

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 19, 1981

The 31st meeting of the committee was called to order at 7:30 a.m. in Room 415 of the State Capitol Building, Chairman Pat Goodover presiding.

ROLL CALL: All members were present.

The first order of business was executive action on Senate Bill 461. The main problems are how to issue more licenses to areas who need them and still keep value on present licenses. Also, floater language needs clarification.

There was discussion of amendment language. Sen. Norman made a motion that 30% be changed to 33% on page 4, line 10. The motion passed with Sen. Towe dissenting. Sen. Manley made a motion to delete paragraph (c) in its entirety on page 5, line 3. The motion carried with Senators B. Brown and Towe dissenting. Sen. McCallum moved to strike section 2 in its entirety and renumber. The vote was unanimously in favor of this motion. Senator Severson moved the bill be given a DO PASS, as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 361:

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

Sen. Lee said the bill allows a corporation doing business in Montana, if they elect to be a DISC, to utilize this on their state corporate income tax. This gives businesses opting to operate in Montana the same footing they would have in other states. At this time the bill would affect very few businesses in the state, but this would be an incentive to entice some businesses to Montana. Bordering Canada would pave the way where warehousing might be possible here. He felt a DISC program would allow them to continue to service their accounts that are already in existence and not be penalized.

PROPOSERS:

Janelle Fallon, Montana Chamber of Commerce; Sen. Goodover, who felt that we have examples of DISC-type industries in the state and removing the tax would allow more competition; Sen. Dorothy Eck who said we ought to start shifting corporation tax from corporations to the shareholders.

There were no opponents, so questions were called from the committee.

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Sen. Elliott in asking about administration of DISC's was told this bill would disallow the consolidation of the DISC with the parent corporation. Also, a single audit team goes in and the results are shared by all states in which these corporations do business. Since Montana would end up with a diverse treatment of DISC, we might not be able to participate. Most relief would go to out-of-state corporations.

Ellen Feaver said the assumption in most multi-state compact audits is that treatment of DISCS should be similar, especially with consolidated or non-consolidated returns. DOR would have to do the auditing for DISCS themselves and would not be consolidated with the parent activity.

Sen. Lee closed by saying that this bill provides an incentive for new manufacturing in the state. He said it was not the meaning of the bill to offer any differential incentive more than the federal government, which is 50%, and that he would be agreeable to amendment. Sen. Elliott felt the point is that the tax is developed, and then being exempted. He said he would do some research on it. The hearing was closed on Senate Bill 361.

CONSIDERATION OF SENATE BILL 372:

"AN ACT TO ALLOW LOCAL GOVERNMENTS TO REDUCE THE PROPERTY TAX VALUATION OF PROPERTY OF NEW BUSINESSES IF SUCH REDUCTION WILL BE BENEFICIAL TO THE LOCAL ECONOMY."

Sen. Jan Johnson, District 49, felt this bill puts decision-making responsibility at the local government level so they can control how they help themselves. Several companies have attempted to use industrial revenue bonds, and she felt this questionable because it could put government in direct competition with private lending institutions. She further felt that taxing power of local governments is exclusive and is the appropriate tool for doing this.

PROPOSERS:

J. Wolf, budget director from Silver Bow County, thought it would be good if local government did have flexibility in trying to attract new business in their communities. He questioned page 2 where it says that a business that has had a change in name or ownership would not be eligible for a reduction.

Sen. Johnson closed saying the big difference between this bill and tax incentive districts is that the bill does not create a new district and gives local government the power to deal with one business at a time. She said the bill is aimed at bringing city and county governments closer together and she would not be opposed to city having the say in the city limits and the county outside the limits.

Sen. Crippen felt eliminating the business inventories tax would be a step toward accomplishing what Sen. Johnson wanted to do. The hearing was closed on Senate Bill 372.

DISPOSITION OF SENATE BILL 53:

Sen. Norman moved that SB 53 be given a DO NOT PASS. The vote was in favor of the motion with Senators Elliott and Crippen dissenting.

DISPOSITION OF SENATE BILL 17:

Amendments to SB 17 were approved on the 30th of January, but the sub-committee didn't address Sen. Crippen's concern about payment under protest.

