

HOUSE TAXATION COMMITTEE MEETING MINUTES
March 23, 1981

A meeting of the House Taxation Committee was held on Monday, March 23, 1981 at 8:00 a.m. in Room 102 of the State Capitol. All members were present except Rep. Harrington, who was absent. HOUSE BILL 842 and SENATE BILLS 292 and 361 were heard and EXECUTIVE ACTION was taken on HOUSE BILL 844.

The first bill to be heard was SENATE BILL 361, sponsored by Sen. Gary Lee. Two handouts were distributed; see Exhibit "A." The bill allows for federally sheltered DISC's to take advantage of the same things on the State level as the federal level. Montana will not be the first State to enact this kind of legislation. Montana should be interested in this because of its proximity to Canada and the abundance of north to south trade. Some amendments might be necessary.

Finn Walstad, Nordak Industries, Great Falls, then rose in support of the bill. They ship Montana products overseas. DISC will enable them to compete with other States. Some States don't have DISC because they don't have corporate income taxes. If the State is ever going to invite a business, they should have a DISC. Even worse, the State is not allowing established businesses to grow and to do international business.

A company cannot have a federal DISC unless they are a straight corporation. This needs to be different on the State level because the federal program needs changing and is being worked on. He passed out a copy of Resolution 51, which they came up with at a federal meeting on the subject; see Exhibit "B." The State's 18,596 small businesses are the base of the State's economy and the future of it. They need to be allowed to grow and be able to compete. Without this bill, farmers will be left with the tab.

Montana has resources the entire world wants, but the State doesn't produce nearly as much as it should. It is time the State got a little bit of the benefit from its resources. We have a duty as citizens not to only Montana but to the Country to equal the balance of payments. We have a duty to the local Community. Even though only eight States have DISC's, the rest of the States don't have corporate taxes. The loss in revenue to the State would be \$200,000 if this bill was passed. If he brought \$1 million of foreign sale into the State, however, this would be weighed against this loss. Also, it would create new jobs. It is the Legislature's duty to eliminate that penalty on the businesses that want to do business overseas.

John Bailey, Northwest Bank in Great Falls, then rose in support of the bill. He has six clients who would benefit from the use of DISC. Five of the six are small businessmen and once again the small businessman is being penalized because the State has no DISC provision. DISC on the federal level allows one to shelter 50% of overseas income. Right now, none of it is sheltered in Montana; 150% of that income is being taxed. Most of these small businesses don't qualify under existing federal law unless they incorporate. At present, there is no

amendment to allow Subchapter S and partnerships and proprietorships and they should be included.

Forrest H. Boles, Montana Chamber of Commerce President, then spoke up in support of the bill.

There were no OPPONENTS to SENATE BILL 361.

John Clark, Department of Revenue, then made some comments; see written testimony Exhibit "C." \$200,000 is a fairly accurate estimate, but they cannot tell for sure without an exhaustive look at their files. He agreed to conduct further research if the Committee requested this.

Questions were then asked. Rep. Underdal asked Mr. Clark if the boost to the economy from the new jobs was considered. Mr. Clark said he assumed that this had been taken into consideration. Rep. Underdal said that according to Department of Revenue indications, this treatment would be subsidizing exports and if this was so, how about other foreign nations; don't they subsidize exports to the U. S. Mr. Walstad said he completely disagreed with Mr. Clark. He submitted that jobs would double after DISC was enacted. European countries don't have an added value tax when they export.

Rep. Asay wanted to know if the bill would have any effect on cattle or wheat sales overseas. The sponsor replied that this didn't apply to raw or energy-related materials.

Rep. Nordtvedt commented on the statement that these companies have been penalized. He wanted to know if this was in comparison with Montana's treatment of companies doing domestic activity. Sen. Lee replied that the big penalty was when they competed on the foreign markets. Most industrial nations competing in this market had other advantages. Rep. Nordtvedt questioned if, because European countries are subsidizing exporting industries, the U. S. should also do this. Sen. Lee disagreed.

Rep. Williams wanted to know who the stockholders were in these corporations. Sen. Lee said they were just like any other corporation. Rep. Williams didn't think the Montana Corporate License tax would be repealed, and questioned if this wouldn't defer the payment. Sen. Lee replied that it would. He suggested that a cooperative be organized because they don't have to pay their Corporate License tax, they distribute their return to the stockholders first. Rep. Williams pointed out that proprietorships and partnerships didn't pay a Corporate License tax. Mr. Baily said the Subchapter S's were what should be addressed.

Rep. Bertelsen wanted to know if any size corporation could come under the program. It was brought out that this was the case, however, the number of large corporations vs. small ones in the State was less than 13 vs. more than 18,000.

Rep. Bertelsen said it seemed to him the fiscal note figures could change dramatically in a few years. Mr. Clark said the Corporate License tax was a very fluid thing.

Sen. Lee then closed. He commented that Mr. Clark had mentioned the word "assumption" quite a bit, and a lot of things were being assumed. They assumed a lot on the report that came from Washington. He apologized for not having the amendments ready and asked that the Committee accept them in the near future. The hearing on SB 361 was then closed.

SENATE BILL 292, sponsored by Sen. Tom Hager, was then heard. The bill does two things: (1) A plant wanting to use industrial revenue bonds has the option of selling short term bonds than can be later turned into long term bonds. This would give the company the option of doing this initially to get the project started and in a few years when the bond market is better, they can be rolled over into long term bonds. (2) It clarifies that there will be one hearing on the project for the industrial development bonds. At the time the bonds are rolled over, another public hearing wouldn't be required.

