

MINUTES OF THE MEETING OF THE HOUSE TAXATION COMMITTEE
February 14, 1983

The meeting was called to order at 8:00 a.m. by Chairman Yardley. Roll call was taken and all committee members were present except Representatives Harrington and Dozier, who were excused but came later in the meeting.

Testimony was heard on HB 641, HB 644, HB 693, and HB 702. Executive action was taken on HB 527, HB 570, HB 641, HB 644, and HB 693.

HOUSE BILL 641

REPRESENTATIVE JACK SANDS, District 68, sponsor of the bill, said HB 641 was introduced at the request of the county treasurers. The bill raises the amount of interest from delinquent property tax payments from 5/6 of 1% per month to 1% per month. The existing penalty of 2% was not changed. If less than \$10 is due on delinquent taxes, the county treasurer will charge a minimum charge of \$10.

REPRESENTATIVE SANDS said this issue has been around a lot in previous sessions. He said he has mixed feelings about the increase in the tax. During these hard times, it may make it more impossible to pay back delinquent taxes.

Proponents

DORIS SHEPHERD, County Treasurer of Yellowstone County, said she is representing the Association of Counties. Ms. Shepherd said 1% interest per month is fair. There are \$3 million in delinquent taxes in Yellowstone County and the delinquency rate is rising. Delinquent taxes are a problem and the association would like to see the interest rate raised to at least 12% per year.

There were no opponents testifying on HB 641.

REPRESENTATIVE SANDS closed his presentation of HB 641.

REPRESENTATIVE KEENAN asked if most of the people not paying taxes are the corporations and big businesses. Ms. Shepherd said that was correct. The corporations and businesses are earning interest on the money they should have paid their taxes with.

REPRESENTATIVE DEVLIN asked if delinquent taxes are still on the increase. Ms. Shepherd said they contacted some of the larger counties in Montana and were told delinquency is on the increase.

The hearing on HB 641 was closed.

Vice-Chairman Neuman took over as presiding chairman at this time.

HOUSE BILL 644

REPRESENTATIVE DAN YARDLEY, District 74, sponsor of the bill, said HB 644 was introduced on behalf of the Department of Revenue. This bill is a housekeeping bill. It revises and clarifies Section 15-31-544, MCA, relating to action on a false or fraudulent income tax return. This is applied to corporation license tax. This bill makes explicit the statute of limitations applicable in the instances of failure to file a return, or the filing of false or fraudulent returns and will rectify a potential problem area. ←

REPRESENTATIVE YARDLEY said there are two separate statutes of limitation. Section 15-31-509, MCA, addresses the instances of returns that have been filed. This section has proven very workable in the past and the only change proposed to this section is one of internal referencing. The second statute of limitations is section 15-31-544, MCA, which addresses the instances where no returns have been filed or the filings are false or fraudulent.

Section 15-31-544, MCA, may require that in both instances, a voluntary filing or a failure to file, the department will be required to initiate a court action for the collection of the tax within five years. The department said they would have rather asked for the re-enactment of the exact language of section 15-31-542, MCA.

Proponents

LYNN CHENOWETH, Corporation Tax Division, Department of Revenue, said HB 644 is a housekeeping bill to clean up some language in Section 15-31-544, MCA. The department would be required to initiate court action on every assessment made in order to keep the file open and active under the current reading of Section 15-31-544. The department wants that changed so that is an assessment is issued, no further action needs to be taken by the Department of Revenue to keep the statute of limitations open.

REPRESENTATIVE MEL WILLIAMS, District 70, said as cosponsor of HB 644, he would like to go on record in support of the bill. House Bill 644 just makes it easier for the Department of Revenue to comply with the law.

There were no opponents testifying on HB 644.

REPRESENTATIVE DEVLIN asked if HB 644 is going to generate money for the state. Mr. Chenoweth said no it won't but it will save time for the Department of Revenue so that no court action has

to be taken in order to keep the statute of limitations open.

REPRESENTATIVE NEUMAN asked why the language on page 1, line 20, refers to just fraudulent and not false. Representative Yardley said that should include both false and fraudulent.