Sen. Towe said he would like to see it made clear that if you do take an appeal to STAB and the appeal is pending when tax time comes the appeal is enough so that you won't have to pay second half taxes. He requested that Cort address that. The question arose about large taxpayers who might protest--say Burlington Northern and Montana Power Company. Dennis Burr felt they would be keeping revenue that would be held by the local governing body earning interest. Cort was asked to draft a simple amendment saying that in the event an appeal of the tax is before STAB at the time of the normal payment date that the tax need not be paid under protest provided once a final decision is made, after all appeals, the tax must be paid with interest as provided.

DISPOSITION OF SENATE BILL 210:

Amendment language was discussed. SB 210 is similar to 107 except the remedy is different. Sen. Towe moved SB 210 be given a DO PASS, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 6:

Sen. Towe moved that SB 6 be tabled. The motion passed unanimously.

DISPOSITION OF SENATE BILL 20:

Sen. Towe said at the courtesy of the chairman of the committee this bill was not reported out of committee until the committee liquor bill could be drafted. Sen. Towe moved to reconsider action taken on SB 20 on Jan. 27 and subsequent to that motion, moved to table it. The motion carried with Senators Manley and Goodover dissenting.

DISCUSSION OF SENATE BILL 183:

Discussion revealed that there was a problem with application so Sen. Towe and Cort were going to look this bill over today and come up with something tomorrow.

DISPOSITION OF SENATE BILL 107:

A motion was made that SB 107 be given a DO PASS, as amended. The vote was unanimously in favor of the motion.

The meeting adjourned at 10:00 a.m.

Ratny Soodman

ROLL CALL

TAXATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 2/19/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat M., Chairman	✓		
McCallum, George, Vice	✓		
Brown, Bob	✓		
Brown, Steve	✓		
Crippen, Bruce D.	✓		
Eck, Dorothy	✓		
Elliott, Roger H.	✓		
Hager, Tom	✓		
Healy, John E. "Jack"	✓		
Manley, John E.	✓		
Norman, Bill	✓		
Ochsner, J. Donald	✓		
Severson, Elmer D.	✓		
Towe, Thomas E.	✓		

Each day attach to minutes.

DATE

2-19-81

COMMITTEE ON

TAXATION

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
FRIL STROPE	MTA	SB461	AMEN	
D. W. Ligon	MTA			
Robert Bell	MTA	SB461		
Bob Durkee	MTA			
David Durkee	MTA			
Jim Benton				
William H. Hinton	MTA			
Sam H. Hinton	MTA	1	✓	
Paul K. Hinton	MTA		✓	
Bob Hinton	MTA			
J. Way	Bette Silverman	372	✓	

AN OVERVIEW OF A DOMESTIC
INTERNATIONAL SALES CORPORATION (DISC)DISC in a nutshell

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

Requirements of a DISC

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

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

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

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

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

SENATE COMMITTEE TAXATION

Date 2/19/81 Senate Bill No. 461 Time 7:55 a.m.

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)	✓	
SEN. BOB BROWN	✓	
SEN. STEVE BROWN	✓	
SEN. CRIPPEN	✓	
SEN. ECK	✓	
SEN. ELLIOTT	✓	
SEN. HAGER	✓	
SEN. HEALY	✓	
SEN. MANLEY	✓	
SEN. NORMAN	✓	
SEN. OCHSNER	✓	
SEN. SEVERSON	✓	
SEN. TOWE		✓
SEN. GOODOVER (CHAIRMAN)	✓	

Betty Dean
Secretary

Pat M. Goodover
Chairman

Motion: Sen. Norman moved that an amendment
be made changing 30% to 33% on page 4,
line 10.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE TAXATION

Date 2/19/81 Senate Bill No. 461 Time 7:59

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)	✓	
SEN. BOB BROWN		✓
SEN. STEVE BROWN	✓	
SEN. CRIPPEN	✓	
SEN. ECK	✓	
SEN. ELLIOTT	✓	
SEN. HAGER	✓	
SEN. HEALY	✓	
SEN. MANLEY	✓	
SEN. NORMAN	✓	
SEN. OCHSNER	✓	
SEN. SEVERSON	✓	
SEN. TOWE		✓
SEN. GOODOVER (CHAIRMAN)	✓	
	12	2

Betty Dean

Secretary

Pat M. Goodover

Chairman

Motion: made to delete sub-section (c) on
page 5.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 19 1981

MR. President

We, your committee on Taxation

having had under consideration Senate Bill No. 53

Respectfully report as follows: That Senate Bill No. 53

DO NOT PASS

~~DO NOT PASS~~ 4/6

Senator Pat M. Goodover
Chairman.

