

MINUTES OF THE MEETING OF THE HOUSE TAXATION COMMITTEE
March 17, 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 Representative Harrington, who was excused.

Testimony was heard on SB 264, SB 283, SB 335 and SB 459 during this meeting.

Executive action was taken on SB 384.

SENATE BILL 335

SENATOR TOM TOWE, District 34, sponsor of the bill, told committee members that many years ago we used to have a property tax on banks, based on the value of the bank shares. That type of tax caused a lot of problems. During the 1977 and 1979 legislative sessions, bills were introduced to tax banks on an income basis. The only way to successfully tax income and make it fully replace the property tax on bank shares was to remove from the exemption, the tax exempt income from municipal bonds. By doing that, the state was also allowed to tax federal bonds. That legislation was passed and in that legislation, there was a provision that 80% of the money collected would be returned to local governments. There was a problem with this practice and the savings and loans who were now paying a tax on income which they had not done before. One of the savings and loans challenged the statute and said, under another federal code, you cannot tax interest income from federal bonds. The state defended that case by saying the statute goes on to say "except for property tax" and except for a license tax, that is nondiscriminatory". The state said this tax would be considered a license tax. The Supreme Court of Montana said the tax would be an income tax rather than a license tax. With that happening, some problems arose. Banks and savings and loans could go back three years to claim a refund. Those refunds could have equalled \$10 million. It could also mean a loss of approximately \$3.5 to \$4 million per year. Senate Bill 335 attempts to plug that loophole. This bill says that if any financial institution covered by law wants to exclude any income from federal bonds then they must also exclude a comparable share of their deductions. This would be retroactive to 1979.

SENATOR TOWE said only one bank has tried to file for a refund.

The fiscal impact, for this bill, will be about \$300,000 less money with this bill than the law that we now have on the books, but which has been declared inconsistent with federal law.

SENATOR TOWE said there is still litigation pending. That case has been taken to the United States Supreme Court. If the state of Montana is successful, this bill would not be effective. The only

way this bill will become effective, is if we lose that case.

Proponents

JIM BENNETT, President of the First Systems Bank in Billings, said the banks of Montana want to be good citizens and are willing to pay their fair share of taxes. He said 126 out of 130 banks said they prefer to be taxed on the basis of income. They do not want to pay taxes if they do not have the income.

GEORGE BENNETT, representing the Montana Bankers Association, said SB 335 addresses the Montana corporation license tax and would require for any taxable period for which a corporate taxpayer claims the exclusion of income from federal obligations that a formulary decrease in deductions be made to reflect the exclusion of such income. If no claim of exclusion is made then the corporation tax operates fully as in the past taxable years.

The Montana Supreme Court, last fall, held that under the Montana Corporation License Tax Act the Department of Revenue was required to exclude income from United States obligations in order to comply with 31. U.S.C. 742.

The Department of Revenue was joined by the Montana Bankers Association and representatives of local government in requesting a rehearing by the Montana Supreme Court. The decision is now being taken to the United States Supreme Court by petition for a writ of certiorari. The department's petition was filed with the U.S. Supreme Court on March 4th. The Respondents have 30 days in which to file a reply, and one would anticipate a decision as to whether or not the Supreme Court will hear the matter within a matter of weeks thereafter. If the U.S. Supreme Court accepts jurisdiction, argument could be made no earlier than December of this year. Thus, it will be perhaps a year before final determination is made with respect to whether or not under the Montana Corporation License Tax Act income from United States obligations can be included in the measure of the tax.

In the meantime, SB 335 seeks to preserve the status quo; protect the integrity of the Corporation License Tax Act; and preserve Montana's position before the United States Supreme Court that its Corporation License Tax Act is proper under 31 U.S.C. 742.

SENATE BILL 335 would apply only where a taxpayer attempts to exclude U.S. obligation income and would have no application where the taxpayer does not seek claims for refund or exclusion of income. It preserves the integrity of the Corporation License Tax Act and the Department of Revenue's request for review to the United States Supreme Court. It results in only a slight revenue shortfall while preventing large claims for refunds as to past years. If challenged by legal action which is successful, the result would simply be an increase in the allowable deductions against the corporation license tax. (See EXHIBIT 1.)

GEORGE ANDERSON, representing the Montana Bankers Association, said if the Supreme Court decision stands, banks would pay a very reduced amount because they could go back and file a claim for refund for 1979, 1980 and 1981.

Senate Bill 335 would provide for federal obligation income not having to be declared. But, if the bank is not going to pay taxes and declare that federal obligation income, they must reduce their expenses (operating and interest expenses) by the same proportion as their federal obligation income. Banks will pay basically the same tax as they have paid in the past.

The total tax raised under SB 335 would be about \$4.6 million in 1982 and the old law (SB 150) would have raised about \$4.8 million.

MR. ANDERSON urged a do pass on SB 335.

PAT HOOKS, a lawyer from Townsend, said recently the savings and loan industry has been a very sick industry. In the taxable period reported, only three savings and loans paid any tax other than the minimum. He said he supports SB 335.

JOHN CADBY, representing the Montana Bankers Association, passed out copies of EXHIBIT 2 which outlines the advantages of SB 335. He said if the bill is amended in any way, it will jeopardize the banks' expression of good faith.

DAN BUCKS, Deputy Director of the Department of Revenue, said in their judgement the best result would be to win the court case in the U.S. Supreme Court. Refunds will probably be in excess of \$9 million if that case is not won. There is also an ongoing loss of \$3 to \$3.5 million from financial corporations and \$.5 million per year from nonfinancial court cases.

MR. BUCKS passed out copies of EXHIBIT 3, which shows the fiscal impact of the alternative bank bills. He also passed out copies of EXHIBIT 4 and EXHIBIT 5 which show a breakdown of the fiscal impact of the financial institution bills that have been prepared this session. He went over those exhibits with the committee.

MR. BUCKS said they would recommend SB 335 be amended to eliminate the possibility of consolidated returns. If you are going to choose the net income approach, HB 550 should also be passed because they believe it helps strengthen the net income approach and helps to guarantee that method of taxation in the future and prevents that method of taxation from being eroded away. He passed out copies of EXHIBIT 6 which is an amendment to SB 335 to disallow consolidated returns. It would provide an accounting approach most consistent with the use of this revenue as a source of revenue for local governments.

Opponents

MIKE YOUNG, Finance Director for the City of Missoula, said this is the local government tax on banks - it is not just a state tax. The deposit base, in his opinion, is the most equitable base on which to levy the tax for local governments. Net income is the worst. People are taxed on the value of assets and not on how much money they make for the purposes of supporting local government services. There is no justification for substituting income for assets for banks and savings and loans. He said there are lots of groups who would be happy to be good citizens and pay when they could afford it. That is what the banks are trying to do.

MR. YOUNG said seven major counties in the state would receive two-thirds of the revenue from this bill. Banks have done a fair job in matching revenue with the old law. The difference is with the savings and loans.

STAN KALECZYC, representing the Tax Department of the Burlington Northern, Inc., said he opposes the bill because it imposes an illegal tax upon the taxpayers of this state.

As the fiscal note accompanying this bill explains, SB 335 disallows deductions related to excluded interest income derived from United States Government obligations for Montana corporation license tax purposes. And, as this committee is aware, SB 335 is one of three bills originally introduced to address the problem which arose in the First Federal Savings and Loan Association versus the Department of Revenue case decided by the Montana Supreme Court earlier this year. In that case, the Montana Supreme Court held that the Department of Revenue could not disallow the exclusion of interest earned on United States obligations from the net income of the financial institutions who were the taxpayers in that case. In view of the Supreme Court, the effort of the Department of Revenue to include the tax exempt interest in net income was nothing more than an effort by the department to tax indirectly what it cannot tax directly.

