

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 5, 1977

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

ROLL CALL: Roll call found all members present but Sens. Brown, Roskie and Towe, who were excused.

The only witness present was Lester Loble, representing Montana-Dakota Utilities.

CONSIDERATION OF HOUSE BILL 20: Roger Tippy introduced this bill which he states merely clarifies some of the language in the codes, section 84-201, 202 and 406. He distributed Exhibits #1, 2 and 3, attached where explanations and references were made. He explained the repealers and following his presentation, there were questions by the committee and an amendment, #1, was adopted.

Sen. Turnage Moved to Adopt Amend. 1, voting unanimous.

DISPOSITION: Sen. Turnage then Moved HB20, As Amended, Be Concurred In. Motion was carried unanimously. (Sen. Watt to carry bill on floor.)

CONSIDERATION OF HOUSE BILL 19: Mr. Tippy also presented this bill and said that a number of mistakes had been made when this legislation was first introduced in 1973 and this bill will amend the sections concerning appeals to the S.T.A.B. and sets up procedures in the Department of Revenue for an assessment review. Mr. Loble introduced Exh. #4, attached, his amendment, which he said he would like to have amended into the bill. He believed anyone should have the right to a hearing other than the 'people's court' as specified in the bill and his amendment would give any taxpayer the right to appeal as he wished.

His amendment was discussed by the committee and they agreed to its adoption.

Sen. Turnage Moved Amend. #1 Be Adopted. The motion was carried unanimously.

DISPOSITION: Sen. Turnage Moved HB19 As Amended, Be Concurred In. The motion was carried unanimously.

CONSIDERATION OF HOUSE BILL 25: This also was a recodification bill and Mr. Tippy explained it in its entirety, pointing out grammatical corrections and clarifications that had been made in the bill. Several amendments were proposed and discussed by the committee, and they agreed on their adoption.

Sen. Turnage Moved the adoption of Amend. #1; motion carried unanimously. Sen. Watt Moved adoption of Amend. #2; motion carried unanimously also and Sen. Turnage then Moved Adoption of Amend. #3, this voting also carried unanimously.

DISPOSITION: Sen. Turnage then Moved HB25 As Amended, Be Concurred In. The motion carried unanimously. (Sen. Mathers to carry bill on floor.)

Following disposition of this bill the meeting adjourned.



WILLIAM MATHERS

CHAIRMAN

ROLL CALL

SENATE TAXATION COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/5/77

NAME	PRESENT	ABSENT	EXCUSED
SEN. WATT	✓		
SEN. BROWN	Excused		
SEN. GOODOVER	✓		
SEN. HEALY	✓		
SEN. MANNING	✓		
SEN. NORMAN	✓		
SEN. ROSKIE	Excused		
SEN. TOWE	Excused		
SEN. TURNAGE	✓		
CHAIRMAN MATHERS	✓		

Exh. #1, 2, 3

HOUSE MEMBERS

ROBERT L. MARKS
CHAIRMAN
FRANCIS BARDANOUVE
OSCAR KVAALEN
PAT MC KITTRICK



Montana Legislative Council

State Capitol

Helena, 59601

SENATE MEMBERS

NEIL J. LYNCH
VICE CHAIRMAN
GLEN DRAKE
CARROLL GRAHAM
FRANK HAZELBAKER
DIANA DOWLING
DIRECTOR, LEGAL SERVICES;
CODE COMMISSIONER
ROBERT PERSON
DIRECTOR, RESEARCH

ROSE WEBER
EXECUTIVE DIRECTOR
PAMELA DUENSING
ADMINISTRATIVE ASSISTANT
ROBERTA MOODY
SUPERVISOR, ALTER SYSTEM

LC0016

1977 Legislature
Code Commissioner Bill - Summary

House Bill No. 19

TO ALLOCATE THE DUTIES OF CONDUCTING ADMINISTRATIVE TAX
CASE HEARINGS, ETC.

(This summary does not include discussion of routine form
or grammatical changes.) Summary by Roger Tippy.

