

HOUSE TAXATION COMMITTEE MEETING MINUTES  
February 9, 1981

A meeting of the House Taxation Committee was held on Monday, February 9, 1981 at 8:00 a.m. in Room 102 of the State Capitol. All members were present except Rep. Brand, who was excused, and Reps. Devlin and Harrington, who were absent. HOUSE BILLS 539, 541 and 550 were heard and a presentation on HOUSE BILL 92 was made by Dr. Rolf Weil.

HOUSE BILL 550, sponsored by Rep. Dan Kemmis, was heard first. This bill revises the Homestead Exemption law. Up to certain limits a home is exempt from execution when the owner becomes a judgment debtor. The Montana constitution provides for a liberal homestead exemption, and he submitted that present law wasn't complying with the Constitution. Also, due to technical problems, people sometimes have a difficult time getting an exemption. The bill increases the exemption amount from \$20,000 to \$40,000. Other problems with the law are: (1) mobile homes not owning the land they are on cannot get an exemption. (2) single people cannot claim an exemption because the law says only "heads of households" can do this. Another section of the law provides that it is unlawful discrimination for the State to refuse a person any privileges because of marital status. The bill eliminates references to "head of household". Under the bill, people living outside of Cities will be able to claim up to 5 acres under the exemption. He expressed willingness to adjust the amount of acreage. Also, he would be agreeable to reducing the acreage within the City.

Jim Jensen, Low Income Senior Citizens Advocacy, then rose in support of the bill and in particular the mobile home provision and the provision for people outside City limits.

Wensley Krawczyk, Low Income Group for Human Treatment LIGHT, then testified in support of the bill. Expanding the Homestead Tax Relief Act should be an ongoing process. This bill would cover 5,000-10,000 people in the Missoula area alone.

Phyllis A. Bock, Montana Legal Services, then spoke. One of the Senior Citizens' main concerns is losing their homes because of medical bills; this bill would protect them.

Jack Boles, Montana Manufactured Housing Dealers Association, stated that he felt it was justified to include mobile homes in the bill. \$20,000 will hardly buy a mobile home today.

Linda MacKenzie, Montana Credit Union League, then rose in OPPOSITION to the bill. She read Jeff Kirkland's testimony; see Exhibit "A."

Questions were then asked. Rep. Kemmis agreed that the exemption amount on trucks and automobiles should also be changed; Rep. Bertelsen wished to amend the bill to include this provision. The amount of equity is the basis of the \$40,000 figure in the bill. Rep. Kemmis pointed out that the equity couldn't be taken away and the person couldn't be forced to sell. Rep. Underdal wanted to know if a mobile home would still be exempt if it left the State. Rep. Kemmis replied that the mobile home would be subject to the laws of the State that it

went to. The term "homestead" can only apply to a home in Montana.

Rep. Kemmis pointed out that the family definitions were existing language and had simply been moved from another part of the Codes.

Rep. Nordtvedt wanted to know, if the exemption was \$40,000, if Senior Citizens might not be able to incur medical debts and have their homes free of liens. Rep. Kemmis replied that the exemption applied only to the judgment itself. However, if someone owed a hospital \$10,000 and died and there wasn't enough in the estate to pay the bill, supposing the hospital got a judgment against the estate, the estate wouldn't qualify for a Homestead exemption. So, when the estate liquidated that real estate, the hospital could maintain its claim for the bills.

Rep. Neuman wanted to know why line 22 on Page 3 was being stricken. The sponsor replied that at present, in order to claim an exemption, one has to have filed before a judgment is entered and there are very few people who ever do this; this exemption needs to be available for everyone and not just those who had lawyers who took care of this.

Rep. Neuman brought up the case where there was a judgment against some property and the property was sold and the new owner claimed a homestead exemption; he submitted that the original debt couldn't then be collected. Rep. Kemmis replied that if there was a lien against the property other than a judgment lien, the homestead exemption wouldn't apply to the lien. Rep. Neuman submitted that it seemed to him that property with a lien on it could be sold and the purchaser could claim an exemption and the person who put the original lien on would be out in the cold. Rep. Nordtvedt stated that this question would be re-searched.

Rep. Kemmis then closed. He apologized for the bill being in Taxation, because it wasn't a taxation bill, and should probably have been assigned to the Judiciary Committee. He said that if the Committee preferred to have the bill moved, he had no objection. Regarding the Credit Union testimony, he agreed that debtors should have a fair chance to get their share from a bankruptcy. However, the Constitution makes it clear that home owners have a right to a liberal homestead exemption. The question is, what does it take to own a home in Montana, and is \$20,000 enough. The hearing on HB 550 was then closed.

A presentation was then given regarding HOUSE BILL 92. John Delano, Montana Railroad Association, gave a short introduction; Steve Wood, Burlington Northern, then introduced Dr. Rolf Weil, President, Roosevelt University, Chicago.

Dr. Weil gave a presentation on the 4-R Act and the classified property tax codes of Montana and the relationship between the two. He made recommendations which could put Montana's law in compliance with the 4-R Act, in his opinion; see Exhibit "B." He stressed that legislation

be specific enough to be sufficient to satisfy the federal law and expressed willingness to answer any questions.

Rep. Nordtvedt submitted that the most difficult problem at present seemed to be with sales ratio studies. Therefore, an alternative method needed to be found to figure market value of the railroad property. He asked Dr. Weil what his ideas were on how to accomplish this.

