

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 6, 1981

The 39th meeting of the committee was called to order at 8:05 a.m. in Room 415 of the State Capitol Building, Chairman Pat Goodover presiding.

ROLL CALL: All members were present except for Senator Steve Brown.

CONSIDERATION OF HOUSE BILL 462:

"AN ACT TO CLARIFY THE LAWS RELATING TO DISASTER AND EMERGENCY SERVICES EXPENDITURES AND THE LOCAL EMERGENCY LEVY; AMENDING SECTIONS 10-3-311 AND 10-3-405, MCA."

Representative Seifert, District 26, sponsored the bill on behalf of civil defense, to clarify laws relating to disaster services. The only changes are on page 2, line 4, "in the affected fund" and lines 17-19 "governing body of the". The reason is because of different types of local government. Rep. Seifert called on Larry D'Arcy, Department of Administration Deputy Director. He said the first amendment was inserted on the recommendation of local government services who audit cities and towns. If language were not there we would have to take a look at all revenues in the county, and only the road fund and bridge funds were the ones they wanted looked at. The second language was put in because, since consolidation has come along, we felt it would clean up the language.

PROPONENTS: Mike Stephens, Montana Association of Counties; Dan Mizner, Montana League of Cities and Towns, and C. L. Gilbertson, Disaster and Emergency Services.

Representative Seifert closed by saying this bill will not increase any budget. \$750,000 is involved in a biennium; only once were all funds used when there was a severe winter storm.

The hearing was closed on House Bill 462.

CONSIDERATION OF HOUSE BILL 92:

"AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO MODIFY THE PERCENTAGE MULTIPLIER USED IN CONVERTING THE MARKET VALUE OF RAILROAD PROPERTY TO TAXABLE VALUE IN ORDER TO ACHIEVE COMPLIANCE WITH THE REQUIREMENTS OF THE FEDERAL RAILROAD REVITALIZATION AND REGULATORY REFORM ACT; AMENDING SECTIONS 15-6-141 AND 15-23-302, MCA; PROVIDING AN APPLICABILITY DATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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Rep. Asay, Rosebud County, handed out Attachment #1 to the committee. He said the bill was an attempt to keep from happening again what had already happened. This is a tax protest by the railroads and does not deal with the present lawsuit. In February 1976 Congress passed a public law called the 4-R Act. Basically, the law prohibits any state from a) assessing railroad property higher than other industrial or commercial property, b) collecting a tax based on the higher assessment, and c) having a tax rate on railroad transportation property higher than the rate on commercial and industrial property.

The law prohibits two types of actions by the state: 1) valuing the real and personal property of the railroads in such a way that its value in relation to its true market is higher than the ratio of assessed value of other commercial and industrial property to its true market value, and 2) setting a tax rate at a higher rate than the rate for other commercial and industrial property. Counties have been put in a tough situation regarding budgets because of the way the law has been administered.

ELLEN FEAVER: The core of this legislation is to allow the Department of Revenue to comply with the 4-R Act. Our statute throws us into court on an annual basis. We're trying to correct this. We can't put a set percentage in the bill. Two factors must be considered in determining the way railroads are taxed: 1) absolute taxable percentage use, and 2) valuation. The entire railroad is presently valued. Then, the portion of the railroad in Montana is allocated to Montana, and that's the basis we use for taxation. In 1980 Burlington Northern is in court on that valuation. They are saying that not only are we taxing at a bad rate, but their valuation is too high, and that's why the rate needs to be able to float. The suit we are talking about involves six million dollars of an eight-million-dollar tax bill. By county this has a significant effect. Now the protested taxes have been paid into district court. All but about eight counties are affected. Without this legislation, we will be in court every year on the issue. We have an indication that railroads are under-assessed, so we are going to try to determine the salvage level which would be the minimum level at which they should be taxed. It is a costly litigation process, but we have to carry through because stakes are so high. In House hearings, Burlington Northern representatives maintained this would not meet the objectives of the 4-R Act. We can't find any reason why this won't do the job. It will be difficult to set a rate on an annual basis. This bill will provide us the vehicle to use.