MR. KALECZYC read a prepared statement to the committee. (See EXHIBIT 7.)

SENATOR TOWE, in closing, said he wants to emphasize the fact that there is a limit that the deduction that is disallowed is limited to the amount of the interest.

He said this is not an erosion of the base. It is important to remember this is based on the ability to pay.

It is important to compare this bill with other approaches. Neither the deposit tax nor the gross receipts tax plug the loopholes in the law.

If the Supreme Court strikes this method down, they will have to strike down the federal law as well. He said he thinks this bill

is our best legal position. He said he is impressed with the good faith the banks have shown.

Questions from the committee were heard.

REPRESENTATIVE WILLIAMS asked Senator Towe if he would support the amendment proposed by the Department of Revenue. Senator Towe said he would prefer that question be answered by the banks. He said he would rather not get into that issue. It has been said that would not fit in with the title of the bill and that may be true and would present a serious problem.

The hearing on SB 335 was closed.

SENATE BILL 264

SENATOR CARROLL GRAHAM, District 29, sponsor of the bill, said SB 264 is an act to allow the Department of Revenue to impute a value on coal whenever the operator of a mine subjects the coal to processing that improves its quality. He said most of the coal in Montana runs about a 25% moisture content. If that coal was run through some of the processes, that moisture content would be reduced to about 5%. More coal could be shipped to the power plants. The intent of the bill is to allow the taxpayer to pay applicable taxes based on market price of like coal prior to processing and to impute a market price regardless of whether the processing takes place at the mine site or not.

Proponents

JIM MOCKLER, Executive Director of the Montana Coal Council, said SB 264 prevents an added value tax. It is not feasible to build a processing plant to process coal and then have to pay an extra 30% on the value for taxes.

TOM EBZERY, representing NERCO, Inc., said SB 264 establishes incentives for a coal company to improve the quality of its product by the use of beneficiation processes. Enhancing the quality and value of raw Montana coal could be a giant step towards marketing it in areas where Powder River Basin coal generally is not now competitive. Mr. Ebzery read a prepared statement to the committee. (See EXHIBIT 8.)

MIKE FITZGERALD, President of the Montana Trade Association, testified in favor of SB 264. He passed out copies of information concerning coal in Montana and went over that handout with the committee. (See EXHIBIT 9.)

There were no opponents testifying against SB 264.

SENATOR GRAHAM, in closing, offered an amendment to SB 264. On page 2, line 1, following "crushing" he proposed to insert "and to oiling". (See EXHIBIT 10.)

The hearing on SB 264 was closed.

SENATE BILL 283

SENATOR DAVE FULLER, District 15, sponsor of the bill, said SB 283 is an act providing a tax credit for the installation of solar energy systems in Montana; defining such systems; and providing rulemaking authority to establish criteria for such systems.

SENATOR FULLER passed out copies of EXHIBIT 11, which are amendments to SB 283.

SENATOR FULLER said there are 200 businesses in Montana that would be affected by this and could take advantage of the tax credit.

SENATOR FULLER said the total amount of credit available to any taxpayer may not exceed \$1,000 per solar energy system.

SENATOR FULLER said, in his opinion, there will not be a negative impact on tax revenues - in fact, it might go the other way.

Proponents

SENATOR MIKE HALLIGAN, District 48, said the tax credit will help out residential people but will also help out the agricultural people. The more alternative energy we use, the more gas and fossil fuels there will be left for future generations.

CURT HARDING, President of the Montana Solar Energy Industries Association, said, according to California studies on the available energy tax credits, for every \$1 of tax revenue lost to the state of California, \$7 was generated in new revenue. Rather than maintaining those same patterns for Montana, one could assume at least half of that amount will be generated in Montana.

DON REED, representing the Montana Environmental Information Center, passed out copies of EXHIBIT 12 which shows how Montana compares to other states with personal tax credits for energy conservation and renewable energy systems.

JIM MCNAIRY, representing the Alternative Energy Resources Organization, said Montana has a good supply of energy alternatives. He said Montana's current energy tax credit is 5% with a \$125 ceiling, for residential taxpayers only. The proposed credit would be 20% for residential and 25% for other uses, both with a \$1,000 ceiling. He passed out a fact sheet in support of SB 283. (See EXHIBIT 13.) He said Montana has the lowest level of tax credits (for energy) of any of the 27 states on the books.

MR. MCNAIRY passed out copies of proposed amendments to SB 283.
(See EXHIBIT 14.)

VIC ROBINSON, representing Sun Wise, Inc., said all forms of energy have been heavily subsidized by the federal government. Any incentives offered for the installation of solar equipment should be viewed as methods of economic development, rather than give-away programs. He said the proposed tax credit would have a great impact on the following:

1. The number of new jobs here in Montana.
2. The investment in plant and equipment.
3. Increased tax base.
4. Higher awareness of energy and energy conservation.
5. Less unemployment.

MR. ROBINSON said they do not support the grants and give-away programs that existed in both federal and state governments in the past. We do not believe that the state should necessarily pay citizens' utilities bills. We do, however, support the tax incentive program proposed in this bill because we feel it will help expand the alternative energy industries in Montana at this time. We feel that this bill should be viewed as an economic development tool. We feel it has the support of economic development organizations and could eventually provide more in benefits to the state than it costs. (See EXHIBIT 15.)

WADE WILKINSON, representing Montana Solar Energy Industries Association, said the tax revenues raised through a bill such as this would offset any costs to the state. The Senate has looked at this bill and agreed with that assumption. He urged a do pass on SB 283.

PAT WAGNER, representing Wagner Solar, said he thinks the main concern of all Montanans is jobs. This bill will help to provide more jobs.

DICK WAGNER, representing Wagner Solar, said we all know someone who will have to go out-of-town or out-of-state to find a job. This industry could provide many jobs. He said solar works!

HAL BUERMAN, representing Solar Growth, said he would appreciate a favorable recommendation on SB 283.

MIKE FITZGERALD, representing the Montana Trade Association, said this bill is valid and an important one. People can't pay high-rising energy bills. People will receive incentives for investment of money. He recommended a do pass on SB 283.

LYNN LUNDBORG, owner of Lynn's Stove and Solar, said Montanans should be self-sufficient and free of encumbrances of heavy taxes. She urged a do pass on SB 283.

DARVIN ECKERT, representing Montana S.E.I.A., said he would appreciate the legislature's help to help him help other people.

GEORGE DUFFY, representing Wagner Energy, said this tax credit is essential to the average wage earner to be able to have a way to really control the high energy bills. The solar tax credit is a way that has lasting effect on the energy problem. It is not a stopgap measure. This is also a way for us to really exclude dependence on foreign oil suppliers. It encourages clean air and is pollution free. Solar provides a no-nonsense answer to part of the energy problem.

HANK SMIT, representing MONTSEIA, said SB 283 will reduce unemployment by creating jobs in the solar related fields. There will be a 700% return on investment in tax revenues.

DON MACINTYRE, representing the Department of Natural Resources and Conservation, said the department supports alternative energy systems tax credits. He said if this bill is passed out of committee, he would like it to be amended so that a tax credit will be continued to be available for biomass generating systems and for small hydro systems. He passed out copies of proposed amendments to SB 283. (See EXHIBIT 16.)

