

TAXATION COMMITTEE
45TH LEGISLATURE

Rep. Herb Huennekens, Chairman of the Taxation Committee called the meeting to order February 2, 1977, at 8:00 a.m., in room #434, Capitol Building, Helena. All members were present except Rep. Underdal who was excused. Bills to be heard were House Bills 469, 481, 507, 518, 345.

Rep. Edward Lien, District #49, McCone County, sponsor of HB 481, explained this bill allows the license tax on motor vehicles powered by a liquified petroleum gas to be prorated and paid on a quarterly, semi-annual, or annual basis.

HOUSE BILL The bill also requires a nonresident operating a vehicle powered by this fuel to obtain a 72-hour trip permit when travelling in the state.

481

Ralph D. Bawden, Montana L.P. Gas, Billings, MT, supports
HB 481.

Don Copley, Motor Vehicle Division of the Department of Highways, is neutral on this. A provision for a trip permit is needed which eliminates the necessity of issuing a decal.

Jack Twichel, Montana L.P. Gas Association, Billings, supports HB 481 because of ease in handling.

There were no opponents.

Rep. Howard Porter, District #65, Yellowstone County, and Rep. Jack Ramirez, District #64, Yellowstone County, co-sponsors of HB 345, explained this bill pertains to consolidated income tax returns for certain affiliated corporations filing consolidated corporation returns, based on the method
HOUSE BILL used in filing federal consolidated corporation income tax returns.

345

These returns would be on consolidated corporations instead of each corporation filing separate returns. Montana has quite severe restrictions on consolidated returns.

A unitary business is one where income is so interrelated among the corporations that it cannot be separated. They cannot now meet requirements for filing consolidated returns. This bill will allow affiliated Montana corporations to file consolidated returns, and will make for a small tax savings to them.

Patrick Giblin, counsel with Montana Banks, supports this concept and has had this bill introduced. It is very difficult to separate earnings from each individual corporation from corporations that are interrelated. He offered amendments to HB 345 which are attached. This bill eliminates an inequity that presently exists between businesses in the form in which they operate. Small businesses that have elected the corporate form as compared to proprietorships or partnerships would benefit. The dividend will be taxed at each step of the way making two corporations be taxed three times. In contrast, partnerships can be handled with cash to avoid paying the tax two or three times.

There are 16,500 registered corporations; 13,000 that file returns with the DOR so there are many small businesses within Montana that could benefit from HB 345 as it is proposed to be amended. To allow consolidated returns, if they are related, puts them on the same basis as those that have not formed a corporation. There are several reasons for electing to form corporations. If permitted to file federal consolidated return, they could file one under Montana law. This bill will have a minimal tax effect, and would simplify tax laws in Montana. It has the approval of the DOR. It would create equality for businesses in Montana.

Raymon E. Dore, Department of Revenue, advised HB 345 would make tax laws more parallel with the federal code. The taxpayer would have only one set of rules to go by. He believes simplified returns are better for the DOR and the taxpayer. He would prefer that the Legislature give some guidelines in this area. He doesn't want out-of-state corporations affected.

R. W. Corcoran, Department of Revenue attorney, advised there are a large number of multi-national corporations who don't want to file as the department wants them to file. This does not affect the DOR's ability to collect taxes nor to require large multi-national corporations to file if they want them to do so; it just affects a small group of corporations in Montana.

Ron Haugen, Montana Banks, Billings, says CPAs out of New York support HB 345. He feels the present law is excessive. The present law requires 80% ownership in order to meet requirements for consolidated returns. He handed out an overview of federal consolidation requirements (attached). This is an elective choice with no business unitary requirement. It is closer to the federal rules and makes accounting easier. There are 75-100 that could benefit, plus any future ones meeting requirements. Income revenue was \$269,000 in 1975. Montana has 16,000 active domestic corporations. This will not benefit out-of-state corporations. All of the income from such a corporation would have to be derived inside the state.

Tom Dowling, Lewis & Clark Co. attorney, advised the amendments say corporations have to be all Montana corporations who have solely Montana income. This eliminates multi-national corporations. If an affiliated corporation has income from within and without Montana, it cannot benefit from this bill. Intra-state corporations would be only corporations to benefit. This does not include a corporation that has 4 businesses in Montana and one out of Montana - everything has to be generated in Montana.

R. Corcoran explained this is to clarify restrictions applying to large multi-national corporations; and they wish to create this benefit for Montana corporations because of the large number of very small corporations. He feels this benefits Montana taxpayers and the DOR.

Jerome Anderson, Montana Banks, supports HB 345.

Rep. E. N. Dassinger, District #50, Rosebud County, sponsor of HB 507, advised this bill is designed to attempt to bring the taxation of railroads in line with the federal Railroad Revitalization Act. This bill will change the effective

HOUSE BILL tax rate on railroad property from 16% to 12% by placing
 railroad property in Class four.

