

HOUSE TAXATION COMMITTEE MEETING MINUTES
March 25, 1981

A meeting of the House Taxation Committee was held on Wednesday, March 25, 1981 at 8:00 a.m. in Room 102 of the State Capitol. All members were present. EXECUTIVE ACTION was taken on HOUSE JOINT RESOLUTION 52.

Chairman Nordtvedt moved that HJR 52 be amended to be a 12% reduction because the Comparative Ratio Studies showed a 12% difference. Rep. Williams agreed with the suggestion. He pointed out that Rep. Sivertsen's testimony had also been in favor of this.

Rep. Nordtvedt explained that the Resolution dealt with settling the protested tax payments for previous years. Also, it would free up the money from the protested taxes so that local governments could spend it. He submitted that 12% was probably the most objective number available in the entire dispute.

Rep. Vinger wanted to know what recourse would be left for people who paid their taxes and didn't protest. Ellen Feaver, Department of Revenue, said that once a tax is paid and not protested, there is no recourse. Rep. Vinger submitted that it was unfair to treat good taxpayers this way, while the complainers were being satisfied.

Rep. Williams agreed with this philosophy but added that historically nothing had been able to be done about this. The courts have decided that if the taxpayer hasn't taken enough initiative to protest, then he has no recourse. He submitted that if everyone was given relief whether or not they protested, the Counties would lose a great deal of money.

Rep. Nordtvedt said that the bulk of the suits were triggered by the publicity of the other suits, and there would always be a certain amount of tax appeals. This resolution is trying to settle the problem of the 34% cases and isn't trying to interfere with the rights of individuals to appeal their taxes. The resolution is tied to only three years. He added that if SB 483 failed, he hoped that the Department of Revenue would send out a directive that all property be adjusted by 12%, to avoid a future problem.

It was pointed out that line 8 on p. 2 also needed amending and the new figures would be calculated.

Discussion took place regarding the percentages by which the litigants felt they were overtaxed vs. HJR 52.

Regarding P. 1. line 15, Rep. Nordtvedt moved that "valued" should be stricken and "appraised" inserted and line 24, p. 1 should also have "appraised" inserted.

The question was called for on the amendments; motion carried unanimously.

Rep. Sivertsen explained that on January 1, 1979 a new appraisal period was entered into and the old appraisals would be used until the new cycle was finished when the new figures would be applied to all prop-

erties. Therefore, he felt 1981 shouldn't be any bone of contention. This resolution is addressing the last appraisal cycle.

Rep. Vinger wanted to know what would keep people from protesting in 1981. Ms. Feaver said SB 483 was drafted to address the problem until the next reappraisal cycle. If SB 483 is passed, individuals can still protest the values of their properties, but under that legislation they will have no standing on the use of different manuals.

Rep. Harp asked, if HJR 52 passed and SB 483 didn't what would stop the person being assessed in 1981 and 1982 from saying the previous people got a 12% reduction, so they were also entitled to one. Rep. Nordtvedt said personally he felt that if SB 483 didn't pass, there would be an across-the-board reduction of 12%. Ms. Feaver said the Department would have to consider either that kind of a move, which would be hard for the schools to bear, or they could continue to litigate.

Dennis Burr, Montana Taxpayers Association, said that all improvements to real estate amounted to 21% of the tax base. Residential is probably slightly more than 1/2 of that total; therefore, 10% of the tax base is all that would be addressed. If 10 - 12% is taken off, it is taken down to about 1% of the tax collected; therefore, it doesn't seem like a huge amount to him.

The problem of present litigation vs. future was discussed. Rep. Nordtvedt pointed out that all the tax money was tied up, about \$7 million, at present.

Ms. Feaver explained where the money under protest was. The argument that the Counties are getting by without this money is not agreed with by the schools. The money is earning interest, but the interest cannot be used, either.

Rep. Asay wanted to know what the Resolution would do to the railroads. Ms. Feaver said it would do nothing, they were only suing for 1980. They could say that the 12% factor should be considered when settling with them.

Rep. Nordtvedt said that if he were a tax attorney for the railroad, he would allow that the essence of the Resolution was to bring the ratio of appraised value to market value to commercial property down to residential standards. Therefore, the railroads would have the ground to say that ultimately that same factor had to be used for them, too.

Rep. Dozier said that was what bothered him about the Resolution, and it still came down to the point that the Legislature was taking sides in the cases.

Rep. Williams pointed out that a Select Committee studied the problem

and many sources were consulted and the most sensible approach to try to solve the problem was come up with.