Dr. Weil stated that as far as valuation, there were no "arm's length" transactions for railroads; market value has to be approximated. The value of a railroad can be measured in three ways, and no one method is absolutely right. However, with the three averaged, it comes closer. (1) capitalization of income. The entire railroad income needs to be looked at. Worth of the assets needs to be established by looking at the income they generate over time. A discount rate is figured. (2) value of stocks and bonds of the railroad. Since they are a measure of the value of the capitalization, they are another indicator. (3) (and least reliable) reproduction cost less depreciation of railroad property. Only property can be used which is "used and useful." It isn't fair to value non-productive mileage of track. This is what is being done around the country. The technique usually averages these three determinants and then a comparison is made with local property. In his experience, because railroads are centrally assessed, they are assessed by people more competent than the local assessors. Therefore, it is more likely that railroad property will be better assessed.

Rep. Asay reiterated that until the State has a proper evaluation, it would seem that it would be tying its hands by setting the rate at a predetermined level. Dr. Weil asked why this problem couldn't be immediately attacked. He stressed that for now, it was in the interests of all taxing units in the State to get the law passed so that litigation could be avoided. He submitted that unless his advice was followed, litigation would continue. He suggested that the valuation problem be addressed however the Legislature wanted to. He stressed that the equalization provision be immediately passed.

Rep. Asay asked Dr. Weil if he hadn't stated that the present method of establishing the rate was acceptable. Dr. Weil said that the classification system was acceptable except that commercial and industrial property couldn't be assessed lower than railroad property. Rep. Nordtvedt thanked Dr. Weil for his testimony.

Mike McCarter, Attorney General's Office, then made some comments. (1) There are two possible points of discrimination: (a) the classification and (b) de facto discrimination. Even though everything is being assessed at 100% some of the property might be being under-valued, under the railroads. (2) He disagreed with Dr. Weil regarding what action was needed regarding equalization. De facto discrimination, he agreed, needed to be taken care of. However, he submitted there was a possibility that the State wouldn't have to do anything if everything was found to be at the same percentage. He felt valuation wasn't separate

from equalization. State law requires that railroads not be assessed higher than true market value. This recognizes that railroads might not be being assessed at true market value. If one class is being assessed at 80%, then everything should be assessed at 80%. If other property is lower, railroads have to be brought down. There is no equalization question if railroads aren't any higher than other property. The law would fully take into consideration the legal discrimination as well as the equalization question, if there was one, by bringing down the multiplier to a level which would take into consideration both average classification and equalization.

Another disagreement he had with Dr. Weil was with pegging this in Class 4. Last year, the average classification percentage was about 10.09% and not Class 4 percentages. He submitted that there was no way of getting certainty under the statutes. Every year there might be a different sales ratio certainty figure. Also, the railroads can always challenge their valuation. The only to get certainty is to allow the Department of Revenue to adjust the multiplier to comply with the 4-R Act.

Rep. Nordtvedt asked Mr. McCarter if he found acceptable Dr. Weil's three approaches to valuing railroad property. Mr. McCarter submitted that experts usually agreed that salvage value was the minimum value. Other consulting they have done to find true market value has indicated that there are a number of sales of at least railroad segments. This information can be used to help to develop sales assessment ratios. He didn't find unit value acceptable because unit values between the States varied as much as 100%.

Rep. Nordtvedt wanted to know who the experts were that said they could determine salvage value. He was told they were consultants, experts who could value the land, track, and rolling stock.

Rep. Nordtvedt wanted to know if there were any States that had succeeded in getting this kind of valuation. He was told that no State had tried this. In the litigation, most States have complied with what the railroads wanted them to do; Montana hasn't done this.

Rep. Asay submitted that salvage value might be a fourth possibility for arriving at value. Mr. McCarter said he felt this would be absolutely the bottom line; this is the way other commercial property is treated. He pointed out that the 4-R Act didn't require any specific assessment method. It requires true market value, but this doesn't have to be true market value if this is a going concern.

Rep. Asay wanted to know if figures were available as to the return to the railroad. Don Hoffman, Department of Revenue, answered that it was hard to do any kind of valuation other than the unit method on railroads, because all other methods were more costly. He stated that the capitalized income approach was one of the approaches used.

Rep. Nordtvedt asked, assuming the stock market was fairly efficient and the railroads had a breakup salvage value, why would the total value

of common stocks be appreciably less than the breakup value of the railroad. Mr. McCarter said he wasn't sure; however, if the Milwaukee Railroad is looked at, the debt ratio might be so high there wasn't much equity in the company; however, this doesn't mean the property wasn't valuable.

Rep. Sivertsen submitted that the problem was that the railroads have had problems. He wanted to know how, therefore, this could be used to determine value. Mr. McCarter said that assumptions were based on values and rates, which were set up and supplied to the ICC. He questioned whether Montana was tied in its valuation to the regulator. It can't be determined for Montana what value can be put on the property.

Rep. Nordtvedt asked Dr. Weil for his comments regarding salvage value. He wanted to know if it had ever been said that salvage value was the same as market value. He replied that salvage value was lower and for Montana to engage in a procedure not used by any other State would be a waste of money. He said he was puzzled about Mr. McCarter's comments regarding valuation. He submitted that the Department of Revenue could prevent the railroad from being assessed at 80%. The railroad has to report income to every State and why two States arrive at different valuations he didn't know. The rate of discount varies from State to State, but valuations in Montana are not at the low end. If value isn't at 100%, it is the Department of Revenue's fault. Regarding certainty, the possibility of litigation can be minimized. He added that Mr. McCarter was right to know one cannot guarantee that there will never be any more litigation. But the Legislature should want to minimize the likelihood of litigation and his testimony provides that opportunity.

