

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Vice Chairman Bob Ream, on January 25,
1989, at 9:00 a.m.

ROLL CALL

Members Present: 17

Members Excused: 1

Members Absent: None

Staff Present: Dave Bohyer, Legislative Council

Announcements/Discussion: None

HEARING ON HOUSE BILL 163

Presentation and Opening Statement by Sponsor: Rep. Bud
Campbell, District 48, stated that HB 163 covers taxes
that are considered nuisance taxes and are more costly
to administer than the funds collected. Rep. Campbell
submitted an attachment (Exhibit 1) to the committee.

List of Testifying Proponents and What Group They Represent:

Mike Strawbridge, Vice President and General Manager,
Montana Division of Ideal Cement
Riley Johnson, National Federation of Independent
Business
Ken Nortveldt, Director, Department of Revenue

List of Testifying Opponents and What Group They Represent:

Pat Melby, Montana Ski Area Association

Testimony:

Mike Strawbridge spoke in support of the bill. (Exhibit 2).

Riley Johnson spoke in support HB 163 stating the members of
his association would like to get rid of the nuisance
taxes and the accompanying paperwork.

Ken Nortveldt spoke in support of HB 163 stating that the taxes and the accompanying paperwork involved are not cost effective. Dr. Nortveldt specifically mentioned the store license tax which is levied on every retail establishment in the state. In some of the small towns, the tax is \$11.00 per year. Dr. Nortveldt stated this small amount and all of the processing and paperwork costs involved are not worthwhile. He also stated that a number of the store owners have complained that new businesses in their areas have never paid these taxes or filled out the forms required. Enforcing this tax is not cost effective for the department and should be eliminated. Dr. Nortveldt stated his department would make the necessary adjustments for the loss of revenue as a result of this bill and he urged that the bill be passed.

Pat Melby spoke in opposition to HB 163. He stated his organization, the Montana Ski Area Association, would like their tax to remain in effect. HB 163 would eliminate the registration fee and the annual gross receipts tax which is used for the safety inspection of tramways. Mr. Melby presented amendments to delete these taxes from HB 163. (Exhibit 3).

Questions From Committee Members: Rep. Driscoll asked Dr. Nortveldt if the tax on cigarettes and non-prescription drug retailers was federal or state. Dr. Nortveldt replied he did not know but he would look into this area.

Rep. O'Keefe asked Rep. Campbell about the omission of the housing tax from the bill. Rep. Campbell replied this is a tax that receives federal funds and that is the reason for the omission.

Rep. Giacometto asked Dr. Nortveldt is this would be cost effective. Dr. Nortveldt replied it would not since there was no great amount of money involved and the processing is too costly. Rep. Giacometto then asked how many FTEs would be dropped as a result of the elimination of these taxes. Dr. Nortveldt replied that the fiscal note showed less than one FTE.

Rep. Raney asked Dr. Nortveldt why the cement tax is a nuisance tax. Dr. Nortveldt replied it is not really a nuisance tax but there are only two producers in the entire state paying this tax. Rep. Raney asked if there was a difference between the taxing of cement

producers and the taxing of coal or oil industries. Dr. Nortveldt replied this tax on the cement industries is in addition to the severance tax. It is really a tax on the production of cement. Rep. Raney then asked what the history was on this tax and why it was levied originally. Mr. Strawbridge answered stating at the time the tax was levied, the net proceeds tax was not in existence. When the net proceeds tax was levied, the tax on the production of cement was never removed. This is really a tax on the raw materials used in the production of cement and another tax on the finished product.

Rep. Schye asked Mr. Strawbridge how the net proceeds compared to the cement tax. The fiscal note states \$126,000.00 on the cement tax, what is the proceeds tax. Mr. Strawbridge replied that the \$126,000.00 represented both cement companies. The net proceeds is approximately two to three times larger.

Rep. Hoffman stated he was not familiar with the gross proceeds tax. He asked Rep. Campbell to explain. Rep. Campbell replied this is indicated on the attachment he presented to the committee. Rep. Ream explained to Rep. Hoffman that the tax was net proceeds and gross receipts.

Closing by Sponsor: Rep. Campbell stated that the bill would solve some taxation problems and it would not cost a great amount of money. He urged a DO PASS by the committee.

DISPOSITION OF HOUSE BILL 163

Motion: None

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 215

Presentation and Opening Statement by Sponsor: Rep. Marian Hanson, District 100, stated HB 215 would provide a state income tax credit for physicians and dentists who

practice in rural areas where there is a shortage of medical practitioners. The doctors would be required to practice for one year in the rural area before they could apply for the tax credit and after receiving the credit, they would have to stay in the area for at least five additional years. Also, the patient ratio in the area has to be one to 3,000 for doctors, and 1 to 5,000 for dentists. The tax credit will drop 20% each year. If the doctors and dentists do not stay the full five years, they are liable for all sums credited to them and they must send in a report each year to the Department of Revenue. This will not commence until next year and as a result, there are four counties only that will be impacted in 1991.

List of Testifying Proponents and What Group They Represent:

Jim Aarons, President, Montana Hospital Association
Michael Sherwood, Montana Trial Lawyer's Association
Kay Foster, Concerned Citizen

List of Testifying Opponents and What Group They Represent:

Gerald Neeley, Montana Medical Association
Ken Nordtveldt, Director, Department of Revenue

Testimony:

Jim Aarons spoke in support of HB 215 stating he considers the bill a step forward but not the entire solution to the problem facing rural communities. He said if the tax credit proposed keeps just one additional doctor or dentist practicing in Montana, everyone will be well served.

Michael Sherwood spoke in support of HB 215. (Exhibit 4). Mr. Sherwood also proposed amendments to the bill. (Exhibit 5).

Kay Foster spoke in support of HB 215. She stated that during the last year, she had served as Chairman of the Obstetrical Availability Advisory Council. She said her main objective in this legislative session was to increase the Medicaid level for obstetrical care but some rural areas and small towns have devised creative short-term solutions to their medical personnel problems. Ms. Foster presented a copy of the Advisory Council's recommendations in this area. (Exhibit 6).

Gerald Neeley spoke in opposition to HB 215. Mr. Neeley stated that the Montana Medical Association whom he represents, is not against the bill per se and while

this is positive legislation, it is not an alternative to the types of measures he feels are really needed. There has been a continual decline in the number of obstetricians and the reasons are more than current dollars. (Chart attached - Exhibit 7). Some of the problems are the large increases in obstetrical malpractice lawsuits and the increasing malpractice insurance rates for doctors. (Exhibit 8). Mr. Neeley also presented the committee with a sheet (Exhibit 9) comparing HB 215 with proposed Montana Medical Association legislation that has been introduced in this session of the legislature.

Ken Nordtveltdt spoke in opposition to HB 215 stating Montana currently supports a program enabling young Montanans to attend medical school in the state of Washington at a cost of \$25,000.00 per student per year. This subsidy is essentially provision free. Dr. Nordtveltdt suggested that part or all of this program be converted into a loan or grant with the provision that upon entering medical practice, the student could have part of all of these funds forgiven upon their agreement to practice in rural Montana. Dr. Nordtveltdt suggested that, if the committee passes the bill, it be amended to include a statement regarding the current medical students who have been subsidized stating that they could not apply for this additional credit for practice in rural areas. He also suggested on page 2, lines 4 and 8, the phrase "in excess of" be replaced with the phrase "less than." Dr. Nordtveltdt also mentioned dealing with the fact that after a doctor is in the credit program, and the doctor patient ratio in his particular area changes, making him/her no longer eligible for the income tax credit. This is not covered in the bill at present.

Questions From Committee Members: Vice Chairman Ream asked Dr. Nordtveltdt about page 1, line 22, the phrase "he intends to continue residing" and later on page 3, lines 7 to 14, states the penalty for leaving the area before the end of the five year period, can this be done legally if some unforeseen circumstance arises and the doctor must leave. Dr. Nortveltdt stated he did not see any problem with granting a credit based on a certain performance and if the performance requirements are not met, then requesting the credit be returned.

Rep. Giacometto commented to Mr. Neeley that he did not see the relevance of his testimony to HB 215 although he understood his position and agreed with him but felt Mr. Neeley needed another bill.

Rep. Driscoll asked Mr. Neeley about the tax credit shortfall figures on his attachment. The maximum possible credits for 1989 is \$274,000.00. The fiscal note states there are seven physicians and one dentist, total of eight people. Rep. Driscoll questioned the figure of \$34,000.00 in taxes per year for each of these eight people. Mr. Neeley answered that was not the case. The figures are based on the assumption that the bill applies to all physicians in the state who deliver babies.

Rep. Good commented that she did not see the relevance of Mr. Neeley's testimony with respect to HB 215 and that she resented being "held hostage" in this way.

Rep. Patterson referred to the five counties receiving \$719,000.00 in tax credits for the next five years. Rep. Patterson stated these are very small rural areas with few doctors practicing. He asked how much these particular doctors would save on their taxes under HB 215's program. Mr. Neeley stated there was a maximum of seven doctors involved and he did not have a breakdown by each county but he would say there are approximately three doctors practicing in the obstetrical area in these five counties. Mr. Neeley also stated that a physician making \$50,000.00 per year would get a maximum tax credit of \$4,127.00 which is the tax table rate of 11%.

Rep. Rehberg asked Rep. Hanson if she had taken into consideration the problems mentioned by Mr. Neeley. Rep. Hanson stated her bill was one of several options to look at the problem of rural doctors and dentists and not obstetrics.

Rep. Ream asked Rep. Hanson about taxes after the five year period the doctors and dentists are expected to stay in their rural communities. He stated that in the sixth year, the doctor's income tax jumps from 10% to 100%. Rep. Hanson answered this was not the case. The physician/dentist would be paying 90%.

Closing by Sponsor: Rep. Hanson stated that HB 215 was just one option available to try to solve the rural health problem.

DISPOSITION OF HOUSE BILL 215

Motion: None

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 263

Presentation and Opening Statement by Sponsor: Rep. Tom Hannah, District 86, stated that in the last legislature SB 162 was passed concerning partial payment of taxes that allowed people having problems paying their taxes to work out a payment plan. The purpose of this plan was to allow taxpayers to keep their property. The plan was designed to allow the property tax owner to pay the current taxes plus the most delinquent year. The taxpayer would then be only two years delinquent. Over the next three years, the taxpayer would be able to become current on his/his taxes. Some counties did not accept this method and as a result, the Attorney General made a ruling on SB 162. (Exhibits 10 & 11). The ruling, in part, states that although the taxpayer pays the partial payments, the procedure for seizing the property is not stopped. Rep. Hannah stated this was not the intent of the original legislation. The intent of HB 263 is to extend what is called the year of redemption one year for each year the payments are made. The bill is not designed to allow property owners to escape paying their taxes although there will always be those who will abuse the system.

List of Testifying Proponents and What Group They Represent:

Alec Hanson, Montana League of Cities and Towns

List of Testifying Opponents and What Group They Represent:

Susan Miller, Jefferson County Treasurer &
Representative for Montana Treasurer's Association
Bruce McKinsey, General Counsel for DACO Incorporated
Sue Bartlett, Lewis & Clark County Clerk & Recorder

Testimony:

Alec Hanson stated that his organization is not interested in repossessing property. He stated this bill will encourage people to pay their delinquent taxes. Mr. Hanson expressed the concern that SB 139 will shorten the redemption period for undeveloped lots or possibly extend the redemption period from 18 months to 3 years.

The combination of SB 139 and this bill could cause some problems in this area and he expressed the hope that the committee could coordinate the two bills.

Susan Miller spoke in opposition to the bill. (Exhibit 12).

Bruce McKinsey spoke in opposition to the bill stating it was a major step backward in that it turns local government into banking institutions permitting them to loan out taxpayer funds to delinquent developers. Mr. McKinsey expressed the opinion that funds should not be used by the local governments to assist delinquent taxpayers. He stated those who were delinquent should have to face the consequences of that situation. Mr. McKinsey also submitted documents from Mr. Cort Harrington who opposed the bill but could not attend the hearing. (Exhibit 13).

