a Montana tax-exempt organization or a bank or trust holding the fund on behalf of a tax-exempt organization.

The credit is calculated differently depending on whether the donation is a planned gift or an outright gift.

> The credit for an **individual or estate** that makes a **planned gift** is **40% of the present value** of the aggregate amount of the charitable gift portion of the planned gift.
>
> The credit for a **corporation, small business corporation, partnership, limited liability company, or estate** that makes an **outright gift is 20%** of the charitable donation.

The maximum credit for any taxpayer is $15,000 and the credit must be claimed in the year of the donation. The credit may not be refunded or carried to another tax year.

STATUTE LISTS PLANNED GIVING FINANCIAL TECHNIQUES

An outright gift is a one-time charitable donation deposited in a qualified endowment, while a planned gift must use one of nine financial techniques specified in section 15-30-2327, MCA. The financial techniques take three general forms:[8]

- **Donor receives income from donated asset for fixed term or life, then qualified endowment receives the asset at the end of the term or life**. Includes charitable remainder unitrust, charitable remainder annuity trust, charitable gift annuity, deferred charitable gift annuity, pooled income fund, and charitable life estate agreement.
- **Qualified endowment receives income from donated asset for a fixed term, then asset reverts to donor or donor's heir.** Includes charitable lead unitrust and charitable lead annuity trust.
- **Paid-up life insurance.** Qualified endowment is the owner and beneficiary of a life insurance policy for which all premiums are paid.

PURPOSE: INCENTIVIZE PLANNED GIVING IN MONTANA

The legislation enacting the credit did not include a purpose statement but did contain 14 "Whereas" clauses outlining support for the credit. The clauses identified a "weak tradition" of planned giving in Montana that could be bolstered with a tax incentive.

[8] "Form QEC Instructions," Montana Department of Revenue, available from: https://mtrevenue.gov/publications/qualified-endowment-credit-form-qec/, accessed Feb. 26, 2024.

Taken together, the clauses point to a purpose of encouraging planned giving that supports community organizations serving local needs.

LEGISLATIVE HISTORY

Within 5 years of enactment of the qualified endowment credit in 1997, the Legislature amended the credit percentages, but most changes since then have extended the termination date of the credit.

MAJOR CHANGES TO QUALIFIED ENDOWMENT CREDIT

1997

- Credit enacted
- **50% credit** for donation to qualified endowment
- **Maximum credit: $10,000**
- Termination: 12/31/01

2001

- Credit revised to **40% for planned gift** (individual), **20% for outright gift** (business)
- **Termination extended** to 12/31/07

2002

- **Temporary reduction** in credit:
  - Through FY03: $6,600 max; 30% planned, 13.3% outright
  - Until May 2004: $13,400 max; 50% planned, 26.7% outright