DOWLING: Let's forget about the lawsuit. The 4-R Act was enacted by Congress in 1976. Why weren't we here before? Railroads came to the legislature and asked something be done to bring the state into compliance. The Department of Revenue said they came too soon. We came back next session and asked the House to deal with the Act. They said we can beat you--sue us. One of the things Senator Towe has indicated is that he is interested in salvage value. The Sioux line tried to do the same thing. The Supreme Court said

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that is not the proper way of valuing railroads. Railroads are saying the act is there - it isn't a railroad act. The tax situation is what we are involved with. Dr. Weil's testimony was handed out, Attachment #2. The bill before you does not address valuation. If you pass this bill you are building an annual lawsuit by giving the Department of Revenue and railroads room to fight. Please be specific. He passed out proposed amendments, attachment #3, which railroads would like to have considered. The 10% figure is based on average values of commercial and industrial properties during 1980 - there is no magic to it - it could be changed. We don't want to fight with this state, but this bill doesn't do it. Tom Dowling was a proponent on record, with amendments.

Sally Price, Assessors Association, requested favorable consideration for all of the assessors so that it will make their workload much lighter.

OPPONENTS:

There were none. Attention was called to the fiscal note showing a two-million-dollar loss to the counties. When the time comes I will put an amendment to this bill.

Representative Asay closed. There is no desire here to tax the railroads unjustly, but we all want the railroad to pay its fair share in proportion to the business they do. This bill allows the Department of Revenue to conform to the 4-R Act. A 10% rate would tie the state's hands. An immediate effective date is proposed. I think it's important that you realize that the railroad is currently contending it should pay tax at the rate of 2.88%. I have a breakdown on exact figures as to what it is costing each county.

Senator Crippen: Figures used in the proposed amendment are dated 1/27 - were these used in the House? The answer was yes. The Supreme Court in the Sioux case said you must, for centrally assessed properties, take the entire income generated and apportion it among the states. The Sioux felt it was advantageous to use salvage value. They tried to use that and the court said it was an improper method of valuation.

Senator Towe said you are talking about apples and oranges, because what we are talking about is at least salvage value, or an indication of what value should be. It probably should be much higher. What the court was saying is, if the railroad wants to use it, it is not acceptable because it is too low. What we say here is that salvage value is a bottom.

Senator Elliott: I think this bill should be tabled until we look at the coal tax lawsuit. It looks like this is an infringement on the state's right to impose taxes.

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Senator Towe saw two issues 1) whether or not without legislation the tax can be stricken by the court as too high. That's where we are with the coal, and 2) whether Congressional legislation which strikes tax is unconstitutional. It is my opinion that we will probably lose that battle. There is precedent in other areas (banks) for the federal government to come in and say a particular tax cannot be discriminatory. This is probably consistent with that. That's different from Congress coming in and saying that a severance tax cannot be levied.

Senator Towe to Ellen: Would you comment on the amendments?

Ellen Feaver: We believe fixing a rate would be a real mistake. Should we find the valuation was low, we would be locked into taxing railroads less than other commercial properties. I don't have a copy of the amendments at this point.

Senator Towe: Why do you want us to give you the flexibility? Why not just put in 10 - put 10.5 - you do assessment figures and if it's higher that's too bad for the Burlington Northern?

Ellen Feaver: Tax rates change frequently as legislature meets. The other commercial property's market value in comparison to assessed valuation changes on a yearly basis. We only assess every five years so every year that ratio changes. One rate won't end up doing it.

Senator Towe: Under federal law I don't see that you have that flexibility. Can you adjust the tax rate to make up a deficiency in the judgment?

Ellen Feaver: We can adjust the rate to make up the difference. What the 4-R Act gets at is equity for the railroads.

Tom Dowling: He thought you have hit the problem. The bill does not solve the problem.

Senator Towe: Ellen is taking a position we can adjust tax rate to make up the problem with the assessment.

Tom Dowling: You can't do that. First you have no commercial and industrial property rate. My position is that the bill in front of you doesn't solve the problem.

Senator Towe: Let's assume for the moment it is possible for the Department of Revenue to adjust rate and the Department of Revenue doesn't need authority to set the rate. Why doesn't this bill solve the problem?

Senator McCallum to Ellen: From listening to Towe you want authority to be able to appraise and assess the rate so that you can set the dollars out there.

Ellen Feaver: We are asking to tax railroads fairly in comparison with other property. If we adjusted the rate and valuation to arrive at a set dollar amount of tax, we would not be in compliance with the 4-R Act. That Act requires we treat them the same as other property.

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Senator McCallum: Most commercial property is 10.55%?

Don Hoffman: Rate was arrived at 10.55%. This was just a simple average of rates at which commercial and industrial property are taxed.

