

48.
3/12/79

HOUSE TAXATION COMMITTEE

46th Legislature

The meeting was called to order in Room 434, at 8:30 a.m., March 12, 1979, by the chairman, Representative Herb Huennekens. A quorum was present as was Randy McDonald, staff attorney.

House Bills 429, 496 and 784 were to be heard.

Representative Sivertsen, District 1, Hill County, explained HB 429 of which he is sponsor. He stated that the question of foreign ownership of agricultural land has been addressed before. However, this legislation has sought to prohibit such ownership. He stated that on an average, foreign ownership is about .3%, and varies from state to state. HB 429 would require that foreign persons, businesses and corporations report ownership with the Department of Agriculture and disallow individual income tax and corporation tax deductions for expenses of producing agricultural products. This legislation is an effort to discourage ownership by those persons seeking to use it as a tax write-off.

HOUSE BILL
429

Rep. Sivertsen proposed adding a new section to define the terms of the bill. He also presented several amendments, as are listed on the attached addendum. Basically, he is changing the qualifying individuals average income from the property from \$1 million to \$500,000 during the preceding three years. This is to take care of individuals who are not farmers, and receive less than 3% of their income from the land. This concluded Rep. Sivertsen's remarks. He reserved the right to close.

Rep. Underdal presented some facts related to the foreign ownership of Montana farm land (see attached sheet). He concluded that we do have a problem in this area and concurred with Rep. Sivertsen's bill. He urged a do pass recommendation by the committee.

Mons Teigen, Montana Stockgrowers and Woolgrowers Association, spoke in support of HB 429 as a reasonable approach to a problem the people of Montana are demanding legislation for.

Sharon Peterson, Women in Farm Economics and the Farm Bureau, spoke in support of HB 429 as a reasonable approach. She urged a do pass recommendation by the committee.

Alice Fryslie, Montana Cattleman's Association, stated that although the association has not supported more drastic measures previously introduced, they do support this legislation as a means to give us the data to take more stringent action if necessary and provide revenue to offset the cost of doing this information gathering.

Ann Page, Montana Farmers Union, spoke in support of HB 429 as a step in reducing unfair advantages available to high income investors. She stated that even the most efficiently owned and operated farms cannot compete with tax sheltered corporations. There is a growing trend in absentee ownership and she urged a do pass recommendation.

There were no opponents.

Jim Mockler, Montana Coal Council, proposed an amendment, new section 7, line 5, following "property," insert: "however nothing in this act shall apply to any lands held for the purpose of mineral exploration or production or incidental thereto."

Mr. Mockler asked that the committee consider that Shell Oil Company, with 60% owned by various interests outside of Montana, is one of the primary taxpayers in the state. This amendment would take care of any problems the mining companies would have with HB 429.

Rep. Sivertsen closed saying recent polls show Montana people are vitally concerned about foreign ownership and felt that it was imperative that this legislature do something about this. He had no problems with Mr. Mockler's amendments so long as they only address what Mr. Mockler spoke to. Otherwise it should come under this act.

Rep. Nordtvedt questioned the proposed amendments as to who would qualify. Mr. Mockler stated that reclamation is one of their highest costs and would certainly want that to qualify for tax deductions.

Rep. Huennekens instructed Mr. McDonald to check into the legal aspects of the proposed amendments to see if this would be an escape from the problem.

A question was raised as to whether this bill was comparable with HB 101, which prohibits foreign land ownership in the state. It was stated that this bill was killed in committee.

Rep. Fabrega stated that this bill not only applies to state income taxes, but corporate license tax deductions allowed by 15-31-114. Rep. Sivertsen was not sure on this matter.

Rep. Bertelsen questioned the enforcement of the law. It was explained that reports are made to the IRS. The foreign interest is subject to a fine of up to 25% of the market value of the property for violation or failure to report. This is addressed on page 1, line 10.

It was pointed out that this bill would apply to the nonresident Canadian who owned Montana land for farming purposes, but lived in Canada.

Rep. Johnson asked who would gather the reports and compile ownership. Joe Lindberg, Department of Agriculture, had not had a chance to look into this yet, but assumed it would be in cooperation with the Department of Revenue and with county tax assessors. He stated that he would get back to the committee as soon as he was more certain on this.