Opponents

DAVE LEWIS, Director of the Office of Budget and Program Planning, said his office considered two tax credits when they figured the budget:

1. The elderly property tax credit.
2. Expansion of the tax credit in the Build Montana Program.

If this bill is passed, they will have to amend the Executive budget.

SENATOR FULLER, in closing, asked for a favorable recommendation on SB 283.

Questions from the committee were heard at this time.

CHAIRMAN YARDLEY asked what is the fiscal impact as far as the current budget. Mr. Bucks said the fiscal note was prepared on the bill in its original form. If this money is not spent through tax credits, it will be spent somewhere else.

MR. BUCKS said this committee should clarify the treatment of married couples filing a joint return. The credit would be \$1,000 per taxpayer on the form, or \$2,000 per joint return. He said

he would provide that amendment for the committee's consideration.

REPRESENTATIVE DOZIER asked if he built his own solar collector, could he take this credit. Senator Fuller said yes.

REPRESENTATIVE REAM asked what will happen if both Representative McBride's bill and this bill are passed. Jim Oppedahl, staff researcher from the Legislative Council, said there is a coordination clause to cover that.

The hearing was closed on SB 283.

SENATE BILL 459

SENATOR DOROTHY ECK, District 39, sponsor of the bill, said SB 459 is an act providing for a tax credit for university-affiliated research. She said this bill may not increase the amount of research done in Montana but it does give us a commitment that this is an area that is very important. An increase in research is very important. The fiscal impact will not be significant, as far as the state is concerned.

A firm can receive a tax credit for 20% of 65% of their expenses plus 20% of the federal credit. The total tax credit for \$1,000 would be about \$150. If there were \$1 million in research, that would be a cost of about \$26,000 to the state. The Department of Revenue has estimated a possible impact of \$50,000.

The state credit has restrictions on it. The research must be limited to university-affiliated research or research in a Montana recognized research facility.

There is an automatic sunset date on this bill. If the federal credit is sunsetted in four years, we will have to do something different with this bill in order to keep the credit active.

Proponents

LARRY WEINBERG, representing the Montana University System, said the university system supports the bill. They would like to see some stimulation in research. He said this credit may not open many new jobs but the research that may result may be the impetus to creating new jobs.

JOHN JULA, representing Montana State University, said SB 459 will provide for people in the private sector to receive a benefit from contributing to research. He said he considers this bill as a companion bill to the Build Montana Program. It provides a mechanism for helping funding research in Montana. It will help economic development in the state of Montana.

ED BINGLER, representing Montana Tech, said attracting private sector capital investment for building the capability of university research and development will strengthen Montana's technology base and improve employment opportunities.

The modest inducements offered to private sector supporters of research through this bill is appropriate at a time when other states across the country are providing major programs of support for research and technology development. Montana will be left far behind if a greater effort is not made to attract private capital for research.

JULIE FOSBENDER, representing the Associated Students of the University of Montana, said benefits to the state because of research are many. She urged support of SB 459.

DAN BUCKS, Deputy Director of the Department of Revenue, said the fiscal effects of this bill will be about \$50,000 per year.

There were no opponents testifying on this bill.

SENATOR ECK said \$500 will be the maximum credit available. She closed on her presentation on SB 459.

The hearing was closed on SB 459.

CHAIRMAN YARDLEY called the committee into Executive Session at this time.

EXECUTIVE SESSION

Senate Bill 384

REPRESENTATIVE NORDTVEDT said the effective date has been changed from May 1 to June 30. He said a taxpayer has to have paid his taxes before he can receive a refund or a credit.

REPRESENTATIVE NORDTVEDT said the proposed amendments have been looked over by Representative Thoft, Mr. Charles Graveley, Montax and himself and everyone agrees with the amendments.

REPRESENTATIVE NORDTVEDT moved the proposed amendments to SB 384.

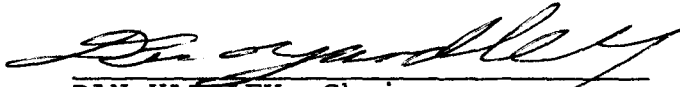

The motion was voted on and PASSED unanimously.

REPRESENTATIVE NORDTVEDT moved SB 384 BE CONCURRED IN, AS AMENDED.

The motion was voted on and PASSED unanimously.

CHAIRMAN YARDLEY asked Representative Nordtvedt to carry the bill in the House.

The meeting was adjourned at 11:30 a.m.


DAN YARDLEY, Chairman
Vicki Lofthouse, Secretary

STATEMENT OF GEORGE T. BENNETT IN SUPPORT OF
SENATE BILL 335 FOR THE MONTANA BANKERS ASSN.

* * * * *

I am George T. Bennett of Helena, counsel for the Montana Bankers Association, an organization representing 164 state and national banks in the state of Montana. This statement is made in support of Senate Bill 335.

Senate Bill 335 addresses the Montana corporation license tax and would require for any taxable period for which a corporate taxpayer claims the exclusion of income from federal obligations that a formulary decrease in deductions be made to reflect the exclusion of such income. If no claim of exclusion is made then the corporation tax operates fully as in past taxable years.

THE PROBLEM:

The Montana Supreme Court last fall held that under the Montana Corporation License Tax Act the Department of Revenue was required to exclude income from United States obligations in order to comply with 31 U.S.C. 742.

The Department of Revenue was joined by the Montana Bankers Association and representatives of local government in requesting a rehearing by the Montana Supreme Court. The decision is now being taken to the United States Supreme Court by petition for a writ of certiorari, copy attached. The Department's petition was filed with the U. S. Supreme Court on March 4th. The Respondents have 30 days in which to file a reply, and one would anti-

cipate a decision as to whether or not the Supreme Court will hear the matter within a matter of weeks thereafter. If the U. S. Supreme Court accepts jurisdiction, argument could be made no earlier than December of this year. Thus, it will be perhaps a year before final determination is made with respect to whether or not under the Montana Corporation License Tax Act income from United States obligations can be included in the measure of the tax.

PURPOSE OF S. B. 335:

In the meantime, Senate Bill 335 seeks to preserve the status quo; protect the integrity of the Corporation License Tax Act; and preserve Montana's position before the United States Supreme Court that its Corporation License Tax Act is proper under 31 U.S.C. 742.

POTENTIAL CLAIMS FOR REFUND:

If it is ultimately held that the corporate tax cannot reach U. S. obligation income, then for the taxable years 1979-1981 the Department of Revenue estimates that approximately \$9 million in refunds of corporate tax could be claimed by the affected taxpayers.

The Department of Revenue in the past in making refunds of corporation license tax has required each of the local governmental units to refund its proportionate part. This will cause not only a financial burden, but also an accounting and budgetary problem for all of the local taxing jurisdictions affected.

Senate Bill 335 would require taxpayers filing claims for refund

to adjust their deductions, and such adjustment would result in only a very slight decrease in revenue as to past years for which claims for refund can be made.

Senate Bill 335 is based on the premise that the present corporation license tax can properly, under 31 U.S.C. 742, reach income from United States obligations and that the status quo should be preserved while the Department of Revenue seeks a reversal of the court ruling.

RETROACTIVE NATURE OF SENATE BILL 335:

Under Senate Bill 335 the method of determining allowable deductions for corporation license tax purposes would be given retroactive application to taxable years past but still open for redetermination of liability, either by the Department by deficiency assessment, or by the taxpayer by claims for refund.