Tom Dowling: I didn't participate in these trials. I understand that was a negotiated figure. Commercial and industrial are somewhere around 10%; they agreed to 10.55.

Senator Towe to Don Hoffman: You said simple average - you went through all classes and averaged them all and came up with 10%. But that's not realistic. Did you run a weighted average?

Don Hoffman: We tried except when you get to real property and improvements, you cannot identify what's residential and what's commercial - all in one class.

Senator Towe: What's your opinion of the 10.5? Were you satisfied with that settlement?

Hoffman: I would have to say, no, because there was a question not addressed as to whether net proceeds percentages should be in there. It was determined that would have to be decided in court.

Representative Asay: About federal government interfering in state's taxing authority. We do not have a specific class for commercial. If this bill is passed as written you won't be in contradiction.

Senator Hager: I would like to know when you define railroad property if this includes lots that are not part of the right-of-way.

Dowling: It doesn't include anything other than operating stock.

Jack Gribble, Administrator, Property Tax Division: There is a fixed percentage that commercial and industrial properties are taxed at. The fact that they are included with residential doesn't alter the fact. They are taxed at 8.55. Under Montana law, railroads are taxed at 15% market value. We're trying to clarify and meet the 4-R Act recommendations. Let's assume we are assessing commercial properties at 60% and we are assessing railroads at 60% - that would indicate that we are discriminating against the railroads. We don't have the flexibility to address a variance between the ratio we are assessing if we determine that we are assessing railroads closer to market value than we are other commercial property. We won't comply with the 4-R Act if we are bound by the fixed percentage.

Senator Towe to Ellen: Suppose we were to aim the bill to simply read that rather than giving you authority to set the percentage, the percentage would be set. Then the assessment would be set by you as you determine commercial and industrial property assessments, and then you would have your authority to set a fair figure. Why do you need extra flexibility?

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Ellen: Because assessment is set annually on the unitary method. I don't think we can make that amount go up and down.

Senator Towe: Are we bound to the unitary method by statute?

Ellen: No.

Senator Towe: I would like to know where it says that you can change the rate to make up an error in the assessments.

Ellen: As soon as McCarter gets back, I'll have him explain.

CONSIDERATION OF HOUSE BILL 63:

"AN ACT TO EXEMPT FROM INCOME TAXATION PRIVATE OR CORPORATE RETIREMENT BENEFITS NOT IN EXCESS OF A CERTAIN AMOUNT; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN EFFECTIVE DATE."

Representative Moore, District 41, said the state income tax exemptions have been laid aside for all people in the PERS, Highway Patrol, Teacher's Retirement, etc. Also, people who draw retirement and pay taxes on a pension have an exemption not in excess of \$3,600 on their pay. This bill provides the \$3,600 received as annuity, pension, or endowment under any private or corporate retirement plan or system, except those received under a defined compensation program, an individual retirement account, or any similar program in which contributions made by an individual are tax exempt when first made receive the same break as all other retirees.

PROPONENTS:

Jim Jensen, representing Low Income Senior Citizens; Jim Hughes, representing Mountain Bell.

Sen. Crippen said a Mr. Shore wanted to go on record in support.

OPPONENTS:

Ed Sheehy, representing NARFE. Mr. Sheehy said he understood from Representative Moore's statement that he asked the Department of Revenue to rewrite section (c) of the bill. One word gave him a problem - the word is "defined." He wondered if it might not mean "deferred." He also wondered about the words corporate and private. See his attachment #4. Mr. Sheehy felt the bill did not go far enough and that the exemption should be an amendment to bring exemption to \$6,600. Future legislators may wish to tax benefits now fully exempted. The ceiling set by this legislature might be the ceiling for the future. We have 4,764 regular federal retirees in the state of Montana who receive benefits based on their employment. Just considering those people they brought into the state \$3,612,000 in October of 1979. In April 1 of this year the same retirees will bring into the state \$4,606,000. The state is reducing the COLA adjustment by taxing these benefits. He hoped this bill would be aimed to a higher amount and passed.

Helen Haegele --- read a letter from Tom Ryan, Attachment #5.

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Rep. Moore closed. He said he thought no more than \$3,600 should be the amount as it is comparable to those who are retired under federal retirement. He only asked for an even break. This bill just has to do with the private sector--they are just asking for the same break public and federal employees get.

CRIPPEN: You said you want them to get the same break. Federal employees get a \$3,600 break. It would seem public employees are fully tax exempt.

