

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 11, 1977

The twenty-second meeting of the Taxation Committee was called to order on the above date in Room 415 of the Capitol Building at 8:05 a.m. by Chairman Mathers.

ROLL CALL: Roll call found all members present with the exception of Sen. Healy

The following witnesses were present:

James Madison	Dept. of Rev.
Howard Vralsted	"
Don Allen	Mont. Petroleum Assoc.
Clyde Logan	Sam Gary
Tom Winsor	Mont. Chamber
Wayne Martell	U of M Student
Ernie Guindon	SAIA
Jim Mockler	Mont. Coal Council
Bill Parker	Mont. State Indian Legis. Office
Vicki Johnson	

CONSIDERATION OF SENATE BILL 309: Chairman Mathers introduced Mr. Allen to explain the bill and he presented Mr. Logan who he said had better knowledge of the statutes. Mr. Logan said the proposed legislation would make present system of taxing consistent and producers of any non-renewable natural resource could take their prorated portion of the resource indemnity trust tax out of royalties due royalty interests. He said there is no other state that requires operators to pay the tax on royalties. Mr. Madison said the Department takes no stand as far as the bill is concerned, however he would echo Mr. Logan's comments insofar as making the statutes consistent so that all mineral royalties would be handled the same.

The Chairman called for other proponents or opponents and following, permitted questions from the committee. There was discussion and several comments concerning the loss in revenue and it was estimated perhaps \$60,000 to \$70,000. Following further discussion, the hearing on SB309 was closed.

CONSIDERATION OF SENATE BILL 394: Sen. Mehrens, Dist. 45, said his very simple bill merely gave everyone who files an income tax return an increased deduction for each member of the family, of \$750.00. Mr. Winsor rose to give his support of the bill and Mr. Vralstad said he neither supported or opposed the bill, but said an amendment should be made to the bill, saying some of the language as deleted in the bill, should be reinstated. His comments are contained in Exh. #1, attached.

The Chairman asked for other proponents or opponents and following, for questions from the committee. They referred to

SB1, which gives a \$1,000 deduction and compared the costs in terms of lost revenue to the state. They asked the question of how the lost revenue was to be recovered should this legislation be adopted. Following this discussion Chairman Mathers concluded the hearing on SB394.

CONSIDERATION OF SENATE BILL 319: Sen. Towe presented his bill and told the committee he could give no cost as there is no coal being mined on an Indian reservation at this time. This bill would allow Indian tribes to tax coal mined on the reservation and allow credit of dollar for dollar against a coal severance tax. He presented a number of exhibits, including a letter which he read, see Exh. #2, attached, also two exhibits, #3 and 4, which were legal memos concerning decisions and rulings concerning tribal lands in relation to coal taxing.

Mr. Parker next addressed the committee and read a statement, copy of which is attached, Exh. #5. He also said the Indian Legislative Office did not plan to support SB319, preferring instead, to settle any such tax matters in the courts.

Mr. Mockler expressed his support of the bill but said it is quite unlikely that coal would be developed on the reservation with a 60% tax. The tax he said would be slightly over 60% with the Indian tax, which would be a pyramiding tax, and the state's 30%. Mr. Lucas also gave brief testimony as a supporter of the bill.

The Chairman asked for other proponents or opponents of the bill and then permitted questions from the committee. Mr. Canan Area Director of the Bureau of Indian Affairs was also present and said there are substantial revenues being paid by the Indian people to the state and local governments and in addition, one might also add up the various federal subsidies being paid to school districts, as an example, it would be found there are a great many federal funds being made available in lieu of taxation for the Indians. Rather than being a drain on the state's resources, he said Indian tribes are paying their own way and with the aid of federal dollars, perhaps they're paying over their share. He was questioned by several members of the committee who asked about the source of these funds and asked if it were not true that such funds came from taxpayers and were not derived from reservations, earmarked for use for federal projects. Mr. Canan said Indians who receive such federal funds could be compared to funds that are spent on Malmstrom as an example, for maintenance of and assistance for those people living there.

