

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 1, 1977

The sixtieth meeting of the committee was held on the above date in Room 415 of the Capitol Building, called to order by Chairman Mathers.

ROLL CALL: Roll call found all the members present.

The following witnesses were present:

Harold Pitts	Mont. Indep. Bankers
John Cadby	Mont. Bankers Assoc.
Bruce Johnson	First Nat'l. Bank, Helena
George Bennett	Mont. Bankers Assoc.
Glen Drake	Am. Ins. Assoc.
	League of Cities
Steve Turkiewicz	Mont. Assoc. of Counties

CONSIDERATION OF HB 735: Mr. Bennett presented this bill, having considerable background information on the bill, saying it did 3 things: 1, it would shift the tax on bank shares to the bank itself; 2, would have provided a formulary deduction for United States obligations; and 3, would have granted to banks their equalization factor. He said banks in Montana have been taxed on tangible property the same as solvent credits. Because of Federal law the Legislature shifted the tax on money capital to a tax on shareholders. He said this statute was construed by the Supreme Court and the question then was if the tax was on U.S. obligations. The Court said the tax was an indirect tax. Congress amended the Federal statute in 1959 that a direct or indirect tax on U.S. obligations was not permissible. Mr. Bennett continued his testimony and said banks are offering for 1977 and 1978 to be allowed a limited deduction, or pro rated deduction, amounting to about 5 or 5% savings to the average bank. He said the Department of Revenue would not oppose this formulated method and would thus avoid litigation for '77 and '78, and would leave local governments in the same shape as they are now.

He said HB70 affected the bank share tax. Bank shares are the only property in Montana taxed at 100% and he said he didn't believe there is any doubt but that banks are target taxpayers, paying higher rates than the railroad, utilities, etc. He said they are asking for an interim situation for '77 and '78 as there will be a study on tax classes during that time. He distributed Exh. #1, as amendments to the bill.

Mr. Cadby appeared also as a proponent of the bill and said the bill has a self-destruct clause on it so it will be studied in the interim. Mr. Pitts said he was authorized to support the bill for 1977 and 1978 and said the Ind. Bankers had held a conference on this this and have agreed to support the bill and discourage any litigation for 2 years. Mr. Turkiewicz said they have

been involved with the problem and agree that this is an interim solution and will maintain the status quo.

The Chairman then asked for other proponents or opponents and following, for questions from the committee. A discussion followed with Mr. and Mr. Hutchinson of the D. of R. contributing to the explanation of the method of determining the net worth of the bank as a percentage of the total worth of the bank.

Following additional discussion, the committee moved to accept the amendments. Sen. Turnage Moved the Adoption of Amendments in Exh. #1; his motion carried unanimously.

DISPOSITION: Sen. Turnage Moved HB735 As Amended, Be Concurred In. The motion carried unanimously.

The Chairman then stated it is probable that HB67 will be transferred out of this committee into State Administration Committee. They then discussed HB422, previously heard.

Sen. Towe Moved to Adopt the Amendments to HB422; motion carried.

DISPOSITION: Sen. Towe Moved HB422 As Amended, Be Concurred In. The motion carried unanimously.

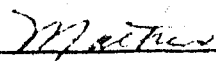
The committee then discussed HB599, previously heard by the committee, and the proposed amendments. Mr. Dore of the Department of Revenue also contributed to the discussion. The committee proposed not allowing such credits for carry-back years and to make the effective date reflect that decision. Sen. Towe Moved the amendment to HB599; motion carried unanimously.

DISPOSITION: Sen. Towe Moved HB599 As Amended, Be Concurred In. The motion carried unanimously.

Sen. Watt then moved the amendments to HB215, presented to the committee and explained by Mr. Tippy, as on Exh. #4.

DISPOSITION: Sen. Watt Moved HB215 As Amended, Be Concurred In. The motion carried unanimously.

Following disposition of these bills, the meeting adjourned.


 WILLIAM MATHERS CHAIRMAN

Amend HB 215, third reading bill.

1. Amend the title, page 1, line 6

Following: "1947;"

Insert: "coordinating this amendment with other pending legislation;"

2. Amend page 7, section 1, line 18.

Following: "(a)"

Strike: "Any"

Insert: "So much of the market value of any"

3. Amend page 7, section 1, lines 22 and 23.

Following: "acres,"

Strike: "which together have a market value of not more than"

Insert: "as does not exceed"

4. Amend page 9, section 1, lines 14 through 22.

Following: "classification."