MOORE: PERS, Highway Patrol, Teachers Retirement, and game wardens are fully tax exempt and pay no state income tax from their pensions.

CRIPPEN: I support your concern that the bill would have very little chance of passing if these were incorporated.

MOORE: Thirty-six hundred dollars was exempted for federal and military service organization. We are just trying to ensure that the private sector gets the same break as them.

CRIPPEN TO FEAVER: She said she would say the Department of Revenue had not prepared the fiscal note because their name was not there.

MOORE: Estimates (fiscal note) have varied from \$400,000 to 1.2 million. It isn't known how many people would qualify. Rules would have to be set up in the Department of Revenue as to who might qualify.

The hearing was closed on House Bill 63.

DISPOSITION OF SENATE BILL 291:

Sen. McCallum said SB 291 is recommended to the full committee as a DO PASS. Bruce Crippen moved the amendments to SB 291. The motion carried unanimously. It was moved to give a DO PASS, as amended, on SB 291. All voted aye, except for Senator Norman.

DISPOSITION OF SENATE BILL 292:

The subcommittee recommended that Senate Bill 292 be given a DO PASS, as amended. Sen. McCallum moved the amendments and the vote was unanimously carried. Sen. McCallum then moved that Senate Bill 292 be given a DO PASS, as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 383:

Cort responded to an earlier question regarding SB 383 saying that the difference is between protest and petition. For a RSID you need 60% before RSID can be formed, but to protest a SID you need 50%.

NORMAN: They aren't comparable because the county commissioners cannot enact a RSID. They have to get 60% to come and ask, but the city council with 15% can get a petition. At least this brings us up to some sort of equality.

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DISPOSITION OF SENATE BILL 358:

The subcommittee's recommendation to the full committee is that Senate Bill 358 DO NOT PASS. Senator Crippen recommended a DO NOT PASS for Senate Bill 358. The motion carried unanimously.

DISPOSITION OF SENATE BILL 447:

Subcommittee recommended that Senate Bill 447 be given a DO NOT PASS. Senator Manley wanted to remind committee that he and Senator Turnage have two bills that require elections. Landowners get to vote in our bills, and the hearing will be on the 10th.

Senator Elliott recommended that Senate Bill 447 be given a DO NOT PASS. The motion carried, with Senator Bob Brown dissenting.

Senate Bills 423 and 476. The subcommittee felt that the full committee should make the decision on these bills.

Cort will provide amendments for other bills that are outstanding.

A meeting was announced for 8:00 a.m. Saturday morning.


PAT M. GOODOVER, Chairman

BD

ROLL CALL

TAXATION COMMITTEE

47th LEGISLATIVE SESSION -- 1981

Date 3/06/81

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 March 6, 1981

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppos
Ed Hock	1831 5th and	3	✓	✓
Ed Hock	1731 5th and HB 63	2	✓	✓
Ed Hock	317-12 to HB 63	3	✓	✓
Ed Hock	Dept of Adminstration	4	✓	✓
Ed Hock	Private 8th St	5	✓	✓
Jim Jensen	LISCA	HB 63	✓	✓
Tom Hock	Westland 1267	667	✓	✓
Tom Hock	MT Face 62	412	✓	✓
Tom Hock	MT. R. C. Am	32	✓	✓ with am
Tom Hock	Pop. 1175	90	✓	✓
Tom Hock	1212	92	✓	✓
Tom Hock	11	11	✓	✓
Tom Hock	Reserve 1122	22	✓	✓

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

1. Introduction.

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

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

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

(1) Recodified in 1978.

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

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

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

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

3. Assessment Jurisdiction.

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

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

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

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

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

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

5. Conclusion.

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

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

CURRICULUM VITAE
OF
ROLF ALFRED WEIL

PERSONAL DATA

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

EDUCATION

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

HONORARY DEGREES

D. Hebrew Letters, College of Jewish Studies, 1967
L.H.D., Loyola University, 1970

EXPERIENCE

1. Research Assistant, Cowles Commission for Research in Economics, 1942-44
2. Research Analyst, Illinois Department of Revenue, 1944-45
3. Lecturer, Indiana University Adult Education Division, 1945-46
4. Faculty Member, Roosevelt University, 1946-
5. Tax Consultant to Gulf, Mobile & Ohio Railroad,
J. L. Jacobs and Company, and other clients - currently
6. Acting President, Roosevelt University, 1965-66
7. President, Roosevelt University, 1966-

RESEARCH EXPERIENCE AND PUBLICATIONS

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

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

COMMUNITY AFFILIATIONS AND ACTIVITIES

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

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

MEMBERSHIPS

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

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

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

21 January 1981

TO: House Taxation Committee
RE: H.B. 92 Railroad Tax Rate

Background:

In February of 1976 the U. S. Congress passed what is called Public Law 94-210 (codified at 49 USC Section 26 (c)) commonly the Four R's Act.

