MINUTES

MONTANA SENATE
52nd LEGISLATURE - 2nd SPECIAL SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Mike Halligan, on July 13, 1992, at 1:30 p.m.

ROLL CALL

Members Present:
- Mike Halligan, Chairman (D)
- Dorothy Eck, Vice Chairman (D)
- Robert Brown (R)
- Steve Doherty (D)
- Delwyn Gage (R)
- John Harp (R)
- Francis Koehnke (D)
- Gene Thayer (R)
- Thomas Towe (D)
- Fred Van Valkenburg (D)
- Bill Yellowtail (D)

Members Excused: None.

Staff Present: Jeff Martin (Legislative Council)

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None.

HEARING ON SENATE BILL 9

Presentation and Opening Statement by Sponsor:

Senator Tom Keating told the Committee Senate Bill 9 is a reduction of adjustments for income taxes paid on the increase in retirement benefits for public retirees, including teachers and public employees. The retirees pay the income tax and a rebate or refund is given. Public employees receive approximately $156, teachers (in the $8500 retirement range) receive $270 as an annual adjustment. He explained he had intended to amend the bill to change the adjustment to a cost of living adjustment. Senate Bill 9 allows the teachers and public employees to pay income tax and receive a rebate. His desire was to increase the amount of deductibles to pay less tax instead of receiving a rebate.

Proponents' Testimony:

None.

Opponents' Testimony:

Representative Bervyl Kimberley spoke in opposition to Senate Bill 9. He told the Committee he had reluctantly supported Senate Bill 226 along with other organizations which also supported the bill. He stated these pensions have not received cost of living increases, and there promises made in the past that the pensions were not large but would be tax free. Even with the promise this would create a tax on one single group.

Tom Bilodeny, Research Director from the Montana Education Association spoke in opposition to Senate Bill 9 from prepared testimony. (Exhibit #1) He also asked it be noted in the record that former Representative Ralph Eudaily is in opposition to Senate Bill 9.

Representative Hal Harper told the Committee this legislation would propose to balance the fiscal crisis on the backs of those people who have built state government and educated our children. He stated Montana needs comprehensive tax reform, but this it is not fair to single out one group of people.

Tom Schneider, representing the Montana Public Employees Association told the Committee MPEA had not agreed with taxing of retirees. He urged the Committee to guarantee the compromise which was reached would be continued.

John Den Herder, President of the Association of Montana Retired Public Employees spoke from prepared testimony in opposition to Senate Bill 9. (Exhibit #2)

Alve Thomas spoke in opposition to Senate Bill 9 from prepared testimony. (Exhibit #3)

Larry Burlingame of the West Montana Retired Teachers Association, Missoula, told the Committee he worked 38 years as a teacher with the understanding state income exclusion was part of their compensation.

John Malee, representing the Montana Federation Teachers asked to go on record in opposition to Senate Bill 9.

Arnold Schiedaman???? from Missoula told the Committee the economic, social and moral contract with public employees, not to tax retirement income, is a prime consideration when taking employment with the state. He stated reneging on this commitment bodes poorly in attracting new teachers or other public employees to the state.

Tim Bergstrom, representing the Montana State Council of Professional Fire Fighters and the Montana State Firemens Association asked to go on record in opposition to Senate Bill 9.

Tom Foley, representing the American Federation of State, County and Municipal Employees asked to go on record in opposition to Senate Bill 9.

Don Walters, a private citizen from Missoula, asked to go on record in opposition to Senate Bill 9.

A letter from Don Wright was entered into the record. (Exhibit #4)

Don Judge, Executive Secretary of the Montana State AFL-CIO told the Committee the Montana State AFL-CIO unanimously endorsed a resolution opposing taxing of workers in city, counties, and the state.

Edwin Johnson, Helena told the Committee any reduction in his income by taxes would be a hardship.

Questions From Committee Members:

Senator Harp asked Larry Nachtsheim when the first payments are made for the tax year 91. Mr. Nachtsheim stated these were made on May 1, 1992; the 1992 payment will be April 1, 1993. The total amount of payment for 1992 was $3,193,000.

Senator Harp asked Judy Rippengale how much of the $3.1 million was held in tax. Ms. Rippengale told the Committee she did not know.

Closing by Sponsor:

Senator Keating agreed this is a tax increase. He stated for some it may be true for some that there was reneging on promises, but others it may not be true. He told the Committee Senate Bill 9 was not an attempt to balance the budget on the backs of retired teachers and public employees. He explained during the current crisis this would have been 3.7% of the shortfall of the budget while 8%, 10% and 15% are being taken from other budgets.

HEARING ON SENATE BILL 13

Presentation and Opening Statement by Sponsor:

Senator Greg Jergeson told the Committee the state must be comes to grips with the budget problems unless people are willing to give up something. He stated he feels a strong sense of ownership for the Growth Through Agriculture Program because he was the Senate co-sponsor of the original bill in 1987. He explained he has carried all subsequent amendments. He told the Committee the basis of the Growth Through Agriculture Act was to provide grants and loans to help get businesses started. He explained there are have been recent financing that have not met the original program, such as financing the trade office in the Orient. The cuts that were made in sub-committee and in full House Appropriations Committee were severe as they have been allocated to the experiment station, to extension service, to the bureau of mines and to the forrest conservation station. It does not help these agency to secure grants if the basic infrastructure of the agency is destroyed. Senate Bill 13 proposes to divide the 2% coal tax flow in two. Half is interrupted for a period of one year (grants and loans will not be made for one year), the other half will be allocated permanently into the four attached agencies in the University System, giving them a base of revenue. The performance of each program must be reviewed at the next session.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Questions From Committee Members:

Senator Thayer asked Senator Jergeson if this is the same as the counseling and mediation service. Senator Jergeson said it is not. He explained that is a general fund appropriation which is made to provide a stipend for those individuals who volunteer to help farmers in distress.

Senator Eck asked Senator Jergeson about the check off on income tax. Senator Jergeson explained the income tax checkoff with respect to agriculture is the Ag in Montana Schools. He stated this has no relationship to Growth Through Agriculture.

Senator Yellowtail asked Senator Jergeson if it can be verified what extent the practice of diverting this program to the Orient. Senator Jergeson stated $140,000 per year is going to the trade office in the Orient.

Senator Yellowtail asked Matthew Coen of the International Trade Program of the Montana Department of Commerce to clarify. Mr. Coen explained after the special session in January, 38% ($65,000) of the International Trade budget comes through Growth Through Agriculture. He told the Committee that passage of Senate Bill 13 as written would eliminate those monies for this fiscal year.

Senator Yellowtail asked if there were consistent with the original intent. Mr. Coen stated when the international trade program was started by the 1987 Legislature this was the funding system. Until this year it was 1/3 of the funding.

Senator Brown asked Mr. Coen if the 38% goes to the International Trade Divisions offices in Montana. Mr. Coen stated it was also Taiwan, Japan and Canada.

Senator Brown stated it is obvious there are agricultural relationships with all three of those countries. Mr. Coen stated the original intent of overseas offices was to concentrate on items other than wheat and barley. The focus has been on other crops, and processed foods here in Montana.

Senator Brown asked Mr. Coen if saw these expanding with the developing free trade agreement between the United States and Canada. Mr. Coen told the Committee he did, especially for the processed foods.

Senator Thayer asked Mr. Coen when the funding for support of the international trade was started. Mr. Coen explained the trade offices began in 1988, but the funding mechanism was put in the 1987 Legislature.