Strike: the remainder of line 14, lines 15 through 21 in their entirety, and "improvement in the dwelling." in line 22.

5.

Following: Section 1

Insert: "Section 2. In the event House Bill 70 is enacted into law and repeals section 84-301, R.C.M. 1947, then in lieu of section 1 of this act, section 84-301.16, R.C.M. 1947, as enacted by House Bill 70, shall be further amended by this act to read as follows:

"84-301.16. Class fifteen property -- description -- taxable percentage. (1) Class fifteen property includes:

(a) a capital investment in a building for an energy con-

*Amend?
Adopted
Motion*

Exh. # 11

SENATE COMMITTEE TAXATION

Date 4/1/77 House Bill No. 735 Time _____

NAME	YES	NO
SEN. WATT	X	
SEN. BROWN	X	
SEN. GOODOVER	X	
SEN. HEALY	X	
SEN. MANNING	X	
SEN. NORMAN	X	
SEN. ROSKIE	X	
SEN. TOWE	X	
SEN. TURNAGE	X	
CHAIRMAN MATHERS	X	

10 0

Nita Fjeseth
Secretary

William L. Mathers
Chairman

Motion: As Amended. Be Conc. In.

Carried

(include enough information on motion--put with yellow copy of committee report.)

*Norman
copy*

PROPOSED AMENDMENTS TO H.B. 735

Epl. #1
James Bennett

1. Amend ^{Page 1} ~~Page 2~~ lines 5-6, to read as follows:

~~SHARE-TAX-UPON-THE-BANK; TO PROVIDE A DEDUCTION FOR~~

~~[PROPERTY-EXEMPT-FROM-TAXATION]~~ UNITED STATES OBLIGATIONS

~~FOR BANK SHARE TAX PURPOSES; TO PROVIDE~~

2. Amend Page 1, lines 24-25, and Page 2, lines 1-3, to read as follows:

(b) that portion of the book value of any-property
UNITED STATES OBLIGATIONS owned by the bank which is
exempt-from-property-taxation as bears the same ratio to
the value of such exempt-property UNITED STATES OBLIGATIONS
as the stock equity of such bank bears to the total assets
of such bank as shown on the books of the bank.

3. Amend Page 2, lines 4-6, to read as follows:

(2) Valuation and assessment of such shares for the
purposes of taxation shall be made as provided in Title 84,
chapter 46-2, EXCEPT THAT, FOR PURPOSES OF COMPUTING THE
DEDUCTION ALLOWED BY SUBSECTION (1)(b) OF THIS SECTION,
THE BOOK VALUE OF UNITED STATES OBLIGATIONS OWNED BY A BANK
SHALL BE THE AVERAGE OF THE BOOK VALUES OF THE UNITED
STATES OBLIGATIONS OWNED BY THE BANK ON THE LAST BANKING
DAY OF EACH OF THE 12 MONTHS OF THE PRECEDING TAXABLE YEAR."

Amended
Adopted

Amend the title, lines 6 and
Following "TAX"
Strike: "AND CORPORATION LICENSE TAX"

HB. 599

1. ~~XXXXXX~~ Amend page 1, section 1, line 15.
Following: "the"
Strike: "same"
Insert: "one-fifth"

2. Amend page 1, section 1, line 19 through line 3 on page 2.
Following: "IS"
Strike: "INDEPENDENTLY OWNED AND OPERATED AND THAT IS NOT DOMINANT IN
ITS FIELD OF OPERATION, THE DEPARTMENT OF REVENUE SHALL ESTABLISH A
DETAILED DEFINITION BY RULE, USING IN ADDITION TO THE FOREGOING CRITERIA,
OTHER CRITERIA THAT DO NOT EXCEED THOSE ESTABLISHED IN TITLE 13, CHAPTER
121 OF THE CODE OF FEDERAL REGULATIONS, AS AMENDED, "SMALL BUSINESS" SHALL
FURTHER MEAN A BUSINESS DOMICILED IN MONTANA OR THAT EMPLOYS MORE THAN
50% OF ITS TOTAL EMPLOYED PERSONNEL WITHIN THE STATE AND, IF INCORPORATED,
IS INCORPORATED IN MONTANA "
Insert: "eligible to elect to be taxed under the provisions of 841501.1,
whether or not such
election is made"
3. Amend page 2, section 2, line 9.
Following: "equal to"
insert: "one-fifth"

4. Amend page 2, section 3, line 14.
Following: "December 31,"
Strike: "1977"
Insert: "1976"
Following: "."
Insert: "A credit may not be carried back to any taxable year
commencing in 1976."

