

HOUSE TAXATION COMMITTEE
46th Legislature

Rep. E.N.Dassinger, Vice-chairman, called the committee to order at 8:45 a.m., February 16, 1979, in room 434, Capitol Building, Helena. Rep. Fagg was absent. All other members were finally present. Randy McDonald, staff attorney was present.

House Bills 581, 582, 619 were to be heard.

Rep. Orren Vinger, District #3, Wolf Point, sponsor of HB 581, explained this bill would change the due date for special fuel tax returns from the 25th of each month to the last day of each month. Because of post office service delays penalties for late filing had been imposed.

HOUSE BILL

581 Norris Nichols, administrator of Motor Vehicle Tax Division, DoR, said they consider the date of the post office cancellation as filing date. Other states have different dates and grace periods. Every state is different. They have no objection to the change. On page 1, line 5 following "the", insert "annual and"; and on line 22, change "25" to "31". The user shall make an annual report. Whatever is done, make it consistent throughout the bill.

Rep. Vinger closed saying HB 581 makes filing dates more consistent. He wants a committee bill showing the state penalty at 5% as is the federal penalty. At the moment the state penalty is 25% which they think is too high.

Questions from the committee -

Rep. Williams asked if there is no provision for a grace period in the law at the present time. Mr. Nichols said there is none.

Rep. Hirsch asked if the report would be on the fuel up to that date. Mr. Nichols said the report is for the previous month.

Rep. Fabrega asked what happens if for good cause - bookkeeper is ill or if records have been lost due to an act of God - will there be a penalty? Sometimes it is the accountant's fault.

Rep. Dassinger said the postoffice stamp date is considered the filing date.

Rep. Daniel Kemmis, District #91, Missoula, sponsor, explained HB 619 is to clear up the law in Montana which makes estate planning difficult. Estate planning regarding a marital deduction requires some type of planning in order to qualify under federal estate tax provisions. There are limitations on how to qualify. If a gift or devise is made to the surviving spouse and for them is really only a life estate to the spouse, if that gift should end up with somebody besides the surviving spouse, they can't qualify for the deduction. In order to meet this requirement, there are certain kinds of devises made to the surviving spouse so can use money for life but the remainder goes to the estate which qualifies for marital deduction. Because of a supreme court decision it isn't clear in Montana that you can devise to an estate.

HOUSE BILL

619

Professor Lester R. Rusoff, law school in Missoula, supports HB 619, said an estate trust couldn't be used in Montana. Estate trusts and power of appointment trust are used in other states. They are used to qualify marital deductions. HB 619 is designed to make it clear that estates in Montana can take advantage of the federal estate tax marital deduction. They are challenging on the federal marital deduction in court now. This bill will allow estate planners in Montana be able to do what estate planners in other states can do.

There were no opponents.

Rep, Kemmis closed saying to see amendments.

Questions from the committee -

Rep, Williams asked the effect on inheritance tax, Rep, Kemmis said the federal estate tax might have some effect. Rep, Williams asked you are talking about federal deductions? Rep, Kemmis said Yes. He didn't know of any constitutional problems in connection with the severability paragraph.

Rep, Reichert asked if this legislation apply to an heir in an accident death of both husband and wife where both were killed. Professor Rusoff said No, If the wife survives the husband by 5 days, she would take under a will. It is commonly put into a will the presumption that the other spouse does not survive, the marital deduction will be available to the estate of the person making the will. A pass-through trust may result in the estate tax on the death of the devisor.

"Power of appointment" - In the case where a husband has property and he dies first, part of his estate will be put into a trust and the wife will get the income as long as she lives and the property will go to whomever she names or to their issue. A trust has to be broad enough to put into her own estate. The part deductible when the husband dies is taxed when the wife dies. One-half when he dies, one-half when the wife dies so the tax will be on no more than 100%. 50% when he dies and 50% when she dies - has to be broad enough to allow a devise to be made to a dead person's estate.

