

HOUSE TAXATION COMMITTEE

46th Legislature

Rep. E.N.Dassinger, Vice-chairman, called the meeting to order at 8:30 a.m., March 6, 1979, in room 434, Capitol Building, Helena. Rep. Huennekens was excused as was Rep. Jay Fabrega. All other members were finally present. Staff attorney, Randy McDonald, was present.

Bills to be heard were HJR 44, HB 470, 758, 765.

Rep. Gene F. Frates, District #60, Billings, chief sponsor, explained HB 758 would preclude a corporation having more than 25 shareholders from recovering interest on more than \$10,000 of any tax money paid under protest and later refunded. If a case regarding taxes paid under protest went on for years and years, and the interest earned on that protested tax amount were paid, it would be paid only on the first \$10,000. No estimate can be made of the fiscal impact of this bill, but it probably would be minimal.

758

HOUSE BILL Senator Steve Brown, District #15, Helena, Lewis and Clark County asked how deep are the pockets of the State of Montana. Interest paid on taxes paid under protest was to help out home owners and small taxpayers - just about a year before the coal companies filed suit. This is a significant deterrent to Montana. Taxes on the coal companies will be paid under protest until the tax suit is settled, and the state will be required to pay 5%. After the first installment paid under protest has been brought to suit and not settled, any subsequent tax installments paid under protest will bear interest at 6% if the first installment is lost to the county or state. Interest rates are going higher and higher each year. If the coal companies are successful in their suit, in addition to having to pay back taxes, will have to pay interest. The total amount of taxes that could maybe have to be refunded would be in the neighborhood of \$16.4 million in addition to the \$650,000 appropriated for the attorney general's office. Where would you come up with \$16 million in this biennium? We are not just talking about the coal tax, are talking about all taxes - there could be a dispute with a large corporation. This bill protects small and farm corporations - have to make a distinction between this kind of suit and those of the small corporations. That is the reason for introduction of HB 758.

Opponents -

Gene Phillips, Pacific Power and Light, Kalispell, opposes HB 758. This bill won't do what the sponsors want it to do. This bill applies to corporations and Decker is a partnership. They pay the highest rate of taxes and will continue to do so. The bill will not affect them and they will be entitled to collect interest. There is a telephone operation in northwest Montana run through a subsidiary. The telephone is a wholly owned subsidiary so on one hand could collect. They now control 60,000 acres of Montana.

The number of stockholders stays right around 25. You will affect quite a few corporations that will be right on the line. You simply put the operation in the name of a wholly owned subsidiary. Have to look at overall ramifications. It simply doesn't get to the problems you are trying to address.

T. Dowling, Montana Railroad Association, Helena, opposes HB 758. There is a constitutional problem with this bill. Stockholders spread throughout the country. Drier Bros. is a partnership - not going to do it with this bill. Can't tax partnerships differently. Clear constitutional problem with this bill. See testimony attached.

Ed Nelson. Montana Taxpayers Association. Helena. opposes HB 758. The intent of the bill passed two years to allow interest to be paid on protested taxes, had no idea of this problem. The protested property taxes were based on ad valorem taxation basis. Any class action suit includes everybody. Would include major utilities and all others in this class.

If a suit had gone to court and taken a year, your interest requirement would be in excess of \$30,000 not \$10,000. Quite concerned about treating taxpayers differently. This only relates to property tax. If the local government follows the law as stated today, there is no impact on government because the law requires the government to invest in shortterm notes and if the taxpayer wins, he gets that money. Hope this bill is killed.

Rep. Frates asked Senator Brown to close. Mr. Dowling raised the question of equal protection. If the committee thinks there is a problem the bill can be amended. No person can recover/more than \$10,000 and that makes for no differentiation. Willing to work with the committee. Have to address this question. How much interest the state is going to wind up paying - not only in the coal tax suit, but in many others.

Questions from the committee -

Rep. Reichert wanted to follow up on this concept that no more than \$10,000 of protested tax money could earn interest. Senator Brown said everybody is in the same position - nobody can collect on more than \$10,000.

Rep. Lien reminded up to two years ago, no interest was paid. On ad valorem taxation, the protest amount is in an escrow account until problem is resolved. The protested amount is being spent and invested. Senator Brown explained the coal companies are now requesting an injunction to put it in a separate account and that it cannot be used. Will automatically flow to one entity as an account.

Rep. Nordtvedt - suppose we look at these giant corporations not as a monolith. Each one acting as an individual is a lot different than bringing a suit to collect \$132 million. This suit could drag on for 8 years.

Rep. Hirsch thinks that this might make for more protesting payment of taxes.

