

TAXATION COMMITTEE
45TH LEGISLATURE

Chairman Rep. Herb Huennekens called this meeting to order at 8:00 a.m. in room #434, Capitol Building, Helena, February 21, 1977. Representatives Edward Lien and John Vincent were excused. Bills to be heard today are HB 681, 735, 783.

Rep. Steve Waldron, District 97, sponsor of HB 681, explained this bill exempts retailers from most of the provisions of the Montana Cigarette Sales Act. The bill also transfers the administration of the act from the Department of Revenue to the Department of Business Regulation.

HOUSE BILL

681 Bill Groff, Director of the Department of Revenue, feels regulation of this act should be under the Department of Business Regulation.

OPPONENTS:

Tom Maddox, executive director of the Montana Association of Tobacco and Candy Distributors, asks disapproval of HB 681 and 106. See statements attached.

Harvey DeMars, owner of Louie's Grocery, Helena, stated that as owner of a small convenience store, a large part of his sales depends on cigarettes, which is a traffic builder. As it is now regulated, he can make a 10% gross profit, but costs are more than 15% for operation of the store, and it is up allowing only a 1-1½% profit increase. He keeps cigarettes priced low so they are traffic builders. HB 681 would put him at a disadvantage.

Dan Carpita, Beaverhead Bar Supply, Dillon, MT, testified HB 681 will put the small grocer in competition with the large chain stores. He opposes HB 681.

Dick Disney, Department of Business Regulation, does not approve of transferring the enforcement of this act to the Department of Business Regulation because he feels they could not enforce it in the form in which it is at present.

John P. Poston, Montana Coin Machine Operators, Helena, opposes the bill because he feels stores could sell at lower prices than vending machines could. See his statement attached.

Bill Jappe, Mini Co-op, Dillon, said he cannot operate on the small profit margin that HB 681 would allow.

Frank H. Bishop, Sheehan's of Helena, Inc., Helena, opposes HB 681.

Rep. Waldron closed by saying he cannot see why HB 681 would invite price wars. Small stores are already going out of business and cigarette pricing won't have much to do with that anyway. Vending machines sell at a greater price than small stores do. As far as the cigarette revenue act is concerned, the same amount of revenue will be received by the state. The Department of Revenue's job is to deal with revenue, and the Department of Business Regulation's job is to regulate business and unfair practices. Perhaps the Department of Regulation is not necessary.

Questions from the committee members brought out that the Department of Revenue personnel feel they should not regulate prices since we do have the Unfair Practices Act. They do not think the department collecting taxes should set and regulate prices. The Department of Business Regulation thinks they should not regulate something that they don't license. No designated amount of revenue is assigned to the Cigarette Enforcement Act. The Unfair Practices Act has been on the statutes since 1937 and it has been found to be unenforceable in its present form and recodification has been asked for. It has been defined by the courts as unconstitutional.

A price war could be started because people don't understand the law or are immoral. This happens now when cigarettes are used as a loss leader. In trying to attract people to their store, the owner is motivated to try to outdo the other and so this causes a cost break. The other stores have the opportunity to meet this competition under present law, but it would be suicide to do so. The DOR is enforcing the Cigarette Sales Act well.

Rep. Dorothy Bradley, District #77, sponsor of HB 783, advised this bill allows household and dependent care services incurred as employment-related expenses to be deducted in computing state income taxes. The bill varies from the federal regulations referenced in Montana statute, prior to the 1976 Tax Reform Act, by allowing a taxpayer working part-time to claim it by limiting the full deduction to persons or couples earning \$18,000 or less, and allowing only children, other than handicapped children, 10 years old or less to be qualified for this dependent care.

Howard Vralstad, Department of Revenue, offered an amendment providing for an effective date of passage and approval: "Section 3. Effective date. This act shall become effective upon passage and approval and shall apply to taxable years beginning after December 31, 1975."

Rep. John Scully, District 76, sponsor of HB 735, stated this bill addresses itself to a problem that has been around for many, many years dealing with bank taxation. This bill deals with the bank share tax which becomes very confusing to everyone involved in bank taxation. When we lose our gain in taxation, we overreact. There are so many types of banks we can't get together so that there is an equal taxation throughout the state. Some amendments will have to be made in HB 735. He asked this committee to take a look at the fundamental basics. There is a tendency to protect small banks. Bank taxation is very, very high. We had better take a look at our tax structure. During the interim there was a great deal of discussion, but there is a need to look at the entire statutory process. He did not wish to close on arguments, stating the bank representatives would answer questions by the committee for information on bank taxation. In the next few years it will be necessary to sit down and take a good look at bank taxation.