Mr. Steve Wood then spoke up regarding the salvage value question. Railroads in Montana tried to say they should be valued on a salvage value basis, and in 1977 the Supreme Court said this method wasn't acceptable.

Regarding assessment itself and the assessment responsibility, he didn't think the railroad industry had ever said that the local assessor didn't do his job properly. The problem is that they don't assess or appraise every property every year. Therefore, some property that hasn't been appraised for several years won't be accurate. Local property will always be less than property that is appraised every year; that is the difference in the equalization process. The railroad position in the litigation is that they are valued about twice of what they should be under the current method and no matter what, they will continue to be overvalued. However, this has nothing to do with what is before the Committee. The only question before the Committee is whether the Department is going to have to equalize and classify.

Mr. McCarter stated that Dr. Weil had indicated that salvage value was the lowest value. If salvage value is higher than what is on the books, the State has its case. He expressed belief that the bill was leveling the railroads at about \$300,000. Right now the challenge is \$5 million from the railroads; therefore, it is worth it to the State to figure the true market value. Regarding the Department of Revenue's

doing the unit method of valuation, there is a difference between what the State does for itself and the question under the 4-R Act. As far as the State's assessment practices, there is nothing in the statutes that commands that a certain method be used. It needs to be determined whether the unit method of valuing is discriminatory. The hearing regarding the subject was then closed.

HOUSE BILL 539, sponsored by Rep. Herb Huennekens, was then heard. There has been much action to limit property taxes. In Montana the actual total of residential property taxes is not a matter of State law, but is a function of local mill levies, which are variable from jurisdiction to jurisdiction. The only way to equalize the burden is to use taxable value. The statutes refer to true market value, although it is never talked about in the current year. Actual value is decided by the appraiser. A base year of 1972 is being used; therefore, appraisals also vary. This bill attempts to provide a process to get a reasonable, equitable figure upon which a citizen can base a protest. The appeal process is thereby simplified. The 5% figure was arrived at because it comes out to about 1.5% when multiplied by 8.55%. Therefore, it is in line with other figures.

There were no PROPONENTS; there were no OPPONENTS, to HB 539.

John Clark, Department of Revenue, then made some comments. 40% of the residences in Montana might be justified to protest their taxes under this bill. The Supreme Court has found that commercial and residential properties are in the same class and this will lead to new treatment of residential property. He urged the Committee to look at these questions very carefully.

There is a question that some standards might be necessary to assure fair appraisals. Rep. Huennekens pointed out that at present, there wasn't an inflation factor in appraisal figures. He submitted that the inflation factor shouldn't carry the value above 5%.

Rep. Underdal submitted that the real help would be in areas where there was a depressed market in housing. Rep. Huennekens disagreed with this because a ceiling is placed; poor appraisals are being dealt with more than anything else. As true market value changes, it should lift the ceiling above 15%.

Rep. Nordtvedt wanted to know what would happen in the situation where a community had a severely depressed market but the appraisals had already been frozen until the next reappraisal. He submitted that these areas would have a lot of protests. Rep. Huennekens submitted that a very severe collapse of the economy would be needed.

Rep. Bertelsen wanted to know how much of an increase in lawsuits could be expected if the bill was enacted. Rep. Huennekens said that he didn't expect much of a change, and submitted that Mr. Clark's figures were too high.

Rep. Huennekens then closed. He admitted that there might be a very severe financial impact from this bill, if the 5% were to apply to commercial and industrial property. Regarding standards for appraisals, he would have no objection to setting any standards as long as a burden wasn't placed on the taxpayer. The hearing on HB 539 was then closed.

HOUSE BILL 541, also sponsored by Rep. Huennekens, was then heard. This is a continuation of HB 398, from the 1979 Legislative session. The Attorney General's office held that bill invalid because of conflict with 1979's HB 213, which completely redid the property tax structure. He submitted that this decision of the Attorney General's was wrong.

This session, instead of using federal adjusted gross income as a base, all income is used. The former figure is easier to use for checking, but disability and retirement income puts some people above the requirements. Also, the bracket figures were raised because of inflation.

Present statute says that in the case of a retired married couple, the income limitation is \$8,000, and this is an automatic producer or inequity because the dividing line is so narrow. Therefore, a graduated scale would be much more equitable. It is not right that old people should have to sell their homes because they cannot keep up with the property taxes.

Impact from the bill on the State should be negligible, and to solve the loss of revenue to local governments, income tax rebates could be given. He would like to have the people actually see that they are getting a rebate on their property taxes. A provision could be added to the bill saying that after the tax process at the local level was completed, the County Treasurer would submit to the State all the rebates that were granted, and the State could refund the County. He proposed that a fund be established in the Department of Revenue from which the rebates could be made, based on an assessment made by the Department on how much would be needed.

Jim Jensen, Low Income Senior Citizens Advocacy, then rose in support of the bill. They have always supported the sliding scale concept.

There were no OPPONENTS to HB 541.

John Clark, Department of Revenue, then made some comments. The Department doesn't have any problems with the bill, but would like to have some rule making authority to set forth some application mechanism and to provide for some proof of income. He supported having the application set up so that a person could change it if income changed, instead of having to refile every year.

Questions were then asked. Rep. Oberg wanted to know how all income could be determined, since not all of it was required to be reported.