Rep. Bertelsen asked how this could be restricted to property tax. Mr. Nelson said just put it in terms stating that. You are collecting no other dollars benefiting the state except the university 6-mill levy. Errors are found in taxation and sometimes you have to file a protest to get attention of local officials. Someone who has a \$500 tax bill finds an error of 10¢, isn't going to sue - that's why you have class action suits. The area of protection is good. Thinks this question you are discussing is totally different.

Rep. Bertelsen asked if they would be averse to limiting to property tax? Senator Brown said No.

Rep. Dennis G. Nathe, District #1, Redstone, chief sponsor, explained HB 470 would exempt large agricultural machinery from taxation while held as a business inventory. While machinery is on consignment, it is not owned by the dealer, but he pays taxes on it. This bill is introduced in the spirit of fairness.

All new cars are brought into the state and are tax exempt.

HOUSE BILL 470      When a new car is sold, it is registered and that individual starts paying taxes then. That doesn't happen with large farm machinery.

Opponents -

Dean Zinnecker, Montana Association of Counties, Helena, opposes HB 470. One more exemption in business inventory - creates more problems for local governments.

Questions from the committee -

Rep. Underdal wanted to know how large is large? Rep. Nathe explained all of the items listed under section 2 of the bill which are listed in the official guide used by the department of revenue in Class 12. Refers to line 17. Rep. Underdal asked how much money are talking about? Rep. Nathe didn't know.

Rep. Nordtvedt asked when does agricultural machinery go on the tax rolls? If bought in April, would go on in June, Rep. Nathe advised.

Rep. Fabrega asked the average value of this equipment. Rep. Nathe said a minimum of \$40,000 to \$120,000. They are under consignment to him, but he has to have them on hand and he has to pay taxes.

Rep. Lien asked do the dealers have to pay on the floor plan as of the first day of January now? DoR said they are assessable in their position of being in controlling custody of the dealer.

Rep. Williams asked about the degree of discretion here. Large construction machinery would be a problem.

Rep. Fabrega asked how much machinery is under consignment? Rep. Nathe said a great deal - about \$3 million worth on consignment to one implement dealer. Rep. Fabrega asked if they couldn't pass those taxes back to the machinery company? Rep. Nathe said they are under a non-fee franchise. DoR - have seen some of these agreements and the reason why the dealer pays the tax - it works the other way. In order to get the goods the dealer has to pay the tax and pass it on to the consumer.

Rep. Underdal suggested this tax be taken off and then exempted and then the tractors discounted the amount of the tax. Rep. Nathe said this would be up to the individual dealer as to whether he would pass that exemption on to the farmer.

Rep. Joe Tropila, District #36, Great Falls, chief sponsor explained HJR 44 would allow the department of revenue to amend Montana administrative rules governing distillery representatives' activities to more closely parallel regulations of the federal bureau of alcohol, tobacco, and firearms governing the same activities.

HOUSE JOINT RESOLUTION 44      Mickey Matthews, Helena, said he had been advised by Bruce McGinnis, DoR, that if they wanted something done quickly, to go to the legislature. This refers to 27 CFR 6.27

43  
3/6/79

Page 4

Major amendments come on page 3. Wants 45 days changed to 30. Section (b) was stricken on the original resolution. Moved (c) up to (b) and added a new number (5) talking to the same 24 cases allowed before. Felt this is in keeping with what we have done in the past. 24 cases of samples did not allow anyone to get into dealing. Where a case is given could get into dealing, but 24 case limit could not.

Have been keeping a sample log since in business, but would like to go into reports which is an amendment as proposed by the division. This isn't that much to add on but to report daily or monthly is a little too much. The trend is to deregulate, but Montana seems to want to be more regulated. With the reports you are presumed guilty until proved innocent. Unconstitutional. Amendment by the division - can't understand why they want the logs.

Opponents -

Bruce McGinnis, Chief Counsel for the department of revenue. The legislature decided it shouldn't impose such strict regulations - regulation of a particular industry. The State of Montana has decided in the laws that it has passed that the sale and consumption of liquor will be regulated in the State of Montana and some strict regulations have been passed giving the DoR some directions. In response to the legislature last session these individuals who are distributors are to be registered with the division so they know who they are and who they represent. Regulations are what they feel the legislature stated.

Amendments we have here - if it is the consensus of the committee, we can live with them. There is nothing out of the ordinary nor will they corrupt the business. We know the sample logs the industry uses so that they report to us so that we know how many samples go where. Of every 10 cases they buy, they get one free, or something of that nature--this is a matter of checking into that.

This is one opportunity for the legislature to look and see what controls and how much they want to exercise over one aspect of the sale and control of liquor in Montana.