507

Gorham Swanberg, Montana Railroad Association, Helena, supports HB 507 which changes railroad centrally assessed property from Class 11 to Class 4. Railroads have property in 11 classifications in Montana, and he feels they should be reduced from Class 7 to Class 4. He handed out a copy of the public law which is attached. Three years from February 5, 1976, this law becomes effective. This would have a \$1.25 million tax effect in Montana. Railroads look upon it as a correction of a longstanding federal tax. This is a mandated change at the request of the federal government. He hopes for favorable consideration by the committee.

OPPONENTS:

Dennis Burr opposes this bill because of the impact upon local governments. This won't help to bring Montana into compliance. The earliest it can take effect would be January 1980. Something will have to be done. This legislation is premature at this time.

Kenneth Morrison, DOR, advised Public Law 210 affects all states. Other states have questioned whether the law is constitutional. HB 507 is premature until the DOR needs to look at it in the way that 210 is determined. He feels it would be better to review other commercial projects and bring them up to railroads rather than railroads down to them. Sales ratio studies do not indicate they are out of line with railroad properties.

Rep. Dassinger replied that the compliance date would be February 5, 1976, because they are allowed three years, but he feels this is from the date of the law. That is why this is brought up at this time. He would accept an amendment to comply with whatever date it is decided should be used. This would be a reduction of \$1 to \$1.5 million to local governments.

Mr. Swanberg advised that railroads are centrally assessed and then Montana's share is prorated to each county. Assessment date is January 1. This has to be done and completed in the very early part of 1979 so that the tax could be collected in 1979. An effective date to coincide with February 5, 1979, should be inserted.

Rep. Gilligan feels that to get this clarified now, railroads should be in a class like mining is.

Mr. Burr stated the process of reappraisal is to get everything valued on the same basis. The ratio of market value to assessed value should be the same for commercial and industrial property as it is for railroads. Assessed value is taxable value, depending on how classification laws are set up, some laws may conform to that and some may not. This bill tries to put all utility property in similar statutes in Montana law - statutes that deal with assessment of like property together. He recommends taking no action on this matter until the next session.

Rep. W. Jay Fabrega, District #44, Cascade County, sponsor of HB 469, states this bill would prevent harrassment of taxpayers by limiting circumstances under

which income tax returns, filed more than five years before may be audited and deficiencies assessed.

HOUSE BILL

469 Gorham E. Swanberg, representing the Montana Railroad Association, Helena, advised the statute of limitations is a cut-off date after which a person can no longer file a lawsuit to correct any type of wrong. This is predicated upon the fact that a person must pursue his right and file a lawsuit within a certain length of time. Statutes run from six months to 8 years; some claims have no statute of limitations. This bill is an attempt by the state of Montana to prohibit the federal government from opening tax returns after five years. The first half of the bill applies to corporations, and the second half applies to individuals. If a taxpayer is asked and gives an extension of time to the federal government for reauditing his tax return, the state automatically is allowed an extension of time. This bill limits the reauditing by the state of Montana to whatever changes are made by the federal government or on a new tax return filed. If they rely on the federal extension, the state of Montana has to accept the result of the federal extension.

Bill Groff, DOR, said he has no objection to individual taxpayers having this benefit, but he does have some objection to corporate taxpayers having this benefit.

Gerald Foster wants the statute amended because they are concerned about allocation and apportionment between states by the federal government. He is not interested in this specific program.

It is becoming more and more often that federal waivers are used. It takes a long time to make an audit. The federal government is concerned with just income and expense items. There are laws requiring keeping income tax figures for up to 25 years, especially for multi-national corporations. Waiver of the statute would be demanded and accommodated better by the federal government. Should the state be allowed to sort of piggyback on the federal waivers?

Mr. Groff said in three years they have gone from \$9 to \$23 million in additional collections. Now that the DOR is pushing for federal, there is no set boundaries as Montana has. After they get caught up, they will talk about it, but if the law goes on the books, make it workable and enforceable by the DOR. It may take many years to get an audit completed and may require several waivers. The DOR can solve the problem by getting the waiver and then the state would pursue the allocation problem. At present they can wait until expiration of the federal waiver and can come in and start over on records many years old. He opposes the corporation part of the bill; the DOR should be able to go back and catch up.

Gerald Foster said a year or two would not help. It is very difficult to get this done. All the states are having trouble; some states say "no". When the U.S. is auditing, he recommends they hold it open for apportionment adjustments at the same time.

Mr. Corcoran said from a legal standpoint refusal of waivers on the part of multi-national corporations makes it very difficult for the state when there is a refusal to the state, but federal law is powerful. If we go to the

provisional assessment record, we are denying ourselves the opportunity to have discovery of the records of the company. The fact that we are able to get a waiver from a multi-national corporation is not an advantage to the state of Montana. The DOR is very small in comparison to some of the large multi-national corporations.