Rep, Kemmis explained estate planning is done in order to make sure that the surviving spouse is hit with as low an estate tax as possible, and one of the means of doing this is through an estate trust. To keep the federal estate tax low, want to be able to create an estate trust. Have to devise property not to a person, but to the estate of that person. The question is whether you can devise property to the estate of a person. HB 619 allows people to do the kind of estate planning that they do everywhere else.

Rep, Underdal mentioned tenants in common can provide for income to the survivor, and make a trust to the children.

Rep, Reichert asked why this relates to marital exemption.

Rep, Williams asked if HB 619 is to make it so Montana is conforming to what other states are doing. Rep. Kemmis said Yes.

Rep, Johnson said Montana has an inheritance tax. Prof. Rusoff said Montana's death tax is primarily an estate tax. Montana's estate tax is designed to take advantage of a federal estate tax. Then there is a Montana estate tax that

comes into play. Montana inheritance tax has been large enough so that the Montana estate tax was seldom paid. Montana estate tax will be more often paid. There is a provision for marital deduction in Montana inheritance law but it is not spelled out. The problem with the federal estate tax is because Montana inheritance tax provision is much briefer and doesn't use the same provisions.

Rep. Fabrega asked Mr. Stohl why Montana was deriving most of its income from death tax rather than inheritance tax? This had to do with the probate in Montana.

Prof. Rusoff said this will not affect Montana estate tax - it is only for federal estate tax. Don't expect to have any affect over Montana estate tax. If federal estate tax will affect amount of credit for state tax and Montana estate tax is designed to take advantage of the federal credit, it may be possible that if the federal estate tax is lessened by taking advantage of the marital deduction, the Montana inheritance tax would be increased. If the federal estate tax is reduced, the Montana tax will be also reduced. If federal estate tax is reduced, it would increase Montana inheritance tax maybe.

Rep. Burnett, sponsor of HB 582, left to get some more material, so committee went into executive session until his return. Rep. Huennekens now chairman.

EXECUTIVE SESSION

HOUSE BILL 619 - Rep. Fabrega moved HB 619 DO PASS with proposed amendments. Page 1, line 9, following "the", strike "of"; following "purpose" insert "of". Page 2, line 6 following "person", strike "Permissible", insert "Permissible". There were no Noes. Reps. Nordtvedt, Burnett, Lien, Fagg were absent.

HOUSE BILL 581 - Rep. Vinger moved HB 581 DO PASS AS AMENDED. Discussion was had on the variation post offices use in stamping cancellation dates on letters. There were no Noes - same 4 absent.

Rep. Burnett returned to the committee and hearing proceeded.

Rep. Jim Burnett, District #71, Luther, sponsor of HB 582, explained this bill would exempt from property taxation airplanes built before 1936 which are not regularly used for transportation purposes.

HOUSE BILL 582 Al C. Newby, Montana Chapter of Antique Aircraft Association, Belgrade, supports HB 582. He passed around to the committee a magazine article on antique aircraft and a postcard. He would like to make antique aircraft on an equal basis with antique automobiles. There are 15 antique aircraft in the state now but very few are flying. His testimony attached proposes to change to over 40 years instead of using the date of 1936.

Mike Ferguson, Montana Aeronautics Board, Helena, supports HB 582, feels very few, 5 or 6, antique aircraft are registered in Montana that are flying. A lot are laying around in barns and garages. No blue book goes back to properly assess antique aircraft - so they don't have much impact on counties' income.

Frank Bass supports HB 582. He is a member of the International Antique Aircraft Association which has 5,000 members devoted solely to restoring and flying planes of days gone by. He is also a member of the Montana Antique Aircraft Association which is dedicated to the preservation of antique aircraft. He would like to have more old planes restored and flying although they are not too practical in open competition with planes that are normally being used for transportation now. Recommends Do Pass so people will be encouraged to restore old planes lying around. He feels there may be 20-25 that could be restored.

Rep. Dassinger resumed as chairman.

Rep. Huennekens thinks HB 582 is a fine bill. He feels more interest should be taken in our heritage and aircraft is as entitled to consideration as are old cars.

Rep. Huennekens resumed as chairman.

Rep. Burnett closed saying since there are so few old aircraft, he feels this bill is needed. Registration will be continued on these aircraft on an annual basis for a \$4 fee.