SENATE COMMITTEE TAXATION

Date 2/19/81 Senate Bill No. 53 Time _____

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)	✓	
SEN. BOB BROWN	✓	
SEN. STEVE BROWN	✓	
SEN. CRIPPEN		✓
SEN. ECK	✓	
SEN. ELLIOTT		✓
SEN. HAGER	✓	
SEN. HEALY	✓	
SEN. MANLEY	✓	
SEN. NORMAN	✓	
SEN. OCHSNER	✓	
SEN. SEVERSON	✓	
SEN. TOWE	✓	
SEN. GOODOVER (CHAIRMAN)	✓	

Betty Dean
Secretary
Motion: _____

Pat M. Goodover
Chairman

Sen. Norman made motion that SB 53
do not pass.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 19

81

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MR. **PRESIDENT:**

We, your committee on **TAXATION**

having had under consideration **Senate** Bill No. **210**

Respectfully report as follows: That **Senate** Bill No. **210**
be amended, as follows:

1. Title, line 5.
Following: "PROCEDURES"
Strike: "BEFORE THE STATE"
2. Amend title, line 6.
Following: line 5
Strike: "TAX APPEAL BOARD"
Insert: "IN THE DISTRICT COURT"
3. Page 1, lines 12 through line 25.
Following: line 11
Strike: lines 12 through 25 in their entirety.

XXXXXX
DO PASS

(CONTINUED)

4. Page 2

Strike: line 1

Insert: "NEW SECTION. Section 1. Challenge to assessment rules or procedures. (1) An aggrieved taxpayer may, in lieu of proceeding under Title 15, chapter 15, part 1, bring a declaratory judgment action in the district court seeking a declaration that a method or procedure of assessment of property adopted or utilized by the department of revenue is illegal or improper.

NEW SECTION. Section 2. Procedure. (1) Except as provided in subsection (2), an action pursuant to [section 1] is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under [section 1] may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23; or

(b) the procedure provided for in subsection (3).

(3) (a) A party bringing an action under [section 1] may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) An election to give notice under this subsection does not prevent any party to the action from serving process on other interested parties.

(4) In a proceeding under [section 1] all issues shall be tried by the court.

NEW SECTION. Section 3. Remedy. (1) If the district court determines that the challenged rule or procedure is improper it may direct:

(a) that the assessment be changed for the taxpayer or taxpayers who brought the action as well as all similarly situated taxpayers; or

(b) such other remedy as the court considers appropriate.

(2) The remedy directed by the district court may apply only to taxes imposed during or after the year the rule or procedure is challenged. The remedy may not apply to the application or implementation of the rule or procedure as it applies to taxes imposed in years prior to the challenge under [section 1].

NEW SECTION. Section 4. Tax to be paid. A tax which is based on the rule or procedure being challenged under [section 1] and which becomes due before the final determination of the validity of the rule or procedure must be paid when due as a condition of continuing the action."

Renumber subsequent sections.

(CONTINUED)

5. Page 3, line 20.

Following: "procedure"

Strike: "may be brought only before the state tax appeal"

6. Page 3, line 21.

Following: line 20

Strike: "board"

Insert: "shall apply only to the taxpayer bringing the challenge and
may not apply to all similarly situated taxpayers unless an action
is brought in the district court as provided in [sections 1 through 4]"

7. Page 3, line 22 through line 25.

Following: line 21

Strike: line 22 through 25 in its entirety.

and, as so amended

DO PASS

L.C.

SENATE COMMITTEE

TAXATION

Date 2/19/81 Senate Bill No. 6 Time 9:42 a.m.

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)	✓	
SEN. BOB BROWN	✓	
SEN. STEVE BROWN	✓	
SEN. CRIPPEN	✓	
SEN. ECK	✓	
SEN. ELLIOTT	✓	
SEN. HAGER	✓	
SEN. HEALY	✓	
SEN. MANLEY	✓	
SEN. NORMAN	✓	
SEN. OCHSNER	✓	
SEN. SEVERSON	✓	
SEN. TOWE	✓	
SEN. GOODOVER (CHAIRMAN)	✓	

Betty Dean

Secretary

Motion:

Pat M. Goodover

Chairman

That Senate Bill 6 be tabled - unanimous

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE TAXATION

Date 2/19/81 Senate Bill No. 20 Time 9:45 a.m.