Bob Sullivan, a Montana Power lawyer, rose in support of the bill. The bill adds a definition of bonds. The provision for having a hearing is amended and the third section of the bill provides that in the event short term bonds are rolled over, the proceeds of the long term bonds would have to be placed in trust and invested in guaranteed securities. The bond market has been very volatile because of fluctuating interest rates. Right now there isn't much of a market for long term bonds but there is for short term bonds. This bill will allow companies to take advantage of this. Savings would be passed on to the consumer.

Montana Power and five others are building Colstrip 3 and 4 at a \$1.8 billion dollar cost; the pollution control facilities will be paid for by the issuance of industrial development bonds. Forsyth has already passed a resolution and held a hearing and found that issuance of the bonds would be in the public interest. The issuants will issue short term bonds within a few months. Southern California did this same kind of financing and was able to sell the bonds for 8 3/4%. At present, long term bonds would be 3 - 4 percentage points higher.

Montana Power and the other participants in Colstrip 3 and 4 are also looking at the option of issuing short term bonds. They are negotiating with two large banks; the banks would issue a letter of credit backing up the short term bonds and Montana Power's rating of "A" would be supplanted by the bank's "AAA" rating. This will lower the interest rate on the bonds. The net savings would be \$2 million per year in lower interest. To Montana Power, this would be savings of about \$600,00 per year and this would be passed on to consumers. This is an example of how the bill would be beneficial to consumers.

He went through the bill and explained what the amendments would do.

They suggested that the bill be amended to provide for an effective date on passage and approval, and an amendment would be submitted to cover this. The reason is that they want to meet their deadline of a proposed sale of the short terms bonds as of April 29th.

There were no OPPONENTS to the bill. Questions were asked. Rep. Nordtvedt said that it seemed there was an assumption that the bond market wasn't very efficient and the advantages hadn't been discounted in the bond rates. He wondered if the authority wasn't being given to Montana Power to speculate in the bond market. Mr. Sullivan said they weren't. There was no market for long term bonds and therefore if they could not use the short term bonds they would have to use other financing which might cost more and would be passed on to the consumer.

Rep. Nordtvedt questioned what would happen if the long term bond market never improved. Mr. Sullivan said that historically they had gone through cycles of escalation and depression and part of their expectations are based on that cycle repeating itself. If the bond market improves, this bill would allow advance refunding if the change happened before three years was up.

Rep. Nordtvedt asked him if he considered that not having a hearing when the bonds were rolled over was a crucial part of the bill. Mr. Sullivan said it was crucial from the standpoint of not putting the government official through another hearing in Forsyth. They think the original hearing was sufficient.

Rep. Nordtvedt asked if the government eventually backed the bonds up. Mr. Sullivan said the bonds didn't pledge the assets of any governmental agency.

Rep. Underdal asked Mr. Sullivan what the cost was to hold a hearing, and he replied that the cost would be more than a few thousand dollars.

Rep. Nordtvedt said he had been wondering if there might be a possibility with the market going the wrong way like it did a few years ago.

Rep. Harp wanted to know about the rating of the power company. Mr. Sullivan said bonds are downgraded because of earnings going down. Rep. Harp stated that, in other words, there wasn't a great enough return on the investment to warrant an "AA" rating. Mr. Sullivan replied that this was correct. Rep. Harp wanted to know if the bill would help even if the rating could be improved. Mr. Sullivan said the advance refunding concept in the bill was more a matter of the volatility of the market. The better rating would help as far as interest rates.

Rep. Brand asked Mr. Sullivan if short term bonds hadn't always demanded higher interest rates than long term ones. He replied that that might have been true historically, but it wasn't the case at present. Investors in long term securities aren't anxious to buy

them now but they are interested in short term bonds.

Rep. Brand wanted to know why the Montana Power Company didn't ask for this type of legislation years ago. Mr. Sullivan said they didn't have this problem when Colstrip 1 and 2 were built.

Rep. Williams had a question regarding the fact that money in trust could be invested in government securities. He questioned if this couldn't be done at present. Mr. Sullivan said it could be; the IR Codes had a provision where one could utilize money in different markets. In this case, if the bonds are sold at 9% and then the proceeds are invested in government securities at 15%, the 6% is the so-called "arbitrage." That income is used to pay off the interest and principle of the long term bonds. The IR Codes have a requirement that the proceeds have to be invested in government guaranteed securities and Montana law doesn't have this at present. Consequently, if Montana Power sold short term bonds and had to roll them over to long term, they would have only 180 days to comply. This bill would extend the arbitrage. This bill will be a mirror image of the IR Code provisions.

Rep. Williams pointed out that short term bonds had no penalty for redemption. Mr. Sullivan said there didn't have to be. They are presently negotiating this. Rep. Williams submitted that ultimately, the prices would be higher if short term bonds were purchased, and Mr. Sullivan agreed.

Rep. Asay said that the bill was giving Montana Power the authority to have some option in the money market and this need was probably there because of the heavily depressed market for electricity. He asked Mr. Sullivan if the bill would be giving Montana Power the opportunity to keep its obligations current. Mr. Sullivan said this was true, but stressed that the bill wasn't a Montana Power relief bill, because it can be taken advantage of by anyone.

Rep. Nordtvedt said that when Montana Power had its own funds it had the option of temporary short term financing vs. long term and the company was asking for this same authority in the industrial revenue bonding authority, for pollution control equipment. Mr. Sullivan said this was correct. Rep. Nordtvedt asked him if banks would be willing to give letters of credit to save on interest rates. He questioned if the fact that they were willing to do this wasn't indicative that they weren't quite willing to agree with the bonding rating agencies. Mr. Sullivan said he didn't think this was necessarily true. He didn't think it had any relationship to the belief in the bond market. The advantage of the letter of credit is to substitute the "AAA" rating of the bank, because it is higher than the other participants.