Once upon a time, the entities involved in setting and collecting property taxes were known as the assessor, the board of county commissioners, and the state board of equalization. In 1973, references to all these entities in the tax statutes were rather mechanically changed to "department of revenue" or "state tax appeal board" without much attention to the resultant administrative structure. For instance, the assessor (in 84-440), the county commissioners (in 84-609), and the state board of equalization (in 84-711) each had authority to assess property which had escaped assessment. The procedures and limits on the authority of each differed, as their respective offices differed. Yet each reference was changed to "department of revenue" in 1973. The department has its choice among 3 code sections when it assesses omitted property now.

The statutes also reflect confusion as to the timing of a formal adjudicatory hearing in taxpayer-department disputes. While the state tax appeal board (STAB) is generally recognized as the formal hearing board for such cases, a number of sections call for hearings within the department. The APA's contested case provisions apply to these department hearings, which entails formality and an effort to develop a full record. Yet STAB maintains its duty is to develop a full record; consequently the department hearing is wasted time for all parties.

This represents an effort to rationalize administrative procedures in tax disputes upon the premises that (1) the department would have a single procedure for revising assessments and inserting omitted assessments, with opportunity for an informal conference at the department followed by a formal hearing before STAB, and (2) appeal procedure would be spelled out in cases going directly from department to STAB, i.e., not via the county tax appeal boards. These cases comprehend centralized utility

3/5

and mine assessments, Class 7 determinations, and all non-property tax matters.

Analysis of the bill:

Section 1. 84-709. Amendment in (4) emphasizes informality of appeals from county appeal board decisions and clarifies STAB's power to adopt its own rules of practice and procedure.

Section 2. New section, outlining separate procedure for direct appeals from department to STAB. Contested case procedures of Montana APA would apply to these appeals without the exemptions created for cases coming from county boards.

Section 3. 84-603. Amendment deletes reference to provision in 84-602 (which is to be repealed) dealing with old power of county commissioners to reduce the assessment ratio on an entire class of property in the county. Now, legislature has enacted standard assessment ratios for realty and department handles assessment ratios for personalty under notice and hearing rule making proceedings.

Section 4. 84-711. Amendment basically establishes new procedure for revising assessments. 10-year "statute of limitations" parallels 10-year limit on collecting personal property taxes enacted in 1975. Under old law, 3-year limit applied to state board of equalization while no time limit was set on assessor's revision authority.

Subsection (2) replaces first paragraph of 84-710, which as presently worded is at odds with reality. This says the department, "before making any change in the assessment of any property" must schedule a hearing on the change and send notice to the taxpayer by certified mail. Read literally, this applies to every automobile assessment every year, since the value changes in the blue book, with depreciation, every year. What the law covered before '73 (state board changing assessor's values) would be expressed again under the proposed language, i.e., those items like livestock and farm machinery valued from reports filed by the taxpayer are covered when the department revises the value from the reported figure.

Subsection (3) replaces the formal hearing procedures set out in 84-609, 84-710, and 84-711 with standard requirements for notice, conference, department action after conference, and appeals from that action.

Subsection (4) provides for response in the county courthouse to an order revising an assessment.

Section 5. 84-1841. Shifts formal hearings and judicial review thereof in gasoline tax cases from department to STAB.

Section 6. 84-4923.1. Shifts formal hearings and judicial review thereof in income tax cases from department to STAB.

Under 84-4923.1, Dept. still has decision authority.

Section 7. 84-5606.24. Recognizes department hearings in any cigarette vendor case involving licensing qualifications rather than revenue.

Section 8. 84-5606.25. Provides for judicial review of STAB decision in cigarette tax case or of department decision if case involves licensing rather than revenue.

Dept. now has decision authority.

Section 9. 67-2220. Shifts formal hearing under Abandoned Property statutes from department to STAB.

Section 10. 67-2221. Shifts judicial review of formal hearings in abandoned property disputes from department decision to STAB decision.

Section 11. Repeals:

84-440, authorizing department to assess at any time property which is discovered to have escaped assessment.

84-602, authorizes department to increase or lower assessments to equalize and match true value, upon notice and hearing, and to change the assessment ratio of an entire class within a county.

84-609, authorizes department to direct assessor to list any property which had escaped assessment and to revise assessments, and directs county clerk to notify all interested parties.

84-710, requires department to send notice by certified mail before revising any assessment, requires department to hold hearing before changing assessment ratio of any class within a county.