Article XIII, Section 3 of the Montana Constitution only prohibits retrospective laws if they impose a "new liability in respect to transactions or considerations already passed." The Constitution of the United States does not prohibit retrospective legislation, but only those state enactments which constitute ex post facto laws or which impair the obligation of contract or violate the guarantees of the 14th amendment.

Senate Bill 335 would apply to past taxable years only where the taxpayers make claim for refund, thus would apply only with taxpayer initiated claims for refund, or requests for audit adjustment.

CONTROLLING FEDERAL STATUTE:

31 U.S.C. 742, the controlling federal statute contains a very important exception to the rule that states cannot tax either the income or the obligation. This exception reads:

" . . . except non-discriminatory franchise or other non-property taxes in lieu thereof, imposed on corporations and except estate taxes or inheritance taxes."

The Montana Corporation License Tax Act presently is non-discriminatory and it is a franchise tax upon the privilege of doing business in Montana in the corporate form measured by income. The attorneys for the Department of Revenue are optimistic that the United States Supreme Court will reverse the Montana Supreme Court and we share their optimism.

Keeping in mind that the only type of tax which can satisfy 31 U.S.C. 742 is one that is (a) non-discriminatory, (b) a franchise or other non-property tax, and (c) imposed upon corporations, it is clear that any corrective legislation should seek to preserve the Montana corporation license tax as the best and fairest type of corporate tax to be imposed upon financial institutions and all business and commercial corporations in the State of Montana.

A deposits tax, first of all, would discriminate because it would apply for the most part to financial institutions which accept deposits. To the extent a deposits tax applies to non-financial institutions, it would apply to corporations which do

business essentially as do banks or other financial institutions and which in all probability hold United States obligations. Thus, it discriminates as between corporations and as to the types of assets held. Secondly, a tax upon deposits is more like a property tax than a franchise tax. Thirdly, to be a franchise tax the tax must be upon a privilege granted by the state. In the case of the Corporation License Tax Act, this is a tax upon the privilege of doing business in the state of Montana in corporate form. A deposit creates a debtor/creditor relationship and, therefore, anyone holding a deposit is a debtor owing that money to the depositor/ creditor. Thus it is very difficult to see that the deposit tax could actually be called a "franchise tax" since there is little merit in treating a "debt" as a "privilege" state bestowed. Also, if borrowing money is a "privilege" then all borrowers should be made subject to the tax uniformly.

A second proposal is a "gross receipts tax" upon banks and savings and loans. Gross receipts are defined as gross income under the Corporation License Tax Act. Therefore, this type of tax is simply the corporation license tax imposed upon banks and savings and loans, not as to their net income but as to their gross income. Setting aside the question of unfairness in taxation, this is obviously discrimination against financial institutions because they hold United States obligations and a totally discriminatory application of the Corporation License Tax Act as to only two corporate taxpayers, viz., banks and savings and loans.

SUMMARY:

The advantages of Senate Bill 335 are:

1. It would apply only where a taxpayer attempts to exclude U. S. obligation income and would have no application where the taxpayer does not seek claims for refund or exclusion of income.

2. It preserves the integrity of the Corporation License Tax Act and the Department of Revenue's request for review to the United States Supreme Court.

3. It results in only a slight revenue shortfall while preventing large claims for refunds as to past years (something that cannot be accomplished under the two proposed alternative measures).

4. If challenged by legal action which is successful the result would simply be an increase in the allowable deductions against the corporation license tax.

5. Will be challenged, if challenged at all, only by non-financial institutions.

No. _____

In The
Supreme Court of the United States
October Term, 1982

THE DEPARTMENT OF REVENUE OF THE
STATE OF MONTANA,

Petitioner,

vs.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF MISSOULA, AND HAVRE FEDERAL SAVINGS
AND LOAN ASSOCIATION

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MONTANA

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i.

QUESTION PRESENTED FOR REVIEW

Whether The State of Montana Can Include Interest Income From Certain Federal obligations (*i.e.*, 31 U.S.C. §769 and 12 U.S.C. §§1433, 1725(e), 2055, 2079, 2134), in the net income measurement of the Montana Corporation License Tax imposed by Sections 15-31-101 *et seq.*, Montana Code Annotated.

- A. Whether the Montana Corporation License Tax Satisfies the Requirements of the Exception Contained in 31 U.S.C. §742, so as to Allow the Inclusion of Federal Interest Income Within the Computation of its Tax Base.
- B. Whether the Immunity From State Taxation Described in 31 U.S.C. §769 and 12 U.S.C. §§1433, 1725(e), 2055, 2079, 2134 is Broader than that Otherwise Provided by 31 U.S.C. §742.

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No. _____

In The
Supreme Court of the United States
October Term, 1982

—o—
THE DEPARTMENT OF REVENUE OF THE
STATE OF MONTANA,

Petitioner,

vs.

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION
OF MISSOULA, AND HAVRE FEDERAL SAVINGS
AND LOAN ASSOCIATION

Respondents.

—o—
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF MONTANA

—o—
The Petitioner, the State of Montana, respectfully prays
that a Writ of Certiorari issue to review the judgment and
opinion of the Supreme Court of Montana entered in this
case.

OPINION BELOW

The Opinion of the Montana Supreme Court is reported
at *First Federal Savings & Loan Association v. Depart-
ment of Revenue*, ___ Mont. ___, 654 P.2d 496 (1982). A
copy of the Opinion of the Montana Court appears in the
Appendix, pp. 1a-10a.

JURISDICTION

The Opinion of the Montana Supreme Court was
entered on September 23, 1982. A timely Petition for
Rehearing was denied by a split court on December 6,

1982, Appendix pp. 11a-12a, and this Petition for Certiorari was filed within 90 days of that date. Accordingly, this Petition is timely under 28 U.S.C. § 2101(c) and Supreme Court Rule 20.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case concerns the tax exception contained in 31 U.S.C. § 742. Also involved are certain provisions of the Montana Corporation License Tax, in particular §§ 15-31-101(3), 15-31-143(1) and 15-31-113(1)(a)(i), of the Montana Code Annotated. The following statutes are also involved in this case, but because of their length are set out verbatim in the Appendix, pp. 34a-36a: 31 U.S.C. § 769 (United States Treasury Bills); 12 U.S.C. §§ 1433 (Federal Home Loan Bank Notes), 1725(e) (Federal Savings & Loan Insurance Corporation Notes), 2055 (Federal Land Bank Obligations), 2079 (Federal Farm Credit Bank Securities), and 2134 (Federal Home Loan Stock Dividends).

31 U.S.C. § 742:

Exemption From Taxation

Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered directly or indirectly, in the computation of the tax, except nondiscriminatory franchise or other nonproperty taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes.

Montana Code Annotated:

15-31-101. Organizations subject to tax

...

(3) Every corporation, except as hereinafter provided and except as provided in 33-2-705(6), engaged in business in the State of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding taxable year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under part 3. This tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

15-31-143. Return and payment on corporate dissolution.
(1) It is hereby declared that the policy of the State of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

15-31-113. Gross income and net income. (1) The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and: (a) including: (i) interest exempt from federal income tax;

STATEMENT OF THE CASE

Respondents, First Federal Savings and Loan Association of Missoula and Havre Federal Savings and Loan Association are federally chartered savings and loan associations doing business in the State of Montana in corporate form. As such, Respondents are subject to the Montana Corporation License Tax provided for in Title 15, Chapter 31 of the Montana Code Annotated (MCA).