Rep. Harp wanted to know if industrial revenue bonds were set up for pollution control, and wanted to know where the provision was that

said this could be done. Mr. Sullivan said it was part of the industrial development statute.

Sen. Hager then closed. He reiterated Mr. Sullivan's comment that they would like to have an amendment for the bill to be effective on passage and approval. The bond market is very subject to the law of supply and demand and this would be another tool for the people building the projects to hold down their costs.

Rep. Williams then asked another question. He asked Mr. Boles if he saw any problems with the bill. He said that on the surface, they saw none. The hearing on SB 292 was then closed.

HOUSE BILL 842, sponsored by Rep. Red Menahan, was then heard. The testimony was turned over to Jack Scanlan, tax attorney. This bill allows a tax credit against the Montana Corporate License tax. The bill provides limitations on the amount of total credits; it is set at \$5 million. There are also limitations to the corporations or businesses to receive the grants. In addition, the amount received by the businesses in the community would be excluded from State income taxation. There is no sense in allowing a grant and then taxing it.

There is a definition in the bill providing standards to qualify as a severely impacted area. The bill is designed to infuse financial aid into some very needy businesses in the Community of Butte. He thought the bill would work and wouldn't pose any substantial drain on the surpluses of the State. In looking at what that community has given to the State in the past in revenues, this bill must be enacted to aid those businesses.

Bob Helm then spoke. The problem in Anaconda is much too serious; the economy is hemorrhaging and they are hoping to reverse this if adequate funds can be made available in adequate time. The matter is one of a lot of luck and determination. He has seen this type of thing before; he explained that he was a specialist in this area. The Anaconda case has hope if they can have resources and time. This will probably be the most critical situation of the community's history.

Forrest Boles, President of the Montana Chamber of Commerce, then rose in support of the bill. They have opposed plant closure legislation quite strongly. They welcome the opportunity to support this legislation. Page 2, lines 24 - 25, he thought might be interpreted wrong, and didn't believe the local government should be the wording; local economy would be better.

There were no OPPONENTS to HOUSE BILL 842. Questions were asked. Rep. Brand asked Rep. Menahan what he meant by the term "plant closure." He said it wasn't restrictive to anything, it was just a term for industrial plant. Rep. Brand brought up that there were other communi-

ties in the same predicament as Anaconda, but they didn't have "plants." Rep. Menahan said he would be amenable to changing the language to make it more inclusive. Mr. Scanlan suggested that the bill be amended to say "business closure."

Rep. Burnett pointed out that there were a number of other things and he wanted them encompassed in the bill.

Rep. Asay wondered if 10% was a proper figure. He pointed out that the unemployment rate was almost this high. He questioned whether the percentage should be increased. Rep. Menahan said his area had lost about 70% of their non-government jobs by the end of the year.

Rep. Nordtvedt asked Mr. Scanlan if the grants would be made by one business to another. Mr. Scanlan confirmed this. Rep. Nordtvedt wanted to know why the business needed to grant the money at all, since financing was from the government treasury. Mr. Scanlan said it was because there would be a tax credit for the first company. Rep. Nordtvedt submitted that business "A" did the initiating of deciding how much money and to whom they will give it. However, the government takes up 100% of the cost. Mr. Scanlan agreed this is what would happen, but this could be administered through the Department of Revenue but he didn't have access to Department figures so he couldn't write into the bill administrative language. Rep. Nordtvedt asked, if the tax credit was going to be 100% of the gift from Company "A," it was really being financed by the State, so why have the business involved originally. He wanted to know what the role of the first business was. Mr. Scanlan said it was a means of providing relief to the community. It allows business to help business.

Rep. Harp pointed out that the first business would be helping themselves as well as the economy. It is an incentive to Business "A." Rep. Nordtvedt commented that this would particularly be the case if Business "B" was of importance to Business "A." Rep. Bertelsen submitted that the Legislature seemed to be getting involved in many diverse types of tax relief, and felt that many of them would have to be reworked in future years.

Rep. Asay wanted to know what would happen if Company "B" was a subsidiary of Company "A," and Mr. Scanlan said that this was what the bill was aimed at. Rep. Asay submitted that if Company "B" actually belonged to Company "A," it would be an exchange of dollars with a large tax advantage. Mr. Scanlan said that was the purpose; it allowed business to help business. He submitted that the Department of Revenue didn't have as good a handle on what business needed as other business.

Rep. Nordtvedt submitted that this was not business helping business, because the government is picking up the tab to the tune of 100%. It could be assumed that the fiscal impact would be \$5 million per year.

Rep. Brand wanted to know if the bill should be amended to be effective on passage and approval and Mr. Scanlan said this would be good.

Rep. Williams wanted to know what the mechanics would be for transferring the grant money. Mr. Scanlan said all the money would be going to the Department of Revenue and they would monitor the total amounts and would make sure that no business would receive any more or less than was allowed by limitations.

Rep. Williams wanted to know who would determine whether or not a business qualified. Mr. Scanlan said this wasn't addressed directly in the bill, but this didn't get to directly helping businesses. Rep. Williams wanted to know who would make the decision on who got the money, if the requests were for twice as much as was allowable. Mr. Scanlan said that would be up to the Department of Revenue.