415
STANDING COMMITTEE REPORT

April 1

19 77

MR. **PRESIDENT**

We, your committee on **TAXATION**

having had under consideration **HOUSE** Bill No. **422**

Respectfully report as follows: That **HOUSE** Bill No. **422**
third reading bill, be amended as follows:

1. Amend title, line 5.
Following: "CORPORATIONS"
Insert: "and corporation loss carryovers"
2. Amend title, line 6.
Following: "84-1501.1"
Insert: ", "
3. Amend title, line 7.
Following: "84-1501.2"
Insert: "and 84-1502"
4. Amend page 9, section 2, line 7.
Following: "line 7"
Insert: "Section 3. Section 84-1502, R.C.M. 1947 is amended to read
as follows:

DO PASS
XXXXX

"Section 84-1502. Deductions allowed in computing income. In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use of possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deduction allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceeding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the 3 preceeding

taxable periods, shall be a net operating loss carryover to each of the 7 taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b)(ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period of any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) The case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(e) Notwithstanding the provisions of section 84-1508.1 (c), R.C.M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

(3) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made

under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following: (a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(d) Taxes imposed by any other state or county upon or measured by net income or profits.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state."

Renumber: subsequent sections

5. Amend page 9, section 3, line 10.
Following: "1976."

Insert: "The amendment made in section 3 applies to taxable years ending after December 31, 1975."

AND AS SO AMENDED,
BE CONCURRED IN

WILLIAM MATTHEWS

CHAIRMAN

STANDING COMMITTEE REPORT

April 1 19 77

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 735

Respectfully report as follows: That HOUSE Bill No. 735,

third reading bill, be amended as follows:

1. Amend the title, lines 5 and 6.

Following: "FOR"

Strike: "PROPERTY EXEMPT FROM TAXATION"

Insert: "United States obligations"

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

Following: "value of"

Strike: "any property"

Insert: "United States obligations"

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

Following: "of such"

Strike: "exempt property"

Insert: "United States obligations"

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

Following: "chapter 46"

Insert: ", except that, for purposes of computing the deduction allowed by subsection (1) (b) of this section, the book value of United States obligations owned by a bank shall be the average of the book values of the United States obligations owned by a bank shall be the average of the book values of the United States obligations owned by the bank on the last banking day of each of the 12 months of the preceding taxable year"

AND AS AMENDED, BE CONCURRED IN

The Big Sky Country

MONTANA STATE SENATE

April 1, 1977

COMMITTEES:
TAXATION, CHAIRMAN
EDUCATION
RULES

SEN. WILLIAM L. (BILL) MATHERS
BOX 267
MILES CITY, MONTANA 59301

Senator C. R. Thiessen
Chairman, Committee on Finance and Claims
Montana Senate

Dear Senator Thiessen,

The Taxation Committee has voted to amend House Bill 151, the electrical energy producers' tax bill, to strike the provision allocating 15% of the revenues to an energy planning/siting earmarked account in the general fund. This means the appropriation to the Department of Natural Resources and Conservation from this earmarked revenue account would be voided, that general fund receipts would increase a commensurate account, and that the appropriation to the department for this program should therefore be drawn from the general fund. The Taxation Committee has agreed to request your committee to amend the appropriations bill accordingly.

It has been the policy of the Taxation Committee this session to avoid allocating any new tax revenues to earmarked accounts wherever feasible, in order to improve the budgeting and appropriations process.

Sincerely,

William L. Mathers
Senate Taxation Committee

WLM/sjh

cc: Representative Francis Bardanoue
John LaFaver
Ted Doney

STANDING COMMITTEE REPORT

April 1 19 77

MR. **PRESIDENT**

We, your committee on **TAXATION**

having had under consideration **HOUSE** Bill No. **599**

Respectfully report as follows: That **HOUSE** Bill No. **599**,
third reading bill, be amended as follows:

1. Amend page 1, section 1, line 15.
Following: "take"
Strike: "the same"
Insert: "one-fifth"

2. Amend page 1, section 1, line 19 through line 3 on page 2.
Following: "IS"
Strike: "INDEPENDENTLY OWNED AND OPERATED AND THAT IS NOT DOMINANT IN
ITS FIELD OF OPERATION, THE DEPARTMENT OF REVENUE SHALL ESTABLISH A
DETAILED DEFINITION BY RULE, USING IN ADDITION TO THE FOREGOING CRI-
TERIA, OTHER CRITERIA THAT DO NOT EXCEED THOSE ESTABLISHED IN TITLE 13,
CHAPTER 121 OF THE CODE OF FEDERAL REGULATIONS, AS AMENDED, "SMALL
BUSINESS" SHALL FURTHER MEAN A BUSINESS DOMICILED IN MONTANA OR THAT
EMPLOYS MORE THAN 50% OF ITS TOTAL EMPLOYED PERSONNEL WITHIN THE STATE
AND, IF INCORPORATED, IS INCORPORATED IN MONTANA"
Insert: "eligible to elect to be taxed under the provisions of
84-1501.2, whether or not such election is made"