REPRESENTATIVE NEUMAN suggested striking "the" on line 19, page 1, and inserting "a". Representative Yardley agreed with him.

REPRESENTATIVE YARDLEY said there will be two statutes on the statute of limitations. One will be Section 15-31-544, MCA, and the other is the five-year term on failure to file.

The hearing was closed on HB 644.

HOUSE BILL 702

REPRESENTATIVE YARDLEY, District 70, sponsor of the bill, said HB 702 is an act to clarify that the property of nonprofit organizations that own and operate facilities for the care of the developmentally disabled are exempt from property taxation.

REPRESENTATIVE YARDLEY said the real change in the bill occurs on page 3, subsection (2) where the term "institutions of purely public charity" means a corporation or association organized and operated exclusively for charitable purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, has been added.

Proponents

JOE ROBERTS, representing the Legislative Action Committee for the Developmentally Disabled, said there is a need for this bill because there was a question in the Department of Revenue as to whether the tax exempt status is really exact in the statutes.

MR. ROBERTS said the key to the bill is on page 2, line 18, where the bill includes institutions of purely public charity as part of the general exempting statute.

MR. ROBERTS said a large part of the funds to run a developmentally disabled facility comes from the state.

There were no opponents testifying on HB 702.

GREG GROEPPER, Department of Revenue, said he is not rising as a proponent or an opponent to HB 702. The Department of Revenue does not have a position for or against this legislation. He said he wants to clarify some things. The law is not clear on

how we should treat quasi-governmental agencies as far as tax relief. He said there are some specific exemptions and some specific language in the general exemption statute. When it gets down to vehicle use to transport mentally disabled people to lunch, for example, that vehicle would not be entitled to an exemption. There are two areas where developmentally disabled groups' vehicles would be entitled to exemption. Those areas include vehicles used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals. In the attorney's, for the Department of Revenue, judgement, if you are using the vehicle for something other than those areas, the vehicle would be subject to taxation. Mr. Groepper said he did not think that was the intent of the legislature but that is how the statute is interpreted.

MR. GROEPPER said he also has a question on the term "purely public charity". Purely public charity has been interpreted meaning there is not a dime of federal, state or local tax money in that organization and it is existing for that purpose. If you have an agency like the human resources development agency that have federal money coming into the agency, while they are not federal property, there is a question as to whether that agency is purely public charity. Mr. Groepper said the purposes of this bill would be better served if that language, on page 3, became another section. It would indicate the legislature's intent that these kinds of agencies would be tax exempt. By putting in the section on "purely public charity", Mr. Groepper felt the legislature would be "muddying the waters" and inferring that "purely public charity" isn't what it has been interpreted to be in other sections of the law.

REPRESENTATIVE KEENAN asked when a sheltered workshop or day-care center is housed in a building with another business, how would that be taxed. Mr. Groepper said they would take the value of the building, prorate the value of the building to square footage used by the agency and that part of the value of the building used by the agency as an exemption.

The hearing on HB 702 was closed.

HOUSE BILL 693

REPRESENTATIVE SWITZER, District 54, sponsor of the bill, said HB 693 is an act revising the penalty for failure of a county assessor to make an annual statement to the Department of Revenue. He said all fines, forfeitures, and penalties incurred by a violation of any of the provisions of the state tax laws must be paid into the treasury for the use of the county where the person against whom the recovery is, had resided.

REPRESENTATIVE SWITZER said another feature of the bill is when an agent of the department who purposely or negligently fails to perform his duty under this section or a deputy or member

of the agent's staff delegated such duty who purposely or negligently fails to perform such duty is guilty of official misconduct under 45-7-401. He said that is a clause that allows for the removal of an employee from office.

REPRESENTATIVE SWITZER said HB 693 is an attempt to correct a situation with employees that do not cooperate with the assessor's office and can become a hinderance.

