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HOUSE TAXATION COMMITTEE

46th Legislature

Representative Herb Huennekens, Chairman, called the committee to order in Room 434, at 8:30 a.m., January 25, 1979. All members were present.

Bills to be heard were HB 266, 267, and HJR 10.

Rep. Les J. Hirsch, House District 52, Miles City, explained HB 266 which he sponsored, would require an explanation relating to the assessment of agricultural land on which an irrigation system has been introduced be printed on each assessment form.

HOUSE BILL

266 This bill makes more clear the provision that lands on which irrigation systems have been installed would have a three-year extension of assessment value from dryland to irrigated status. The bill should be amended to show a delayed effective date because assessment forms are already printed for 1978.

There were no opponents.

Rep. Nordtvedt asked where the explanation would be put on the assessment forms which are already filled up. Rep. Huennekens advised the Department of Revenue would have no problem printing this along with other laws on this supplement. Rep. Williams explained the statute 5-7-216 applies to the new type of irrigation system.

Rep. Les J. Hirsch, sponsor of House Bill 267, said this bill would exempt rights of entry from taxation. The right of entry is the right to enter land to explore for mineral rights when another person owns the surface rights of the lands.

HOUSE BILL

267 The right of entry tax was created about 1921 - much litigation has resulted since. The issue is clouded and complex because of district court rulings. When an owner sells his land and reserves the right of entry, there is a severed right of entry interest. The reserved right of entry could be taxed, but could not tax the conveyed right of entry. Courts have not given any direction as to how to apply this tax. Taxes range from 25¢ to \$7.10 an acre, and the tax has become more discriminatory and more clouded by a district court ruling that county tax authorities have to prove that there is mineral value beneath the surface in order to tax fairly. In 1977 there were 3,476,400 acres of assessed right of entry taxed in Montana. In comparison to all of Montana, this is insignificant.

Dennis Burr, Department of Revenue property tax division, explained the right of entry is simply when the owner keeps the right of entry he has the right to enter and explore for minerals on that land. The DoR does not tax minerals in place. No method of taxing that mineral right by taxing the right to look for that mineral rather than taxing the mineral itself. The department could not prove that the right of entry had any

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value, and they could not tax because of unconstitutionality. It is illegal to tax the right of entry. The people who want to voluntarily pay a right of entry tax average \$2 an acre across the state. The tax is producing \$180,000 across the state per year. Some people feel that by having a right of entry tax vehicle, the surface owner can reunite surface rights with mineral rights. They could redeem through delinquent taxes. This is one reason for retaining the right of entry. He supports getting rid of this tax as it raises very little revenue and is unconstitutional where courts have acted.

Dean Zinnecker said he was really not an opponent. This affects about \$1.5 million of taxable value and could affect counties. He recommends seeing a fiscal note before acting.

Questions from the committee revealed - Golden Valley receives taxes from rights of entry assessments. The Burlington Northern pays taxes on all the rights they have. Some of their property has considerable timber. Burr advised the only ones paying are those who voluntarily pay. There is unknown quantities of mineral and unknown owners as well, and no way to place a proper value on the right to enter and explore. This does not do away with rights of entry - the department doesn't want to tax them. Those who do pay taxes on these rights use this as a means of recording possession of the rights of entry in their name.

Rep. Hirsch said it is unconstitutional to tax on a presumptive value. Rep. Dassinger said all large companies are very precise in following the law - they may try to change the law, but are very precise in following the law. Rep. Williams wanted to know if the DoR only taxes on separate owners. Yes.

Rep. Nordtvedt raised the question of whether rights of entry are valued at time of sale of property. Burr stated there are not enough sales by which to establish a market value. If we did have a mineral value, is it conceivable that these rights of entry could become very valuable? Burr said it would be easier to tax minerals than the right of entry. Right of entry is evidence of continuity of title. The right of entry is the right of ingress and egress. Usually this is consummated at the time of sale.

Rep. Sivertsen said the right of entry isn't the same as it used to be. Now you have to pay to get entry, have permits, etc., it's a whole new ball game. Rep. Underdal said when leasing, the lessee and lessor both have right of entry.

Rep. Jay Fabrega, House District #44, explained HJR 10 is a follow-up of HB 161. This joint resolution urges the Congress of the United States to enact a law to allow renters a deduction for the portion of HOUSE JOINT rent attributable to property tax.
RESOLUTION 10

Rep. Reichert asked if it might not be more advantageous to ask for a tax credit since many people do not itemize deductions. Rep. Fabrega said either a tax credit or deduction would be acceptable.

Executive Session:

Rep. Williams moved HB 266 DO PASS. Rep. Hirsch moved an amendment stating an effective date be adopted - add "(5) Effective date. This act is effective on January 1, 1980." Amendment was unanimously adopted. House Bill 266 DO PASS AS AMENDED was approved unanimously.

Rep. Lien moved that HB 150 DO PASS. He reported the subcommittee on HB 150 found nothing in the testimony that really clarified that the S&Ls should not be taxed. The taxes for S&Ls would be raised under HB 150 with the purpose of establishing equity in line with taxes paid by other lending institutions and corporations. They agree with equity, but don't like to have to pay more taxes. The subcommittee recommends that HB 150 be submitted to the committee without the amendment suggested by the S&Ls which would establish reserve for bad debts.

Rep. Fabrega moved for all motions pending that the committee researcher provide wordage to indicate that the tax shall return to the county for distribution to the taxing jurisdictions in that county.

Rep. Bertelsen mentioned HB 150 could take about \$3 million from the state and give it to the counties in which banks and S&Ls are located. Banks were being taxed on bank shares and were not paying what they should have because of much of their money being invested in federal, municipal, state bonds the interest from which is tax-free. This bill will make the interest on such bonds taxable to corporations who own 81% of such securities - 2% are owned miscellaneously, 17% owned by individuals who will not be taxed.

Rep. Fabrega said if this bill isn't passed, we will take a \$3 million rap in revenue. S&Ls are not now paying a share tax, but are paying a corporation tax.

Rep. Huennekens advised the concern is not the state tax, but the federal tax. Rep. Nordtvedt said 1/4 to 1/3 of 1% would be the effect of this additional tax on cost of municipal bonds.

Rep. Fabrega moved amendments to be included on page 18, line 13, following "payment.", Strike "(1)"; and on page 19, lines 2 through page 20, line 1, strike Subsection (2) in its entirety. Amendments were adopted unanimously.

Rep. Lien amended his motion to DO PASS AS AMENDED. Motion was adopted with Rep. Bertelsen voting No.

The wordage provided by the Staff Attorney, Randy McDonald was: Page 12, lines 1 and 2, following: "in", strike: "multiple taxing jurisdictions"; insert "more than one county,". Page 12, line 3, following "distribution", insert: "among those counties".

Rep. Nordtvedt moved HB 94 DO PASS. He then moved amendments be adopted. See amendment on Standing Committee Report. Amendments were adopted with Reps. Dassinger, Johnson, Underdal voting No. HB 94 will be held for further action.

Committee adjourned at 11:00 a.m.

Josephine Felt

Herb Huennekens
REPRESENTATIVE HERB HUENNEKENS, Chairman.