

House Taxation Committee Meeting Minutes
March 26, 1981

A meeting of the House Taxation Committee was held on Thursday, March 26, 1981 at 8:00 a.m. in Room 102 of the State Capitol. All members were present. HOUSE BILL 852 and SENATE BILLS 42, 102, 322, and 457 were heard and EXECUTIVE ACTION was taken on SENATE BILL 42.

The first bill to be heard was SENATE BILL 102, sponsored by Sen. Matt Himsl. This bill is an extension of a schedule that has been in existence and includes an income scale which was passed by the Legislature several years ago. The original schedule amended a section of the law that had already been repealed, and the Attorney General had ruled that the schedule didn't apply. He explained what the bill would do. The Senate added the benefit for any low income person providing more than 50% of the dependent's income. A sliding scale is set up so that taxes gradually increase when, for example, improvements are made on a house. The lower the level of income the lower the percentage of the tax ratio. See Exhibit "A" for a written text. He pointed out that there were already many people on this kind of relief and the fiscal note was a tentative estimate. He asked the Committee to accept the concept of this approach to granting relief to the low income people who couldn't afford high property taxes.

Bob Durkee, VFW, then rose in support of the bill. He suggested an amendment. He referred the Committee back to HB 34 which attempted to correct the same error that occurred two years ago when assessors determined that 100% Disabled Veterans compensation was classed as income. He submitted that this wasn't done anywhere else in the tax realm. They don't feel compensation should be classed as income. They are asking that the concept of HB 34, which is Tabled in the Senate Taxation Committee be amended into SB 102.

Dennis Burr, Montana Taxpayers Association, then rose in support of the measure. One of his main problems when working at the Department of Revenue was that there was an \$8,000 income limit for the elderly and every year between Legislative sessions, Social Security increases would knock some people out of the relief. This graduated scale seems to be a much better approach.

Fred MacKintosh, Department of Montana DAV, then rose in support of the bill. He agreed with Mr. Durkee's suggested amendment to the bill.

John Sloan, DAV National Service Officer at Fort Harrison, also wanted to reiterate Mr. Durkee's remarks. He pointed out that there were less than 600 of the totally service-connected disabled Veterans in Montana, and he expressed hope that the Committee would give its due consideration to that group and put the amendment in the bill.

A representative of the American Legion rose in support of the bill.

John McGlynn, Veterans Affairs Commission, said he would like to see the amendment put in the bill.

Dan Antonetti, State Director of the Veterans Improvement, rose in support of the bill as amended.

There were no OPPONENTS to SB 102. Questions were then asked. Rep. Underdal submitted that the definition contained in Subsection (ii) on P. 2 was very broad. Sen. Himsl agreed, but if anyone qualifies under this Section of the law, then if the person is willing to do these things, he should also be entitled to a tax break. He submitted that the relief wouldn't be great but the approach was a compassionate one. He said that the bill that was passed in 1979 raised the level from \$8,000 to \$10,000, and therefore this was not as much of a jump in concept as in 1979.

Rep. Dozier wanted to know what the term "all income" applied to. Sen. Himsl said "all income" was used so that the person would be able to declare his total income. From the standpoint of administration, this would be the easier way to do this. Rep. Dozier wanted to know if "all income" would include alimony and child support and Sen. Himsl said it would. Rep. Williams wanted to know if Sen. Himsl objected to the proposed amendment. He replied that this decision would be left up to the Committee, and he didn't have any strong objections to it.

Sen. Himsl then closed. He admitted that he didn't know what the net effect would be on appraised values, although there ought to be some reduction. The important idea is that these people need at least some token tax relief.

Control of the meeting was relinquished to Vice Chairman Sivertsen, and HOUSE BILL 852, sponsored by Rep. Ken Nordtvedt, was then heard. This bill increases the GVW fees on trucks by 20% across-the-board on the weight schedule. The reason for this bill was because of talk about the State having to embark on a substantial program of upgrading roads. He submitted that this would help fund that program. There are several suggestions on how to get this money: (1) from the General Fund; (2) from the interest on the Coal Constitutional trust fund; (3) user fees should also be changed as well as tapping other sources of revenue. This bill was introduced so that the Summit Conference could have it as one of the options available for its consideration. The GVW tax hasn't been changed in 13 years, and he maintained that the value of money had fallen so that these taxes were actually at about 38% of their 1967 value; therefore, in real purchasing power terms, the GVW tax has been cut by 62%. If the Highway Department actually needs more funding, this bill will help to do this in a fair way, moreso than just tapping the General Fund. He submitted that there was nothing magic about the 20% figure.

Ben Havdahl, Montana Motor Carriers, then rose in OPPOSITION to the

bill; see written testimony Exhibit "B." He reminded the Committee that there were a number of bills in the Legislature reducing taxes on automobiles and light trucks and it was assumed that they would receive tax relief and it seemed to him that it would be unfair to them, while this is being done, to have over-the-road trucks going up.

Mike Rice, Transystems, Inc., then rose in opposition to the bill; see Exhibit "C." They want to know what will be done with all the revenue from this and other bills before they endorse any more increases. A plan is needed and taxes can't be discussed until the plan is formed.

Bob Whalen, a Florence resident representing the owner/operator, Independent Truckers in Montana, then rose in opposition to the bill. They have had a hard time coping with rising operating costs. The owner/operator basically has a federally mandated surcharge to help offset some of the cost, but they have no way of raising their rates overnight for compensating for other increased costs. The owner/operator Independent trucker is becoming an endangered species.

Jo Brunner, WIFE, then spoke in opposition to the bill; see written testimony Exhibit "D."

Mons Teigen, Montana Stockgrowers and Woolgrowers, Montana Cowbells, and also representing the Montana Highway Users Federation, then rose in opposition to the bill. He endorsed Mr. Havdahl's comments. They are concerned about what is happening to livestock trucking in Montana. There isn't an industry today that can go broke faster than the livestock trucker.

Keith Olson, representing the Montana Logging Association, then spoke. The independent logging contractors don't have any job security and they can't afford this increase.

Ann Scott, Montana Farmers Union, also was opposed to the bill. The State cannot afford to lose any more of its independent truckers. Railroads can very easily run the truckers out of business. For the overall well-being of the State, it is critical that a healthy trucking industry be maintained. Also, some rural communities are in the position of having lost all types of carrier service and they need to be considered. This bill would only enhance the trend that is currently taking place. Also many farm vehicles are only maintained for hauling grain to market, and they don't feel that an increase like this would be equitable for these vehicles.

John Braunbeck, Montana Intermountain Oil Marketers Association, then spoke. They are heavily involved in both common carrier operations and the private trucking industry and they are opposed to the bill. They are too heavily involved with working on a reasonable tax package and until an overall plan can be presented, they feel that the cart is being put before the horse.

Jim Hughes, Mountain Bell, rose to express concern about an overall increase in taxes of this type.

Questions were then asked. Rep. Roth wanted to know if it would be legal to raise rates to pay the increased tax. Mr. Rice said it depended on the commodity. He submitted that it wouldn't be easy to get an increase.

Rep. Vinger asked Mr. Rice if he had to go before the PSC before rates were raised, and he replied that for regulated nonagricultural commodities they had to go either before the PSC or the ICC; but on exempt commodities they didn't have to.

Rep. Brand asked Mr. Havdahl what was being done possibly to avoid paying taxes in Montana on the part of the truckers. Mr. Havdahl said that in order to run a truck combination, a permit was needed. Rep. Brand wanted to know if a different truck's permit was very often used, and if the State laws were stringent enough to protect the State from this kind of violation. He wanted to know if this kind of abuse was happening very often. Mr. Havdahl said that enforcement took place at the scale; therefore, any truck in the State has to go through the scale before any laws can be enforced. It is possible to bypass the scales if someone really wanted to; it is possible to do this in any State. He didn't know that this was happening on a very prevalent basis, but he didn't think it was.

Rep. Brand said that he had been told that using someone else's permit was within the law as it was currently written. Mr. Havdahl said that to his knowledge this wasn't proper under the law.

Mike Rice commented. "Permit" is a very broad term in the industry; a number of permits are needed to make a truck run. Most permits can be obtained by mail. Because of the high fees, some carriers only want to go through the State once or twice and they simply buy a trip permit. Occasionally the wrong truck registration is gotten but this is caught. They don't get away with it.

Rep. Roth asked Mr. Havdahl if the Motor Carriers Association was concerned with the deteriorating condition of the highways. She submitted that this bill would provide one method for improving them. Mr. Havdahl said that he did have concern for the state of the highways. They are talking about what means will be used to take care of the problem.

Discussion took place regarding the cost of operating in other states vs. in Montana. It was brought out that there was considerable variation.

Mr. Havdahl said the fees applied across-the-board and farm trucks paid a certain percentage of the fee after it was calculated. If the GVW were increased, this would be reflected on farm vehicle fees also.

Rep. Nordtvedt then closed. He agreed that before substantial monies were put into highways, a plan needed to be put together.

The question is, who is going to pay the bill. The most beneficial and direct way is for the users to pay for these costs. Of course, the cost will be passed on to the consumers of the products that are delivered by road. The name of the game in this society is to use the government mechanism to hide true costs and the question of how to best finance roads needs to be faced. The total GVW revenue will maintain fewer miles of roads. GVW is a proper part of the support of roads because road construction is influenced by the impact of big truck travel. This Legislature is going to have to decide if the users of the roads or others are going to have to pay the cost for maintaining the roads.

SENATE BILL 322, sponsored by Sen. Tom Hager, was then heard. All that is left of the bill is that an individual can purchase organic fertilizer produced in the State and write the purchase amount off. This will stimulate use of solid waste in Montana. As a landfill, the land is not being used productively and this bill would help change that.

Joseph C. Horvath, Eko-Kompost, Inc., Missoula, then rose in support of the bill. He is a manufacturer of organic fertilizer and soil conditioner. He came to Montana to produce something like this especially for coal mine reclamation. He explained the process by which his product was manufactured. Many waste products are taken advantage of in the manufacturing process. His product is so good that some animals would eat it because it is high in protein content. Also, it is sterile and has no relation to the original components that went into it. Samples were distributed. He urged a DO PASS on the bill.

Bill Potts, State Health Department, Solid Waste Bureau, then spoke up in support of the bill. Many communities are faced with serious problems. They look upon this bill as a compliment to other resource recovery activities presently under way in the State. They have looked at compost operations and felt comfortable with that type of process and were in support of the bill.

Bill Cregg, Mayor of Missoula, then rose in support of the bill. They might have the dirtiest air and the cleanest sewage in the State. If this thing catches on the way it should, the Missoula people will be taking care of the problem for other Cities in the State, also. This is a good answer to a sludge problem.

Rosalie Buzzas, Alderwoman in Missoula, rose in support of the bill. This is a good way for encouraging this type of business in the State.

Dan Mizner, Executive Director, Montana League of Cities and Towns, rose in support of the bill. This is an alternative to solving some of the problems of Cities and towns. This is an opportunity

for an industry to get involved with local government to solve the problems of waste disposal.

Jo Brunner, Montana Agriculture Business Association, said that she wasn't really an opponent, although the bill had been opposed in the Senate. The amendments took care of their problems, which were: (1) references that users of commercial fertilizers got a tax incentive. They don't (2), and they still have this problem: P. 1, lines 14 - 16. They don't dispute that claim, but are concerned about the inference that a product like this will cure that problem. She submitted that it took 10 - 20 tons per acre to raise the mulch enough to have an effect.

Questions were then asked. Rep. Oberg asked Mr. Potts if this product could be used on vegetables. Mr. Potts said federal regulations on a commercial level restrict the use of certain types of sludge with certain types of vegetables. However, from what they have seen in Montana, sludge is relatively clean as compared to large, industrialized areas. Their major concern is the level of pathogen kill but they have seen that the processing of compost produces a high pathogen kill.

Rep. Oberg wanted to know if there was adequate testing of the products to see that they were within the federal guidelines. Mr. Potts said that the U S Department of Agriculture would take care of this end of the requirements.

Mr. Horvath said that he had researched this and informed the Committee that the USDA recommended a limit of 415 ppm of cadmium. His compost has .01 parts of cadmium. He submitted that the drinking water in Helena had more than his compost. Rep. Roth asked him if the Eko-Kompost plant was the only one in the State, and he replied that it was the only one in the Nation. She wanted to know if he would be able to supply the agricultural community. He said he couldn't supply 75% of the total needs of the State even if he could utilize a maximum amount of sludge and other components.

Rep. Roth wanted to know if the cost of the plant made the endeavor economically feasible. He replied that it was economically feasible; the problem was lack of information about the product to the population and the newness of the industry. He submitted that Missoula sludge was very clean and although the sawmill industry was a good factor for his locating in Missoula, he had based his decision on the quality of Missoula sludge.

Rep. Roth asked Sen. Hager if the tax incentive would be for the facility. He explained that it was for the users of the product. Rep. Nordtvedt submitted that, therefore, the bottom line was that the person using the product will now be able to take the expense as a tax deduction.

Rep. Roth wanted to know what the cost of the product was. Mr.

Horvath said that the retail was about \$60 per ton. They are trying to lower the price.

Rep. Harrington asked Ms. Brunner if this fertilizer would interfere with the use of commercial fertilizer. She said that they had opposed the bill in the Senate because it inferred that use of commercial fertilizer was a tax incentive. Mr. Mizner said that the sludge problem was a major one and this method is one possibility for solving the problem. However, it will not solve all of the Cities and Towns' problems. Rep. Oberg wanted to know if this was limited to only Montana producers and he was told that it was.

Rep. Williams asked Sen. Hager, if a nursery decided to use several tons in their operation, could they write this off as an operating expense and also use the tax incentive. He said a short amendment was needed to prevent this.

Sen. Hager then closed. Regarding the comments about saline seep, hopefully this will be used in combination with chemical fertilizers. The hearing on SB 322 was then closed.

SENATE BILL 457, sponsored by Sen. Harold Dover, was then heard. Education is a very important aspect of our life and this bill addresses trying to help the educational system. This bill is not a tuition tax credit bill; it is an income tax credit bill. It encourages contributions to qualified institutions. References to private, elementary schools were deleted because there are none in Montana.

He explained what the bill did. The three private units of the University system would qualify under this bill, plus ten private high schools. This bill benefits taxpayers equally. No less money will be spent on public education. It is private and corporate dollars that are not going to the government that will go to these institutions under the bill. If these schools can get more private support, it would help them to continue their services to the State.

Ward Shanahan, appearing on behalf of himself, then rose in support of the bill. He presented some information which explained what was being talked about in the bill; see Exhibit "E." The government is not getting involved in a private institution, it is merely refraining from doing something. There are several ways of doing this: an exemption, a deduction, or a tax credit. The credit is the most equitable way of making a donation. Pages 2 and 3 of the Exhibit show how Montana statutes are connected with the federal law. Regarding the legality of the bill, he cited the case of Court vs. Tax Commissioner, which was decided by the U. S. Supreme Court in 1970. This tax credit is applicable to people who give to the U of M Excellence Fund as well as those who give to private education.