The committee asked also if by continued separate treatment, claiming immunity from state taxation, the Indian people were not furthering any discrimination, rather than eventual assimilation into the majority. Mr. Guindon asked for permission to speak and cited treatment of the Indians as contributing to the 'nation within a nation' status of some of the tribes. Mr. Parker said also, that it really doesn't matter what is done with this particular bill, as the courts will uphold the tribes' right to deal with their own minerals. Mr. Canan also said there is a special law

which has been on the books for some time, which permits some taxation of Indian minerals. The court would have to rule on the taxing of coal on the reservation.

There was some discussion of the portion of the bill which specified how the tribes should spend such revenues and it was questioned whether such ruling would be legal and if tribes set their own laws, they need not accept such dictates. It was then pointed out that one of the councils of the tribes concerned had requested such a measure be put in should this legislation ever be introduced when the bill was first planned, several years ago.

The percentage paid for royalties was discussed and Mr. Mockler volunteered the information that the amounts vary considerably, from percentages per acre, to cents per ton mined.

The committee then asked Mr. Parker if some benefit was not being realized by residents of the reservation from the coal tax revenues presently being paid to the state coal fund. Mr. Frank Montibeller stated that the Coal Board had funded a grant to the Ashland School, also to the Hardin School District, as examples, so indirectly some of the residents are receiving benefits from the coal tax moneys.

SB66 was discussed briefly as it related to this bill and it is expected both the Crow and Cheyenne will be feeling some of the impact of coal mined since the mines will be very close to the edge of the reservation.

Mr. Mockler said he felt the state would lose the right to tax Indian coal and the only thing the bill might do would be to save the state some money in a law suit. Discussion also included whether or not Indian tribes should be considered a sovereignty and how this affected the extent to which they were subject to laws of the United States.

Following the discussion the Chairman announced the committee would take no action on any of the bills due to lack of time and would meet next Monday morning at 8:30 a.m.

ADJOURN: Motion was made to adjourn by Sen. Watt, seconded and carried.


WILLIAM MATHERS

CHAIRMAN

E.C. #1

The Department of Revenue believes the proposed deletion at lines 5 and 6 on page 7 will produce an unintended result. Deleting the wording requiring nonresidents to prorate their exemption deductions results in extending the proration requirement to include residents. Thus, a resident who derived income from U. S. savings bonds or other income exempt from Montana Income Tax, but subject to Federal Income Tax, would not be entitled to the full exemption deduction. He could claim only that fractional part thereof which his Montana adjusted gross income is of his Federal adjusted gross income.

Under the law presently in effect, nonresidents are required to prorate their exemption deductions because they are taxable only with respect to that part of their income derived from sources within Montana. Residents, however, are not required to prorate their exemption deductions because they are taxable with respect to their income derived from sources both within and without Montana.

Assuming it is not the intent of the deletion appearing at lines 5 and 6 of page 7 to require Montana residents to prorate their exemption deductions, we suggest that paragraph 9 be amended as follows:

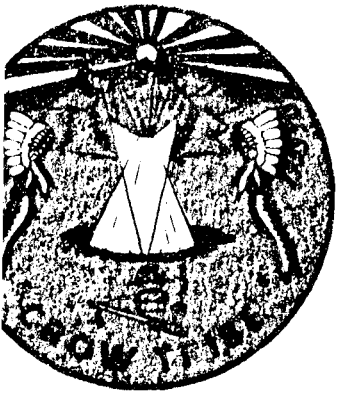
- (9) ~~Proration-of-exemption-deduction-in~~ In the case of a nonresident taxpayer

{1} the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his Federal adjusted gross income.

Also, in order to have the law in effect at the earliest possible date for the purpose of applying it to short taxable periods (such as in the case of a change in taxable year) we suggest that Section 2 of the Act be amended to read as follows:

Section 2. Effective date. This act shall become effective upon passage and approval, and the provisions thereof shall apply to taxable years beginning after December 31, 1976.

Conf. #2



CROW TRIBAL COUNCIL

CROW AGENCY, MONTANA 59022

January 31, 1977

PATRICK STANDSOVERBULL, Chairman
FORREST HORN, Vice Chairman
PHILIP WHITE CLAY, Secretary
ELLIS "RABBIT" KNOWS GUN, Vice Secretary
PHONE: Area Code (406) 638-2671 ext. 49 & 46

Crow Country
COMMITTEE ON TAXATION
Montana State Senate
State Capitol Building
Helena, Montana 59601

ATTENTION: Senator Thomas Towe

Dear Mr. Towe:

You recently introduced a proposed bill for consideration by the State Legislature entitled:

"An Act allowing a Credit against the Coal Severance Tax for any similar tax levied by an Indian Tribe on coal produced on a Reservation".

