

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on January 19, 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
Rene'e Podell, Committee Secretary

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

Committee Business Summary:

Hearing: SB 139
Executive Action: SB 35

HEARING ON SB 139

Opening Statement by Sponsor:

SEN. JOHN HARP explained SB 139 provides clarifications of terms found in the law, but not previously defined as "ongoing activities", "ordinary income", "wages earned within Montana", "publicly traded limited partnership", and "officers in the closely held corporation". He highlighted each section of the bill noting the reasons for the clarifications, and clean up language incorporated into SB 139.

Proponents' Testimony:

Jeff Miller, Administrator, Income Tax Bureau, Department of Revenue, stated SB 139 arose from discussions with the interim committee for Work Comp, during last session and this session.

He noted that a large portion of the bill is conforming with the department's present administrative practice on such things as Montana's wages and ongoing activities. **Mr. Miller** said that the exception, is the new exclusion for limited partnerships. He asked for the committee's support of SB 139.

Dennis Burr, Montana Taxpayers Association, testified in support of SB 139, noting that it cleans up everything that needs to be cleaned up.

Jim Tutweiler, Montana Chamber of Commerce, stated this bill is a fairness issue correcting the mistakes made in the previous bill.

Don Allen, Montana Products Association, supported the clarification language in the bill commenting that the intention of the last legislature was to do the bill this way.

Opponents' Testimony:

None

Informational Testimony:

None

{Tape: 1; Side: A; Approx. Counter: 18.4.}

Questions From Committee Members and Responses:

SEN. DELWYN GAGE asked **Mr. Miller** if the department wanted a copy of the K-1 filed. **Mr. Miller** said the department is asking for a copy of K-1 to be attached, in order for the department to fill out all of the required information.

CHAIRMAN DEVLIN asked **Mr. Miller** if this affects, in any way, those who opted out of Work Comp. **Mr. Miller** stated, "no". He explained that whatever the wage paid, or the equivalent of wages paid, is the base of this tax. He reported that the employer is required to withhold and remit the Old Fund Liability Tax (OFLT).

SEN. FRED VAN VALKENBURG asked **Mr. Miller** if it was his intent by putting in the term, "derived from ongoing activities" (Page 4, Line 7), this tax would not apply at all to capital gains earned in the course of business operation. **Mr. Miller** commented that was essentially correct. He explained that OFLT is levied on ordinary income and capital gains doesn't typically fall into the category of ordinary income. **SEN. VAN VALKENBURG** voiced his concern with the department's definition of ordinary income. **SEN. VAN VALKENBURG** stated that it was very possible for a business entity to structure its income so that a very significant portion of income, that might otherwise be ordinary, would be treated as a capital gain. He asked **Mr. Miller** to respond to this concern. **Mr. Miller** said the bill as it originally came out was defined as a tax on ordinary income, (referring to Page 4, Line 6).

SEN. BARRY "SPOOK" STANG asked Mr. Burr if in some cases stock in limited partnerships is given to employees as bonuses in lieu of wages, and wondered if they should be construed as partial wages. Mr. Burr stated he would doubt that stock would be given in lieu of wages. CHAIRMAN GERRY DEVLIN asked SEN. STANG if he would like to refer that question to Mr. Miller. Mr. Miller explained that to the extent that it is considered compensation, it is subject to OFLT.

SEN. DELWYN GAGE referred to Page 2, Line 29, and Page 3, Line 19, questioning Mr. Miller on "wages" earned in the State of Montana. Mr. Miller stated that the department counts very heavily on the employer to distinguish what is Montana wage based tax, versus non Montana base. He noted Page 3, Line 18(e), was intended to deal with a workers domicile.

Closing by Sponsor:

SEN. JOHN HARP offered no further comment in closing.

{Tape: 1; Side: A; Approx. Counter: 33.8.}

EXECUTIVE ACTION ON SB 35

Motion: SEN. BARRY "SPOOK" STANG MOVED THE AMENDMENTS presented by the Department of Revenue.

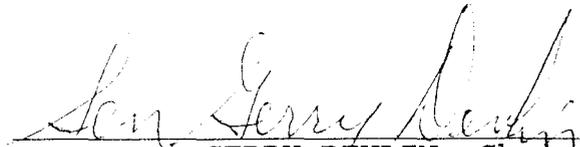
Discussion: SEN. LORENTS GROSFIELD referred to Page 1, stating it isn't clear what exact date the return is due. Mr. Chenoweth remarked the tax is due May 15th. CHAIRMAN DEVLIN said the penalty and interest needs to be separated.

Motion/Vote: MOTION PASSED UNANIMOUSLY on the amendments by oral vote (161231SC.SPV).

Vote: SB 35 PASSED UNANIMOUSLY AS AMENDED.

ADJOURNMENT

Adjournment: 8:43 a.m.


GERRY DEVLIN, Chairman


RENEE J. PODELL, Secretary

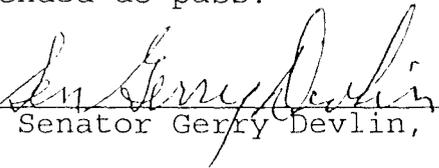
GD/rp

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 19, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration SB 35 (first reading copy -- white), respectfully report that SB 35 be amended as follows and as so amended do pass.

Signed: 
Senator Gerry Devlin, Chair

That such amendments read:

1. Title, lines 7 and 8.

Strike: "CLARIFYING" on line 7 through "FILED;" on line 8

2. Page 1, line 30.

Strike: "is due"

Insert: "and interest must be paid"

3. Page 4, line 3.

Following: "when due"

Insert: "under 15-31-111(2)"

-END-


 Amd. Coord.
Sec. of Senate

161231SC.SPV