2007 2013 2019

- **Terminations extended** to 12/31/13, 12/31/19, and 12/31/25

2023

- Increased **maximum credit to $15,000**
- **Removed termination** date

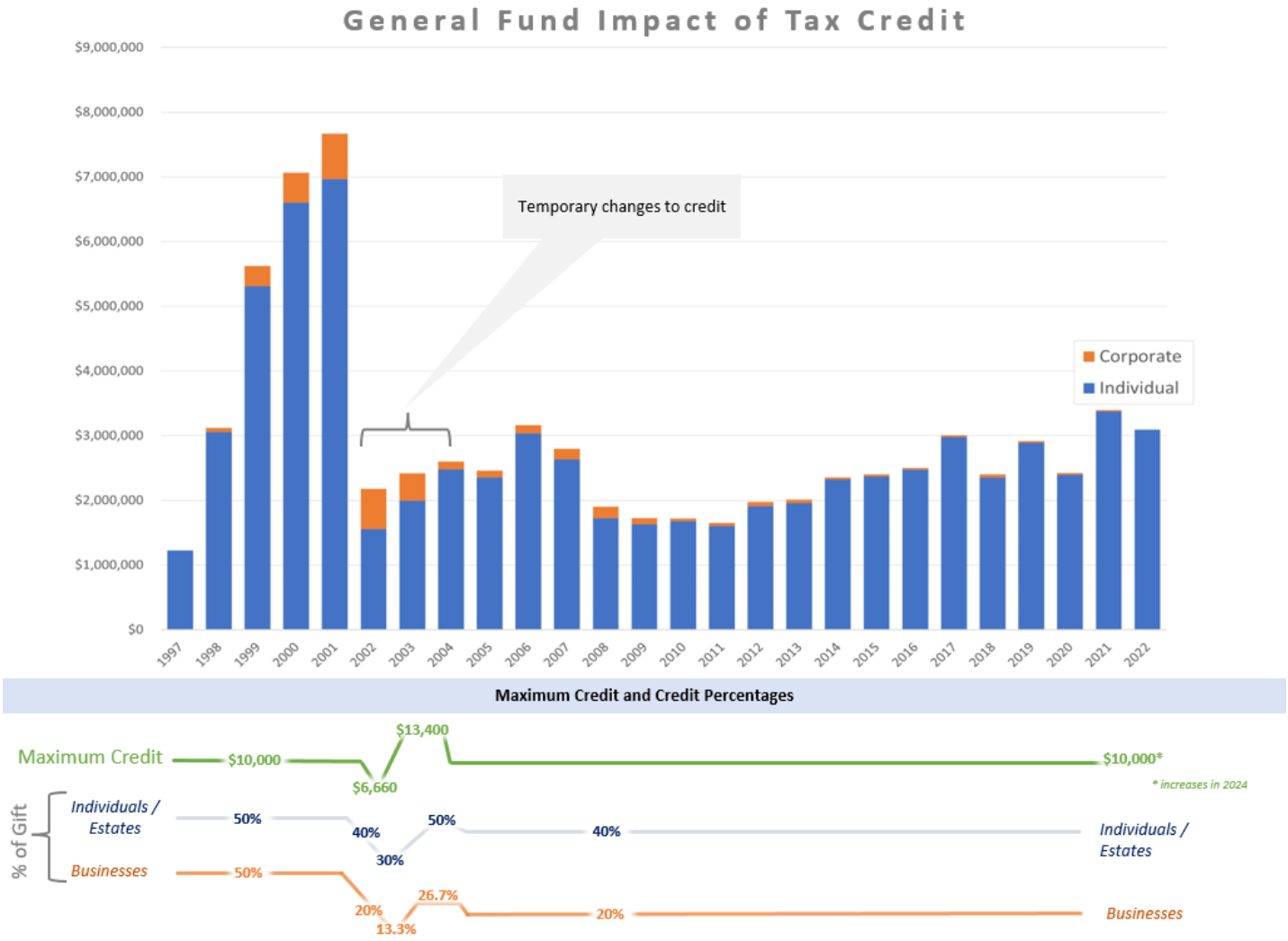
TAXPAYER USE OF CREDIT

Claims for the qualified endowment credit exceeded $7 million per year in 2000 and 2001 but have totaled less than $3 million in most recent years. The credits were likely higher in the first 5 years after enactment because the credit was calculated as 50% of the donation and an individual donation was not required to be a planned gift. Since 2002, when the Legislature reduced the credit percentage to 40% for individuals and 20% for businesses and required individual donations to be in the form of planned gifts, credits totaled less than $3.5 million per year.[9]

After the reduction in the credit for businesses, most of the credits were claimed as individual income tax credits. Since 2004, more than 90% of the credit dollars have been individual income tax credits. Over the last 6 years, the individual share of credits was more than 98% per year.

[9] The Legislature temporarily decreased the credit percentage and maximum credit for parts of 2002 and 2003 and temporarily increased the credit percentage and maximum credit for parts of 2003 and 2004.