Bob Korthuis, Principal of Manhattan-Christian High School and President and Registered Lobbyist for the Association of Nonpublic Schools, then encouraged support of the bill; see written testimony Exhibit "F."

Sr. Mary Editha Brown, Superintendent of Schools for the Diocese of Eastern Montana, rose in support of the bill and also spoke up on behalf of the Catholics in the Western part of the State. Elementary schools were eliminated from the bill and she regrets this. Regarding the question that their elementary schools don't qualify for accreditation, this is not the case. According to the Attorney General, the State cannot accredit elementary schools. She would like the Legislature to make this possible or even mandated. Their goal is to produce self-sufficient and productive members of society. The fact that some systems incorporate religious denomination is not a point of issue at this time. If there were a citizen in Montana who took that tax credit for every student in private high schools, that amount of money would come to a loss to the public school system of approximately \$30,000. However, the contribution that people are making to the State by educating their children privately is taking the burden off of the public school system's budget. Therefore, \$3,500,000 is being freed for public school use by private schooling. The \$30,000 would be an upper limit in the loss to the public schools. The biggest thing that will come out of this bill is the recognition of the freedom of choice for education; the fiscal gain from this bill won't be significant. They are in support of the Catholics supporting public education also.

Dick Flikkema, a rancher in the Gallatin Valley, rose in support of the bill. Bruce Alton, President of Rocky Mountain College in Billings, also rose in support of the bill; see written testimony Exhibit "G."

Wayne Buchanan, Executive Director of the Montana School Boards Association, then rose in OPPOSITION to SB 457; see written statement "H."

David Sexton, Montana Education Association, also rose in opposition to the bill; see Exhibit "I."

Gary Jensen, representing Americans United and the North Pacific Conference of Seventh-day Adventists, then spoke; see Exhibit "J."

Jess Long, School Administrators of Montana, rose in opposition to the measure; see Exhibit "K."

Alve Thomas, Deputy Superintendent of Public Instruction, also spoke in opposition to the bill; see Exhibit "L."

Everett Lynn, a Helena dentist, then spoke against the bill; see Exhibit "M."

Lois Tonne, Montana Parent Teachers Association, also rose in opposition to the measure, on behalf of that Association.

Shauna Thomas, representing the Montana Federation of Teachers, AFT, AFL-CIO, then spoke in opposition to the bill; see Exhibit "N."

John Clark then rose in opposition to SB 457 on behalf of the Department of Revenue. (1) The bill represents a strong departure from current tax philosophy as far as corporations. (2) There is a technical question about the interaction of the credit with charitable contributions on an individual income tax. It is not clear how much could be taken as a charitable contribution and how much as credit. (3) Administrative complexity is involved in offering an alternative credit. He suggested that the credit amount be set at a flat amount if the bill was passed.

Questions were then asked. Rep. Harrington wanted to know how many States had a similar tax credit. Also, he wanted to know how they handled the system. Mr. Jensen said these laws had been stricken down in many States. Tax aid to nonpublic schools takes a multiplicity of forms and in the States that have adopted tax aid to private schools, costs have mushroomed. The case of Pearl vs. Nyquist ruled on tax credits; there are three or four states where this has been approved and not struck down.

A proponent of the bill submitted that Pearl vs. Nyquist involved a grant for tuition aid and didn't apply to the question. Another witness referred the Committee to a U. S. Supreme Court decision involving the Franchise Tax Board vs. United Americans. The sponsor of the bill agreed to make this information available to the Committee.

Mr. Thomas (OPI) then confirmed that he had testified on behalf of the Director of the Office of Public Instruction, and Mr. Clark added that the Director of the Department of Revenue also shared his position.

Rep. Nordtvedt asked Mr. Jensen about the argument that students could be incorporated easily into the local schools at no cost to the public. He replied: (1) The "dumping" threat is a "red herring." If a nonpublic school closed, they would be absorbed into the public system, probably several different schools. Rep. Nordtvedt questioned what would happen to the Foundation Program, which gave money to students no matter where they attended school. He asked Mr. Jensen if he considered other individuals' resources public money and if they chose to give to private schools, if he would consider this as coming from public monies. Mr. Jensen said the Supreme Court had rules that no matter where the money came from, it was unconstitutional.

Rep. Nordtvedt asked Dr. Lynn about the possibility that 60% of Americans might choose alternative schools if given the opportunity. He wanted to know if he felt that if they wanted to do this, they should be blocked. Dr. Lynn said he could only offer what the poll said that this was an indication. Past versus present history needs to be looked at. Other countries have dual school systems which compete with each other and this leads to segregation. Rep. Nordtvedt

asked Dr. Lynn, assuming the poll was accurate, that 60% of people wanted the choice, if he thought those wishes should be blocked. He replied that they should be blocked because the public-supported school system is a very cohesive thing. There would be a trend away from one school system. He saw merit in pluralism but not in a double school system competing with itself.

Rep. Sivertsen asked Dr. Lynn why it was that people would go beyond regular support of education to private support. Dr. Lynn said that most of the private school systems had a religious focus. Personally, he felt that a religious orientation could best be provided elsewhere besides school. However, those people that want to inculcate their philosophy all day should be able to have this privilege. Rep. Sivertsen said it was possible that some people were no longer satisfied with public education and what it had to offer. Dr. Lynn agreed but submitted that public schools shouldn't be abandoned. Rep. Sivertsen asked him how he proposed fighting this on the local level when the mandates were federal. Dr. Lynn said that more people could participate in School Board meetings.

Sr. Brown said, regarding the dual system, the only countries that had monopoly systems such as the U. S. in the world were Communist.

Rep. Asay wanted to know what the original education system was in this Country. Dr. Lynn said the origin was with private education, run by churches. Public education was an innovative, bold step that came about.

Rep. Switzer suggested that there were possibly merits to having a competitive situation being established between private and public education, and possibly it might improve quality. Mr. Buchanan said that the erosion of public schools was not in the best interests of the Country. This bill would take government money and give it to private institutions and this is a different situation. Rep. Switzer asked him if he thought there would be a stimulus to improve quality so that public education wouldn't lose its students. He replied there were limitations on public education. (1) They have to take all students, where private schools can be selective. Public schools are also subject to regulations. Therefore, the two aren't on the same footing and there was a degree to which they could respond to competition.

Another opponent of the bill added that the State of California conducted a program by which vouchers were issued for tuition and the parent could pick the school. The study ran three to four years, but was discontinued because the majority of the parents chose to send their children to the neighborhood school.

Rep. Roth asked Mr. Buchanan if he felt that his enrollment was threatened by this bill. He said it was the "camel's nose under the tent" that they objected to. At present the effect probably wouldn't be very great, but this is a temporary situation. Rep. Asay

asked him if he had a lack of confidence in his ability to compete. He reiterated that there were limitations on competition. For instance, public schools cannot provide religious education. He stressed that they weren't trying to destroy private schools.

Discussion took place regarding the placement of "problem children" Sr. Brown said that children that were problems were transferred back and forth from public to private schools, and that was the beauty of alternative choice. Mr. Sexton commented that private schools didn't have to take the expensive children, while public schools did.

Rep. Harrington had a question regarding the statement that if the bill were to pass, there would be a mass exodus from public schools to private. Sr. Brown disagreed with this because many of the private schools weren't accredited. The only place students could possibly transfer to would be the accredited high schools, but with the additional tuition the parents would have to pay, this probably wouldn't happen.

Rep. Williams asked Mr. Shanahan about Section 6 of the Montana Constitution: if one figures out how much is owed to the State on the income tax and deducted it, he submitted that this was basically funding by the State. Mr. Shanahan disagreed. It is a question of whether one takes it off the tax or off income. Rep. Williams wanted to know about a religious school being donated to. Mr. Shanahan said this was a choice to the person that was making the donation. The State is saying that the person will not be taxed if he makes the choice. What is more fair about the credit is that everyone gets the same credit. He submitted that the Constitutional provision talked about appropriations from public funds and this wasn't what was happening under the bill. Rep. Williams said, based on some of the testimony regarding Court cases, this same kind of contribution had been ruled to be religious in nature. Mr. Shanahan disagreed, especially with the evidence of PEARL vs. Nyquist. He submitted that the cases didn't involve the same thing as this bill.

Rep. Williams asked Mr. Jensen for his interpretation of the matter. Mr. Jensen said PEARL vs. Nyquist dealt with three different issues and one of them was tax credits. They ruled on this area as well as the other two.

Rep. Brand asked Mr. Korthuis if he or others in private schools turned down children who might be costly to have as students. He replied they had to fill out a form that said they wouldn't do this, if they wish to retain their tax-exempt status. However, they could refuse a student on the basis of religion.

Sen. Dover then closed. One thing that was inferred was that only the wealthy could go to private schools. A survey shows that this is not the case. If private schools weren't available to take children not wanted in the public schools, public schools would be

in trouble. In Montana's private schools, 25% of the children attend tuition-free. He submitted that this bill wasn't an aid program; it was an incentive for people to support education. He emphasized that this wasn't tuition, it was to anyone to get the same deduction off their income tax. This is more equitable than the present system. He submitted that educational contributions were already deductible in other areas. He wanted to help the Committee to make a good bill better, and asked that it be amended to provide for equal treatment if someone wanted to contribute to a public high school. The hearing on SB 457 was then closed.

SENATE BILL 42, sponsored by Sen. Steve Brown, was then heard. This bill was put in Subcommittee in the Senate and the percentage was reduced from 1% to 5/6%, or 12% per year. There is an increase in the number of delinquencies and part of the reason for this is because people were not paying as a form of borrowing from local government revenues. Not all increased delinquency rates are solely contributable to taxpayers borrowing against the Counties; inflation has also been a factor. However, there is an increasing trend for people not paying their taxes because of the low interest rate on late taxes. This is one of the few bills still alive that can be put in the plus column for local governments; he urged that the bill BE CONCURRED IN.

Rep. Williams asked Sen. Brown why the Senate had changed the percentage down. He replied that the Senate felt that 12% was more reasonable than 14%. This amendment had enabled the bill to gain passage.

Russ Ritter, City Commissioner from Helena, then rose in support of the bill. Helena has suffered some sizeable decreases in tax collections. At one time when the Legislature set the percentage, the economic situation wasn't the same as it now is. All they are asking is that Cities and Counties be bailed out of the banking business.

Mike Stephen, Montana Association of Counties, then rose in support of the bill. Local governments feel they are competing somewhat with the money market at this time. Based on statistics, the Counties are possibly having to cut services because of the loss in this source of revenue. He also pointed out that 35% of the total taxes past due in Missoula County were over \$4,000. He submitted that this bill wouldn't be hurting the small people because they wouldn't be the ones using the money to play the money market with. Also, many home owners pay their taxes in their house payments on a monthly basis and therefore don't have delinquent taxes.

Bill Cregg, Mayor of Missoula, rose in support of the bill. Good money management demands that taxes not be paid when money market certificates can be gotten for 16% vs. the 8% penalty for late taxes. He submitted that the percentage amount in the bill was too low.

Therefore, this bill will not induce a great number of people to pay. They liked the bill better when the percentage was attached to the federal discount rate.

Jim Halverson, Roosevelt County Commissioner, rose in support of the measure.

Dan Mizner, Executive Director of the Montana League of Cities and Towns, then spoke up in support of the bill. If the cash isn't there to pay the bills, and warrants are granted, the "ante" had to be "upped."

Rosalie Buzzas, City of Missoula, spoke up in support of the measure. She pointed out that while people who don't pay their taxes are not being penalized, people who do pay are penalized, because services have to be cut. Any help to make the situation more equitable would be welcomed.

Ellen Burns, Valley County Assessor, rose in support of the bill.

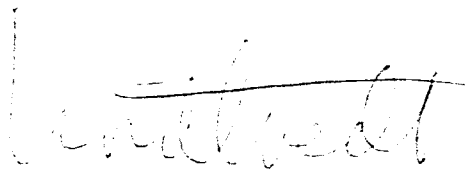
John Clark, Department of Revenue, rose in support of the bill. Their problems in this area on the State level are recapitulated in the Counties.

There were no OPPONENTS to SB 42.

Rep. Zabrocki commented that if one was going to penalize people from paying taxes late, people should be rewarded for paying on time.

A motion was made that SENATE BILL 42 BE CONCURRED IN; motion carried unanimously.

The meeting was adjourned at 12:00 p.m.



Rep. Ken Nordtvedt, Chairman

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VISITORS' REGISTER

HOUSE Taxation

COMMITTEE

BILL SB 102

Date 3/26/81

SPONSOR HMSL

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

S.B. 102 would change a section of Class 4 property tax application by increasing the level of income from all sources for relief, but the amount of relief would be determined by an income scale to which would be applied a percentage of the normal rate.

The first qualification would be that the beneficiary be a 60 year-old Montana resident where annual income from all sources would not exceed \$12,000 for a single person and \$15,000 for a married couple.

Also qualifying would be any person with dependent children whose income did not exceed \$12,000. The old law was limited to widows or widowers--this suggested change would extend possible relief to young divorcees. *U. to many Montana people who are older and half of the personal keep.*

This bill would also raise the income levels for retirees qualifying special tax relief on campers and mobile homes--again to \$12,000 for single and \$15,000 for married couples. See page 4, line 2.

Further, this bill would increase the level for disabled veterans in meeting certain residence exemptions, again raising to \$12,000 for a single person and \$15,000 for a married couple.

The reason for raising the qualifying level is to include income from all sources. For example, as it is now--a married couple might get \$4800 from Social Security and \$4,000 from another pension, and at \$8800 he is without any relief, yet he cannot afford to pay a tax of 300 mills on a \$25,000 home

for a tax bill of \$641.25.

Also, it should be understood that this tax relief applies to only the first \$35,000 or less of the market value on any improvement on real property--that is homes, trailer or mobile home used as a permanent dwelling and on land not exceeding 5 acres or under contract for deed and actually occupied at least 10 months out of the year as a primary dwelling.

I am told under our appraised standards, that in effect such property is appraised on a so-called market value, but actually is estimated to be about 45% of the selling price--~~so there is little in the \$35,000 ceiling~~--\$35,000 value could mean a place selling for \$77,777.

The problem is a serious one for retired people, a couple retires on -- say \$6,000 income from social security and another \$6,000 from a retirement program so have \$12,000 a year. They buy a modest little place for \$20,000. The man is a bit handy, he adds a room so the kids can visit, adds a car port, the wife has always wanted a fire place, he paints the place and decorates with fancy shutters--and then the appraiser comes by and says they have at least a \$35,000 house. So under our present law our retirees cannot qualify for relief and their tax bill in a popular city would be \$897.75--2.56% of the appraised value and 7.48% of their income for just property tax--this does ^{not} include interest, insurance nor maintenance. This makes a total cost beyond their means to support, and they have to sell.