Rep. Bertleson asked how the time or purchase was going to be determined. Just how were they going to gain that percent of income. It was stated the Department of Revenue tax returns would be used to gain this information, to decide if a corporation did not comply with the law and did not report.

Rep. Fabrega stated that 15-31-114 states that if you enter into a farming operation and have an income of more than \$500,000, less the help from agricultural production, you cannot take a loss from agricultural productions, based on an average of three years.

Rep. Dassinger asked if aliens are required to file income tax reports. It was stated that they are not required by state law to report purchase of property.

Mr. Lundberg cited similar problems in California where raw almonds are being exported without paying any taxes to the state.

Rep. Dozier pointed out that present foreign land owners are not reporting ownership. This bill requires that everyone with foreign ownership would have to report. Registration is only required after purchase. Rep. Dozier wanted this brought to the committee's attention.

Rep. Sivertsen said it was the intent that under this law everyone with foreign ownership would have to report.

Rep. Polly Holmes, District 67, Yellowstone County, presented HB 784 as a companion bill to HB 479, which increased the tax on gasoline to provide funds for local governments. HB 784 increases the tax on diesel fuel by one cent a gallon and allocates the estimated revenue increase to counties, cities and towns.

HOUSE BILL
784

Rep. Holmes stated that it was clear that our roads are worse than ever before and that the cost of repair should be equally shared by all who use them. This legislation is an effort to include truck drivers using diesel fuel in the sharing of this cost. She circulated a recent picture from the Billings Gazette depicting the problem of damaged roads. She stated, in conclusion, that we need this money and urged a do pass recommendation by the committee.

Mr. Mizner spoke in favor of HB 784, stating that this was not included in the original bill due to a drafting error. He stated that more and more automobiles are using diesel fuel and it is only right that these vehicles be included in the cost of road repair. He urged a favorable recommendation by the committee.

There were no opponents to HB 784.

Rep. Holmes saw no need to close. She just asked that the committee remember what their cars will look like without this legislation.

Questions from the committee:

Rep. Sivertsen asked if this would be better considered as an amendment to HB 479. It was explained that the title of HB 479 was so specific it was decided to introduce separate legislation. It was then suggested that maybe the title could be amended. Rep. Huennekens stated that he would take the matter before the Rules Committee to get a ruling on proper procedure.

Rep. Williams explained to Rep. Bertelson that volatile fuels referred to propane. Point was raised that such language might tax gasoline twice, as it is considered a volatile fuel.

Rep. Dassinger approved of recommendation that the two bills be coordinated as to title and contents.

There were no further questions by the committee.

The hearing on HB 784 was closed.

Representative Moore, District 21, Cascade County, sponsor of HB 496 explained his bill to the committee. This bill would impose a 20% surtax on the property tax of agricultural land, class eleven property and real estate improvements owned by a foreign person. Revenue would be divided among the entities in local government in which the foreign lands are located. The bill will take effect for all taxable years after December 31, 1978. Rep.

HOUSE BILL

496

Moore cited Flathead County as a county with many properties owned by foreign interests. In view of all the benefits enjoyed by these foreign interests they only pay minimal property taxes. He felt they should be charged this surtax, which would be distributed among local governments. Rep. Moore reserved the right to close.

Rep. Yardley, co-signer of HB 496, repeated information given on HB 784.

Rep. Fabrega stated that foreign land owners are enjoying all the good things furnished by the state and felt they should be paying a little toward their keep. This bill wouldn't apply only to farm land.

Mrs. Peterson spoke in support of HB 496, stating that part of the problem is giving foreign interests too many advantages and this could provide income to Montana.

Alice Fryslie, Montana Cattlemen's Association, questioned how much it is going to cost to collect data and suggested that perhaps some of the revenue could be earmarked to support what is being done.

Ann Page, Montana Farmers Union, questioned whether foreign persons included foreign trusts and foreign corporations. She stated that foreign persons should also include U.S. based trusts and corporations that are owned by foreign investors.