Sue Bartlett spoke in opposition to the bill stating that her concern was the fact that in some counties such as Lewis and Clark, there are tax delinquencies that are greater than the 36 month period cited in this legislation. She stated the bill should have the provision that partial payments which bring the delinquencies under the 36 month period for redemption have to be paid in order to extend the time before tax deeds could be issued. She stated it was her understanding that taxes must be at least 36 months delinquent before a property could be seized under present law.

Questions From Committee Members: Rep. Driscoll asked Sue Bartlett about the taxes that are delinquent in 1980, stating he understood that under the law, the property is to be seized after four years. Ms. Bartlett replied that the tax delinquency has outstripped the resources of Lewis and Clark County to go through the seizure process. A second reason is the courts have been ruling against the county in property seizure cases and the process is being reviewed.

Rep. Driscoll stated to Mr. McKinsey that in a number of counties, where property has been seized for nonpayment of taxes, the county has not been able to resell all of the properties. Prior to SB 162, people would pay something on their taxes. Now they are not paying anything and the properties cannot be sold. Mr. McKinsey replied that this is true but under current law, cities and counties are now allowed to sell the properties for less than the amount owed in taxes. This had not been allowed previously.

Rep. Good asked Rep. Hannah if he would object to an amendment to page 2, line 5 regarding the penalties and interest on delinquent taxes. She suggested making these a little higher than the commercial rate. Her concern was for the small business people who may be having honest financial problems where large developers may use the system to their advantage and remain delinquent. Rep. Hannah replied he would not want this in the bill because there are other bills being introduced to address this issue. Rep. Good then asked about an effective date amendment. Rep. Hannah stated there was a specific reason for the effective date which is some counties refused to accept partial payments, have seized property and sold it. This is illegal under current law. This retroactive date would eliminate that situation and the committee needs to be careful about eliminating it.

Rep. Koehnke asked Ms. Bartlett if the counties are trying to sell the properties they have seized for delinquency for any amount now that they can sell them for less than the taxes due. Ms. Bartlett replied the properties were being sold for less than the taxes due but not for just any amount. However, she stated that the process of sending out the notices before a property can be seized, is a long and costly procedure and the lack of funding has limited the number of properties the county of Lewis and Clark can act upon each year.

Closing by Sponsor: Rep. Hannah stated that his bill was not trying to replace SB 162 or make the policy decisions of that bill ineffective. He stated this bill will simply make the policy decisions regarding partial payments of taxes work effectively and legally. He stated the retroactive date is very important because of concern with properties being sold when they should not have been sold and the possible legal problems in this area. Rep. Hannah stated the need for implementing a procedure that is workable for people during the current difficult economic situation in Montana.

DISPOSITION OF HOUSE BILL 263

Motion: None

Discussion: None

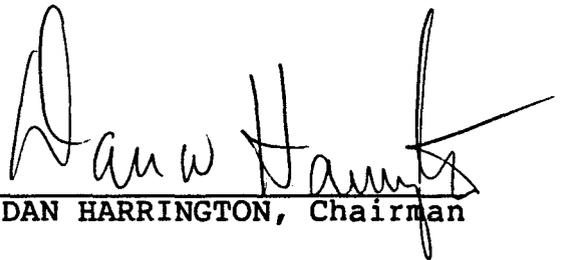
Amendments and Votes: None

Recommendation and Vote: None

Dave Bohyer, Legislative Council, submitted two documents
(Exhibit 14) explaining HB 263.

ADJOURNMENT

Adjournment At: 10:30 a.m.



REP. DAN HARRINGTON, Chairman

DH/lj

2115.min

DAILY ROLL CALL

TAXATION

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date January 25, 1989

NAME	PRESENT	ABSENT	EXCUSED
Harrington, Dan, Chairman			✓
Ream, Bob, Vice Chairman	✓		
Cohen, Ben	✓		
Driscoll, Jerry	✓		
Elliott, Jim	✓		
Koehnke, Francis	✓		
O'Keefe, Mark	✓		
Raney, Bob	✓		
Schye, Ted	✓		
Stang, Barry			✓
Ellison, Orval	✓		
Giacometto, Leo	✓		
Gilbert, Bob	✓		
Good, Susan	✓		
Hanson, Marian	✓		
Hoffman, Robert	✓		
Patterson, John	✓		
Rehberg, Dennis	✓		

Rep. Campbell
987 Session
LB 307

EXHIBIT 1
DATE 1/25/89
HB 163
Rep. Ben Campbell

Nuisance Taxes Can Be Eliminated

Montana can afford to do away with several unnecessary and obsolete taxes and fees. Everyone will save time and money.

The following taxes should be eliminated because the costs of administration and compliance are too high in relation to the revenue they produce:

<u>Tax</u>	<u>FY 86 Collections</u>
Camper Decal Fee	\$ 8,811
Store License Tax	285,896
R E Co-op and Tele Co-op License Tax	13,030
Tramway Tax	18,318
Cement and Gypsum License Tax	117,213
Micaceous Mine License Tax	8,941
Retail Coal Dealer License Tax	16
National Housing Tax	.190
Sleeping Car Tax	0
Express Company Tax	<u>0</u>
 Total	 \$452,415

Both taxpayers and state government will benefit from eliminating certain other small fees and modifying some requirements. We propose to:

- 1) Stop charging fees for providing corporate tax clearance certificates and copies of corporate tax returns,
- 2) Eliminate the gasoline tax "refunder's" fee and make the refunder's license continuous instead of renewable every three years, and
- 3) Match the deadline by which more than 25,000 employers must file W-2 forms with the federal deadline,

These changes will streamline government and reduce needless work for Montana taxpayers.

EXHIBIT 2
DATE 1/25/89
HB 163
Rep. Bud Campbell

HB 0163 Nuisance Taxes

Mr. Chairman and committee members, my name is Mike Strawbridge and I am the Vice-President and General Manager for the Montana Division of Ideal Cement at Trident, Montana.

I wish to support Mr. Campbell's bill of removing nuisance taxes for the following reasons:

1. The cement industry in Montana has experienced severe economic times over the last seven years. Cement consumption in Montana has dropped to approximately 50% of the amount used by this state in the early 1980s. We as an industry have had to implement some permanent lay-offs and extended lay-offs for many of our employees. We have been unable to provide pay increases for the majority of our employees for nearly six years. In order to find a market for our cement, we have been forced to expand our shipping area far into other states where our competitors are not faced with the same tax burden placed on Montana industry. In one area, we must compete against a cement producer that pays no federal, state, or local taxes.

2. The cement tax slated for elimination in Mr. Campbell's bill is a prime example of why any industry is reluctant to further process raw materials in Montana. We as an industry currently pay "net proceeds" tax on all raw materials used in the production of cement. After the processing is complete, we are taxed

EXHIBIT 2

DATE 1/25/89

HB 163

Rep. Bud Campbell

again for each ton of cement made from those ~~some low~~
materials. This type of Double Taxation acts as a
deterent for industry and puts Montana cement producers
at a competitive tax disadvantage.

I hope you will favorably consider House Bill 0163
which will eliminate nuisance taxes not only for the
cement industry in this state, but for other businesses
as well. Thank you for this opportunity to voice my
opinion in support of this bill.

Pat Melby

442-7450

HB 163

PROPOSED AMENDMENTS

EXHIBIT 3

DATE 1/25/89

HB 163

Rep. Bud Campbell

1. The Title, Page 1, line 9: following "RETAILER'S LICENSE TAX", Insert "AND"
2. The Title, Page 1, lines 10 and 11: delete ", AND THE TRAMWAY AND ANNUAL REGISTRATION FEE GROSS RECEIPTS TAX"
3. The Title, Page 1, line 14: delete: "23-2-714, 23-2-715,"
4. Page 2, line 14: delete: "23-2-714, 23-2-715,"

EXHIBIT 4

DATE 1/25/89

HB 215

Rep. Martin Hanson

Testimony of Michael J. Sherwood, MTLA

Supporting House Bill 215 as amended

January 25, 1989

Montana is experiencing a shortage of rural doctors. While there are probably a series of reasons for this, one factor is the fact that rural doctors delivering babies must pay the same amount for malpractice as those in the cities.

Insurance companies, even those owned by doctors, ^{do not} ~~have refused~~ to adjust rates based upon number of deliveries or gross income.

Multiple pieces of legislation have been introduced to address this problem ^{and} ~~and~~ are still in bill drafting stages:

1. No liability for any doctor arising from negligence when attempting to relieve severe pain (House Bill 57)

2. The MMA proposal regarding obstetrics which includes an insurance pool administered by the state and funded by insurance carriers in all fields. This also proposes multiple restrictions on suits and damages.

3. Increased medicaid payments for child delivery. ^{funded by a cigarette tax.}

*3221
insurance
rate making
control*

Malpractice premium increases are not due to huge jury awards in this state. Only \$57,500 in awards have been awarded arising from child delivery and less than \$700,000 in awards have been awarded against doctors in total in the last ten years. This contrasts with 51 million dollars in premiums in the malpractice field in the ten year period from 1975 to 1984.

In fact the latest figures provided by the MMA show CLAIMS decreasing by 21 percent in 1986.

We support the doctors in their efforts to obtain relief, but adamantly deny that the cause for the problem is high jury awards or claims. Doctors have already successfully lobbied for a medical malpractice panel which significantly burdens any injured victim of malpractice--they cannot be found negligent unless another doctor says they have violated professional standards of care--Rule 11 provided that attorneys can be sanctioned for bringing spurious suits has been adopted and still premiums have risen considerably in the early 80's. In 1987 25 major pieces of legislation were adopted restricting injured victim's rights and still premiums rise.

We propose the amendment because both the Government Accounting Office in its 1987 report and the Interim Obstetrics Council of the governor recommend preventive measures to reduce malpractice.

EXHIBIT 5

DATE 1/25/89

HB 215

Rep. Marion Hanson

Proposed Amendment to House Bill 215

Michael Sherwood, MTLA

Page 1, Line 25:

Insert: (c) During the last calendar year the applicant has successfully completed five (5) hours of continuing medical education. If the applicant is engaged in a practice which includes the delivery of babies, at least three of the five hours must have been in an area of instruction directly related to the delivery of babies.

EXHIBIT 11-6
DATE 1/25/89
HB 215
Rep. Marion Hanson

MS. KAY FOSTER
DECEMBER 2, 1988
PAGE 2

State of Montana
Office of the Governor
Helena, Montana 59620
(406-443-3111)

TED SCHWINDEN
GOVERNOR

December 2, 1988

Kay Foster, Chairperson
Obstetrical Services Availability Advisory Council
c/o Jan Clark
Department of Commerce
Helena, MT 59620

Dear Kay:

I wanted to thank you and the Council members for your service on the Obstetrical Services Availability Advisory Council. As I mentioned in our meeting in early November, I believe the Council did an excellent job of dealing rationally with an emotional subject. I know that the Council's work and its report will be valuable to the 1989 legislature as they consider this subject, which is of vital interest to people throughout the state. I have carefully considered the Council's recommendations and included several in my Executive Budget, FY 1990-91.

As you may know, my budget recommendation for the next biennium is relatively "tight". In order to bring revenues and expenditures in line, I have recommended very few new or expanded programs and have reduced agency operating budgets. However, the Council made such a compelling case that I have included additional funding in several areas recommended by the Council:

--Increased Medicaid reimbursements. The budget recommendation includes \$3,104,510 in general funds (\$10.8 million total cost) for the biennium to provide a 28 per year increase in reimbursement rates paid to state medical and Medicaid providers. The Department of Social and Rehabilitation Services would be allowed to allocate these funds based on the greatest need for adjustment in specific reimbursement rates. During the current biennium, SRS was appropriated funds to provide a 1.58 reimbursement increase to providers and allocated about one-half of the available funds to prenatal and postnatal care and delivery reimbursement increases. In addition, the budget proposes \$100,000 for the biennium be appropriated to SRS for targeted reimbursement increase for Medicaid deliveries.

