

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 11, 1981

The 66th 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: Senator Towe absent, all other members present.

CONSIDERATION OF HOUSE BILL 870:

"AN ACT TO INCREASE THE STANDARD DEDUCTION ALLOWED FOR INCOME TAX PURPOSES; AMENDING SECTION 4 OF INITIATIVE NO. 86; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Representative Nordtvedt said this is a supplement to a Senate bill and will increase the standard deduction from 15% to 20% gross and increase the standard deduction to \$1,500 for single taxpayers and \$3,000 for married taxpayers. The bill affects those taxpayers who do not itemize, primarily those who do not have expenses connected with home ownership. The fiscal impact is 3.5 million dollars for the biennium. Representative Nordtvedt felt it was a good supplement to the surtax repealer.

There were no proponents, opponents, or questions from the committee so the hearing was closed on HB 870.

Senator Eck made a motion that House Bill 870 BE CONCURRED IN. The vote was unanimous, except for Senator Manley who voted no.

DISPOSITION OF HOUSE BILL 27:

Representative Nordtvedt suggested the title be changed to say "to clarify that the individual income tax base exemption is \$800." A motion was made to so do, and it carried unanimously.

CRIPPEN: If the Attorney General's opinion was held to be correct, then you don't have an act to clarify.

B. BROWN: Why don't we adopt amendments as proposed by Representative Nordtvedt, act on the bill, and between the time we do that and the time it gets to the floor we can get some kind of opinion from the rules committee?

GOODOVER: I think we should act here.

B. BROWN: I move we adopt the amendments proposed by Representative Nordtvedt yesterday.

The vote was unanimously in favor of the motion. Senator McCallum made a motion HB 27 BE CONCURRED IN, as amended. The motion unanimously carried.

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DISPOSITION OF HOUSE BILL 63:

Senator Eck made a motion to reconsider House Bill 63. The motion passed by a 7-5 vote to reconsider. Senator Eck said she had received requests from a number of senior citizens to amend this bill, either to \$500 or \$100, so that during the next two years some base can be established by the DOR to determine what impacts would accrue and to compare what other employees are getting in their retirement plans. She moved we amend this language anywhere from 2% to 10% on line 5.

ELLIOTT: Those exclusions were put in the law for a specific reason. I would oppose the motion to reconsider.

NORMAN: Do you think if you put 10% above the 3,600 that most people would apply?

ECK: Yes, I think if people knew they were going to get another exemption of \$360 they would.

CLARK: I think the DOR would be opposed to setting some kind of percentage. If you like, set a dollar exclusion. It would be up to us to structure our form to capture that and allow an exclusion for the amount you pick and this should give us the data.

GOODOVER: Can you get data with \$100?

CLARK: You might even make a statement of intent to make it clear why you have initiated this process.

ELLIOTT: Most professional accountants would be aware of the change in the law. Large companies would probably use some form to notify their pensioners. The biggest problem will be with the DOR trying to formulate on the return.

McCALLUM: I don't like to use the percentage of 10%. How about \$360, so it would read "all benefits, not in excess of \$360?"

ELLIOTT: If we don't give a percentage figure, we are not going to determine how much is affected. We won't generate the statistics you want by excluding the percentage method.

CLARK: If we were to single out retirement income on one line, the individual then will lump all that other income in one place. By taking the exclusion you would have a pretty good indication before they entered it into the adjusted gross line.

The question was called on the motion to use the \$360 figure. The motion carried, with Senators Elliott and Manley dissenting.

DISPOSITION OF HOUSE JOINT RESOLUTION 52:

CRIPPEN: I would like to see that 12% changed to 20%.

MANLEY: I would like to see any figure removed.

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MARK SAFTY, attorney with a Billings firm. He deferred his comments to Bob Goff, an attorney with a Great Falls firm.

GOFF: I have been involved since the inception. The 34% comes from the department's own manuals. They have adopted the 1976 Marshall and Swift manual. The construction cost, less depreciation, is the basis of their appraisal. The indices in the Marshall and Swift allow you to do this. A contractor testified that looking at lumber, concrete, and labor, the costs had to be reduced from the years 1976 to 1971 by 34%. It is not a figure anyone has taken out of the air. We took a survey of 200 houses sold in 1978 and also 20 commercials. When we made comparison we compared appraised value to sale price and compared the ratios we got; we are looking at 39% to 40%. The DOR says they have a sales ratio study and that's where they get the 12%. We have tried to get the basis for the 12%; they won't give it to us.