Proponents

CHARLES GRAVELEY, representing the County Assessors Association, urged favorable consideration of HB 693. Mr. Graveley said assessors have a "double whammy" placed on them in cases of official misconduct. Every other elected or appointed official who fails to perform his duties can be charged with official misconduct in office and that can result in a jail sentence of up to six months in the county jail, a fine of up to \$500, or both, and removal from office upon conviction. There is no other elected or appointed official that has the additional penalty of \$1,000 if charged with official misconduct except the county assessor. Mr. Graveley said that is unfair. He said the \$1,000 penalty should be taken off the books.

There were no opponents testifying on HB 693.

REPRESENTATIVE SWITZER, in closing, said he agrees with the comments made by Mr. Graveley.

The hearing was closed on HB 693.

REPRESENTATIVE DOZIER was present at the meeting at this time.

REPRESENTATIVE NORDTVEDT was excused from the meeting at this time.

CHAIRMAN YARDLEY called the meeting into Executive Session.

EXECUTIVE SESSION

House Bill 693

REPRESENTATIVE DEVLIN moved HB 693 DO PASS.

REPRESENTATIVE WILLIAMS said before we change these kinds of statutes, he thinks the judicial system should take a look at it. Maybe there is a lot more involved than we see on the surface.

REPRESENTATIVE WILLIAMS asked if it would be reasonable to refer this bill to the Judiciary Committee. Chairman Yardley said it

would be reasonable but there is not enough time left before transmittal for the bill to be rereferred, heard and then passed out of the Judiciary Committee.

REPRESENTATIVE WILLIAMS said the law doesn't state if the situation exists, the fine has to be levied. Mr. Groepper said the statute is strict but the Director of the Department of Revenue ran into this problem with an assessor and after finding out what the problem was, she used her own discretion and decided not to levy the fine. If the fine is levied, the money either comes out of the assessor's salary or out of the assessor's bond.

REPRESENTATIVE SWITZER said the fine was overlooked once before and he thinks the problem should be taken care of at the county level.

REPRESENTATIVE BERTELSEN said all county officials work in the same office. The official misconduct charge would be sufficient. It is unfair to put assessors into a different classification and especially when the Department of Revenue thinks the \$1,000 fine is excessive.

The motion of DO PASS was voted on and PASSED. A roll call vote was taken. All committee members present voted yes except Representative Zabrocki, who voted no. Representatives Harrington, Neuman and Nordtvedt were excused during the vote.

House Bill 641

REPRESENTATIVE HARP moved HB 641 DO NOT PASS.

REPRESENTATIVE SWITZER said he supports the bill. The 2% penalty applies to everyone. The real problem is with the people who, for investment purposes, hold the tax money because the penalty for not paying taxes is smaller than the interest amount received on that money if invested.

REPRESENTATIVE DOZIER said he thinks the fine should be raised because the penalty is not being levied very often against small property owners. It is the large property owners that are most often fined.

REPRESENTATIVE DEVLIN made a substitute motion that HB 641 DO PASS.

The substitute motion was voted on and PASSED. A roll call vote was taken. All committee members present voted yes except Representatives Asay and Harp, who voted no. Representatives Harrington, Neuman and Nordtvedt were excused during the vote.

House Bill 644

REPRESENTATIVE ZABROCKI moved HB 644 DO PASS.

The motion was voted on and PASSED. All committee members present

voted yes. Representatives Harrington, Neuman and Nordtvedt were excused during the vote.

House Bill 570

REPRESENTATIVE WILLIAMS said HB 570 dealt with establishing goods and equipment intended for rent or lease as class eight property for purposes of taxation. Representative Williams said we tried to avoid taxing small businesses for the rental of heavy equipment. The Department of Revenue has drafted the following language to be amended into the bill:

"Lease or rental of exempt equipment, goods, or machinery for commercial use and individually valued in excess of \$5,000 shall be reported quarterly to the department on a form specified by the department so the department may fulfill its responsibility under 15-24-1203."

REPRESENTATIVE NORDTVEDT was present at the meeting at this time.