Under this bill on a sliding scale--a married couple with a \$12,000 a year income on a property appraised at \$35,000 value, the mill levy is 300, the tax would be \$538.65 or 4.48% of their income.

<u>Single Person</u>		<u>Tax</u>
Appraisal	\$ 8,000	none
Income	2,995	

<u>Single Person</u>		<u>Tax-Present</u>	<u>Under Bill</u>
Appraisal	15,000		
Income	9,980	384.75	230.85

Appraisal	18,000		
Income	11,500	461.70	415.50

<u>Married</u>		<u>Tax-Present</u>	<u>Under Bill</u>
Appraisal	15,000		
Income	8,800	384.75	173.35

Appraisal	25,000		
Income	14,000	641.25	577.12

Appraised house = \$25,000 x .0855 = 2137.50
Taxable 2,137.50 x 300 mills = \$641.25

Mrs. A--Proposed Single

Selling price	\$25,000
Market Value (40)	10,000
Total Income	4,800 Social Security
	3,600 Pension
	<u>8,400</u>

\$8400 leads to 60% rate

60% of 8.55 = 5.13

10,000 x 5.13 = \$5.13 taxable

513 x .334 (mills) = \$171.34 tax

Presently=

10,000 x 8.55 = 855 x .334

\$285.57

Mr & Mrs. Rich Married

Selling Price \$50,000

Market Value (40%) 20,000

Total Income 13,000

13,000 rate 90%

90% of 8.55 = 7.70

20,000 x 7.70 = 1540 taxable

1540 x .334 = \$514.36

Presently

20,000 x 8.55 = 1710 x

334 = \$571.14

Selling Price 10,000 Single

Market Value (40) 4,000

Total Income 4,800

4800 → 30% of 8.55

30% of 8.55 = 2.57

4,000 x 2.57 = \$102.80 taxable

102.80 x .334 = \$34.34

Presently

4,000 x 4.275% = 171

171 x .334 = \$57.11

VISITORS' REGISTER

HOUSE

Taxation

COMMITTEE

RILL

HB 852

Date

3/26/81

SPONSOR

Nordtvedt

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
John Bannock	Helena	Mont IOMHA Energy Serv. Co.		X
Tex Pate	Helena	Mont. IOMHA		X
Mike Rice	Great Falls	Transystems Inc		X
Ben Hardahl	Helena	Mont Nitr. Carriers		X
Bob Walen	Missoula	owner O Perotone		X
Mons Teigen	Helena	Wife ^{Michiganers} Stockholders & Con. Co.		X
Keith Olsen	Helena	MT. Logging Assn		+
Ann Scott	Simms	W. F. U		✓
J. Brunner	Helena	W. IFE ^{Power Farmers} S. L. E		✓
Linda Jones	Helena	Wife - Former Reader		✓
Jim Hughes	Helena	Mont Bell		✓
Debbie Garrett	Missoula	Elvis Mont. IOMHA	✓	
Albino	Helena			

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Ben Hovdahl BILL No. HB 852
ADDRESS Helena DATE 3/24
WHOM DO YOU REPRESENT Montana motor carriers Assn
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MMCA POSITION ON HB 852

The Montana Motor Carriers Association opposes HB 852, a bill proposing to increase gross vehicle weight fees 20% across the board on all trucks, tractors and trailers used by the trucking industry in Montana.

The trucking industry views the proposed increase in GVW fees in light of other fee and tax increases that have been enacted into law by this legislature and those bills in addition to HB 852 that contemplate increasing taxes affecting trucking yet to be passed. I specifically refer to HB 499, calling for a 3¢ per gallon increase in motor fuels including diesel fuel.

Looking specifically at GVW fees and sales taxes on new trucks, revenue to the Montana highway program from this source has been on the increase steadily. Since 1975, revenue has increased 80% or a growth of about 16% a year. (1975 - \$10,250,000; 1976 - \$13,250,000; 1977 - \$14,060,000; 1978 - \$15,400,000; 1979 - \$17,850,000; and 1980 - \$18,200,000) This rate of growth has occurred notwithstanding an increase in the GVW fees since 1968. One reason is that revenue from other states who are members of the International Registration Plan has increased from trucks prorating registration fees on the basis of mileage traveled in Montana. As more and more states become members of the IRP, the revenue continues to grow. Also, with the increase in the number of trucks operating throughout the state and in other states, GVW revenue will continue to grow.

An increase in GVW fees in Montana will disproportionately have an adverse effect on trucking operations operating solely within Montana as they will bear 100% of the tax increase since they do not apportion vehicle registration fees.

5

* 78,000 pound truck, GVW fee \$952.25 - HB 852, \$1,142.70

- 2 -

This, of course, will include trucks carrying agriculture products, farm trucks, logging trucks, and private carriers operating within the state.

The GVW fee is only one part of the cost to register and operate a large over-the-road truck in Montana.* In addition, ad valorem taxes are assessed and collected on each truck and trailer registered. Since 1968, the average statewide mill levy applied to heavy trucks has increased 33%, from 154 mills to 204 mills. In addition, the value of equipment has skyrocketed since that time. An over-the-road trailer, equipped with basic equipment, sold for \$25,000 in 1970. That same tractor has increased 300% to \$75,000 from that time. A flatbed trailer in 1970 cost \$6,000, today the same trailer costs \$13,000 - more than a 100% increase. The costs of this equipment is rising monthly. Advalorem taxes assessed against trucking equipment has increased dramatically since 1968.

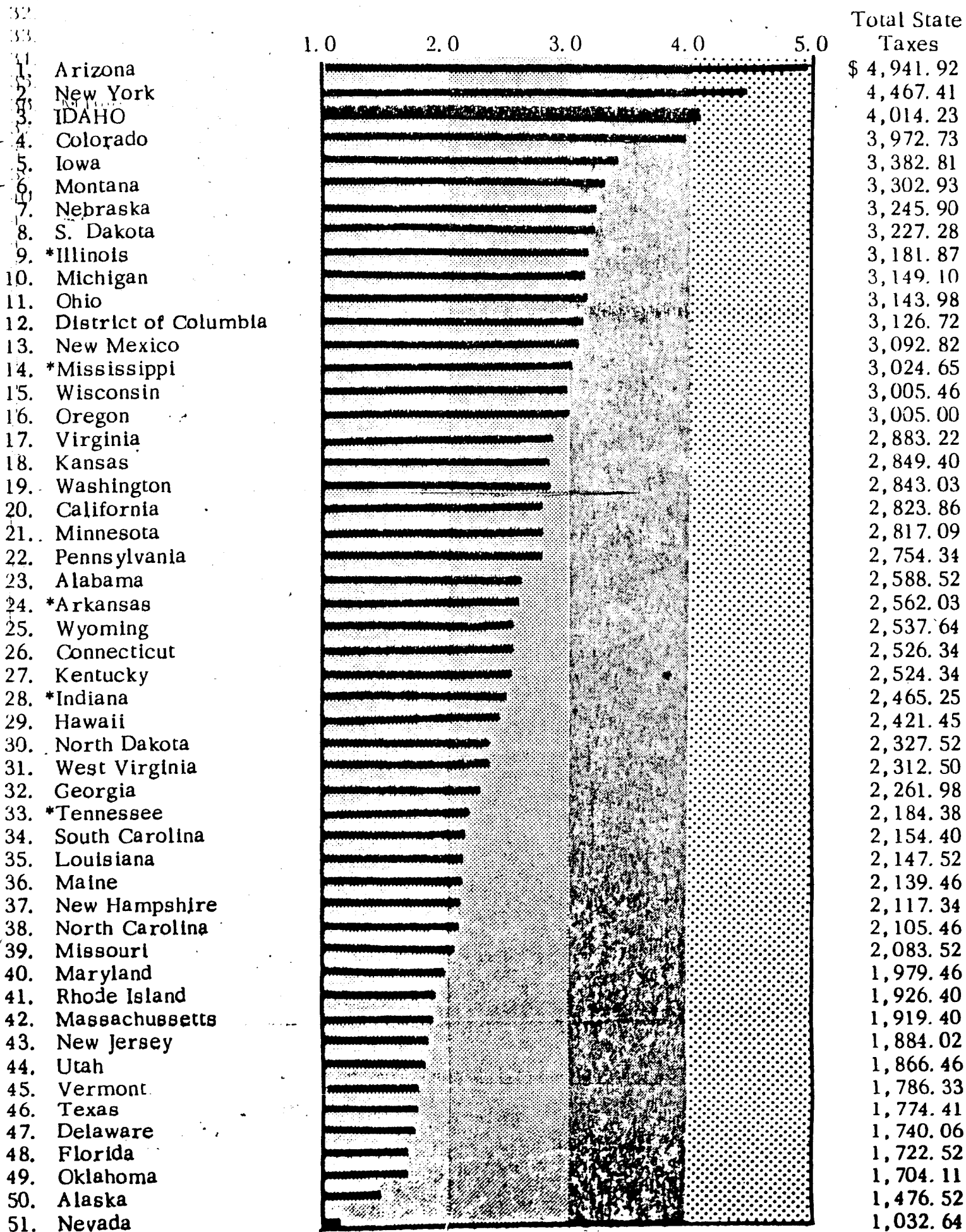
In addition to GVW fees, a typical 78,000 pound 5-axle semi traveling an average of 70,000 miles consumes 14,894 gallons of diesel fuel, pays \$1,638.34 at the current rate of 11¢ per gallon. Montana is the sixth highest state out of 50 when comparing total taxes assessed by the state on a 5-axle 78,000 pound truck semi-trailer combination, totaling \$3,303 annually. When federal taxes are added, the total per truck is \$4,852.

It is estimated that if HB 852 is passed, the total increase in GVW fees would be \$5 million per biennium. This is in addition to the \$4 million increase in permit fees assessed for overweight and oversize permits passed by this legislature and signed into law under SB 346. In addition, HB 499 contemplates an increase in diesel fuel taxes of \$.03 per gallon. Assuming the passage of these bills, the total Montana tax on a typical 78,000 pound semi would go to \$3,940 or to as high as \$5,600, depending on the evaluation and property tax statewide mill levy assessed on the vehicles. It would place Montana in the position of being the 4th highest or the 2nd highest state for taxes on a 78,000 pound semi. A distinction the trucking industry does not feel that Montana needs or wants.

A COMPARISON OF STATE TAXES PAID ON A TYPICAL DIESEL POWERED

5-AXLE TRACTOR-SEMI TRAILER COMBINATION

(Based on a 78,000 gross weight vehicle driving 70,000 miles per year, consuming 14,894 gallons of fuel, averaging 4.7 miles per gallon.)



* States not having a statute allowing the maximum gross weight of 78,000 pounds, instead having a weight of 73,280 pounds.

Information source: The above noted calculations will be included in the 1981 update of the publication "Road User & Property Taxes on Selected Motor Vehicles," developed by Federal Highway Administration in cooperation with the Department of Interstate Cooperation, American Trucking Associations, Inc.

WITNESS STATEMENT

NAME Mike Rice BILL No. 842
ADDRESS Box 399 DATE 3-26-81
WHOM DO YOU REPRESENT Transystems Inc
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:



March 26, 1981

Mr. Ken Nordtvedt
Chairman
Montana House Taxation Committee
Capitol Building
Helena, Montana 59601

Dear Representative Nordtvedt:

I strongly protest House Bill 852 calling for a 20% increase in gross vehicle weight taxes. Once before in this session I appeared and protested a highway taxation bill on the basis that there simply had been inadequate planning both in terms of highway use and funding.

This legislature has already passed Senate Bill 346 which provided fee increases of 1,000% and 1,150% on the predominant vehicle used by our company. As a result of that bill, our company or more exactly, the consumers using our services will pay over \$11,000 more. It appeared at the time that this was the extent of the increase in highway taxes that we could anticipate for the session. As a result of this, we lent our support to the bill. We could not have been more wrong.

Since then it would appear that the legislation was merely the tip of the iceberg and that in fact the issue of highway financing is in total chaos. There has been a bill calling for a three cent a gallon fuel tax increase, administration statements calling for up to as much as 90% of the interest on the coal trust fund to be used for highways, an approach made to the Montana Motor Carrier's Association on a variable fuel tax and now the bill presently before this committee calling for a 20% increase in gross vehicle weight fees.

To place this in some sort of monetary perspective, let me offer you the following effects of this legislation on just our company.

1. House Bill 346, \$11,130
2. House Bill 852, \$19,506
3. Each 1¢ per gallon increase in fuel tax, \$13,673

It is unfair and unreasonable to ask anyone in our state, and especially in my industry to support any tax increase which is a result of such a chaotic and patchwork approach.

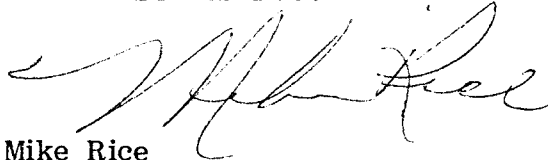
I am sure that no one in our industry would have supported House Bill 346 if they had known that there would be a whole new crop of tax increases following the passage of such legislation.

Finally, let me suggest one further number which is never discussed - and that is the multiplier effect given truck cost increases by the railroad industry. Many of you heard in the House Appropriations Committee, the railroad testify to the fact that the reason for their recent rate decrease on grain was the ever-increasing share of that market held by truckers. By their own admission, the motor carrier industry provides a ceiling on rail rates. If the trucks are now hauling 10% of the grain out of the state and the rails 90%, and if increased tax burdens are placed on the trucker, then you may assume that the rail rates will increase by that amount also. Hence, any increase in taxes or expense incurred by the trucker will ultimately cost the grain shipper in Montana ten times that amount.

I urge you to resist this ill-considered patchwork approach for this bi-ennium and use that time under the authority of laws already passed by this legislature to plan a more intelligent approach.

Sincerely,

TRANSYSTEMS INC.

A handwritten signature in dark ink, appearing to read "Mike Rice", written over a horizontal line.

Mike Rice
President

Le3/AA2/JMR/pgf

7-11-74 3:00 PM
EXHIBIT "D"

WITNESS STATEMENT

NAME Jo Brunner

BILL No. HB852

ADDRESS Helena

DATE 3/26

WHOM DO YOU REPRESENT W.I.F.E.-self-Power Farmers

SUPPORT OPPOSE X AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: ~~XXXXXX~~ Mr. Chairman, members of the committee, my

name is Jo Brunner and I speak today for Women Involved in Farm Economics, for my husband and myself ~~and~~ farmers and for the Power Farmers, my local cooperative, and we wish to protest this proposed rate hike in the gross vehicle weight fees.

Agriculture in Montana is held captive in our shipping requirements. We, and especially in the area where I live, were served until a short time ago, by the Milwaukee, the Burlington Northern, and by mostly independent truckers. The Milwaukee is no longer in existence.