Senator Thayer asked Senator Jergeson if he had indicated he was surprised the monies were being used in this way. Senator Jergeson stated he was not clear as to when Growth Through Agriculture monies were used for the International Trade Office. In 1989, he supported general fund monies going into foreign trade office, and would continue to do so. He stated he was surprised to the degree to which Growth Through Agriculture money has been used.

Senator Halligan asked Matt Coen if the percentage has increased because general fund dollars have been cut. Mr. Coen explained it has become a larger part of the international trade office's budget. He stated since coal severance rates were changed the income declined, international is now a larger percent from the Growth Through Agriculture fund. The amount of money in terms of dollars is the same as 1988.

Senator Gage asked Senator Jergeson if he had looked into taking the Arts Council fund rather than this fund. Senator Jergeson explained one of keys to resolving fiscal difficulties is the willingness to cut our programs.

Senator Eck asked Mike Murphy of the Montana Department of Agriculture if there is an analysis or report showing the relative value to the state of the trade offices v. the others. Mr. Murphy said there was a report prepared for the Legislature review. Mr. Coen stated agriculture totals are grouped in the non-bulk commodity. He stated since the program began the focus has been on those areas on value added product from Montana. In 1987, $24 million (15%) of our exports was value added; in 1991,

$89 million (29%) of our total exports were valued added. According to the US Department of Commerce, for every million dollars of exports 20 new jobs are created.

Closing by Sponsor:

Senator Jergeson told the Committee Senate Bill 13, and his interest in the program indicates the very real struggle in dealing with the problems facing the state.

HEARING ON SENATE BILL 11

Presentation and Opening Statement by Sponsor:

Senator Steve Doherty told the Committee Senate Bill 11 changes the Resource Indemnity Coal Tax Trust calculation from the current .4% contract sales price to .5% of market value. This would reverse what was done last session. The changes had been done for the simplicity of accounting purposes and was supposed to be revenue neutral. Representative Ream has been attempting to find out if it is revenue neutral, but has had difficulty in obtaining information. Senate Bill 11 would 'force the issue' and the information being sought will be made available. Senator Doherty entered several pieces of correspondence into the record. (Exhibit #5)

He explained there were six coals companies making appeals directly on the market value of the coal and suprisingly enough were all receiving the same treatment. He questioned the retro-active applicability of what was changed.

He stated the budget office has prepared a fiscal note showing a $17,000 addition. This shows it is not revenue neutral.

Proponents' Testimony:

None.

Opponents' Testimony:

Jim Mockler, Executive Director of the Montana Coal Council spoke in opposition to Senate Bill 11. Mr. Mockler told the Committee the total annual value and the total annual tax figures have never been requested and never been denied. It is part of the annual report. He explained the problem is the asking for individual tax returns which are not public. He stated the privacy of this information protects one competitor from the other. This is the only information ever refused.

Ken Williams, representing Montana Power Company and ENTECH told the Committee after the 1991 the accountants were impressed with the simplicity of the calculation and its consistency with other tax policy. He explained it has been an area of legal dispute.

Tom Ebzery, attorney from Billings, representing NERCO and Spring Creek Mine told the Committee the audit department and accounting department made it clear there had been more time spent on this tax (on audits alone) and was pleased to have this bill passed last session. He commented NERCO has paid more since the passage of the bill but has experienced considerable time savings in the accounting department, and therefore is opposed to Senate Bill 11.

Questions From Committee Members:

Senator Towe asked Mr. Mockler if the coal companies were opposed to revealing all tax returns or only the RIT. Mr. Mockler commented he did not believe any tax returns were public information, but this bill addressed RIT.

Senator Towe asked Mr. Mockler if the coal companies did not want to reveal the information on the RIT forms, what part specifically are they objecting to. Mr. Mockler told the Committee by making any of the RIT information public a calculation can be made which allows the competitors to determine what the total company costs are. He explained there is no objection to the total (combined all companies) being revealed.

Senator Towe asked Mr. Mockler if he believed the .4 would be revenue neutral. Mr. Mockler stated he did.

Senator Gage asked Don Hoffman, Bureau Chief of the Natural Resources Bureau if any audits had been done in the year 1991. Mr. Hoffman stated there had not been.

Senator Gage asked Mr. Hoffman what the difference would be in performing an audit for 1991 compared to previous years. Mr. Hoffman stated in 1991 it would be simply comparing contract sales prices computed for the coal severance and then taking .4%; in the earlier years it required determining the value of the coal that is mined now. He explained typically coal is sold at a point FOB mine where it loaded on the train. Loading, handling, crushing, hauling, etc. had to then be taken from the value FOB.

Closing by Sponsor:

Senator Doherty told the Committee he understood the confidentially provisions in the RIT tax are not found in other taxes. He stated the mining business is highly competitive and there may be certain confidential proprietary information. He explained he continues to question why the companies which were in the appeals process, based under the old law, were each (with all their differences) able to receive the same treatment in the negotiations and have all decisions retroactively apply for four years. He stated he would like to know the legal basis for these decisions.

EXECUTIVE ACTION ON SENATE BILL 9

Motion:

Senator Harp moved Senate Bill 9 DO NOT PASS.

Discussion:

Senator Van Valkenburg told the Committee the faith cannot be broken.

Amendments, Discussion, and Votes:

None.

Recommendation and Vote:

Senate Bill 9 was voted UNANIMOUSLY DO NOT PASS.

EXECUTIVE ACTION ON SENATE BILL 13

Motion:

Senator Van Valkenburg moved Senate Bill 13 DO PASS AS AMENDED.

Discussion:

Senator Van Valkenburg stated the foreign trade office is a good idea, but if it is not an good enough idea to be funded out of the general fund, they should find other private funding or contributions.

Amendments, Discussion, and Votes:

Senator Towe moved to amend Page 5, Line 2. Motion to amend carried unanimously.

Recommendation and Vote:

The motion Senate Bill 13 DO PASS AS AMENDED CARRIED with Senator Brown and Senator Thayer voting NO.

ADJOURNMENT

Adjournment At: 2:45 p.m.

Mike Halligan

SENATOR MIKE HALLIGAN, Chairman

Linda Casey

LINDA CASEY, Secretary

MH/llc

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ROLL CALL

TAXATION COMMITTEE

DATE 7/13/92

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	X		
SENATOR DOHERTY	X		
SENATOR GAGE	X		
SENATOR HARP	X		
SENATOR KOEHNKE	X		
SENATOR THAYER	X		
SENATOR TOWE	X		
SENATOR VAN VALKENBURG	X		
SENATOR YELLOWTAIL	X		
SENATOR ECK, VICE CHAIR	X		
SENATOR HALLIGAN, CHAIR	X		

Each day attach to minutes.

ADVERSE

SENATE STANDING COMMITTEE REPORT

July 13, 1992

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 9 (first reading copy -- white), respectfully report that Senate Bill No. 9 do not pass.

Signed: ______________________
Mike Halligan, Chairman

7-13-92
Amd. Coord.

Sec. of Senate

SENATE STANDING COMMITTEE REPORT

July 13, 1992

MR. PRESIDENT:
We, your committee on Taxation having had under consideration Senate Bill No. 13 (first reading copy -- white), respectfully report that Senate Bill No. 13 be amended and as so amended do pass:

1. Page 5, line 2.
Strike: "allocation" through "subsection"
Insert: "the allocations provided by subsections"
Following: "(1)"
Insert: "and (2)"

Signed: ____________________
Mike Halligan, Chairman

7-13-92
Amd. Coord.

7-13-92
Sec. of Senate
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Montana Education Association 1232 East Sixth Avenue • Helena, Montana 59601 • 406-442-4250

--- 1992 RETIREMENT ISSUES FACTSHEET ---

---- 1991 RETIREMENT LEGISLATION ----
THE "ZERO SUM (OR WORSE)" TAXATION GAME!