REPRESENTATIVE DEVLIN asked how the figure of \$5,000 was arrived at. Mr. Groepper said he tried to capture the essence of what this committee wanted. That figure could be raised or lowered.

REPRESENTATIVE ASAY said anything that is taxable should be taxed. He said he would rather have language that would say anything that is taxable in any other place should be taxed instead of having a dollar amount.

JIM OPPEDAHN, legislative researcher for the Legislative Council, said if you put that language under Chapter 24, Part 12, which is beneficial use tax, it may not work for this bill. The beneficial use tax is imposed for the privilege of gainful use or beneficial use of property that is otherwise tax exempt. The Department of Revenue collects the tax. The department asks for the reporting of the value of the equipment and the department will then assess that value out. He said the statute reads that by legal status of the owner held under contract of sale or lease with option to purchase with lease monies applicable to the purchase price by any person or for his exclusive use shall be subject to assessment under this chapter.

GREG GROEPPER said the department's concern is that when the legislature took off the business inventory tax as of January 1, 1983, some equipment is now exempt that used to be nonexempt. Under the beneficial use statute, if the property was exempt today, the department would tax the person who uses the property but that is not feasible.

REPRESENTATIVE ASAY said the equipment should be taxed not as business inventory but as property.

REPRESENTATIVE HARRINGTON was present at the meeting at this time.

REPRESENTATIVE WILLIAMS said the proposed language to be amended into the bill would put the Department of Revenue in the position of being able to tax large equipment but not tax people who were tax exempted before.

REPRESENTATIVE WILLIAMS moved the PROPOSED AMENDMENT TO HB 570 DO PASS.

The motion was voted on and FAILED. A roll call vote was taken. All committee members present voted no except Representatives Bertelsen, Devlin, Harp, Switzer, Ream, Underdal, Williams and Yardley, who voted yes. Representative Neuman was excused during the vote.

REPRESENTATIVE WILLIAMS moved HB 570 BE AMENDED as follows:

1. Page 1, line 12.

Following: "(1)"

Insert: "Except as provided in (2), class"

2. Page 2, line 6.

Following: line 5

Insert: "(2) Goods, equipment, and machinery included in class six property prior to January 1, 1983 is exempt from property taxation."

The first amendment was voted on and PASSED. All committee members present voted yes except Representatives Asay, Dozier and Jacobsen, who voted no. Representative Neuman was excused.

The second amendment was voted on and PASSED. All committee members voted yes except Representatives Asay and Jacobsen, who voted no. Representative Neuman was excused.

CHAIRMAN YARDLEY asked Jim Oppedahl to amend the title of the bill to reflect the amendments passed.

REPRESENTATIVE WILLIAMS moved HB 570 DO PASS AS AMENDED.

The motion was voted on and PASSED. A roll call vote was taken and all committee members voted yes except Representatives Abrams, Harp, Jacobsen and Nordtvedt, who voted no. Representative Neuman was excused.

House Bill 527

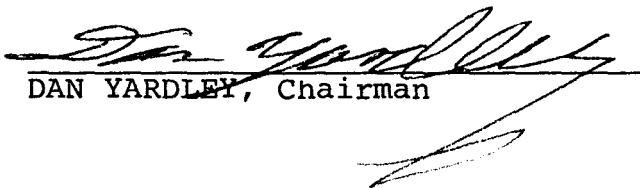
REPRESENTATIVE VINGER moved HB 527 DO PASS.

REPRESENTATIVE VINGER said said private television districts provide their own transmitters. Cable television companies have come in and pirated the signals from those transmitters. The subscribers

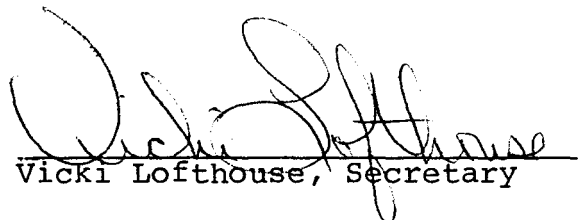
then pay the cable companies for their services. Those people, then, no longer pay fees to the private television districts. He said it would be better to tax the subscribers for costs incurred by the private television districts for the cost of the transmitters than to tax the cable companies because the cable companies will raise their fees in order to cover that tax. People who do not have television can go to the courthouse and say they do not have a television and then would not have to pay the fee. If the television district would go "belly-up" as a result of lack of funds, the cable companies would have to build their own transmitters to get signals, and those people using and paying for cable would end up paying more for the cable television.