~~Many~~ independent truckers are presently out of business, for ~~the~~ ^{the} greater part, because of the unit car freight rates, ~~plus~~ ^{plus} the fact that our grain and fertilizer businesses must utilize the form of transportation beneficial to us in order to bring any semblance of profit to that business.

Consequently, for ~~much~~ ^{much} of Montana there is one operating railroad and the small amount of truckers who were able to keep their heads above water. The railroad brings in the major part of the fertilizer in our area, but when the peak spreading time comes around they are not able to keep up with the demand, and we have to go to trucks. Power has perhaps the largest, if not the largest commercial fertilizer spreading business of the cooperatives in the state and we cannot afford to lose this supplemental source. I'm sure this is shared to a great extent by any business.

We feel ~~this~~ proposed GVW fee increase is another added burden to those truckers, and it will be passed to some extent from them to our companies then to the separate farmers and ranchers.

We recognize the added burden on our highways; we feel we need the competition in the state for those hauling our agriculture freight, whether it be the produce we sell or the products we consume. Certainly, with the monopoly of the railroad sub-terminal pickups--their proposed plans to not use our existing elevators even now on their mainlines, we are going to have to go to more commercial truckers. Many of us are going to have to purchase bigger trucks of our own, certainly not a practical investment for the smaller operators, or to go the commercial truckers, or make many more trips with our farm trucks.

~~We~~ ^{As} prefer the independent truckers not be given this added burden, which will indeed pass down the line ~~to~~ ^{to} increase the cost of transportation, ~~which is~~ already a formidable cost to ~~the~~ ^{the} Agriculture.

WITNESS STATEMENT

NAME Mrs. Toman ^{House} BILL No. S. 52
ADDRESS Helena DATE 3/26/81
WHOM DO YOU REPRESENT Mont. Highway Users Federation
Mont. Truckers - Motorcarriers - Contractors
SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME John N. Olson BILL No. HB 952
ADDRESS Box 1716 Helena, MT DATE 26 MARCH 81
WHOM DO YOU REPRESENT Montana Logging Assn.
SUPPORT OPPOSE X AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Many of our members are owner/operators of logging trucks -- these are precisely the independent businessmen who can afford this increased increase the best.

VISITORS' REGISTER

HOUSE Taxation

COMMITTEE

RULL

SB 322

Date 3/26/81

·ONSOR

Halligan

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Bill Lugg BILL No. SB 322
SB 42
ADDRESS 530 McLeod Missoula DATE 3/27/81
WHOM DO YOU REPRESENT City of Msla
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Ronald B. [unclear] BILL No. 428522
ADDRESS 215 [unclear] DATE 2/26/81
WHOM DO YOU REPRESENT City of [unclear]
SUPPORT / OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Russ Ritter BILL No. 42
ADDRESS 430 Tamarack DATE _____
WHOM DO YOU REPRESENT City of Helena
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

VISITORS' REGISTER

HOUSE Taxation

COMMITTEE

PULL SB 457

Date 3/26/81

SPONSOR DOVER

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME WARD SHANNAHAN BILL No. 457
ADDRESS Box 1686 Helena DATE 3-26-81
WHOM DO YOU REPRESENT Self
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

attached - printed informal
Oral Statement made

FEDERAL INCOME, GIFT & ESTATE TAXATION, VOL 1 - PARKIN & JOHNSON

TEXT ON 3/26/71
EXHIBIT "E"

§ 1.01

THE INDIVIDUAL

[I.R.C. references are to Internal Revenue Code of 1954]

438-50

term is basically "gross income" less specified deductions. Technically it is defined to be adjusted gross income decreased by itemized deductions in excess of the zero bracket amount (i.e., the standard deduction under prior law) and the personal exemptions (see discussion at § 1.07). I.R.C. § 63(b), as amended by Tax Reduction and Simplification Act of 1977 § 102(a).

Itemized deductions are all the deductions allowed an individual other than personal exemptions and those deductions which are taken in computing adjusted gross income (basically business deductions). See § 1.07.

As to tax tables and "tax table income", see § 1.13. As to "gross income", see §§ 1.02-1.06. As to deductions, see §§ 1.07-1.09.

(3) Credits against Tax

After the tax is computed by applying the percentage rates to taxable income, the tax may be reduced by certain "credits against tax". Credits may be classified into two broad groups, those which are necessary to reflect certain previously made payments, such as the credits for withheld tax, estimated tax, or foreign taxes paid; and those which represent simply a benefit conferred in the form of a credit rather than (or as an alternative to) a deduction from income, such as the credits for the elderly, for child care, and for business investment. ~~The concept of the credit as opposed to the deduction is being some Congressional favor, on the theory that a dollar-for-dollar credit benefits all taxpayers equally, whereas a deduction has greater value to a taxpayer in the higher brackets.~~

The various credits are as follows:

	I.R.C.	Text
	§	Reference
Tax withheld on wages	31	§ 74.03
Withholding from nonresidents	32	§ 7.04
Foreign taxes	33	§§ 1.11, 2.02

15-30-116. Veterans' bonus or military salary — exemptions.

(1) All payments made under the World War I bonus law, Korean bonus law, and the veterans' bonus law are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department in the same manner as other income tax refund claims are paid.

(2) The salary received from the armed forces by residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana is exempt from state income tax.

History: (1)En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965; amd. Sec. 169, Ch. 516, L. 1973; Sec. 84-4907.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 326, L. 1975; Sec. 84-4907.2, R.C.M. 1947; R.C.M. 1947, 84-4907.1, 84-4907.2.

15-30-117 through 15-30-120 reserved.

15-30-121. Deductions allowed in computing net income. In computing net income, there are allowed as deductions:

(1) ~~the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the following exceptions which are not deductible:~~

- (a) items provided for in 15-30-123;
- (b) state income tax paid;
- (2) federal income tax paid within the taxable year;
- (3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974. However, the limitation set forth in section 214(e)(4) of the Internal Revenue Code of 1954 as that section was in effect for the taxable year that began January 1, 1974, applies only to payments made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and to payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) to the taxpayer or the taxpayer's spouse.

(4) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(5) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978.

History: En. Sec. 6, Ch. 181, L. 1933; re-en. Sec. 2295.6, R.C.M. 1935; amd. Sec. 2, Ch. 167, L. 1947; amd. Sec. 2, Ch. 260, L. 1955; amd. Sec. 1, Ch. 102, L. 1977; amd. Sec. 2, Ch. 574, L. 1977; amd. Sec. 5, Ch. 576, L. 1977; R.C.M. 1947, 84-4906; amd. Sec. 1, Ch. 90, L. 1979; amd. Sec. 1, Ch. 129, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 90, L. 1979, provided: "This act is effective on its passage and approval and applies to taxable years beginning after December 31, 1978." Approved March 15, 1979.

Effective date and applicability. Sec. 2, Ch. 129, L. 1979 provided: "This act is effective on passage and approval and applies to taxable years after December 31, 1978." Approved March 19, 1979.

15-30-122. Standard deduction. In the case of a resident individual, a standard deduction equal to 15% of adjusted gross income shall be allowed

461-731

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

- Sec. 161. Allowance of deductions.
- Sec. 162. Trade or business expenses.
- Sec. 163. Interest.
- Sec. 164. Taxes.
- Sec. 165. Losses.
- Sec. 166. Bad debts.
- Sec. 167. Depreciation.
- [Sec. 168. Amortization of emergency facilities.]
- Sec. 169. Amortization of pollution control facilities.
- [Sec. 170. Charitable, etc., contributions and gifts.]
- Sec. 171. Amortizable bond premium.
- Sec. 172. Net operating loss deduction.
- Sec. 173. Circulation expenditures.
- Sec. 174. Research and experimental expenditures.
- Sec. 175. Soil and water conservation expenditures.
- Sec. 176. Payments with respect to employees of certain foreign corporations.
- Sec. 177. Trademark and trade name expenditures.
- Sec. 178. Depreciation or amortization of improvements made by lessee on lessor's property.
- Sec. 179. Additional first-year depreciation allowance for small business.
- Sec. 180. Expenditures by farmers for fertilizer, etc.
- [Sec. 181. Deduction for certain unused investment credit.]
- Sec. 182. Expenditures by farmers for clearing land.
- Sec. 183. Activities not engaged in for profit.
- Sec. 184. Amortization of certain railroad rolling stock.
- Sec. 185. Amortization of railroad grading and tunnel bore.
- Sec. 186. Recoveries of damages for antitrust violations, etc.
- [Sec. 187. Amortization of certain coal mine safety equipment.]
- Sec. 188. Amortization of certain expenditures for child care facilities.
- Sec. 189. Amortization of real property construction period interest and taxes.
- Sec. 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly.
- Sec. 191. Amortization of certain rehabilitation expenditures for certified historic structures.
- Sec. 192. Contributions to black lung benefit trust.
- Sec. 193. Tertiary injectants.
- Sec. 194. Contributions to employer liability trusts.
- Sec. 194. Amortization of reforestation expenditures.

SEC. 161. ALLOWANCE OF DEDUCTIONS

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

Legislative History

This section was amended by Sec. 102 (b) (1) of Public Law 95-30 (May 23, 1977), known as the Tax Reduction and Simplification Act of 1977, which, appli-

cable with respect to taxable years beginning after December 31, 1976, struck out "section 63(a)" and inserted in lieu thereof "section 63".

SENATE COMMITTEE REPORT

(83d Cong., 2d Sess., S. Rep. No. 1622 (1954) 195)

§ 161. Allowance of deductions: This section is identical with section 161 of the bill as it passed the House. It states the general rule that in computing taxable income there shall be allowed the

deductions specifically provided in the other sections of part VI relating to itemized deductions for individuals and corporations.

MANHATTAN CHRISTIAN SCHOOL
March 25, 1981

Honorable Members of the House Taxation Committee:

I am Bob Korthuis, Principal of Manhattan Christian School, and President and registered lobbyist for the Association of Nonpublic Schools of Montana (ANSM). This organization represents some 5000 students and 5000 parents of the State of Montana. We encourage you to support Senate Bill 457 for the following reasons:

1. Freedom of choice of educational alternatives is vital to a free society.
2. Encouragement of cultural pluralism is vital to a free society.
3. The nonpublic school has long been a part of our heritage having roots that go even deeper in time than our public school counterpart.
4. The nonpublic school is making a valuable contribution to our society not only because of the quality of its products, but also because of the millions of dollars that it saves the taxpayer.
5. The intent of the framers of the Constitution was not to keep religion out of the State but rather to separate the church and state as institutions.
6. The idea that a school can be neutral in the area of religion is not a tenable position. Anything that is taught reflects a philosophy. Neutrality, secularism, humanism, and any other philosophical view are, in fact, religious in nature.
7. By this bill, aid is given the parent, not the school or the church.
8. This bill encourages individual and corporate giving, which relieves some demands upon the public.
9. Private initiative is basic to the American free enterprise system.
10. The cost for implementing this kind of aid is minimal because funds do not have to be taken from public coffers.
11. Enhancing the quality of nonpublic education should serve to increase the quality of public education, because of the stimulating effects of competition.

Thank-you for the opportunity of sharing our views with you.

Sincerely,

Bob Korthuis

Bob Korthuis

WITNESS STATEMENT

NAME Sister Mary Edith Brown BILL No. SB 457
ADDRESS Box 1399 Brant Falls DATE 8-26-71
WHOM DO YOU REPRESENT Catholic Schools -
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Testimony Before the Montana House of Representatives Committee on Taxation
by Dr. Bruce T. Alton, President, Rocky Mountain College, Billings, on behalf
of the independent colleges of Montana

My name is Dr. Bruce T. Alton, President of Rocky Mountain College in Billings, speaking in behalf of the independent colleges of Montana, which include Rocky, Carroll College, and the College of Great Falls. I have come to speak in favor of passage of Senate Bill 457.

As independent colleges we receive no direct state financial assistance and very little if any direct federal assistance. We are, as it were, the free enterprise element within the higher educational community. Either the product that we sell - post-secondary education - generates demand within the marketplace or we cease to exist. In light of the fact that my own institution traces its history to its founding as the Montana Collegiate Institute in Deer Lodge in 1878, the first college or university to be founded in Montana Territory, and continues to flourish 103 years later, the system apparently is working extremely well.

The fact is, however, that as independent institutions, we are greatly dependent upon the private sector for its generosity in providing fiscal support for our continuing operation. This is in the tradition of support that has been provided for independent higher education since the founding of the first college in this nation in 1636. You should remember that most of what this nation knew in the first 225 years which followed that founding was independent higher education. It was not until 1862 and the passage of the Morrill Act and the establishment of the Land Grant College that state supported higher education took seed. As recently as 1950 enrollments in independent colleges and universities exceeded those of the state system. Thus much of the strength that we have come to know and to enjoy as a nation and as a state has been the result of this free enterprise and independent educational element.

There is little question that higher education in Montana - both independent and state-supported - will benefit from the passage of Senate Bill 457. The question that you must ask yourselves is simply this: Will the State of Montana benefit?

We in the independent sector believe that it will.

From the outset it should be recognized that we in the independent sector are strongly committed to serving the state in which we function. The preponderance of our enrollments is composed of Montana students. As a matter of fact, the percentage of students enrolled from the state of Montana at one of our members, the College of Great Falls, equals or exceeds such percentage at every single unit of the Montana University System. When combining all three independent institutions, the percentage of in-state students either exceeds or is within 2 - 3% of Montana student enrollments at the University of Montana, Montana State University, Montana College of Mineral Science and Technology, and Northern Montana College.

With this acknowledged commitment to the education of Montana students, a question that can very well be asked is this: How much does it cost us to maintain our independence?

This is of course not an easy question to answer. But if we take as a basic fiscal difference between state and independent higher education the fact that units of the state system receive an allocation from state funding and we do not, it is a good place to begin in making that comparison.

In the biennium just ending you will remember that the basic support from the general fund for the Montana University System was approximately \$55 million in each year. If one would then take that total support and divide it by the average of the 24,210 full time equivalent students enrolled in the University System during that period, it would average \$2,272 per student. In other words, for every full time equivalent student who enrolled in one of the six units of the state university system, \$2,272 in tax support walked in the door with them.

If that, then, is a comparative figure of our cost to be independent, and it is in turn multiplied by our full time equivalent enrollment of 2,384 students during this same period, our cost of being independent in the present year is somewhat in excess of \$5.4 million.

Which of course means a tax savings for the citizens of Montana. For in our enrollment of students, educational costs for these students are not incurred by the Montana University System. If the three of us ceased to exist tomorrow, and if only our Montana students transferred to units of the university system, the state would be faced with an additional liability in excess of \$4.1 million in general operating expense alone, not to mention a very significant additional capital expenditure to accommodate these students.