Rep. Sivertsen said the reason the State was where it was was because of what the Legislature did before 1975. First it was the Constitution and then what the Legislature did. The cyclical appraisal didn't work right. The Legislature could continue to accuse the Department of Revenue of not handling their job well, but this wouldn't solve the 34% cases, and litigation would continue to cost everyone a lot of money. He submitted that lawyers didn't want HJR 52 because they were making a lot of money from the 34% cases. He expressed willingness to listen to any other solutions as to what to do.

Rep. Dozier said he didn't think the lawyers would back off just because the Resolution was passed. Rep. Sivertsen said possibly the tax payers might be willing to settle with passage of this, however.

Rep. Harp said that without this Resolution the Department still had the responsibility to act on behalf of the State without the Legislative direction. Having the Legislature go on record in favor of the action might be putting itself in a corner. He submitted maybe the Department of Revenue should settle this on their own.

Rep. Nordtvedt submitted that this would be costly, and said he felt the problem was created by two manuals and how they interacted with the letter of the law.

Rep. Sivertsen submitted that the Legislature came up with the cyclical reappraisal program. The Department of Revenue used the two most current manuals they had. They used the 1972 manual because the 1975 one wasn't available. Therefore, the Legislature was involved. He didn't agree with all the Department had done, but that didn't matter, because now the Legislature needs to solve this problem. Without this legislation, they will have to continue to litigate. There would be quite an impact if the Department of Revenue decided there would be a 12% reduction for all commercial property, which is their other alternative to litigation if this Resolution didn't pass. Rolling everyone's taxes back would be very costly.

Rep. Brand submitted that they could do this anyway. When these years were up they could roll them back under their own appraisals in the future. He wanted to know who was maintaining that the lawyers wouldn't proceed anyway even with the rollback of 12%. Also, he wanted to know who was going to pay for the attorneys' fees.

Rep. Nordtvedt said that at present, the taxpayers were paying the Department of Revenue legal fees and the individual taxpayers protesting were paying for their own fees. The taxpayer is taking up the tab.

Rep. Brand submitted that this Resolution wouldn't guarantee that the

problem would be settled.

Rep. Williams said the Department of Revenue felt that the majority of the litigants would settle for 12%. It will be cheaper for the taxpayer to settle for 12% than to continue litigating.

Rep. Brand submitted that the small cases would probably settle, but the larger corporations wouldn't be willing to settle.

Rep. Nordtvedt said that was the essence of why this was a special case. This was an epidemic of tax appeals, which could be avoided. This Resolution will not change the fact that the big companies will always be protesting whatever they can possibly protest.

Rep. Dozier submitted that this bill and SB 483 didn't address the real problem, that a sloppy assessment was done. He submitted that the same problem would continue to occur until it was addressed. Rep. Nordtvedt admitted that this was a stopgap measure. Rep. Dozier submitted that the Department of Revenue was overburdened with the job they were given.

Rep. Bertelsen said the biggest beneficiary in the Resolution would be the small businessman; therefore, it would be helpful to the majority of these people to have this Resolution passed.

Rep. Roth pointed out that the Resolution was only a guideline by which the Department of Revenue could operate.

Rep. Nordtvedt moved that the Resolution DO PASS AS AMENDED; motion carried with Reps. Dozier, Harp, Vinger, and Brand opposed.

SENATE BILL 483 was then considered. Rep. Nordtvedt said that in a sense this was also a stopgap bill; it wasn't designed to take care of the appraisal system for the indefinite future, it was only addressing the present cycle of appraisals. He didn't want some of the present features of the appraisal system to be permanent.

The amendments previously made to the bill were reviewed. (1) p. 7, lines 16 and 17. Rep. Nordtvedt said that this amendment would cause certain problems according to the Department of Revenue. Rep. Williams requested John Clark, Department of Revenue, to comment on this.

Mr. Clark said the basic appraisal approach to a large multi-family dwelling was different than the approach to a single or two-family dwelling. By striking the language, the Department is put in the position that a 100-unit apartment dwelling should be appraised the same as a single-family dwelling.

Rep. Williams wanted to know why this couldn't be done. Mr. Clark said it was a matter of the appraisal approach to that kind of property. The income stream generated by the apartment to the owner of it is

considered when the value is determined for the big building and this is a different approach than the single-family dwelling which looks at the replacement cost.