HOUSE MEMBERS

ROBERT L. MARKS
CHAIRMAN

FREDERICK BARDANOUVE

JOHN KVAALLEN

PATRICK MC KITTRICK

JOSE WEBER
EXECUTIVE DIRECTORMELBA DUENSING
ADMINISTRATIVE ASSISTANTROBERTA MOODY
SUPERVISOR, ALTER SYSTEM

Montana Legislative Council

State Capitol

Helena, 59601

SENATE MEMBERS

NEIL J. LYNCH
VICE CHAIRMAN

GLEN DRAKE

CARROLL GRAHAM

FRANK HAZELBAKER

DIANA DOWLING
DIRECTOR, LEGAL SERVICES;
CODE COMMISSIONERROBERT PERSON
DIRECTOR, RESEARCH

LC0015

1977 Legislature
Code Commissioner Bill - Summary

House Bill No. 25

TO CONSOLIDATE PROPERTY TAX PROCEDURES FOR THE CENTRALIZED
ASSESSMENT OF RAILROADS, UTILITIES, AIRLINES, MINES, AND
OIL AND GAS WELLS.(This summary does not include discussion of routine form
or grammatical changes.)

The assessment and taxation of railroads, utilities, airlines, mines, and oil and gas wells historically was handled directly by the old state board of equalization rather than by the assessor. Long before the 1973 creation of the revenue department and STAB, the sections dealing with this centrally assessed property contained a welter of overlaps, contradictions, and redundancies. The attached bill proposes to repeal all provisions dealing with dates for taxpayer reporting and departmental apportionment, estimated tax, protests and hearings, and penalties, and replace them with seven sections establishing a uniform procedure for these properties.

An earlier draft of this bill, encoded "LC0004," was distributed in April, 1976, to the tax departments of over twenty corporate taxpayers, most of those who pay substantial taxes under these statutes. No objections or comments were received except for several technical amendments suggested by the department. Any differences between 0004 and the attached 0015 are noted in the following memorandum.

1. Section 1. New section declaring that department shall centrally assess the five categories of property. Recapitulates existing law except for adding the word "centrally", since the department is now responsible (by its agents in the counties) for assessing all property. Same as 0004 except that subsection (1), railroads, no longer contains the phrase "constituting a single and continuous property", and subsection (3), airlines, now says "all property of scheduled airlines", without excluding locally assessed airline property.

Section 2. New section directing department to send notices of assessment to centrally assessed taxpayers and to provide a grievance procedure in the form of an assessment review conference at the department followed by a formal STAB hearing. Differs from 0004 by: (a) allowing taxpayer 30 days after notice, instead of August 15, to seek review conference, (b) changing department proceeding from a formal APA contested case hearing to an informal review conference, (c) deleting second Monday in October deadline for final department decisions, and (d) changing STAB hearing from review of record of department hearing to full-fledged hearing at STAB.

Section 3. New section setting uniform due date of March 31 for centrally assessed taxpayers' reports. Same as 0004.

Section 4. New section authorizing department to estimate value of centrally assessed property in the absence of report from taxpayer, and imposing penalty of 2/3 of 1% per month until the report is filed or the estimated assessment is transmitted to the counties. Differs from 0004 by changing "hearing" to "conference" (STAB would conduct the formal hearing), and inserting a cutoff on the running of the penalty when the report is filed.

Section 5. New section directing department to apportion "inter-county" property (railroads, utilities, airlines) among the counties. Differs from 0004 in wording of alternative basis for apportionment if mileage basis is impractical.

Section 6. New section directing department to transmit apportioned assessments and mine or oil field assessments to county assessors, and directing assessors to enter values in assessment book. Same as 0004 except for deletion of word "flight" before "property of airline companies".

Section 7. New section governing method of handling assessments changed as a result of STAB order, court order, or departmental revision. Same as section 8 of 0004 (section 7 of 0004 has been deleted from this bill).

Section 8. Amend 84-404 by inserting the word "centrally" after "assess", since this section always referred to centrally assessed property, delete references to county clerk and substitute assessor, as recipient of apportioned assessments, and insert STAB as a reviewing authority of department decision.