The motion of DO PASS was voted on and PASSED unanimously.

The meeting was adjourned at 10:40 a.m.



DAN YARDLEY, Chairman



Vicki Lofthouse, Secretary

DEPARTMENT OF REVENUE



TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

February 11, 1983

MEMORANDUM

TO: Representative Yardley

FROM: Jerry Foster, Administrator
Natural Resource & Corporation Tax Division

RE: An explanation of the need for House Bill 644: "An act to generally revise and clarify section 15-31-544 MCA, relating to action on a false or fraudulent income tax return; amending sections 15-31-509 and 15-31-544 MCA; and providing an immediate effective date and an applicability date."

To provide you an historical perspective on the problem we are trying to correct by this legislation; at the time the 1981 Legislature was meeting, the Department had pending before the Montana Supreme Court, litigation involving the ~~statute of limitations~~ statute of limitations. In response to an adverse lower court ruling, and in response to the uncertainty of the outcome of that litigation, the Department proposed legislation which was subsequently passed and codified as section 15-31-544, MCA., approved April 17, 1981. In August of 1981, the Montana Supreme Court issued its opinion in the matter of Caterpillar Tractor Co. v. Department of Revenue (1981) 633 P.2d.618.

In light of this decision and on advice of the Departments' counsel, we are proposing this bill to make explicit, the statute of limitations applicable in the instances of failure to file a return, or the filing of false or fraudulent returns and rectify a potential problem area.

For Corporate License Tax purposes, Title 15, Ch 31, MCA provides for two separate statutes of limitation. Section 15-31-509 MCA addresses the instances of returns that have been filed, providing a five year statute of limitations from the due date of the return or date filed whichever is later for the Department to make an assessment of additional taxes or the taxpayer to request a refund. This section also provides for specific instances where those limitations may be extended but they are of no consequence here. This section has proven very workable in the past and the only change proposed to this section is one of internal referencing.

The second statute of limitation section is ~~section 15-31-542 MCA~~ which addresses the instances where ~~the statute of limitation~~ ~~has been repealed~~ ~~or the statute is otherwise inapplicable~~. As stated above, this section was enacted in 1981 in response to our Catapillar litigation. The court held in that case that due to the very complex working of the rules of statutory construction, section 15-31-542 MCA, the predecessor to 15-31-544, had been impliedly repealed. Accordingly, at that time, rather than the unlimited statute of limitations intended by the legislature in instances of failure to file, the Department was limited to a two year period to make an assessment. The passage of Section 15-31-544 immediately corrected this situation.

Fortunately, the Legislature in enacting our present law did provide a retroactive effective date so that no ground was lost. Unfortunately, and the problem we are now trying to correct, the language the Department proposed and the Legislature ratified in Section 15-31-544 MCA appears to have placed a new and completely unintended constraint into law. Specifically, ~~we are advised by counsel that section 15-31-544 MCA, may be found to require that in both instances, a voluntary filing or a failure to file, the Department will be required to initiate a court action for the correction of the tax within five years of the due date or date of filing the return whichever is later. If this is the case the Department will be compelled to initiate premature, costly and cumbersome legal actions for not only the assessment of the tax but the collection of the same. This was not intended and the Department will admit in hindsight that rather than introduce section 15-31-544 MCA and its confusing language, we should have simply asked for the reenactment of the exact language of the repealed section 15-31-542 MCA.~~

This legislation attempts to do just this and nothing more. There is no intent to alter in any fashion the retroactive effective date of Section 15-31-544 MCA.