On retirement issues, the 1991 legislature produced a very mixed record. On the plus side, Representative Nisbet's (D-Great Falls and a GFEA member) bill to allow educators to buy lost service time due to illness, strike or other reason was passed and signed by the governor. MEA was also successful in working with TRS to prevent Montana's university system from ending employer contributions to TRS in respect to the long-term liabilities associated with the "Optional Retirement Program." If this legislation (SB264) would have passed as originally introduced, the TRS would have had its contribution base cut by $700,000 per year.

On the negative side, the legislature tabled MEA's bills to establish a "Guaranteed Annual Benefit Adjustment" (GABA) for both TRS and PERS. Ignoring the obvious and substantial adverse impact of inflation on retirees' pensions (see separate "GABA Factsheet"), the legislature decided to continue to let retirees fend for themselves. MEA will be back in 1993 with follow-up GABA, or similar inflation-protection pension legislation.

Finally, on the final day of the 1991 session and in the face of MEA opposition, the legislature enacted and later the governor signed into law SB226 -- TRS/PERS pension taxation.

SB226 eliminated the fifty-year old income tax exempt status of TRS and PERS pension benefits. In its place, SB226 provided each individual a pension exclusion of the first $3,600 in benefits per year <u>if</u> that individual's total income from all sources is less than $30,000. Following a rapid phase-out of the total income threshold, even the $3,600 exclusion is lost if individual annual income exceeds $31,800. As a purported "make-whole" adjustment for the imposition of tax, Montana resident TRS and PERS retirees will have their pensions boosted upwards by +2.5%. Unfortunately, SB226's "make-whole" adjustment isn't enough to fully cover the cost of the new tax for even the typical 1991 TRS retiree.

SENATE TAXATION
EXHIBIT NO. #1
DATE 7/13/92
BILL NO. SB 9

PENSION TAXATION: BEFORE & AFTER SB226

Until changed by the 1991 legislature, Montana's income tax law treated the "typical TRS retiree" retiring in June of 1991 (i.e. a retiree age 55, with 25 years service, entitled to an annual TRS benefit of $13,000, and having $7,000 in non-pension income), to $127 in income tax based on the $7,000 of non-pension income.

Under SB226, the same 1991 retiree will receive an annual benefit adjustment of +$325 but be expected to pay $523 in Montana income tax on pension benefits ($13,260) plus other income ($7,000). <u>The "net impact" of SB226 on this retiree is to reduce his/her after-tax spendable income by $72; or the equivalent of reducing the value of his/her TRS pension by -.55%</u>.

SB226 obscures -- but in no fashion negates -- the fact that the taxation of public pension benefits is seen by some as a significant revenue source upon which the State's budget can be balanced. Indeed, SB226's pension tax was the one major "new tax" advocated by the governor and enacted by the 1991 legislature. It will raise more than $27 million in new revenue for the State during the 1991-93 biennium. Approximately $8 million of this new revenue will come from TRS and PERS pensioners, while the +2.5% pension adjustment will cost the State only slightly more than $7 million.

SB226 abrogated Montana's fifty-year promise of tax exemption for TRS/PERS benefits. SB226 failed to make the TRS/PERS systems and pensioners whole -- over the biennium, nearly $700,000 more in revenue will be collected from TRS/PERS benefit receivers than will be paid-out to selected retirees pursuant to the 2.5% pension adjustment. Moreover, SB226 fails to assure many current retirees and virtually all future retirees of an equivalent replacement benefit in exchange for the imposition of taxation.

MEA's efforts to defeat SB226 were instrumental in assuring that nothing less than a +2.5% benefit adjustment was authorized for TRS and PERS pensioners. We will remain vigilant to assure that the full intent of SB226 and continuing state funding for the adjustment are maintained. Nevertheless, enactment of pension taxation is a serious and lasting scar on the record of the 1991 legislative session. By playing "budget-balance games" on the backs of pensioners, retirees can -- at best -- view the 1991 legislature (and possibly the 1992 special or 1993 regular legislatures as well-?) as a "zero-sum" finance exercise.

MEA/tb:1/3/92

JUNE 1990

MEA-R Newsline

Montana Education Association
Retired Members Program
1232 East Sixth Avenue
Helena MT 59601
1-800-332-2270

Volume 6, Number 2 - June 1990

Will the State tax your retirement benefits?

Just over one year ago, the U.S. Supreme Court ruled that Michigan's state income tax exemption for state and local retiree benefit income was unconstitutional if the same exemption was not also allowed for federal retiree benefit income. Davis v. Michigan Dept. of Treasury (1989).

Currently, the Court is considering whether states must refund already collected state income tax revenue resulting from federal retiree benefit income. Additionally, separate legal actions have been filed or are being planned in Montana and other states which assert a constitutional right to "equal tax treatment" and refund entitlements for both federal and private pension retirement benefit recipients.

The Supreme Court's decision unleashed a whirlwind of legislative activity in two dozen states — including Montana — that had state income tax exemptions for state and local retiree benefits similar to those provided by Michigan law. Montana narrowly avoided a hasty legislative response during last summer's special legislative session. However, Montana's Department of Revenue, by administrative rule, did not collect income tax on federal retiree benefit income for 1989. Regardless, the issue of taxing your retirement benefits will be one of the major issues for debate during the 1991 regular legislative session.

Historically, MEA has opposed state income taxation of TRS and PERS benefits. Our position is fundamentally grounded on the fact that the overall level of TRS and PERS benefits were initially determined and subsequently adjusted based on the presumption of income tax exemption. If constitutional law mandates a technical adjustment in the manner that Montana treats non-state/local retiree income or otherwise requires a statutory amendment of Montana's income tax law, MEA will hold fast to the position that TRS and PERS retirement benefit recipients must — at the very least — be "held-harmless" and continue to receive the same retirement benefit value that is presently received.

MEA can pursue our position on taxation of retiree benefits in a number of different ways. We can, for example, argue for a "minimal response" to the Supreme Court's decision by exempting federal retiree benefit income, or we can conditionally accept taxation of TRS-PERS benefit income so long as a corresponding increase of the benefit level is legislated. (A summary prepared by the Federation of Tax Administrators on how eleven other states have responded to the Davis decision is found below.)

The MEA Retirement Committee and Jack Johnson (MEA-R Chair) are interested in hearing your ideas on this issue. We'd also like to know if you are interested in helping on the 1991 legislative lobby effort concerning taxation of TRS-PERS benefits and/or other MEA retirement issues. Please send your comments to: Tom Bilodeau, MEA, 1232 E.Sixth Ave., Helena MT 59601.

Benefits — continued on page 2

Congratulations to newly elected MEA-R State Chair: Jack Johnson of Billings

Benefits — continued from page 1

Eleven states have enacted legislation to alter the state income taxation of public employee retirement benefits in response to the 1989 U.S. Supreme Court decision in Davis. These states have not, for the most part, opted to exempt fully the federal retirement benefits. Instead, they have chosen to impose tax on a substantial portion of state and local benefits by allowing state, local, and federal retirees to exclude a relatively modest amount of retirement income from taxation. As shown in the table, in all but two states, the exclusions range from $2,000 to $6,000.