But beyond these measurements of tax savings to the citizens of Montana, the independent colleges of Montana also represent no small economic entity for the generation of tax revenue for state and county government. While we are ourselves tax exempt entities, we do in fact pay our fair share for municipal services. But the most important single factor is that found within our combined budgets, which total this year well over \$12 million, a very large percentage of which is committed to the wages and benefits for our employees, who in turn provide for a wider personal income and personal property tax base than might otherwise be the case. Add to this a minimum of \$2 million in business transactions completed by our respective student bodies in the purchases of goods and services, and one has an economic unit that is not to be dismissed lightly.

What does the State of Montana presently pay for this combination of both general fund expenditure saving in excess of \$4 million as well as a tax revenue base well over \$14 million in this year alone? Nothing. Absolutely nothing. In brief, for a multi-million dollar financial entity, for the

contribution of quality educational services, for a viable independent alternative to promote the responsiveness of state-supported higher education, the price tag is absolutely zero.

It is for this reason that we can in good conscience encourage your favorable consideration of Senate Bill 457. Whatever loss might occur in tax revenue as the result of passage will be more than offset by the financial benefits, both direct and indirect, which might accrue to the State. We believe strongly that any action of government which encourages responsiveness and positive action within the private sector to support those areas of responsibility which should be rightly theirs is to be commended. Senate Bill 457 is such an action. For within its structure is found strong encouragement for the support of education - both independent and state supported. We can think of no better investment for the future of Montana. We would encourage its passage.



MONTANA SCHOOL BOARDS ASSOCIATION

501 North Sanders
Helena, Montana 59601
Telephone: 406/442-2180
Wayne G. Buchanan, Executive Director

DATE: March 25, 1981

TO: Taxation Committee
Montana House of Representatives

FROM: Wayne Buchanan, Executive Director

SUBJECT: Opponent Testimony on SB 457

The Montana School Boards Association wishes to go on record as an opponent of SB 457.

The principal reason for our opposition is that this bill would provide for the direct use of tax money for the support of private schools. This measure is very similar in form to so called "tuition tax credits" which have been the subject of intense legislative effort at the federal level for the past several years. In 1978 the president of the National School Boards Association, characterized tuition tax credits as the "single most important threat that public education has ever faced." Similar statements have been made by the leadership of the National Education Association, the American Federation of Teachers, and numerous other educational groups throughout the country. Careful consideration of the probable effects of this type of legislation will demonstrate that such rhetoric does not overstate the case.

SB 457 is not a tuition tax credit proposal but in several important respects it is worse. At least with tuition tax credits in order to claim the credit one must have a child in a private school. This bill would allow any individual or corporation to claim a tax credit up to \$50 or \$100 respectively. This bill would have an even greater effect than a tuition tax credit law.

The eventual effects of such legislation are interrelated and cumulative. These are:

1. Government subsidy of private schools causing a lowering of tuition rates;
2. A flow of students from public to private schools;
3. A loss of governmental funding of public schools (since such funding is based on number of students attending);
4. A loss of public school support in mill levies, bond issues, etc. (since more parents will have children in private schools);

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5. A segregation of children into religious, ethnic, and perhaps socioeconomic based education systems.

The proponents of this bill have pointed out that amount of money proposed is small and it is. Still, a \$50 tax credit amounts to a \$625 deduction to someone who is in the 8% bracket on the state income tax schedule. There is the further incentive of being able to take part of one's tax liability which "would just go to the government anyway," and contribute it to a favorite private school. Furthermore, the committee may be assured that if this measure is successful, there will be regular biennial attempts to increase that amount.

Finally, if 457 becomes law it is certain to provoke lawsuits to test its constitutionality on both the state and federal level.

We respectfully ask that this committee report this bill "do not pass."

Mr. Chairmen and Members of the Committee:

This bill, along with some other recent events, signals one of the most radical shifts in public policy we have ever witnessed.

If you read the front page of yesterday's Independent-Record, you saw that the Helena School District is laying off 10 teachers for two reasons (1) This legislature is underfunding special education by about \$5 million next year and (2) The Reagan administration has drastically cut back Title I funds. And the same thing is happening all over the state. I'm not telling you this just because 10 highly skilled people will be added to the unemployment rolls, although that should be a concern too. The point is we are turning our backs on the children who need the most help--the handicapped and the poor--the two groups served by special ed and Title I. What has this to do with SB 457?

At the same time we are saying no to the poor and disabled we are saying yes to the well-off. We are saying we will now subsidize private education. We are saying we will grant generous tax breaks to those who can afford to send their kids to private schools. Not many poor and handicapped kids go to private schools.

This emerging philosophy is saying--let's create 2 distinct educational systems in this country--a public system for the needy and disadvantaged and a private system for the elite. I submit to you that this policy is WRONG. It is wrong to tell the dyslexic kid in Helena that he will lose his remedial reading teacher or to tell the kid who can't walk that he will lose his physical therapist while giving wealthy families and corporations a hefty tax credit for their private school donations.

Of course the problem will be compounded for public schools as they lose kids to the private schools. With fewer ANB they will have even less

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money to educate the most expensive-to-educate children.

And the bill doesn't even allow a credit for someone who might want to contribute to a public school such as the Deaf and Blind School in Great Falls.

You may say \$50 or 100 doesn't amount to much. By state law 25% of the income tax goes to public school support. Our foundation program will lose \$12.50 or \$25 every time this credit is granted. We have no idea of the immediate or ultimate impact. If you grant a \$50 credit now will they want \$150 next session? There are already bills in the Congress to allow \$500 tax credits for private school tuition. It will happen here too.

Finally, this bill is patently unconstitutional, let me read you Article X, Section 6 of the Montana Constitution:

Every accredited private school in Montana is church-affiliated--clearly this bill will be challenged in the courts if enacted. I think the Legislature would be shirking its own responsibility to uphold the constitution if it passes this bill because it's politically popular in some quarters. I think it irresponsible to drop this issue in the lap of the Supreme Court when it is so obviously unconstitutional-- every time you allow such a tax credit you are appropriating money for religious schools.

We have no brief against private education. But let's keep it private. The state has no business funding private schools.

If the committee decides that this bill has any merit, I would like to offer two amendments which make the bill both constitutional and fairer to public schools.

Our first amendments would limit tax credits for donations to nonsectarian private or public schools.

Our second amendments would limit credits for donations to institution of higher learning only, deleting secondary schools, as elementary schools were eliminated in the Senate.

Either set of amendments would be patching up a bad bill, but making it more acceptable. The best decision you can make is to kill SB 457!

David Sexton

Montana Education Association

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. Non-discrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may



Montana Education Association

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HOUSE TAXATION COMMITTEE HEARING ON SB 457, MARCH 26, 1981

Proposed Amendments to Senate Bill 457 (Alternative A):

Page 1, Line 22: After "nonprofit," insert "nonsectarian."

Page 1, Line 23: Delete "private" and insert "nonsectarian."

Proposed Amendments to Senate Bill 457 (Alternative B):

Page 1, Line 23: After "Montana," insert period. Delete remainder of Lines 23-25.

Page 2, Lines 23-25: Delete all of Paragraph (5).

TESTIMONY BEFORE THE
HOUSE TAXATION COMMITTEE
ON MARCH 26, 1981
Opposing SB 457

Taxation 3/26/81
EXHIBIT "J"

Mr. Chairman, and members of the Committee: My name is Gary Jensen, and I appear today in behalf of Americans United and the
to oppose SB 457.

North Pacific Union Conference of
Seventh-day Adventists

WHAT'S WRONG WITH TAX CREDITS?

Plenty. (1) They would benefit only churches and private organizations whose schools enroll children from affluent families. Tax credits would discriminate against the poor and against the 90% of American families who utilize public schools.

(2) Tax aid to parochial and private schools would mean disaster for public education. A Gallup poll in 1969 indicated that 59% of people polled would send their children to private or parochial school, if they were free! It takes no prophet to predict that tax aid to public schools would mean government subsidization and promotion of the growth and proliferation of these schools. American public schools, like those in many other countries, would become little more than dumping grounds for racial and religious minorities, the poor, the handicapped, the problem children, the underachievers. (Refer to Church & State articles: "Tax Credits Won't Do" and "Tax Credits Opposed.")

(3) Tax credits would be inflationary, for as history has shown, aid programs tend to escalate, thus depleting tax funds which have to be made up by taxpayers. (See Opinion of the Supreme Court in COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY v. NYQUIST 413 U.S. 756 (1971). In LEMON v. KURTZMAN, 403 U.S. 630, a footnote taken from Statistical Abstract of the United States 105 (1970) reads: "In 1960 the Federal Government provided \$500 to private colleges and universities. Amounts contributed by state and local governments to private schools at any level were negligible. Just one decade later federal aid to private colleges and universities had grown to \$2.1 billion. State aid had begun and reached \$100 million." "As the present case demonstrates, we are now reaching a point where state aid is being given to private elementary and secondary schools as well as colleges and universities."

(4) Article X, Section 6 of the Constitution of Montana prohibits aid to sectarian schools. (See page 7)

(5) The U.S. Supreme Court has consistently ruled that tax aid to parents of children attending nonpublic schools violates the establishment clause of the First Amendment to the U.S. Constitution.

IN LEMON v. KURTZMAN (1971) The U.S. Supreme Court ruled that to pass muster under the Establishment Clause the law in question, first must reflect a clearly secular legislative purpose, second, must have a primary effect that neither advances nor inhibits religion, and third, must avoid excessive government entanglement with religion ("in the sense of 'a comprehensive, discriminating, and continuing state surveillance'").

In PEARL v. NYQUIST (the commissioner of education for New York, 413 U.S. 758) the U.S. Supreme Court ruled that "the system of providing income tax benefits to parents of children attending New York's nonpublic schools violates the Establishment Clause because, like the tuition reimbursement program, it is not sufficiently restricted to assure that it will not have the impermissible effect of advancing the sectarian activities of religious schools." "The State must maintain an attitude of 'neutrality,' neither

'advancing' nor 'inhibiting' religion, and it cannot, by designing a program to promote the free exercise of religion, erode the limitations of the Establishment Clause." "Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this Court. To the contrary, in so far as such benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions." (page 793). See also page 798 and Rhode Island Federation of Teachers, AFL-CIO v. Norberg (1980). (~~See~~ pages 8 + 9 of *revised material*)

(6) Public opinion, as measured by statewide referendum elections and opinion polls, is clearly opposed. (See "The People Speak: Parochialism and the Voters" in Church & State, October 1980 issue). (~~See~~ pages 2-5)

(7) Tax aid to nonpublic schools is unnecessary. Private, Protestant and Jewish schools are growing without tax aid and have shown little interest in getting it, though they will certainly take their share if tax funds flow for the benefit of Catholic schools.

Bishop William Mc Manus, director of the Chicago archdiocese Catholic schools, told his fellow bishops in Houston in April 1969 that Catholics have more than enough money to support adequately their parochial schools but are apparently losing interest in them. Catholics are also sharply divided over parochial aid, with as many as one-third opposed to it.

ANSWERS TO ANTICIPATED ARGUMENTS IN FAVOR OF SB 457

(1) Advocates of tax aid for nonpublic schools claim that their schools cannot survive without outside help and that it would be cheaper to the public to provide some support for nonpublic schools than for the public schools to have to absorb a flood of children from collapsed nonpublic school systems. Imagine, they say, what would happen if _____ nonpublic students suddenly poured into public schools. Taxes would jump something awful. So settle for a SMALL flow of taxes into nonpublic education and escape the worse, excruciating blow.

REBUTTAL: Realistically, that scare is a phony. A total inundation is out of the question. Private schools HAVE been phasing out for years. Their pupil loads HAVE been absorbed in public systems. Any future phasings out will also probably be gradual.

Parochial school children are bussed in from an area representing many public school districts. Divided up among the public schools nearest their homes, these children could easily be absorbed into the public school system without even increasing the number of teachers.

(2) Tax credits do not aid the schools but rather the parents.

REBUTTAL: In PEARL v. NYQUIST, the U.S. Supreme Court ruled: "The tuition reimbursement grants, if given directly to sectarian schools would similarly violate the Establishment Clause and the fact that they are delivered to the parents rather than the schools does not compel a contrary result, as the effect of the aid is unmistakably to provide financial support for nonpublic, sectarian institutions." (pages 757,758)

(3) There is a difference between tuition tax credits and an income tax credit.

REBUTTAL: (See page 756 of PEARL v. Nyquist). (~~See~~ page 10)

- (4) Another argument that is sometimes used is that parents who send children to the private schools pay taxes for the public ones and get no benefit; why should they be taxed and given nothing in return when private schooling costs them more on top of taxes and shaves part of the tax load for everyone else?

REBUTTAL: Under objective examination, this claim of "double taxation" can be shown to be a myth. The law guarantees freedom of religion, but expressly forbids the state to support any religion or religious school. Since the state makes public education available to all children, parents who want parochial education for their children are asking a special privilege. And they should be required to pay for this privilege, just as parents who send their child to a nonchurch private school pay for that privilege.

If a parent sends a child to a parochial school, he is no more subject to double-taxation than a childless couple, an aged widow, or millions of other citizens who pay local taxes for public schools whether they use them or not. The public school is a community responsibility; parochial tuition cannot be thought of as a tax but as the cost of a private purchase.

Everybody's taxes make a contribution to the basic public good. Why should willing sharers of this obligation see part of their taxes go into a system that sustains someone else's religion - a purpose many do not Share? What would be fair about THAT?

I have listed just some of the reasons why SB 457 is a bad piece of legislation. Tax credits for charitable contributions to nonprofit institutions would create a host of problems, and may I remind you that the U.S. Supreme Court has ruled time and time again that they violate the Establishment Clause of the First Amendment to the U.S. Constitution. Therefore, I strongly urge you to vote "DO Not Pass" on SB 457. Thank you.

dictating an individual's vote.

Freedom of religion, as the Founding Fathers saw it, was not just the right to associate oneself with a certain denomination but the right to disassociate without penalty. Belief or nonbelief was a matter of individual choice—a right underwritten in the basic charter of nation's liberties. Religions should be barred from any official political status.

They were a fascinating breed, these young Constitution-makers. They were products of the period of the Enlightenment, avowed rationalists, probes of the connection between cause and effect in freedom, highly developed spiritually both in the moral content of their political ideas and in their realization that something lay beyond human power and human comprehension that called for respect. It was only when this transcendent reality sought to be institutionalized that they became concerned—concerned in the sense that they knew that religions sought to speak in the name of truth but that, since there were different religions, truth could become competitive and even combustible. Therefore, the duty of government was to make truth a private rather than an official matter. People could select their truths as they could select anything else in a society that knew it had to be protected against autocracy in any form—political, social, ecclesiastical.

By and large, our literature tends to mirror this open view. The religious convictions of our people are reflected rather than advocated. The range of those ideas runs all the way from H.L. Mencken's scoffing in his *Heathen Days* to William Faulkner's religious allegory, *The Fable*—a novel, incidentally, seldom mentioned by critics but one that he himself considered his most important work.