Rep. Menahan then closed. When one is talking about this type of tax credit, it could also be assumed that one is also supporting the churches in this way. Another bill sets up a mechanism for local developments to disburse money. There are many ways this can be done without setting up a lot of expensive mechanisms. Anaconda is a one-horse town, and the horse died. The Company is paying \$5 million less in property taxes this year and possibly next year this will go down \$1 million more. A mill used to bring in \$16,000 and now it is down to about \$12,000 and they are up to 436 mills. Costs are very high. To license a new car in Deer Lodge County is more than \$500. The smelter operation has changed and buildings being salvaged go off the tax rolls. Through no fault of the community, the smelter is smelting over 50% of the ore smelted from out of State. They would like to get some help to survive. If they could have 2 - 3 years of help, they could get back on their feet. The hearing on HB 842 was then closed.

The Committee then went into EXECUTIVE SESSION. HOUSE BILL 844 was considered. Rep. Williams proposed an extensive amendment to the bill. He thought it should be indexed just like the income tax. Rep. Nordtvedt submitted that it was being. Rep. Dozier moved the bill DO NOT PASS. Rep. Burnett made a substitute motion to TABLE the bill.

Rep. Williams rose in opposition to the substitute motion. Rep. Vinger rose in support of the bill. Montana is long overdue for having a sales tax. It is the fairest tax that there ever was. The property tax is one of the most unfair taxes there ever was. He wouldn't support the bill, however, unless it replaced some other tax. He said he would like to see a Constitutional amendment to lock this in. Farm machinery, for example, costs up to \$600 per year in taxes; with a sales tax they would pay the tax based on the difference of trade and this would be the end. The same should be true for cars. This bill is good for senior citizens; if Class 11 property was repealed off the books. That way, one would only spend money on what was bought. He wished to go on record in support of a sales tax in the State of Montana, so long as it replaced property taxes.

Rep. Underdal said a license fee system was being considered, and a place to pay for it was being looked for, and this would be an ideal system to take care of this. However, he was not in support of a sales tax.

Rep. Devlin wanted to go on record in support of the bill. Senior citizens are being taxed out of their houses, and they have asked him to do something so they won't lose their homes. He submitted that the Legislature couldn't continue to say that everybody was out of step but Jim when all other States are making the thing work.

Rep. Asay commented that the idea of having a sales tax in Montana wasn't even discussable. This was an issue, and to keep it bottled up wasn't fair because many people were in favor of a sales tax and therefore he felt it should come out of Committee.

Rep. Burnett rose in defense of his motion. He thought that to put the bill on the Floor of the House wouldn't be advantageous. He felt the bill should be kept alive at this time and later, closer to transmittal date, the decision could be made whether or not to pass the bill.

Rep. Williams submitted that his district was opposed to the sales tax and every person in labor in the State was opposed to it. Rep. Devlin said he was floored by the response from senior citizens on this issue. Rep. Nordtvedt pointed out that if food and medicine were excluded, it was only expected that senior citizens would be in favor of the bill. Rep. Devlin said that he had gotten his responses before the bill had even been drafted. Rep. Roth said she would favor a sales tax if it were a replacement tax. Her understanding was that it only replaced the income surtax. Rep. Nordtvedt said that other taxes were also replaced under the bill. Rep. Roth pointed out that there was no real guarantee that the property tax would be replaced. Rep. Zabrocki submitted that the bill had been introduced too late in the Session. The complete tax package would have to be reworked if this bill passed.

Rep. Dozier said Wisconsin had a 3% sales tax proposal to relieve the property tax; however, the property tax was never relieved. The sales tax is just another new tax. He submitted that the exemptions would fall away in the future. In the end, all that would be left would be one more regressive tax on the books.

Rep. Vinger said that North Dakota had started out with a 4% sales tax and did away with their personal property tax and would be doing away with their cattle tax. Also, their sales tax has been lowered. He submitted that he had a lot of people in his district which were in support of a sales tax.

Rep. Vinger said a repealer on Class 11 property taxes could be included in the bill and it could be workable.

Rep. Williams said that if there is going to be a sales tax, everyone should be treated the same. He urged that farm machinery, etc., not be exempted. There is no end to the exemptions in this bill and he felt the tax should either be put on everything or everything but the necessities of life. This bill exempts more than it taxes.

Rep. Switzer said he was in favor of the bill if it could guarantee that tax relief would occur elsewhere. He would support the motion to Table the bill more than the motion to kill the bill.

Rep. Nordtvedt didn't want to Table the bill. Fifteen years ago, he lived in Massachusetts, one of the most highly taxed States in the union. A sales tax was passed and relief on other property taxes lasted for one year. Government then began to grow again. He submitted that the same thing would happen in Montana. The only way a new tax could be instituted in the State would be if it was done within a Constitutional framework. He expressed hope that the bill could be killed and if people wanted to propose a sales tax, they should do it through a constitutional route which wouldn't open the floodgates of government.

Rep. Roth wanted to know if the sales tax in other states was provided for within a constitutional framework, and Rep. Nordtvedt said that in most cases, it probably wasn't.

Rep. Devlin agreed with Rep. Nordtvedt as far as locking relief in. This way, each Legislature cannot change it until it is lost as a replacement.

Rep. Sivertsen rose in opposition to the bill. (1) The cost of collecting or administering the tax could become quite great. (2) Unless this bill was properly administered, there would be problems and in future years Montana would be forced into some new sources of revenue because the ad valorem concept was being eroded. If this Legislature continues to chip away on that concept, sooner or later people will be forced into some other sources of taxing. At that time, the cost of government will climb.

The question was then called for and the motion to TABLE the bill failed 15 - 3; see roll call vote. The question was then called for on the DO NOT PASS motion; motion carried 12 - 6; see roll call vote.

SENATE BILL 483 was then considered. Rep. Williams moved that it BE CONCURRED IN. Rep. Nordtvedt submitted that using the term "market value" could imply that the appraised value would have to be updated every year to keep up with the market. He suggested that the word "appraised" be inserted instead.

