

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on February 8, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John G. Harp (R)
Sen. Dorothy Eck (D)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Council
Renée Podell, Committee Secretary

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

Committee Business Summary:

Hearing: SB 305, SB 306, HB 141
Executive Action: SB 305, SB 273, SB 28

HEARING ON HB 141

Opening Statement by Sponsor:

REP. ROBERT R. STORY, JR, HD 24, Park City, stated HB 141 comes to the committee at the request of the Department of Transportation. He acknowledged the bill is a housekeeping bill dealing with several areas of taxation law on gasoline and a couple other items. REP. STORY highlighted the changes presented in the bill.

Proponents' Testimony:

Cindy Anders, Montana Department of Transportation, presented written testimony. EXHIBIT 1.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. MIKE FOSTER asked REP. STORY if ethanol was being discussed on Page 3. REP. STORY stated, "No".

SEN. DELWYN GAGE questioned REP. STORY in regard to the wording "two tank refund". REP. STORY responded currently if gasoline is purchased in bulk at factory prices two tanks are allowed if the vehicle is not used on public roads. Ms. Anders commented that there are about 400 to 500 people who file for the two tank system. She said because of the underground storage regulations people are using their second tank for in town driving.

CHAIRMAN DEVLIN asked Ms. Anders if the bill does away with the two tank system for people who use the system for farm/ranch purposes only. Ms. Anders stated, "No". CHAIRMAN DEVLIN asked Ms. Anders to explain how the two tank system is mentioned in association with underground storage tanks. Ms. Anders commented the Department of Health has placed regulations on underground storage tanks. She stated they must be current with department specifications. CHAIRMAN DEVLIN questioned Ms. Anders in regard to what underground storage tanks have to do with this bill. Ms. Anders stated many people are putting storage tanks above ground due to Health Department regulations and others are doing away with the two tank systems.

Closing by Sponsor:

REP. STORY commented this bill is a good bill and he encouraged support. He asked SEN. MACK COLE to carry the bill.

HEARING ON SB 305Opening Statement by Sponsor:

SEN. KEN MESAROS, SD 25, Cascade, commented SB 305 seeks a simple change to reducing the exemption period for property obtained from tax sale. He explained language needs to be consistent at "18 months". He stated 18 months is a reasonable period of time to allow taxes to be paid.

Proponents' Testimony:

Dick Michelotti, Cascade County Treasurer, supports the 18 month period proposed in this bill because it makes it better for the counties. He stated there will be better redemptions because the

amounts won't be as large. He urged support from the committee.

Lance Clark, Montana Association of Realtors, urged a do pass on SB 305.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. FOSTER asked SEN. MESAROS to explain the retroactive applicability on Lines 27 - 29 of the bill. SEN. MESAROS stated the applicability language was put into the bill in order for the counties to benefit as soon as possible. SEN. FOSTER commented what happens if the bill doesn't pass until the very end of the session. SEN. FOSTER asked Mr. Robinson if he would respond to this concern. Mr. Robinson commented he didn't know if the delay would have an impact.

SEN. BARRY "SPOOK" STANG asked Mr. Michelotti what the notification process consists of. Mr. Michelotti commented the County Treasurer sends notification to all the parties of interest. He explained letters are sent to taxpayers of delinquent status giving them 30 days to pay their taxes. He said after the 30 day period a search of tax record is conducted, and everyone with an interest in the property is notified that the county will apply for tax deed on a certain date. He stated there is a 90 to 120 day period that the taxpayer can redeem their property before the property is set for a county auction date. Mr. Michelotti further explained the taxpayer has up to the point of auction to redeem their property.

Closing by Sponsor:

SEN. MESAROS commented this is a simple change and urged support.

EXECUTIVE ACTION ON SB 305

Motion: SEN. STANG MOVED TO AMEND SB 305 by inserting, "UPON PASSAGE AND APPROVAL" (SB030501.AJM).

Discussion: None

Motion/Vote: MOTION TO AMEND SB 305 CARRIED UNANIMOUSLY.

Vote: SEN. STANG MOVED SB 305 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY.

HEARING ON SB 306Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, Great Falls, stated SB 306 is a simple, straight forward bill expressing if someone is taxed on income in another state they shouldn't be taxed again in Montana. He explained with more and more retirees moving to Montana the legislature needs to constitute clear language for retirees who have had income taxed in another state.

Proponents' Testimony:

Thomas E. Magruder presented written testimony. EXHIBIT 2.

Opponents' Testimony:

Mick Robinson, Director, Department of Revenue, commented Mr. Magruder's situation is very unusual. He stated SB 306 puts in an exclusion which doesn't cover very many taxpayers within the state. He explained this particular situation will be decreasing in the future because of changes in most state retirement systems. Mr. Robinson said there is already a mechanism in state law which covers not only this particular situation, but other situations where Montana residents are paying a tax to another state on income (credit for taxes paid to other states). He acknowledged there isn't a need for this legislation.

Ed Sheehy stated during his employment he was required to live in many different states and he paid taxes from his salary on retirement contributions. He voiced concern with the wording "contributions" used in the bill.

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. DOROTHY ECK mentioned she has been dealing with the DOR on a situation in regard to a taxpayer who received a refund (he paid too much money in California), and received \$10,000 back which he in turn paid Montana income taxes. She asked Mr. Robinson how many other situations there are in need of a bill like what is being presented in SB 306. Mr. Robinson commented the area of tax law which is being dealt with here is called a tax benefit. He stated this is a double taxation issue which is covered under a tax benefit. Mr. Robinson asked Jeff Miller, Department of Revenue, to respond to the tax benefit concept. Mr. Miller stated the tax benefit concept in it's simplest terms is the recovery of an amount of money in a current year that a deduction or credit previously taken, is included in income. He said the state doesn't have provisions to deal with the federal tax

benefit rule. **SEN. ECK** asked **Mr. Miller** how difficult it would be to amend this whole concept which may work better for this particular type of client. **Mr. Miller** said language could be presented in straight forward form, however he isn't sure it fits as an amendment to this bill.