There were no opponents.

EXECUTIVE SESSION Continued

HOUSE BILL 582 - Rep. Burnett moved HB 582 DO PASS AS AMENDED. Amendments: Page 1, line 10, following "Aircraft", strike "built prior to 1936", insert "40 years old or older". There were no Noes. Reps. Fagg and Lien were absent. Motion was adopted.

HOUSE BILL 592 - Rep. Williams moved HB 592 DO NOT PASS. He doesn't feel it will do the job for the people who need the help. Rep. Dozier thinks it is not helpful. Rep. Fabrega wants to provide some sort of help to students. Rep. Sivertsen thinks that this is an area that we need to be thinking about but this is not the right approach. Rep. Gilligan likes the idea. Because of inflation, family income is too high for some persons for eligible programs. Middle income persons are not helped that much because many have too high incomes when both parents work, but such a tax incentive might serve to ease some frustrations.

Rep. Williams withdrew his motion to Do Not Pass, and substituted a motion to TABLE.

Rep. Dassinger sees the fairness in the bill in equating with the tax credit for business, but it is not doing enough. It is a step in the right direction. He thinks a payback of some sort would be more helpful to students and parents. Rep. Huennekens asked Rep. Gilligan what the State of Montana does with regard to scholarships, loans, grants, etc. Family incomes in the brackets that do not meet requirements make for ineligibility. Help has excluded middle class Americans for benefits available for education purposes from the federal grant and loan programs.

Rep, Johnson said a student has to be very smart or very poor to get assistance, Income requirements are based on assets of parents or student to determine eligibility. Rep, Reichert thinks the state should guarantee loans to middle income persons. Recommends coming up with a bill guaranteed by the state. The federal government is rescinding their loan guarantees for students because of losses and banks are not making this type of loan.

Rep, Sivertsen said they will be putting 50% of the coal severance tax into a trust fund for education. Maybe 25% could be recognized better if used for student guaranteed loans at low interest than is done with the interest we are receiving from that fund now. The fund is just holding its own with inflation forces at the moment. He feels this would be an investment in the future.

Rep, Huennekens mentioned Randy McDonald said the loan rates are at such a low interest rate banks do not want to loan for that purpose. That is part of the problem of not being able to get a bank loan.

Rep, Fabrega suggested taking part of the fund and making low-interest loans, but this does not meet the "Prudent Man Rule" mandated by the legislature. He supports the bill.

Rep, Vinger thinks this bill says "thank you" for handling your lives in such a manner that you can put your kids through school on your own. Rep, Williams thinks part of the trouble with the federal loan program was the way it was managed. He would oppose Montana going into a loan program. Persons who don't need the help would be the ones who are getting it. Rep, Dassinger can't understand why tax money on timber, coal, agriculture is any different. It costs banks 9% to get money to loan, it will cost more than that for them to loan it again.

Rep, Huennekens feels we are not reaching a class that needs the help, but are extending help to those who don't need it. Rep, Nordtvedt said most students make more than \$1600 per year and might have to pay income tax and would thereby benefit from this tax credit. Rep, Reichert thinks the best way to meet the problem is to reduce fees.

Motion TO TABLE HB 592 was adopted by a roll call vote of 10-8. Rep, Fagg was absent.

HOUSE BILL 604 - Rep, Harrington moved HB 604 BE TABLED. Rep, Johnson made a substitute motion DO NOT PASS HB 604. Rep, Nordtvedt suggested including a reciprocity agreement with states allowing Montana retirement incomes not to be taxed in the state of residence of Montanans living out-of-state.

Rep, Reichert mentioned this bill would allow up to \$3,600 to be tax free.

Motion to TABLE HB 604 was adopted unanimously with Reps, Fagg & Sivertsen absent.

HOUSE BILL 269 - HB 269 has approved amendments, but is being held for consideration in connection with other inheritance bills (Lien and Burnett's) bills that are not yet in committee.

Meeting adjourned at 11:40 a.m.

Jo Link



REP. HERB HUENNEKENS, Chairman