GOODOVER: The reason for this is we have created a problem in past legislative action. We hope to do something here that will help in settlement of claims.

TOM CLARY: I am an attorney from Great Falls. You are being sold a bill of goods. You should understand that I have clients that pay a lot of taxes. I can fight every year. Not all commercial properties are in that position. DOR is hurting the little guy. DOR's theory is "let's take advantage of the small taxpayer's inability to fight." But they are so insulting in their attitude. Their legal staff has spent more than 75% of its time on the 34% cases.

We're trying to tell DOR it made a mistake. Let's all use the same base for the same sets of property. I would suggest this resolution to DOR: That they go back and use the same cost data for clarification and use the same base for getting their appraisals. Let the courts decide the yearly adjustment.

GOODOVER: Do we just allow cases to stack up?

CLARY: They should look at the information for what's right.

REPRESENTATIVE SIVERTSEN: I think in saying that DOR is taking on the small person, Mr. Clary is also saying the legislature is not doing a job. We are in this situation because maybe the legislature has not acted responsibly in the past. DOR was directed to do this on a cyclical system. They used the latest information available. The courts have said the cases have to be handled on an individual basis. Lawyers like that. If you set this at 18-20% you are tying the hands of the DOR to be able to settle. There are some people who will settle for less.

CLARK: The 34% came from a comparison between a 1976 Marshall and Swift and a 1972 Marshall and Swift. The residential property was done on a Montana based sales manual. As Representative Sivertsen said, if we don't get some guidelines from the legislature as to where we should settle these cases . . . It is tax money local

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governments have levied, but haven't gotten

ELLIOTT: I think Dennis Burr should have a chance to respond.

BURR: As John mentioned, the 34% came from a comparison of two manuals...between a 1976 commercial manual and a 1972 commercial manual. Inflation in those manuals is 34%. That doesn't really mean anything. The 1972 residential manual used arrives at about a 10% difference on some properties. There are many components of the cost of a piece of residential property. Some are higher in the 1972 manual than the 1976 Marshall and Swift. Ten percent is an average. There are some houses you can appraise where you will get a higher appraisal than the 1976. The Montana Taxpayer's Association position is if you are going to do anything (if you concede an average 12%) we think the only way is to take 12% off all commercial property. Settling this for 34% doesn't do anything for the people who didn't appeal.

On the 34% cases, those are not all in court. Some were heard by the board in 1978 and 1979. Sometime in 1979 the stay orders were issued. It's the State Tax Appeals Board who is trying to get out of hearing the 3,400 cases they created. I think STAB should hear those cases. Lots of people have no idea whether they are 34% over. At a hearing before STAB, DOR brought their own statistician in and torpedoed their own study. The large question here is whether you will have the assessment procedure based on market value or cost of construction. By allowing a resolution comparing cost manuals to determine whether they are equitable, is risky.

I agree if you are going to say anything, you should say 12%. The department cannot comply with the requirements of the Realty Transfer Act and furnish the information Mr. Goff wants. The Supreme Court gave specific guidelines. I think what you do should be based on market statistics.

NORMAN: You display a simmering anger toward DOR. Still, there is a conflict between STAB and DOR. Suppose this resolution were to pass, what would your clients do? Under this resolution we are urging, and we are saying, 12%. Would you advise your clients to settle for that? Wouldn't you attempt to go in and get a higher settlement?

CLARY: I have a number of clients who are small taxpayers. The bottom line is that I am getting tired of these cases because there is no end in sight. I would like to solve the problem.

NORMAN: Suppose we passed at 34%. Do you think DOR will settle for 34%?

CLARY: I think they will give an across-the-board settlement to the small taxpayer. We suggested to DOR we would get all taxes pending in 1978 and we would give them the biggest piece of pie. You let them go. In 1979 you have a lot more dollars at stake and in 1981 you bring all the guys on board. Make some adjustment proposal. Give us the clout to settle all commercial properties.

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NORMAN: What I think you are saying is if we wrote 34%, DOR would settle with everybody for 34%. I would like to ask Mr. Clark, will you settle for 34%?

CLARK: The resolution just provides the recommended base.

NORMAN: So the little guy will take it first. You would be mistaken to settle for the little guys at 34% if they don't want.

ELLIOTT: We have a few of these cases in the Flathead Valley. I talked to attorneys before I came. They urged us to do just this kind of procedure. They suggested perhaps 20% would be good. I would like you to express just what degree of conflict we might have if we amended this up. In the interests of trying to settle, will you expound further?