--Increasing the availability of prenatal care. The budget proposes expanding prenatal education and Medicaid coverage for expectant mothers in several ways. In accordance with the federal Catastrophic Care Act,

-more-

the budget includes \$5.9 million for the biennium (\$1.7 million in general fund) for Medicaid coverage of children under one year of age and pregnant women whose income is less than the poverty level. In addition, the budget includes \$65,000 per year of general fund to expand the Department of Health and Environmental Science's prenatal education programs and \$50,000 per year additional general fund for Family Planning prenatal counseling.

I join the Council in hoping that the substantial tort reform enacted by the 1987 legislature will bring long-term relief in medical liability insurance premium rates. I also appreciate the careful review that you have given to the proposals dealing with this subject submitted the Montana Medical Association and the Office of the State Auditor and hope the 1989 legislature will consider your comments carefully as it debates these measures.

Once again, thank you for the time and effort you have spent. The people of Montana will, I am confident, benefit as a result.

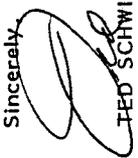
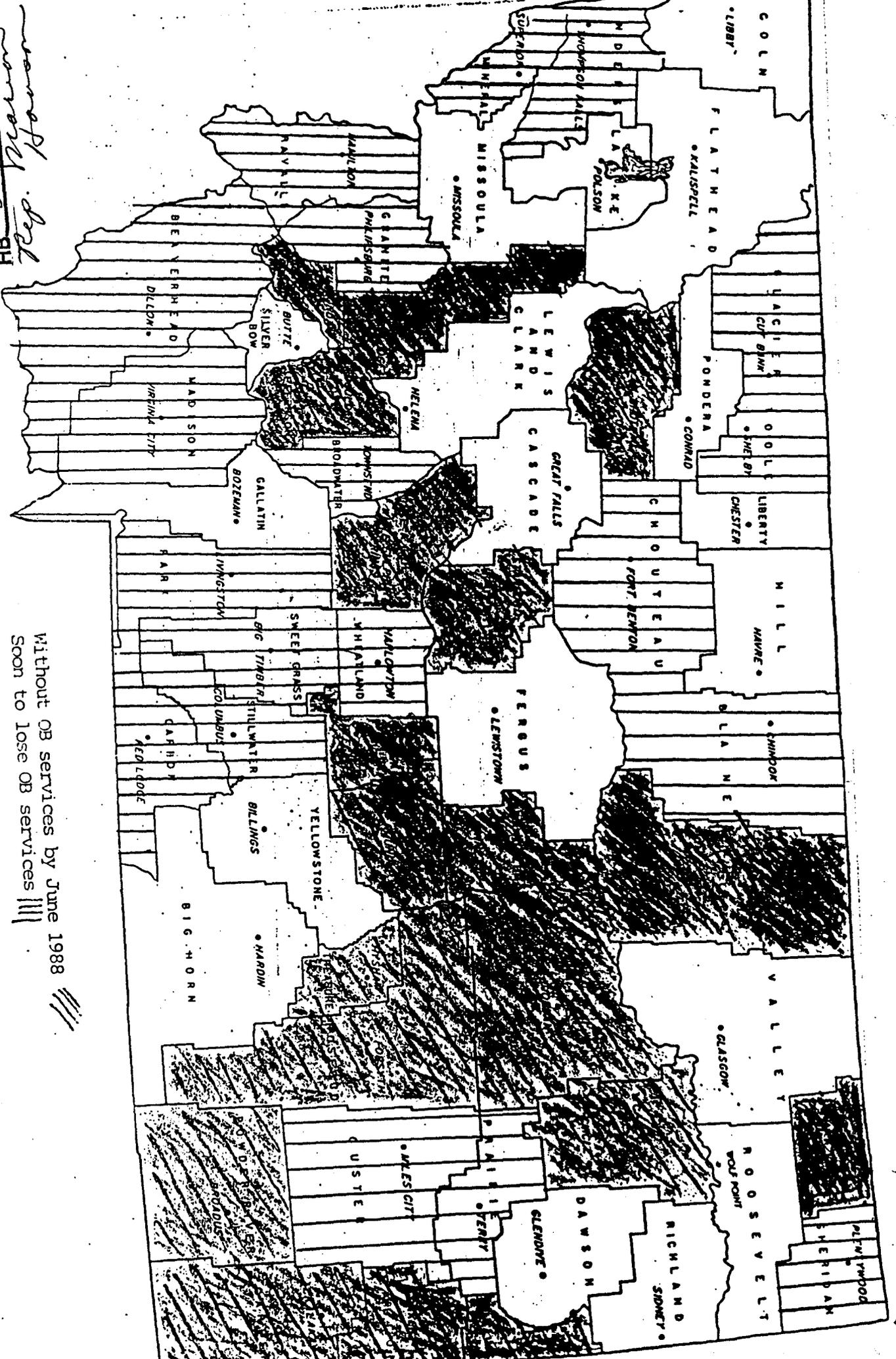
Sincerely,

TED SCHWINDEN
Governor

EXHIBIT 6A

DATE 1/25/89

HB 215
Rep. Pearson
Hawson



Without OB services by June 1988
Soon to lose OB services |||||

DATE 1/25/89HB 215
Rep. Marion
Hanson

#59400	Total OB Case - Vag Del.	1590 ⁰⁰
	Medicaid pmt.	667.21
#59410	Vag Delivery only	1295 ⁰⁰
	Medicaid pmt	410.80
#59501	C- Section with total Case	2000 ⁰⁰
	Medicaid pmt	745.07
#59500	C Section only	1700 ⁰⁰
	Medicaid pmt.	512.56

EXHIBIT GA, pg 3

DATE 1/25/89

HB 215

Rep. Morrison
Horsman

3400 medicaid patients
@ 662²¹ = 2,251,514

3400 medicaid patients = 3,400,000
@ 1000

difference = 1,148,486

adding 500 new pregnancies made eligible
under federal mandate 7/1/89 (75% of poor)
= 500,000

and 7/1/90 to 100% federal poverty level
500 more pregnancies = 1,000,000

Total cost 7/1/90 4400 medicaid
pregnancies = 4,400,000

EXHIBIT 6A, pg. 4
DATE 1/25/89
HB SCIENCE 215
Rep. Nelson
Hanson

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES



TED SCHWINDEN, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

December 12, 1988

Van Kirke Nelson
210 Sunny View Lane
Kalispell, MT 59901

Dear Dr. Nelson:

Dr. Espelin has asked that the attached information be forwarded for your review. The reason we are interested in the data is twofold: to search the consumption trends of lifestyles and examine possibilities for sources of revenue for prevention/health promotion activities.

The State of California, through a recent statutory initiative (public referendum), passed a 25¢ per pack tax on cigarettes and 31¢ per dollar value on tobacco products. The Tobacco Tax and Health Protection Act of 1988 will earmark approximately \$600-700 million for the following:

- 35%--uncompensated hospital services (acute care)
- 20%--school/community based health education
- 10%--uncompensated physician services
- 5%--research with tobacco related diseases
- 5%--wilderness fire suppression and rehabilitation
- 25%--legislative allocation to any of the above.

A market survey was administered two years prior to the initiative to determine the acceptability of a tax on tobacco and 58% agreed with the proposal. They agreed with the tax and didn't care of its disposition. On general election day, the California voters, 57.8% at least, voted for the Act. The initiative was apparently opposed by the Governor, but supported in mass by the voluntary health organizations, physicians, and legislators.

Obviously, many worthwhile causes could be helped by an initiative of this sort in Montana. However, we would hope that tobacco reduction is the primary target. The elimination of tobacco use would have a more profound impact on vital statistics than virtually any other public health measure.

Sincerely,

Robert W. Moon

Robert W. Moon, MPH
Consultant, Health Promotion and Chronic Disease

EXHIBIT 6A, pg. 5
 DATE 1/25/89
 HB 215
 Rep. M. Hannon

TOBACCO TAXES
 FACT SHEET

Cigarette Tax

Rate:	1982-83	12¢ per pack	
	1984-88	16¢ per pack	
Amount of Revenue:	FY 82	\$11,233,044	
	FY 83	\$10,580,701	- 5.8%
	FY 84	\$11,929,453	+12.7%
	FY 85	\$12,984,626	+ 8.8%
	FY 86	\$12,469,883	- 4.0%
	FY 87	\$12,157,915	- 2.5%
	FY 88	\$11,430,657	- 6.0%

Disposition (16-11-119 M.C.A.): 79.75% long-range building fund in the debt service fund

20.25% long-range building program fund in the capital projects fund

*Minus the expense of collecting all the taxes levied, imposed, and assessed.

Tobacco Products Tax (Ex.: smokeless tobacco, chewing tobacco).

Rate: 12.5% of the wholesale price to the wholesaler, except products as may be shipped from Montana and destined for retail sale and consumption outside the State of Montana.

Amount of Revenue:	FY 82	\$519,448	
	FY 83	\$581,203	+11.9%
	FY 84	\$692,897	+19.2%
	FY 85	\$650,793	- 6.0%
	FY 86	\$669,932	- 2.9%
	FY 87	\$720,332	+ 7.5%
	FY 88	\$773,440	+ 7.3%

Disposition (16-11-206 M.C.A.): 5% defrayment for collection and administrative expense.

95% long-range building fund is the debt service fund.

FY - Fiscal Year July 1 - June 30 (Example: July 1, 1987 - June 30, 1988 - FY 88)

NOTE: Prepared by Toni Jensen, Rocky Mountain Tobacco Free Challenge, Montana Department of Health and Environmental Sciences.

Source: Montana Department of Revenue

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ALCOHOL TAXES
FACT SHEET

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Liquor Tax

Rate:

26% Excise Taxes Liquor License Net Profit

Amount	1982-83	\$6,554,838 - 4%	\$4,096,768 - 4%	\$5,010,213 - 12%
of	1983-84	6,415,784 - 2%	4,006,857 - 2%	5,408,943 + 8%
Revenue:	1984-85	5,935,058 - 7%	3,707,704 - 3%	4,540,660 - 16%
	1985-86	5,833,106 - 2%	3,645,692 - 2%	3,850,811 - 3%
	1986-87	5,587,174 - 4%	3,490,356 - 4%	3,850,811 - 13%
	1987-88	5,322,936 - 5%	3,323,773 - 5%	3,785,922 - 2%

Disposition: 16% Excise tax to state general fund
10% License fee

65.5% to state institutions
4.5% to counties*
30.0% to cities and towns*

* Based on sales by liquor stores in each county adjusted for out-of-county sales

** Based on sales to retail liquor dealers in each town

Wine Tax

Rate: \$.27 per liter after 6-30-85: .20 per liter after 7/1/79

Amount	1982-83	\$1,118,998 + 42%
of	1983-84	1,131,131 + 1%
Revenue:	1984-85	1,132,060 + .008%
	1985-86	1,558,355 + 38%
	1986-87	1,657,782 + 7%
	1987-88	1,567,140 - 5%

Disposition: \$.16 per liter to state general fund
\$.0834 per liter to state institutions
\$.0133 per liter to counties*
\$.0133 per liter to cities and towns*

Beer Tax

Rate: \$4.30 per barrel after 7/1/85; \$4.00 per barrel after 7/1/79

Disposition: \$1.80 per barrel to state general fund
\$1.50 per barrel to cities and towns*
\$1.00 per barrel to state institutions

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Amount	1982-83	\$3,294,412 + .04%
of	1983-84	3,211,297 - 3%
Revenue:	1984-85	3,083,163 - 4%
	1985-86	3,105,743 + 2%
	1986-87	3,060,956 - 1%
	1988-89	2,997,015 - 2%

*Must be used for law enforcement, regulation, and control
of the sale and use of liquor.

