

1 House JOINT RESOLUTION NO. 46
 2 INTRODUCED BY Bradley Henderson Stoltz
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4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
 5 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE
 6 DEPARTMENT OF REVENUE TO APPLY ITS REVENUE RULING NO.
 7 42-2.6(2)-S60730 IN A FAIR AND EVENHANDED MANNER.
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9 WHEREAS, many married Montanans have found that filing
 10 a joint return for their federal income taxes under section
 11 6013 of the Internal Revenue Code has been advantageous for
 12 them during the past several years, and

13 WHEREAS, many married Montanans have also found that
 14 due to the structure of Montana income taxation, filing
 15 separate returns for their state income taxes is
 16 advantageous for them, and

17 WHEREAS, the Department of Revenue has responded to
 18 this situation by issuing revenue ruling 42-2.6(2)-S60730
 19 which purports to allow a proprietor of a business and the
 20 proprietor's spouse to allocate their income between them
 21 for actual services rendered, and

22 WHEREAS, this ruling has been in the past, administered
 23 in an arbitrary and uneven manner as in some cases where the
 24 wife of the taxpayer is being allowed only the bare minimum
 25 wage for farm labor.

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 2 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
 3 OF REPRESENTATIVES OF THE STATE OF MONTANA:

4 That the Department of Revenue is urged to apply its
 5 ruling No. 42-2.6(2)-S60730 in an evenhanded manner and
 6 allow income to be assigned to one or the other spouse in
 7 proportion to actual services rendered at a rate which
 8 equals a fair and competitive wage for the type of service
 9 actually rendered.

10 BE IT FURTHER RESOLVED, that where both spouses do like
 11 and equal work when the business is jointly owned the value
 12 of their work shall be considered equal.

13 BE IT FURTHER RESOLVED, that the value of the
 14 contribution be equal to that of the other spouse when equal
 15 services are contributed and, in the event one spouse is
 16 making a greater or lesser amount of these contributions,
 17 this also be taken into account in making the allocation.

-End-

H. R. 46

STATE OF MONTANA

REQUEST NO. 192-75

FISCAL NOTE

Form SD 15

In compliance with a written request received February 11, 19 75, there is hereby submitted a Fiscal Note for HJR 46 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

A joint resolution of the House of Representatives urging the Department of Revenue to apply its revenue ruling No. 42-2.6(2) - S60730 regarding income allocation between spouses in a fair and evenhanded manner.

FISCAL IMPACT:

Revenue rulings are issued by the Department of Revenue to interpret laws or to establish policies on which the law is silent. Such rulings are generally subject to negotiation between the taxpayer and the Department. Since the law is silent on the issue of income splitting for Montana income tax purposes, revenue ruling 42-2.6(2) S 60730 was issued. That ruling states in essence that the income derived from a proprietorship must be reported by the proprietor except in the event the spouse of the proprietor renders services for which the spouse is not paid. In that event, a reasonable allocation of income to the spouse is allowed to be deducted from the proprietor's income and is reportable by the spouse. The amount of income allocated to the spouse is determined by the taxpayers when their returns are filed. The criteria used by the Department of Revenue in determining the fairness of the income allocation is the average going rate for the type of service performed by the unpaid spouse. Generally, the income to be assigned each spouse is arrived at by mutual agreement during the audit process.

HJR 46 urges the Department of Revenue to apply its ruling in an evenhanded manner. Since this is the intent of the Department of Revenue, HJR 46 would have minimal impact on income tax collections. To establish new criteria for income splitting would necessitate enacting a new law.

Michael B. Billings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 14, 1975