George T. Bennett, Montana Bankers Association, Helena, supports this bill. He gave a brief history of banks. Before World War I, when all property was assessed and taxed at full cash value, the money was taxed as other property and was an ad valorem tax on property. U. S. obligations are not taxed.

Then the tax was shifted from the banks to the shareholders. You taxed the shareholders and not the banks, and this was permissible. The banks were to pay the tax and try to collect it from the shareholders. The U.S. broadened the tax and the state could not tax U.S. obligations and savings and loan companies. Because of regulations drafted by the DOR, attorneys for banks looked at the statute and started litigation in the computation of the tax on banks. The U. S. obligations would have to be eliminated. There are problems: Because it is a tax on the shareholders and not on the banks. In an attempt to eliminate the value of U. S. obligations from the value being taxed, a formula was established. States could tax bank shares and could include U. S. obligations. A U. S. judge decided that U. S. obligations should not be taxed, but pointed out that not the full value, but only that portion representing the net worth of the bank should be taxed. This formula allows to be done what the district court here says should be done to eliminate U. S. obligations from the bank value.

The banks are asking an equalization of their properties. Bank share tax is an ad valorem tax. Property tax is being continually eroded away because of special classes and exemptions. Solvent credits are exempt. The study just completed by the interim committee has a gradient; there are taxpayers who enjoy certain privileges. Net gross proceeds of mines and right of entry are in lieu of a tax on minerals in place. Utilities, railroads, etc., are assessed at 16% - still well above the average property of the state. The equalization factor needs to be studied. This bill is a means of reminding the committee that banks are paying the target tax. Net worth at 100% places the tax on the banks rather than on shareholders. This will result in a 5 or 6% reduction in bank tax.

George D. Anderson, Montana Bankers Association, Helena, spoke in favor of HB 735.

Mantz Hutchinson, Department of Revenue, explained what the effect will be. He stated each bank must be computed on its own as they can vary so much from bank to bank. December 31, 1975 figures are available. Because of the actual litigation, the department has gone through each assessment sent in. He handed out a "100% Assessment Method per MBA Method", and explained it. He stated this is one of the most onerous taxes placed on the banking business and on no other business. The banks are very honest in how they report it. The banks pay more taxes than any other business with which they deal.

John T. Cadby, Montana Bankers Association, Helena, supports HB 735, stating that the bank stock tax is no good, but after studying the matter, they couldn't arrive at any other base that could do any better - found the same inequity that is found in capital stock tax. A deposits base would disrupt cash flow and be more inequitable. By providing a limited deduction instead, tax base would be about 70%, making counties and cities receive a great deal less revenue. A 40% class would yield less than \$1 million dollars. He would accept any amendment the cities and towns would recommend - some place between 40% and 100% that would yield about the same as in 1975. If banks could not deduct this from federal income tax, this will be passed on to the consumers. This bill is not the answer, it is an interim solution. Will have to study this problem another year or so. He urges support of HB 735.

Bob Burke, President of the First National Montana Bank, Missoula, supports HB 735.

Harold Pitts, Helena, supports HB 735.

Dan Mizner, Executive Director of the League of Cities and Towns, doesn't know whether to oppose or approve HB 735. The reduced tax base, and mandated expenditures are going to make it necessary to come up with the mandated expense someplace and will have to add this to some other tax. He recommends page 3, lines 2 and 3 be amended to read "100%" instead of 40%. He also recommends that a subcommittee be appointed to study this bill in conjunction with HB 817.

OPPONENTS:

Dean Zinnecker, Executive Director of the Montana Association of Counties, opposes HB 735 because local governments have lost \$118 million dollars of taxable value because of tax reduction on certain other tax bases. Reducing the tax on bank shares will place more tax burden on property. He thinks the issue should be looked at very seriously. See his statement attached.

Bill Groff, Director of the Department of Revenue, appeared to provide information only, and neither to support or oppose HB 735. The other court case has been appealed and could maybe be overturned. The problem here is that banks are overtaxed. He heartily endorses the idea of putting both bills into a subcommittee. The overall loss would be \$576 million dollars which would mean over \$1 million dollars out of county and city revenue.

Mantz Hutchinson explained the pending lawsuit. If assessed, a statute is in conflict with federal regulations, and this bill would no doubt bring a suit also. He urges careful consideration of HB 817 and a senate bill introduced by Senator Towe.