The number of credits claimed by both individuals and corporations has also declined since the credit percentage reductions. Individual credits peaked at 1,654 in 2001 and totaled in the 600 to mid-700 range over the last 6 years. Corporate income tax credits numbered 127 in 2001. The most corporate credits claimed in the last 6 years was 13 claimed in 2018.



COMMITTEE RECOMMENDS RETAINING CREDIT

The Revenue Interim Committee recommended retaining the qualified endowment credit. When the credit is reviewed again, there will be data showing the impact of 2023 legislative changes to increase the maximum credit and remove the credit's termination date.

CREDIT FOR PROPERTY USED TO COLLECT OR PROCESS RECLAIMABLE MATERIAL

There is a credit, provided for in Title 15, chapter, 32, part 6, against the individual income tax or corporate income tax for investment in property used to collect or process reclaimable material. The credit may be claimed in the year of the investment and may not be carried to another tax year. The credit is available for the first $1 million of investment as follows:

- 25% of the first $250,000 invested;
- 15% of the next $250,000 invested;
- 5% of the next $500,000 invested.

If the investment in eligible property is $1 million or more, the credit is equal to $125,000.

Claiming the credit does not prevent a taxpayer from claiming a depreciation or amortization deduction for the investment or from claiming other tax incentives under Title 15.

Definitions

Collect: the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility	Process: includes but is not limited to the treatment of hazardous wastes as defined in 75-10-403	Reclaimable material: material that has useful physical or chemical properties after serving a specific purpose that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer processor, or manufacturer

EXAMPLES OF EQUIPMENT ELIGIBLE FOR CREDIT

Administrative Rule 42.4.2604 lists 24 examples of equipment that may qualify for the credit. Some of those examples are balers, compactors, containers, conveyors, cranes with grapple hooks or magnets, crushers, end loaders, forklifts, magnetic separators, scales, screeners, shredders, and vacuum systems.

RECLAIMABLE MATERIAL FURTHER LIMITED

The definition of reclaimable material in section 15-32-601, MCA, contains an additional restriction that material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material unless:

- the person generating the waste historically disposed of the waste on site or in a landfill; and
- standard industrial practice does not generally include the reuse of the waste in the manufacturing process.

In addition, section 15-32-604, MCA, provides that a credit may not be claimed for property used to produce energy from reclaimed material.

PURPOSE: PROMOTE RECLAMATION OF MATERIALS OTHERWISE DISCARDED

The Legislature did not include a purpose statement when enacting the credit for property used to collect or process reclaimable material. However, legislation enacting the credit in 1991 included a statement of intent. At the time, state law required a procedure in legislative rules for including a statement of intent when a bill contained a delegation of authority.[10]

> The original purpose of the credit was to promote the reclamation of materials that would normally be discarded.

The 1991 statement of intent outlined an expectation that the Department of Revenue "adopt rules that will promote the reclamation of materials that would normally be discarded, by encouraging the collection, processing, and reuse of reclaimable and recycled materials by businesses."

LEGISLATIVE HISTORY

1991
- Credit enacted as 25% of property cost with no maximum
- 1995 termination date

1993
- Revised definition of **reclaimable material** to exclude material reclaimed by the consumer, processor, or manufacturer unless the person historically disposed of the waste and standard practice does not include its reuse

1995
- Revised credit to current amount with $1M limit
- Enacted definition of **process**
- Revised definition of **reclaimable material** to include soil contaminated by hazardous wastes
- Extended termination to 2001