Source: 1988 Annual Financial Report of the Liquor Enterprise Fund, Montana
Department of Revenue

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final

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Rep. Hanson

Report says baby doctors need lots of help

The Independent Record, Helena, Mont., Monday, October 3, 1988—7A

BILLINGS (AP) — Both government and the private sector must help solve Montana's loss of baby doctors because the crisis stems from legal issues, inadequate Medicaid reimbursement and spiraling malpractice insurance rates, a governor's advisory committee reports.

The Obstetrical Services Availability Council said the Legislature should expand Medicaid coverage for pregnant women and consider the Montana Medical Association's proposal for a state insurance plan that immediately would reduce malpractice insurance premiums for doctors who deliver babies, the council said.

The 15-member panel, including a lawyer, legislators, health care providers and insurance representatives, submitted its report to Gov. Ted Schatzel with many suggestions, but no easy an-

swers for dwindling availability of obstetrical services. Billings City Councilwoman Kay Foster, who chaired the panel, said the governor asked for recommendations by Sept. 30 to help develop budget proposals for the 1989 Legislature.

The list of recommendations included raising the Medicaid reimbursement to doctors to \$1,000 per delivery, which would be a "break even" figure and about 80 percent of what the average non-Medicaid patient pays. Currently, Medicaid pays about \$650 per delivery.

The state pays about 30 percent of Medicaid, and the rest is from federal funds. The council suggested a tobacco tax increase to cover the increased state cost.

The council said it targeted the tobacco tax because of a correlation between smoking and problem pregnancies.

Any state-run insurance plan for obstetrical malpractice coverage must be actuarially sound, the panel emphasized. It must include provisions for injury prevention in birth-related cases and must provide for eliminating uncertainties of the current tort and insurance system.

The Montana Medical Association's proposal includes such provisions and "deserves careful consideration by the Legislature," the panel said.

However, the council said the infant compensation plan proposed by State Auditor Andrea Bennett is not viable and is too narrow in scope to adequately address short-term or long-term needs. Other council recommendations included:

- Expanding education programs in prenatal and infant care and supporting existing programs with goals of low birth weight prevention and providing early access to prenatal care.
- Amending current law on payments of future damages of \$100,000 or more to make periodic payments mandatory in obstetrical cases.
- Limiting liability for doctors who participate in peer review as proposed by the Montana Medical Association.
- Continuing efforts of small communities to find creative short-term ways of retaining physicians who will deliver babies. This may include financial assistance in the form of matching grants or loans from the Legislature, private insurance carriers and others.

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Advisory council seeks cure for state's obstetrical care crisis

Who's delivering the babies in rural Montana?

Increasingly, the answer is nobody. It's not news that Montana is facing an obstetrical care crisis. Since 1986 the number of family practitioners delivering babies in the state has dropped nearly in half, from 160 in 1986 to only 87 in 1988.

The number of ostetricians delivering babies has decreased too, from 42 in 1987 to 37 in 1988. The numbers tell a grim story. Nearly one quarter of Montana's 56 counties were without obstetrical care in 1988. Another 19 counties are expected to lose such service in the near future.

Why?

According to an advisory council appointed by Gov. Ted Schwinden to analyze the problem and present possible solutions there are three reasons for the loss of obstetrical services.

"Skyrocketing malpractice insurance rates, a variety of tort-related issues and inadequate Medicaid reimbursement rates," were the causes listed in the board's Nov. 2 report to Schwinden.

What can be done to ease the situation?

The 15-member council wasted little time in getting down to the business of answering that question. Short-term and long-term measures to encourage physicians to maintain their obstetrical practices, to ease the insurance availability problem and to improve the medical/legal climate were suggested in the report.

The Montana Medical Association will present a bill to the 51st Legislature that will restructure the way obstetrical services are paid for, cut-

ting insurance premiums by nearly 40 percent, according to Brian Zins, executive director of the MMA. The council endorsed that proposal and rejected a proposal by the Office of the State Auditor as being "too narrow in scope... (it) does not solve the problem on a short-term or long-term basis," the report stated.

The state medical association's proposal, on the other hand, would provide quick and lasting relief for the obstetrical insurance crisis.

"All we want to do is let the physicians practice medicine and provide services to the citizens of Montana," Zins said. The MMA's bill would do that by making obstetrical insurance affordable for the state's family practioners and obstetricians.

Medicaid also drew the council's attention. Several changes in that program could ease the situation, according to the council's report. Among the suggested changes were raising the level of Medicaid reimbursement to doctors who deliver babies to \$1,000 — the "break-even" amount for the doctor, extending the program's eligibility coverage for pregnant women and expanding the prenatal and infant care education programs.

Those changes will cost money. The council suggested paying for the expanded Medicaid services with a tax increase on tobacco products to be matched by federal funds. The funding issue merits further study.

We join the Montana Medical Association in commending Schwinden and the board for their prompt and studied response to the medical insurance crisis. The Legislature must act in a similar fashion.

Solution is complex

On Nov. 11 the Tribune printed an editorial outlining the recommendations of the Governor's advisory council on obstetrical care.

As chairman of this council I am concerned that it inaccurately stated that it "endorsed" the proposed bill of the Montana Medical Association, which they describe as offering "quick and lasting relief for the obstetrical insurance crisis".

Our written recommendations do commend the MMA for certain portions of their lengthy proposal, particularly relating to peer review, examination and certification of physicians, and requiring periodic payment of future damages.

We stated that "of the proposals before the Council the MMA proposal warrants careful consideration by the Legislature." When presenting our findings to Governor Schwinden I commented that "questions continue regarding the constitution of its actuarial soundness".

It is of great concern to this council that any proposed solution to the medical liability crisis be able to withstand constitutional challenge and be fiscally sound.

Our recommendations were not easy answers. There appears no "quick fix." The best short term and long term solution we found was in the lowering of the number of high risk pregnancies through maternal education and accessible prenatal care. You have very clearly outlined our suggestions for increasing Medicaid reimbursement and extending prenatal and infant care programs.

I appreciate the Tribune's efforts to educate Montanans and seek solutions to the obstetrical care crisis. The efforts of the MMA are commendable but their voluminous plan to guarantee lower insurance rates must be premised on its constitutionality and actuarial soundness.

KAY FOSTER, Billings, chairman,
Obstetrical Services Availability
Advisory Council

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OBSTETRICAL SERVICES AVAILABILITY ADVISORY COUNCIL



REPORT OF RECOMMENDATIONS
Submitted to the Honorable Ted Schwinden
Governor of Montana

October 1988

DEPARTMENT OF COMMERCE

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TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3494

HELENA, MONTANA 59620-0401

November 2, 1988

The Honorable Ted Schwinden
Governor of Montana
State Capitol
Helena, MT 59620

Dear Governor Schwinden:

On behalf of the Obstetrical Services Availability Advisory Council, which was created by Executive Order No. 6-88, I am pleased to present to you the council's "Report of Recommendations" regarding the loss of obstetrical care in Montana.

Many groups and individuals presented information and viewpoints to the council. The council is appreciative of their contributions, which were essential to the recommendation process.

The council hopes that you and other policymakers will find these recommendations helpful.

Sincerely,

Kay Foster
Kay Foster
Chairperson

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OBSTETRICAL SERVICES AVAILABILITY ADVISORY COUNCIL

Medical Profession:

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Great Falls, MT

Dr. Van Kirke Nelson
Kalispell, MT

Dr. Jimmie L. Ashcraft
Sidney, MT

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Glasgow, MT

Legal Profession:

Leo Berry
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Karl J. Englund
Missoula, MT

Insurance Industry:

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Charles Butler, Jr.
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Legislature:

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Helena, MT

Sen. H.W. Hammond (R)
Malta, MT

Rep. John R. Mercer (R)
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Kay Foster (Chairperson)
Billings, MT

Marietta Cross, RN
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Jean Bowman
Helena, MT

Staff:

Office of Research & Information Services
Montana Department of Commerce

OBSTETRICAL SERVICES AVAILABILITY ADVISORY COUNCIL
Report of Recommendations

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Background

The Obstetrical Services Availability Advisory Council was appointed on March 11, 1988, by Governor Schwinden. The appointment of the Council was the result of a recommendation by the Insurance Subcommittee of the Governor's Council on Economic Development, which had been studying the obstetrical malpractice insurance crisis in Montana at the request of the Governor and the Montana Medical Association in anticipation of the possible convening of a special session of the Legislature. Finding that the complexity of factors involved in the obstetrical care crisis were beyond the scope of a brief special session, the subcommittee recommended the formation of a broader based council whose charge would be to study in depth the factors contributing to the crisis.

The Obstetrical Services Availability Advisory Council has 15 members, representing the medical and legal professions, the insurance industry, the legislature, and the public.

The PURPOSE of the Council is to:

- (a) Examine the extent, causes and effects of the loss of obstetrical care in Montana;
- (b) Analyze possible short-term solutions, including but not limited to increased medicaid reimbursement and direct payments for a portion of malpractice premiums related to obstetrical care;
- (c) Analyze potential long-term solutions, including but not limited to those proposed by the Montana Medical Association and the State Auditor; and
- (d) Recommend, on or before September 30, 1988, preferred short-term and long-term solutions for submission to the 51st Legislature.

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The Council considers the loss of adequate obstetrical services from competent providers and the loss of access to such services in Montana a crisis.

The extent of the crisis is widespread and worsening, especially in rural areas; but urban areas are impacted as well.

The causes of the crisis include the well-publicized problem of skyrocketing malpractice insurance rates, a variety of tort-related issues, and inadequate medicaid reimbursement rates.

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The effects of the crisis are many, but combined, ~~can be described as the~~ loss of adequate obstetrical services from competent providers and loss of access to such services in Montana, especially in rural areas.

Among the worst effects are a possible increase in the number of low birthweight babies, the factor most closely associated with infant mortality, and an increase in the human costs and economic costs of babies born at risk.

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OBSTETRICAL SERVICES AVAILABILITY ADVISORY COUNCIL  
Report of Recommendations

BACKGROUND DATA AND RECOMMENDATIONS

BACKGROUND DATA

The Obstetrical Services Availability Advisory Council met five times between April 1988, and September 1988. In addition to contributing information from their own areas of professional expertise, Council members solicited viewpoints and information regarding access to obstetrical services in Montana and in the nation from concerned individuals and interest groups.

In the interest of the conciseness of its report of recommendations, the Council has declined to reiterate comprehensively in this document the information, data, and arguments and critiques regarding each of the components of the issue of access to obstetrical services. Readers seeking such information are directed to the bibliography of documents and resources. It is sufficient to present selected information and data to illustrate briefly some of the factors that drive the crisis in loss of obstetrical services in Montana.

-----

The number of doctors delivering babies in Montana is declining.

|      |                      |       |      |
|------|----------------------|-------|------|
| 1986 | Family Practitioners | ..... | 160  |
| 1987 | " "                  | ..... | 120  |
| 1988 | " "                  | ..... | 87   |
| 1986 | Obstetricians        | ..... | (na) |
| 1987 | "                    | ..... | 42   |
| 1988 | "                    | ..... | 37   |

(Source: Montana Academy of Family Physicians; Montana Medical Association)

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In January 1988, eighteen of Montana's fifty-six counties were without obstetrical services. Another nineteen counties were anticipating losing obstetrical services "soon."

(Source: Montana Academy of Family Physicians)

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In 1982, there were 14,538 births in Montana; in 1987, 12,239 births. Twenty-eight percent of Montana babies are Medicaid babies. By 1990, the national Catastrophic Coverage health plan will raise Medicaid eligibility to 100 percent of poverty level, and the percentage of

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Medicaid babies will increase in Montana.