Ellen Feaver, Director of the Department of Revenue, replied that the way the statutes were written, market value is achieved every five years and that is how the interpretation is arrived at.

Rep. Nordtvedt submitted that this wasn't really being done because

the manual arrived at market value as of its date, which was already several years behind. Therefore, never was any property ever taxed at market value under the present system.

Ms. Feaver said she didn't know that there was any problem to changing the language to "appraised." However, the statutes currently say market value throughout. Therefore, if it was changed in one place, it needed to be changed everywhere.

Rep. Harp rose in opposition to the motion. This would be giving the Department of Revenue the Legislature's blessings and there will be no way left for the taxpayer to protest. Also, he pointed out P. 13, line 4, specified market value in the same years, and this would be knocking out the present system. He also submitted that discussion about Burlington Northern in the testimony didn't have anything to do with the bill.

Rep. Sivertsen submitted that the bill wasn't addressing the problems of the last appraisal; the bill was aimed at the future. He took exception to some of the testimony chastizing the Department of Revenue. If they have problems, it is because the Legislature put them into them and the Legislature needs to continue supporting them. Lawyers would like to see the litigation continue. If it doesn't like the tax system, the Legislature should change it and take the demand off the Department of Revenue to do what they are mandated to do at present.

Rep. Roth said that at present, the Department of Revenue is mandated to make proper evaluation. She didn't know whether she would rather have the Department of Revenue or her own attorney make the proper evaluation and this was her consideration.

Rep. Dozier said there was no way someone could be kept from appealing their valuation. He felt the bill addressed the very important problem of the two different classes of property and how they should be treated. He felt the Department should be given the authority to treat them differently and that is what this bill does.

Rep. Nordtvedt suggested several amendments. The first amendment, P. 3, line 17, was to keep all residential property in the same class. Rep. Dozier rose in support of the amendment. Rep. Williams said this amendment had been proposed to the Senate Taxation Committee and had been refused. The question is, whether one tax was going to be replaced with another.

Rep. Nordtvedt submitted that there were too many bills which assumed that the government could figure out better how to allocate things. Rent is determined by the market for rental property. If the potentiality is allowed for that rental housing will end up in a higher tax class than home owning, this will affect the market. If it is believed that all residential property should bear the same tax rate, he urged adoption of the amendment. Rep. Roth moved the amendment; motion

carried unanimously.

Rep. Nordtvedt's next amendment was on P. 11, after line 24. He pointed out that the Senate had killed Rep. Huenneken's bill saying that if taxable value is more than 5% of its market value, then that is ground for a tax appeal. The amendment would insert this same provision into this bill; he moved the amendment. The literal phrasing of the bill is that one can freeze appraisals for five years. Therefore, some protection is needed. A class is being split. This creates the potentiality that the Legislature can come back and change the rates. The purpose of the amendment is that it gives all the people once in one class a common ground for appealing taxable value if it is more than 5% of the market value. 5% is a ceiling.

Rep. Williams wanted to know if the 5% was too low. He submitted that if the property was increased 6% but still wasn't higher than other properties in the area, then it wouldn't fall under the amendment. Rep. Nordtvedt said that it would. If a property of a certain type ended up being appraised at 6% of market value and someone brought this to the Board's attention, under present law he has shown sufficient evidence to get his property reappraised and if some of the other bills pass, that will become a general ground for others also. 5% under any condition would be the maximum increase they could get.

Discussion took place regarding what kinds of property would be included under the amendment.

Rep. Oberg rose in support of the amendment but pointed out that the reason it failed in the Senate was because there were a substantial number of properties that would qualify for reappraisal.

Mr. Clark, Department of Revenue, then spoke up. As many as 40% of the residences in the State might be over the limits on residential property.

Rep. Sivertsen wondered if it was possible under the present system to come within 5% Statewide. Rep. Nordtvedt said this wasn't a variation of 5% from the average, it was saying the appraisal process had to be accurate to 5%, it just has to be within 5% of the market value.

Rep. Bertelsen said it was his understanding that the Department of Revenue was saying that they would be put in a position where 40% or more of the property owners could appeal their taxes. Rep. Nordtvedt said his own belief was that it wasn't quite that high. Because of the split, there was a substantial amount of property lying over 5% as well as a lot of property less than 4 1/2%, which is the mean.

Rep. Williams questioned whether a bigger figure shouldn't be considered. Rep. Nordtvedt submitted that there would only be a handful of cases if the percentage was changed to 4%. Rep. Williams wanted to know why 5% was chosen. Rep. Nordtvedt said it would represent an identifiable overappraisal from the mean. Ms. Feaver

said Rep. Huenneken's bill only addressed residential property and they had no statistics together on commercial, and it was possible that in industrial situations, everyone may be over the 5% amount. Rep. Williams suggested that the amendment might deal solely with residential. Rep. Nordtvedt suggested that classes 13 and 14 be stricken in his amendment. Rep. Williams rose in support of the change. The question was called for on the amendment; motion carried with Rep. Neuman opposed.

Discussion then took place on the bill. Rep. Nordtvedt wanted to know what the exceptions were from 100% of market value. Mr. Jack Gribble, Department of Revenue, said this now applied to agricultural land and net proceeds. Rep. Nordtvedt wanted to know if the Department would object to language saying the 100% of the market value as of the date of the manual. Mr. Gribble said it would probably be true that the existing language wouldn't require yearly reappraisals. His personal opinion was that that language should be stricken.