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)	✓	
SEN. BOB BROWN	✓	
SEN. STEVE BROWN	✓	
SEN. CRIPPEN	✓	
SEN. ECK	✓	
SEN. ELLIOTT	✓	
SEN. HAGER	✓	
SEN. HEALY	✓	
SEN. MANLEY		✓
SEN. NORMAN	✓	
SEN. OCHSNER	✓	
SEN. SEVERSON	✓	
SEN. TOWE	✓	
SEN. GOODOVER (CHAIRMAN)		✓

Betty Dean
Secretary
Motion: _____

Pat M. Goodover
Chairman

That SB 20 be tabled.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE TAXATION

Date Senate Bill No. 183 Time 9:55 a.m.

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)		
SEN. BOB BROWN	✓	
SEN. STEVE BROWN	✓	
SEN. CRIPPEN		✓
SEN. ECK		
SEN. ELLIOTT		✓
SEN. HAGER		✓
SEN. HEALY	✓	
SEN. MANLEY	✓	
SEN. NORMAN		✓
SEN. OCHSNER	✓	
SEN. SEVERSON		✓
SEN. TOWE		✓
SEN. GOODOVER (CHAIRMAN)	✓	
	6	6

Betty Dean
Secretary
Motion:

Pat M. Goodover
Chairman

Motion:

5. Brown moved that words "unpaid or" be stricken on page 1, line 23.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 19 31
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MR. ~~XXXXXXXX~~ PRESIDENT:

We, your committee on Taxation

having had under consideration Senate Bill No. 107

Respectfully report as follows: That Senate Bill No. 107
be amended, as follows:

1. Page 1, line 13.
Following: line 12
Strike: lines 13 through 25 in their entirety.

2. Page 2, line 1.
Following: page 1
Strike: lines 1 and 2 on page 2.

3. Page 2
Following: line 2
Insert: "NEW SECTION. Section 1. Alternative remedy. (1) An aggrieved taxpayer may, in lieu of proceeding under 15-1-401 or 15-1-402, bring a declaratory judgment action in the district court seeking a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

XX: XX: X
DO PASS

(CONTINUED)

(2) The action must be brought within 90 days of the imposition of the tax. The court shall consolidate all actions brought under subsection (1) which challenge the same tax levy. The decision of the court shall apply to all similarly situated taxpayers except those taxpayers who are excluded under [section 7].

NEW SECTION. Section 2. Procedure. (1) Except as provided in subsection (2), an action pursuant to [section 1] is subject to the provisions of Title 27, chapter 8.

(2) In lieu of the requirement of 27-8-301, a party bringing an action under [section 1] may elect to use:

(a) the procedures available under the Montana Rules of Civil Procedure for bringing a class action, Title 25, chapter 20, rule 23, or

(b) the procedure provided for in subsection (3).

(3)(a) A party bringing an action under [section 1] may elect to give notice as provided in this subsection. A party so electing must publish notice that an action has been brought. The notice must be published at least once each week for 4 consecutive weeks in a newspaper of general circulation published in the county where the action is commenced and in other counties within the jurisdiction of the taxing authority. The notice shall advise each similarly situated taxpayer that:

(i) the court will exclude him from the class if he so requests by a specific date;

(ii) the judgment, whether favorable or not, will include all similarly situated taxpayers who do not request to be excluded; and

(iii) any similarly situated taxpayer who does not request exclusion may, if he desires, enter an appearance.

(b) an election to give notice under this subsection does not prevent any party to the action from serving process on other interested parties.

(4) In a proceeding under [section 1] all issues shall be tried by the court.

NEW SECTION. Section 3. Remedy. If the district court determines that the tax was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax, the judgment may direct:

(a) that the revenue collected under the illegal tax be directly refunded to the taxpayers who have paid the illegal tax and who have not been excluded from the action;

(b) that the revenue collected under the illegal tax be used to reduce a similar levy in the ensuing tax year; or

(c) such other remedy as the court considers appropriate.

NEW SECTION. Section 4. Tax to be paid. The taxes that are being challenged under [section 1] must be paid when due as a condition of continuing the action."

Renumber subsequent sections.

4. Page 6, line 9.

Following: "Section 1"

Insert: "through 4"

5. Page 6, line 12.

Following: "section 1"

Insert: "through 4"

And, as so amended,
DO PASS