We can learn a lot from our literature about the need to keep religious authority out of political activity. For the writer is most effective when he transmits his own perceptions of life and human experience rather than his advocacy of an institutionalized interpretation of the great unanswered questions.

The writer, perhaps more than any of his fellow artists, has access to the human subconscious. His words sink deep, shaping dreams, easing the pain of loneliness, banishing incantations and omens, keeping alive the memories of the race, providing intimations of immortality, nourishing great anticipations, sharpening the instinct for justice, and imparting respect for the fragility of human life. These functions are essential for human evolution. Without them, civilization becomes brittle and breaks easily. Society can be measured, therefore, not by the display of power but by its attention to the conditions of creativity and by its acceptance of human sovereignty as the highest value.

One can recognize the right and indeed the duty of any individual or group in the society to act in behalf of its moral convictions. But such actions have to stay within clearly defined limits. The moment religious forces seek to control government rather than to influence it they threaten the very society they seek to protect.

Norman Cousins is editor emeritus of Saturday Review and editor of "In God We Trust": The Religious Beliefs and Ideas of the American Founding Fathers. This piece is reprinted from Saturday Review with permission.

Tax Credits Won't Do

by Carl T. Rowan

It sounds like a couple of pieces of free cake. Give Americans federal vouchers to help pay for their children's educations, then parents can send their children to the schools of their choice. What could be freer, more egalitarian, or sweeter than that?

Wipe out those federal housing programs that have been ripped off by slick entrepreneurs with slick lawyers. Just give people vouchers so they can go out and rent, or buy, and "live where they want to." What could be more American than that?

Well, both these voucher schemes are snares and delusions. They are not supported by all the people the politicians think, and they will not do what their supporters profess to believe.

The tuition tax credit issue is generally perceived as a liberal-conservative tussle, since President Carter and the public education establishment oppose such credits while President-elect Reagan and his advisers favor such grants.

Under a headline saying "Life or Death for U.S. Public Education," Albert Shanker, president of the American Federation of Teachers, wrote an article about "The Menace of Tuition Tax Credits." Shanker said:

"If tuition tax credits become the law of the land, the U.S. government will, through a system of tax giveaways, pay for a substantial part of the tuition of children in private schools."

"The effect would be the destruction of public education as it has existed in this country for over 200 years. Parents who are well-off would add their own money to the government grant and put their children in schools that could afford expensive programs. The loss of students from more affluent families would do irreparable harm to the public schools, with the public schools coming more and more to resemble charity wards for those who either cannot afford private schools or those who are rejected by private schools."

Rejected? Yes.

(Michigan) had a voucher initiative on the ballot two years ago and it was defeated resoundingly, in part because a lot of conservatives who have children in private schools were afraid that an army of "undesirables," armed with tuition vouchers, would come knocking at their doors.

A Michigan friend of mine, a devout Catholic, worked hard for passage of the tuition voucher because, he admits, with three children in private school he needs the money. He was amazed to find that in his conservative-dominated school only 20% of the parents would support the plan. The rest were swayed by arguments that if everyone could get help their school would be overrun by "riffraff," meaning minorities and poor people.

In (California) where a five-year single-district experiment with educational vouchers produced mixed reviews, proponents of the idea have failed so far to muster enough support to put the issue before the voters in a statewide initiative.

be swung by the Jewish vote in close contests.

Though they probably will attract a small percentage of the national vote, three minor party candidates for President are running and could affect the outcome in states where voting for major candidates is close. The Libertarians are fielding Ed Clark in 50 states, the

Citizens Party hopes to run Barry Commoner in at least 30, and the New York Right-to-Life Party has nominated Ellen McCormack as its single issue candidate. She is also on the ballot in Kentucky and New Jersey as an independent.

The People Speak: Parochialism and the Voters

Parochialism—any form of direct or indirect tax aid for sectarian private schools from any level of government—has been a controversial political issue in the United States since the early nineteenth century. Generally speaking, however, the policy followed throughout the country until the present has been one of confining public support to public schools, usually on the ground that parochialism would violate the constitutional principle of separation of church and state and would damage public education.

Since World War II controversies have raged over parochialism in Congress and most state legislatures, in the courts, and in the arena of public opinion. Most parochialism plans were defeated in the legislative process, while those which were enacted were challenged in the courts by Americans United and other organizations. All but the most minor and peripheral forms of parochialism have been struck down as unconstitutional by the courts, particularly in a remarkable series of U.S. Supreme Court rulings beginning in 1971 with *Lemon v. Kurtzman*.

Advocates of parochialism have tried to win over public opinion but their efforts proved to be ineffective. Between 1966 and 1978 twelve statewide referenda dealt with parochialism in one form or another. In every case the parochialism lost. These referendum elections, then, shed a great deal of light on how the American people view proposals to provide public aid to denominational schools.

1966: Nebraska. A proposed amendment to the state constitution to allow tax funds to be used to provide transportation services for parochial schools was rejected by the state's voters 57% to 43%.

1967: New York. Battles over parochialism led to formation of a Catholic political party in the Empire State in the 1830s and 1840s. An 1842 state law forbade tax aid for sectarian schools, while in 1894 Catholic church officials agreed to a provision in the state constitution barring aid for parochial schools in exchange for a clause allowing tax aid to sectarian charities.

When New Yorkers voted in 1965 to approve the call-

ing of a state constitutional convention, a predominantly Catholic parochialism lobby group called Citizens for Education Freedom saw its chance. CEF managed to win a solid majority of the delegate seats at the convention by concentrating votes on the minority of candidates favoring removal of the anti-parochialism section of the state constitution. The "stacked deck" convention did what CEF wanted. But then their luck ran out.

Religious, educational, parents, labor, and other groups formed the Committee for Public Education and Religious Liberty (PEARL) to counter the threat to church-state separation. In the November 1967 constitutional ratification election, New Yorkers voted down the whole proposed new state constitution 72.5% to 27.5%. Since the rest of the proposed constitution was generally unobjectionable, its defeat may fairly be ascribed to the single overriding issue, parochialism.

The New York vote was also significant because the parochialism spent a reported \$2 million to win the referendum, compared to only about \$50 thousand by the defenders of church-state separation. (The complete story of the New York battle may be found in Edd Doerr's 1968 book, *The Conspiracy That Failed*.)

1970: Michigan and Nebraska. Michigan's legislature proved increasingly compliant to the demands of parochialism in the late 1960s. So a coalition of defenders of church-state separation initiated by petition a proposed amendment to the state constitution to make even more explicit the already existing prohibition of parochialism. When the November votes were counted the church-state separation amendment had won 57% to 43%.

Although the parochialism won in eight predominantly Catholic counties, they lost in eleven other predominantly Catholic counties.

In Nebraska CEF and the Catholic hierarchy got the legislature to initiate a proposed state constitutional amendment to authorize a tuition reimbursement plan. On election day the amendment was defeated 57% to 43%.

1972: Maryland, Oregon, and Idaho. In 1971 the Maryland legislature, after several years of defeat for paro-

chiaiders, passed a bill to provide \$12 million per year to parochial schools under a complex voucher plan. Americans United and other groups gathered enough voters' signatures to put the bill to referendum in November 1972. Marylanders then voted the bill down 55% to 45%.

Oregon voters were presented by the legislature with a proposed amendment to replace a strong anti-parochial state constitutional provision with a weaker, vaguer one, patterned after the provision voted down in New York just five years earlier. Oregonians defeated the measure 61% to 39%, voting it down in every one of the state's 36 counties.

On the same day Idaho voters rejected a proposed constitutional amendment to allow transportation aid for parochial schools by 57% to 43%.

1974: Maryland. Less than two years after their 1972 electoral defeat, Maryland parochiaiders got the legislature to enact another bill, this time for \$9.7 million per year for books, equipment, supplies, and transportation for parochial schools. Once again groups concerned with defending church-state separation and public education petitioned the bill to referendum. After an acrimonious campaign Maryland voters defeated the new parochiaid bill 56.5% to 43.5%.

1975: Washington State. The next state to face a referendum on parochiaid was Washington. The legislature, responding to pressure from both parochial schools and

denominational colleges, proposed a state constitutional amendment to allow unlimited tax aid to denominational private education. The state's voters defeated the amendment 60.5% to 39.5%.

1976: Missouri and Alaska. Parochiaid advocates in Missouri, long a battleground on the issue, initiated by petition a proposed state constitutional amendment to authorize state aid in the form of transportation, textbooks, and auxiliary services. The parochiaiders induced Governor Bond to schedule the ratification referendum on August 3, in the hope that public school teachers and parents would be unable to organize to defeat the measure. The strategy failed. On August 3 Missourians defeated the amendment 60% to 40%.

In November Alaska voters turned down a proposed amendment to allow unlimited state aid to private denominational schools and colleges. The vote was 54% to 46%.

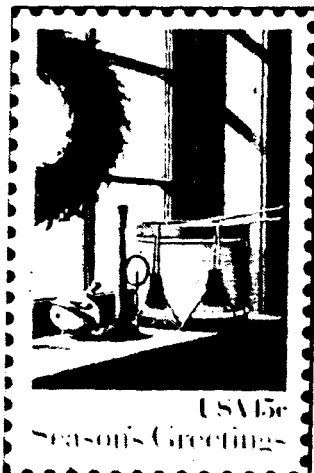
1978: Michigan. The last referendum on parochiaid took place in Michigan. Parochial school interests went all out, initiating by petition a proposed constitutional amendment to provide parochial, private, and public schools with equal support under an unspecified voucher plan. The parochiaid amendment also included a clause abolishing property taxes for education. On November 7 Michigan voters buried the amendment in a 74% to 26% landslide.

Minor referenda. Parochiaid was also defeated in 4 out of 5 local referenda held during the 1960s. Wickliffe, Ohio, voted down a \$50 per student tuition grant plan 76% to 24% in 1963. The next year voters in Farmington, Maine, defeated a parochial transportation plan 58% to 42%. In Anne Arundel County, Maryland (where the state capital, Annapolis, is located), referenda were held in 1964 and 1968 on parochial bus service bills. They were defeated both times by identical margins, 56% to 44%. In their only victory, parochiaiders won a bus service vote in Southington, Connecticut, by 82% to 18% in 1966.

Opinion polls. Voter referenda are the best opinion polls. They do not merely sample opinion, they register the views of all voters concerned enough to vote on an issue. Nonetheless, virtually all polls taken anywhere in the country have registered opposition to parochiaid.

In 1952, 1966, and 1969 national polls by the Gallup organization registered opposition at 49% to 40%, 50% to 38%, and 59% to 37%. In 1963 Louis Harris found opposition running 54% to 33%.

Americans United sponsored surveys in four states. In Maryland in 1970, using three different poll questions, AU measured opposition at 62.5% to 35.3%. A 1970 Illinois poll of urban, rural, and small town people showed 59% to 39.2% opposition. An AU poll at the Tennessee State Fair in 1970 found opposition running 78.7% to 21.3%. An Ohio poll the following year



Christmas Stamps for 1980

This year's Christmas stamps, as they have since 1970, offer a choice between sacred and secular. The religious stamp reproduces a portion of a stained glass window in the Washington Cathedral (Episcopal), while the secular stamp shows old toys on a windowsill.

The Johnson Administration began the tradition of issuing Christmas stamps in 1966, reversing a policy against religious theme stamps dating back to Benjamin Franklin. Critics of some of the Christmas stamps have charged that they put the Postal Service in the position of preferring some religious and some theological concepts over others.

showed people opposed to parochial aid 61.7% to 37%, a fact which had no perceptible effect upon the Ohio legislature.

The United Republican Fund of Illinois polled 11,000 Republicans in 1971. They came out against parochial aid 67% to 27%.

Polls by lawmakers in a number of states have shown similar results. In 1971 California State Senator Short found voucher plans opposed 62.8% to 31.1%, while Pennsylvania State Representative Hopkins found his constituents 74% to 26% against increasing parochial aid. In 1972 California State Senator Milton Marks' constituents opposed vouchers 48% to 41%, while Wisconsin Congressman William Steiger, who favored parochial aid, found his constituents opposed 62% to 38%.

In 1973, Maryland Congresswoman Marjorie Holt, who has voted for parochial aid, found her constituents opposed to tuition tax credits 54.7% to 41.5%. Wisconsin state legislators Mel Cyrak and Ronald Parys (Milwaukee) found opposition in their districts at 67% to 33% and 51% to 44% respectively. New York Assemblyman Don Cook and Ohio State Representative Harry Lehman found their districts' voters opposed to parochial aid by margins of 64% to 36% and 66% to 34%, respectively.

In 1975 Suffolk County, New York, State Senator Caesar Trunzo's poll registered his district 54.6% to 37.8% opposed to additional aid for parochial schools.

In 1976 Ohio Congressman Chalmers Wylie (Columbus) found his district opposed to parochial aid 66% to 27%.

East Hartford, Connecticut, voters were carefully cultivated in the mid-1970s to approve a voucher plan experiment for their city, to be supported by the federal government. They turned the plan down 70% to 30%.

Three highly significant polls were conducted during the summer of 1978, when the battle in Congress over tuition tax credit parochial aid was at white heat. The national Roper poll found opposition to tax credit aid running 64% to 28%. A popular TV debate show, "The Advocates," asked viewers after a balanced debate on tax credits whether they approved or disapproved of the plan. They disapproved 64% to 36% despite efforts by parochial aiders to influence the poll with phony responses. Maryland Congressman Newton Steers did an extensive poll of his constituents (the AU national offices are in his district) and found them opposed to tax credits 64% to 30%. Steers voted for the tax credit bill in Congress and was defeated for reelection in November.

After the Packwood-Moynihan tuition tax credit parochial aid plan was defeated in 1978, one of its original sponsors, Minnesota Congressman Bill Frenzel polled his constituents and found them opposed to tax credits 74.4% to 25.6%. Ohio Congressman Ralph Regula, who also voted for tax credits, found his district opposed to the plan 58% to 42% in a 1979 poll.

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Solid opposition. As these 12 statewide referendum elections, 5 local referenda, and 26 national and local opinion polls make quite clear, the American people are solidly opposed to any form of public aid for parochial and private schools. By inference they support the Supreme Court and lower court rulings which have ruled unconstitutional all but minor and peripheral forms of parochiaid.

Analysis of the referendum and poll results show some correlation between opinions on parochiaid and the religious affiliation of the voter or poll respondent. Protestants generally though not universally oppose parochiaid, often by about a 2 to 1 margin. Catholics tend to support parochiaid, though not universally and by widely varying margins. Jews tend to strongly oppose parochiaid.

The referenda were won by church-state separationists, incidentally, despite the fact that they were outspent in every political campaign by the advocates of parochiaid. In a number of the referenda, such as the one in Michigan in 1970, political and business leaders flocked to the parochiaid banner, though to no avail. In

most of the referendum states, separationists formed formal or informal coalitions representing religious, teachers, parents, civil rights, and a variety of other groups. Americans United for Separation of Church and State was active in all of the referenda, often playing a key advisory role in view of its many years of experience in dealing with the parochiaid issue.