SEN. DELWYN GAGE asked **Mr. Miller** how many times a situation like **Mr. Magruder's** has come up. **Mr. Miller** stated he has been with the department for six years and this is the only time he has seen this type of situation.

CHAIRMAN DEVLIN asked **SEN. DOHERTY** what was the reason for the 1991 effective date in the bill. **SEN. DOHERTY** acknowledged the 1991 date was chosen in order to deal with other situations. **CHAIRMAN DEVLIN** asked **SEN. DOHERTY** if there was another situation that was unique to **Mr. Magruder's** situation. **SEN. DOHERTY** responded he isn't aware of any other situations.

Closing by Sponsor:

SEN. DOHERTY acknowledged if the committee wanted to change the effective date they could do so. He commented in regard to the DOR's objections that folks aren't trying to get a windfall. He said they have paid taxes, are willing to pay taxes, and have no intention to dodge Montana tax liability. **SEN. DOHERTY** voiced concern with the attitude the DOR portrayed in regard to saying it is a rare situation, therefore legislation isn't needed to cover it. He stated language needs to be put into statute where people can't be taxed where contributions were already taxed. He acknowledged it is a matter of fairness for those people who rely on pension income.

{Tape: 1; Side: B; Comments: Tape Turned.}

INFORMATIONAL DISCUSSION:

SEN. GAGE presented information on SB 257. He submitted **EXHIBIT 3**.

EXECUTIVE ACTION ON SB 306

Discussion: **SEN. ECK** commented she would like more time to review the language in order to cover a whole group of people. **CHAIRMAN DEVLIN** responded there would be a problem in changing the language due to the title of the bill. **SEN. ECK** stated she would like **Jeff Miller** to work on language for the bill.

SEN. GAGE said he would like to hold action on the bill until **Jeff Miller** can review tax laws from other states.

CHAIRMAN DEVLIN concluded action on SB 306 would be taken at a later date.

EXECUTIVE ACTION ON SB 273

Motion: SEN. JOHN HARP MOVED TO TABLE SB 273.

Motion/Vote: MOTION TO TABLE SB 273 CARRIED UNANIMOUSLY.

Discussion was held on the rules of order in regard to a proposed Constitutional Amendment.

EXECUTIVE ACTION ON SB 28

Discussion: SEN. GAGE discussed his bill that was passed in the Local Government Committee.

CHAIRMAN DEVLIN asked SEN. GAGE if his bill takes the 6% out. SEN. GAGE responded, "Yes".

Motion: SEN. STANG MOVED TO TABLE SB 28.

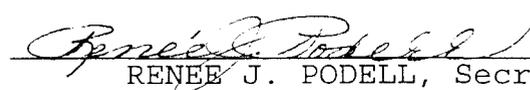
Vote: MOTION TO TABLE SB 28 CARRIED UNANIMOUS.

ADJOURNMENT

Adjournment: 9:21 a.m.



GERRY DEVLIN, Chairman



RENEE J. PODELL, Secretary

GD/rp

February 8, 1995

House Bill 141

SENATE TAXATION

DATE February 8, 1995

EXHIBIT NO. 1

BILL NO. HB 141

SUBMITTED BY: WILLIAM SALISBURY, ADMINISTRATOR
ADMINISTRATION DIVISION
MONTANA DEPARTMENT OF TRANSPORTATION

"AN ACT CLARIFYING TERMS AND PROCEDURE BETWEEN GASOLINE AND SPECIAL FUEL, ALLOWING THE DEPARTMENT OF JUSTICE TO EXPEND FUNDS AND AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO COLLECT DELINQUENT MOTOR FUELS TAXES."

The Montana Department of Transportation appears before this committee to offer our support for HB 141.

HB 141 would make the gasoline and special fuel distributor laws identical by clarifying terms, tax collection procedures and refund procedures. It would also allow the Montana Department of Justice to expend funds from the tribal motor fuels administration account for expenses incurred while participating in the negotiation of revenue sharing agreements between tribal governments and the Department of Transportation.

HB 141 also amends language that's been on the books since 1969 regarding the distributor's 1% shrinkage allowance. The Environmental Protection Agency (EPA) identifies the "shrinkage allowance" terminology as a loss of fuel through evaporation or contamination of the soil. In reality, "shrinkage allowance" simply means the distributor has an allowance for collecting the tax. The new verbiage accomplishes two items: (1) it replaces the current 1% evaporation of fuel allowance verbiage with collection fee verbiage creating consistency between the gasoline and special fuel taxation laws and (2) clarifies the intent of the allowance.

The 1991 Legislative Session created the Montana Department of Transportation. Two components of the Motor Fuels Tax Division of the Montana Department of Revenue did not transfer to the Montana Department of Transportation. The first is the ability to limit the use of restrictive endorsements on negotiable instruments and the second is the authority to collect delinquent motor fuel taxes with an offset of tax refunds or other funds due the taxpayer from the state. This bill allows the department to utilize these collection procedures.

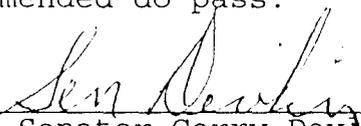
The Montana Department of Transportation urges this committee to give this proposal a pass recommendation.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration SB 305 (first reading copy -- white), respectfully report that SB 305 be amended as follows and as so amended do pass.

Signed: 
Senator Gerry Devlin, Chair

That such amendments read:

1. Title, line 6.
Strike: "AND" through "DATE"
2. Page 1, line 27.
Strike: "-- retroactive applicability"
3. Page 1, lines 28 through 29.
Strike: "and" on line 28 through "1994" on line 29

-END-


Amd. Coord.
Sec. of Senate

331353SC.SPV

SENATE TAXATION

DATE February 8, 1995

SENATE NO. 2 J

SENATE BILL NO. SB 306

Presentation by:

Thomas E. Magruder
304 28th Avenue NW
Great Falls, MT 59404
406/454-1142

Before the Senate Committee on Taxation
February 8, 1995

On behalf of:

Senate Bill 306

Purpose:

To show that while the intent of the legislature was not to tax income already taxed, the Montana Income Tax Law that ties Montana Income to the Federal Adjusted Gross Income does tax us twice on the same income and in all fairness should be changed in a way that protects us against this unfair treatment.