CHARACTERISTICS OF STATE LEGISLATION PASSED IN RESPONSE TO DAVIS V. MICHIGAN DEPARTMENT OF TREASURY

State	Exclusion Level	Includes Private	Age Limit	Phase-Out of exclusion	Benefit Offset	Prior Tax on State/Local
Arizona	$2,500	NO	NO	NO	YES	Exempt
Colorado[1]	$20,000	YES	55	NO	NO	Same
Iowa[2]	$2,500	NO	55	NO	NO	Exempt
Missouri[3]	$6,000	NO	NO	YES	NO	Exempt
New York[4]	Exempt	NO	NO	N/A	N/A	Exempt
Oklahoma	$5,500	NO	NO	NO	NO	Exempt
Oregon[5]	$5,000	NO	62	YES	YES	Exempt
South Carolina[6]	$3,000	YES	NO	NO	YES	Exempt
Virginia[7]	$16,000	YES	55	YES	NO	Exempt
West Virginia	$2,000	NO	NO	NO	NO	Same
Wisconsin[8]	Exemption for federal employees entering prior to 1/1/64	NO	NO	N/A	N/A	Same - Taxed unless in Milwaukee systems prior to 1/1/64

[1]Colorado - State, local, federal and private retirees over age 55 may exclude the first $20,000 of retirement income. Under prior law, state, local, federal civilian and private retirees regardless of age were eligible for a $20,000 exclusion, but military retirees under age 55 were accorded only a $2,000 exclusion.

[2]Iowa - Exclusion level is $2,500 for single taxpayers and $5,000 for joint filers. It is effective for tax year 1989 only. Without change, all pension benefits will be taxable in 1990.

[3]Missouri - Exclusion is $3,000 in tax year 1989 and $6,000 in 1990 and forward. The $6,000 exclusion will apply to private pensioners in tax year 1991. The exclusion is not allowed for taxpayers with an adjusted gross income of greater than $25,000 single/$31,000 married ($12,500/$16,000 in tax year 1989.)

[4]New York - exempts benefits received by federal retirees. State Constitution prohibits taxation of state and local retirement benefits. Previously, federal retirees (as well as all other retirees) were eligible for a $20,000 exclusion.

[5]Oregon - Exclusion phases out between $30,000-35,000 income. State and local retirees will receive a rebate of the additional tax paid. The new law expires after tax year 1990.

[6]South Carolina - Private retirees must be age 62 or over to qualify for the exclusion.

[7]Virginia - The first $16,000 of retirement income is fully excluded; for income between $16,000 and $40,000, the exclusion is reduced by $1 for every $3 of income down to $8,000; over $40,000, no exclusion is allowed. The exclusion is phased in over three years. Taxpayers with retirement income between $16,000 and $40,000, the exclusion is reduced by $1 for every $3 of income down to $8,000; over $40,000, no exclusion is allowed. The exclusion is phased in over three years. Taxpayers with retirement income between $16,000 and $40,000 will be allowed 50% of the allowable exclusion in tax year 1989, 75% in 1990 and 100% in 1991 and forward.

[8]Wisconsin - Exempts benefits of federal retirees who entered systems prior to January 1, 1964. Benefits received by other federal retirees and all state and local retirees, except those entering certain Milwaukee local systems prior to January 1, 1964, will remain fully taxable. Source: Federation of Tax Administrators compilation from various sources.

MARCH 1991

MEA-R NEWSLINE

Montana Education Association Retired Members Program

1232 East Sixth Avenue — Helena MT 59601
Volume 7, Number 2 March 1991

CT NOW!

RS & PERS Pension Tax Bills hreaten Your Livelihood!

ably during the next two weeks, critical lative (and legislative leadership) decis will be made on bills that propose to tax her Retirement System (TRS) and Public loyee Retirement System (PERS) pension fits. MEA's Legislative Program (Item position on the issue is explicit: MEA opposes efforts to tax school mployees' retirement benefits without n equivalent replacement benefit." e of the bills presently before the Legislafully comply with the Association's ion.

tact Legislators on the House l Senate Tax Committees (a list ears on the following page), islative leadership or legislators n your area now to express your cern on this issue.

fically, MEA opposes SB 124 (Senator e Swift: R-Hamilton). SB 124 would pt from taxation the first $12,000 of state, al or private retirement pension benefits. after, any pension income in excess of 00 would be treated as ordinary income ct to deductions, credits, and ultimately x. SB 124 fails to provide any pension stment to offset for the new tax and the 00 threshold is not indexed — i.e. as e retirees begin receiving benefits, a er portion of their benefits will be subject .

MEA also opposes SB 226 (Senator John Harp: R-Kalispell). SB 226 is the Governor's most recent proposal for pension taxation. It would exempt the first $10,000 of pension benefits if the "retiree household's" total income is less than $35,000. For households having total annual income of more than $35,000, all pension income would be taxed. SB 226 lacks any pension adjustment mechanism, the threshold levels are not indexed, and no provision is made for the adverse taxation impacts that result when additional taxable income climbs above Social Security's current $21,000 threshold.

Although sympathetic to the intent of Senator Dorothy Eck's (D-Bozeman) bill, MEA also opposes SB 218. SB 218 would tax all pension benefit income above $3,600 but then provide a tax rebate to TRS and PERS pensioners that equals the amount of tax they paid on TRS and PERS benefits. Unfortunately, the bill's rebate formula fails to fully reimburse pensioners for all of the new tax they will be paying if the pensioner has any non-pension income. Additionally, SB 218 is structured in such a way that federal pensioners have rather persuasively argued that they will succeed in a threatened court challenge.

MEA vigorously opposed all three of the Senate bills when they were heard before the

Act Now — continued on page 2

Act Now — continued from page 1

Senate Taxation Committee. All three bills are now awaiting executive action by the Senate Taxation Committee.

Meanwhile, in the House, Representative O'Keefe (D-Helena) has introduced HB 900. Presently, HB 900 is supported by the Montana Retired Teachers' Association and the Montana Association of Retired Public Employees. HB 900 raises TRS and PERS benefits by 2.5% in an attempt to offset the amount of new income tax imposed on TRS or PERS benefits in excess of $3,600 a year. O'Keefe's bill comes the closest of all pending bills to holding retirees harmless for newly imposed taxes. However, during the House Taxation Committee hearing on March 5, an attorney representing federal pensioners promised litigation if HB 900 was enacted.

MEA is presently reserving judgment on HB 900. We are watching the bill (and possible amendments) very closely as the Legislative Leadership appears interested in incorporating the proposed $3,600 pension exemption threshold plus a minimal offsetting TRS and PERS benefit adjustment into a more comprehensive income tax code revision bill. At this point in time, HB 900, at best, minimally conforms with the Association's policy position regarding retirement benefit taxation.

OCTOBER 1991

MEA-R Newsline

Official Publication of the Montana Education Association Retired Members Program
1232 East Sixth Avenue — Helena, MT 59601 — 1-800-332-2270 or 406-442-4250
October 23, 1991

How does your future look after the new pension tax legislation?

The Montana Legislature — despite vigorous MEA opposition — did enact TRS and PERS public pension taxation last April. Now, it appears that a legal action filed in August by a group of individual pensioners challenging the tax provisions of SB226 as applied to federal service pension recipients might potentially affect both the taxation and benefit adjustment aspects of SB226. No decision from the District Court is anticipated before mid-1992.

While MEA and MEA-R will continue to keep our members informed of developments in the case as they arise, we thought we would refresh everyone's memory on what is at stake. A general description of the tax bill (SB226) prepared by TRS reads:

"Senate Bill 226 provides for the taxation of all pension benefits over $3,600.00. This exemption will be reduced $2.00 for each $1.00 of federal adjusted gross income in excess of $30,000.00. This bill also provides for a statutory appropriation of 2.5% of total benefits. The TRS board will distribute this appropriation in a lump sum payment in May of each year beginning in 1992. Only retirees who are residents of the State of Montana will be eligible to receive this benefit adjustment. This bill also directs the Revenue Oversight Committee to study the taxation of pension benefits and to report their findings and recommendations to the 53rd Legislature."