SIVERTSEN: I talked to some of these same people. This leads me to believe we are all groping for a number. If you put 20% on you might just as well kill the bill.

ELLIOTT: Regarding your points, you indicated if we set at 20% the limitation would continue. My thinking is that it would stop.

SIVERTSEN: It's only a recommendation to the DOR. If DOR has to settle for 20% we say you have to. What are you basing the 20% on?

S. BROWN: My problem is that you are saying 12% is not a ceiling but you say if we go to 20% it is a floor. You will resolve these by setting notice in the mail. Why don't you say we have run our sales manual and we come up with 12%. I would think if you just sent out an offer of settlement on your appraisal....

CLARK: I think you have hit on the approach we will take. The resolution gives us a little more clout, since we are bargaining away money.

S. BROWN: My suggestion is just to get rid of the figure of 12%.

MANLEY: Why haven't you started this process?

CLARK: We are in negotiation.

GOODOVER: We got the taxpayers into this situation. We can't just sit back. Taxpayers are paying the cost of this litigation. I think we have to take a position somewhere.

CLARY: The DOR has acknowledged that sales ratio is not up to snuff. The basis of the sales ratio survey is the Realty Transfer Certificate. There is no requirement calling for a realty transfer certificate being filed in all actions. Your basic input is not under control. Any statistician will tell you unless you know what your population is you have no way to know whether your sample is right or not.

The hearing was closed on HJR 52.

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DISPOSITION OF HOUSE BILL 718:

S. BROWN: I will move that we delay consideration of HB 718 until Monday.

It was decided that the committee go through the proposed amendments to HB 718. A gray copy of HB 718 was brought into the committee room at the beginning of the meeting. Some of the amendments did the following: defined hard-rock mining, DCA was changed to Department of Commerce, revenue to be paid from the metal mines tax was set up, and fiscal impact was discussed.

ECK: What's the impact?

SHANAHAN: 5 million dollars.

ECK: Would that money also pay the expenses of the board?

SHANAHAN: The board expenses come out of metal mines fund.

S. BROWN: I am assuming that the impact plan, if some part is challenged, the burden would be on the applicant. In light of all the discourse in the siting law, should we put that in?

SHANAHAN: Since our plan has no presumption of correctness.....

S. BROWN: On page 13, the plan is deemed valid, but in sub 4 there is no assertion that those are deemed valid. I think we need to clarify the burden of proof.

STEVE DOHERTY: There are people who do not view the two bills as incompatible. With regard to the burden of proof, one of the questions the local government units have is how will local government units respond to a million dollar development with part-time people?

CRIPPEN: Let's envision how the county gets the funds.

SHANAHAN: 1) From tax prepayment section; 2) Educational impact bonding provision, and 3) From just forcing us to pay the amount of tax needed. This is there because the RITF was stricken for this legislation.

S. BROWN: Local government has 90 days to review the plan and come up with objections. How long does the Department of State Lands have to prepare EIS?

SHANAHAN: A year.

The hearing was closed on HB 718.

The meeting adjourned at 10:30 a.m.

ROLL CALL

TAXATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date April 11, 1981

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.

STANDING COMMITTEE REPORT

April 11 19 81

PRESIDENT:

MR.

TAXATION

We, your committee on

having had under consideration **House** Bill No. **870**

Nordtvedt (Eck)

Respectfully report as follows: That **House** Bill No. **870**

BE CONCURRED IN

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SENATE COMMITTEE TAXATION

Date April 11, 1981 UB Bill No. 63 Time 8:28 a.m.

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

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Betty Dean
Secretary
Motion: I reconsider.

Pat M. Goodover
Chairman

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

SENATE COMMITTEE TAXATION

Date 4-11-81 House Bill No. 63 Time 8:40 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	<i>absent</i>	
SEN. MANLEY		✓
SEN. NORMAN	✓	
SEN. OCHSNER	✓	
SEN. SEVERSON		✓
SEN. TOWE	<i>absent</i>	
SEN. GOODOVER (CHAIRMAN)	✓	

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Betty Dean

Pat M. Goodover

Secretary

Chairman

Motion: Be concurred in as amended.

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

SENATE COMMITTEE TAXATION

Date Oct 11, 1981 HJR ~~Bill~~ No. 52 Time 9:37 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)	✓	

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Betty Dean Pat M. Goodover
 Secretary Chairman
 Motion: Referred in order

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