Americans oppose parochiaid for a variety of reasons. The most salient are probably these: It is unconstitutional. It means forcing all citizens to contribute involuntarily to the support of religious institutions. It would harm the public education system that enrolls 90% of American children. It would use public funds to divide children by creed, class, race, and in other ways. It would endanger the freedom and independence of religious private schools.

The lesson for politicians is obvious. Most Americans support the constitutional principles of separation of church and state as essential to the preservation of religious liberty and other democratic values. There is rarely any real gain for politicians in moving against this main stream.

Tax Credits Opposed

Donald D. Kennedy, president of Stanford University, one of the country's leading private universities, came out strongly against tuition tax credits for colleges in a January speech to college officials in California. He said that tuition reimbursement tax credits would be "repressive and quite possibly inflationary" and would "hopelessly confuse" tax relief with aid to education.

Stanford officials, who have opposed the tuition tax credit scheme for twenty years, estimate that the annual costs of college credits alone could go as high as \$5 billion. (The Packwood-Moynihan tax credit bill) defeated in Congress in 1978 would have cost an additional \$2.5 billion per year for parochial and private elementary and secondary schools.

Kennedy said that families with in-

comes over \$25,000 would receive half of the benefits of the plan while poor people who owe little or no taxes would receive no benefit.

Federal aid to parochial and private elementary and secondary schools was also attacked in January by the National Committee for Citizens in Education (NCCCE), a public interest group which promotes greater parental influence in public schools. The NCCCE warned that tuition tax credit federal parochiaid, such as that advocated by Sens. Daniel P. Moynihan and Robert Packwood, could seriously damage or destroy public education. The NCCCE supports "increasing the education options open to parents within the framework of the public schools."

annual re-examination, but the pressure for frequent enlargement of the relief is predictable. All three of these programs start out at modest levels: the maintenance grant is not to exceed \$40 per pupil per year in approved schools; the tuition grant provides parents not more than \$50 a year for each child in the first eight grades and \$100 for each child in the high school grades; and the tax benefit, though more difficult to compute, is equally modest. But we know from long experience with both Federal and State Governments that aid programs of any kind tend to become entrenched, to escalate in cost, and to generate their own aggressive constituencies. And the larger the class of recipients, the greater the pressure for accelerated increases.⁵⁵ Moreover, the State itself, concededly anxious to avoid assuming the burden of educating children now in private and parochial schools, has a strong motivation for increasing this aid as public school costs rise and population increases.⁵⁶ In this situation, where the underlying issue is the deeply emotional one of Church-State relationships, the potential for seriously divisive political consequences needs no elaboration. And while the prospect of such divisive-

⁵⁵ As some 20% of the total school population in New York attends private and parochial schools, the constituent base supporting these programs is not insignificant.

⁵⁶ The self-perpetuating tendencies of any form of government aid to religion have been a matter of concern running throughout our Establishment Clause cases. In *Schempp*, the Court emphasized that it was "no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment," for what today is a "trickling stream" may be a torrent tomorrow. 374 U. S., at 225. See also *Lemon v. Kurtzman*, 403 U. S., at 624-625. But, to borrow the words from Mr. Justice Rutledge's forceful dissent in *Everson*, it is not alone the potential expandability of state tax aid that renders such aid invalid. Not even "three pence" could be assessed: "Not the amount but 'the principle of assessment was wrong.'" 330 U. S., at 40-41 (quoting from Madison's Memorial and Remonstrance).

of the trust shall forever remain inviolate unless appropriated by three-fourths (3/4) of the members of each house of the legislature. December 31, 1979, at least fifty percent (50%) of the severance tax dedicated to the trust fund.

ARTICLE X

EDUCATION AND PUBLIC LANDS

educational goals and duties.
public school fund.
public school fund inviolate.
board of land commissioners.
public school fund revenue.
prohibited to sectarian schools.
non-discrimination in education.
school district trustees.
boards of education.
public university funds.
public land trust, disposition.

Section 1. Educational goals and duties. (1) It is the goal of the state to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.
The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school system the state's share of the cost of the basic elementary and secondary system.

Section 2. Public school fund. The public school fund of the state consists of: (1) Proceeds from the school lands which have been or may be granted by the United States, Lands granted in lieu thereof, Lands given or granted by any person or corporation under any law of the United States, All other grants of land or money made from the United States for educational purposes or without special purpose, All interests in estates that escheat to the state, All unclaimed shares and dividends of any corporation incorporated in the state, All other grants, gifts, devises or bequests made to the state for gen-

Section 3. Public school fund inviolate. The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

Section 4. Board of land commissioners. The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

Section 5. Public school fund revenue. (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

Section 6. Aid prohibited to sectarian schools. (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. Non-discrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

Section 8. School district trustees. The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

Section 9. Boards of education. (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational sys-

ness may not alone warrant the invalidation of state laws that otherwise survive the careful scrutiny required by the decisions of this Court, it is certainly a "warning signal" not to be ignored. 403 U. S., at 625.

Conclusion Our examination of New York's aid provisions, in light of all relevant considerations, compels the judgment that each, as written, has a "primary effect that advances religion" and offends the constitutional prohibition against laws "respecting an establishment of religion." We therefore affirm the three-judge court's holding as to §§ 1 and 2, and reverse as to §§ 3, 4, and 5.

It is so ordered.

MR. CHIEF JUSTICE BURGER, joined in part by MR. JUSTICE WHITE, and joined by MR. JUSTICE REHNQUIST, concurring in part and dissenting in part.*

I join in that part of the Court's opinion in *Committee for Public Education & Religious Liberty v. Nyquist*, ante, p. 756, which holds the New York "maintenance and repair" provision¹ unconstitutional under the Establishment Clause because it is a direct aid to religion. I disagree, however, with the Court's decisions in *Nyquist* and in *Sloan v. Lemon*, post, p. 825, to strike down the New York and Pennsylvania tuition grant programs and the New York tax relief provisions.² I believe the Court's decisions on those statutory provisions ignore the teachings of *Everson v. Board of Education*, 330 U. S. 1 (1947),

*[This opinion applies also to No. 72-459, *Sloan, Treasurer of Pennsylvania, et al. v. Lemon et al.*, and No. 72-620, *Crouter v. Lemon et al.*, post, p. 825.]

¹ N. Y. Laws 1972, c. 414, § 1, amending New York Educ. Law, Art. 12, §§ 549-553 (Supp. 1972-1973).

² Pa. Laws 1971, Act 92, Pa. Stat. Ann., Tit. 24, § 5701 et seq. (Supp. 1973-1974); N. Y. Laws 1972, c. 414, § 2, amending N. Y. Educ. Law, Art. 12-A, §§ 559-563 (Supp. 1972-1973); N. Y. Laws 1972, c. 414, §§ 3, 4, and 5, amending N. Y. Tax Law §§ 612 (c), 612 (j) (Supp. 1972-1973).

LEGAL DIGEST

PAROCHIAID--Elementary and Secondary

CASE: Rhode Island Federation of Teachers,
AFL-CIO v. Norberg

CITATION: 630 F.2d 855 (1st Cir. 1980)

COURT: United States Court of Appeals, First Circuit

DATE: September 17, 1980

FACTS: A Rhode Island statute granted a state income tax deduction for tuition, textbooks, and transportation expenses incurred in sending dependents to primary and secondary schools in New England. The United States District Court for the District of Rhode Island found that the statute violated the establishment clause of the First Amendment, 479 F.Supp. 1364 (D.R.I. 1979).

ISSUE: Whether the tax deduction for expenses incurred in sending students to primary and secondary schools violates the establishment clause of the First Amendment.

HELD: Yes. [This affirms the decision of the federal district court.]

RATIONALE: "Since the statute is facially neutral and does not speak in terms of sectarian schools, the more important question is whether the district court properly concluded that the tuition deduction had the primary effect of conferring (a tax benefit) on parents who send their children to sectarian schools (After reviewing the facts found by the district court, ...we find the district court's conclusion to be sound)"

As for the textbook and instructional materials deduction, "We start with the premise that the State could not permit deductions to be taken for sectarian books or instructional materials...or for instructional equipment that is used for sectarian purposes.

"The difficulty...is not that the secular nature of the textbooks and instructional material for which deductions might be taken could not be guaranteed; it is that the involvement of church and state necessary to guarantee that result would excessively entangle church and state. We agree that continuing surveillance would be necessary to ensure that equipment which can be used for both secular and sectarian purposes, such as tape recorders and projectors, are used only for secular purposes.

"We find no error in the district court's conclusion that, because the transportation deduction was a minor part of the challenged statute, it could not be severed from the unconstitutional portions of the statute."

Robert W. Nixon, Esq.
JOHNS & CARSON
6930 Carroll Avenue, N.W.
Washington, D. C. 20012

February 17, 1981

of the constraints of "conscience and discipline," *ibid.*, and notwithstanding the "high social importance" of the State's purposes, *Wisconsin v. Yoder*, 406 U. S. 205, 214 (1972), neither may justify an eroding of the limitations of the Establishment Clause now firmly emplantated.

C

Sections 3, 4, and 5 establish a system for providing income tax benefits to parents of children attending New York's nonpublic schools. In this Court, the parties have engaged in a ~~considerable debate over what label best fits the New York law.~~ Appellants insist that the law is, in effect, one establishing a system of tax "credits." The State and the intervenors reject that characterization and would label it, instead, a system of income tax "modifications." The Solicitor General, in an *amicus curiae* brief filed in this Court, has referred throughout to the New York law as one authorizing tax "deductions." The District Court majority found that the aid was "in effect a tax *credit*," 350 F. Supp., at 672 (emphasis in original). Because of the peculiar nature of the benefit allowed, it is difficult to adopt any single traditional label lifted from the law of income taxation. It is, at least in its form, a tax deduction since it is an amount subtracted from adjusted gross income, prior to computation of the tax due. Its effect, as the District Court concluded, is more like that of a tax credit since the deduction is not related to the amount actually spent for tuition and is apparently designed to yield a predetermined amount of tax "forgiveness" in exchange for performing a specific act which the State desires to encourage—the usual attribute of a tax credit. We see no reason to select one label over another, as the constitutionality of this hybrid benefit does not turn in any event on the label we accord it. As MR. CHIEF JUSTICE BURGER's opinion for the Court in *Lemon v. Kurtzman*, 403 U. S., at 614, notes, constitu-

One factor of returning significance in this weighing process is the potentially divisive political effect of an aid program. As Mr. Justice Black's opinion in *Eisen*

Opinion of the Court

413 U.S.

v. Board of Education, supra, emphasizes, competition among religious sects for political and religious supremacy has occasioned considerable civil strife, "generated in large part" by competing efforts to gain or maintain the support of government. 330 U. S., at 8-9. As Mr. Justice Harlan put it, "[w]hat is at stake as a matter of policy [in Establishment Clause cases] is preventing that kind and degree of government involvement in religious life that, as history teaches us, is apt to lead to strife and frequently strain a political system to the breaking point." *Walz v. Tax Comm'n*, 397 U. S., at 694 (separate opinion).

The Court recently addressed this issue specifically and fully in *Lemon v. Kurtzman*. After describing the political activity and bitter differences likely to result from the state programs there involved, the Court said:

"The potential for political divisiveness related to religious belief and practice is aggravated in these two statutory programs by the need for continuing annual appropriations and the likelihood of larger and larger demands as costs and populations grow." 403 U. S., at 623.⁵⁴

The language of the Court applies with peculiar force to the New York statute now before us. Section 1 (grants for maintenance) and § 2 (tuition grants) will require continuing annual appropriations. Sections 3, 4, and 5 (income tax relief) will not necessarily require

⁵⁴ The Court in *Lemon* further emphasized that political division along religious lines is to be contrasted with the political diversity expected in a democratic society: "Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. Freund, Comment, Public Aid to Parochial Schools, 82 Harv. L. Rev. 1680, 1692 (1969)." 403 U. S., at 622.

S
A
M

School Administrators of Montana

501 North Sanders
Helena, MT 59601
(406) 442-2510

March 26, 1981

To: Ken Nordtvedt, Chairman
House Taxation Committee
From: Jesse W. Long, Exec. Secr.
School Administrators of Montana
Re: SB 457 An act to allow an income tax credit for
charitable contributions to a non profit corporation,
fund foundation, trust or association organized and
operated exclusively for the benefit of non profit
institutions of higher learning or private institutions
of secondary education.

The School Administrators of Montana is a professional association representing district superintendents, secondary principals, elementary principals and county superintendents. The School Administrators of Montana beleives that SB 457 will reduce the financial support avaiable to public schools, therefore they oppose this tax credit legislation.

The tax credit proposal(SB457) is a major new direction in policy for Montana. The state cannot afford to take this step if the quality of education is endangered. The state's duty to the public is to provide public schools. The duty of the state to the private or church schools is to leave them alone. Now comes SB 457 and the duty to leave the private schools alone is suddenly inverted to the duty to provide for them. The tax credit is not only bad policy, it is patently unconstitutional, flying in the face of Article X Section 6 (1) of the Montana Constitution. The Montana Constitution plainly states that "The legislature counties, cities, towns, school districts and public corporations shall not make any direct or indirect appropriations or payments form any public fund or monies or any grant of lands or other property for any sectarian purpose or to any church, school, academy, seminary, college, university or other literary or scientific institution controlled in whole or part by any church, sect or denomination."

Given the tax rebellion, the costly mandated federal and the enrollment decline school administrators consider their survival to be at stake. The tax credit could easily reduce the income tax revenue by \$5,000,000. Lets assume 100,000 taxpayers in Montana each contribute \$50. After all there are approximately 176,000 church members in the eight larger denominations in Montana and certainly each of them would be encouraged to "donate" to the appropriate institution.



OFFICE OF PUBLIC INSTRUCTION

STATE CAPITOL
HELENA, MONTANA 59601
(406) 449-3095

Ed Argenbright
Superintendent

March 25, 1981

To: Representative Ken Nordtvedt, Chairman
House Taxation Committee

From: Alve Thomas, Deputy Superintendent
Office of Public Instruction

A handwritten signature in cursive script that reads "Alve Thomas".

Re: Senate Bill #457

The Office of Public Instruction opposes the tax credit bill for private secondary schools for the following reasons:

1. Montana public school foundation program presently receives 25% of individual income taxes and 25% of corporation income tax revenues. This bill would reduce the total amount received and the tax credit would go to private schools.

Under present tax laws all other contributions to nonprofit institutions are considered as deductions. This legislation would grant a tax credit.

2. Senate Bill 457 requires that a school be accredited to be eligible for tax credit. Consequently, the tax credit would not be distributed equitably as only ten private secondary schools would meet this requirement. Under the provisions of this bill only those donating to private accredited secondary schools or schools of higher education would be eligible for the tax credit.