Rep. Sivertsen moved to reinstate the language on lines 1 - 6, on p. 13. Rep. Nordtvedt submitted that he almost had an admission from the Department of Revenue that they hadn't been following the letter of the law. Mr. Gribble said that was something that he personally had suggested might be a subject of litigation, that there are types of property annually updated and other types not.

Rep. Williams wanted to know if the Department of Revenue was opposed to reinstating the language. Ms. Feaver said lines 7 - 10 on p. 15 were added to replace the language on p. 13, which was stricken (lines 1 - 6). Discussion took place regarding the two approaches.

Rep. Sivertsen said that eventually it was hoped by the Department that reappraisal could be done every year. Therefore, some of the inequities in the system would be done away with. By making a distinction between the two classes of property the Department is being given the authority to readjust the rate.

Rep. Nordtvedt asked Ms. Feaver if an amendment to P. 13, line 10 would be acceptable to them. She said that would be alright with them. Mr. Gribble said this would preclude the Department from putting 100% appraisals on. Mr. Clark said that readjustment only applied to the first cycle, and there was nothing in the Codes covering this at present. Rep. Nordtvedt said the 5% provision was important because the intent wasn't to give the Department the authority to double the amount. Rep. Bertelsen wanted to know, if the language on the top of p. 13 was reinstated, if that would be referring to a section of the law which had been repealed. Ms. Feaver said this section of the law was repealed and if the amendment on line 10 was adopted it would do the same thing as lines 1 - 6 did. Rep. Switzer said he felt lines 1 - 6 were better than the new language on p. 15 lines 7 - 10. Rep. Nordtvedt submitted that his amendments on line 10 vs. reinstating lines 1 - 6 would be an overlapping, although this wouldn't hurt. Rep. Williams wanted to know how Rep. Nordtvedt's line 10 amendment would go with the language on p. 15. He wanted to know if this would

be more compatible than reinstating the language on lines 1 - 6, p. 10. It was decided not to reinstate the language on lines 1 - 6, p. 10.

Rep. Nordtvedt said he had another problem. If there is a reappraisal of residential property and it is brought up to a new manual, there will probably be a doubling of the taxable value of residential property in one stroke, and there is no legislation on the books which adjusts the percentage to compensate for this and if nothing is provided, people's taxes will be doubling overnight. A mechanism is needed to make that adjustment automatic. Rep. Williams submitted that this was a problem that wouldn't develop until the next session of the Legislature. The question was called for on the amendment on line 10, p. 13; motion carried unanimously.

Rep. Williams then moved that the language on the top of p. 13 not be reinstated; motion carried with Reps. Switzer, Harp, and Burnett opposed.

Rep. Underdal moved that the bill BE NOT CONCURRED IN, as a substitute motion. Rep. Nordtvedt said he would like to wait another day before the bill was acted on. Rep. Williams withdrew his original motion. It was stressed that all Committee members should study the bill carefully. Final action on the bill was postponed until the next day.

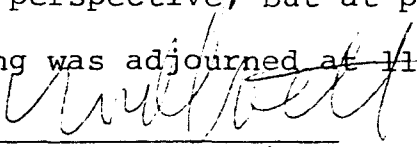
Rep. Switzer said that one of his objections to the bill was that when the split was made into various classes, nowhere in the bill did it say that each manual shall be from the same year. From his point of view, the 34% problem was being left available.

Rep. Williams requested that Mr. Gribble respond to this statement. He said the reason the bill was introduced was that there was a basis in the 34% cases that was reflecting on the use of the two different manuals and the two different years. The useful life of the bill should extend only to the completion of the current appraisal cycle. They are bound to use the two different manuals until the end of this cycle. That was the basis for writing the bill in this manner. It is not the intention of the Department to continue this practice of using different year manuals.

Rep. Nordtvedt said that the bill was an attempt to get through the present cycle as best as could be done. He submitted that this bill was certainly not acceptable as a long-term solution.

Rep. Williams brought up HJR 52, which also addressed the problem. The Legislature needs to take the responsibility to help straighten this mess out. Once the next cycle begins the matter should be in the right perspective, but at present it is a mess to straighten out.

The meeting was adjourned at 11:00 a.m.


Rep. Ken Nordtvedt, Chairman

VISITORS' REGISTER

HOUSE 70-1000 COMMITTEE

FILE 100-36-1

Date 11/21/81

SPONSOR _____

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

50% Deferred Tax

25% Tax Savings Possible

A DISC—Domestic International Sales Corporation—is a category of corporation added to the Tax Code by the Revenue Act of 1971. A DISC is entitled to defer Federal income taxes on 50 percent of its export income. The deferral is limited to 25 percent of export income for sales of military property.

In most cases, by using a DISC, exporting companies can realize a 25 percent tax savings on income from the sale abroad of U.S.-made goods and certain related activities. A DISC can use the tax savings generated by the deferral in its export business or for other export-related purposes.

A DISC earning more than \$100,000 may take advantage of the standard 50 percent deferral only if the value of its exports in the tax year reported exceeds 67 percent of its previous average annual base period performance. Until 1980, the base period will remain the 4 years from 1972 through 1975, at which time the 4-year base period will begin to progress annually by 1 year. This means that new DISCs will not have to apply this incremental limitation during the first 4 years of operation.

Basically, a DISC is a domestic corporation that meets certain minimal organizational requirements and limits itself almost exclusively to export sales activities. A DISC can operate as a principal, buying and selling for its own account, or as a commission agent. It can be related to a manufacturer or be an independent merchant or broker. A DISC also can maintain sales and service facilities abroad to enhance its foreign promotional and marketing efforts.