The tax impacts of SB226 will only be felt by TRS benefit receivers subject to Montana income taxation law. For those receivers filing Montana tax forms next winter on calendar year 1991 income, SB226 will effectively raise the level of Montana income tax expected of them. The actual increase will vary according to the taxpayer's combined TRS and non-TRS income level. The State of Montana will thus collect these new state revenues during the spring of 1992 based on 1991 taxpayer income

SB226 also provided a continuing general fund statutory appropriation for increasing TRS and PERS benefits by an amount equal to 2.5% of the total amount of benefits paid during the prior year. However, this additional 2.5% of system-wide benefit dollars will only be paid to in-state TRS and PERS benefit receivers. Given the current distribution of in-state and out-state TRS benefit receivers, the upward adjustment for in-state TRS benefit receivers is likely to approach +2.9%.

Despite a legal opinion offered by the Montana Legislative Council that this 2.5% is due beginning in June of 1991, the Governor's office has taken the position that SB226 does not mandate, nor will a benefit adjustment be made, until May of 1992. It is anticipated that the adjustment pay-out will take the form of a once a year "13th check."

MEA will continue to watch closely the pension tax case and will participate in the Interim Legislative Committee on Retirement Issues meetings. You can let MEA know what you would like us to emphasize by contacting Jack Johnson, MEA-R Chairman (1-406-259-5578), or Tom Bilodeau, MEA Research & Retirement Issues Director (1-800-332-2270 or 1-406-442-4250).

Your opinions and recommendations will be forwarded to the MEA Retirement Committee for discussion at its November meeting.

Did You Know?

Since 1976, NEA has had more members serving as delegates to the Democratic and Republican conventions than any other membership organization in the country. — *NEA Leader's Reference Book*

AMRPE

Association of Montana Retired Public Employees

Post Office Box 4721
Helena, Montana
59604

A non-profit corporation of P.E.R.S. Retirees for P.E.R.S. Retirees

TESTIMONY ON SB 9--SPECIAL SESSION 1991

ASSOCIATION OF MONTANA RETIRED PUBLIC EMPLOYEES

How soon we forget. It was a mere 15 months ago that the Association reluctantly agreed to the elimination of a long-standing benefit of employment for public retirees. The only reason the Association agreed to the elimination of the tax exemption for retirement benefits was because SB 226 contained the "make whole" provision providing a 2.5 percent increase in benefits. Had the Association and other groups representing retirees opposed Senator Harp's bill, it most likely would have failed.

However, the public retirees recognized the difficult position the legislature was in because of the <u>Davis v. Michigan</u> case. That case prohibited the state from taxing federal retirees differently than state retirees. To exempt federal retirees would have caused a loss of several million dollars in revenue. At a minimum, the state had a moral obligation to continue this benefit of employment. Many public retirees worked their entire lives with the promise that their retirement benefits would not be taxed. However, due to the problem with federal retirees, public retirees agreed to substitute the tax exemption for the "make whole" 2.5 percent increase. That allowed the state to collect those millions of dollars that were lost due to the <u>Davis</u> decision.

Although every effort was made to be fair to public retirees in the "make whole" provision, many suffered loses under SB 226. They paid much more in taxes than they received. Now, SB 9 proposes that the state break faith with its employees--those very employees who agreed to help the state by giving up their tax exemption. It's a sad day when the best solution offered to the state's financial problems is to balance the budget on backs of seniors and retirees.

We ask you to kill SB 9.

SENATE TAXATION
EXHIBIT NO. 2
DATE 7/13/92
BILL NO. SB 9

Montana Retired Teachers Association

July 13, 1992

To: Senate Taxation Committee
From: The Montana Retired Teachers Association

The Montana Retired Teachers Association opposes S.B. 9 that would eliminate the benefit adjustment to retired teachers and public employees under the provisions of S.B. 226.

Since 1937 retired teachers were assured that their pension benefits would not be taxed. Because of the 1989 U. S. Supreme Court decision, that ruled that federal retirees could not be taxed differently than state retirees, we were persuaded to agree to a tax if a reimbursement was assured.

State retirees paid state income taxes in 1991 and received a reimbursement with the May check in 1992. Those with lower benefits received more than they paid in taxes. Those with higher benefits received less than they paid in state income taxes.

To eliminate the adjustment would be an abrogation of the agreement that we made. We would not have supported a tax that was contrary to fifty years of assurances that benefits would not be taxed, if we thought the reimbursement would be eliminated after one year.

When a teacher retires from teaching in Montana, he or she must realize that every year his or her purchasing power will diminish. Montana is one of the few states that does not have any type of regular cost of living adjustment. To tax the benefits and then eliminate the reimbursement would be totally unfair.

Alve Thomas
State Coordinator
Montana Retired Teachers Assn.

SENATE TAXATION
EXHIBIT NO. 3
DATE 7/13/92
BILL NO. SB 9

Helena, Mt.
July 13, 1992

Chairman
Senate Taxation committee:

Regarding ~~HB-8~~ SB-9 Wright I would like to submit the following for your consideration concerning the revoking of the rebate of state income tax for retired state employees.

I retired in 1977 after 36 years of service to the State of Montana. My take home retirement pay was $868. My take home pay is now $875, $7.00 more than it was in 1977. The cost of living has risen more than 50 percent since 1977. The end result is that I have less than 50% of the buying power I had at the time of retirement. This is in face of rising medical costs and other costs associated with aging.

I respectfully request that ~~HB-8~~ SB-9 Wright be killed.

Sincerely:

Donald Wright

Donald Wright
Retired State Employee
1445 Otter Rd
Helena, MT 59601

SENATE TAXATION
EXHIBIT NO. #4
DATE 7/23/92
BILL NO. SB 9

State of Montana

Stan Stephens, Governor

Department of Revenue
Denis Adams, Director

Room 455, Sam W. Mitchell Building
Helena, Montana 59620

December 20, 1991

Mr. James D. Mockler
Executive Director
Montana Coal Council
2301 Colonial Drive
Helena, Montana 59601

Dear Mr. Mockler:

This letter confirms that the six coal producers in Montana have notified the Department that they find the Resource Indemnity Trust Tax calculation acceptable. These six companies have agreed to calculate the RITT for 1987, 1988, 1989, and 1990 based upon .4 percent of the contract sales price as defined in Section 15-35-102, MCA.

Should you need any additional information, please contact me.

Sincerely,

Denis Adams

Denis Adams
Director

cc: Decker Coal Company
Knife River Coal Mining Company
Peabody Coal Company
Spring Creek Coal Company
Western Energy Company
Westmoreland Resources, Inc.
Jerry Foster
Dave Woodgerd

SENATE TAXATION
EXHIBIT NO. 5
DATE 7/13/92
BILL NO. SB 11

Montana Legislative Council

Research and Reference Services

Room 138 • State Capitol
Helena, Montana 59620-1706
(406) 444-3064
FAX (406) 444-3036

March 10, 1992

TO: Jerry Foster, Administrator, Natural Resource and Corporation Tax Division

FROM: Dave Bohyer

RE: Historical data on coal production taxes

I am attempting to respond to an information request from a legislator and I need your assistance in gathering some data on taxes on coal production. The specific taxes are the Resource Indemnity Trust Tax imposed under Title 15, chapter 38, MCA, and the Coal Severance Tax imposed under Title 15, chapter 35, MCA.