In their respective corporation license tax returns for tax year 1979, Respondents deducted the interest income derived from certain federal obligations from their gross income to arrive at net income for purposes of measuring the Montana Corporation License Tax. Subsequently, Petitioner, the Montana Department of Revenue audited the returns, disallowed the deduction taken for interest income on certain United States obligations and issued notices of resulting tax deficiencies.

Thereafter, Respondents filed suit in the District Court of the First Judicial District of the State of Montana for the County of Lewis and Clark, contending in their complaint for Declaratory Judgment as follows:

16. Plaintiffs contend that while 31 U.S.C. Section 742, as a general rule, authorizes the inclusion of interest income from United States obligations in the calculation of net income for purposes of a nondiscriminatory corporation license tax, this federal statute does not repeal, amend, nullify or control the specific federal statutes relating to the federal securities listed on "Exhibit A" wherein it is provided that the interest income from these securities is specifically exempted from any form of state taxation which would include corporation license taxes.

17. The federal statutes pertaining to the federal securities shown on "Exhibit A", being more specific than the general statute regarding state taxation of interest income from obligations of the United States must be, and are,

controlling in determining whether the interest income from such securities is taxable.

In answer to the Respondents' Complaint, the Montana Department of Revenue contended that the inclusion of interest income from federal obligations in the net income measurement of a corporation franchise tax is permissible under the express language of 31 U.S.C. §742 and pursuant to a long line of decisions of this Court interpreting the exemption language of §742 as not extending to a non-discriminatory franchise tax.

The Respondents never questioned that the Montana Corporation License Tax is anything other than an excise tax on the corporate franchise. See Items 13, 15 and 18 of Complaint Appendix, pp. 38a-50a.

Pursuant to the filing of a Motion for Summary Judgment by each party the trial court held that interest income from the specified federal obligations were includable in the computation of the Montana Corporation License Tax pursuant to 31 U.S.C. §742 as well as the established line of case law emanating from this Court interpreting this section, and entered judgment on behalf of the Petitioner.

The Memorandum and Order of the District Court appears in the Appendix at pp. 13a-27a.

The Respondents herein appealed the order of the District Court to the Montana Supreme Court which reversed and held that the inclusion of the interest income from the specified federal obligations in the net income measurement of the Montana Corporation License Tax violated both 31 U.S.C. §742 and the federal agency statutes providing for issuance of such obligations (31 U.S.C. §769; 12 U.S.C. §§1433, 1725(e), 2055, 2079, and 2134). In reaching that conclusion the Montana court declined to address, discuss or recognize the 100 plus year

interpretation given to the exemption language contained in 31 U.S.C. §742 by this Court, upholding inclusion of federal interest income in the measure of a state franchise tax.

A second issue presented to the Montana Supreme Court by the Respondent but left undecided was whether the Montana Corporation License Tax is discriminatory. The Montana Court determined this second issue to be moot in light of its decision on the first issue, 654 P.2d at 499, however it will be addressed in this Petition. The Montana Court also addressed a third issue concerning the application of a 1979 legislative amendment to the net loss carryover provisions of the Montana Corporation License Tax statutes. This third issue being solely a matter of state law is not raised into issue in this Petition.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

A. THE MONTANA SUPREME COURT'S DECISION ON THE FEDERAL QUESTION CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT AND OTHER STATE COURTS OF LAST RESORT.

INTRODUCTION

This Court issued a decision on January 24, 1983 in *Memphis Bank and Trust Company -v- Riley C. Garner*, 51 U.S.L.W. 4104, which held a Tennessee franchise tax law imposing a 3% tax on the net earnings of banks doing business within the state, unconstitutional, discriminatory under the Supremacy Clause. The rationale of this Court's holding was that although interest income from federal obligations is includable in certain instances in the base of the tax, since interest income from otherwise comparable state and local obligations was excluded therefrom the state tax was

discriminatory. The issue now presented to this Court for review was not directly addressed in *Memphis Bank and Trust Company* but was specifically referred to and set forth in Footnote 5 to the Opinion, 51 U.S.L.W. at 4105, as follows:

In establishing the Federal Credit Banks, Congress made clear that the obligations of these banks would be immune from taxation by the States. 12 U.S.C. §§2055, 2079 and 2134. We have no occasion to determine whether the immunity described in these provisions is broader than that otherwise provided by 31 U.S.C. §742.

This Court now has the opportunity to directly address this particular issue which possesses significant import for not only the State of Montana and its citizens, but all states which levy a "nondiscriminatory franchise-tax or other nonproperty tax in lieu thereof on corporations" and include in the measure of such tax interest income from otherwise tax exempt federal obligations. In addition, this issue affects more than 120 years of jurisprudence from this Court in the federal and state franchise taxation area.

If the issue is left unaddressed, states such as Montana will continue to endure the dilemma of finding a method which effectively taxes financial institutions engaged in business within the state so as to truly reflect such institutions' fiscal responsibilities to the state and more importantly to its fellow citizens. Historically, this has been an ongoing and frustrating problem for the State of Montana. See, *Montana Bankers Association v. Montana Department of Revenue*, 177 Mont. 112, 580 P.2d 909 (1978) (holding that the 1959 congressional amendment to 31 U.S.C. §742 prohibits the inclusion of the value of federal obligations in the assets of a national bank for purposes of computing a bank shares tax).

Section 742, after being amended in 1959, was marked by an absence of litigation for more than 20 years. The

Montana Supreme Court's interpretation of 31 U.S.C. §742 in the *Montana Bankers Association* case *supra*, appears to be one of the first state court decisions since the amendment on what was thought to be a settled issue. Since then however, numerous cases relating to that specific issue have arisen. It must be noted the issue has not been resolved uniformly since the highest courts in these states have opted for an interpretation of 31 U.S.C. §742 *contra* to that of the Montana Court. Cf.: *Bartow County Bank v. Bartow County Board of Tax Assessors*, 285 S.E. 2d 920 (Ga. 1982), *appeal docketed*, No. 81-1834, 51 U.S.L.W. 3023 (April 5, 1982) (holding Georgia bank shares tax consistent with 31 U.S.C. §742); and also *Bank of Texas v. Childs*, 615 S.W. 2d 810 (Tex. 1981), cert. granted sub nom. *American Bank and Trust Co. v. Dallas County*, ___ U.S. ___, 51 U.S.L.W. 3339 (1982) (No. 81-1717) (holding that the State of Texas' property tax on bank shares which is computed on a bank's net assets without any deduction for tax-exempt United States obligations owned by a national bank is not violative of 31 U.S.C. §742).

As can be noted, the effects of the Montana Supreme Court's construction of 31 U.S.C. §742 are beginning to surface in this Court in the bank shares tax area and are requiring the attention of this Court to settle. Now, this unprecedented interpretation of 31 U.S.C. §742 threatens to permeate the area of state franchise taxation. If left unaddressed from this Petition, the Montana Supreme Court's interpretation of 31 U.S.C. §742 will once again pervade the courts of other states and ultimately wind themselves to this Court. This Court can speak definitively on this most important issue by granting this Petition.