We are being assessed Montana state tax on money that was taxed in the State of Pennsylvania when it was earned. Pennsylvania did not permit it to be sheltered. The Federal Government did and is now rightfully taxing its distribution. The wording in Montana tax law reportedly requires that by definition the Federal Government figure is automatically the state figure. The law assumes incorrectly that all jurisdictions permitted sheltering. This creates the problem and needs to be changed retroactively to protect us.

We do not have a problem with paying Montana state income tax on income earned while we are residents of the state of Montana, regardless of the source of that income. In fact we are paying Montana Income Tax on our monthly annuity from Pennsylvania even though Pennsylvania does not tax it. The disagreement with the amount in question is that this money in question was income in the state of Pennsylvania during the 1980's when it was earned, while we were Pennsylvania residents. Pennsylvania income tax was paid on this money at the time it was earned, before retirement contributions were withheld. Therefore, while it was sheltered from Federal Taxes at the time and is now correctly labeled income by the Federal Government, it cannot be Montana income now, just because it is being returned to us now.

The following attachments are presented to further explain this unfair tax situation:

- Notification of Adjustments to Montana Tax Return - Tax Year 93
- September 6, 1994 letter to Montana Department of Revenue
- September 9, 1994 letter to State Senator Steve Doherty
- September 9, 1994 letter to Governor Marc Racicot
- October 26, 1994 letter received from Governor Marc Racicot
- November 2, 1994 letter to Mr. Bob Turner, Montana Department of Revenue
- August 25, 1994 letter from the Pennsylvania Public School Employes' Retirement System
- Copy of page 18 from the Pennsylvania Income Tax booklet which covers employee retirement deductions

IF YOU INQUIRE ABOUT THIS
ADJUSTMENTS, PLEASE REFER TO
THIS NUMBER 940739996

IA15

INCOME TAX DIVISION
MONTANA DEPT. OF REVENUE
P.O. Box 5805
Helena, Montana 59604-5805
(406) 444-2837

RS 166321975 12/31/1993

Your right to appeal is explained on the back of this form.

NOTIFICATION OF ADJUSTMENTS TO YOUR MONTANA TAX RETURN		
ERROR CODES	TAX YEAR	NOTICE DATE
32B c3	93	C7/08/94

An error signified by the code above has resulted in an adjustment to your Montana Long Form or your Homeowner/Renter Form (2EC). Refer to the enclosed "Reason for Change" sheet.

165 32 1875 183 34 9741
MAGRAUDER THOMAS E
MAGRAUDER JUDITH A
304 28TH AVE NW
GREAT FALLS MT 59404-1332

RETURN

CORRECTED COMPUTATIONS

LINE #	COL. A	COL. B.
18) Total of Lines 6-17	49296	8988
19) Adjustments from Income	()	()
20) Adjusted Gross Income Per Federal Return	49296	8988
24) Total Additions to Income		
25) Add Lines 20 and 24	49296	8988
33) Total Reductions of Income	()	()
34) Line 25 Less Line 33	49296	8988
35) Montana Adjusted Gross Income	49296	8988
36) Itemized or Standard Deduction	(14109)	(1075)
37) Line 35 Less Line 36	35187	7913
38) Exemptions	(1400)	(1400)
39) Taxable Income (Line 37 Less Line 38)	33787	6513
40) Tax from Tax Table	2255	209
41) Surtax (4.7% of line 40)	106	10
42) Tax on Lump Sum Distributions		
43) Total Tax—Add Lines 40, 41, 42	2361	219
44) Credits from Form 2A, Line 108	()	()
45) Line 43 Less Line 44	2361	219
46) Investment Credit Recapture		
47) Old Fund Liability Tax	25	25
48) Total Contributions		
53) Total Tax—Lines 45, 46, 47, 48	2386	244
54) Combine Amounts in Col. A & B Line 53		2630
55) Montana Tax Withheld	820	715
56) Payments on Estimated Tax/Payments with extensions		
57) Homeowner or Renter Credit		
58) Total of Lines 55-57	820	715
59) Combine Amounts Col. A & B Line 58		1535
60) Overpayment	()	
63a) Amount Paid with Return		
60a) Amount Applied to Prior Year's Tax	()	
64) Under Payment Penalty	()	
65) Late Filing Penalty	()	
62a) Correct Refund After Adjustments		
61) Amount Applied to Next Year's Estimated Tax	()	
62b) Net Refund		
63) Correct Tax Due		1566.00
63a) Amount Paid with Return /... SP...USE...REFUND.....	(471.00)	
60a) Amount Applied to Prior Year's Tax	(0.00)	
63c) Additional Tax Due		1095.00
64) Under Payment Penalty		0.00
65) Late Filing Penalty		0.00
66a) Late Payment Penalty/Extension Penalty		0.00
67) Interest		22.41
68) Total Due or (Overpayment)XX		1117.41

EXHIBIT 2
DATE 2-8-95
5B 306

304 28th Avenue NW
Great Falls, MT 59404
(406-454-1142)

September 6, 1994

Audit Program Manager
Income and Miscellaneous Tax Division
Office Audit Section
Department of Revenue
P. O. Box 5805
Helena, MT 59604-5805

Re: Notification of Adjustment 940739996 IA16
 Social Security # 166-32-1875

We request an "Informal Conference" as provided under Section 42-16-111
A.R.M.

The Notice of Assessment, dated July 11, 1994, is assessing an additional Montana State Income Tax amount to include our refund, plus \$1,117.00 with interest for the tax year 1993. The additional assessment is based upon the premise that all money taxed by the federal government is Montana income. That premise is faulty. It is income for Federal purposes because the federal government did not tax it when it was paid to us. Consequently they are taxing it now. That, however, does not qualify it as Montana state income. The fact that using the federal amount on the form is a convenient way to determine tax liability since it is applicable to almost all tax returns does not in itself mean that the federal figure is the correct figure in determining Montana tax liability. We were residents of the state of Pennsylvania at the time the money was earned. Pennsylvania had the right and did tax it as income. We have enclosed a copy of a letter forwarded to us from the Public School Employees' Retirement System, dated August 25, 1994, verifying that we did indeed pay state tax on this money "before any amounts are deducted for retirement contributions."