Rep. Huennekens said this question referred to disability income. He pointed out that there was an affidavit provided for in the current law. This bill wasn't trying to address military disability retirees.

Rep. Huennekens said that it would be necessary to reconcile this bill with SB 33.

Rep. Bertelsen submitted that without a rebate provision, a serious problem might be created in other areas. Rep. Huennekens said that the Fiscal Note was based on 1975 census data; he challenged the validity of the note on this basis. Mr. John Clark stated that the figures had allowed for inflation. Rep. Huennekens submitted that income levels would be very difficult to figure. He said the figure they say the County revenues will be decreased by was probably too high. Mr. Clark said that the present 50% drop had an effect of about \$1 million less than with this bill included. Rep. Huennekens said that 50% flat scale was to some extent duplicated, so there might not be as much impact as the first look would indicate.

Rep. Nordtvedt said that according to the figures, the elderly did better than many other groups in the 1970's. He wanted to know if Rep. Huennekens still felt that tax breaks should be encouraged for Senior Citizens, in light of this. Rep. Huennekens submitted that the data from the 1970's had been skewed by certain groups and he submitted that those on Social Security weren't keeping up as well as other groups. Even though they have kept pace with inflation, they started out behind. He admitted that there would be some people paying more under this bill, but it would be temporary until new people moved into the system.

Rep. Huennekens then closed. Mr. Clark's point on verifying accuracy on the County document was appropriate, and this was covered in the amendments. He confessed that he had "pride of authorship" in the bill, and devised the concept himself. He maintained that the Attorney General was "cockeyed;" his decision had penalized the Senior Citizens of Montana for the past year. He said he felt very strongly about this bill being passed.

Rep. Williams added that there had been no intention in HOUSE BILL 213 of 1979 to interfere with the 1979 bill addressing this area. The hearing on HB 541 was then closed.

Chairman Nordtvedt announced that Rep. Keyser was not available to present HOUSE BILL 549, and the hearing would be postponed.

Rep. Burnett then presented what he had in mind for a Committee bill for parimutuel betting. Most states that have a sales tax have a tax on betting; in Montana there is no tax. Close to \$9 million exchanges hands in parimutuel betting and under these circumstances he would like to see a 2% tax. Rep. Burnett proposed that the revenues go to the General Fund and that the tax be 2% on the value of the ticket.

Rep. Nordtvedt wanted to know what the intent was for the estimated \$200,000 revenue to the State. Rep. Burnett said that it was a source of revenue that shouldn't go ignored. Rep. Harp submitted that the money



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should go to the areas with the facilities. Rep. Williams said that under present law parimutuel facilities were getting a percentage of the total income for operating.

Rep. Bertelsen expressed hesitance to have a Committee bill that was not an overriding interest of the State. Rep. Oberg seconded the statement. Rep. Sivertsen submitted that unless the money was going to go for a specific problem, the Legislature shouldn't be in the business of raising more tax revenues. A straw vote was taken and it was decided to not pursue the matter.

Chairman Nordtvedt then solicited volunteers to look into the oil shale taxation issue. Reps. Underdal and Oberg were enlisted.

Rep. Sivertsen explained that HOUSE BILL 451 was left in Committee because Rep. Meyer had requested that a hearing not be held. However, there was some interest in developing a Committee bill to repeal the 3%.

Mr. Clark said that the nonresident withholding area was a problem area in the law and this bill would clarify some of the problems. At present not more than a few thousand dollars of tax revenue is being generated. Maybe this bill would enable the Department to get up to \$75,000 - \$100,000 from this source. They will have difficulty in administering the present law and they would like to have some clarification. He said that the problem hadn't been pursued very vigorously but some interest groups had gotten the bill drafted.

Rep. Nordtvedt said the Committee would be willing to look at a recommended draft from the Department if they wished to submit one. Ellen Feaver, Director of the Department of Revenue, said that it had been decided not to recommend legislation in this area since it was a low priority item.

Mr. John Cadby, Montana Bankers Association, said the law had never been enforced since 1959 when it was enacted. The best thing that could happen would be to get it off the books. He submitted that the tax could easily be avoided even if the law was enforced.

Rep. Williams wanted the Department of Revenue to do some research and report back to the Committee.

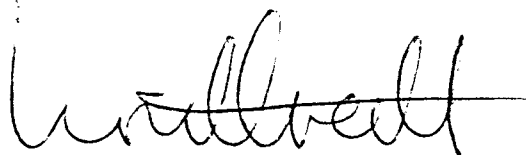
Mr. Cadby submitted that more money would be spent on enforcing the law than would be generated by it. Rep. Williams asked John Clark what would happen if the present statute would be repealed. Mr. Clark said that it would just make the Department less guilty of non-enforcement.

Rep. Sivertsen moved that the Committee pursue a bill dealing with the problem which would repeal this section of the law. The motion was seconded and carried, with Reps. Bertelsen and Nordtvedt opposed. Rep. Sivertsen was put in charge of pursuing the matter.

Rep. Roth agreed to carry HB 549 the following day. (The chief sponsor wasn't going to be available.)

The Motor Vehicle Fee Subcommittee, it was announced, would meet upon adjournment of the meeting.

The meeting was adjourned at 10:30 a.m.

A handwritten signature in cursive script, appearing to read "Ken Nordtvedt", written over a horizontal line.