Mr. Taylor, Montana Woolgrowers, spoke in support of the bill and hoped for a do pass recommendation by the committee.

Jim Mockler, Montana Coal Council, proposed the addition of the same amendment submitted for HB 429 be amended into HB 784.

Mr. Mockler stated that a great many organizations are foreign interests and hoped that the committee would take a look at that. He hoped the bill did not apply to land held for purposes of mineral exploration.

Rep. Moore closed saying he had no objections to the proposed amendments, his original intention was farm land. Registration is now required with the federal government. The second portion referring to Class 11 property is an effort to get at foreign ownership of resort area land, such as around Whitefish and Duck Lakes. He felt that if these foreigners come into this state to enjoy the good life they ought to pay a little surtax. He concluded by urging favorable consideration by the committee.

Rep. Bertelsen questioned the constitutionality of such legislation. Rep. Moore stated that the original bill included out-of-state U.S. residents, and this was ruled unconstitutional. The bill in its present form has no constitutional problems and refers to non-U.S. aliens.

Rep. Underdal again presented statistics on foreign ownership in the country.

Rep. Johnson asked for an estimate of the actual income to the state. It was explained that if an interest was paying \$1,000 annually in property tax, 20% or \$200 would be added to this as surtax. This money would then be distributed among the city, county and school districts.

Rep. Williams questioned whether language should be added to cover foreign corporations and trusts. Rep. Moore felt that the language was sufficient as it is.

There were no further questions. The hearing was closed on HB 496.

EXECUTIVE SESSION.

Rep. Huennekens asked the committee if they felt a hearing was necessary on this committee bill. The concensus of the committee was that a hearing was not necessary. Rep. Vinger explained the bill would make the penalty for filing late returns on diesel fuel the same as was for gasoline late returns. The gasoline penalty had been 10% and the diesel fuel late returns was 25%. They are now both at 10% under HB 898.

HOUSE BILL

898

Rep. Lien said he has talked to Norris Nichols, of the Department of Revenue Motor Fuel Tax Division, about this and Mr. Nichols thought they should be the same.

Rep. Vinger moved that HOUSE BILL 898 DO PASS. Adoption of this motion was unanimous. Reps. Underdal, Gilligan and Harrington were absent.

HOUSE BILL 831 - Rep. Burnett explained this bill allows county commissioners to forgive taxes, and extends the provision that they could continue the exemption. Would have to delete section (2) and come up with the other provision which would be done with a committee bill. The committee bill would impose the property delinquent taxes; if the bill is passed county would have to forgive each year.

Staff attorney said the problem is with that rodeo association in Red Lodge borrowed \$100,000 and then built some improvements. The county assessor started taxing the land and so the rodeo owed about \$9,000 in back taxes and owe the bank. And now wants the county assessor to forgive back taxes. Wouldn't go very good in judiciary. Any rodeo land used all year around as a fairgrounds is non-taxable because it belongs to the city. Rodeo grounds belongs to the rodeo association in Red Lodge. There are 7 1/2 acres involved valued at \$168,000 which is borrowed against. The rodeo association has about 9 people - no membership. They have put themselves on the line for so much money. If they are not able to negotiate this out, it is public land, and as soon as it is paid off, they plan to turn it back. Assuming there will be one more rodeo, the county will be forced to take tax title. Lending institutions cannot allow this. They will pay back taxes and assume ownership of the property. This land sits under the ski run and is quite a valuable piece of property and it will revert from public property to private property.

Rep. Burnett said this is an evolvment and will sustain the rodeo. It is a non-profit corporation. The association takes no pay for themselves. This is a community development - the county is desirous of not losing this to private interests. If it does happen, it will impair fair grounds and will eliminate rodeo grounds. Back taxes are charged against the county.

Rep. Huennekens asked if anyone knows anywhere tax forgiveness has been done. The county does not feel it is feasible for them to pay for the indebtedness built up by the city. Pretty much a special interest bill.

Rep. Fabrega asked if there is anything precluding a city or county from accepting property that is mortgaged? Rep. Burnett explained the property was city and the tax is county.

Rep. Huennekens explained there are two problems - the acceptance of a committee bill and HB 831 itself. The committee bill would exempt this type from future taxation, but wouldn't affect back taxes at all. That would apply statewide.