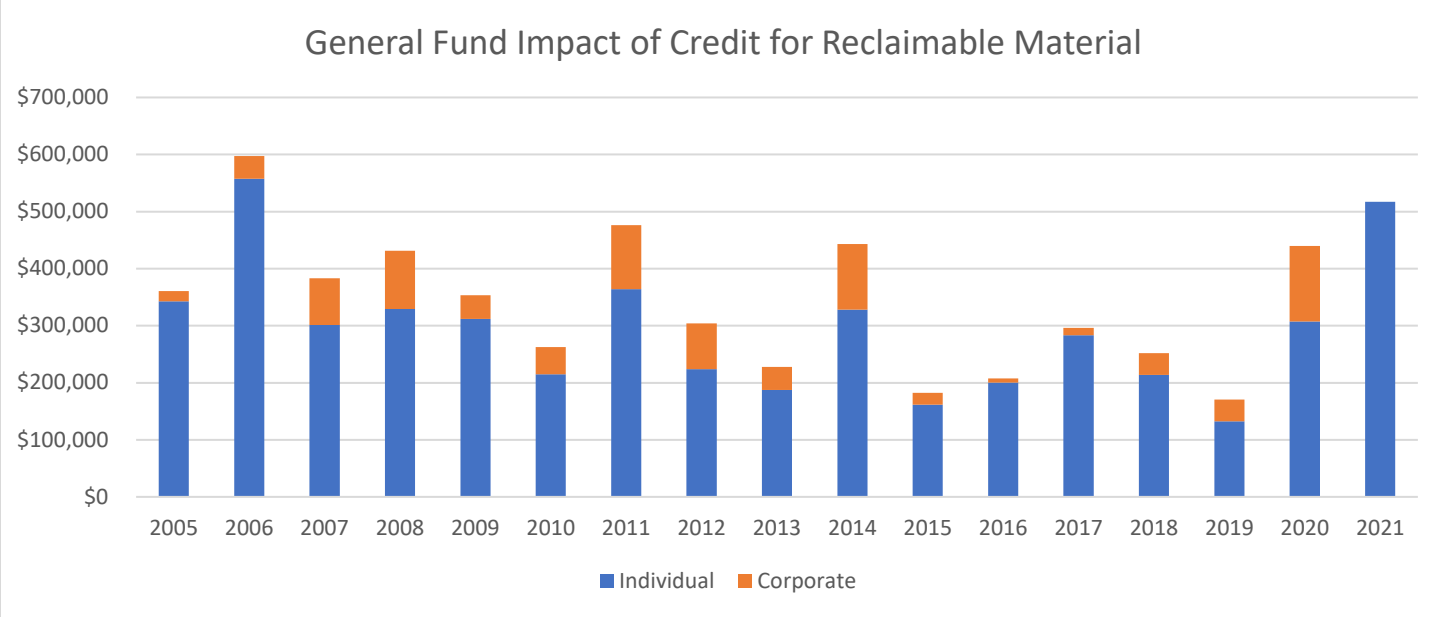
2001, 2005, 2009
- Termination date changed in 2001 to 2005 and in 2005 to 2011
- 2001: removed soil contaminated by hazardous waste from definition of **reclaimable material**
- 2009: removed termination date

[10] Former section 5-4-404, MCA. Repealed Ch. 11, L. 1997.

TAXPAYER USE OF CREDIT: $6 MILLION IN CREDITS CLAIMED SINCE 2005

Since 2005, the total general fund impact of the credit for property used to collect or process reclaimable material was $5.9 million. Annual revenue loss ranges from a low of about $170,000 in 2019 to almost $600,000 in 2006.[11] Individual income taxpayers claimed most of the credits: nearly $5 million since 2005, compared with $928,000 claimed by corporate income taxpayers over the same period.

The most recent available data shows $517,000 in credits claimed by individual income taxpayers in 2021 and $132,350 in corporate income tax credit claims in 2020.



UNCLEAR WHETHER $1 MILLION CREDIT LIMIT REDUCED CREDITS

Credits claimed after 1995 are calculated only on the first $1 million in value and are equal to 25% of the cost only for the first $250,000 with a reduced amount thereafter.

Examining the impact of this change is difficult due to insufficient data. Data on actual dollars of credit claimed by individual taxpayers between 1992 and 2004 is not available. On the corporate side, the number of credits claimed is not available in most years after 1998 because fewer than 10 taxpayers claimed credits. In addition, there are only four years of data for comparison before the change went into effect in 1996.

