TAXATION COMMITTEE
45TH LEGISLATURE

Rep. Herb Huennekens, Chairman, called the Taxation committee to order in room #434, at 8:00 a.m., March 24, 1977. All members of the committee were present. Senate Bills 150, 350, and 431 were to be heard.

Senator Frank Dunkle, District #15, Lewis & Clark Co., chief sponsor of SB 150, advised this bill was originally designed to pay attorney's fees if you wished to protest your taxes, but the Senate committee deleted this provision. SB 150 provides that taxes paid under protest will be invested during the time the tax appeal is pending and that if the taxpayer is successful in the appeal or suit, he shall be refunded with the protested tax, the costs of suit, and interest on the protested taxes at 5 or 6 % a year or the current interest rate in the county, whichever is greater. The bill applies only to suits filed after July 1, 1977.

SENATE BILL 150

Ed Nelson, Montana Taxpayers Association, urges support of this proposal. They audit property levies in the state annually. In one way or another they recover in excess of $1 million per year and by and large are successful in getting those levies corrected. Some come up as questions when it sometimes takes legal consideration as to whether the tax is legal or not. Sometimes they have to be protested.

You will find people who own businesses in the state who will have to borrow money to pay their taxes. This kind of proposal makes the local government a little more cautious in setting their levies. If you protest your taxes, the state will take the tax money through their investment program and you can get interest on it, if your protest is successful. They believe the county should do the same thing. If this is done, he thinks that money should be segregated and invested in some way so the county will earn some additional money with which to refund the taxpayer or for its own benefit, while the case is being decided.

Greg McCurdy, MACo, stated they have no objection with the idea that someone has put their money in escrow. Originally, this bill included payment of attorneys' fees to which they disagreed. He questioned what is meant by "cost", and urges the committee to define this. This makes an innocent local government have to settle something the state demands which is a cost to the local government.

During questions and comments, Senator Dunkle has no objection to "costs" being deleted. He does not think providing interest on money paid under protest will cause more people to protest their taxes; this money could be tied up for up to over a year. In order to pay taxes under protest, you have to say so at the time of payment, and file suit within 30 days afterwards.

Senator Greg Jergeson, District #3, Blaine County, sponsor of SB 431, explained this bill provides that spouses that own a business jointly may allocate their income for state tax purposes as follows: The spouse who contributes fewer hours of work is allocated 1/3 of the gross income from the business multiplied by his share in the business plus reasonable compensation for his services. The other spouse is allocated the remainder. This bill is effective for tax years after January 1, 1977.

SENATE BILL 431

This bill would not apply to Sen. Jergeson since he is single, and his farm is incorporated. There were no opponents to the bill in the Senate. People have been using this method of tax splitting before but it is not generally known by owners of joint tenancy farms or businesses. The present fiscal note is incorrect.

Cris Warp, L.P.A., Chinook, who is with The Honadel Company, Havre, advised that when two people who earn $10,000 each working in town, pay $370 less than a farmer or businessman who earns $10,000 and whose wife owns this property with him under joint tenancy pays. His company has been fighting with the DOR for several years in connection with this allocation. $370 per month presently is allowed a wife by the DOR in figuring her income compensation. This bill has two parts - income splitting and compensation for the wife. Legislation is necessary to clarify splitting income between husband and wife. Letter attached.

Mr. and Mrs. Dean VanVosten, Turner, feel SB 431 is an awareness bill. People are not aware of what the bill contains. If your accountant doesn't take advantage of this, then the small businessmen and farmers will be paying more than their share of taxes. Mrs. VanVosten said she has been a farm wife for better than 30 years, and thinks farm wives deserve this tax break.

John and Elizabeth Jergeson, parents of Rep. Jergeson, were introduced. Mr. Jergeson said they had worked together to accumulate their present holdings, and that Mrs. Jergeson had done just about everything there was to do on a farm by either partner. People do not understand how much work the wife has done. Urge your support of SB 431.

Mrs. Jergeson said you all have to pull together, and urges support of this bill.

Robert Swanberg, representing Honadel Co. and himself as an attorney-at-law in Great Falls, is not sure how the DOR arrived at the fact that joint ownership is not a legal way for dividing income. Mother and son are allowed to split income, but if the owners are husband and wife, the income cannot be split. The fact of relation destroys the right of the husband and wife to split income. Both are liable for property taxes, and it is his view that there should be no difference in the joint interest concept. This is a public interest bill and by enacting it into law, it will give the DOR the regulation necessary to accept this rather than an arbitrary ruling of their own. Urges passage of this bill.

Edward W. Nelson, Montana Taxpayers Association, Helena, supports this bill saying this proposal would provide a measure of equity for payment of income taxes. Strongly urges support of this bill. Testimony attached.

OPPONENTS:

Ray Dore, department of revenue, said he did not appear for the department at the Senate hearing on this bill - someone else did. He has been with the department two months. He appeared last session when they had a bill like this. The rule as it has been applied doesn't fit anyone. Prior to 1973, no splitting was recognized. Possibly the department made a mistake in writing the rule in the first place by not paying enough attention to legal ownership concept. If you pass nothing, and allow the rule to stand, we are inevitably moving toward a 50/50 split which is 30/70 right now. Those people who prepare their own tax returns probably are not going to be as aware of this income splitting allowance as are those who have professional help in the preparation of their tax returns. There are three attempts to rectify this in the Legislature now. The rule does not take into consideration where the wife works in a secretarial position. The rule applies to other small proprietorships, not just farms.