Rep. Ken Nordtvedt, Chairman

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## VISITORS' REGISTER

HOUSE Terrace COMMITTEEBILL 40550Date 2/9/81SPONSOR Kimmins

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS.
Linda Bachini - Intern	Bozeman.	MT. Credit Unions League		X
Phyllis A. Bock	Helena	MT. Legal Services	✓	
<del>Wes Kenworthy</del>	Missoula	Low Income group for Helensia	X	Impaired
STEVEN WOOD	St. Paul, MD	BN	X	
ROFF WELI	Chicago, Ill	BN	X	
Mick Melat	Helena	DoR		
Don Hoff	Helena	DoR		
Jim Jensen	Helena	HISCA	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE BILL 550

TESTIMONY OF JEFFRY M. KIRKLAND  
DIRECTOR OF GOVERNMENTAL RELATIONS  
MONTANA CREDIT UNIONS LEAGUE

BEFORE THE HOUSE TAXATION COMMITTEE  
ON MONDAY, 9 FEBRUARY, 1981

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, FOR THE RECORD I AM JEFF KIRKLAND, DIRECTOR OF GOVERNMENTAL AND COMMUNITY RELATIONS FOR THE MONTANA CREDIT UNIONS LEAGUE. OUR LEAGUE IS A TRADE ASSOCIATION REPRESENTING 133 OF 136 CREDIT UNIONS IN MONTANA, AND IT IS ON THEIR BEHALF THAT WE STAND IN OPPOSITION TO HOUSE BILL 550.

OUR MAJOR CONCERN WITH THE BILL IS THAT IT WOULD DOUBLE THE MAXIMUM HOMESTEAD EXEMPTION ALLOWED A DEBTOR IN A BANKRUPTCY PROCEEDING FROM THE CURRENT \$20,000 TO \$40,000. IN ESSENCE, THAT WOULD ALLOW THE DEBTOR TO SHIELD FROM HIS CREDITORS A MAXIMUM OF \$40,000 OF HIS EQUITY IN REAL PROPERTY.

AS NON-PROFIT COOPERATIVE LENDING INSTITUTIONS OWNED AND OPERATED BY OUR MEMBERS, CREDIT UNIONS HAVE ALWAYS BEEN DEMONSTRABLY CONCERNED WITH THE ECONOMIC WELL-BEING OF OUR CONSUMER-MEMBERS. IN FACT, FINANCIAL COUNSELING FOR MEMBERS WHO ARE IN ECONOMIC DIFFICULTIES IS ONE OF OUR MOST IMPORTANT SERVICES. AND IT IS FROM THIS STANDPOINT OF CONSUMER-MEMBER ADVOCACY THAT WE OPPOSE HOUSE BILL 550.

BANKRUPTCY HAS TRADITIONALLY BEEN A METHOD OF OBTAINING A "FRESH START" FOR THOSE WHO HAVE BECOME OVERWHELMED BY DEBT, EITHER

FROM POOR ECONOMIC JUDGMENT OR FROM SOME CATASTROPHIC OCCURRENCE SUCH AS ILLNESS, LOSS OF EMPLOYMENT, OR AN ACCIDENT. AS LENDERS, EVEN THOUGH WE SUSTAIN LOSSES FROM BANKRUPTCIES, WE AGREE WITH THE "FRESH START" CONCEPT OF BANKRUPTCY.

HOWEVER, WE ALSO BELIEVE THAT BANKRUPTCY SHOULD RESULT IN EQUITABLE TREATMENT FOR BOTH THE DEBTOR AND HIS CREDITORS. THAT IS, THE DEBTOR SHOULD BE ABSOLVED FROM HIS UNMANAGEABLE DEBT, AND THE CREDITORS SHOULD RECEIVE AS MUCH OF WHAT THEY ARE CONTRACTUALLY ENTITLED TO AS POSSIBLE.

SHOULD THE HOMESTEAD EXEMPTION BE DOUBLED FROM \$20,000 TO \$40,000, SOME PRE-BANKRUPTCY PLANNING BY THE DEBTOR'S ATTORNEY COULD OSTENSIBLY ELIMINATE MOST, IF NOT ALL, OF THE DEBTOR'S ASSETS FROM THE BANKRUPTCY ESTATE, THEREBY LEAVING NOTHING FOR DISTRIBUTION TO THE CREDITORS.

AGAIN, WE STRONGLY BELIEVE IN THE DEBTOR'S RIGHT TO A "FRESH START" AFTER BEING ABSOLVED FROM UNMANAGEABLE DEBT. HOWEVER, WE DO NOT BELIEVE THAT THE DEBTOR SHOULD BE RELEASED FROM ALL HIS CONTRACTUAL OBLIGATIONS TO THE COMPLETE DETRIMENT OF HIS CREDITORS.

AS LENDERS, WE SEEK AN ELEMENT OF FAIRNESS IN A BANKRUPTCY PROCEEDING, AND THE ABILITY TO SHIELD A MAXIMUM OF \$40,000 IN EQUITY FROM THE BANKRUPTCY ESTATE SIMPLY DOES NOT PROVIDE EQUITABLE TREATMENT TO CREDITORS. THE HOMESTEAD EXEMPTION SHOULD PROVIDE THE DEBTOR A REASONABLE BASIS FOR STARTING OVER. IT SHOULD NOT, HOWEVER, SERVE AS A DEVICE TO BETTER HIS ECONOMIC POSITION AT THE EXPENSE OF HIS CREDITORS.