(Source: Montana Dept. of Health & Environmental Sciences; Montana Dept. of Social & Rehabilitation Services)

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Physicians' average global charges in Montana:

|                     |            |
|---------------------|------------|
| Normal deliveries - |            |
| 1986 .....          | \$ 778.00  |
| 1987 .....          | 932.00     |
| 1988 .....          | 1,150.00   |
| Caesarean Section - |            |
| 1986 .....          | \$1,098.00 |
| 1987 .....          | 1,296.00   |
| 1988 .....          | 1,542.00   |

Nationwide, the physicians' average global charge is \$1,436.00 in 1988.

Blue Cross and Blue Shield of Montana's maximum reimbursement to physicians in 1988 for a normal delivery is \$1,175.00. This represents the 90th percentile of all charges submitted in calendar year 1987 by Montana physicians who deliver babies.

Medicaid reimbursement to physicians in FY88 was \$619.00, and in FY89 is \$662.00 for a normal delivery.

(Source: Montana Blue Cross/Blue Shield; Montana Department of Social & Rehabilitation Services)

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Companies providing malpractice insurance to Montana family practitioners who deliver babies in 1988:

|                   |            |       |                |
|-------------------|------------|-------|----------------|
| St. Paul .....    | 26 doctors | ..... | 29.0% of total |
| ICA .....         | 10 "       | ..... | 11.5% " "      |
| UMIA .....        | 26 "       | ..... | 29.8% " "      |
| Doctors' Co. .... | 17 "       | ..... | 19.5% " "      |
| Truck Ins. ....   | 8 "        | ..... | 9.2% " "       |
| Total: 87 "       |            |       |                |

Companies providing malpractice insurance to Montana obstetricians in 1988:

|                   |           |       |                |
|-------------------|-----------|-------|----------------|
| St. Paul .....    | 0 doctors |       |                |
| ICA .....         | 0 "       |       |                |
| UMIA .....        | 5 "       | ..... | 13.5% of total |
| Doctors' Co. .... | 32 "      | ..... | 86.5% " "      |
| Total: 37 "       |           |       |                |

-----  
Premiums for malpractice insurance for family practitioners:

|              | 1987     | 1988     |                              |
|--------------|----------|----------|------------------------------|
| ICA          | \$12,392 | \$13,011 | (no C-section, no high risk) |
| St. Paul     | (na)     | \$25,000 | (with C-section)             |
| UMIA         | \$12,646 | \$21,475 | "                            |
| Doctors' Co. | \$19,011 | \$20,962 | "                            |

Premiums for malpractice insurance for obstetricians (Caesarean section included) in 1988:

|              |          |
|--------------|----------|
| St. Paul     | \$66,939 |
| ICA          | \$44,971 |
| Doctors' Co. | \$39,039 |

-----  
In 1973, under the "occurrence" type insurance, family practitioners with obstetrical coverage AND WITH TAIL coverage paid \$1,981, and obstetricians paid \$3,247.

In 1988, under the "claims made" type insurance, family practitioners with obstetrical coverage and with NO TAIL coverage paid approximately \$25,000, and obstetricians paid \$39,841.

It is likely that, under the current system, malpractice insurance premiums will continue to increase 10 percent to 20 percent, or more.

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Doctors who deliver babies pay the same premium amount regardless of the number of deliveries annually. It is estimated that a doctor must deliver 50 babies annually in order to "break even" with respect to malpractice insurance premiums.

The majority of rural (i.e., population under 10,000) family practitioners deliver less than the number of babies sufficient to cover their liability insurance costs.

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In 1986, 83 of the 3,400 Medicaid babies born in Montana each cost over \$10,000 during the first year of life.

(Source: Montana Dept. of Social & Rehabilitation Services)

"The lifetime costs of caring for a low birthweight baby can reach \$400,000. The costs of prenatal care -- care that might prevent the low birthweight condition in the first place -- can be as little as \$400."

(Source: National Commission to Prevent Infant Mortality, "Death Before Life: the Tragedy of Infant Mortality," p.9)



## RECOMMENDATIONS

Having carefully considered the broad spectrum of information, data, and viewpoints, the members of the Council determined that the loss of adequate obstetrical services from competent providers and the loss of access to such services in Montana is a complex crisis having no single perfect solution. Efforts to ameliorate the crisis must be broadbased and sustained, and responsibilities for those efforts must be assumed immediately by state and local government, professional organizations, and the private sector.

Therefore, the Council recommends to the Governor of Montana, the following short-term measures that can be taken to encourage physicians to maintain their obstetrical practices, and long-term measures to address problems of insurance availability and affordability and to improve Montana's medical/legal climate.

### Short-term Measures

#### Regarding Increasing Medicaid Reimbursements --

- Raise the level of Medicaid reimbursement to doctors who deliver babies to \$1,000, which is a "break even" amount for doctors delivering babies, and which is approximately 80 percent of the insurance industry's allowance for a normal delivery. It is expected that this increase will encourage doctors considering leaving the practice not to do so, although it is not anticipated that doctors who have stopped delivering babies will begin delivering them again.
- Adopt presumptive eligibility for pregnant women and expedite applications for Medicaid assistance so that early, effective prenatal care is available to Medicaid clients. Further, reimbursement by Medicaid to providers for any services rendered must be guaranteed.
- Extend Medicaid eligibility coverage for pregnant women to 150 percent of the poverty level. (In 1990, by Federal mandate, Medicaid programs will include the population at 100 percent of poverty level.)
- Expand Medicaid's outreach/education/application programs for prenatal and infant care to sites where health providers deliver care, such as state and local health department clinics, hospital clinics, etc.

Regarding Funding Medicaid -

In seeking a source of funding for increased Medicaid reimbursements for obstetrical services, the Council recognizes the strains on the state budget.

There is considerable evidence that a significant number of Medicaid mothers with complicated pregnancies, which often result in the birth of babies whose health and development are at risk, use tobacco products.

- Because of the correlation between problem pregnancies, tobacco use, and infants born at risk, the Council recommends that the best potential source of increased funding for Medicaid reimbursements for obstetrical services is a tax increase on tobacco products to be matched 70/30 by federal funds.

Long-term Measures

Regarding Reducing Medical Malpractice Insurance Costs -

The Council recognizes the 50th Legislature's tort reform efforts, and believes that those efforts will have a long-term beneficial impact on medical liability insurance premiums. The Council makes these further recommendations.

- Consider legislation that reduces medical liability insurance premiums for doctors who deliver babies. Of the proposals before the Council, the Montana Medical Association proposal published/dated June 1988, warrants careful consideration by the Legislature. The Montana Medical Association proposal seeks: (1) actuarial soundness; (2) provisions for injury prevention in birth-related cases; and (3) provisions for eliminating the uncertainties of the current tort and insurance system. The Infant Compensation Plan, proposed by the Office of the State Auditor, is too narrow in scope, does not adequately address the variety of needs, does not solve the problem on a short-term or long-term basis, and is not viable in the form presented to the Council.
- Consider alternative methods of medical malpractice liability insurance rate-setting.
- Amend current law relating to discretionary periodic payment of future damages of \$100,000 or more and make such periodic payments mandatory in obstetrical cases.

Other

- The Council recognizes that some small communities have devised creative, short-term solutions to encourage physicians who deliver babies to remain in those small communities, including paying a portion of the doctors' liability insurance premiums and making the doctors employees of the community hospitals. The Council applauds those efforts and urges other small communities to do the same. The Council recommends cooperation

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and financial assistance in the form of matching grants or loans from the Legislature, private insurance carriers and others, in the short term, to keep physicians delivering babies in small communities.

- The Council supports and commends existing maternal/child health programs whose goals are the prevention of low birthweight babies and early access to medical care.
- The Council supports and commends the reform recommended by the Montana Medical Association limiting the liability of doctors who participate in peer review.
- The Council supports and commends the intentions of the Montana Medical Association to study the topic of state examination and certification of physicians practicing in Montana.
- The Council recommends that there be full disclosure to patients of the risks, particularly in rural areas, regarding the availability of and access to obstetrical services.



The Council extends its appreciation to all the organizations and individuals who contributed to the considerations of the Council, and especially to the Montana Medical Association and to Gerald (Gary) Neely.

OBSTETRICAL SERVICES AVAILABILITY ADVISORY COUNCIL  
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TESTIMONY / COMMENTARY / DATA

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American Insurance Association
Blue Shield/Blue Cross of Montana
Doctors' Company
Missoula County Health Department
Montana Academy of Family Physicians
Montana Department of Social and Rehabilitation Services
Montana Hospital Association
Montana Legislative Council
Montana Medical Association
Montana Midwifery Association
Montana State University, College of Nursing
Neely, Gerald (Gary), Esq.
Office of the State Auditor and Commissioner of Insurance
Saint Paul Fire and Marine Insurance Company
State Bar of Montana
Trieweiler, Terry N., Esq.

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COMPARISON OF TAX CREDIT WITH MMA LEGISLATION

COMPARATIVE ANALYSIS OF ALTERNATIVES		
	MMA BILL	TAX CREDIT
Concept Can Be Supplemental To MMA Proposal	N/A	Yes
Concept Can Be Viable Alternative To MMA Proposal	N/A	No
Concept Supported By Physicians	Yes	No
Immediate Stop Of Loss Of OB Services If Only This Fully Implemented And Implemented On Wide-Spread Basis	Yes	No
Reversal Of Loss Of OB Services If Only This Fully Implemented And Implemented On Wide-Spread Basis	Yes	No
Taxpayer Funded	No	Yes
Initiation Or Continuation Of Solution Dependent Upon Economy Of State	No	Yes
Immediate Reduction In Overall Insurance Cost To OB Physicians	Yes	No
Increased Predictability Of Damages Payable To Injured Parties	Yes	No
Will Work With Physicians Who Have Very Low Income	Yes	No
Addresses Full Range Of Reasons Why Physicians Are Quitting Delivery Of Babies	Yes	No
Damages Payable To Injured Parties	Yes	No
Contributes To Long-Term Stabilization Of Insurance Costs And Availability	Yes	No
Contributes To Reduction Of Costs Of Legal System	Yes	No
Contributes to Reduction In Number Of Medical Malpractice Claims	Yes	No
Benefits Of Savings From Program Required To Include Patients	Yes	No

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MONTANA MEDICAL LIABILITY INSURANCE RATES: 1989 - 1993

MONTANA OB/GYN

Montana Medical Liability Insurance Rates - Family Practice With Obstetrics - No 'Tail' Costs - \$ 1 Million/\$ 3 Million Limits

YEAR	CARRIER			
	St Paul	UMIA	Doctors Co	ICA
1989	\$17,000	\$20,185	\$20,880	\$13,011
1990	\$19,380	\$23,011	\$23,803	\$14,833
1991	\$22,093	\$26,232	\$27,136	\$16,909
1992	\$25,186	\$29,905	\$30,935	\$19,276
1993	\$28,712	\$34,092	\$35,265	\$21,975

1989 Rates Based On Carrier Rate Cards. Projected Rates Based On Consulting Actuary's Projections For Montana At 14% Per Year.

MONTANA OB/GYN

"TAIL" Or Extended Reporting Endorsement - Montana Medical Liability Insurance Rates - Family Practice With Obstetrics - \$ 1 Million/\$ 3 Million Limits

YEAR	CARRIER			
	St Paul	UMIA	Doctors Co	ICA
1989	\$28,050	\$26,241	\$37,584	\$26,022
1990	\$31,977	\$29,914	\$42,846	\$29,665
1991	\$36,454	\$34,102	\$48,844	\$33,818
1992	\$41,557	\$38,876	\$55,682	\$38,553
1993	\$47,375	\$44,319	\$63,478	\$43,950

1989 Rates Based On Carrier Interviews. Projected Rates Based On Consulting Actuary's Projections For Montana At 14% Per Year.