DISCUSSION

The decision of the Montana Supreme Court that interest income from certain federal obligations is not in-

cludable in net income for purposes of calculating the Montana Corporation License Tax (which is a franchise income tax), is in derogation of the long established judicial interpretation of 31 U.S.C. §742 developed by this Court, affirming the inclusion of otherwise tax exempt obligations or interest therefrom in the measure of a corporate franchise tax pursuant to 31 U.S.C. §742. In addition, the decision of the Montana Supreme Court is contrary to the recorded congressional intent enacting the 1959 amendment to §742.¹ See, also Symons, *State Taxation of Banks: Federal Limitations*, 99 Banking L.J. 817 (1982).

The issue before the Court in this petition involves the question of when a state can levy a tax involving obligations of the United States. Initially, any state tax must meet the requirements of the exception contained in 31 U.S.C. §742 which expressly provides that such state taxation must first be nondiscriminatory and second must be either a "franchise tax" or "other nonproperty tax in lieu thereof imposed on corporations".² It is after these two requirements are satisfied that the subsequent federal issue of this Petition presents itself, i.e., the interpretation to be given to exemption language contained in the federal agency statutes.

The holding of the Montana Supreme Court in this matter ignores the historical treatment of state excise taxation by this Court and fails to recognize that under certain parameters federal interest income can be legally embraced in state taxation according to 31 U.S.C. §742. The

¹ See, S.Rep. No. 909, 86th Cong., 1st Sess., reprinted in 1959, U.S. Code Cong. & Ad. News, 2769, 2773-74, and 2777.

² 31 U.S.C. §742 also excepts "estate taxes or inheritance taxes but are not at issue in this Petition.

statute under consideration, 31 U.S.C. §742 was enacted in 1862 and provided that "all stocks, bonds, and other securities of the United States held by individuals, corporations, or associations within the United States shall be exempt from taxation by or under state authority." Act of Feb. 25, 1862, Ch. 33, §2, 12, Stat. 346.

An initial reading of the express words of the statute appeared to indicate an all encompassing prohibition of any state taxation which utilized federal obligations or interest therefrom. However in early watershed decisions, this Court clarified construction of the statute and sanctioned certain areas of exception regarding state taxation, thereby curtailing an overly broad interpretation of §742. Two general areas regarding the taxation of state granted privileges have been recognized by this Court as being allowable, notwithstanding the prohibition of §742. The two areas of allowable taxation are the franchise and inheritance tax areas, in which the state levies a tax for the respective privileges of doing business within the state, *Society for Savings v. Coite*, 6 Wall. 594 (1867); *Provident Institution for Savings v. Massachusetts*, 6 Wall. 611 (1867); *Hamilton Co. v. Massachusetts*, 6 Wall. 632 (1867), and transmitting or receiving of property via a testamentary or intestate devise, *Plummer v. Coler*, 178 U.S. 115 (1900).

Congress amended 31 U.S.C. §742 in 1959 so as to expressly ratify and thereby reinforce the judicially developed exceptions to the state taxation exemption contained in §742. The amendment enumerated two requirements which must be satisfied in order to qualify as an exception to the §742 state taxation exemption. The tax must first be either a "franchise tax" or "other nonproperty tax in lieu thereof" imposed on corporations. Subsequent to the 1959 amendment this Court upheld a franchise tax utilizing a net income measure that included

interest income from federal obligations. See *Reuben L. Andersen-Cherne, Inc. v. The Commissioner of Revenue of Minnesota*, 423 U.S. 886 (1975) (Appeal dismissed for lack of a substantial federal question, and thus constituting a disposition on the merits of the case and concomitantly binding precedent for all courts. See *Hicks v. Miranda*, 422 U.S. 332 (1975)). Secondly the tax must be "nondiscriminatory". See, *Memphis Bank and Trust, supra*. The Montana Corporation License Tax fulfills both of these requirements.

The Montana Corporation License Tax constitutes a franchise or other nonproperty tax in lieu thereof imposed on corporations" within the meaning of 31 U.S.C. §742. Montana statutes expressly describe the tax as a license fee for the privilege of carrying on business within the state in corporate form. See §§15-31-143(1) and 15-31-101(3), MCA, *supra*. The Montana Supreme court has held innumerable times that the corporate license tax is a franchise tax upon the privilege of doing business in the State in a corporate capacity. *Montana Bank v. Casey*, 135 Mont. 104, 337 P.2d 935 (1959); *State v. J. C. Maguire Const. Co.*, 113 Mont. 324, 125 P.2d 433 (1942); *O'Connell v. State Board of Equalization*, 95 Mont. 91, 25 P.2d 114 (1933); *East Helena State Bank v. Rodgers*, 73 Mont. 210, 236 P. 1090 (1925); *Cottonwood Coal Co. v. Junod*, 73 Mont. 392, 236 P. 1080 (1925); *Equitable Life Assur. Co. v. Hart*, 55 Mont. 76, 173 P. 1062 (1918). As already noted the Respondents never questioned the nature of the Montana corporation license tax in their Complaint³ or otherwise and conceded in their

³ See generally Respondent's Complaint, reproduced in Appendix, pp. 38a-50a.

Complaint⁴ as well as in their briefs⁵ to both the Montana Supreme Court and the State District Court that the tax was a franchise tax.

The Montana Supreme Court described the tax in its Opinion issued in this matter as follows, 654 P.2d at 498:

The Department argued that the Montana Corporation License Tax is a franchise tax on the privilege of doing business in Montana with the tax based upon or measured by the net income of the taxpayer. Hence, it was argued, that the tax is not on the property (interest income) but is on the privilege. This Court finds the argument to be unpersuasive. It is a distinction without a difference in our opinion. *If the franchise tax is on the privilege and the tax is based on the net income, this Court concludes that the tax is on the privilege and the net income.* If the net income includes tax-exempt interest, the tax is on the exempt income which is prohibited by the specific federal statutes creating the federal obligations and granting the tax exemption.

It appears clear that the Montana corporation license tax is a franchise tax. However, if the tax is somehow construed not to be a franchise tax, at very least it is a "non-property tax in lieu thereof imposed on corporations" and still falls within the § 742 exception.

In addition to the Montana Corporation License Tax constituting the type of tax contained within the exception

⁴ See, Respondent's initial Protest to the Department specifically incorporated as Exhibit "C" via item 13 of the Complaint which states: "taxpayer admits that generally interest income from United States obligations is taxable for purposes of the Montana Corporation License Tax."

⁵ See, e.g., Respondent's Reply Brief to Montana Supreme Court, p. 2; Reply Brief to Montana District Court, p. 3, both reproduced in Appendix, pp. 518-52a.

to 31 U.S.C. § 742, it also meets the second requirement in that it is nondiscriminatory. As has been already noted, a second issue presented to the Montana Supreme Court in this matter was whether the Montana corporation license tax is discriminatory. Although the Montana court determined this second issue to be moot in light of its decision on the first issue, the Department successfully prevailed at District Court that the Montana tax is not discriminatory since it includes interest income derived from all obligations issued by the State of Montana or any political subdivision thereof, any sister state, or the United States. This is all that is required by § 742 according to *Memphis Bank and Trust Company*, 51 U.S.L.W. at 4105.

It is clear that under the principles established in our previous cases, the Tennessee bank tax cannot be characterized as nondiscriminatory under § 742. Tennessee discriminates in favor of securities issued by Tennessee and its political subdivisions and against federal obligations. The State does so by including in the tax base income from federal obligations while excluding income from otherwise comparable state and local obligations. We conclude therefore, that the Tennessee bank tax impermissibly discriminates against the Federal Government and those with whom it deals.