COMMITTEE RECOMMENDS RETAINING CREDIT

The Revenue Interim Committee recommended retaining the credit for property used to collect or process reclaimable material.

[11] Data provided via email by Aaron McNay, Department of Revenue, Sept. 27, 2023.

CREDIT FOR PRESERVATION OF HISTORIC BUILDINGS

The credit for preservation of historic buildings is an individual income and corporate income tax credit equal to 25% of the federal rehabilitation credit. The credit is not refundable but may be carried forward 7 years.

The federal credit is equal to 20% of qualified rehabilitation expenditures, which means the Montana credit is equal to 5% of total eligible expenditures.

FEDERAL REHABILITATION CREDIT REQUIREMENTS

The federal rehabilitation credit is provided for in 26 U.S.C. 47. The credit is calculated based on **qualified rehabilitation expenditures**.

Qualified Rehabilitation Expenditure	
✓ An amount chargeable to a capital account for property for which depreciation is allowed under 26 U.S.C. 168	X Expenditure for which straight line depreciation is not used
✓ Nonresidential real property	X Cost of acquisition
✓ Residential rental property	X Cost for enlargement of existing building
✓ Real property with a useful expected life of more than 12.5 years	X Tax-exempt use of property
✓ An addition or improvement to any of the above	

Qualified rehabilitation expenditures must be made for a **qualified rehabilitated building**, which requires that the building:

- be **substantially rehabilitated**;
- be placed into service before beginning the rehabilitation;
- is a **certified historic structure**; and
- is subject to depreciation.

A building is **substantially rehabilitated** if the **qualified rehabilitation expenditures** during the rehabilitation period exceed the greater of the adjusted basis[12] of the building or $5,000.

The Secretary of the Interior must determine that the building is a **certified historic structure**, which requires that it be listed on the National Register or be located in a registered historic district and be certified by the Secretary as being of historic significance to the district.

[12] The adjusted basis is the cost of the building plus or minus adjustments, which could include capital improvements (increase) or depreciation (decrease). "Rehabilitation Credit (Historic Preservation) FAQs," IRS, accessed Dec. 29, 2023.

PURPOSE: SAVING AND RESTORING HISTORIC STRUCTURES

The legislation enacting the credit for preservation of historic buildings did not contain a purpose statement. Reviewing the statements by bill proponents during the Senate hearing offers some insight into the possible purpose of the credit.

Bill sponsor, Rep. Dan Harrington, expressed a goal of saving deteriorating historic buildings in Montana and making them a productive part of the community. Brian Cockhill, director of the Montana Historical Society, added that the credit will allow developers to restore historic structures. Evan Barrett, executive director of the Butte Local Development Corporation, also noted that the federal rehabilitation credit was lowered from 25% to 20% and that the Montana credit would make up that difference.[13]

LEGISLATIVE HISTORY

The current version of the credit for preservation of historic buildings is identical to the law enacted by the 1997 Legislature.

The 2001 Legislature amended the credit available to individual taxpayers to provide for an alternative credit equal to 20% of the cost of implementing a conservation easement.[14] However, the alternative credit terminated on December 31, 2011.

The Legislature amended the credit for preservation of historic buildings once, in 2001, but those changes terminated in 2011.