I have attached a photocopy of this law to this memo. Basically the law prohibits any state from:

- a) Assessing railroad transportation property at a value at a higher value than other commercial and industrial property.
- b) Collecting a tax based on the higher assessment
- c) Having a tax rate on railroad transportation property higher than the rate on commercial and industrial property.

The law prohibits two types of actions by the state. The first is valuing the real and personal property of the railroads in such a way that its value in relation to its true market is higher than the ratio of assessed value of other commercial and industrial property to its true market value.

The second prohibited act is setting a tax rate at a higher rate than the rate for other commercial and industrial property.

Montana's property tax scheme establishes eleven classes of property (Sec. 15-6-131-141) and sets assessment rates at from 100% (oil royalties) to 3% (Co-ops). This assessment rate percent that you multiply times fair market value to yeild taxable value. The Counties take taxable value times their mill levy to get the amount of tax. The basic rate of real property is 8.55%.

In the Montana Code, Section 15-6-141, sets the rate for railroads, although it doesn't expressly say so. I have attached a copy of that statute to this letter. It sets railroads at 15% of market value and other centrally assessed property at ~~12%~~.

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House Taxation Committee
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This 15% rate is clearly not the same rate even as the 12% rate for other centrally assessed property. Last year the Federal District Court looked at the different rates and determined that the average business and commercial rate was about 10.5% and allowed assessment at that rate.

It was this difference that was the basis for the first lawsuit. The second lawsuit claims that not only is the rate, 15%, wrong but the assessed value is also much too high, because of the method of assessment is wrong. They only paid as if the assessment rate were about 3%. See attached letter.

Something clearly needs to be done. The assessment rate is violating the federal law. It should be changed so that railroads are not singled out with a special rate. Ideally the rate should be the same as other commercial and industrial property.

The Federal law reflects the beginning of a serious attack on State tax systems. The broad language of the law allows the railroads to go the court easily and disrupt a tax system which was developed over a long period. This system reflects a series of compromises with agriculture, mining and small local businesses, which can not be easily undone. Each of the special property classes with its special assessment rate will fight any change. The different rates are often justified for example, the special lower rate for REA's electrical distribution system.

(c) may seek judicial review of any Commission action on any matter involving a common carrier by railroad subject to this chapter; to the extent such review is authorized by law for any person and on the same basis;

(d) shall solicit, study, evaluate, and present before the Commission, in any proceeding, formal or informal, the views of those communities and users of rail service affected by proceedings initiated by or pending before the Commission, whenever the Director determines, for whatever reason (such as size or location), that such community or user of rail service might not otherwise be adequately represented before the Commission in the course of such proceedings; and

(e) shall evaluate and represent, before the Commission and before other Federal agencies when their policies and activities significantly affect rail transportation matters subject to the jurisdiction of the Commission, and shall by other means assist the constructive representation of, the public interest in safe, efficient, reliable, and economical rail transportation services.

In the performance of its duties under this paragraph, the Office of Rail Public Counsel shall assist the Commission in the development of a public interest record in proceedings before the Commission.

Concurrent submission of budget requests and estimates to President and Congress

(5) The budget requests and budget estimates of the Office of Rail Public Counsel shall be submitted concurrently to the Congress and to the President.

Authorization of appropriations

(6) There are authorized to be appropriated to the Office of Rail Public Counsel for the purpose of carrying out the provisions of this section not to exceed \$500,000 for the fiscal year ending June 30, 1976, not to exceed \$500,000 for the fiscal year transition period ending September 30, 1976, and not to exceed \$2,000,000 for the fiscal year ending September 30, 1977.

Feb. 4, 1887, c. 104, Pt. I, § 27, as added Feb. 5, 1976, Pub.L. 94-210, Title III, § 304(a), 90 Stat. 51.

Legislative History. For legislative history and purpose of Pub.L. 94-210, see 14.