The letter dated August 4, 1994 from you states that "as a Montana resident you are taxed on all your income." We agree with that. Our disagreement is in the definition of income. In fact, we are now paying Montana Income Tax on our monthly annuity received from the Pennsylvania State Teachers Retirement System. It is income now because it is an annuity on our investment. But the portion of the investment itself upon which we have already paid state income tax was income at that time and cannot be considered income again. Income for tax purposes, by its very definition, can only be income on one occasion. The money in question is simply money that has been held in trust in our account toward our retirement and has now upon our retirement been returned. Really it is not different than if it were in a savings account. Certainly it cannot be the intent of the Montana state legislature to require us to pay state taxes twice, once when the money was income, and another time when we withdraw it from our savings.

We hope that the Department of Revenue handles this matter differently than they have to this point. The letter dated August 4, 1994 from you states: "state the authority on which you base your appeal." We are not tax accountants or tax lawyers. We should not have to be, nor should we find it necessary to hire one. The Department of Revenue has accountants and tax lawyers. They are fully capable of knowing and doing the right thing in this situation. We are confident they will, once the issues are clearly understood. We did make a trip to Helena for the purpose of clarifying and settling this matter but were met with the same attitude as the letter displays. That is, with technical indifference, as an adversary, and an unwillingness to give careful consideration to our position. The Department of Revenue should be our friend and our advocate. We do not deserve to be treated as if we were the enemy. The Department should be interested in finding a way for us to legally pay only those taxes the legislature in all fairness would want us to pay. The Department of Revenue knows the law. Its policy should be to interpret the law in the same way they would if it were their own situation or that of a friend, not an adversary. It is easy to use authority to bully. What is required in this day of growing disrespect and rebellion against government and public officials is the genuine desire on the part of public officials to be supportive of just treatment of the citizen. Too often the statement "it's the law" is used to bludgeon the citizen into accepting unjust action when in fact the official knows the law is open to interpretation.

The benefit of ambiguity in interpretation should swing to the citizen, not the State. The Department of Revenue should be an advocate for the citizen. When the state tax law is unclear, or obviously appears to be causing an unjust result, the Department of Revenue should expend every effort to protect the citizen as much as possible. Our definite impression is that the Department uses ambiguity in the law and technical flukes for the purpose of taking advantage of the citizen and using the statement "it's the law" to bully the citizen. We ask that the Montana Department of Revenue assist us as Montana residents in resolving this matter with all fairness and no hint of a resolution that smacks of the violation of the principles of justice.

Thank you,

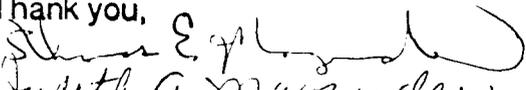
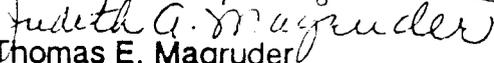


Thomas E. Magruder
Judith A. Magruder

EXHIBIT 2
DATE 2-8-95
SB 306

304 28th Avenue NW
Great Falls, MT 59404
(406-454-1142)

September 9, 1994

State Senator Steve Doherty
531 3rd Avenue S.W.
Great Falls, MT 59404

Dear Senator Doherty:

Attached are letters to Governor Marc Racicot and to the Montana Department of Revenue. These letters explain the unfair situation in which we have been placed. We are being assessed Montana state tax on money that was taxable income in the State of Pennsylvania during the time we were residents of that state.

We are asking you to review the matter and assist us through the Governor's office and the Department of Revenue to resolve this matter.

Thank you for your help.

Sincerely,



Thomas E. Magruder

304 28th Avenue NW
Great Falls, MT 59404
(406-454-1142)

September 9, 1994

Governor Marc Racicot
State Capitol
Helena, MT 59620-0801

Dear Governor Racicot,

Enclosed is a packet of information we are asking you to forward to the Department of Revenue. To maintain our right of appeal they must have it no later than September 28, 1994. We are asking you to do this because we are hopeful that you can find a way, or a person, in that department who will treat us as citizens worthy of their help rather than as adversary's with whom they must struggle. We ask you also to monitor the situation. That is, to serve as an advocate who determines that we as citizens receive fair treatment at the hands of the Department of Revenue.

We are not, nor have we ever been, people who protest against taxation. In fact I have publicly written in support of greater understanding and support of public officials and government in general even in the form of higher taxes. But, we cannot accept unfair, unjust treatment at the hands of government. The Department of Revenue is attempting to do just that. They seem interested only in collecting whatever money they can force, just and legal or not, rather than doing everything they can to insure that we are not forced to pay unfair or unjust taxes. And I must point out that their reputation precedes and gives credibility to the notion that on at least some occasions they have not been the advocate of fair treatment for the ordinary citizen. Please read the letter I have written to them for an understanding of why this is true in this particular situation. We believe that if someone in that department who was fair minded and objective would look into this matter, it could be resolved quickly and with all fairness.

One is left to wonder how much of the frighteningly pervasive tax rebellion can be attributed to unfair and high handed treatment of taxpaying citizens. It appears from our point of view that if government were to diligently act on the principles you frequently demonstrate, both through your actions, and when you speak of government which is open, friendly, and prepared to empathize with the citizen, that the citizen would be better prepared to take ownership in the problems government faces, and contribute to solutions rather than identify with the naysayers. The department of revenue certainly has frequent opportunity in this very critical area. Thank you for your help. We know you are extremely busy and regret the necessity of placing additional burdens on you.