More specifically, for tax years 1980 through 1990, I am interested in four specific pieces of information for each of six Montana coal producers. For each year, those four pieces are:

- the total annual "gross value of product" (per 15-38-104, MCA) for Resource Indemnity Trust Tax (RITT) purposes;
- the total annual RITT paid;
- the total annual value of product in contract sales price (per 15-35-103, MCA) for coal severance tax (CST) purposes; and
- the total annual CST paid.

The six coal producers are: Decker Coal Company; Knife River Coal Company; Peabody Coal Company; Spring Creek Coal Company; Western Energy Company; and Westmoreland Resources, Inc.

For your convenience, I have attached six tables -- one for each of six coal producers -- that you might fill in and return to me. It would be very helpful to me if you could provide the information to me by April 3. If you have any questions, please give me a call at 444-3064.

Thank you for your assistance and cooperation.

db\03102b.ddb
enc.

Montana Legislative Council

Research and Reference Services

Room 138 • State Capitol
Helena, Montana 59620-1706
(406) 444-3064
FAX (406) 444-3036

April 23, 1992

TO: Jerry Foster, Administrator, Natural Resource and Corporation Tax Division

FROM: Dave Bohyer

RE: Historical data on coal production taxes

On March 10, I requested some information from you regarding taxes on coal production in Montana. Rather than ask you to rummage through your March files for that memo, I will just reiterate the request.

The specific taxes that I am interested in are the Resource Indemnity Trust Tax imposed under Title 15, chapter 38, MCA, and the Coal Severance Tax imposed under Title 15, chapter 35, MCA. For tax years 1980 through 1990, I am interested in four specific pieces of information for each of six Montana coal producers. For each year, those four pieces are:

- the total annual "gross value of product" (per 15-38-104, MCA) for Resource Indemnity Trust Tax (RITT) purposes;
- the total annual RITT paid;
- the total annual value of product in contract sales price (per 15-35-103, MCA) for coal severance tax (CST) purposes; and
- the total annual CST paid.

The six coal producers are: Decker Coal Company; Knife River Coal Company; Peabody Coal Company; Spring Creek Coal Company; Western Energy Company; and Westmoreland Resources, Inc.

I have again attached six tables -- one for each of six coal producers -- that I hope you will complete and return to me by Wednesday, April 29. If you have any questions, please call me at 444-3064.

Thank you for your assistance and cooperation!

db\04223a.ddb
enc.

DATE: April 29, 1992

TO: Dave Bohyer
Legislative Council

FROM: Jerry Foster, Administrator
Natural Resource & Corporation Tax Division

SUBJECT: Historical data on coal production taxes

Attached is the information you requested regarding the severance and resource indemnity trust tax gross values and tax payments. You will note that we have provided a company by company breakdown for the severance tax only. We have not provided the by company breakdown you requested for the resource indemnity trust due to the confidentiality requirements of the resource indemnity trust statutes.

If you have any questions regarding this information please contact Don Hoffman or me.

cc: Denis Adams

G:\123\COAL\COALCSP
Montana Legislative Council
Research and Reference Services
Room 138*State Capitol
Helena, Mt 59620-1706
Attn: Dave Bohyer

	TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID	TOTAL ANNUAL GROSS VALUE PER RITT RETURN	TOTAL ANNUAL RITT PAID
1980	$210,363,854.71	$63,109,156.71	$151,176,449.21	$755,882.25
1981	$224,343,956.06	$67,124,461.57	$158,759,250.84	$793,796.25
1982	$261,680,212.85	$78,396,281.47	$215,929,263.69	$1,079,646.32
1983	$266,354,152.39	$79,719,935.27	$204,338,494.73	$1,021,692.47
1984	$298,903,744.03	$89,449,270.67	$236,913,921.01	$1,184,569.61
1985	$299,324,324.44	$89,598,424.26	$231,787,139.42	$1,158,935.70
1986	$272,304,323.64	$80,044,532.47	$215,922,183.30	$1,079,610.92
1987	$251,663,516.30	$71,236,611.91	$240,259,949.71	$1,201,299.75
1988	$272,688,611.97	$70,720,656.38	$256,932,703.21	$1,284,663.52
1989	$248,298,808.44	$54,053,173.76	$198,422,674.36	$992,113.37
1990	$255,442,943.02	$52,961,957.62	$204,593,048.02	$1,022,965.24

G:\123\COAL\COALCSP

		TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID
DECKER COAL COMPANY	1980	$128,901,519.00	$38,670,456.00
	1981	$126,658,506.00	$37,997,553.00
	1982	$135,605,567.00	$40,681,670.00
	1983	$138,867,528.00	$41,660,258.00
	1984	$142,168,435.00	$42,650,531.00
	1985	$145,353,012.00	$43,605,904.00
	1986	$132,779,789.00	$39,019,420.00
	1987	$110,754,414.00	$30,536,176.00
	1988	$130,112,457.00	$35,092,752.00
	1989	$106,352,707.00	$24,871,281.00
	1990	$102,830,918.00	$22,300,032.00

		TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID
KNIFE RIVER COAL	1980	$1,935,488.95	$387,043.00
	1981	$1,787,264.42	$357,452.89
	1982	$1,542,837.52	$308,567.50
	1983	$1,863,133.45	$372,626.69
	1984	$2,218,543.49	$443,708.71
	1985	$1,988,728.66	$397,745.73
	1986	$2,322,271.49	$461,969.46
	1987	$2,704,132.32	$517,767.71
	1988	$2,144,204.68	$316,973.14
	1989	$2,383,075.00	$380,360.02
	1990	$2,012,848.00	$240,712.93

		TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID
PEABODY COAL COMPANY	1980	$14,819,811.17	$4,486,611.00
	1981	$17,295,634.59	$5,190,656.00
	1982	$19,425,900.00	$5,827,770.00
	1983	$19,233,935.34	$5,770,183.60
	1984	$26,497,684.00	$7,949,305.60
	1985	$25,698,046.00	$7,709,413.00
	1986	$19,008,622.00	$5,508,386.25
	1987	$24,657,318.00	$7,397,195.00
	1988	$23,420,925.00	$5,705,087.00
	1989	$26,735,526.00	$5,662,544.00
	1990	$20,998,215.00	$5,189,378.00

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		TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID
SPRING CREEK COAL	1980	$0.00	$0.00
	1981	$7,999,573.00	$2,399,788.00
	1982	$14,717,063.33	$4,415,119.00
	1983	$26,330,929.00	$7,899,279.00
	1984	$32,475,607.00	$9,742,683.00
	1985	$30,711,146.00	$9,213,344.00
	1986	$32,523,666.00	$9,436,664.00
	1987	$34,058,234.00	$9,247,338.00
	1988	$20,390,641.00	$3,857,586.00
	1989	$26,638,486.00	$5,042,464.00
	1990	$31,806,195.00	$5,158,950.00

		TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID
WESTERN ENERGY COMPANY	1980	$52,755,534.86	$15,826,660.46
	1981	$65,795,024.75	$19,738,507.42
	1982	$66,923,005.30	$20,123,403.07
	1983	$72,981,053.75	$21,894,316.12
	1984	$87,866,022.93	$26,359,806.87
	1985	$87,596,401.57	$26,278,920.47
	1986	$80,612,542.92	$24,113,370.92
	1987	$76,285,124.99	$22,576,846.70
	1988	$89,452,695.09	$23,904,272.99
	1989	$80,363,150.86	$17,020,812.38
	1990	$88,278,282.02	$18,070,996.69

		TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID
WESTMORELAND RESOURCES	1980	$28,706,800.85	$8,612,040.25
	1981	$30,103,160.89	$9,030,948.26
	1982	$23,465,839.70	$7,039,751.90
	1983	$7,077,572.85	$2,123,271.86
	1984	$7,677,451.61	$2,303,235.49
	1985	$7,976,990.21	$2,393,097.06
	1986	$5,057,432.23	$1,504,721.84
	1987	$3,204,292.99	$961,288.50
	1988	$7,167,689.20	$1,843,985.25
	1989	$5,825,863.58	$1,075,712.36
	1990	$9,516,485.00	$2,001,888.00

G:\123\COAL\COALCSP

		TOTAL ANNUAL VALUE OF PRODUCT (IN CSP) FOR CST	COAL SEVERANCE TAX PAID
SPRING CREEK COAL	1980	$0.00	$0.00
	1981	$7,999,573.00	$2,399,788.00
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	1983	$26,330,929.00	$7,899,279.00
	1984	$32,475,607.00	$9,742,683.00
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WESTERN ENERGY COMPANY	1980	$52,755,534.86	$15,826,660.46
	1981	$65,795,024.75	$19,738,507.42
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	1989	$80,363,150.86	$17,020,812.38
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WESTMORELAND RESOURCES	1980	$28,706,800.85	$8,612,040.25
	1981	$30,103,160.89	$9,030,948.26
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	1987	$3,204,292.99	$961,288.50
	1988	$7,167,689.20	$1,843,985.25
	1989	$5,825,863.58	$1,075,712.36
	1990	$9,516,485.00	$2,001,888.00

State of Montana
Stan Stephens, Governor

Department of Revenue
Denis Adams, Director

Room 455, Sam W. Mitchell Building
Helena, Montana 59620

RECEIVED
MAY 13 1992
MONTANA LEGISLATIVE
COUNCIL

May 12, 1992

Dave Bohyer, Director
Research Division
Montana Legislative Council
Helena, Montana 59620

Dear Dave:

In a memorandum of April 23, 1992, to Jerry Foster, Administrator of the Natural Resource and Corporation Tax Division, you requested information concerning taxes paid by coal companies. The Division provided you with a great deal of information.

You were provided with the aggregate total for "gross value of product" and amount of tax reported for the Resource Indemnity Trust Tax. You were provided with the aggregate total for value of product as a function of contract sales price and the amount of tax reported for the coal severance tax. You were also provided with individual taxpayer information on contract sales price and coal severance tax reported for each of six different companies.

The above information is not covered by any confidentiality statutes. However, the Montana Legislature has made individual taxpayer returns confidential under the Resource Indemnity Trust Tax (RITT), section 15-38-109, MCA. As a result, the Department can not provide RITT information for individual taxpayers. We have provided the information in the aggregate because in this manner, confidential individual tax return information is not revealed.

The Department will be happy to discuss these taxes with you and answer any questions we can without violating taxpayer confidentiality.

If you have any questions or concerns, please let me know.

Sincerely,

Denis Adams

Denis Adams, Director

cc: Representative Bob Gilbert, Chairman, Revenue Oversight Committee
Jerry Foster, Administrator, Natural Resource & Corp. Tax Division

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Montana Legislative Council

Research and Reference Services

Room 138 • State Capitol
Helena, Montana 59620-1706
(406) 444-3064
FAX (406) 444-3036

May 27, 1992

Denis Adams, Director
Department of Revenue
Room 455, Sam W. Mitchell Bldg.
Helena, MT 59620

Dear Denis,

Following receipt of your May 12 letter, I have discussed the instant request for information with the requesting legislator, a few other legislators, and with my colleagues within the Legislative Council staff. Summarizing the conversations with the various legislators is fairly simple: they want me to pursue the information and respond to the original request. The conversations with my Council colleagues leads us to believe that the information that I have requested is likely not confidential under the statutes or the Constitution.

With those conversations as background, I am taking this opportunity to ask you to reconsider your decision to deny my request for information on Montana's resource indemnity trust tax (RITT). To that end, I am again requesting information regarding the RITT, as I cannot respond to the legislative request for information without the information I requested from you previously.

Specifically, for the years 1980 through 1990, I am requesting the gross value of product and the amount of RITT paid by each of six coal producers. Specifically, for tax years 1980 through 1990, I need two specific pieces of information for each of six Montana coal producers. For each year, those two pieces of information are:

- the total annual "gross value of product" (per 15-38-104, MCA) for Resource Indemnity Trust Tax (RITT) purposes; and

- the total annual RITT paid.

The six coal producers are: Decker Coal Company; Knife River Coal Company; Peabody Coal Company; Spring Creek Coal Company; Western Energy Company; and Westmoreland Resources, Inc.

I respectfully recognize your interpretation of confidentiality requirements and your desire to follow that interpretation, but I must also respectfully recognize a legitimate request for information from an elected official who has a need for information that is necessary to his analysis and decision making. Consequently, I hope that you are able to provide me with the information that I have requested in a manner that will serve your interests as well. Finally, I hope that we can resolve this matter by next Friday, June 5.

If you have any questions or concerns, please contact me.

Sincerely,

Dave

David D. Bohyer, Director
Research and Reference Services

lao 2148dbxa

State of Montana
Stan Stephens, Governor

RECEIVED
JUN 12 1992
MONTANA LEGISLATIVE COUNCIL

Department of Revenue
Denis Adams, Director

Room 455, Sam W. Mitchell Building
Helena, Montana 59620

June 9, 1992

Dave Bohyer, Director
Research Division
Legislative Council
Room 136, State Capitol
Helena, Montana 59620

Dear Dave:

I appreciate your concerns, as expressed in your letter of May 27, regarding the confidential information contained in Resource Indemnity Trust Tax returns. However, I must disagree with your apparent opinion that the information you are requesting is not confidential. It is clearly confidential by statute and under the Montana Constitution. I know you are aware of §§ 15-38-104 and 15-31-507, MCA. In addition, the Department has an administrative rule, ARM 42.23.105, which applies to the corporation license tax and, because of the statutory cross reference, to RITT. These provisions speak for themselves and clearly cover the information you are requesting.

It may be helpful if I explain why this information is confidential under the constitutional right of privacy as well as by statute. As you are no doubt aware, the Montana Constitution provides for the right to examine public documents "except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." Art. II, Section 9, Montana Constitution. In addition, Art. II, Section 10 of the Montana Constitution is one of the strongest provisions protecting individual privacy in any state constitution. The Montana Supreme Court has clearly stated that "individual privacy" protects corporations. Mountain States Telephone and Telegraph Co. V. Department of Public Service Regulators, 643 P2d 181, 183 (1981) and Belth v. Bennett, 227 Mont 341, 740 P2d 638 (1987).

The reason this particular information is confidential is that in conjunction with information from the severance tax returns, a competitor could ascertain certain information about how a particular company operates which could be useful. The information could be determined based on the amount of deductions taken pursuant to the formula contained in ARM 42.32.107. The amount of RIT tax paid in comparison to the severance tax paid will provide information concerning the deductions taken. Therefore, the legislature was clearly justified in making this information confidential.

My most important consideration must be revenue collection. Taxpayers must feel confident that information made confidential by the legislature will remain so. If the Department of Revenue betrays this trust, it will have a detrimental effect on revenue collection.

As a result of the above, I simply have no choice but to deny your request. I hope you will understand my concerns about the long term ability of the state to collect revenue. It seems to me that the severe fiscal problems facing Montana dictate that we all spend our time working to solve our long term problems and promoting taxpayer trust and compliance with the tax system.

It appears that the sole reason for your request is to make public the confidential information included in RITT returns filed by the coal companies. If you feel there is any impropriety involved, then the Legislative Auditor's Office is the appropriate agency to review our decision. I welcome such a review since the Legislative Auditor's staff is bound by the same confidentiality statutes as the Department of Revenue.