Rep. Williams said that many people contended that if this kind of property was taxed as residential that the rent would be reduced. Mr. Clark said it was a matter in the difference in the appraisal approach. Once these two things were put in the same class, the presumption is that they will be appraised in the same fashion.

Rep. Nordtvedt wanted to know if the Department had comparative ratio studies on the large residential properties, and submitted that this would be their solution to the two different approaches. A factor could be taken from the studies to make adjustments on the multiple dwelling. Therefore, if two different approaches were started out with, this would be taken care of in the end.

Mr. Clark submitted that Jack Gribble, also from the Department of Revenue, should be contacted before the Committee acted in this area.

Rep. Sivertsen said that under the present system, the language in the bill was what was done. Therefore, if this was not in the law, he wondered if there wouldn't be an effect on the cases in the last appraisal. This would be an admission of the Legislature that this wasn't the way they wanted it done.

Rep. Vinger asked Dennis Burr for his opinion. Mr. Burr said that from the taxpayer's point of view, the Department's problem with striking the language was that with the Resolution they were admitting there was a 12% discrepancy between commercial and residential property. SB 483 separates the properties into two classes. The taxpayer's right to protest that they are 12% overappraised is eliminated. If apartment houses are put into residential, they have got the 34% argument still on their side, the problem is that a good number of the 34% cases are residential property more than three-family units.

Rep. Nordtvedt agreed with Mr. Burr and suggested that the Department of Revenue summarily take 12% off the appraisal of all large rental units.

Rep. Williams said that therefore, Rep. Nordtvedt's conclusion not to put this in statute would leave the situation like it was. Rep. Nordtvedt said the effect of the amendment striking the "by three or fewer families" was either (1) if they don't adjust large apartment buildings, then they leave themselves open to future litigation, or (2) to create equity between small and large residential property the Legislature needed to give strong motivation to the Department to take 12% off of large residential property. If SB 483 passed, then the commercial property taxes for the rest of the cycle wouldn't need to be reappraised by 12% because it would be in a different class. The effect of the amendment would be that large-unit residential property would be ad-

justed down 12% so that all residential property would be on the same basis and there would be no class grounds for litigation.

Rep. Brand wanted to know what Rep. Nordtvedt thought the definition of commercial was. Rep. Nordtvedt admitted that one of the definitions was that the purpose of the unit was to make money. Rep. Brand submitted that the amendment would cause other commercial property owners to contend that they shouldn't be taxed as commercial, either. Rep. Nordtvedt submitted that this approach was very patchwork and would be short-term. However, it would prevent litigation.

Rep. Bertelsen said that by taking the language out, nothing was really done because the Department would retain its present latitude. The amendment would say that they had to include all these properties in residential. Rep. Nordtvedt disagreed. Mr. Burr said the argument could be made that a big apartment building could be contended to be commercial.

Rep. Newuman wondered what the fiscal impact of the amendment would be. Rep. Nordtvedt said that 40% of the households in the State were rental and probably at least 1/2 were duplexes or triplexes. Therefore, about 1/4 of all residential homes were larger.

Rep. Williams wanted to know, if the statement that the unit is occupied the majority of the time by the owner were put in, what the effect would be. Rep. Nordtvedt submitted that the effect of this amendment was to have the renter put on the same basis as the owner.

Rep. Dozier said that if a 40-unit apartment example was taken, it would have probably been originally occupied by 8 individual single-family units. This will be more efficient land use.

Rep. Williams said that much discussion had been aimed at giving renters a tax break and this amendment would accomplish that. Rep. Neuman said that this amendment wouldn't lower rent. Rep. Nordtvedt said it would lower the rent, because the rentals were competitive. The taxes wouldn't go down; they just wouldn't go up as fast.

Rep. Vinger wanted to know if the percentage would be at 12% after three years, or if it would be going back to where it presently was. Rep. Nordtvedt said he had an amendment to end the act on the last day of the present cycle. The new cycle hopefully would rate new legislation to prevent repeating past mistakes. Rep. Vinger said that hopefully in the next cycle the difference would be the same as the present 12%. Rep. Sivertsen said that hopefully in the new cycle the discrepancy wouldn't be there.

Rep. Williams said that possibly residential, commercial, and industrial property should remain in two separate classes in the future. He submitted that maybe this provision in the bill should be made permanent or else the 1983 session could have a bill to do this.

The Chairman announced that SENATE BILL 483 would be taken up again on Friday, March 27.

The meeting was adjourned at 10:00 a.m.


Rep. Ken Nordtvedt, Chairman

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