

Opinion No. 9**Statutes — Taxation — Revenue
Measures — Introduction of
Revenue Bills.**

HELD: 1. A bill which changes the method of reporting corporate income for tax purposes is not a revenue bill within the meaning of Article V, Section 32, of the Montana Constitution.

2. A bill which changes the rates of existing taxes is not a revenue bill within the meaning of Article V, Section 32 of the Montana Constitution.

April 27, 1955.

State Board of Equalization
State Capitol Building
Helena, Montana

Gentlemen:

You have asked my opinion upon the following questions:

1. Is a bill which changes the method of reporting corporate income for tax purposes a revenue bill within the meaning of Article V, Section 32, of the Montana Constitution, which provides that all bills for raising revenue shall originate in the House of Representatives?
2. Is a bill which changes the rates of existing taxes a revenue bill within the meaning of Article V, Section 32?

Article V, Section 32, of the Montana Constitution contains a common limitation upon the exercise of legislative power. That section provides:

"All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills."

The State of Montana borrowed this provision from the Federal Constitution. (See *State vs. Bernheim*, 19 Mont. 512, 49 Pac. 441.) It was intended to place in the House of Representatives the exclusive right to determine the manner of raising

the funds necessary to the operation of the government. (*State vs. Bernheim*, supra, *Evers vs. Hudson*, 36 Mont. 135, 92 Pac. 462.)

It has been consistently held by the Supreme Court of the United States, and by the Supreme Court of the State of Montana, that the restriction does not apply to every act which may bring some revenue into the state treasury, but only to those acts which levy taxes in the strict sense of that term, and have as their avowed purpose the creation of revenue for the state government (*State vs. Driscoll*, 101 Mont. 348, 54 Pac. (2d) 571, and cases cited therein).

Various types of acts, which incidentally create revenue while accomplishing some other primary purpose, have been examined by the courts and found to be not in violation of this type of constitutional limitation.

The *Bernheim* case, supra, held that a license fee of one dollar collected from ticket agents of railroad and steamship lines was incidental to regulation of transportation agencies, and did not make the act a revenue act.

In *State vs. Driscoll*, supra, it was held that the Montana Liquor Control Act (Chapter 105, Laws of 1933) was not a revenue measure within the constitutional meaning, even though its operation resulted in revenue to the state treasury.

The Supreme Court of Oklahoma held, in the case of *Anderson vs. Ritterbush*, 22 Okla. 761, 98 Pac. 1002, that a bill providing new methods for discovery of property which had not been listed for taxation, and for assessment and collection of the taxes due, was not a revenue bill within the constitutional prohibition.

In *Mumford vs. Sewall*, 11 Ore. 67, 4 Pac. 585, the Oregon Supreme Court held that a law declaring mortgages to be real property for tax purposes was not a revenue measure.

These authorities are particularly applicable to the question of changed accounting methods. Even if such a change resulted in increased rev-

enue, it would not be a revenue bill within the meaning of the prevailing rule of law as expressed in these decisions.

The Oregon Supreme Court has also had before it the question whether a change in tax rates is a revenue measure. In *State vs. Wright*, 14 Ore. 365, 12 Pac. 708, that court held that a bill increasing the amounts of certain licenses payable to the state was not an act to raise revenue within the constitutional limitation.

It is therefore my opinion that a bill which changes the method of reporting corporate income for tax purposes is not a revenue bill within the meaning of Article V, Section 32, of the Montana Constitution.

It is also my opinion that a bill which changes the rates of existing taxes is not a revenue bill within the meaning of Article V, Section 32, Montana Constitution.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.