TAX CREDIT SHORTFALLS: HB 215 And Dollars Needed To Defray Obstetrical Component Of Insurance And Not Doing So

TAX CREDIT SHORTFALLS

ALL PHYSICIANS: Amounts Needed To Defray Obstetrical Costs Vs. Available Tax Credit Amounts - Exclusive Of Tail Costs

Year	Maximum Necessary Amounts	Maximum Possible Credits	Maximum Shortfall From Credit
1989	\$1,006,070	\$274,033	\$732,037
1990	\$1,150,944	\$205,525	\$945,419
1991	\$1,316,680	\$137,016	\$1,179,664
1992	\$1,506,282	\$68,508	\$1,437,774
1993	\$1,723,187	\$34,254	\$1,688,932
	\$6,703,163	\$719,336	\$5,983,827

TAX CREDIT SHORTFALLS

UTAH MEDICAL INSURANCE ASSOCIATION: Amounts Needed To Defray Obstetrical Costs Vs. Available Tax Credit Amounts - Exclusive Of Tail Costs

Year	Primary Policy	Maximum Credit	Bill Credit	Unpaid Primary Policy
1989	\$20,185	\$4,127	\$3,302	\$16,883
1990	\$23,011	\$4,127	\$2,476	\$20,535
1991	\$26,232	\$4,127	\$1,651	\$24,582
1992	\$29,905	\$4,127	\$825	\$29,080
1993	\$34,092	\$4,127	\$413	\$33,679

1977-1988: Montana Physicians With OB/GYN Malpractice Claims

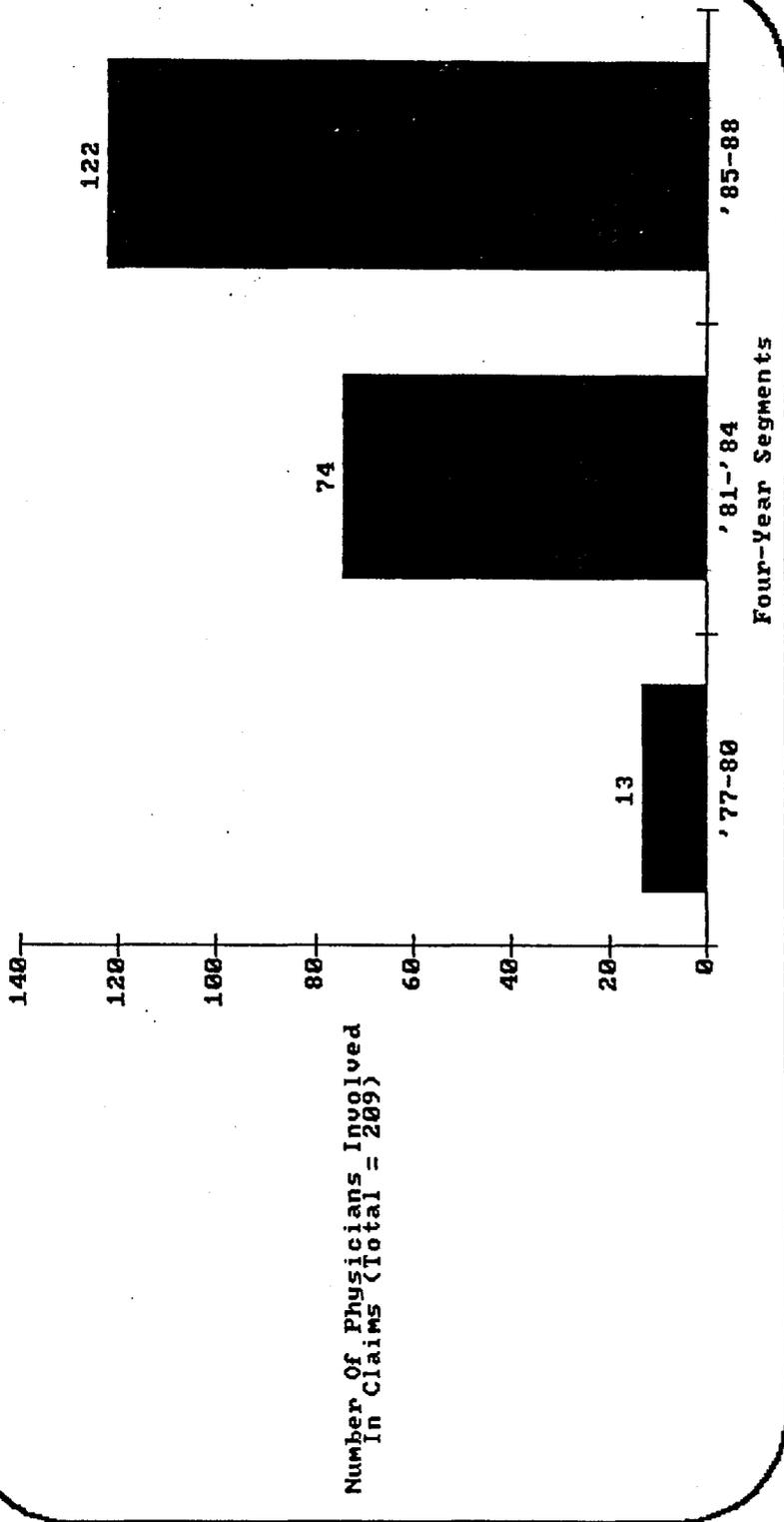


EXHIBIT 9
DATE 1/25/89
HB 215
Rep. M. Hanson



EXHIBIT 10
 DATE 1/25/89
 HB 263
Rep. Tom Hannah

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October 28, 1988

Rep. Tom Hannah
 2228 Beloit
 Billings, Montana 59102

Dear Representative Hannah,

In response to your inquiry of yesterday regarding the effect of Senate Bill No. 162 (Ch. 587, L. 1987), I have concluded the following:

1. A benefit accrues to a delinquent taxpayer under section 30 of SB 162 (15-16-102(5), MCA) in that the taxpayer is now allowed to make partial payment of delinquent taxes where any partial payment was formerly prohibited. (See 40 Op. Att'y Gen. No 15 (1983).)
2. If partial payment of delinquent property taxes is made, the period for redemption is not tolled. This procedural situation existed prior to the adoption of SB 162 and, according to a recent opinion of the Attorney General, still exists. (See 42 Op. Att'y Gen. No. 117 (1988).)
3. In order for the redemption period to be tolled by a partial payment of delinquent property taxes under 15-16-102(5), MCA, a specific statutory provision must be enacted. Without such a statutory provision, the redemption period remains as provided in Title 15, ch. 18, MCA, generally, and in 15-18-111, MCA, specifically. (See 42 Op. Att'y Gen. No. 117 (1988).)

I would hasten to point out that this is not a legal opinion, but rather a conclusion I have drawn from reviewing the tax deeding process, current and previous applicable code sections, and the two opinions of the Attorney General cited above. If we can be of further assistance in this or any other matter, please contact me.

Sincerely,

David D. Bohyer, Director
 Research and Reference Services

enc.

M5024 8302DBHA

EXHIBIT 10, Pg. 2 r.m.
DATE 1/25/87
HB 263
Rep. Tom Hannan

**PARTIAL PAYMENT OF
DELINQUENT PROPERTY TAXES**

**Legal
Memorandum**



Montana Legislative Council

Prepared by
MONTANA LEGISLATIVE COUNCIL
Room 138
State Capitol
Helena, Montana 59620
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DATE 1/25/89
HB 263
Rep. Down
Hannah

PARTIAL PAYMENT OF DELINQUENT PROPERTY TAXES

By James H. Lear
Staff Attorney

Montana Legislative Council

June 1988

I. ISSUE

Can a taxpayer make partial payment of delinquent property taxes under 15-16-102(5), MCA, if a county clerk has given notice of delinquent property taxes pursuant to Section 61(3) and (4), Ch. 587, L. 1987?

II. BRIEF ANSWER

The legislative history and circumstances attending the enactment of Senate Bill 162 (Ch. 587, L. 1987) support the conclusion that the 50th Legislature specifically intended to provide leniency to a taxpayer confronted with potential loss of property due to delinquent taxes. In 40 A.G. Op. 15 (1983) the Attorney General held that the period of redemption for land sold for delinquent taxes cannot be tolled by payment of part of the delinquent taxes. He held that payment of all taxes and assessments is required for redemption to occur. The introduced version of SB 162 incorporated the Attorney General's strict interpretation prohibiting partial payment of delinquent property taxes. However, in 1987 that policy decision was reversed when the Senate Taxation Committee amended SB 162 to allow partial payment and that amendment was incorporated into law.

VOLUME NO. 42

OPINION NO. 117

COUNTY OFFICERS AND EMPLOYEES - Lack of authority of county treasurers to refuse partial payment of delinquent property taxes;

COUNTY OFFICERS AND EMPLOYEES - County treasurer - a ministerial officer whose duties are limited by statute;

TAXATION AND REVENUE - Period of redemption not tolled by partial payment of delinquent taxes;

MONTANA CODE ANNOTATED - Sections 1-2-101, 15-16-102, 15-18-101, 15-18-111, 15-18-112, 15-18-212 to 15-18-214;

OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 71 (1988), 40 Op. Att'y Gen. No. 15 (1983).

- HELD: 1. Partial payment of delinquent property taxes does not toll the period of redemption.
2. The county treasurer may not refuse partial payment of delinquent property taxes as long as delinquent taxes are due and the payment is made in accordance with section 15-16-102(5), MCA.

20 October 1988

Speaker Bob Marks
Montana House of Representatives
302 Lump Gulch
Clancy MT 59634

Dear Speaker Marks.

You have requested my opinion on several questions relating to delinquent property taxes, which I have rephrased as follows:

1. Does partial payment of delinquent property taxes toll the period of redemption?
2. May the county treasurer refuse to accept partial payment of taxes after notice under section 15-18-212, MCA, has been given?
3. If partial payment of delinquent taxes tolls the redemption period, is a tax deed invalid if issued pursuant to a notice stating that all delinquent taxes must be paid before the end of the three-year redemption period?

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DATE 11/25/81
HB 263
Rep. Tom Hansen

***PARTIAL PAYMENT OF
DELINQUENT PROPERTY TAXES***

**Legal
Memorandum**



Prepared by
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EXHIBIT 11, pg. 2
DATE 1/25/89
HB 263

PARTIAL PAYMENT OF DELINQUENT PROPERTY TAXES

By James H. Lear
Staff Attorney

Montana Legislative Council

June 1988

I. ISSUE

Can a taxpayer make partial payment of delinquent property taxes under 15-16-102(5), MCA, if a county clerk has given notice of delinquent property taxes pursuant to Section 61(3) and (4), Ch. 587, L. 1987?

II. BRIEF ANSWER

The legislative history and circumstances attending the enactment of Senate Bill 162 (Ch. 587, L. 1987) support the conclusion that the 50th Legislature specifically intended to provide leniency to a taxpayer confronted with potential loss of property due to delinquent taxes. In 40 A.G. Op. 15 (1983) the Attorney General held that the period of redemption for land sold for delinquent taxes cannot be tolled by payment of part of the delinquent taxes. He held that payment of all taxes and assessments is required for redemption to occur. The introduced version of SB 162 incorporated the Attorney General's strict interpretation prohibiting partial payment of delinquent property taxes. However, in 1987 that policy decision was reversed when the Senate Taxation Committee amended SB 162 to allow partial payment and that amendment was incorporated into law.

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III. ANALYSIS

The Legislative Council staff was requested by more than one individual to answer the issue stated above. Apparently, several counties are in need of the answer in order to correctly implement Section 61(2)-(4), Ch. 587, L. 1987, which states:

(2) During the period between [the effective date of this act] and July 1, 1988, the county clerk and county treasurer of each county shall cooperate in identifying all property in their respective counties on which the taxes are delinquent or on which a tax sale certificate or assignment certificate was issued.

(3) Not less than 60 days or more than 90 days prior to July 1, 1988, the county clerk in each county shall give notice, as provided in [section 21 (codified as 15-18-212, MCA)], for each property on which the taxes have been delinquent for the 3 preceding years or more or for which there had been issued a tax sale certificate to the county and for which the board of county commissioners has directed the county treasurer to issue a tax deed.