DOX:RASEK

CONTINUED

April 1, 1977
TAXATION COMMITTEE

4. Amend page 2, section 2, line 9.
Following: "equal to"
Insert: "one-fifth"

5. Amend page 2, section 3, line 14.
Following: "December 31,"
Strike: "1977"
Insert: "1976"
Following: "."
Insert: "A credit may not be carried back to any taxable year
commencing in 1976 or earlier."

AND AS SO AMENDED,

BE CONCURRED IN

WILLIAM MATHERS

CHAIRMAN

STANDING COMMITTEE REPORT

.....April 1..... 19 77.....

MR.President.....

We, your committee onTaxation.....

having had under considerationHouse..... Bill No. 215.....

Respectfully report as follows: That.....House..... Bill No. 215.....

third reading bill, be amended as follows:

1. Amend the title, page 1, line 6.

Following: "1947;"

Insert: "coordinating this amendment with other pending legislation;"

2. Amend page 7, section 1, line 18.

Following: "(a)"

Strike: "Any"

Insert: "So much of the market value of any"

3. Amend page 7, section 1, lines 22 and 23.

Following: "acres,"

Strike: "which together have a market value of not more than"

Insert: "as does not exceed"

4. Amend page 9, section 1, lines 14 through 22.

Following: "classification."

Strike: the remainder of line 14, lines 15 through 21 in their

~~entirety~~ entirety, and "improvement in the dwelling." in line 22.

CONTINUED

5. Amend page 10, section 1, line 20.

Following: line 20

Insert: "Section 2. In the event House Bill 70 is enacted into law and repeals section 84-301, R.C.M. 1947, then in lieu of section 1 of this act, section 84-301.16, R.C.M. 1947, as enacted by House Bill 70, shall be further amended by this act to read as follows:

"84-301.16. Class fifteen property -- description -- taxable percentage. (1) Class fifteen property includes:

(a) a capital investment in a building for an energy conservation purpose, to the extent provided under 84-7403; and

(b) so much of the market value of any improvement on real property, a trailer affixed to land, or mobile home and appurtenant (and not exceeding 5 acres, as does not exceed \$25,000, when such dwelling and land are owned or under contract for deed and are actually occupied for at least 10 months per year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than \$7,000 for a single person or \$8,000 for a married couple.

(2) (a) A person applying for classification of property under this class must make an affidavit to the department of revenue on a form provided by the department without cost as to:

(i) his income, if applicable;

(ii) his retirement benefits, if applicable;

(iii) his marital status, if applicable;

(iv) the fact that he maintains the land and improvements as his primary residential dwellings; and

(v) such other information as is relevant to the applicant's eligibility.

(b) This application must be made before March 1 of the year after the applicant becomes eligible under this classification.

(c) For the purpose of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 94-7-203, relating to the criminal offense of false swearing.

(3) Class fifteen property is taxed at 6% of its market value, or in the case of property classified under (1) (b) of this section, so much of 6% as is determined under 84-305, whichever is less.

Section 3. Statement of intent. It is intended, by section 2 of this act, to conform the substantive policies which House Bill 215 enacts into the format which House Bill 70 will create. Section 2 further reflects House Bill 70, as amended, in that it deletes the prohibition against reappraising class fifteen property during the occupancy of the dwelling by a qualified taxpayer or taxpayers. Reappraisal of class fifteen property would be permitted, and the

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Committee on Taxation
House Bill 215

taxable percentage of that reappraised value would then fall to a figure below 6%, as set forth in the Senate amendments to House Bill 70. If reappraisal brings the value above \$35,000 the first \$35,000 would be taxed in this class and the excess taxed on other real property. The publisher of the 1977 Supplements to the Revised Codes of Montana 1947, is directed to publish section 2 of this act as the official version of section 84-301.16 in the event House Bill 70 is enacted."

Renumber: following section

AND AS SO AMENDED, BE CONCURRED IN

William L. Mathers, Chairman