CREDIT UNIONS ARE MEMBER-OWNED, AND EVERY TIME A CREDIT UNION SUSTAINS A LOSS THROUGH BANKRUPTCY, IT IS NOT A SELECT GROUP OF STOCKHOLDERS THAT GETS HURT--IT IS EACH AND EVERY ONE OF THE CREDIT

UNION'S MEMBERS. AS I MENTIONED PREVIOUSLY, WE ARE CONCERNED WITH THE ECONOMIC WELL-BEING OF OUR CONSUMER-MEMBERS, BUT WE ARE ALSO CONCERNED WITH THE EQUITABLE TREATMENT OF OUR MEMBER-OWNERS. WE DON'T BELIEVE THAT THE DOUBLING OF THE CURRENT \$20,000 HOMESTEAD EXEMPTION TO \$40,000 PROVIDES THAT EQUITABLE TREATMENT.

FOR THAT VERY COMPELLING REASON, WE URGE THAT THIS COMMITTEE RECOMMEND THAT HOUSE BILL 550 DO NOT PASS.

NAME \_\_\_\_\_ BILL No. \_\_\_\_\_  
ADDRESS \_\_\_\_\_ DATE \_\_\_\_\_  
WHOM DO YOU REPRESENT \_\_\_\_\_  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

HB 92 -

John Delano - Mont RR Assn  
Dr. Rolf Weil - Pres., Roosevelt Univ.,  
Chicago  
Steve Wood - BN - St. Paul  
Tom Dawling - Mont RR Assn



Testimony of Dr. Rolf A. Weil  
Before Senate and House Tax Committees of  
the Legislature of the State of Montana  
February 9, 1981

1. Introduction.

It is a privilege for me as an economist and as a long-time student and practitioner in the field of public finance to testify before this distinguished group of legislators on a matter of common concern.

In 1976<sup>(1)</sup> the Congress of the United States passed the Railroad Revitalization and Regulatory Reform Act. Among the purposes of this Act, commonly referred to as the 4 R Act, is the prevention of tax discrimination in the various States against the rail transportation property of common carriers. To attain this objective the legislation provides the opportunity for railroads to sue in the federal courts without first availing themselves of State judicial systems which historically had become a slow and inadequate procedure.

In essence, the 4 R Act provides that the level of assessment as determined by an assessment/sales<sup>(2)</sup> ratio study of commercial and industrial property may not be significantly lower than the level of assessment of the carrier operating property. Moreover, the Act provides that if a random-sampling sales ratio study cannot be made for commercial and industrial property, equalization will have to take place between the level of all other property subject to property taxation and the level of the centrally assessed railroad property.

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(1 Recodified in 1978.

(2 The Act refers to a sales assessment ratio study.

## 2. The Classified Property Tax and the 4 R Act.

Many States classify property for tax purposes and specify different assessment levels for different classes of property. There is nothing in the 4 R Act to prevent this procedure. However, the level of assessment on railroad operating property may not be higher than the level specified for commercial and industrial property. Moreover, setting an identical level by law, although a necessary condition, is not a sufficient condition to meet the federal requirement. In actuality the "true" level of assessment of commercial and industrial property as measured by a sales ratio study must not be lower than that for the rail property.

To be specific, in the State of Montana the statutory as well as the "actual" level of assessment for property Class 4 must not be lower than that for the railroad classification.

## 3. Assessment Jurisdiction.

As a practical matter, it is only a State-wide study of commercial-industrial property that produces a large enough sample to make comparisons. Moreover, for railroad property the assessment jurisdiction is the State and it is therefore logical, administratively reasonable, and legally probably necessary to use State-wide data.

Moreover, if a ratio cannot be determined for commercial and industrial property on a State-wide basis, equalization between rail and all other property must be undertaken.

4. Recommendations for Possible Changes in State of Montana Assessment Procedures.

In order to accomplish the dual objectives of complying with the 4 R Act and to minimize costly litigation, I would recommend that the legislature and the Montana Department of Revenue take the following steps legislatively and/or administratively:

- a. Establish a separate property class for operating railroad property and set its level of assessment at the same level as the level provided for in the present Class 4.
- b. Conduct annual assessment/sales ratio studies and determine the actual level of assessment for commercial and industrial property as well as for all property.
- c. Equalize the valuation between centrally assessed railroad property and the State-wide ratio for commercial and industrial property. For example, if the statutory assessment on railroad property were set at 10% and if commercial and industrial property is on the basis of a ratio study found to be at 8%, a multiplier of .8 should be applied to the Montana rail valuations.
- d. In calculating assessment to sales ratios, sales for the latest available 12 months period should be used and the market values should be compared with the preceding January 1 assessment data.
- e. If for statistical purposes<sup>(1)</sup> an inadequate number of commercial-industrial sales are available, railroad property should be equalized with all other property using generally accepted statistical procedures.

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(1) It must be possible to determine the commercial-industrial assessment level within a narrow enough confidence interval to be meaningful.