A DISC's deferred export income is not taxed until that income is distributed to shareholders. The tax-deferred earnings retained by the DISC can be—

Invested in its export business—to build up inventory of products to be exported or to provide office and warehouse facilities and other property

Used to extend financing to its foreign customers

Invested in certain Export-Import Bank of the United States (Eximbank) obligations, or in "producer's loans" to related or unrelated U.S. producers for export, to help improve their export production capacity, or to develop new products.

Deferral continues as long as the DISC remains qualified or until the DISC makes a distribution to shareholders. Once a distribution to shareholders is made (and the law requires 50 percent or more of export income be deemed distributed during each tax year), it is taxed to the shareholders at their normal rates.

In addition to the deferral benefit, special intercompany pricing rules applicable to sales between a DISC and a related manufacturer permit a greater amount of profit to be attributed to the DISC than normally would be allowed under the arms-length pricing provisions of the Tax Code.

WHO CAN SET UP A DISC?

Any company exporting or interested in exporting can form a DISC to handle its export sales. Basically, a DISC is a domestic corporation that meets the following requirements:

- Has at least \$2,500 paid-in capital.
- Has only one class of stock.
- Files a statement of election to be treated as a DISC with the Internal Revenue Service.
- Demonstrates shareholder consent to such election.
- Maintains its own bank account and accounting records.

There is no limit on the number of shareholders. In addition, a DISC can handle the exports of any number of U.S. producers, whether related or unrelated. For example, several small companies might jointly own a DISC to sell their complementary products in a full product line.

Certain types of corporations are ineligible to be treated as DISCs because the combination of DISC deferral and special tax treatment normally accorded these corporations would be inappropriate. These include tax-exempt organizations, personal holding companies, banks, savings and loan and other similar financial institutions, insurance companies, mutual funds, China Trade Act corporations, and subchapter S corporations. In addition, a Western Hemisphere Trade Corporation cannot hold stock in a DISC.

A DISC also must meet certain tests to qualify for the deferral benefit:

- At least 95 percent of its income must be from qualified export receipts.
- At least 95 percent of its assets must be export related.

These requirements were designed to ensure that a DISC limits itself to operations legitimately connected with the promotion and sale of U.S. exports. They are drawn broadly enough to permit the use of a DISC in many different business situations.

QUALIFIED
EXPORT
RECEIPTS

QUALIFIED
EXPORT
ASSETS

Qualified export receipts generally include income from the sale, lease, or rental of goods produced, grown, manufactured, or extracted in the United States for ultimate use abroad. They also include income from services related and subsidiary to such sale, lease, or rental. Manufactured goods made with foreign components can qualify for the deferral treatment if the value added in the United States equals or exceeds half of the fair market value of the product.

Other qualified receipts are *gains* from the sale of plant and equipment used in the corporation's export business; *dividends* from a foreign selling subsidiary of the DISC; *interest* on such debt obligations as accounts receivable arising in connection with qualified export sale, lease, or rental transactions, on producer's loans, and on obligations issued, guaranteed, or insured by the Eximbank; and receipts from engineering and architectural services on foreign construction projects and from management services provided by an actively exporting DISC to another DISC.

Certain receipts are excluded from qualification for the DISC deferral treatment. They include receipts arising from the sale of raw material or energy resources subject to deductions for percentage depletion, unless the value added by additional processing or manufacturing in the United States reaches at least 50 percent of the export value; the sale of items considered in short supply under the Export Administration Act; the sale, lease, or rental of property for ultimate use within the United States; sales accomplished by a subsidy granted by the U.S. Government; direct or indirect sales to the U.S. Government for use abroad where the purchase of U.S. products is required by law or regulation; the sale of goods having more than 50 percent foreign content; and licensing or royalty fees related to patents, inventions, models, designs, know-how, good will, trademarks, or franchises.

Qualified export assets include export goods held as inventory; assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export goods or the performance of managerial, engineering, or architectural services producing qualified export receipts; accounts receivable held by the corporation arising from qualified export activities; money, bank deposits, and other temporary investments needed to meet working capital requirements; certain loans made by the DISC to its parent or an unrelated export manufacturer (producer's loans); and stock or securities of a foreign sales subsidiary of a DISC.

Also qualifying as export assets are certain Eximbank and Foreign Credit Insurance Association (FCIA) obligations; obligations of the Private Export Funding Corporation (PEFCO); and bank deposits which, at the end of the taxable year, exceed reasonable working capital needs but are invested in qualified export assets within a specified period of time after the end of the taxable year.

Specifically excluded from the definition of qualified export assets is property leased or rented by a DISC for use by any member of a controlled group that includes the DISC. Also excluded are patents, inventions, models, designs, formulas or processes, copyrights (other than films, tapes, records, or similar reproductions for commercial or home use), good will, trademarks, trade brands, franchises, or other similar property.

A corporation wishing to be treated as a DISC must file a statement of election (IRS Form 4876) with the Internal Revenue Service within 90 days preceding the beginning of the year for which it seeks DISC status, or if newly formed within 90 days after the date of incorporation.

For further information write:

U.S. Department of Commerce
International Trade Administration
Office of International Finance and Investment
Foreign Business Practices Division
Washington, D.C. 20230



U.S. DEPARTMENT OF COMMERCE
International Trade Administration

February 1980

AN OVERVIEW OF A DOMESTIC
INTERNATIONAL SALES CORPORATION (DISC)

DISC in a nutshell

A DISC is a U.S. corporation engaged in export activities. The principal advantage of a DISC is that federal tax can be deferred on up to 50% of its export-related profits until a distribution, actual or deemed, is made to its shareholders. Deferral is available to qualifying companies with minimal corporate substance and, provided certain rules are followed, a DISC may earn up to 50% of these export profits notwithstanding the usual arm's length pricing standards.