Sincerely,



Thomas E. Magruder

cc. Department of Revenue

State Senator Steve Doherty, 531 3rd Ave S.W., Great Falls, MT 59404

State Representative Joe Tropila, 209 2nd St. N. W., Great Falls, MT 59404

OFFICE OF THE GOVERNOR
STATE OF MONTANA

EXHIBIT 2
DATE 2-8-95
SB 306

MARC RACICOT
GOVERNOR



STATE CAPITOL
HELENA, MONTANA 59620-0801

October 26, 1994

Thomas E. Magruder
304 28th Avenue NW
Great Falls MT 59404

Dear Mr. Magruder:

Thank you for your letter of September 9 in which you requested that I take a look at your income tax assessment, and monitor it so that you receive fair treatment from the Department of Revenue. I recently spoke to the Director of Revenue and asked him to also review your file.

Your situation is a unique one since Pennsylvania taxes your contributions as they are earned and not when they are distributed, just opposite of what the Internal Revenue Service does.

Montana is tied by law to the federal adjusted gross income. Thus, your distributions which are taxable to federal would also be taxable to Montana, even though you paid income tax on them once in Pennsylvania. The Department did correctly assess the tax since it is their responsibility to enforce the laws passed by the Legislature. The representative from the Department with whom you visited does not have the authority to change or compromise the law.

However, I have been advised that there may be a solution. If you can prove that you were taxed on that income by Pennsylvania and can show the amount of tax, you would be eligible for a tax credit against your Montana income tax liability.

Please contact Bob Turner of the Income and Miscellaneous Tax Division at 444-3361 with your tax information and hopefully this can be resolved.

Sincerely,

A handwritten signature in cursive script that reads "Marc Racicot".

MARC RACICOT
Governor

November 2, 1994

Mr. Bob Turner
Income and Miscellaneous Tax Division
Department of Revenue
P O Box 5805
Helena, MT 59604

Re: Notification of Adjustment 940739996 IA16
Social Security #166-32-1875

Dear Mr. Turner:

In response to our request for assistance, we have received the enclosed letter from Governor Marc Racicot. The Governor's letter clearly states the understanding that the money in question was taxed by Pennsylvania while we were residents of that state. We appreciate that some relief will be granted by allowing us to use the tax paid as credit against the amount Montana claims is due. We are still in disbelief that income earned and taxed in another state of residence as far back as 1983 can legally be taxed as income in Montana. I feel sure if it were your personal situation, you would be as shocked.

Governor Racicot's letter states that we must prove we were taxed and show the amount of tax paid. The letter from the Pennsylvania Teacher Retirement System provided with our appeal clearly states the fact that the amount in question was income at the time earned and was taxed by the state of Pennsylvania at that time. I do have my tax returns and W'2 since 1983 but am unsure as to how to choose which years this specific money was earned. Pennsylvania has a flat rate income tax that increased over the years in question. Since the amount of money in question is only a partial lump sum return (with the balance being rolled into an IRA) which years do I use to determine the tax paid. May I use the years in which I paid the highest percentage, or does Montana law specify I must use the lowest percentage. Please advise me on what further proof I must provide and how to show the amount of tax paid.

Mr. Turner, any further assistance you can provide for a more just finding in this matter will be greatly appreciated.

Sincerely,

Thomas E. Magruder

cc: Governor Marc Racicot
State Senator Steve Doherty
State Representative Joe Tropila



COMMONWEALTH OF PENNSYLVANIA
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Telephone (717) 787-8540

Mailing Address

PO Box 125
Harrisburg PA 17108-0125

Building Location

5 North 5th Street
Harrisburg PA 17101

AUGUST 25, 1994

EXHIBIT 2
DATE 2-8-95
SB 306

THOMAS E MAGRUDER
304 28TH AVE NW
GREAT FALLS MOT 59404-1332

S. S. 166-32-1875

Dear Mr. Magruder:

The amounts of \$626.79 and \$13,300.83 totaling \$13,927.62 that you received January 1993 were lump sums of your retirement contributions from the Public School Employees' Retirement System (PSERS) of Pennsylvania.

The lump sum is subject to federal tax but not state tax. Federal tax is not paid on retirement contributions when the salary is earned. The member pays the state tax on all income before any amounts are deducted for retirement contributions.

The following reference from PSERS retirement code, Act 96 of October 2, 1995, under Section 8533:

"The right of a person to a member's annuity, a state annuity, retirement allowance, to the return of contributions, any benefit or right accrued or to any person under the provisions of this part, and the moneys in the fund are hereby exempt from any state or municipal tax...."

If you have any further questions, contact me at (717) 787-8540.

Sincerely,

A handwritten signature in cursive script that reads 'Kathryn A. Tubbs'.

Kathryn A. Tubbs, Retirement Technician
Member Service Center

Although you must be able to substantiate travel expenses as to time, place and business purpose, you meet the above requirements when you receive a fixed mileage allowance or a per diem living expense allowance which does not exceed applicable Federal limits.

Exclusions from Compensation. Certain income is not taxable as compensation. Examples are:

1. Social Security benefits, public assistance and unemployment compensation.
2. Qualifying old age or retirement benefits. (See page 19 for more information.)
3. Payments received under workmen's compensation acts, occupational disease acts or similar legislation for injuries received while working and damages received (whether by suit or otherwise) for personal injuries or sickness. If the payments you received for injuries received while on the job are included in your W-2, attach an explanation.
4. All premiums for group term life insurance policies purchased for employees.
5. Prizes and awards unless the winner is required to render any substantial services as a condition to receiving the prize or award.
6. Federally taxable noncash fringe benefits realized from an employee's personal use of his employer's property or services, such as an employee's personal use of his employer's vehicle or airplane.

Gifts. Gifts made from detached or disinterested generosity are not taxable. However, transfers of cash or property made pursuant to an obligation to provide payment for compensable services, or as an inducement to perform compensable services, are taxable compensation and not gifts.

Scholarships, Fellowships and Stipends. Scholarships and Fellowship awards made on the basis of need or academic achievement for the purpose of encouraging or allowing the recipient to further his educational development, and not as compensation for past or present employment or in expectation of future employment services, are not taxable. If you believe your Scholarship or Fellowship award meets this requirement, you must attach an original detailed description of the program under which the award was granted. This must be an original letter and signed by your department head or other official. A form letter is not acceptable.