Mr. Groff recommended to at least make a statute of limitations for 10 years.

Mr. Foster said small corporations' federal income audits are accepted by the state of Montana DOR. The DOR has one year after the U.S. audit is completed for them to complete theirs. The question is whether the average corporation or individual keeps records long enough. Statutes provide for refunds as well as charges.

Rep. Steve Waldron, District #97, Missoula County, sponsor of HB 518, said the Indians in Montana can buy cigarettes without paying any state tax, and can sell them at a very low price. This bill allows wholesalers, subjobbers, retailers, and vendors to sell cigarettes to people who are not licensed under the cigarette dealers' license act if they produce evidence that they are exempt from Montana cigarette taxation. This bill would allow Montana businessmen to assume the selling of cigarettes to those held for state exemption. Indians may not stop buying from out-of-state wholesalers, but this would provide closer places from which to purchase cigarettes at the same price as they could purchase them from an out-of-state dealer.

HOUSE BILL 518
Tom Maddox, Executive Director of Montana Tobacco and Candy Distributors, offered an amendment which takes out the word "vendor". See his testimony.

Bill Groff, DOR, is neutral in this matter, but thinks the bill should give local people opportunity for more business. He supports the amendment for clarification purposes.

R. Corcoran, DOR, said Indians can sell to other Indians on the reservation and Indians had to collect the tax when they sold to other persons. He is enormously annoyed with the Indian cigarette problems. There has to be documentary evidence and a person has to sign a receipt saying they are exempt from payment of the tax.

Committee recessed to an executive session.

HOUSE BIL 60 - Rep. Dassinger moved to recommend HB 60 DO NOT PASS. Unanimous approval by 11 members.

HOUSE BILL 309. Rep. Fabrega moved to recommend HB 309 DO PASS. Unanimously adopted.

HOUSE BILL 340 - Rep. Fabrega moved that HB 340 be recommended DO PASS. He further moved that HB 340 be amended on page 1, section 1, line 24, "3/10 of 1%" be inserted; and on page 3, section 1, line 12, "6/10" be stricken and "3/10" be inserted. This motion was approved. Rep. Dassinger moved to amend

23 - February 2, 1977

Page 6

HB 340 as per attached amendments. After much discussion on "public lands" the motion carried unanimously. The original motion was changed to HB 340 AS AMENDED DO PASS. Motion carried with Rep. Underdal voting No.

HOUSE BILL 168 - Rep. Fabrega asked for reconsideration of the committee's action on HB 168, and that it be given a DO PASS. He made a motion to add amendments; this motion failed 5-7. Rep. Williams made a substitute motion to recommend HB 168 DO NOT PASS. Motion failed 6-7. So original motion of HB 168 DO PASS recommendation was adopted 7-6.

HOUSE BILL 362 - Rep. Fabrega moved that HB 362 DO PASS. He further moved to amend HB 362. Reps. Uhde and Huennekens voted No. Motion carried. Rep. Fabrega then moved that HB 362 AS AMENDED DO PASS. Motion failed 7-7. Rep. Sivertsen moved to recommend HB 362 DO NOT PASS. Motion failed 6-8. The committee will vote later.

HOUSE BILL 422 - Rep. Fabrega moved to recommend HB 422 DO PASS. He further moved to recommend HB 422 be amended according to proposed amendments. These amendments were unanimously adopted. Rep. Fabrega further moved that "shall be treated as owned by one shareholder" be stricken. Motion was unanimously adopted. He further moved to recommend that HB 422 AS AMENDED DO PASS. This motion was adopted unanimously by 13 members present.

HOUSE BILL 469 - Rep. Bertelsen moved to recommend HB 469 DO NOT PASS. This motion was unanimously adopted.

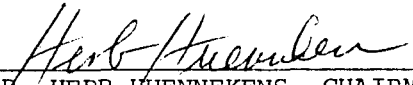
HOUSE BILL 507 - Rep. Fabrega moved to recommend HB 507 DO NOT PASS. Motion carried with Rep. Dassinger voting No. Rep. Dassinger had moved an amendment to have the date changed to "February 5, 1979", but this motion failed.

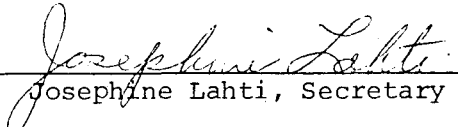
Rep. Dassinger took over chairmanship of the committee.

HOUSE BILL 474 - Rep. Huennekens moved that HB 474 DO PASS. Rep. Fabrega made a substitute motion that HB 474 DO NOT PASS. Motion carried with Rep. Williams voting No.

SENATE BILL 9 - Rep. Bertelsen moved that SB 9 BE CONCURRED IN. Motion carried unanimously.

Meeting adjourned at 11:45 a.m.


REP. HERB HUENNEKENS, CHAIRMAN


Josephine Lahti, Secretary