Questions revealed that a portion of the capital that is invested in government securities is what will be exempt. If total assets are \$3,000,000; federal securities are \$1,000,000; the equity value is 10% of value of total assets - this would be \$300,000 less \$100,000, with \$200,000 being amount exempt. This would be 6-7% of total assets which amount of federal securities that would be exempt.

No other business is taxed on capital investment. If this is put into a study for two years, what would happen to the present suit? Mr. Hutchinson advised taxes would probably be paid under protest and \$6-7 million dollars would be paid under protest. Referring to the lawsuit in court at the present time, if the DOR loses the case and HB 735 is passed, it would be about the same as we have now and we would have another court case. Mr. Bennett, attorney for the Montana Bankers Association advised that the idea of limited reduction is that this is an approach to allowing deduction for U. S. obligations. You are taxing net worth of the bank, not all of its assets. If you eliminate that portion of U. S. obligations, would this satisfy requirements? Litigation is asking 100% reduction of U. S. obligations. Mr. Groff advised that this suit will probably be appealed to the U. S. Supreme Court in any event.

Some banks might pay a tax, but most would not have to if HB 735 is passed.

Continuation of hearing on HB 680.

USE BILL 680 Paul G. Newby, Belgrade, MT, Montana Aviation Trades Association, stated HB 680 would provide funds enabling a match of federal funds of 9 to 1. (See his complete testimony attached) He supports the decision to place a portion of the fuel tax into the revolving fund so local governments can borrow for airport and aeronautical purposes; which loans are to be fully refunded by users of the airports through taxes of some kind. He recommends that the law for all state aircraft using an airport to pay for the use of the airport be adhered to. He recommends a Do Pass on HB 680.

Burt Huntington, Red Lodge, testified he believes the increase in aviation fuel proposed is necessary. The present tax rate has been in operation for 30 years. In the past the federal government has shared airport development expenses, but the new eligibility requirements eliminate 60-70% of Montana's airports, and this throws a greater burden on the Montana Aeronautics Division. Other states have higher taxes than this proposed tax. Since aircarriers are using airports to make a profit, he thinks they should pay the 7¢ fuel tax also. (See his statement attached)

James A. Steffeck, Helena, supports HB 680.

William F. Utter, Great Falls International Airport, representing the Airport Authority, Great Falls, advised non-scheduled aircarriers have a choice as to where they will land, and if this tax is imposed, the Great Falls International Airport will be avoided because of the added fuel cost. (See his statement which is attached)

Wm. Conklin, Great Falls, representing the Great Falls International Airport Authority, stated this increased tax will have a serious effect on international flights from Western Europe enroute to Los Angeles. These planes could use in the neighborhood of one million gallons of gas if they would land in Montana. The FEA already requires an additional tax of 6-7¢ on aviation fuel in Montana.

Jeff Morrison, Helena, Morrison Flying Service, advised if this bill is passed, he would like to see an amendment providing that any payments on outstanding loans in the state be paid back into this revolving fund rather than going into the general fund. Airlines do have the ability to tanker fuel rather buy it in Montana.

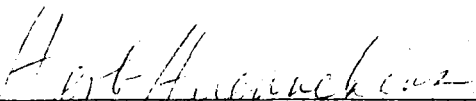
Rep. Warren O'Keefe opposes HB 680, and read a letter from Roger W. Young, executive Vice President of the Great Falls Area of Chamber of Commerce opposing HB 680 because they wish to encourage Western European - Los Angeles planes to refuel in Montana. (See letter attached)

Rep. Burnett advised a resolution is being drawn up mandating that agencies that use the airports pay for services received. About \$40,000 is now due the Aeronautics Division from other state agencies.

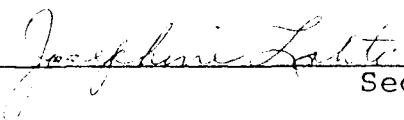
In 1975 55% of the revenue received came from scheduled aircarriers, 10% from lighter planes, and the balance from other sources. If HB 680 fails, the Division will have to go along as is and come back to the next session asking

for general fund or other moneys for supporting the smaller airports. It is agreeable with the Aeronautics Division for any funds received from passage of HB 680 to be put into the same fund they now have. It is anticipated that in the near future, another \$250,000 will be needed. They are requesting only what they feel they need. The question of whether some of these funds could be raised by revenue bonds was posed.

This hearing adjourned at 10:00 a.m.



REP. HERB HUENNEKENS, CHAIRMAN



Secretary