However, fellowship awards and stipends constitute compensation for services if the recipient is required to apply his skill and training to advance research, creative work or some other project or activity, unless the recipient can show that:

1. The benefits resulting from the services of the recipient are so minimal, given the actual services performed or expected to be performed, that they constitute no realistic basis for compensation; or
2. The activities of the recipient are so closely and directly supervised and immediately controlled by regular faculty members so as to constitute a burden on the institution which would offset any benefit it receives from the recipient's activities; or
3. The recipient is a candidate for a degree and the same activities are required of all candidates for that degree as a condition to receiving such degree.

Stipends paid to medical interns and residents pursuant to an internship or residency program that conforms with the "Essentials of an Approved Internship" or the "Essentials of an Approved Residency" as established by the American Medical Association are taxable.

You must attach to your return a detailed description of the program under which the award was granted. A form letter is not acceptable.

Other Compensation. Other compensation includes all payments for services rendered in Pennsylvania unless you are in the business or profession of rendering those services, in which case the payments would be considered business income. See Line 2 instructions. For example: fees for services rendered, honorariums, fees received by executors, fees received by directors of corporations, other similar fees, income reported on Federal Forms 1099, and cash are taxable as compensation for services rendered.

Payments received as consideration for terminating employment before reaching normal retirement age (severance pay) or refraining from the performance of services (covenant not to compete) also constitute taxable compensation.

Employe Deferred Payment Programs and Welfare Benefit Programs

Employe deferred payment programs, such as pension, profit-sharing and stock bonus plans, and Simplified Employee Plans, are established by employers to provide additional compensation to participating employes upon or after separation from service, upon the completion of a fixed period of participation, the lapse of a fixed number of years or upon a showing of financial hardship.

Employe welfare benefit programs are established by employers to provide welfare benefits to employes (or their beneficiaries), such as dependent care assistance, life, accident or health insurance coverage, legal services, medical benefits, supplemental unemployment compensation (SUB), tuition reductions, disability benefits, strike benefits and dismissal pay.

Contributions to Employe Deferred Payment Programs and Welfare Benefit Programs.

Employer Contributions. Contributions by a self-employed individual or entity which employs one or more persons to compensation to employe deferred payment programs and welfare benefit programs on behalf of such employes generally are excluded from the employe's income and are deductible as a business expense to the extent the contributions constitute reasonable compensation for services. Pennsylvania tax law makes no distinction between stockholder-employes or officers of closely held corporations and other employes.

Pennsylvania tax law concerning Simplified Employee Plans differs from Federal law. For Pennsylvania Income Tax purposes, employer contributions to a SEP are excludable from the compensation of an employe.

Employe Contributions. Deferred payment program or welfare benefit program contributions deducted from the compensation of an employe, voluntary employe contributions, and contributions made by an employer pursuant to a cash or deferred arrangement under which the employe unilaterally may elect to have the employer either make the payments as contributions to the profit-sharing or stock bonus plan, money purchase plan, Federal Employee's Thrift Savings Plan or 401(k) or 403(b) plan or other program on behalf of the employe or to the employe directly in cash are not excluded from the employe's Pennsylvania income.

Cafeteria or Flexible Benefit Plan. Under a cafeteria plan or flexible benefit plan, an employe may choose from a package of employer-provided fringe benefits, some of which may be taxable and some

HEARING ON HOUSE BILL 640DATE February 8, 1995
EXHIBIT NO. 3BILL NO. SB 257Opening Statement by Sponsor:

REP. JERRY DRISCOLL, HD 92, Billings, said the bill changes the definition of the average levy for the taxation of railroad car companies to the average statewide rate on commercial and industrial property instead of the average applicable to fleet motor carriers. He said this bill was requested by the House Taxation Committee.

Proponents' Testimony:

Mary Whittinghill, Bureau Chief, Centralized Assessment Bureau, Department of Revenue (DOR), presented her testimony in support of the bill. EXHIBITS 1 and 1a

Opponents' Testimony: There were no opponents.

Questions From Committee Members and Responses:

There were no questions.

Closing by Sponsor: REP. DRISCOLL closed.

HEARING ON HOUSE BILL 641Opening Statement by Sponsor:

REP. MIKE FOSTER, HD 32, Townsend, said this is a bill requested by the House Taxation Committee. The bill establishes the requirement that cash received for taxes be distributed the same as the tax revenue with which it is associated as directed by the Department of Administration according to generally accepted accounting principles. The bill does not change the distribution of any taxes and has no fiscal impact on either fund balance or cash balance. It allows the state to properly apply generally accepted accounting principles consistently to all tax revenue and the associated tax receipts and collections. As a result, all tax revenue received or accrued for a particular fiscal year can be allocated to the proper funds on a consistent basis. REP. FOSTER said the Department would be submitting proposed amendments.

Proponents' Testimony:

Connie Griffith, Administrator, Accounting and Management Support Division, Department of Administration, presented her testimony in support of the bill. EXHIBIT 2 She also submitted proposed amendments which are entirely clerical and clarification in nature. EXHIBIT 3

Opponents' Testimony: There were no opponents.

Questions From Committee Members and Responses:

There were no questions.

Closing by Sponsor:

REP. FOSTER closed.

EXECUTIVE ACTION ON HOUSE BILL 640

Motion: REP. DRISCOLL MOVED EB 640 DO PASS.

Discussion: There was no discussion.

Vote: The motion CARRIED unanimously.

EXECUTIVE ACTION ON HOUSE BILL 641

Motion: REP. REAM MOVED HB 641 DO PASS.

Discussion: There was no discussion.

Motion/Vote: REP. REAM moved to adopt the amendments as proposed by the Department of Administration. EXHIBIT 3

The motion CARRIED unanimously.

Vote: The motion by REP. REAM that HB 641 DO PASS AS AMENDED CARRIED unanimously.