CURRICULUM VITAE  
OF  
ROLF ALFRED WEIL

PERSONAL DATA

Born: October 29, 1921 in Germany  
Naturalized U. S. citizen since 1944  
Married: November 3, 1945 to Leni Metzger Weil  
Children: Susan Linda  
Ronald Alan  
Residence: 3015 Simpson, Evanston, Illinois 60201

EDUCATION

Graduated Hyde Park High School, Chicago, 1939  
B. A. in Economics, University of Chicago, 1942  
M. A. in Economics, University of Chicago, 1945  
Ph. D. in Economics, University of Chicago, 1950

HONORARY DEGREES

D. Honoris Causa, College of Jewish Studies, 1967  
L.H.D., Loyola University, 1971

EXPERIENCE

1. Research Assistant, Cowles Commission for Research in Economics, 1942-44
2. Research Analyst, Illinois Department of Revenue, 1944-46
3. Lecturer, Indiana University Adult Education Division, 1945-46
4. Faculty Member, Roosevelt University, 1946-
5. Tax Consultant to Gulf, Mobile & Ohio Railroad,  
J. L. Jacobs and Company, and other clients - currently
6. Acting President, Roosevelt University, 1965-66
7. President, Roosevelt University, 1966-

RESEARCH EXPERIENCE AND PUBLICATIONS

1. "Methods of Price Control," Cowles Commission Seminar Paper, 1944
2. Contributed to Price Control in Wartime by G. Katona, published by  
Cowles Commission, 1944
3. Research on assessment ratios and special property tax problems,  
Illinois Department of Revenue, 1945-46

5. Conclusion.

It is my judgement that the taxing bodies in Montana would be best served under a system of railroad assessment that produces both equity and certainty. Equity means the elimination of discriminatory taxation and certainty implies the timely collection of taxes without the delays inherent in litigation. The more precise the legislation in regard to the matters discussed in this statement the greater is the likelihood of a smoothly functioning property tax system.

I thank you for considering my recommendations and the underlying reasoning.

4. Federal Grants in Aid to Achieve State-Local Cooperation in Counter-cyclical Fiscal Policy, Ph.D. Thesis, U. of Chicago, 1950. On microfilm.
5. "State-Local Finance and Business Cycle Policy," Illinois Business Review, October, 1950.
6. "Property Tax Equalization in Illinois," National Tax Journal, June, 1953.
7. "Apportioning Costs of Higher Education," Current Issues in Higher Education, Recorder's Report by Rolf A. Weil, 1956.
8. "Morton on Housing Taxation," by Rolf A. Weil. Book review in Journal of Political Economy, Summer, 1956.
9. "Business Schools Adjusting Focus," Business and Society, Spring, 1962.
10. "Property Tax Equalization," 1968 Proceedings of National Tax Association.
11. "Youth Attitudes - 1970" in Vital Speeches of the Day, (November 1, 1970).
12. "Philanthropy and the Challenges of the '70s," in Fund Raising Management, (September-October, 1971).
13. "World Problems - Educational Relevance" in Vital Speeches of the Day, (February 1, 1974).

#### COMMUNITY AFFILIATIONS AND ACTIVITIES

President of Selfhelp Home for the Aged, Inc., Chicago.

Member of Executive Committee of the Federation of Independent Illinois Colleges and Universities, Nonpublic Advisory Committee to the Illinois Board of Higher Education.

#### MEMBERSHIPS

Member of the American Economic Association, the Investment Analysts of Chicago, the American Association of University Professors, and the Committee on Federal Revenues and Expenditures of the Chicago Association of Commerce and Industry.

Member of the Board of Directors of the Edward A. Filene Good Will Fund.

Member of Rotary Club of Chicago, Cliff Dwellers Club, University Club of Chicago, and the Mid-America Club.

*Ellen Hoover*

BN vs. Department of Revenue (1979)

ISSUE: The Federal 4-R (Railroad Revitalization and Regulatory Reform Act) of 1976 requires that railroad property be taxed at a rate which is not greater than those applied to other commercial property. Under Montana's property classification system (1979 version) railroad (centrally assessed) property had a taxable value equal to 16% of its appraised value while commercial property fell into a variety of classifications ranging from 4% (business inventories) through 8.55% (real property and improvements), 11% (manufacturing and mining machinery) and 13% (furniture and fixtures, motor vehicles) to 16% (radio and television equipment).

After negotiation, the parties agreed that the weighted average classification percentage for commercial property in 1979 was 10.5%. Federal Court ordered the use of this figure and the case was settled. BN saved about \$2 million for 1979.

Related Developments:

The 1979 Legislative Session reduced the classification percentage for centrally assessed property from 16% to 15%. This was apparently done as a matter of streamlining the system and not in response to the prospect of BN litigation.

At the time of the settlement, Department attorneys were given the impression that BN would come back in 1980 with the same issue and we would go through the same process of negotiation to arrive at a weighted average classification percentage. There was an acknowledgement that the Legislature held the key to a resolution of the problem and that the parties would "go through the motions" until the 1981 Session had a chance to consider the matter.

BN vs. Department of Revenue (1980)

ISSUES: BN apparently decided to launch a "pre-emptive strike" (contrary to the gentlemen's agreement mentioned above). The company alleged three issues in its complaint.

1. The classification percentage (same as 1979).
2. The appraised value of railroad property in Montana is not correct. In essence, Montana has over-appraised railroad property vis-a-vis other commercial property.
3. The use of sales ratio statistics to further reduce the value given railroad property.

The introduction of valuation issues is novel. The Department briefly considered introducing the issue in the 1979 case but the notion was ultimately rejected because there were dangers perceived in that In fact, when the idea was broached to BN attorneys during negotiation, they were adamant that it should not be raised. course of action. Now that the issue has been raised, the state must vigorously pursue it. A proper defense will require the testimony of expert witnesses who are familiar with the BN system in the state.

If BN's allegations are accepted, the company would save approximately 81% of its local property tax bill for 1980. This translates into a loss of over \$6 million in local government revenue. Because of the magnitude of the sum involved, there seems to be little choice but to prepare as vigorous a defense as possible.