(4) After January 1, 1988, and before May 1, 1988, the county clerk shall send a notice to each purchaser other than the county and to each assignee who has taken an assignment from the county. The notice must be sent by certified mail and contain a statement apprising the purchaser or assignee of his obligation to give notice as required in [section 21]. The county clerk shall also publish in the official newspaper of the county or such other newspaper as the board of county commissioners may designate a general notice to all purchasers and assignees stating the obligations to the purchaser or assignee regarding the notice required in [section 21].

More than one county has taken the erroneous position that property which is the subject of the above-referenced notice no longer qualifies for partial payment of delinquent taxes as allowed under 15-16-102(5), MCA, which states:

(5) If the taxes become delinquent, the county treasurer may accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest.

There are obvious reasons why a county may have taken the position that partial payment of taxes is not allowed if the notices required by Section 61, Ch. 587, L. 1987 have been given. A county may invest significant time and expense in identifying the applicable property and providing the required notice. It is understandable that a county might feel frustrated at that point when a taxpayer demands that the treasurer accept partial payment of the delinquent taxes, tolling the redemption period and leaving the county with the prospect of repeating the procedure for the same property for as much as 3 more consecutive years to bring the property tax current.

However, the language in 15-16-102(5), MCA, does not include any exception or qualifier that would prohibit partial payment if a tax sale certificate or assignment certificate was issued or if notice was given under Section 61, Ch. 587, L. 1987, for property on which the taxes have been delinquent for the 3 preceding years.

The only statutory authority offered in support of the erroneous county position prohibiting partial payment is 15-18-212(6), MCA, which states:

(6) The notices required by subsections (1) through (3) and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which

Rep. Tom Howard

the taxes are or were delinquent, which description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.
(emphasis supplied)

The language in subsection (6)(i) above, when read with the partial payment authorization language in 15-16-102, shows an ambiguity that can be resolved by placing substance over form (the erroneous county position places form over substance). Subsection (6)(i) is a statutory provision indicating the content of a notice or form. It is not a substantive law governing the payment of taxes and therefore must yield to the substantive or directive provision in 15-16-102 that

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allows partial payment of delinquent taxes without qualification other than that set forth in 15-16-102(5).

This conclusion is bolstered by the legislative history and circumstances attending the enactment of SB 162. The bill was by request of the Revenue Oversight Committee. That committee included amendments to 15-16-102 as part of the introduced bill. The committee discussed payment of delinquent taxes and the 1983 Attorney General's opinion that curtailed county treasurers' acceptance of partial payment of delinquent taxes and tolling of the redemption period. The committee added the following language to 15-16-102 in order to codify the Attorney General's opinion:

(4) If the taxes become delinquent, the county treasurer may not accept partial payment of the delinquent taxes, but may accept only the total amount of delinquent taxes, including penalties, interest, and costs.

When SB 162 was heard in the Senate Taxation Committee, a question was asked by a committee member who was also a member of the Revenue Oversight Committee, which requested the bill. The question and response are as follows:

Senator Crippen said he is a little surprised by the acceptance of this bill by the Montana Taxpayers Association. On page 38, line 21, we are putting into law an Attorney General Opinion which states that partial payments for taxes are not acceptable. He asked Sandra Whitney to comment.

Sandra Whitney said we have in the tax law right now a provision for a person to protest his taxes. If a person feels his tax has been raised too high, he can protest the amount of tax that he feels is too high. While they are very concerned about protecting the rights of the taxpayer, they are not sympathetic to the person not paying taxes. This particular provision would require that a person pay

taxes in full. In the past they were allowed to pay the oldest payment and then could stay in arrears for three years. This particular provision refers to a person who is delinquent and he has to pay all his taxes if he is going to pay any. She is in agreement with that provision. (Pages 3 & 4 of Senate Taxation Committee minutes from January 31, 1987--emphasis supplied)

Senator Crippen's question illustrates that during the hearing the Senate Taxation Committee was aware that the introduced version of SB 162, if so enacted, would codify the Attorney General's opinion. Sandra Whitney's response to Senator Crippen's question underscores that the committee was apprised of the past practice of county treasurers allowing partial payment of delinquent taxes and tolling of the redemption period with the effect of allowing the delinquent taxpayer to continually stay 3 years in arrears. Her answer also focuses the issue on whether, as a matter of policy, the legislature intended to be unsympathetic to the person not paying taxes (as the introduced version of 15-16-102 in SB 162 read) or to protect the rights of the taxpayer facing a loss of property for delinquent property taxes (as was the practice prior to the 1983 opinion of the Attorney General).

On February 11, 1987, Senate Taxation Committee members deliberated on this important policy decision. Their debate is recorded at pages 6 through 8 of the committee minutes for that day:

DISPOSITION OF SB 162: Senator Mazurek furnished the committee with amendments to this bill, attached as Exhibit 5, and reviewed the amendments with the committee. . . .

Senator Mazurek said this bill codifies the Attorney General Opinion that says once you become delinquent on your taxes you can't pay anything unless you pay everything that is

owed. Amendment #10 and #11 say if a taxpayer is delinquent in his or her taxes, they can pay less than the full amount of the taxes due by paying all the penalty and interest up to the date of payment and if they want to pay one year back they can do that and the treasurer has to accept that payment. They can pay their obligation by paying the most recent taxes first so they don't get into the situation where someone is paying one year at a time but always is three years delinquent. This would allow a taxpayer to pay the current year plus one year back and eventually eliminate the delinquency, instead of paying all at one time. We are trying to balance the situation where somebody doesn't have to come up with all of his delinquent taxes at once, versus the situation where a taxpayer is always delinquent by three years. This will discourage that, but will not be as harsh as the law used to be. If you were three years delinquent and paid two years this year, and two years the next year; if you didn't go back and pay the first delinquent year, your property could still be sold.

Senator Neuman said if you still owe for a prior year, but are current for the last couple of years, could they still sell the property.

Senator Mazurek said that is a risk that a taxpayer will have to take. If he wants to hang onto his property he will have to pick up the last delinquency.

Senator Neuman asked if at the present time a partial payment could be paid on back taxes one complete year at a time.

Senator Mazurek said they have to pay all the delinquent taxes at once.

Senator McCallum said you would have to pay the penalty and interest first and then you would have to pay the current year.

Senator Mazurek said whatever you pay will be applied to the most recent tax due. He would come in in 1984 and hasn't paid 81, 82, and 83. The first thing he has to pay is all the penalty and interest. He then pays one year,

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which is applied to 1984, two years would go to 1983. Whatever is paid would be applied in reverse order.

Senator McCallum questions whether that would be fair. It would be fairer the other way.

Senator Hirsch asked what the interest rate is now.

Senator Mazurek said 5/6 of 1% per month on interest and 2% penalty.

Senator Bishop thinks the penalty and interest assessment is enough and we should not mess with the three year delinquency.

Senator Mazurek said this amendment is better than the Attorney General Opinion now.

Senator Mazurek made a motion to adopt the amendment furnished to the committee, except #10 and #11, including the amendments explained by Jim Lear to make the bill technically correct and the amendment on page 28, line 6, to strike "by a utility". The motion carried.

Senator Mazurek made a motion to adopt amendments #10 and #11.

Senator Crippen made a substitute motion that the bill be amended on page 38, line 21, through line 1 on page 39, to reflect that the taxpayer can pay delinquent taxes for the oldest year delinquent.

Senator McCallum said you are saying you can pay the taxes for the year that is farthest back, plus penalty and interest.

Senator Crippen said the same as Senator Mazurek's amendments but to make sure they are able to pay the most delinquent tax.

Senator Eck said this would allow them to always be a number of years delinquent.

Senator Severson said that is probably so in some cases but they are still paying interest on it and penalty.

Senator Lybeck said he knew of several taxpayers, at the time when interest rates were higher and the county rates lower, who took advantage of staying delinquent.

Senator Crippen said some do take advantage of this. We are talking about taking away a person's property. He would rather make a mistake on the side of the taxpayer than on the side of the county.

Jim Lear asked for clarification. Does this proposed amendment include penalty and interest being paid first and then the tax for the first delinquent year can be paid.

Senator Crippen said the county treasurer could not accept less than 1 year's delinquent taxes, plus all penalty and interest due on the date of the delinquent payment. The taxes due for the tax year that is delinquent the longest, must be paid before any subsequent year.

Senator Crippen's motion carried 6-5.

This lengthy excerpt from the Senate Taxation Committee minutes abundantly establishes that, since the legislature was "talking about taking away a person's property", it "would rather make a mistake on the side of the taxpayer than on the side of the county" as Senator Crippen stated the policy decision. In other words the committee was talking about the issuance of a tax deed, as that constitutes the final taking away of a person's property, when it decided that the best policy was to allow the taxpayer to prevent that result by paying current taxes and the taxes for the longest delinquent tax year.

The Committee of the Whole debated the issue on Second Reading of SB 162 in the Senate on February 16, 1987. It refined the language to the form in which it was enacted as set forth in 15-16-102(5), quoted on page 3 above, after defeating an attempt to amend the language to require the least delinquent tax year to be paid

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before any prior year. That action was a significant indication that the entire Senate was conversant with this policy issue and rejected Senator Mazurek's approach, which would allow that "If you were three years delinquent and paid two years this year, and two years the next year; if you didn't go back and pay the first delinquent year, your property could still be sold." Of course the word "sold" really refers in a general sense to the final act of taking the property by issuance of a tax deed.

Why then does 15-18-212(6)(i), which was part of section 21 of SB 162, contain language inconsistent with the legislature's policy decision as outlined above? Inadvertence on the part of the legislature and its staff. That language is inconsistent because it was part of a bill that, as introduced, did not allow partial payment, and was overlooked by the Senate Taxation Committee when it amended the bill to allow partial payment. As staff to Senate Taxation Committee, Jim Lear acknowledges that neither he nor any legislator noticed the inconsistent language in this lengthy and intricate bill drafted by Dave Bohyer as staff to Revenue Oversight Committee. Similarly, Dave Bohyer, as staff to the House Taxation Committee, acknowledges that he did not notice the inconsistency during Committee consideration either. The fact that the provisions remained as adopted by the Senate provide testimony to the fact that no member of the House of Representatives or of the Governor's legal staff recognized the inconsistency either. If anyone would have noticed the problem during the legislative process, it would have been amended to be consistent with the partial payment language.

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Office of *Rep. Tom Havnak* EXHIBIT 12
DATE 1/25/89
County Treasurer & Representative for
JEFFERSON COUNTY
-SUSAN M. MILLER- Mt. Treasurer's
Boulder, Montana 59632 Association
JAN 25, 1989

Re: HB 263

Disagree with the retroactive portion of the bill. New section 5 going back is time consuming to Co Offices & not efficient Government.

Believe consideration must be given to the TAX Debt Notification time as the cost the Counties go thru is quite extensive & the process very time consuming. The taxpayers who let their taxes go delinquent are notified each year of the amount on the current bill, so extending a year redemption period is just providing another delay for those who don't pay and I fear may encourage the delinquent % to increase. This becomes quite burdensome for any Co Bonds.

People who pay the taxes on time are penalized by the laws that allow others reprieve after reprieve from paying their fair share. Each year taxpayers don't pay the cash on hand is less than it should be at Budget time, thus resulting in more cost to those who pay current as levies are set for next fy.

The collection process now used for most delinquent & most current year with redemption period as is has been workable. Recommend No Change. Redemption ~~period~~ should remain PAID up within the 36 months to protect Co. that are behind in Tax Debt Process.

Susan M Miller
Jefferson Co Treas
& representative of The
Mt. Treasurer's Association

EXHIBIT 13
DATE 1/25/89
HB 263

Rep. Tom Howard

TO: HOUSE TAXATION COMMITTEE

FROM: J. Cort Harrington, Jr. *J. Cort Harrington*
Representing the Montana County Treasurers Association
and the Montana Association of Clerk and Recorders

DATE: January 25, 1989

RE: HB 263

The Montana County Treasurers Association and the Montana Association of Clerk and Recorders oppose HB 263 as it is currently drafted.