TAXATION OF RAILROAD CAR COMPANIES

Legislation during the July 1992 Special Session repealed the freight line license tax and implemented an ad valorem tax on railroad car companies operating in Montana. The tax is retroactive for tax years 1991 and 1992. The statute requires the Department of Revenue to use the prior year's statewide average mill as calculated in 15-24-103 when computing taxes for the car companies.

Railroad car companies are federally protected under the 4R Act. The Act prohibits taxation of property of the protected class of taxpayers at rates higher than the property of other commercial and industrial properties.

Representatives of some of the car companies indicated to the Department that the average mill as calculated in 15-23-103 might be higher than the statewide average mill of other commercial and industrial property. Subsequent research indicates that the statewide average mill for commercial and industrial properties for 1990 and 1991 is lower than the mill as calculated in 15-23-103.

Statewide Average Mills
 (from prior year)

	All Properties (15-23-104, MCA)	Commercial & Industrial Properties
1991	326.56	1991 317.51
1992	339.47	1992 324.56
1993	343.59	1993 328.24

The estimated tax liability for the railroad car companies would decrease utilizing the statewide average mill for commercial and industrial properties only.

	Total Estimated Taxes
1991	\$2,998,000
1992	\$3,310,000
1993	\$3,349,000

1991	\$2,918,000
1992	\$3,172,000
1993	\$3,200,000

House Bill 640

Sponsor Testimony

This is a committee bill requested by the Department of Revenue. The purpose is to conform the taxation of railroad cars to the Railroad Revitalization and Regulatory Reform Act (4R Act). This federal act prohibits taxing railroad property differently than other commercial and industrial property in Montana.

The July, 1992 Special Session repealed the freightline tax and imposed a state general fund property tax on railroad cars. The legislation was because of a court challenge to the freightline tax by a nationwide railcar leasing company, TTX. The law currently requires the use of a statewide average mill levy for all property to determine the tax amount.

Some taxpayers have questioned the use of this average when the comparison class under the federal act is commercial and industrial property. An average based on the mill levy for commercial and industrial property will be easier to defend if the law is challenged in federal court.

The Department of Revenue is here to present further testimony and answer any questions.

EXHIBIT 3

DATE 2-8-95

SENATE TAXATION COMMITTEE

April 6, 1993

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SB 257

Closing by Sponsor:

Rep. Grinde closed by saying he tried to research information on costs to explain a major concern about why auger mining is taken from 15% to a 4% tax rate. Rep. Grinde presented Exhibit No. 6 to these minutes which explains in part the reasoning behind the taxing difference. This article is from the DOR records. He said it costs 3 to 5 times more to auger mine that to surface mine coal. The equipment consists of a 7-foot diameter drill bit that bores 300-plus feet into a coal seam. The machine that powers the auger runs on 75 gallons of diesel fuel per hour; it is manned by 15 people. There is some expense involved in the process. Even at 4%, the bill will create good things for the State of Montana.

Rep. Grinde said he has heard questions expressed regarding ecological/hydraulic concerns. These mining companies would have to go through a permitting process, the Office of Surface Mining and Federal Organization (OSM) for permitting, and also go to the State Lands. They would be permitted like any other type of mining in the state. The environmental concerns would be addressed at that time. It will cost the Coal Development Corporation a lot of up-front money to set up an auger mining operation through leases, the permitting process, and in contracts with the coal companies. Rep. Grinde said the state would not benefit if the coal is left in the ground. He said 15% of nothing is nothing; 4% of something creates jobs and brings revenue to the State of Montana.

HEARING ON HB 640

Opening Statement by Sponsor:

Rep. Jerry Driscoll, House District 92, presented HB 640 which is a clarification bill drafted at the request of the House Taxation Committee. Rep. Driscoll said the Legislature, during a Special Session, changed the taxation of railway cars from the previous method of taxation. These are not Burlington Northern (BN) cars; they are railroad cars which are the property of leasing companies. HB 640 changes the definition of the average levy for the taxation of railroad car companies to be the average statewide rate on commercial and industrial property instead of the average applicable to fleet motor carriers. This bill comes as a result of problems with some people not paying their taxes because of protests. He believes that under this bill, these people will start paying and the taxes can be collected.

Proponents' Testimony:

Dave Woodgerd, Legal Counsel for the DOR, said HB 640 is a committee bill from the House Taxation Committee by request from the DOR. The purpose of the bill is to make sure that the railroad car property tax passed in the July, 1992, Special

Session complies with the 4R Act. This is a unique property tax in that the money does not go to the local government, but goes directly into the State General Fund because it is a replacement of the Freight Line Tax. There has to be a mill levy to apply to it, and because it is a state-wide tax, they use the state-wide average mill levy used for interstate motor vehicle fleets. However, because of the comparison class under the 4R Act for commercial industrial property, there was some question raised as to whether or not the state-wide mill levy was in compliance with the 4R Act. In order to take that issue away, the DOR has proposed this amendment which would make the average mill levy to be the average state-wide mill levy for other commercial and industrial property in the State of Montana. The result will be a slight decrease in the mill levy from 326.56 to 317.51. using the 1990 average levy.

Opponents' Testimony:

Jim Mockler, Executive Director of the Montana Coal Council, appeared in opposition to HB 640, mainly to enlighten the Committee on a bit of history of this bill. During the 1989 Special Session, the DOR proposed a somewhat complex bill to change the method of taxing rail cars. When he asked the DOR personnel what that would do to Detroit Edison who owns their own rail cars and buys a lot of Montana coal, the DOR said it would change it a few thousand dollars, but nothing dramatic. The fiscal note on the bill showed that it would raise at least \$1.2 million which is the amount of money being raised under the Old Rail Car Tax. Mr. Mockler said Detroit Edison's tax went from \$54,000 to approximately \$450,000 a year; grain car company's taxes went from \$16,000 to \$355,000 a year. The fiscal impact of the bill went from between \$1.2 million and \$1.8 million, to a figure of \$3.3 million, and it is still rising. Mr. Mockler thinks this tax is unjust to the grain producers, coal producers, and other bulk shippers in the State.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Mr. Woodgerd why Section 15-24-103, the truck fleets, was chosen in the first instance. Mr. Woodgerd said that section was chosen is because the DOR was hastily trying to draft a bill as a result of a lawsuit that had been filed saying the Freight Line Tax was unconstitutional. At about the same time the DOR was in Federal Court on that issue, the July, 1992, Special Session came along and they seized on that opportunity to draft a bill. In drafting the bill, they looked around to find out where there was a state-wide mill levy already calculated so they didn't have to do the calculation over again, and they picked up this one. On hindsight, the DOR realized this was a mistake and they should have gone commercial-industrial.