Notwithstanding that interest income from all obligations are included in the base of the Montana tax, it was argued by the Respondents that because statutes providing for issuance of certain Montana obligations⁶ contain tax exempting language, the result is a discriminatory tax. The District Court affirmed the position of the Department that the Montana Corporation License Tax clearly

⁶ §§ 7-7-4607, 7-13-2330, 7-14-4654, 7-15-4307, 7-34-2416, 60-11-1110, 60-11-1210, 67-11-306, and 90-6-125, MCA. See Appendix, pp. 53a-54a, for Complete Text of Statutes.

includes in the measurement of the tax, interest income from all Montana obligations. The basis of the District Court's holding, and the Petitioner's argument is that the statutes' tax exempting language prohibits all forms of state taxation except a franchise tax, since such tax does not tax the income but taxes the corporate privilege. Such rationale is supported by decisions of this Court interpreting §742 prior to the 1959 amendment, and the Montana Supreme Court, as well as other federal excise tax decisions.

**B. THE MONTANA SUPREME COURT DECIDED
AN IMPORTANT QUESTION OF FEDERAL
LAW WHICH HAS NOT BEEN BUT SHOULD
BE SETTLED BY THIS COURT.**

The imposition by the State of Montana of a corporation license tax which includes interest income from federal obligations in its measuring base is plainly in accord with 31 U.S.C. §742. It is at this point that a question of uniform interpretation of federal statutes presents itself. This Court has never directly addressed the issue of whether the tax immunity described in the specified statutes (31 U.S.C. §769 and 12 U.S.C. §§1433, 1725(e), 2055, 2079, 2134) is broader than that otherwise provided by 31 U.S.C. §742. See, *Memphis Bank and Trust Company v. Riley C. Garner*, *supra*, fn. 5. This Petitioner believes that the tax exempting language in §742 provides clear guidance as to the interpretation to be given to the exemption language contained in those statutes. The Montana Supreme Court held otherwise and ruled without stating its reason that the specific federal statutes creating the federal obligations prohibit the inclusion of federal interest in the net income measure of the Montana corporation license tax, notwithstanding the interpretation given to the tax exemption language in §742 by this Court. 654 P.2d at 498.

It must be noted that the specific statutes providing for issuance of certain federal obligations contain language exempting the obligations from state taxation. That language is virtually identical to the exempting language contained in the first sentence of 31 U.S.C. §742, which prior to 1959 comprised the entire statute. Because the language is so similar, the same interpretation of the exempting language given to §742 is applicable to the individual agency statutes. The prohibition on state taxation of federal obligations as contained in §742 does not apply to state franchise taxation. The state tax prohibitions contained in the issuing statutes likewise does not apply to a state franchise tax such as the Montana Corporation License Tax.

Beginning in 1862 this Court interpreted §742 and instituted a long line of decisions upholding the position that states could levy a franchise or excise tax for a granted privilege such as operation in corporate form, and that in computing the value of that privilege consideration of the value of federal obligations held as assets did not violate §742. In short, states could tax the franchise and include the value of interest income from federal obligations in the income measurement. See, *Society for Savings v. Coite*, 6 Wall. 594 (1867); *Provident Institution for Savings v. Massachusetts*, 6 Wall. 611 (1867); *Hamilton Co. v. Massachusetts*, 6 Wall. 632 (1867); *Home Insurance Company v. New York State*, 134 U.S. 594 (1890); *Cleveland Trust v. Landers*, 184 U.S. 111 (1902); *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911); *Educational Films Corporation v. Ward*, 282 U.S. 379 (1931); *Pacific Co. v. Johnson*, 285 U.S. 480 (1932); and *Werner Machine Co. v. Director of Taxation*, 350 U.S. 492 (1956). Succinctly stated, the latest ruling announced in these cases was that a franchise tax does not violate 31 U.S.C. §742 merely because it is measured by a yardstick which includes tax-

exempt income or property, even though a part of the economic impact of the tax may be said to bear directly upon such income or property. See *Werner Machine Co.*, 350 U.S. at 494.

In 1959 the second sentence was added to 31 U.S.C. § 742. As noted in the legislative history, treatises, and by the Montana District Court, although not addressed by the Montana Supreme Court, this second sentence was but a clarification of the exemptive provision contained in the original sentence which expressly ratifies and reinforces the line of decisions announced by this Court interpreting § 742. That line of cases specifically allows a state to levy a nondiscriminatory franchise tax which includes federal interest income in its measure.

In none of these cases, however, was the argument directly addressed as to whether the exempting language contained in the individual statutes providing for issuance of federal obligations is broader than the exemption provided for in 31 U.S.C. § 742. A need for guidance from this Court is evident since the issue presented by this petition is significant and potentially far reaching. The issue of a state's ability to levy a corporate franchise tax and choose a method of measurement which it considers the most appropriate to the exercise of that corporate franchise, deserves plenary consideration by this Court. This case offers a timely opportunity for the court to set the matter to rest.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Montana.

Respectfully submitted,

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TERRY B. COSGROVE

Special Assistant

Attorney General

P.O. Box 1144

Helena, MT 59624

SENATE BILL 335

SB 335 - CORPORATION LICENSE TAX

Advantages:

1. Fairest Tax

- a. Based on ability to pay - net income
- b. Paid in addition to real and personal property taxes
- c. Paid in addition to \$.5 million in supervision fees to state

2. Most Equitable

- a. Treats banks, savings and loans, Sears, American Express, D. A. Davidson, and all other corporations alike
- b. Hardest tax to manipulate

3. Preserves Revenue

- a. Retroactive to 1979
 - (1) Prohibits \$10 million tax refunds
 - (2) Protects local government revenues
- b. Preserves revenue for 1982
 - (1) \$4.5 million to state and local government
 - (2) More taxes paid as economy recovers
- c. Preserves revenue for future years
 - (1) Tax paid regardless of outcome of appeal to U.S. Supreme Court

4. Most Legally Sound

- a. Less susceptible to adverse court ruling if challenged
 - (1) Non-discriminatory franchise tax
 - (2) Taxes all bond income - local, state, and federal
- b. Continues same form of tax as appeal proceeds through court

DEPARTMENT OF REVENUE

EXHIBIT 3
3-17-83

TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

February 16, 1983

MEMORANDUM

TO: Ellen Feaver
Director

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

SUBJECT: Fiscal impact of the alternative bank bills: S. B. 335,
S. B. 263 (.9 mill rate), H. B. 536 (.65%)

	Current Law	Current Law/S&L Decision	S. B. 335	* S. B. 263 (.9 mill rate)	* H. B. 536 Amend to .65%
Banks	4,768,069	1,112,538	4,348,927	4,102,381	4,119,408
Savings & Loans	21,500	2,830	21,447	830,039	775,582
Totals	4,789,569	1,115,368	4,370,374	4,932,420	4,894,990

If you should need any further information, please let me know.