Rep. Dan Harrington said the ideas as put forth in HJR, they are in total agreement with them. The new resolution allows someone to go to a retailer by giving him something. The basic intent of the amendment is to let the DoR know how much is being given to him. Wines will have the same problems. In order to have control of the liquor industry in the State of Montana, it is necessary to know what they are giving licensees.

Bob Lehm, Regional Distilleries, Vaughn, said the state went to great expense to put in a computerized method of analyzing the liquor industry. The investigating board knows the exact amount of liquor that is bought in Montana. Can't see why all the additional paperwork is being added by the proposed department of revenue amendments.

Rep. Tropila said he hasn't seen the amendments. He thinks this is needed in the state.

Questions from the committee -

Rep. Reichert asked if there is a grace period? Rep. Harrington said the 15 days is for the reporting - the 30 days report was expense reports from a particular distillery - they would have 30 days for supplying it. The 15 days

would be from the end of the month on. Not opposed to a grace period. Failure to abide by the codes could end up in revocation of the license.

Mr. Vaughn recommended have to put in by the 15th day of the following month. This is just another step in proving yourself innocent.

Rep. Dozier asked if based on the average, how often would you give a sample? Brown, Foreman Distilleries representative advised \$50 a month allotted to him for giving away. Totals out at approximately 8 cases, which is not even what federal law says - the total gallonage is in federal regulations.

Rep. Williams asked Rep. Harrington if he concurred with Mr. Mathews amendments. He suggested Mr. Mathew's amendments be amended on the last line on page 2, and first lines on page 3. Mr. Mathews said 6.27 refers to page 2, line 7.

Rep. Reichert presumed out of the 2400 licenses issued, there are 1800 liquor licenses and the other 600 are beer only.

William Sharrington, Department of Revenue Investigation Division was also present. Thinks HJR 44 should be amended.

Rep. Melvin Underdal, District #12, Shelby, sponsor explained HB 765 would provide for less paperwork for the county treasurers since the county assessor would have to mail one notice to a taxpayer containing classification and appraisal of all land owned by the taxpayer, and any taxable valuation with an assessed value of less than \$500 - \$200 on agricultural land -  
HOUSE BILL could be dropped from assessment books.

765 Edith Cox, Montana Association of County Treasurers, said some accounts are less than \$1, but the law says they must be collected. Any costing less than \$5 is an expense. This would allow property which realizes less than \$5 to be dropped from the assessment lists.

Mrs. Mary E. Svare, Toole County Treasurer, Shelby, wrote a letter to Rep. Underdal setting forth what they could have saved by using a similar plan. See letter attached.

Opponents -

Dean Zinnecker, Montana Association of Counties, Helena, opposes HB 765. He feels there are some technical problems with the bill. Referring to the new language on page 1 - each item is on a different bookkeeping system for some people and if their tax notices were sent to him automatically consolidated, persons trying to isolate their tax expense would have a problem keeping track of them. You have a situation that will create hassles for you. Recommends studying during the interim.

Tom Dowling, Montana Railroad Association, Helena, advises this bill would cause a great problem for BN who have large land holdings which are related to various kinds of businesses. Different tax situations - different school districts. The large property owner is penalized by this bill.

Rep. Underdal closed saying this applied to all counties. This is not mandatory that each parcel be taken off the tax rolls. The purpose is that it would be consolidated on one list. It is mandatory that the department of revenue break it up.

Questions from the committee -

Rep. Bertelsen asked if it got down to a certain small amount, they wouldn't even be sent a tax statement? Rep. Underdal said yes. Rep. Bertelsen remarked some people look at this statement as a validation of ownership of a piece of property.

Rep. Sivertsen said all properties will be assessed. If statements are not sent out, would pose some problems and maybe the answer to Mel's problem--assessors are paid to do the job. Maybe a minimum charge of \$5-\$10-\$15 irregardless to cover the cost of the paperwork could be made. You are dealing with so many different kinds of property that can be commonly owned and it has to be kept separate for their own records, so if you just listed on one sheet of paper all properties, it would make for bookkeeping problems.

Mrs. Cox said it isn't the paperwork the assessors are objecting to - it is the cost.

Rep. Dassinger asked if this wouldn't be negating a record system for the state. Say I had a lot and the taxes on the lot were to be dropped off the records, how would it be picked up again? Rep. Underdal said it would just not be mailed out if \$20 or less.

Rep. Reichert said the department of revenue has the ability to act on this already, but the county assessors object.

#### EXECUTIVE SESSION

HOUSE BILL 411 - Rep. Vinger moved HB 411 DO PASS. Motion was adopted unanimously. Reps. Robbins, Gilligan, Fabrega, Fagg, Huennekens were absent.