This legislation ~~does not create any new authority for the Department. It is now and has been since 1933, the Legislatures' intent to provide a workable and unlimited statute of limitations to protect the state's interests in dealing with that small percentage of corporate taxpayers whom are not meeting their filing obligations. Passage of this bill will enable us to do this in the most efficient manner and we appreciate your support.~~

JF/sh

UNDER CURRENT LAWS

IF ISSUE AN ASSESSMENT — THEN

MUST FILE ACTION WITHIN 5 YEARS
OR ISSUE WARRANT OF RESTRAINT

ASSESSMENT
THEN
THE COURT
SAYED THAT
SECTION
HAD BEEN
IMPLICITLY
REPEALED
CONNECTED
LAST
SESSION

WITNESS STATEMENT

Name Gregg Shaggen Committee On Taxation
Address _____ Date 2/14/83
Representing Revenue Support _____
Bill No. HB-702 Oppose _____
Amend X

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Suggested language should be in a separate section
and not confused with agency of "purely public charity"
- 2.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

AMENDMENT TO H.B. 570

1. Title, line 7.

Following: "MCA"

Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 1, line 12.

Following: "(1)"

Strike: "Class"

Insert: "Except as provided in (2),"

3. Page 2, line 6.

Following: line 5

Insert: "(2) Goods, equipment, and machinery included in class six property prior to January 1, 1983 is exempt from property taxation."

Re-number: subsequent subsection

STANDING COMMITTEE REPORT

February 14, 19 83

MR. **SPEAKER:**

We, your committee on **TAXATION**

having had under consideration **HOUSE** Bill No. **641**

First reading copy (**White**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE INTEREST FOR DELINQUENT PROPERTY TAX PAYMENT FROM 5/6 OF 1 PERCENT A MONTH TO 1 PERCENT A MONTH FOR ALL DELINQUENT PROPERTY TAXES UNTIL SUCH TAXES ARE PAID; PROVIDING A MINIMUM FEE TO BE ASSESSED WHEN TAXES DUE ARE LESS THAN \$10; AMENDING SECTIONS 15-16-101, 15-16-102, AND 15-17-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

Respectfully report as follows: That **HOUSE** Bill No. **641**

DO PASS

STANDING COMMITTEE REPORT

February 14, 19 33

MR. SPEAKER

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 644

First reading copy (White)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY SECTION 15-31-544, MCA, RELATING TO ACTION ON A FALSE OR FRAUDULENT INCOME TAX RETURN; AMENDING SECTIONS 15-31-509 AND 15-31-544, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

Respectfully report as follows: That HOUSE Bill No. 644

DO PASS

STANDING COMMITTEE REPORT

February 14. 19 83

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 693

First reading copy (White)
color

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PENALTY FOR FAILURE OF A COUNTY ASSESSOR TO MAKE AN ANNUAL STATEMENT TO THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-1-105 AND 15-8-706, MCA."

Respectfully report as follows: That HOUSE Bill No. 693

DO PASS

STANDING COMMITTEE REPORT

PAGE 1 of 2

February 15, 19 93

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration HOUSE Bill No. 702

First reading copy (White)
Color

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THAT THE PROPERTY OF NONPROFIT ORGANIZATIONS THAT OWN AND OPERATE FACILITIES FOR THE CARE OF THE DEVELOPMENTALLY DISABLED ARE EXEMPT FROM PROPERTY TAXATION; AMENDING SECTION 15-6-201, MCA."

Respectfully report as follows: That HOUSE Bill No. 702
be amended as follows:

1. Page 3, line 7.

Following: "purposes:"

Strike: "and"

2. Page 3, line 9.

Following: "less"

Strike: "."

Insert: "; and"

3. Page 3, line 10.

Following: line 9

Insert: "(1) property owned and used by an institution organized pursuant to Title 35 that provides care for the developmentally disabled."

RR:PASCK

February 15,

19 93

4. Page 3, line 11 through 14.

Following: "charity" on line 11

Strike: line 11 through "and" on line 14

5. Page 3, line 16.

Following: "ill"

Strike: ", or developmentally disabled,"

AND AS AMENDED
DO PASS