The ten private secondary schools that now are accredited by the Board are all sponsored by a religious denomination. We question the constitutionality of granting a tax credit for the benefit of a sectarian school.

Article X Section 6 of the Montana constitution states "(1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination."

We believe that private schools are a very necessary part of the educational offerings of this state and should continue to exist and offer an alternative to public education. We further believe that those who choose to send their children to private elementary or secondary schools or to donate to private institutions should be willing to pay for that cost.

/dkk

WITNESS STATEMENT

NAME Dr E. L. Lynn BILL No. 457

ADDRESS Helena DATE 3-26

WHOM DO YOU REPRESENT Self

SUPPORT _____ OPPOSE ☒ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: wish to Testify

EVERETT L. LYNN, DDS.

1400 - 8th Avenue

Helena, Montana

OBJECTIONS TO SB 457

I am opposed to SB 457 for a number of reasons. They are as follows:

ERODES THE TAX BASE: Some tax credit facts bear repeating. The tax credit is a concept of tax abatement entirely different from the various items of deduction currently allowed in reckoning income tax. An entire tax credit would be removed from state income tax obligation. If a contributor to the proposed charity pays the money for a private purpose, he receives the equivalent of a check from the state according to the terms of the bill. Thus we have the same net tax situation whether the state pays the money to an individual or corporation, or the individual or corporation being excused from paying the money to the state. In the end, the State of Montana general funding is depleted in a yet undetermined amount so that individuals and corporations may fund one of their charities. Who then would make up the sums transferred to these institutions from the State of Montana? Those subjected to an additional tax burden to carry out such a proposal would be the general taxpayer.

POTENTIAL FOR ESCALATION: Legislation such as this has a potential for escalation. Who is to say that at the next Legislative session the tax credits proposed could not be increased from (for example) \$50 to \$250 for individuals and from \$500 to \$1,000 for corporations? Once the concept of tax credits is opened up there is no closing it. There will be tax credits sought for this and that -- all worthy causes.

AN ANALYSIS OF PROPOSED TAX CREDIT BENEFITS UNDER SB 457

The tax credit proposal under consideration at this hearing has a shape and a purpose. The shape is that of a cash advantage for individuals or corporations that contribute to public and (or) private institutions of higher learning or to elementary and secondary private and parochial schools. The purpose is to provide a state subsidy to these institutions. Obviously, the State has already fulfilled its obligation to the University System of the State of Montana. As SB 457 makes no exclusion of tax credits for private colleges or schools with a sectarian purpose, it must be assumed that religiously oriented institutions may benefit from the proposal.

DESTINATION OF THE TAX CREDIT

By terms of SB 457, the destination of the tax credit amounts are already stated. In the cases of the private colleges, or private elementary and secondary schools with a religious purpose, we find ourselves in a situation potentially involving a thicket of constitutional, social and religious issues. Being proposed is a law respecting religion and quite likely respecting establishment of religion.

OBJECTIONS TO SB 457

One of the substances and directions of SB 457 is to transfer what is legitimately public moneys to denominational colleges and elementary and secondary parochial schools. One of the potential ultimate effects of the scheme would be to aid religious enterprises. This is barred by the Establishment Clause of the First Amendment. What better way to establish a church than to finance its schools? The Establishment Clause of the First Amendment as interpreted by Justice Black in Everson v. Board of Education 1947 states in part:

"No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion...."

The 1972 Montana Constitution is very specific in barring aid to religious institutions and also to private individuals or corporations.

Article V, Section 11, Paragraph (5) states:

"No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under the control of the state."

Article X, Section 6, Paragraph (1) states: (underlining mine)

"The Legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose to to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination."

PUBLIC UTILITIES ISSUE

The issue of whether charitable contributions are to be charged to the customers or passed on to the shareholders of a public utility corporation is not new. But SB 457 does raise this issue. The Montana Constitution is quite specific as to what not only the Legislature and the public corporations may do in these cases. The Courts of Law have consistently stated that a Legislature cannot circumvent an express provision of the Constitution by doing indirectly what it may not do directly.

Re Pacific Northwest Bell Tel. Co., 100 PUR 3d 82, 90 (Ore. 1973) states:

That which is involuntarily removed from the telephone subscribers' pockets is more akin to a tax than a charitable contribution. Pacific Northwest Bell Telephone Company is a monopoly and the subscribers cannot go elsewhere for service.

COURT AND COMMISSION RULINGS (PLEASE SEE PAGE 3)

I urge the committee to consider these statements and to vote "Do Not Pass".

Everett L. Lynn, D.D.S.

PAGE 3

OBJECTIONS TO SB 457

THE CONSTITUTIONAL QUESTION: COURT AND COMMISSION RULINGS

U. S. SUPREME COURT affirmed a February 1974 three judge federal court decision in California, Franchise Tax Board v. United Americans which barred state income tax credits to aid religious schools.

COMMISSION RULINGS DISALLOWING CHARITABLE CONTRIBUTIONS:

Re Mountain States Tel. and Tel. Co., 78 PUR 3d 429, 440 (Utah 1969)
Re Wisconsin Tel. Co., 84 PUR 3d 50, 53 (Wis. 1970)
Re Mountain States Tel. and Tel. Co., 94 PUR 3d 263, 288 (Ariz.) 1972
Re Mountain States Tel. and Tel. Co., 96 PUR 3d 321 (Colo. 1972)
Re Southern Union Gas Co., 12 PUR 4th 219, 228 (N. M. 1975)
Bainbridge Motor Co. v. General Tel. Co. of Pa., 12 PUR 4th 416, 423 (Pa. 1975)
Re Hawaii Elec. Co., 13 PUR 4th 329, 333 (Hawaii 1976)
Re Pacific Northwest Bell Tel. Co., 100 PUR 3d 32, 90 (Ore. 1973)

State of Washington Supreme Court

Re Supreme Court N. 44800 - Frank M. Jewell, et al. v. Utilities and Transportation Commission, et al. Superior Court No. 1814 409

The Washington Supreme Court struck down the "invisible tax for religion" on the narrow grounds that the public utility commission exceeded its statutory authority and acted in an "arbitrary and capricious" manner.

WITNESS STATEMENT

NAME Lisa S. Toure BILL No. CB 457
ADDRESS Box 182, Goodline DATE 2/26/81
WHOM DO YOU REPRESENT MONT. PARENT Teacher Assn.
SUPPORT _____ OPPOSE L AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:



MONTANA STATE FEDERATION OF TEACHERS

AMERICAN FEDERATION OF TEACHERS
AFL-CIO



P.O. Box 1246

Helena, Montana 59601

(406) 442-2123



TESTIMONY ON SB 457

Mr. Chairman and Members of the Committee:

I am Shauna Thomas representing the Montana Federation of Teachers, AFT, AFL-CIO. We are opposed to this bill.

This is a bill to benefit approximately 5% of Montana's population at the expense of all taxpayers. If this bill were to become law it would shift the tax burden. At the state level it would increase individual income taxes paid by many to make up for this credit for very few. By encouraging through tax credit attendance at private schools, this bill will deepen the problem already being suffered in our public schools -- declining enrollment. As enrollments decline gradually and unpredictably, so do state revenues from the Foundation Program. Hence a shift of the tax burden to local property taxpayers.

The purpose of education is to prepare people to be productive members of the society. The responsibilities and rights of living in a free and democratic society are taught in public schools. There is no guarantee that this same philosophy will be taught in private schools. Particularly if they owe an allegiance to a corporate body for large donations.

The State has a mandate to provide free public schools. It is beyond the scope of state government to provide assistance to private schools in direct competition with the State's own public school system. The State can require its system to be accountable. But it doesn't even have enough information on private school attendance to enforce attendance laws.

As you can see, there are numerous negative implications to this bill. Please don't make it law in Montana.

VISITORS' REGISTER

HOUSE Taxation COMMITTEE

BILL SB 42
SPONSOR S. Brown

Date 3/26/81

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS


• Missoula County Courthouse • Missoula, Montana 59801

(406) 721-5700

March 24, 1981

BCC-81-268

TO: MEMBERS OF THE HOUSE TAXATION COMMITTEE

FROM: Howard Schwartz, Chief of Staff - Missoula County 

RE: S.B. 42

Unpaid taxes are a serious problem in Montana. Counties are finding themselves unable to meet budget commitments and are threatened with cutbacks even in essential services. What has not been stressed is that tax delinquencies rise dramatically with the size of the tax bill. As you can see from the enclosed chart, taxpayers with the largest bills are the ones who are less likely to pay their taxes. From 1979 to 1980, tax delinquencies among people with small tax bills increased hardly at all, while delinquencies among large taxpayers skyrocketed.

The following figures stand out:

- 47% of all unpaid 1980 taxes are owed by 2% of the taxpayers;
- Delinquencies on the smallest tax bills increased by 33% from 1979-1980, while delinquencies on the largest increased by 400%.

To be sure, bad economic conditions and increased tax appeals are part of the problem; but it is clear from the figures that taxpayers with large bills are benefitting disproportionately from the dragged-out appeals process. It should be noted that the Missoula figures for unpaid taxes do not include taxes paid under protest. Taxes paid under protest have also increased in 1980 over 1979; but since these taxes can be distributed relatively quickly, the burden on the County is not as great as outright non-payment. According to the information available to our Treasurer, State Tax Appeals Board Stay Orders have not increased greatly in 1980 compared to 1979. This means that virtually all of the unpaid taxes for the first half of 1980--about \$4.5 million--are from people who, for one reason or another, have chosen not to pay their taxes. If that is the case, then raising the penalty rate high enough to make it unprofitable to withhold tax payments should help the Counties' difficult cash-flow situation.

There is now considerable evidence that many tax delinquents are investing their money in the money market and elsewhere. The Billings Gazette has documented this. One Missoula developer owes \$150,000 in taxes from 1978-

1980. Raising the penalty to 5/6% per month as S.B. 42 does will help. Raising the penalty to 1% as S.B. 42 originally proposed would help even more.

HS:11

Enclosure

cc: Missoula Board of County Commissioners
All Missoula Representatives

ANALYSIS OF MISSOULA COUNTY UNPAID REAL PROPERTY TAXES

Size of Tax Bill	Approx. % of Bills in Size Range	% of Total Taxes Due	% of Total Unpaid Taxes 1979	% of Taxes Unpaid 1979	1980
\$0-499	65	24	23	12	16
500-1000	20	22	15	3	17
1000-1999	10	12	17	5	31
2000-2999	2	4	6	8	30
3000-3999	1	2	3	5	32
4000+	2	35	35	10	42
	100	99	99		100

NOTES: (1) Totals do not always add up to 100% because of rounding.

(2) 1979 figures are for the whole year; 1980 figures for the first half.

STANDING COMMITTEE REPORT

.....April 1.....19 81

MR. SPEAKER.....

We, your committee on TAXATION.....

having had under consideration SENATE Bill No. 42.....

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE PENALTY FOR DELINQUENT PROPERTY TAX PAYMENT FROM 2/3 OF 1 PERCENT PER MONTH TO 5/6 OF 1 PERCENT PER MONTH; AMENDING SECTIONS 15-16-101, 15-16-102, AND 15-17-303, MCA; AND PROVIDING AN APPLICABILITY DATE."

Respectfully report as follows: That.....SENATE Bill No. 42.....

BE CONCURRED IN

DO PASS.

STANDING COMMITTEE REPORT

April 10, 1931

MR. SPEAKER

TAXATION

We, your committee on

having had under consideration SENATE Bill No. 192

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE A GRADUATED TAX ON PROPERTY FOR CERTAIN LOW INCOME AND ELDERLY PERSONS AND TO ADJUST UPWARD CERTAIN INCOME QUALIFICATIONS FOR ASSESSMENT OF PROPERTY TAX; AMENDING SECTIONS 15-6-134, 15-6-135, AND 15-6-211, MCA."

Respectfully report as follows: That SENATE Bill No. 192, third reading (blue), be amended as follows:

1. Page 3, line 9.
Following: "\$5,000"
Strike: "0"
Insert: "158"

AND AS AMENDED
BE CONCURRED IN

DD:PASSY

STANDING COMMITTEE REPORT

April 10, 1951

MR. SPEAKER

We, your committee on TAXATION

having had under consideration SENATE Bill No. 322

A BILL FOR AN ACT ENTITLED: "AN ACT TO STIMULATE THE PRODUCTION AND USE OF ORGANIC FERTILIZER AND SOIL AMENDMENTS IN MONTANA BY PROVIDING TAX INCENTIVES AND REQUIRING USE OF SUCH FERTILIZER AND SOIL AMENDMENTS IN CERTAIN INSTANCES: AMENDING SECTIONS 15-6-135, 15-30-121, AND 15-31-114, MCA."

Respectfully report as follows: That SENATE Bill No. 322, third reading (blue), be amended as follows:

1. Page 3, line 10.
Following: "Montana"
Insert: "if the expenditure was not otherwise deducted in computing taxable income."
2. Page 8, line 14.
Following: "3]"
Insert: "which was not otherwise deducted in computing taxable income"
3. Page 8, line 15 through line 16 on page 13.
Following: line 14 on page 8
Strike: Section 5 in its entirety

AND AS AMENDED
BE CONCURRED IN
DO PASS

STANDING COMMITTEE REPORT

March 31, 1961

MR. **SPEAKER**

We, your committee on **TAXATION**

having had under consideration **SENATE** Bill No. **457**

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW AN INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS TO A NONPROFIT CORPORATION, FUND, FOUNDATION, TRUST, OR ASSOCIATION ORGANIZED AND OPERATED EXCLUSIVELY FOR THE BENEFIT OF NONPROFIT INSTITUTIONS OF HIGHER LEARNING OR NONPROFIT PRIVATE INSTITUTIONS OF ELEMENTARY-OR SECONDARY EDUCATION."

Respectfully report as follows: That **SENATE** Bill No. **457**,
third reading (blue), be amended as follows:

1. Title, line 9.

Following: "PRIVATE"

Insert: "OR PUBLIC"

2. Page 1, line 23.

Following: "private"

Insert: "or public"

3. Page 2, line 11.

Following: "less."

Insert: "However, corporations regulated by the public service commission are not eligible for a tax credit under this section."

AND AS AMENDED

BE NOT CONCURRED IN

~~DO PASS~~

STANDING COMMITTEE REPORT

April 1

21

19.....

MR.**SPEAKER**.....

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

having had under consideration**HOUSE**..... Bill No.**852**.....

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE GROSS VEHICLE WEIGHT FEES ON CERTAIN VEHICLES, AMENDING SECTIONS 61-10-201 THROUGH 61-10-203, 61-10-207, 61-10-208, AND 61-10-211, MCA."

Respectfully report as follows: That.....**HOUSE**..... Bill No.**852**.....

DO NOT PASS

~~DO NOT PASS~~