§ 26c. Discriminatory taxation by States, political subdivisions, or governmental entities or persons acting on behalf of States or subdivisions—Particular acts unlawful

(1) Notwithstanding the provisions of section 302(b) of this title, any action described in this subsection is declared to constitute an unreasonable and unjust discrimination against, and an undue burden on, interstate commerce. It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

(a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.

(b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).

(c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

49 § 26c

TRANSPORTATION

(d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this chapter.

Judicial relief; Limitations

(2) Notwithstanding any provision of section 1341 of Title 28, or of the constitution or laws of any State, the district courts of the United States shall have jurisdiction, without regard to amount in controversy or citizenship of the parties, to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section, except that—

(a) such jurisdiction shall not be exclusive of the jurisdiction which any Federal or State court may have in the absence of this subsection;

(b) the provisions of this section shall not become effective until 3 years after February 5, 1976; FEB 5 1976

(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction;

(d) the burden of proof with respect to the determination of assessed value and true market value shall be that declared by the applicable State law; and

(e) in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value of all such other commercial and industrial property cannot be established through the random-sampling method known as a sales assessment ratio study (conducted in accordance with statistical principles applicable to such studies) to the satisfaction of the court hearing the complaint that transportation property has been or is being assessed or taxed in contravention of the provisions of this section, then the court shall hold unlawful an assessment of such transportation property at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property; and the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district.

Definitions

(3) As used in this section, the term—

(a) "assessment" means valuation for purposes of a property tax levied by any taxing district;

(b) "assessment jurisdiction" means a geographical area, such as a State or a county, city, township, or special purpose district within such State which is a unit for purposes of determining the assessed value of property for ad valorem taxation;

(c) "commercial and industrial property" or "all other commercial and industrial property" means all property, real or personal, other than transportation property and land used primarily for agricultural purposes or primarily for the purpose of growing timber, which is devoted to a commercial or industrial use and which is subject to a property tax levy; and

(d) "transportation property" means transportation property, as defined in regulations of the Commission, which is owned or used by a common carrier by railroad subject to this chapter or which is owned by the National Railroad Passenger Corporation.

BURLINGTON NORTHERN

PROPERTY TAX DIVISION

600 First Northwestern Bank Center
175 North 27th Street
Billings, Montana 59101

Mrs. Claribel Bonine
Treasure County Treasurer
Hysham, Montana 59038

November 30, 1980

RE: NOTICE OF TAX PAYMENT UNDER PROTEST

Dear Mrs. Bonine:

Burlington Northern Draft No. 10224 in the amount of \$ 12,867.11 is transmitted to you in payment of First Half 1980 taxes levied against properties of Burlington Northern Inc. in Treasure County, Montana.

Of the total FIRST HALF TAX amount of \$ 61,205.31 the amount of \$ 48,338.20 is hereby being deposited with the ^{9b 676 40} United States Federal District Court in Billings, Montana, pursuant to the Court's Order of NOV 25, 1980.

- (1) In accordance with Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, states and subdivisions of the states are prohibited from assessing railroad property at a value that has a higher ratio to market value than the ratio applicable to other commercial and industrial property.
- (2) The Montana Department of Revenue completed its valuation and assessment of Burlington Northern's centrally assessed railroad properties and certified the allocated value to the various 48 Montana counties in which Burlington Northern operates. The assessment transmitted by the Montana Department of Revenue to the various 48 counties was based upon a classification ratio of 15% while other commercial and industrial property in Montana was classified and taxed at a ratio to market value that did not exceed 10.096 percent.

The classification ratio applied by Montana Department of Revenue to Burlington Northern Inc.'s property is in direct violation of Section 306 of the Railroad Revitalization and Regulatory Reform Act.

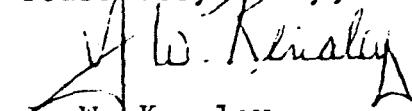
November 30, 1980

Page - 2

- (3) If Burlington Northern's Montana rail transportation property was assessed, equalized and classified in accordance with the requirements of Section 306, the ratio of taxable value to market value determined by the Montana Department of Revenue applicable to Burlington Northern's rail transportation property for 1980 should not exceed 2.884 percent of assessed valuation.
- (4) On August 18, 1980, Burlington Northern Inc. initiated a law suit in the United States District Court for the District of Montana, Billings Division, entitled Burlington Northern Inc. vs. the Department of Revenue of the State of Montana, CV-No. 80-139-B1g. Further by letter dated August 18, 1980, Burlington Northern Inc. informed each County Attorney of the various 48 counties in which Burlington Northern's centrally assessed valuation was distributed of this filing of a federal court action.
- (5) We have indicated on each of the 1980 tax statements enclosed and applicable to the state assessed rail transportation property of this company and located in your county the amount being protested and deposited with the United States Federal District Court in Billings, Montana pending final determination of this law suit.