Section 9. Amending 84-708.1, inserting subject and verb at beginning of each subsection, deleting central assessment duties from subsection (1) and cross-referencing to new section 1 of the bill, deleting apportionment duties and substituting authority to adopt rules for centrally assessed property. The department already has a number of administrative code rules citing 84-708.1 as authority, although that authority does not clearly appear. Also making style and grammar changes in subsequent subsections, and indicating verb "shall" before apparent

duties and "may" before apparent powers. This last was not in 0004; other change was in subsection (2), limiting rule-making delegation to centrally assessed properties.

Section 10. Amend 84-801 to make style and grammar changes consistent with recodification, and to delete April 1 reporting deadline--this is replaced by the March 31 date in section 3 of the bill.

Section 11. Amend 84-802 to make style and grammar changes consistent with recodification, and to delete provisions for show-cause "appearance" by protesting railroad companies (replaced by section 2 of the bill) and for 2nd Monday in July apportionment date (replaced by sections 5 and 6 of the bill).

Section 12. Amend 84-901 to delete 2nd Monday in March reporting deadline for utilities--replaced by March 31 in section 3 of the bill, and to make style and grammar changes.

Section 13. Amend 84-905 to delete 2nd Monday in July requirement for apportionment of utility assessments, replaced by July 1 in sections 5 and 6 of the bill, and to make style and grammar changes.

Section 14. Amend 84-5402 to make style and grammar changes, to delete the 2/3 of 1% penalty imposed on taxpayers not reporting net proceeds (replaced by like provision in section 4 of the bill), deleting an additional penalty of \$25 per month, and deleting a provision for allowing extensions of filing deadlines (replaced by section 3 of the bill).

Section 15. Amend 84-5403 to make style and grammar changes, and to delete redundant phrases, such as "value in dollars and cents", "calculate and compute", and "ascertain and determine".

Section 16. Amend 84-5405 to delete redundant or superfluous phrases, such as "shall be and shall constitute" or "herein provided for", and to make style and grammar changes.

Section 17. Amend 84-5407 to delete redundant or superfluous phrases, such as "as aforesaid", "value...and such gross value shall be", and the Engineering and Mining Journal of New York City.

Section 18. Amend 84-6201 to add a definition of "well" in order to substitute "well" for the inappropriate term "mine" throughout the oil and gas tax statutes.

Section 19. Amend 84-6202 to delete references to mines and mining and substituting references to production from a well (of oil and gas); delete the 2/3 of 1% penalty, the \$25 a month penalty, and the extension of time provision which are replaced by sections 3 and 4 of the bill.

Section 20. Amend 84-6203 by changing mines to wells, "said"s to "the"s; deleting redundancies (value in dollars and cents, ascertained and determined); and making style and grammar changes.

Section 21. Amend 84-6403 by deleting airline assessment reporting date of May 1, replaced by March 31 in section 3 of the bill, and inserting commas for grammatical consistency.

Section 22. Repealers.

84-719 tells the department to assess net proceeds and centrally assessed property by the 3rd Monday in July and to apportion the assessments among the counties as directed by other statutes. This is in the codes more as a cross-reference than as a substantive grant of authority; it would be replaced by sections 1 and 5 of the bill.

84-720 tells the department to transmit the apportioned assessments to the county clerk by the 4th Monday in July, with a copy of each assessment portion sent by the department to the taxpayer. These requirements conflict with those in other sections (e.g., 84-802 tells the department to send its apportionments of railroad assessments to the assessor by the 2nd Monday in July, and oil and gas net proceeds to the assessor by July 1). These provisions would be replaced by section 6 of the bill.

84-721 directs the county clerk to enter the apportioned assessments in the book; again, other sections assign this duty to the assessor. Section 6, subsection (2) of the bill would settle on the assessor.

84-722 provides for hearings, either on the protest of a taxpayer (it means, but does not say, owners of centrally assessed property) or on the motion of the department if it believes an error of assessment has been made, for the purpose of changing an assessment--and for making a record for purposes of STAB and judicial review. As the memo for a companion bill, LC0016, points out, a formal department hearing is a waste of time since STAB will often go over all the same ground in its hearing. Entry of revised assessments are also covered. These provisions are replaced by sections 2 and 7 of the bill.

84-802.1 provides for a hearing before STAB to review the department's decision in railroad assessment. Replaced by section 2 of the bill.

