

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 17, 1977

The forty-fifth meeting of the Taxation Committee was called to order on the above date in Room 415 of the State Capitol Building at 8:10 a.m. by Chairman Mathers.

ROLL CALL: Roll call found all members present with the exception of Sen. Manning who was excused.

The following witnesses were present:

Steve Grose	Mont. Savings & Loan
John Cadby	Mont. Assoc. of Bankers
Rod Wilson	Blgs. Cham. of Commerce
Mr. Dore	Dept. of Revenue
Mr. Burr	"
Mr. Madison	"
Mr. Groff	"

CONSIDERATION OF HOUSE BILL 95: Rep. Fagg gave a brief presentation of his bill which would delete hydrous sillicates from mica mines tax. He said hydrous sillicates is clay and is used in the making of brick and clay pots and that manufacturers of these products are finding the present tax prohibitive when they attempt to compete with other firms out of the state. The Department of Revenue had asked this law be taken off the books as it was a difficult tax to collect. This same clay is often found in basement excavations and enforcement of the collections would be most difficult. D.R. representatives agreed with Rep. Fagg's presentation of the bill. There were no other proponents or opponents and following a brief discussion, the bill was moved.

DISPOSITION: Sen. Watt Moved HB95 Be Concurred In. The motion was carried unanimously.

CONSIDERATION OF HOUSE BILL 73: Rep. Ramirez presented this bill which dealt with excluding income on mortgages, etc., held by out of state companies. He thought this bill would encourage out of state companies to buy state loans thereby boosting the state's economy. He said at present such companies have several risks involved in making such loans, one of these being the possibility of their being subject to the corporation income tax.

The Chairman asked for other proponents and Mr. Cadby said he knew of an individual who was having difficulty in selling loans to some companies in New York because of the tax and he felt if this bill were passed it would be a means of encouraging the sale of bonds to out of state companies. Sen. Murphy also was a proponent of the bill, providing it be amended as he proposed.

Chairman Mathers called for other proponents or opponents of the bill and a discussion followed with questions from the committee and amendments proposed.

Sen. Turnage moved that Mr. Tippy draft an amendment that will specify that these are to be secondary loans and securities and would have to originate in the state. His motion was seconded by Sen. Watt.

Following further discussion, the hearing on HB73 closed.

CONSIDERATION OF HOUSE BILL 422: Rep. Ramirez also presented this bill which he said pertains to small corporations, qualifying under subchapter S, and the bill simply adopts the changes of the tax reform act of 1976 to bring the state law into conformity with the Federal. Mr. Dore said the D.R. supports the bill also.

DISPOSITION: Sen. Turnage Moved HB422 Be Concurred In. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 583: Rep. Ramirez said this bill clarifies when the state corporation license tax accrues for Federal tax purposes. He said there is a problem with corporations who use the fiscal year. He distributed Exh. #1, and said the law did not state what year the company should pay the tax. Therefore, if they had a particularly good year they would want to pay the tax in that year, rather than the following year, should it be a poorer one. Several amendments were suggested for the bill and Sen. Turnage moved the addition of the word "taxable" in 2 places in the bill, on page 2, line 10, following "for the" and on page 1, line 24, following the word "preceding".

Sen. Turnage Moved the Adoption of these Amendments and the motion carried.

DISPOSITION: Sen. Turnage then Moved HB583 As Amended Be Concurred In. This motion also carried unanimously.

The committee then looked at bills heard previously, first taking up HB551. They discussed this bill again and consulted with Mr. Burr concerning the D.R.'s stand on the legislation. He said the D.R. was satisfied with the bill.

Sen. Towe then Moved to Amend the Bill as shown on the committee report attached. His motion carried unanimously.

DISPOSITION: Sen. Towe Moved HB551 As Amended Be Concurred In. This motion carried unanimously.

The committee then discussed HB155 and agreed to act upon it.

DISPOSITION: Sen. Turnage Moved HB155 Be Not Concurred In. Motion carried with "No" votes by Sens. Healy, Watt, Norman.

Following disposition of this bill, the meeting adjourned.

Mathers

ROLL CALL

SENATE TAXATION COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/17/77

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

Sec 84-1511 states "(1) It is hereby declared the policy of the state of Montana both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section." This section of law goes on to state that every corporation dissolved or ceasing to do business in Montana must pay taxes as provided in 84-1501 on all net income earned in Montana including net income for the final period.

1. PROBLEM SOUGHT TO BE SOLVED -- Substance of proposed
legislation:

Montana lenders have difficulty in selling real estate mortgages to out of state lenders. Montana lenders cannot in any way hold all of the real estate loans, particularly the residential loans, which they make. Consequently, they must attempt to sell a portion of those loans to out of state financial institutions. If the out of state financial institutions refuse to purchase the loans, the ultimate effect is a decrease in the number of loans with a consequent effect upon the construction industry and the economy as a whole.

Out of state lending institutions are reluctant to purchase Montana loans if the purchase, in and of itself, will subject the out of state lenders to the necessity to qualify to do business in the State of Montana and to pay corporation income tax. Of course, where the out of state lenders' activities within the State of Montana are sufficient to constitute the doing of business, then they should unquestionably qualify to do business as required by law and should pay the corporation income tax. However, where they simply purchase indebtednesses or mortgages or other security interests from Montana banks, and have no activity within the State of Montana except periodic inspections of the security, this should not constitute the doing of business and should not subject them to the corporation income tax. Because the risk exists of this occurring, however, most out of state lenders will not purchase Montana indebtednesses.