When proper credit for this payment has been entered on your tax records, please return the tax receipts direct to me at the address shown on the letterhead indicating partial payment has been rendered to you at this time in the amount shown.

Yours very truly,


J. W. Kenaley
Manager Property Taxes

JWK:AT5

cc: Clerk and Recorder
County Attorney

Attachments

CERTIFIED MAIL NO. 10945

House Bill No. 92

Introduced by ASAY

1. On page 2, line 9, after the word in, delete "15-23-202," and insert "(c), below,"

2. Following line 11,

insert "(c) Railroad transportation property is taxed at 10% of market value."

Renumber subsequent sections accordingly

3. Beginning on line 25, delete all material following "(2)" through line 5 on page 3.

Insert: "In determining the assessed value of railroad transportation property, the department shall equalize such assessed value at the statewide median ratio to market value at which commercial and industrial property is assessed. The statewide median ratio for commercial and industrial property shall be determined by reference to the assessment Capital Assessment/Sales Ratio Study for the taxable year immediately preceding the year of the assessment."

The Honorable Pat Goodover
Chairman, Senate Taxation Committee
Montana State Senate
State Capitol, Helena, Montana

Dear Senator Goodover:

I am writing to you as the chairman of the Senate Taxation Committee, with copies of this letter being mailed to other members of the Committee.

House Bill 63, which proposes to exempt from Montana income taxation, private or corporate retirement benefits not in excess of \$3600 passed the House with one dissenting vote on second reading. At the House Hearing on February 4, 1981 two witnesses appeared on this bill. One a paid lobbyist for LISCA was in favor, and I, a retired Federal employee was opposed.

I am opposed to House Bill 63 simply because it does not go far enough. I am in favor of an amendment to exempt all retirement benefits, State, Federal, Private Corporate and public retirement benefits earned outside the State of Montana, to at least \$6600.00 with a dollar for dollar offset for any earned income derived from wages in excess of \$3600.00.

As I stated at the house hearing: It is possible for a couple one employed by the state, the other by a local school district to have retirement benefits in a combined amount of \$30,000 fully exempt from Montana Income Tax. This is not fair or equitable. In addition this couple could have the added benefits of Social Security that Federal Retirees may not have.

I believe the day is not far off that will bring full taxation to all retirement benefits ~~not~~ in excess of the exclusion that will be set by House Bill 63.

Therefore, I urge you and your committee to consider my proposed amendment.

The attached copy of a letter to the editor is for your information.


EDMUND F. SHEEHY
LEGISLATIVE CHAIRMAN
RETIRED FEDERAL EMPLOYEES

Spenn

\$343 monthly. This income is taxable under federal income tax and after the \$3,600 exclusion state income tax.

A person with average earnings under social security retiring at age 65 in 1981 can get \$532 in benefits plus an additional allowance of \$266 for his wife, non-taxable.

I believe that Rep. Moore should hear from the people of Great Falls as to what's fair in income tax exclusion.

EDMUND SHEEHY, retired federal employee, 1731 5th Ave., Helena

Income tax exclusion

Rep. Jack Moore of Great Falls has a bill before the legislature (HB 63) to exempt from income taxation private or corporate retirement benefits not in excess of \$3,600.

This prompts two questions:

Where did Mr. Moore come up with the \$3,600 figure?

What consideration is given to a person such as a teacher whose benefits are based on a public retirement system in another state?

Perhaps another question is whether age should be a factor in allowing benefits.

In 1961, two Republican members of the legislature, with the support of then-Gov. Nutter, brought into law the present \$3,600 exemption given to federal retirees. This was to recognize that people who did not have the supplemental benefits of social security may be entitled to a tax break.

What HB 63 presupposes is that all retirement benefits are under one umbrella and benefits from one should be taken into account when determining benefits of another. I believe that there are many people in and around the Legislature who are not aware that the city of Great Falls has never extended the benefits of social security to its policemen. This is an example of how difficult it is to compare benefits or the reasons for special tax treatment.