Section 5 of the bill states that it applies retroactively and applies to property tax payments tendered on or after July 1, 1988. This retroactive provision is the primary basis of the Clerks' and Treasurers' opposition. To put the opposition in perspective, it is important that the committee understand the recent history of the tax deed process. Prior to the Summer of 1988, the tax deed process was not actively pursued by local government. A change was brought about with the passage, in 1987, of SB 162. That bill revised the process for selling tax liens and for issuing a tax deed. That bill also mandated that the counties actively seek to take tax deed on delinquent property in which those delinquent taxes are more than three years old. SB 162 (1987) also provided for the partial payment of delinquent taxes (codified at §15-16-102(5), MCA.) For the first time in many years, county governments actively sought to take tax deed on delinquent property last summer and fall. It was during that process that Rep. Hannah questioned whether a partial payment of delinquent taxes tolled the period of redemption.

Representative Bob Marks requested the Attorney General to give an opinion about whether the partial payment of delinquent property taxes tolled the period of redemption. In 42 Attorney General's Opinion, Opinion No. 117, a copy of which is attached, the Attorney General opined that a partial payment of delinquent taxes does not toll the redemption period. County officials relied on the Attorney General's opinion in issuing tax deeds. The purpose of HB 263 is to retroactively reverse the Attorney General's Opinion, but it will throw into question the validity of the tax deeds issued last summer and fall.

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DATE 1/25/59

HB 263

Rep. Don Heard

If there are property taxpayers out there who tendered a partial payment but who lost their property to a tax deed based on an Attorney General's Opinion, you are guaranteed a lawsuit. In that lawsuit the current owner of the property may be liable to return the property to the original taxpayer and the county may be liable to the current owner for the amount paid for the property. Either scenario may violate Article XIII, Section 1, which prohibits retrospective laws which impose new liability in respect to transactions or considerations already passed.

At the very minimum, the retroactive applicability date should be removed.

The Clerk and Recorders and the County Treasurers support the general concept of the bill, but not its retroactive applicaiton.

The Clerk and Recorders and Treasurers would also propose to amend the bill so that the running of the redmption period would be tolled by a partial payment only if the partial payment were made prior to the giving of the notice required by 15-18-212, MCA.

There is a great deal of work involved in sending the notice required by 15-18-212, MCA. This bill as drafted could require county officials to go through this expensive and time consuming process on a piece of property once a year for four consecutive years. The partial payment provision gives a taxpayer the opportunity to catch up on his taxes over a number of years. The proposed amendment would give a delinquent taxpayer 34 months in which to make a partial payment and extend the redemption period one year and would greatly assist the county officials in fulfilling their duties as mandated by the statute.

I would be happy to work with the staff or members of the committee in preparing any amendments that may be appropriate.

JCH/db
Attachment

VOLUME NO. 42

OPINION NO. 117

COUNTY OFFICERS AND EMPLOYEES - Lack of authority of county treasurers to refuse partial payment of delinquent property taxes;

COUNTY OFFICERS AND EMPLOYEES - County treasurer - a ministerial officer whose duties are limited by statute;

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OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 71 (1988), 40 Op. Att'y Gen. No. 15 (1983).

- HELD: 1. Partial payment of delinquent property taxes does not toll the period of redemption.
2. The county treasurer may not refuse partial payment of delinquent property taxes as long as delinquent taxes are due and the payment is made in accordance with section 15-16-102(5), MCA.

20 October 1988

Speaker Bob Marks
Montana House of Representatives
302 Lump Gulch
Clancy MT 59634

Dear Speaker Marks.

You have requested my opinion on several questions relating to delinquent property taxes, which I have rephrased as follows:

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2. May the county treasurer refuse to accept partial payment of taxes after notice under section 15-18-212, MCA, has been given?
3. If partial payment of delinquent taxes tolls the redemption period, is a tax deed invalid if issued pursuant to a notice stating that all delinquent taxes must be paid before the end of the three-year redemption period?



EXHIBIT 19
DATE 1/25/89
HB 263
Rep. Bob Haan

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PAUL E. VERDON

RESEARCH MEMORANDUM

Explanation of House Bill No. 263
51st Legislative Session

Prepared for The House Committee on Taxation

by

David D. Bohyer, House Taxation Staff

January 30, 1989

* * * * *

BACKGROUND

On Wednesday, January 25, 1989, the House Committee on Taxation conducted a hearing on House Bill No. 263 (HB 263). The title of the bill, in relevant part, states:

A bill for an act entitled: "An act providing for a 1-year extension of the property tax lien redemption period for each time partial payment of delinquent property taxes is made pursuant to section 15-16-102, MCA; . . .

Testimony presented to the Committee centered around two major issues (1) allowing the partial payment of delinquent taxes, and (2) tolling the period of redemption.

DISCUSSION OF THE BILL

Allowing Partial Payment

In the "Old Days"

Prior to 1983, practices among Montana's County Treasurers varied with respect to accepting partial payment of delinquent taxes. A common practice was to accept a partial payment of the delinquent taxes, e.g., a partial payment amounting to the delinquency of one year's taxes outstanding (and delinquent). That practice was held to be illegal in a 1983 opinion of the Attorney General. (40 A.G. Op. 15 @ 55, 58 (1983))

An attendant result of accepting partial payments was to "toll" the period for redeeming the taxes, i.e., the date on which a tax deed could be issued was extended each time a partial payment was accepted. While determining that acceptance of partial payments of delinquent taxes was illegal, the Attorney General also determined that the practice of tolling the redemption period was also illegal. (40 A.G.Op.15 @ 55, 58 (1983))

Senate Bill No. 162 -- 1987 Session

With respect to partial payment, Section 30(4) of Senate Bill No. 162 in the 1987 Session (SB 162), as introduced, clearly precluded county treasurers from accepting partial payment:

. . . If the taxes become delinquent, the county treasurer may not accept partial payment of the delinquent taxes, but may accept only the total amount of delinquent taxes, including penalties, interest, and costs. (Emphasis added.)

Through the legislative process, however, the same

section of the bill was amended in the Senate to read as follows:

. . . If the taxes become delinquent, the county treasurer may accept partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest.
(Section 15-16-102(5), MCA. Emphasis added.)

With the revisions in the language, the intent of the Legislature was revised and clearly stated: partial payment was acceptable. Current law, as interpreted by a recent opinion of the Attorney General, clearly states that partial payment of delinquent taxes not only is acceptable, but required to be accepted by a treasurer if offered by a taxpayer. (Section 15-16-102, MCA, and 42 A.G. Op. 117 (1988))

House Bill No. 263 -- 1989 Session

About partial payment:

While the word "may" is revised to "must" in HB 263, (p. 2, line 18), the revision does not change current law as interpreted by the Attorney General. The "may-to-must" revision merely codifies the opinion of the Attorney General.

About tolling the redemption period:

The other aspect of HB 263 -- tolling the redemption period -- is a significant change from current law.

Currently, a county treasurer must accept partial payment of delinquent property taxes. However, a

tender of partial payment does not toll the redemption period. Only payment-in-full of all delinquent taxes, interest, penalties, and costs tolls the issuance of a tax deed.

In writing the 1988 opinion on the question of whether or not a partial payment of taxes tolls the redemption period (42 A.G. Op. 117), the Attorney General concluded that existing statutory language regarding the redemption period is substantially the same as the language interpreted in a 1983 opinion (40 A.G. Op. 15). The 1988 opinion states, in relevant part:

. . . redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later. (Section 15-18-111(1), MCA.)

The opinion continues to address the tolling question:

. . . (this language) was interpreted in 40 Op. Att'y Gen. No. 15 at 55 (1983), which held that the statutes in existence did not provide for partial payment of delinquent taxes, but that in any event such partial payments do not extend the three-year redemption period. The rules of statutory construction provide that reenactment of a statute or passage of a similar one in substantially the same terms is an adoption of the construction placed on the previous statute by administrative agencies. . . The 1987 Legislature was well aware of the Attorney General's Opinion, as section 30 of Senate Bill 162 was an express reaction to

the opinion's conclusion that there was no existing statutory authority for partial payment of delinquent taxes. . . .

. . . I therefore conclude that in enacting section 16 and 30 of Senate Bill 162, the Legislature intended to give the taxpayers a break on payment of delinquencies but still within the confines of the statutory redemption period. (Emphasis added.)

The new language added in HB 263 to existing law would provide a new policy regarding tolling the issuance of a tax deed (i.e., extending the redemption period). The new language is on page 2, lines 23 and 24; page 3, line 10 and lines 20 through 23; page 4, lines 11 through 13; page 8, line 9 and lines 10 through 13; and page 9, lines 14 through 20. The new language clearly states that a partial payment of delinquent taxes extends the period of redemption, thus tolling the issuance of a tax deed.

In effect, the new language in HB 263 will require a reversion to the pre-1983 system of allowing partial payment of delinquent property taxes and tolling the issuance of property tax deeds upon partial payment.

About [Section 5] of the bill -- retroactive applicability:

Section 5 of HB 263 has, perhaps, the most immediate consequences. As written, section 5 and the remainder of the bill provide that if a taxpayer tendered partial payment of delinquent property taxes on July 1, 1988, or thereafter, the issuance of a tax deed would be tolled and the redemption period extended one year.

In an instance where no notification of pending tax deed issuance has been made or, in an instance where the notice has been made but no deed has been issued, all parties in the tax delinquency, tax sale, tax deed process could conceivably be held harmless. The process could just stop.

At least one other situation exists, however, that could be greatly affected by passage of the bill with the retroactive applicability date. That situation is one where a valid tax deed under existing law has been issued after July 1, 1988.

A person holding such a valid tax deed (under existing law) could be subjected to court proceedings by a person eligible (under HB 263) to redeem a property tax delinquency having tendered partial payment after July 1, 1988, or even after the tax deed had been issued.

Under this situation, there would be a possible impairment of contract.

About some possible options:

There are a variety of options left to the Taxation Committee and the Legislature. Among the options is, of course, to simply pass the bill as introduced or to kill the bill as introduced. There are also other options.

Option 1: Eliminate the Retroactive Applicability

The bill could be amended to eliminate the retroactive applicability. In so doing, the provisions of the bill would take effect on passage and approval. All persons tendering partial payment after passage and approval would receive an extension of the redemption period,

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effectively tolling the issuance of a tax deed. deeds issued under current law would not be affected by the passage of an amended HB 263, the provisions of which would only apply prospectively.

Option 2: Include a Savings Clause The bill could be amended to include a savings clause. In so doing, a person purchasing a valid tax deed in good faith would be held harmless. Any person tendering a partial payment after June 30, 1988 would extend the redemption period and toll the issuance of a tax deed, unless a tax deed had been issued after June 30, 1988, but before passage and approval. If a tax deed had been issued, it would remain valid.

Option 3: Include a Severability Clause The bill could be amended to include a severability clause. In so doing, the Legislature could let the cards fall where they may to private (and perhaps public) parties should an aggrieved taxpayer choose to file suit in an attempt to recover property on which the taxes had been delinquent for over three years, proper notification was provided, and on which a valid property tax deed (under current law) had been issued in good faith. However, prospective application of the bill's provisions -- especially, extending the redemption period -- should not be affected.

CONCLUSION

The Legislature has the authority to change the rights and responsibilities of property owners with respect to the payment of taxes. House Bill No. 263 is only one

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Rep. Tom Howard

of many attempts over the state's 100-year history to
make the system conform to the changing intentions and
attitudes of changing Legislatures and changing times.

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Hawthorn

**PROPERTY TAX
DELINQUENCIES,
TAX SALES, AND TAX DEEDS
REVENUE OVERSIGHT COMMITTEE**

A Report to the 50th Legislature

December 1986



Montana Legislative Council

Published by
MONTANA LEGISLATIVE COUNCIL
Room 138
State Capitol
Helena, Montana 59620
(406) 444-3064