To solve the problem, R.C.M. 1947, § 15-2299, which defines activities which will not in and of themselves subject a foreign corporation to a finding that it is doing business within the State of Montana, should be amended to add the additional subsection to make it clear that the mere ownership of such indebtedness, whether or not the debt was created by the lender, does not constitute doing business. The subsection should be written to read substantially as follows:

"Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property."

Even with the change in § 15-2299, R.C.M. 1947, savings and loan associations will still be reluctant to rely upon the provisions of Title 15, but will instead look to Title 7 relating to the regulation of building and loan associations. There is no provision in Title 7 comparable to § 15-2299. In order to convince foreign savings and loan associations and their counsel that qualification to do business will not be necessary, §§ 7-130 or 7-131, R.C.M. 1947, should be amended to incorporate a provision similar to the provision referred to above.

HB 73

STATE OF MONTANA

DEPARTMENT OF REVENUE

MITCHELL BUILDING
HELENA, MONTANA 59601

January 28, 1975

Mr. Gareld F. Krieg
Crowly, Kilbourne, Haughey, Hanson
and Gallagher
Attorneys at Law
P. O. Box 2529
Billings, Montana 59103

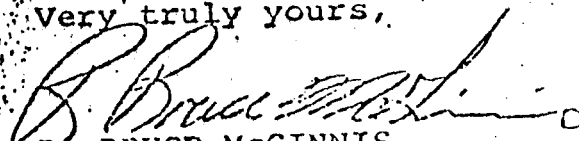
Re: Metropolitan Service Corporation

Dear Mr. Krieg:

I am indeed sorry that this response has been delayed so long. I hope you will please excuse the delay. I have reviewed your inquiry concerning the Metropolitan Service Corporation in light of the response made by this office in the Midland Bank question. It would appear in this case that the out-of-state corporation has less contact with the state than did the out-of-state corporations in the Midland Bank case. All activities relating to the loans secured by Montana real property are carried out by the Metropolitan Service Corporation with only a stated payment being remitted to the out-of-state corporation. It would be my opinion at the present time that the state would not attempt to bring such corporations under the corporation income tax.

If I can be of further assistance to you in this matter, please do not hesitate to call upon this office.

Very truly yours,


R. BRUCE MCGINNIS
Deputy Chief Tax Counsel

RBM:elr

HB 73

Odds are that Congress will fail to enact further extensions in a moratorium that has protected banks from interstate taxation. This was the opinion of Lawrence H. Hazeltine, vice-president for Tax Administration of the NCNB Corp. of Charlotte, N.C. Hazeltine spoke at the Forty-First Annual Bank Administration Institute held last month in Norfolk, Va.

The legislative background. Public Law No. 93-100, effective August 16, 1973, declared a moratorium through 1975 on the application of "doing business" taxes to a federally insured out-of-state depository. In March 1976, this moratorium was extended to September 12, 1976. In Hazeltine's opinion, unless speedy action is taken by bankers and concrete recommendations are made for computation of allocating percentages, no further extensions will arise. The result will be that the various states will be free to tax out-of-state banks in any manner they choose.

The taxation bramble. The biggest problem with "doing business" taxation by a state on banks is that there are two theories of taxation of loan income. These are the destination theory and the domiciliary theory. Under the former, income from a mortgage can be taxed by the state in which the property is located, the state where the borrower's principal office is located, or the state in which the mortgage is signed. Under the domiciliary theory, this income would be taxed by the state in which the lender's principal office is located.

As you can see, certain multistate deals where one state uses one theory and another state the other theory could result in double (or even triple) state taxation of the same income. Another problem is that in some instances the same income may be placed in the allocating percentage which will be taxable by two different states--especially if the state in which the principal office is located is a state which uses the domiciliary theory.

BTR Note: Florida is one state which is waiting with baited breath for the federal moratorium to be lifted. Before the ban on out-of-state depositories went into effect, that state's tax commission tried to tax in Florida the income for any company which had a mortgage on property located within the state.

STANDING COMMITTEE REPORT

March 17 19 77

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 583

Respectfully report as follows: That HOUSE Bill No. 583,

third reading bill, be amended as follows:

1. Amend page 1, section 1, line 24.

Following: "preceding"

Insert: "taxable"

2. Amend page 2, section 1, line 10.

Following: "FOR THE"

Insert: "taxable"

AND AS SO AMENDED,

BE CONCURRED IN

DO PASS

J. A.

STANDING COMMITTEE REPORT

March 17 19 77

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 155

Respectfully report as follows: That HOUSE Bill No. 155

BE NOT CONCURRED IN

DEFAIR

Wm.

STANDING COMMITTEE REPORT

..... March 17 19 77

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 95

Respectfully report as follows: That HOUSE Bill No. 95

BE CONCURRED IN

~~DO NOT PASS~~

GA

STANDING COMMITTEE REPORT

March 17 19 77

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 551

Respectfully report as follows: That HOUSE Bill No. 551,

third reading bill, be amended as follows:

1. Amend page 2, section 2, line 9.

Following: "shall be"

Strike: "conclusively"

AND AS SO AMENDED,

BE CONCURRED IN

DO PASS

J.L.

WILLIAM MATHERS

Chairman.