A schematic of what is happening may be instructive.

Present law.

$$1) \quad \begin{array}{l} \text{Unit Value of railroad} \\ \text{determined by three} \\ \text{approaches (cost, income,} \\ \text{stock and debt)} \end{array} \times \begin{array}{l} \text{Portion of total railroad} \\ \text{property in Montana} \end{array} = \begin{array}{l} \text{Value of} \\ \text{railroad in} \\ \text{Montana} \end{array}$$

The value in Montana is then divided among taxing jurisdictions on the basis of the portion of railroad property in each.

$$(2) \quad \begin{array}{l} \text{Value} \\ \text{in jurisdiction} \end{array} \times \begin{array}{l} .15 \\ \text{class. factor} \end{array} = \begin{array}{l} \text{Taxable value} \\ \text{in jurisdiction} \end{array}$$

$$(3) \quad \begin{array}{l} \text{Taxable value} \\ \text{in jurisdiction} \end{array} \times \begin{array}{l} \text{Local Mill} \\ \text{Levy} \end{array} = \text{Local Tax}$$

What BN Wants.

BN alleges that the Department's methods of computing unit value are erroneous and result in a greater value than the methods used to compute the value of commercial property. Consequently, railroad property in Montana is overvalued in comparison with other commercial property. Furthermore, since sales ratio studies show that the appraised value of commercial property averages about 55% of its market value, BN alleges that its Montana value should be reduced to 55% of the already reduced unit value. Finally, BN-claims that the classification percentage should be dropped to the neighborhood of 10%.



The effect of these changes can be schematically portrayed as follows:

- (1) Current unit value as computed by Department  $\times$  A factor smaller than 1 reached by using "proper" method of valuation.  $\times$  .55 sales ratio factor

this is a fictitious calculation used for illustrative purposes only

= Value of railroad in Montana

The value in Montana is then divided among taxing jurisdictions on the basis of the portion of railroad property in each.

- (2) Value in jurisdiction  $\times$  .10 Class factor = Taxable value in jurisdiction

- (3) Taxable value in jurisdiction  $\times$  Local Mill Levy = Local Tax

# VISITORS' REGISTER

HOUSE TRANSPORTATION COMMITTEE

BILL HE 541

Date 2/9/81

SPONSOR Humboldt

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
JOHN CLARK	HELENA	DEPT OF REV		
Tom Jensen	Helena	LISCA	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.  
 PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE Territorial COMMITTEE

BILL H.B. 539

Date 2/9/81

SPONSOR Herrington

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
JOHN CLARK	HELENA	DEPT OF REV		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE Transportation

COMMITTEE

TITLE 1987-88

Date 5/8/88

SPONSOR House

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
<i>[Faint handwritten name]</i>	<i>[Faint handwritten residence]</i>	<i>[Faint handwritten organization]</i>		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.  
 PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME John Doe BILL No. 45549  
ADDRESS 123 5th Avenue DATE 2-9-81  
WHOM DO YOU REPRESENT Port Savings & Loan League  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

# STANDING COMMITTEE REPORT

FEBRUARY 12

19 71

MR. SPEAKER

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 539

**A BILL FOR AN ACT ENTITLED: "AN ACT TO LIMIT TAXABLE VALUE ON RESIDENTIAL PROPERTY; AMENDING SECTION 15-8-111, MCA."**

Respectfully report as follows: That HOUSE Bill No. 539

DO NOT PASS  
DO PASS

# STANDING COMMITTEE REPORT

.....February 12,..... 19..91.....

MR. ....SPEAKER.....

We, your committee on.....TAXATION.....

having had under consideration .....HOUSE..... Bill No. 541.....

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION  
15-6-134, MCA, TO PROVIDE A GRADUATED TAX FOR CLASS  
FOUR PROPERTY, BASED ON THE INCOME OF THE OWNER;  
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That.....HOUSE..... Bill No. 541.....

DO PASS

# STANDING COMMITTEE REPORT

February 13, 1951

MR. SPEAKER

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 550

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE HOMESTEAD EXEMPTION LAWS; INCREASING THE EXEMPTION TO \$40,000; INCLUDING MOBILE HOMES WITHIN THE EXEMPTION; ALLOWING ALL PERSONS TO CLAIM THE EXEMPTION; ALLOWING THE EXEMPTION TO BE CLAIMED AFTER A JUDGMENT IS RECORDED; AMENDING SECTIONS 25-13-514, 25-13-617, 70-32-101, 70-32-103 THROUGH 70-32-106, AND 70-32-202, MCA; AND REPEALING SECTION 70-32-102, MCA."

Respectfully report as follows: That HOUSE Bill No. 550, introduced (white), be amended as follows:

1. Page 1, line 5.  
Following: "LAWS;"  
Strike: "INCREASING THE EXEMPTION TO \$40,000;"

2. Page 2, line 11.  
Following: "exceeding"  
Strike: "5 acres"  
Insert: "1 acre"

3. Page 2, line 15.  
Following: "an"  
Strike: "1"  
Insert: "one-fourth of an"

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Rep. Ken Nordtvad, Chairman.



## COMMITTEE ON TAXATION AMENDMENTS TO HOUSE BILL 550:

4. Page 2, line 19.  
Following: "620,000"  
Strike: "\$40,000"  
Insert: "\$20,000"

5. Page 5, line 14.  
Following: "than"  
Strike: "\$300"  
Insert: "\$1,000"

AND AS AMENDED  
DO PASS