Sincerely,

Denis Adams

Denis Adams
Director

Montana Legislative Council

Research and Reference Services

Room 138 • State Capitol
Helena, Montana 59620-1706
(406) 444-3064
FAX (406) 444-3036

June 12, 1992

Governor Stan Stephens
Room 204, State Capitol
Helena, Montana 59620

Dear Governor Stephens,

In March, I received from a Montana legislator a request for information regarding Montana's resource indemnity trust tax (RITT) as applied to coal production. The nature of the request was founded in the legislator's desire to review historical data and, from that data, to ascertain trends in RITT receipts from Montana's coal producers. Additionally, because the RITT for coal was revised during the 1991 Regular Session,[1] a parallel interest exists in studying receipts since the enactment of the statutory revisions. Finally, the legislative request was also enhanced by the requesting legislator's curiosity about a December 20, 1991, letter from Department of Revenue Director Denis Adams to Jim Mockler, Executive Director of the Montana Coal Council. (Copy of letter attached as Attachment 1.)

In an effort to respond to the legislative request, I requested from several staff of the Department of Revenue (DOR) historical RITT and coal severance tax (CST) data for each of six Montana coal producers. (See memorandums to Jerry Foster, dated March 10, 1992, and April 23, 1992, attached as Attachments 2 and 3, respectively.) I was initially provided with information on the CST but was denied information on the RITT. Subsequently, after several telephone conversations with DOR staff, meetings with DOR legal staff, and exchanges of letters with Director Adams, I am still being denied the historical information on RITT "gross value of product" and the RITT paid for each of six coal producers for the years 1980 through 1990. (See Attachments 4 and 5.)

As you will glean from the attachments, the DOR's stated reason for denying the information is concern for confidentiality. Based on conversations with my own legal staff, I have suggested to DOR staff, including Director Adams and chief counsel Dave Woodgerd, that it is our belief that the information requested is not covered by the confidentiality statutes cited by DOR staff. However, an option exists under 15-31-507

[1] See Senate Bill No. 93 (Gage, et al.), Ch. 520, L. 1991.

and 15-38-109, MCA, wherein the question of confidentiality can be mooted at your request. It is precisely that option that precipitates this letter.

Pursuant to the legislative request that I referred to earlier and acknowledging the authority delegated to you under 15-31-507 and 15-38-109, MCA, I respectfully request that you authorize the staff of the DOR to provide me with the information relating to the RITT that I previously requested. That information is, for the years 1980 through 1990, the gross value of product and the amount of RITT paid by each of the six coal producers listed below. Specifically, for tax years 1980 through 1990, I am requesting two precise pieces of information for each of six Montana coal producers. For each year, those two pieces of information are:

- the total annual gross value of product (per 15-38-104, MCA) for RITT purposes; and
- the total annual RITT paid.

The six coal producers are: Decker Coal Company; Knife River Coal Company; Peabody Coal Company; Spring Creek Coal Company; Western Energy Company; and Westmoreland Resources, Inc.

I respectfully recognize the DOR's interpretation of confidentiality requirements and Director Adams' desire to follow that interpretation, but I must also respectfully recognize a legitimate request for information from an elected official who has a need for information that is necessary to his analysis and decisionmaking. Consequently, I hope that you will exercise your authority under 15-31-507 and 15-38-109, MCA, and see that I am provided with the information that I have requested in a manner that will serve your interests as well.

Finally, I hope that we can resolve this matter by Friday, June 19. If you are unable to authorize Director Adams to provide me with the information requested, I would greatly appreciate your reasons for denying the request.

If you have any questions or concerns, please contact me at 444-3063.

Respectfully,

Dave Bohyer

David D. Bohyer, Director
Research and Reference Services

Enc.

2164dbxb

STAN STEPHENS
GOVERNOR

State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

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JUN 29 1992
MONTANA LEGISLATIVE
COUNCIL

June 26, 1992

Dave Bohyer, Director
Research Division
Legislative Council
Room 138, State Capitol
Helena, Montana 59620-1706

Dear Dave:

This is to follow up our conversation yesterday concerning your correspondence to Governor Stephens dated June 12, 1992. Prior to yesterday I was unaware of your request. The matter was referred to the Department of Revenue for review and analysis.

I will be meeting with representatives of the department early next week so I may have sufficient information to formulate an opinion on this matter.

I will keep you apprised of the progress of the review and anticipate a response in the next ten days.

Respectfully,

Rick Bartos

RICK BARTOS
Chief Legal Counsel

cc: Denis Adams
Robert B. Person

KUC ...

STAN STEPHENS
GOVERNOR

State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

RECEIVED
JUL 08 1992
MONTANA LEGISLATIVE COUNCIL

July 7, 1992

Dave Bohyer, Director
Research Division
Legislative Council
Room 138, State Capitol
Helena, Montana 59620-1706

Dear Mr. Bohyer:

In reply to your letter of June 12, 1992, I am not sure that I can add much to the response provided to you by Denis Adams. As he states, this information is clearly confidential by statute and under the Montana Constitution. Protection of taxpayer confidentiality is as important to me as it is to the Department of Revenue.

I am advised that no Governor in recent memory has agreed to release taxpayer information to the public pursuant to this statute. It would be unwise to begin a precedent of releasing to the public, information that is provided to the state with the expectation that it will be kept confidential. Such action would be detrimental to Montana's ability to collect revenue and institute unwise governmental powers to intrude on private citizens and business. The long term best interests of this state dictate that I decline your request.

In his letter of June 9, Director Adams suggests that the Legislative Auditor's office may be able to review the information. This is an appropriate agency who has autonomy for independent review while remaining bound by the same confidentiality statutes as the Department of Revenue. I hope you will explore this as a way of resolving this issue.

Sincerely,

Stan Stephens

STAN STEPHENS
Governor

cc: Denis Adams
Robert B. Person
Scott Seacat

DATE July 13, 1992

COMMITTEE ON Senate Taxation

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VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Tom Schneider	MPEA	9		X
Richard E. Williams	AMRPE	9		X
John Dan Herder	AMRPE	9		X
Al Johnson	AMRPE	9		X
Barbara Crebs	TRS	9		X
Monty Briggs	PERS	9		X
William C Howard	MTA	9		X
Bernice Howard	MTA	9		X
Don Waldron	Self	9		X
Alve Thomas	RTA	9		X
Charlotte Thomas	RTA	9		X
Larry Burlingame	RTA	9		X
Edna Nelson	AMRPE	9		X
Ken Given		9		X
TIM BERGSTROM	MT. STATE FIREMENS ASSOC	9		X
VERN ERICKSON	MT. STATE COUNCIL FIRE FIGHTERS	9		X
Don Judge	MT STATE AFL-CIO	SB 9		X
TOM BILODEAU	MEA	9		X
Irma Johnson	RTA	9		X
Mary Jones	RTA	9		X
Bew Kimberley	Retiree			
Dave Woodgerd		11		
Don Hoffman	DOR			
J Hoffman	RET TEACH			
William Forsyth	Teachers	9		X
Arnold Silverman	Univ. Teachers Union	9		X

(Please leave prepared statement with Secretary)

DATE 7/13/92

COMMITTEE ON Taxation

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Page 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Jack E. Cohn	WC Ret Teach Assoc	9		✓
Ken Williams	MPC/Entech	11		✓
John Malee	Mt. Fed. Teachers			✓
Jim Mockler	MT. Coal Council	11		✓
Tom Ebzery	Nerco	11		✓