84-803 directs the department to transmit apportioned railroad assessments to the assessors by the 2nd Monday each July and the assessors to list the values in the books. Replaced by section 6 of the bill.

84-804 directs the department to keep a record of railroad assessments and apportionments. The state records management program under the department of administration now handles such records for all state agencies.

84-903 provides for a show-cause "appearance" before the department by utilities protesting central assessments. This is subject to a 10-day limitation. Section 2 of the bill would give utilities 30 days to protest and have an assessment review conference.

84-903.1 provides for a hearing before STAB to review the department's decision in utility assessment. Replaced by section 2 of the bill.

84-904 provides for a hearing when the department has to estimate value due to the taxpayer's failure to file a complete report. Replaced by section 4 of the bill.

84-906 tells the department how to apportion utility assessments among the counties. Replaced by section 6 of the bill.

84-907 tells the department to keep records of utility assessments. Now covered by state records management program.

84-5408 tells the department to transmit mining net proceeds assessments to the counties and tells the assessor how to list them. The second through fifth sentences contain a five-year averaging system which was held unconstitutional in 1959. The constitutional portion is replaced by section 6 of the bill.

84-5410 authorizes the department to estimate the net proceeds of mines when the taxpayer files no report, and imposes criminal penalties for refusing to heed a department subpoena issued for the purpose of making an estimate. The estimation procedure is replaced by section 4 of the bill and the subpoena power is covered under 84-716.

84-6207 tells the department to transmit oil and gas net proceeds to the assessor and tells the assessor how to list them; replaced by section 6 of the bill.

84-6209 authorizes the department to estimate oil and gas net proceeds and provides subpoena powers and sanctions; covered by section 4 of the bill and by 84-716.

84-6402 states that the department shall centrally assess all property of scheduled airlines; replaced by section 1, subsection (3) of the bill.

84-6405 provides for a show-cause "appearance" when a scheduled airline protests its assessment; replaced by section 2 of the bill.

84-6504.1 provides a STAB hearing to appeal a departmental assessment of airline property; replaced by section 2 of the bill.

84-6406 authorizes the department to estimate value if an airline does not file a report, and adds a 10% penalty to the tax due in such cases; replaced by section 4, with the penalty changed to 2/3 of 1% per month of delinquency.

84-6407 tells the department to apportion airline assessments and tells the county assessor to list them. It also classifies airline property in "class 7 at 40% of value." Such property is now class 11 property. Apportionment procedures are replaced by sections 5 and 6 of the bill.

84-6408 tells the department to keep records of airline assessments; now covered by state records management program.

84-6410 allows the department to extend the time for filing airline reports; replaced by the first sentence of section 4 of the bill.

HB 19

Exh. # 4

Amend Section 1, p 3, line 7

Following: "board"

Strike: "shall not be bound by
the common law and statutory
rules of evidence or rules
of discovery and"

amendment to preserve "people's court"
concept:

Amend Section 1, p 3 line 8

Following: "discovery"

insert: "unless the taxpayer demands that
either or both of the rules of
discovery or evidence apply"

STANDING COMMITTEE REPORT

..... March 5 19 77

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration HOUSE ... Bill No. 20

Respectfully report as follows: That HOUSE ... Bill No. 20,

third reading bill, be amended as follows:

1. Amend page 3, section 2, line 6.

Following: "taxation"

Insert: ", and all property, real or personal, is the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability."

AND AS AMENDED,

BE CONCURRED IN

~~ND:R36X~~

STANDING COMMITTEE REPORT

.....March 5..... 19 77.....

MR. PRESIDENT.....

We, your committee on TAXATION.....

having had under consideration HOUSE Bill No. 25.....

Respectfully report as follows: That..... HOUSE Bill No. 25.....

third reading bill, be amended as follows:

1. Amend page 3, section 3, line 7.

Following: "year"

Insert: "and each report described in 84-801 shall be delivered to the department before April 15 each year"

2. Amend page 4, section 4, line 10.

Following: "PENALTY OF"

Strike: "1/2 OF"

3. Amend page 8, section 9, line 15.

Following: "and"

Insert: "may make rules"

AND AS SO AMENDED,

BE CONCURRED IN

~~DO PASS~~

Wm Mathers