Montana has approximately 6,100 persons receiving civil service annuities. Of these, 4,574 receive benefits on the basis of their employment and contributions that average \$772 monthly, and there are 1,424 receiving reduced benefits, as survivors, that average

To Chairman, Senator Goodloe and
members on the Senate Taxation
Committee

Regarding S.B. 63.

I am Tom Ryan. I represent
the Montana Senior Citizens
Association. We are a non profit
non-subsidized advocacy
organization of approximately
8000 members. Memberships are
\$2.00 per year so we do not maintain a full time lobbyist.
Our membership voted at our
October annual convention
to support the concept of
this Bill, but also voted to
raise the 3600⁰⁰ figures which
we think are unrealistic for all
senior citizens. I think Mr. Sheehey's
figures should be amended into this

STANDING COMMITTEE REPORT

March 6, 1981

MR. PRESIDENT:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 291

Respectfully report as follows: That SENATE Bill No. 291,
the introduced bill, be amended as follows:

1. Page 2, line 3.

Following: "years."

Insert: "In no event may the loans interfere with the payments of bonds or warrants. The loan shall be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are not sufficient funds in the revolving fund to make the loans without interfering with the payment of bonds or warrants, then the loans may not be made."

And, as so amended,

DO PASS

P.A.

STANDING COMMITTEE REPORT

March 6 1981

MR. PRESIDENT:

We, your committee on
TAXATION

having had under consideration
Senate Bill No. **292**

Respectfully report as follows: That
be amended, as follows: **Senate** Bill No. **292**

1. Page 2, line 21.

Following: "county"

Strike: "to acquire a project"

Insert: "to pay the costs of acquiring or improving a project"

2. Page 3, line 5.

Following: "bonds"

Strike: "to acquire a project"

Insert: "to pay the costs of acquiring or improving a project"

3. Page 3, line 11.

Following: "to"

Strike: "acquire a project"

Insert: "pay the costs of acquiring or improving a project"

And, as so amended,

DO PASS

JRF

Senate Bill 292: Authorizing the issuance of short-term bonds in anticipation of the issuance of long-term bonds.

Senate Bill 292 facilitates refunding of bonds by clarifying the definition of "bonds" indicating that the term includes "short-term bonds or notes issued in anticipation of long-term bonds or notes." The Bill also eliminates the requirement for a second hearing at the time the short-term financing is rolled-over into a long-term financing. This feature of the Bill eliminates expense and delay in the conduct of a second, but unnecessary, hearing. Protection of the public interest is guaranteed in the first hearing and need not be duplicated in a second hearing.

Passage of Senate Bill 292 will promote economic development in Montana by allowing capital financing through the issuance of short-term bonds in anticipation of a subsequent roll-over into long-term bonds. By permitting the advanced refunding of short-term bonds bearing disadvantageous interest rates and their replacement with lower interest long-term bonds, the Bill adds greater flexibility to a financing tool that is provided in present law. This greater flexibility will promote capital financing in today's high interest market.

The savings for consumers that could result from the passage of Senate Bill 292 is material as lower capital financing costs result in lower prices. It is significant to note that this Bill was not opposed in its hearing before the Senate Taxation Committee.

STANDING COMMITTEE REPORT

March 6 81

19

MR. **PRESIDENT:**

We, your committee on **TAXATION**

having had under consideration **Senate 383** Bill No.

Respectfully report as follows: That **Senate 383** Bill No.

DO PASS

GL

Date Mar. 6, 1981 Senate Bill No. 383 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)	✓	

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Betty DeanPat M. Goodover

Secretary

Chairman

Motion: to give SB 383 a do pass.

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

STANDING COMMITTEE REPORT

March 6

81

19

PRESIDENT:

MR.

TAXATION

We, your committee on.....

Senate

358

having had under consideration

Bill No.

Respectfully report as follows: That.....

Senate

358

Bill No.

DO NOT PASS

XXXXXX
DO NOT PASS

G.A.

PAT M. GOODOVER,

Chairman.

Date Mar 6, 1981 private Bill No. 358 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)		✓

8 - 4

Betty Dean
Secretary

Pat M. Goodover
Chairman

Motion: to pass.

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

STANDING COMMITTEE REPORT

March 6

19 81

PRESIDENT:

MR.

TAXATION

We, your committee on

having had under consideration

Senate 447

Bill No.

Respectfully report as follows: That.....

Senate 447

Bill No.

DO NOT PASS

~~DO PASS~~

G.W.