TAXPAYER USE OF CREDIT: $2 MILLION IN CREDITS CLAIMED SINCE 1998

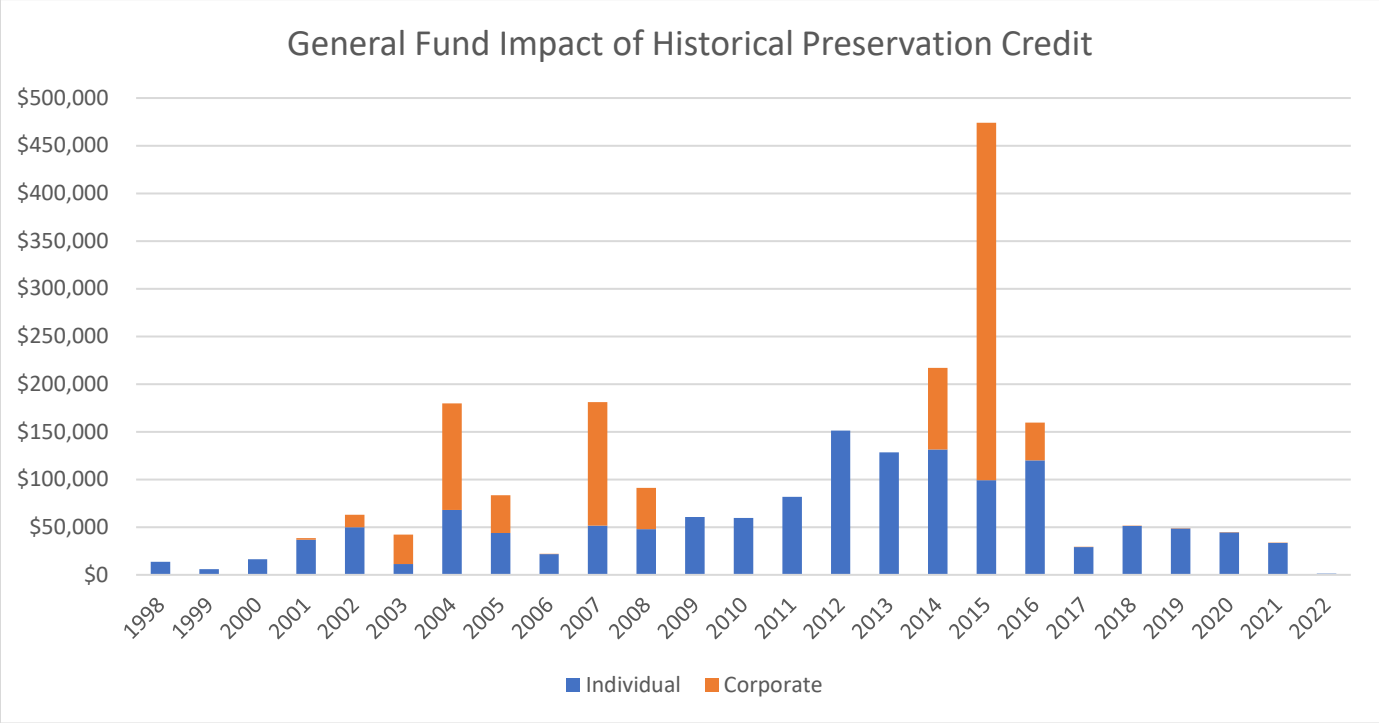
Claims for the credit for preservation of historic buildings totaled about $2.3 million over the last 24 years.[15] Individual income credits accounted for about one-and-a-half times more than corporate credits: $1.4 million compared with $870,000.

In most years, credits claimed amounted to less than $100,000, but exceptions include 2004, 2007, and 2012 through 2016.

Due to confidentiality concerns, the number of corporate credits claimed is only available for years in which no credits were claimed. Exact figures for individual credits are also not available because of confidentiality.

However, the partial individual credit numbers suggest more individuals claimed the credit in nearly every year. Aside from two years with no available credit counts (1999 and 2003), individual credit claims ranged from a low of seven in 2022 to a high of 62 in 2015.

[13] Testimony in Senate Taxation Committee, April 8, 1997.
[14] Ch. 538, L. 2001.
[15] Data is not available for corporate income credits claimed in 1998, 1999, or 2000, and 2022 corporate income tax data is not yet available.



COMMITTEE RECOMMENDS RETAINING CREDIT

The Revenue Interim Committee recommended retaining the credit for preservation of historic buildings.

APPENDIX A: REVENUE INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, House and Senate leadership appoint lawmakers to interim committees. The members of the Revenue Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with section 2-15-155, MCA.

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