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Senator Towe asked why commercial and industrial property is more appropriate than heavy transportation property; it would appear that interstate motor vehicle fleets would be more akin to rail cars than all commercial and industry property. Mr. Woodgerd said the DOR needs to make sure they are complying with the 4R Act. The 4R Act says that this is commercial industrial property. The DOR feels if the State is going to get sued, they are better off to have that comparison. There is no present court case pending, but they have not yet sent out any tax bills under this tax.

Senator Towe asked Mr. Mockler if it wouldn't be more reasonable to have HB 640 in effect. First of all, it is Federally mandated; and secondly, the State is actually going to give companies like Detroit Edison a slight tax break by going from 3.26 to 3.17. Mr. Mockler said he opposes the bill mainly on principles. The Big Horn and Rosebud county areas where Detroit Edison operates their rail cars is considerably lower than the rate in the bill.

Senator Harp asked Mr. Woodgerd about the retroactive date of December 31, 1990, and if the State is picking up some taxes as a result of HB 640 that we wouldn't get otherwise. Mr. Woodgerd replied no, that the retroactive effective date is the same date as in the July Special Session bill, and they are just going back to the beginning of that bill.

Senator Harp asked what is being collected currently. Mr. Woodgerd said the DOR adopted the rules and sent out valuations, but hasn't sent out any tax bills yet for tax year 1991.

Senator Towe asked why the fiscal note doesn't show anything about the collection for past years, if this is made effective for tax years beginning after December 31, 1990. Mr. Woodgerd said the DOR is looking at collecting approximately \$3 million a year for 1991, 1992, and 1993. The \$9 million showing on the fiscal note for FY '94 reflects that retroactive amount. The \$3.2 million would be typical from that date forward. The DOR only put in \$6 million because of the retroactivity problem and problems with a possible lawsuit, and they anticipate not collecting it all this fiscal year. It is Mr. Woodgerd's understanding that \$6 million was put into HJR 3 for FY '94.

Senator Gage asked the bill's sponsor for an explanation on how these figures are used in the reflection on HJR 3. Rep. Driscoll said when HJR 3 passed the House, there was nothing in there for HB 640. The estimate is that of the \$9 million collected, \$6 million will be one-time money.

Senator Eck asked what the prospects are of this being paid under protest. Mr. Woodgerd replied that whenever dealing with the 4R Act, he is never certain; however, the DOR believes there is a potential problem that has been raised by the taxpayers concerning the first year because of the retroactivity issue.

The DOR believes the prudent course is to assume they will not collect the first year's revenue in FY '94. However, they believe that for the next three years and beyond, the state is in compliance with the 4R Act and they will be able to collect that tax.

Closing by Sponsor:

Rep. Driscoll said the State will eventually get \$6 million in this fiscal year. HB 640 is constitutional, and he asks concurrence in the bill.

EXECUTIVE SESSION ON HB 640

MOTION/VOTE:

Senator Towe moved HB 640 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY on oral vote. (771206SC.Sma) Senator Towe will carry the bill on the Senate floor.

HEARING ON HB 639

Opening Statement by Sponsor:

Rep. Jerry Driscoll, House District 92, presented HB 639 which is a bill requiring the DOC to establish a program to provide matching state funds for local economic development funds, subject to appropriation. The money would be sent back to the certified communities. Rep. Driscoll said 96% of the population in the state lives in a community that is a certified community. The money would be used locally for economic development in those areas. At the present, there is not much money in the bill, but they are hoping that more money will be available in the future.

Proponents' Testimony:

Ron Klaphake, Missoula Economic Development Corporation, appeared in support of HB 639, and presented Exhibit No. 7 to these minutes. This exhibit is a summary of HB 639, with a list of certified communities in the state attached. Mr. Klaphake said HB 639 is basically a framework that says there ought to be a partnership between the state and the local communities when it comes to economic development. They started off trying to get some money in the bill, but there is none available. They believe if they can get a framework established, and get the philosophy put down by the Legislature, there will be an opportunity to seek official sources of funding.

Jerry Tavegia, Economic Development Office of the DOC, said he operates the Certified Communities program, and appeared in favor of HB 639 as it is now written. Mr. Tavegia presented

EXHIBIT 3
DATE 2-8-95
SB 257

HOUSE STANDING COMMITTEE REPORT

March 2, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that House Bill 640 (first reading copy -- white) do pass.

Signed: Mike Fastu (Vice-Chair)
Bob Gilbert, Chair

Committee Vote:
Yes , No .

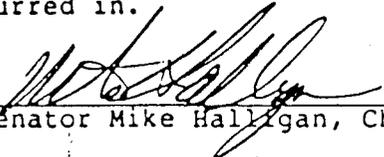
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 6, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 640 (third reading copy -- blue), respectfully report that House Bill No. 640 be concurred in.

Signed:



Senator Mike Halligan, Chair

DATE February 8, 1995

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 141 Rep. Story

SB 305 Senator Mesaros

SB 306 Senator Wokertj

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
Bonna Alexander	MI Petroleum Marketers	141	X	
Tom MacGregor	SIB - IF	306	✓	
Lance Clark	MT ASSN REALTORS	305	X	
Cindy Anders	Dept of Transp	141	X	
Mark McKeel	Cascade County Treas	305	X	
Ed Sheehy	Retiree Fed Employ	306		✓
Mark Robinson	DUR	306		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY