

HOUSE TAXATION COMMITTEE

46th Legislature

The meeting was called to order in Room 434, at 8:30 a.m., March 15, 1979, by the Vice-Chairman, Representative E. N. Dassinger. A quorum was present as was Randy McDonald, staff attorney.

House Bills 303, 309, 449 and 910 were to be heard.

The hearing on House Bills 303 and 309 were postponed for the time being since Rep. Nordvedt, the sponsor, was absent due to a death in his family. A hearing was rescheduled for Tuesday, March 20.

Rep. Reichert asked for the committee's feelings on introducing a committee bill that would make collection officers of corporations personally liable for employee taxes withheld when a corporation goes bankrupt. Howard Vralsted, Department of Revenue, also stated that he believed this was a problem, even though it is not something that happens everyday.

Rep. Burnett stated that it was his understanding that when a company goes bankrupt, this is a court decision. He did not feel that you could make the officer personally liable. It was pointed out that this is the case for every other business, but not in the case of corporations. Most employers are liable for the amount they withhold. Also, most other states make the collection officer personally liable.

Mr. McDonald explained that when a corporation goes bankrupt, the employee loses the amount that has been withheld and is liable to make it up himself.

Rep. Williams felt that such a bill was probably needed.

Representative Lien was concerned that the officer could be held responsible for something he had little to do with. It was explained that it is the duty of the controller to see that the money is paid to the state. Therefore he has to be the one who is responsible.

Representative Hirsch asked if this is such a problem, why hasn't it been addressed before. Mr. Vralsted stated that this does not happen often, but when it does happen the amounts involved are usually very large, sometimes \$30 - 40,000. He was unable to explain why such a bill has not been introduced.

Representative Huennekens took over as chairman.

Rep. Dassinger made the motion to introduce a committee bill to make a corporation officer who is comptroller of funds be liable for any money not paid to the state. (The state is liable if not paid)

Rep. Burnett saw no problem with this committee bill, but would like to have the Department of Revenue substantiate figures for the committee's information. Rep. Reichert stated that even if this related to one corporation every five years, it is needed in this state.

Representative Bertelson could also see where this would have the effect of deterring the officer collecting the money, knowing he was personally liable.

It was decided to have the bill prepared. It was explained by the chairman that the committee did not have to vote to have the bill drawn up. Once the bill is drawn up, 3/4 of the committee will vote on whether to approve the bill or not. If approved, it will be introduced and then have a hearing.

The committee proceeded to hear HB 910, introduced by the House Taxation Committee. Representative Huennekens explained since this was a committee bill, he would not drop out of the chair. He further explained the bill saying that it has been his feeling that Montana statutes do not provide for making impoundments of taxes paid under protest to the state. The material in the statute 15-1-401 and 15-1-402 applies only to payment of license fees under protest and action to recover. He did not feel that the current statute referred to taxes collected under protest by the state and 402 only applies to local governments. The state does not have impoundment necessity.

This bill clarifies what the intention has been, and is, that this statute does not apply to taxes paid to the state under protest.

Mr. McDonald commented, saying this bill makes it clear that payments paid directly to the state are not subject to the existing statute.

Ed Nelson, Montana Taxpayer's Association, was concerned about this bill but did not know what to do about it. He was concerned that the bill is not dealing with the appropriate problem. When the bill says "paid under protest to the state" it is not including advalorem taxes paid to the state. He hoped that University levies for school foundations, for example, are not fouled up by the language in this bill, because it is state funds. He cited several examples where there had been problems with levying illegal taxes. These problems had been straightened out, but this bill could cause problems in this area. He could not tell if these things were covered under this law or not.

Representative Huennekens stated that they would probably have to review case law to make this determination. This bill does not change state law.

Ed Nelson was concerned that this bill was amending a section of law that really relates to advalorem taxes and would provide credibility to the coal tax suit. If this was the case he hoped that whatever the committee did they specifically state that coal taxes have not been treated specially or differently.

Rep. Huennekens assured him that they have been cognizant that this is a judgmental situation, but this is not a case where everyone knows how the judge is going to act. He again stated that the bill deals with long existing laws but is not interfering with the original intention. The bill clarifies statutory intention that it applies to local governments, making no mention of impoundment applies to the taxes paid directly to the state.

Mr. Nelson stated that he hoped the bill did not change how the state has been acting in the base with tax audits.

Opponents

Les Loble, Montana-Dakota Utilities, rose as an opponent to HB 910. He stated that when the coal companies filed their law suit, MDU refused to go along with it. They respected the decision of the legislature and have been paying their taxes all along. He was present to express concern over this bill and amendments. He pointed out that a revenue bill decreases or increases the taxes collected. This bill has to do with procedure, and therefore would not be appropriate to be introduced by this committee at this time.

He stated that the \$500,000 limit in the amendment will mean that if someone pays to the state, the language is so broad it could be talking about any tax. The effect of this procedure would to come to the legislature for private bills. There is a certain unfairness with this, it leaves the small person out and the large interests in the position of coming to the legislature to fight for their cases. If everyone hired a non-lawyer to come to the legislature they are going to spend almost as much as hiring a lawyer to come to the legislature. He would like to see some way the rest of the citizens would not have to have the knees cut from under them.

Don Allen, Montana Utilities, Helena, felt this bill does apply across the board. He thinks the real problem of all taxes is the payment under protest, this bill goes beyond what we are trying to do. He felt that this bill could be creating more problems than it is solving. He suggested creating language that is specific as to what it is trying to do.

With regard to the rules, Chairman Huennekens stated that the committee has the concurrence of the Rules Committee. The extension of the deadline for the preparation of committee bills clearly provides that any bill produced by the committee has to be a taxation bill. He did not see a problem here.

Commenting on other matters raised, Chairman Huennekens stated that this bill just clarifies what has always been the state's intention. The local government section clearly applies only to local governments. The Attorney General's office has no unfavorable comment and has used case law as to how 401 and 402 shall be applied.

Representative Lien asked Mr. Loble if MDU protests taxes, does the state set up an escrow account for those protested taxes? Loble said he didn't know about other taxes but the Attorney General's office took the position that coal taxes need not be impounded.

Representative Fabrega asked if there had been other taxes paid under protest to the state. It was stated that the Supreme Court has just had one case involving \$7 million. The court ruled in favor of the state. Several other cases were mentioned that the state has won.

Representative Reichert asked Mr. Nelson how he felt about Mr. Loble's proposed amendments. He stated that he had no quarrel with that language as most class action suits will involve more than \$500,000. This was certainly better than the other proposal.

Representative Bertleson asked Mr. Loble if he agreed that 402 was aimed primarily at county and local tax. He did not feel that this was the case. He cited a Supreme Court decision, many years old, addressing this statute, ruling that although there are specific references, it deals with all levels of government.

Representative Huennekens stated that page 3, lines 22 and 23 seemed to make it perfectly clear that this subject is a matter of the counties and local government. He did not see how this could be construed to go beyond local government.

Representative Bertleson asked if the committee accepted these amendments, should it come under section 401 or 402. He felt that this might appear to weaken the state's position by saying that this is not apparent enough in the law. Mr. Loble did not have any strong feelings on this.

Mr. Nelson pointed out that no matter what kind of legal interpretation they get, there is going to be another attorney that would interpret it differently.

Representative Uhde, District 72, Flathead County, presented HB 449 of which he is sponsor. He asked that the committee hold their questions until Representative Nordtvedt made his presentation on HB 303 and HB 309, which are related bills. This bill would eliminate injustices in the tax brackets.

HOUSE BILL

449

This bill would annually adjust the tax brackets, exemptions, standard deduction and minimum income requirements of the individual income tax by the application of a cumulative inflation factor.

Representative Uhde felt that Representative Nordtvedt's bill uses a base figure of June. Representative Uhde's reason for using September as a base figure is that those figures are more accurate, however, he would be agreeable to using June. Representative Nordtvedt's bill rounds figures off to the nearest hundred dollars and this would also be easier to process, so it might be better to go with Nordtvedt's bill. This bill has an advantage because it affects the middle income people by raising tax brackets. People in the highest tax brackets are not going to be affected at all.

The impact would be \$3.5 million a year. HB 303 would have an impact of \$3 to \$6 million and HB 449 would have a \$6.7 million fiscal impact.

Representative Uhde closed asking that questions from the committee be delayed until after Representative Nordtvedt presents his bills,

Executive Session:

Representative Fagg moved HB 669 DO PASS. He then moved to amend proposed amendments on page 2, by deleting subsection (c), and moved that all others be adopted. This was unanimously adopted (see attached amendments). Representatives Harrington, Lien, Nordtvedt were absent. Representative Williams asked how could you go back and set a tax on bank shares when they are no longer assessable property, and the way this is worded, it would refer back to that.

Representative Dozier thought he is just trying to lay a claim. Representative Huennekens said it is an attempt to cope with the change in bank taxation. Representative Dozier said you couldn't refer to bank shares since it is not law, and it has to be a statutory provision regarding taxable value, with regard to school district, city and county bondings and as related to salaries. No action will be taken. Representative Fagg will research further.

House Bill 910: This bill would put local government, to some extent, in the position of jeopardy in the future as it might affect the 6 mill university levy or any other levies which would be prevented from impoundment. Might have to extract the 6 mill university levy Representative Huennekens stated.

Senator Turnage said the key word is "directly to the state", and it does not apply to any payments to local governments. He doesn't think their fears are really warranted. What happened to the better draft of this bill. Why create problems when you had a good bill. Does this affect all of the monies that have been already paid. I think this is a poorer approach than the one Roger Tippy drew up. I would say pass this bill by all means, but when you had a good bill, you should have used it. Coal taxes do not have to be impounded according to tax law. If you don't want to do that, do this. Why didn't he say "does not apply to taxes levied under section referring to coal taxation. I think you should meet the problem head on." He recommended amending section 402 and stick amendment in section 401. The issue is impoundment. Les Loble says to attack directly. Representatives Reichert and Williams agree. Representative Fabrega agrees with this action. The question is to amend the present bill or ask for another one.

Representative Huennekens advised that Loble referred to two lawsuits in which there is an ex post facto case in law and if in fact the legislature does pass a bill eliminating or changing the tax, does the court action become moot? Ex post facto applies only to criminal action not to civil actions. The issue is one of impoundments. If the legislature says that we now do not impound, would this be jeopardizing action.

Mr. Loble recommends redrafting according to Tippy's draft. Senator Turnage suggested that Tippy be asked to come to the committee and offer anything he has to offer. Representative Dassinger thinks the Attorney General's office should be here also. Senator Turnage thinks this is fine also.

Representative Ramirez explained the difference between a "base taxable value" which sets a base from which tax increment financing may be figured, and the "actual taxable value" which means the taxable value of taxable property at any time as calculated from the assessment roll last equalized. A base taxable value is the value used to repay bonds within the tax increment element. Bank shares tax is when you take a tremendous amount out of actual taxable base, then the actual taxable base could be lower. This would jeopardize bonds, so a base taxable value is used. It can slide with circumstances, but it is relevant to the bonds to be repaid from that base tax revenue at all times.

Representative Williams explained the bank shares tax has been removed by statute as a base. The question is can the Department of Revenue go back and use it as a base? Representative Ramirez answered no. The base valuation is adjusted downward

to remove any property from the base and adjust the base down so it always protects the bonds issued. The base is fixed as of a particular date and the value as of that date. It would be recalculated as though nothing had been removed. The base slides down and your actual value has gone down anyway because of the change in the law, but it keeps the increment constant.

Representative Fagg recommended that HB 669 DO PASS AS AMENDED. There were no Noes. Representative Nordtvedt was absent. Motion was adopted unanimously.

Representative Mel Underdal asked that HB 765 be reconsidered so some amendments could be adopted. Motion carried. He moved proposed amendments be adopted. Terry Cohea, researcher said no amendments had been proposed. Representative Reichert suggested that this problem be drawn to the attention of the Department of Revenue since it is already in the law. Representative Huennekens said this could be done. A taxpayer could ask to have his property tax assessments separated or put on one assessment notice. Representative Dozier moved that on line 16, the taxpayer may request his property to be listed on one notice. Representative Dassinger made a substitute motion for all motions pending to Table HB 765. Motion failed.

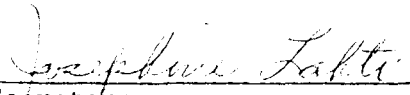
Representative Fabrega moved as a substitute motion that HB 765 DO NOT PASS. Representatives Burnett, Dozier, Underdal and Johnson voted No. Representative Nordtvedt was absent. Motion carried.

Representative Fabrega moved that HB 651 DO PASS. After discussion during which Representative Fagg thinks there is inequity in this bill, and Representative Dassinger said persons who own \$30,000 or even a \$20,000 home may not be a wealthy person. Representative Fagg made a substitute motion of DO NOT PASS HB 651. A roll call vote showed 14 Yes and 4 No votes. Representative Nordtvedt was absent. Motion carried.

Meeting adjourned at 11:30 a.m.



REPRESENTATIVE HERB HUENNEKENS, Chairman



Secretary