HOUSE BILL 768 - Rep. Burnett moved HB 768 DO PASS. Unanimously adopted motion. Above members and Rep. Nordtvedt were absent.

HOUSE BILL 402 - Rep. Underdal moved HB 402 DO NOT PASS. Motion was adopted with Reps. Johnson, Vinger, Dassinger voting No, as did Rep. Nordtvedt. Reps. Fagg, Robbins, Huennekens, Fabrega were absent.

Rep. Nordtvedt feels should not pass this bill since cannot differentiate between what is brought into the state and what is manufactured in Montana. Rep. Gilligan said this makes a special exemption. Rep. Hirsch asked if the ethanol is taxed by the government. Rep. Williams said he was not sure, but denatured alcohol is taxed. It is an impure ethyl alcohol. He reminded the tax is not being levied on alcohol, the tax is being levied on the mixture. Rep. Underdal said there is no way of proving where it is derived from.

HOUSE BILL 150 - Rep. Lien explained subcommittee recommendations were an 80/20 split - 6 3/4% tax - no reserve for bad debts (HB 740 will authorize a reserve for bad debts for all banks and savings and loans).

Rep. Nordtvedt asked what happened to the \$3 million difference in 1976? Rep. Williams said the department of revenue did not contest banks new figures left March 5. They are not too far off from the level of taxation they wanted to accomplish. Rep. Lien said HB 150 will run as it was introduced. If it doesn't raise enough money, all corporation license taxes maybe should be raised 1/4% or so. If undertaxed banks and overtaxed S&Ls, maybe next session should

rewrite the code on financial institutions.

Rep. Vinger said counties will lose \$100,000 with 20% going to the state and 80% to the counties.

Rep. Lien said there would be no reserve for bad debts. HB 740 allows all financial institutions to take a reserve for bad debts. Will be a separate decision.

Rep. Williams said the counties would lose about \$600,000 - state would lose about \$400,000.

Rep. Nordtvedt said any way you cut this, we are talking about \$1 million a year lost revenue that would occur according to the legislative fiscal analyst's budgets. This could be raised by an additional 1/4% license tax. Is there any support here for a committee bill to do that?

Rep. Vinger said should keep in mind, as the bill was originally presented, the whole amount would go to the counties. Doesn't think the state will suffer so much for loss of revenue because of increased coal tax revenues.

Rep. Sivertsen suggested maybe could move a do pass on HB 150 and sunset it in two years and allow for an opportunity to study and consider the situation with all financial institutions. Have only touched the tip of the iceberg here. Have to study all financial institutions or we will never arrive at anything that is fair. After many hearings, keep running into road blocks. HB 150 does not do just what is wanted, but is the nearest thing they can get at the moment.

Rep. Nordtvedt said he thinks over the next biennium, looking at close to \$2 million total loss of revenue from what the executive budget of total revenues and the fiscal analyst's estimates. To maintain the same amount of tax revenue from the corporate license tax, plus bank shares tax, that we come up with a committee bill to increase the corporate license tax across the board treating all the same by 1/4%, going from 6 3/4% to 7%, which would have a fiscal impact of about \$1 million per year revenue. If we allowed the revenue from business here to be less by this process, this is going to either increase the tax burden on the personal taxpayer or decrease the income to the state. Individuals have been faced with increased taxes and corporations have not been affected because of set rates.

Rep. Burnett feels are wrong in what is being concerned about what we are going to lose - the question is are we being equitable? Rep. Sivertsen said that is the question, but we are not looking at it at the present time. We are addressing corporations and even corporations are different - some are paying corporation license taxes who are also paying substantial inventory taxes; also others are paying corporation license tax, but are paying little or no inventory tax. It is not directing itself to equity.

Rep. Reichert asked if it is in the jurisdiction of the revenue oversight committee to study this? It is.

Rep. Vinger would like to see this go out as it is recommended.

Rep. Nordtvedt recommended a straw vote to raise all corporation license taxes. Rep. Williams said this would not provide for equity - about half pay inventory tax - would have to add 1.3 - 1/8 to present corporate license tax which would

43  
3/6/79  
Page 8

increase inventory tax by around 1½%. Doesn't satisfy the situation - penalizing other corporations in addition to the tax they are already paying.

HOUSE BILL 573 - Rep. Dozier moved a DO PASS recommendation on the Statement of Intent to HB 573. There were no Noes. Reps. Fagg, Fabrega, Robbins, Huennekens were absent.

Meeting adjourned at 11:30 a.m.

Herb Huennekens  
REP. HERB HUENNEKENS, Chairman

for E.N. DASSINGER, Vice-chairman

Jo Lahti  
Josephine Lahti, Secretary