I was gratified that the bill was introduced, and sent Mrs. Eloise W. Pease to the meetings on this bill to express our support for this legislation. My purpose now is to indicate our continuing support of the legislation and to urge its passage.

The bill would allow the Crow Tribal coal reserves to be developed in an orderly fashion. We are presently dealing with several coal companies in an effort to arrive at a deal on Crow Tribal coal that will benefit the present generation as well as future generations. We have passed a tribal coal tax on Crow Tribal coal for the purpose of funding the Crow Tribal Council and for the purpose of supplying services to the reservation community. Many services that we have provided in the past, as well as those we will supply in the future, benefit and assist Indian and non-Indian people alike. We have been told that a combination of the Crow tax plus the State tax together with royalty payments is too much for the companies to pay on an economic basis. The enactment of the legislation would also preclude the need to test the validity of the state taxing Indian owned coal, and would aid the public relations between the Indian and non-Indian people.

For these reasons, we want to express to you and your Committee our complete support for this legislation, and call upon the State Legislature to pass this proposal into law.

Sincerely,

A handwritten signature in cursive script, reading "Patrick Stands Over Bull".

Patrick Stands Over Bull
Crow Tribal Chairman

cc: Montana State Indian Legislative Office
P.O. Box 4238, Helena, Mt. 59601



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

Eph. # 3

Memorandum

OCT 13 1976

To: Secretary

From: Solicitor

Re: Tribal Jurisdiction over Non-Indians in Civil Matters: Approval of Various Ordinances of the Crow and Shoshone-Bannock Tribes

I. Introduction and Summary of Conclusions

Several tribal ordinances have been submitted to the Department for approval which involve the question of tribal jurisdiction in civil matters over non-Indians. Briefly, the ordinances are as follows:

1. An ordinance of the Tribal Business Council of the Shoshone-Bannock Tribes regulating land use on the Fort Hall Reservation in Idaho, adopted April 26, 1975
2. A "law and order" code adopted by the Crow Tribe on January 31, 1976 which (in addition to asserting jurisdiction over all criminal violations of the code committed on the reservation by "any person")^{1/} provides that tribal courts shall have jurisdiction over civil suits involving reservation residents or transactions or events occurring on the reservation

^{1/} In view of the disposition we recommend of this request for approval, see p. 2, infra, it is not necessary for us to discuss the separate question of tribal criminal jurisdiction over non-Indians in connection with this ordinance.

DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
SALT LAKE CITY

Encl. # 4

July 29, 1976

The Honorable Richard S. Kleppe
Secretary of the Interior
Department of the Interior
Washington, D. C. 20240

Dear Secretary Kleppe:

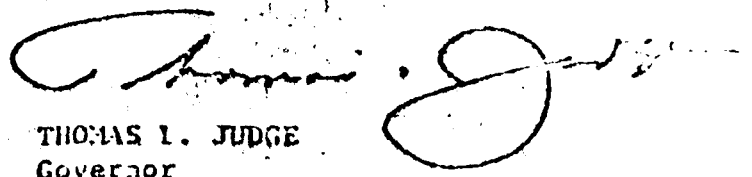
Enclosed is a memorandum of law opposing the approval by the Department of the Interior of the Crow Tribal Coal Taxation Code. As you know, this Code is now before you for approval pursuant to 25 U.S.C. Section 476.

For the reasons stated in the memorandum, it is the position of the State of Montana that the tax proposed by the Crow Tribe is outside the power of the Tribe. As provided by the United States Constitution, the power to originate a revenue measure of this nature lies solely in the House of Representatives.

I strongly urge you to disapprove the Crow Tribal Coal Taxation Code.

Very regards.

Sincerely,


THOMAS I. JUDGE
Governor

cc: Hugh C. Garner, Esquire
Acting Deputy Solicitor
Department of the Interior

Enclosure