HJR 4, sponsored by Rep. Bradley, is one of the best solutions. It might be well to refer this to an interim committee for study. This bill gets part way toward equity. He does not understand the term legal - does that mean names on the deed, or does that mean who earned the money that bought it. Did the wife bring the money into the marriage or did he, or where did it come from? The department does not have the staff to probe beyond the names on the deeds at the courthouse. Just because the names are on the deed does not mean they own it jointly. There will probably be a great increase in paper work pertaining to increased use of corporations and partnerships to avoid taxes. There will be an increase in state government. This bill does not lack merit, but perhaps it could stand some study in an interim committee.

Sen. Jergeson closed saying this does not apply just to farmers and ranchers, but to all busineses that are sole proprietorships. The DOR indicated that some people are going to incorporate to avoid paying more taxes than they would have to with an income splitting allowance being refused a husband and wife.

Questions and comments by the committee included the necessity of the statute or rule setting out data required in cases of joint tenancy requiring an actual contribution. In cases of divorce, in attempting to divide the property, it is based on those who actually paid for the property. In federal estate law you have to look at where the money came from that bought the property.

When taking total income and splitting it in half, the husband's labor is split also. Mr. Miniken, CPA from Chinook, advised that if a wife doesn't work, there is a formula included in the bill. She is entitled to her share as part owner if held in joint tenancy. On a $100,000 income, her one-half share would be $50,000. Using a 1/3 figure as a rental income figure (which is general in his area), there were two ways to bring it up to one-half ratio through income and wages. See the example attached. This process is applicable to stores as well as to farms, and gives the wife her share most equally.

The question as to how this would be related to other small businesses arose. Under law of federal government, all income goes under social security in a husband's name and not in a wife's. Wages are the profit at the end of a year. Thirty per cent of the income is derived from capital alone. To form a partnership between a husband and wife you have to draw up a partnership agreement and when both want to pay social security, you have to go through the partnership procedure to allow the wife to pay social security. By splitting income and both paying social security, one extra payment is necessary.

A wife who helps her husband by doing bookkeeping, making appointments, and helps in other ways, and he is a wage earner, does not come under this formula.

Sen. Jergeson said he would like to see this bill be passed now and not go to an interim committee study.

Mr. Miniken stated it is not a question of whether it is legal to split income between a husband and wife, because it is the law now, for income tax purposes. He feels when taxes are due, the wife is liable and should be liable for the income, too. If they get married, title to the property will have to be changed and this might involve a gift tax for federal purposes. But in order for both to own the property, some legal paper work must be done.

The question of whether a wife works as a partner in the business when there is a large family was brought up. If a wife does not work, this is covered in the bill. She won't pay social security taxes because of splitting income since you do not have to pay social security on rental property income.

Regarding wages due a wife, since farmer's wages are pretty low, you would have to consider his earnings in relation to the wife's wages. By splitting the income in half, you are including the husband's labor. This is accounted for in this bill as it says any money left over after this formula is applied, is allocated to the partner putting in the most hours.

Agriculture and businesses pay most of the income tax that is paid.

Senator Stan Stephens, District #4, Hill County, chief sponsor of SB 350, said this bill provides for an incremental increase in the taxation of newly constructed commercial, industrial, or residential buildings, or those that are renovated or repaired.

SENATE BILL 350

Edward W. Nelson, Montana Taxpayers Association, Helena, supports SB 350. This is designed to wipe out MELDA, and to say that if you expand a business, if you clean up your business, if you build a new business, or if you as a homeowner expand your house, clean it up, renovate, repair - make it better and add to the investment - for that effort on your part you are going to get something out of it, the first person you are not going to see is the tax assessor. This has been addressed before, but he believes this particular piece of legislation addresses the problem very adequately. This has been talked about for 10-12 years. In terms of tax incentive and for development in the state, this is something that both homeowners and businesses could use to further their own and community interests. An advantage for cleaning something up today really isn't in the cards. He hopes that this kind of legislation and this particular bill would receive favorable consideration. This bill encourages people to do something. You are not going to get the work done without an incentive. Testimony attached.

Rod Wilson, Billings Chamber of Commerce, Billings, endorses SB 350 because it promotes industrial growth. He encourages favorable consideration.

The question of whether the scope of the original bill included residential property was raised. The Senate had not raised this question.

This bill is attempting to offer incentives to in-state businesses, since new types of businesses established by out-of-state people already are allowed tax incentives by being in Class 9 which has incremental tax incentives.

If MELDA is repealed, you repeal Class 9 as it is law at this time.

Senator Stephens said it wasn't their intention to discuss residential property, but the Senate committee created this section. He doesn't disagree with it, but it is becoming an encumbrance to passage of the bill.

Under this bill it appears that if you bought an old house, you wouldn't get a tax incentive, but if you build a new house, you would get a tax incentive for five years. The question of whether apartments would qualify arose.

It was felt by the committee that it would be unfair to allow a newcomer to an area this incentive when the persons previously there would not be entitled to it. Some local control should be established since some towns with a lot of new construction could not afford to allow such an incentive for five years.

New property would go on over a 5-year period. So what is being dealt with is a time factor, and in some communities, the benefit might extend to more than that. This would be an incentive to present occupants to upgrade their business.

The intent was to allow a 5-year program to phase in, and a 5-year period of incremental tax value on new or expanded business property for the man in Montana. This is already done for the out-of-state newcomer establishing a new type of business.

The committee recessed to an executive session.

SENATE BILL 65 - Rep. Underdal moved to recommend SB 65 Be Concurred In. The committee discussed the problem of when a part of a building is leased, and it is assessed as a unit, how it would be taxed. Rep. Sivertsen moved that the "or"s be removed. This bill is to be further researched by Terry Cohea and acted upon at a later date.

Meeting adjourned at 10:00 a.m.

Herb Huennekens

REP. HERB HUENNEKENS, CHAIRMAN

Josephine Lahti

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