Requirements of a DISC

A DISC is a domestic, nonmanufacturing corporation which meets the following requirements:

1. Election requirement - A company must elect to be a DISC. In the case of a new corporation, the election is made by filing Form 4876 within the first 90 days of its first taxable year. For an existing corporation, the election must be made during the 90-day period immediately preceding the beginning of the first taxable year for which it elects DISC status.

2. Capitalization requirement - A DISC must have only one class of stock with a par or stated value of at least \$2,500 on each day of its taxable year.

3. Substance requirement - A DISC must maintain separate books and records and have its own bank account on each day of its taxable year. A DISC need not have its own employees or perform any specific activities itself.

4. Gross receipts requirement - A DISC must show that 95% or more of its gross receipts each year are qualified export receipts (QER). In general, QER are receipts from sale or lease of "export property" (defined under 5) or commissions from these export transactions. Also, certain types of interest income will constitute QER.

4. Appoint small business persons to all national boards, commissions and advisory committees whose work impacts on small business. TAXATION 3/23/01
EXHIBIT "B"

INTERNATIONAL TRADE

51. Congress should broaden the tax deferral options of the Domestic International Sales Corporation and provide for the development of an American Trading Company which would automatically qualify as a DISC. Tax deferral options should include the following additional provisions for DISCs: 1) allow for deduction of twice the monies expended for participation in any bona fide overseas trade fair by a DISC; 2) allow for the deduction of twice the amount of premiums paid to Eximbank and FCIA, as legal deductions prior to payment of DISC taxes; 3) increase the \$100,000 exemption clause to \$500,000; 4) provide for a graduated tax on "deemed distribution" from \$500,000 for \$50 million, and a standard rate of 50% levied on over \$50 million; 5) exempt new DISCs from any "deemed distribution" requirement for at least the first three years of operation; and, 6) provide for the elimination of existing incremental provision of DISC regulations. Congress should provide within the tax structure an "Exporter's Allowance" or tax deduction which would apply in the trade of all goods abroad by granting an allowance for 75% of the marketing expenditures incurred by the exporter.
52. Eximbank should establish a special small business founding program through commercial banks, and should consider discounting loans to support international sales and should develop a cooperative program with the SBA for pre-export financing.
53. The Federal government should establish field one-stop service shops to include export services of all Federal agencies under the guidance of the Department of Commerce.
54. The President and Congress should consolidate under an existing cabinet level department, a unified world trade administration. It would be responsible for all trade policy functions of the various agencies and departments. Its objective would be to maximize the international competitive strengths of U.S. Small Business with support and goals for minority, women-owned and disadvantaged business and specific programs developed to utilize their units of, technological, educational, cultural, language and political expertise.

WITNESS STATEMENT

NAME F.H. BOLES BILL No. SB 361
HD 142
ADDRESS Box 1730 HELENA DATE Mar 23, 1981
WHOM DO YOU REPRESENT INT CHAMBER OF COMMERCE
SUPPORT X OPPOSE _____ AMEND yes

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME _____ BILL No. _____

ADDRESS 1111 1st St DATE 10-25-51

WHOM DO YOU REPRESENT Self

~~SUPPORT~~ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HOUSE Teasdale

COMMITTEE

WILL

SIB 292

Date 5/24/31

SPONSOR

Answer

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Robert E. Sullivan BILL No. 58292
ADDRESS 46 E Broadway DATE 5-23-81
WHOM DO YOU REPRESENT MAE
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Civil Testimony

SENATE BILL 292 -- THIRD READING

1. Amend page 1, the Title.
Following: "M.C.A."
Insert: "; AND PROVIDING AN EFFECTIVE DATE."
2. Amend page 5, line 19.
Following: "redemption"
Insert: "Section 4. Effective date. This act
is effective on passage and approval."

VISITORS' REGISTER

HOUSE Taxation COMMITTEE

TULL HB 842

Date 3/23/81

SPONSOR Memorandum

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 27, 1951

SPEAKER

MR.

TAXATION

We, your committee on

having had under consideration SB Bill No. 292

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE GREATER FLEXIBILITY FOR THE ISSUANCE OF INDUSTRIAL DEVELOPMENT BONDS BY A MUNICIPALITY OR COUNTY UNDER TITLE 90, CHAPTER 5, MCA, BY AUTHORIZING THE ISSUANCE OF SHORT-TERM BONDS ISSUED IN ANTICIPATION OF THE ISSUANCE OF LONG-TERM BONDS AND REQUIRING ONLY ONE HEARING FOR REFUNDING BONDS ISSUED TO ACQUIRE A PROJECT; AMENDING SECTIONS 90-5-101, 90-5-104, AND 90-5-107, MCA."

Respectfully report as follows: That SB Bill No. 292,
third reading (blue), be amended as follows:

1. Title, line 11.

Following: "MCA"

Insert: "; AND PROVIDING AN EFFECTIVE DATE"

2. Page 5,

Following: line 19

Insert: "Section 4. Effective date. This act is effective on passage and approval."

AND AS AMENDED
BE CONCURRED IN

NOV 1951

STANDING COMMITTEE REPORT

April 10, 1951

MR. SPEAKER

We, your committee on TAXATION

having had under consideration SENATE Bill No. 361

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT DOMESTIC INTERNATIONAL SALES CORPORATIONS FROM THE CORPORATE LICENSE TAX; AND TO TAX THE SHAREHOLDERS OF DOMESTIC INTERNATIONAL SALES CORPORATIONS; AMENDING SECTIONS 15-30-111 AND 15-31-102, MCA."

Respectfully report as follows: That SENATE Bill No. 361

BE CONCURRED IN

DO-PASS