Rep. Sivertsen mentioned there are a good number of rodeo grounds that are owned by private interests. Add this bill to the one on golf courses. Randy McDonald said they would be limited to non-profit organizations.

Rep. Fagg moved that HB 831 BE TABLED. Rep. Burnett made a motion that the committee have a committee bill prepared - didn't get a 3/4 vote, so didn't pass. Rep. Burnett asked that it be passed for the day. No action taken.

HOUSE BILL 568 - This was rereferred from House floor back to the committee. Could not overcome the federal impact. Every automobile will end up with another tax put on it - gas taxes, license taxes, etc. Rep. Williams thinks this could be considered in a subcommittee and recommends this be done. Rep. Fabrega thinks the portion of the bill that should be retained is the cost of replacement plates. Objects to increase in the fee for registration. The cost of replacement of plates should be the owner's problem.

HOUSE BILL 740 - Rep. Lien thinks Rep. Sales' HB 740 should stand on its own feet. HB 150 have to have in some form or other - don't want 740 piggybacked on HB 150.

Rep. Fabrega asked if there is an increase provided - 6 3/4% in HB 150 and no increase in corporation license tax to offset effects. Rep. Robbins asked what justification there is for a bad debt reserve. Rep. Lien explained all corporations are allowed actual bad debt deductions. The Savings and Loans wanted to have state law allow the same bad debt reserve as the federal. Under HB 150 they get actual bad debts, but no reserve build up. Were denied by the state courts.

Rep. Huennekens said for clarification, they set up this reserve fund and could go up to 40% of net income - could invest this fund and create an investment on which there would be only tax on the interest derived from the bad debt reserve fund.

Rep. Lien said they never got into just what actual loss of savings and loans is. Banks stated that as soon as they dropped to a 6% their actual and their reserve would be about the same and so they would use the actual, but it would be advantageous to the savings and loans.

Rep. Huennekens said the savings and loans have very little bad debt losses because they invest in homes. They said they are trying to build up a reserve in case of people just leaving their homes. S&Ls normally wouldn't have that much loss, but they think they might need it in the future.

Rep. Fabrega explained most loans are reinsured. Congress did allow S&Ls in order to build up capitalization in an industry that it was thought very desirable to have had debt reserve funds built up. The S&L brought suit and the court denied. Rep. Lien explained it was appealed to the state Supreme Court and they reviewed to allow the deduction. Mr. Sheehy, representing the S&Ls, said that was in the late 60s or 70. The suit was on whether or not they were entitled to a bad debt reserve in corporation license code. The court said no. Rep. Williams said that is the reason the S&Ls taxes are being increased about 53%. They removed the exemption from interest income. It is a big increase for the S&Ls.

Rep. Fagg moved HB 740 DO PASS. Rep. Lien opposed to HB 740. Main purpose is to soften the 53% increase - if both were taxed at the same basis before, their increase under this bill would be in excess of 100%, so you want to get the figure that you are basing the previous tax on. The banks' increase would have been dramatic - they have been paying more than they had to.

Rep. Huennekens explained a percentage figure has only meaning with regard to the base - a 50% increase in the base is 50¢. 50% doesn't have any meaning - the question is the increase on how much? Rep. Williams explained the S&Ls are mutual companies and banks are stockholders. Taxing for mutual corporations is different.

Rep. Fabrega said in 1971 Senator Hims1 exempted from taxation the municipals. Prior to that no one could say when they could no longer tax on federal income. The decision made in 1971 created quite a windfall for S&Ls. Feels with regard to HB 740 in the sense of equity, we need to review back to 1971. He is opposed to the bill at this time.

On Rep. Fagg's motion to DO PASS, Reps. Fagg, Williams, Vinger voted Yes. Reps. Underdal, Gilligan, Harrington were absent. Motion did not succeed. Bill will leave committee on a HB 740 DO NOT PASS recommendation.

Rep. Fabrega further commented the level of taxes that the banks will pay is about the same as they would have before 1976. Rep. Sivertsen thinks the loss is not valid projected on what the banks had been paying under a legal tax. Really it's not true that banks will be paying less. Rep. Huennekens said will get much more through a corporation license tax. Rep. Sivertsen explained if had not reached an agreement, they wouldn't have paid any tax - the banks agreed they would pay this amount. Rep. Lien said we are dealing with projections. Had the banks' figures in - that was closest to anything found. It wasn't challenged. Rep. Nordtvedt feels there is something wrong with the whole process.

Rep. Fabrega explained an agreement between the banks and the taxation committee last session was reached in order to give us time. Once they won the lawsuit, it would have set a pattern. The tax income for 1976 was \$1,500,000 of which \$800,000 was being litigated. Less than \$1 million was collected - the banks bound themselves to a pattern of taxation.

Rep. Nordtvedt thinks the issue is not passing HB 150 - the issue is that no attempt was made to adjust revenue so that that sector of the economy paid their share.

HOUSE BILL 150 - Rep. moved that HB 150 BE RECONSIDERED. Rep. Dozier opposed the motion because after two years of consideration, should make a decision. Rep. Sivertsen reminded the banks did not file an action against the state that they won. It was a good citizen act on their part. In looking at the whole broad picture, this is what we came up with.

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Rep. Lien said when agreement was reached, didn't agree on a yearly increase. Will support raising the corporation license tax on all corporations.

Rep. Fabrega said the department of revenue assured us they could win, but they did not do so. Rep. Dassinger said if they do take it to court, only the percentage over 6 3/4% would be in question. Rep. Williams feels there is a question of equity - about 50% of corporations are paying an inventory tax which is equivalent to about 1 1/4% of license tax. Let's set the corporate license tax at 8% and give those paying an inventory tax credit for that.

Motion to reconsider failed by a 4-13 roll call vote. Two were absent.

HOUSE BILL 470 - Rep. Fagg moved HB 470 DO NOT PASS. Rep. Burnett voted No. Reps. Reichert and Harrington were absent. Motion succeeded.

HOUSE BILL 796 - Rep. Sivertsen reminded HB 796 was to clarify some inequities with reappraisal had a few years ago. Rep. Dassinger thinks the bill is more comprehensive than that. Rep. Huennekens mentioned that 1972 is the basis of valuation now. Rep. Fabrega said on the 5-year plan can do it on that basis, but have to do it all at that time. Rep. Sivertsen said they used the 1972 book on residences and the 1976 book on commercial properties. Through this bill, will assure that this is not going to take place and that we use the same year for all reappraisals.

Rep. Fabrega said section 8 annoys more taxpayers than anything else. STAB might be more reluctant to agree. If it was a very bad practice, all of those affected could come directly to the STAB to get relief. Affects a whole class.

Rep. Fabrega moved HB 796 DO PASS. (Rep. Harrington came in) The department of revenue would not have to notify all the people. Rep. Dassinger voted No. Reps. Robbins, Gilligan, Burnett were absent. Motion succeeded.

HOUSE BILL 795 - Rep. Fabrega moved HB 795 DO PASS. Rep. Nordtvedt opposes. Rep. Williams feels this puts the emphasis on the wrong place. Should be under the control at the local level. Not in favor of transferring to the state. Rep. Fabrega said the welfare program has been funded up to 13 1/2 mills in each county. This would impose 6 mills statewide recognizing that a person may move. This would be an equalizing formula - still retains local control of the program, but imposes liability of paying for it at the state level. Rep. Dassinger said we have control but they have the money - feels local control would be lost. Rep. Nordtvedt said under the present system in a county they have a public assistance administrator interviewer - if he does not take a person doubtful or marginal into the program, if he doesn't grant them the county services, the county saves those dollars. Under the new proposed system, where money would be equalized all over the state, if the administrator has no incentives to deny to someone of doubtful right, it gets laid on the question of fiscal responsibility. Rep. Vinger asked who will do the screening. Rep. Fabrega answered the county - the very same people.

Motion that HB 795 DO PASS failed by a roll call vote of 5-10 with 4 absent.

Meeting adjourned at 11:30 a.m.,



REP. HERB HUENNEKENS, Chairman



Josephine Lahti, Secretary