Banks

page 1 of 5

EXHIBIT 4
3-17-83

	Current Law Tax Paid for 12-31-81 or FYA	Current Law S-L Description incl U.S. Taxp	Tax under 12-31-81 Interest offset	Tax under 12-31-81 Depreciation	Tax under 12-31-81 Losses
	299442	50	26745	23264	19135
	9785	50	2188	7430	7043
X	50	50	50	24684	20381
	223519	50	223519	240252	228437
	22195	50	16713	8522	8628
	30318	50	22121	15501	13000
	29940	12896	26662	10667	10702
	53392	33337	52024	35592	30857
	4890	50	50	2923	3975
	15632	50	12590	20517	16288
	26961	1687	22966	20250	19009
	32736	703	24529	10720	9631
	26974	50	24834	30059	29743
	50785	50	34017	19668	17354
	3818	50	3818	7330	7419
	23902	50	15599	13487	12339
	13515	50	10393	17374	9385
	8557	50	8557	15331	14321
	8491	50	6623	5167	4594
	13513	50	11123	7017	6169
	65628	50	50108	31019	31583
	15429	50	10265	5278	4983
	25181	50	22794	17116	16162
	11917	50	10309	8919	8926
X	203986	50	203986	63312	193512
	2679	50	2679	21607	90068
	3955	50	3559	2526	2514
	44285	50	42072	6943	34349
	6209	50	5903	5093	5149
	40194	50	40194	42652	48648
	50	50	50	2113	2164
	3528	50	3528	9943	8989
	15607	50	15403	25525	13424
	13711	13711	13711	10783	11357
	15376	50	15376	8987	8504
	58545	50	36599	32437	27508
	48327	10659	43120	26014	25038
	4150	50	4150	29099	23997
	41665	26993	38816	18635	17100
	9594	2149	9594	13817	13181
	7340	50	5206	4743	4387
	34637	50	25139	20675	17762
	29342	50	18657	16115	14865
	50	50	50	9523	9390
	2444	50	2464	5687	5724
Total this Page	1332769	107985	1116853	14425	1117291

17-20

2233	50	50	2313	11649
56700	18817	52132	1161	21611
83875	5548	80761	60303	10700
94530	17024	91928	11601	72627
14384	50	12035	10510	11107
139237	12260	121527	137377	73666
65835	11388	67531	118721	62171
16601	50	13537	11701	10257
50	50	50	500	89304
63517	50	53411	51747	62182
21531	14374	21120	26910	22553
50	50	50	700	10764
22223	50	18563	13103	11715
2A380	14926	30171	11705	12001
3611	50	3611	9134	1725
23327	50	19231	13616	13320
14660	7298	16523	6377	6675
22068	50	22068	41473	35107
45746	50	41845	42483	33107
192412	87273	181055	136330	154062
81602	53619	17618	16160	52413
4269	50	110	110	2706
3734	50	1167	734	7170
67126	11676	63100	66013	61275
80536	24676	73233	27000	50413
50	50	50	85011	74141
32509	50	23570	14546	18731
10248	50	1173	673	5540
9127	50	9127	18741	17612
16771	3068	16141	12110	11755
51154	25190	49179	33710	10570
154889	104471	151261	127052	107742
44652	31261	43465	26131	23321
84471	50	76721	63534	64146
83068	50	71497	67103	57214
6331	50	3331	20133	34151
9161	50	1336	1336	3114
63226	10153	62044	70713	61163
7808	50	7034	6032	1017
47070	16533	13533	51104	53111
50	50	50	13144	12504
50	50	50	12503	17527
14025	1173	13371	432	10307
118	50	118	118	3013
53397	33873	5112	2030	10000
2537	50	1103	1103	2011
1860560	531410	174461	11111	17111

		1	2	3	4	5
		Box on For 11/2/81 on 7V'81	S&L Drivins Excluding US Int	SB 335 Int Offset	SB 263 Dep. 0009mil	HB 536 Dep. 006560818p1
1		8169	8169	8169	12997	17083
2		33538	50	23322	16255	18246
3		10377	50	9552	5615	5502
4		42056	8652	40143	34413	32409
5		53251	28241	19085	26469	26217
6		30051	20227	27942	13567	11915
7		17285	17005	43727	30171	29277
8		62821	7914	55357	38536	36789
9						
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11	TOTALS THIS PAGE	288518	90311	257297	176023	173438
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		Current Law	Current Law	Tax Under	Tax Under	Tax Under
		Tax PA for	Stt. Dec.	SB 335	SB 263 Dep.	HB 536
		12/31/91 at 6.81	excl. US Int	Int. Offset	.0009 mill	.0065 Gross Rec.
1		14163	7579	14163	11278	11650
2		16711	16711	16711	14153	13387
3		21366	50	21366	46357	50980
4		13637	2037	13637	10396	9805
5		16397	50	15010	12431	10129
6		15687	50	10511	10299	9811
7		6721	50	6710	10767	11612
8		9772	50	9772	7136	7691
9		17664	50	16248	18953	16026
0		20191	50	18533	15402	16050
1		19710	3316	3553	14525	4325
2		7949	50	50	24615	25453
3		15120	50	15120	23725	17440
4						
5		27279	14049	26052	11683	15109
6		12213	8566	12213	8961	10262
7		20331	50	20331	13787	13300
8		49114	34204	48055	14696	18414
9		101915	62414	98077	38466	10442
0		26205	6885	26205	33586	26978
1						
2		29382	11678	29382	16088	17941
3		40692	50	31296	23109	19646
4		8521	50	8521	13655	13427
5		26408	50	26408	73583	72342
6		23724	50	23724	46483	42197
7		109333	50	101921	101849	100664
8		50	50	50	5672	6906
9		50	50	50	17767	15163
0		20993	50	17997	674	25575
1		17356	17356	17356	7799	9068
2		106025	50	82621	45713	41397
3		25509	18936	25060	11553	12869
4		59939	50	50064	24386	20154
5		3550	50	3550	9205	8665
6		163531	128410	163531	218647	205463
7		93935	50	3425	4409	4232
8						
9		Total This Page	1065617	334091	775038	962684
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		Current Law Tax P'd For	Current Law S-L Decision	Tax Under SB 335	Tax Under SB 263	Tax Under H.B. 536	
		12-31-81 or FY 81	Excl. U.S. Interest	Interest Offset	Deposits .0009	.0065 gross recd.	
1		50	50	50	9762	9229	
2		19287	50	17331	14200	11220	7
3		50	50	50	6928	8133	3
4		14291	10252	13805	28755	6065	4
5		16839	50	16839	12596	14002	5
6		6594	50	6594	10661	11739	6
7		9316	50	9316	15303	16614	7
8		20628	50	18586	17010	17432	8
9		39652	50	32822	24663	25834	9
10		13621	50	13621	11102	12251	10
11		2118	50	2118	8771	4334	11
12		14446	3341	13464	7837	7320	12
13		28581	15454	27165	20545	17449	13
14		35002	18014	33491	29237	25931	14
15							15
16	Total this page	220475	50561	205272	217370	187553	16
17							17
18	Total Page 1	1332769	103985	1168853	974405	1127894	18
19	Page 2	1960660	531610	1742467	1769279	1677445	19
20	Page 3	288540	90311	257297	178023	173438	20
21	Page 4	1065617	334071	975038	962684	953078	21
22							22
23	Banks Total	4768069	1112538	4348927	4102381	4119408	23
24	S-L's Total	21500	2830	21447	830039	775582	24
25							25
26	Total Financials	4789569	1115368	4370374	4932420	4894990	26
27							27
28							28
29							29
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		Current Law	Current Law	Tax Under	Tax Under	Tax Under
		tax paid	St L Decision	SB 335	SB 263	H.B. 536
		1/1/81 or 4.81	excl. US int.	Interest Offset	Dep. = .0009 mill	Comm Rec X .006
		50	50	50	6067.0	6977
		50	50	50	6374.7	46093
		50	50	50	5360.9	49063
		50	50	50	2915	1190
		50	50	50	2675.2	21796
		15412	50	15412		17300
		50	50	50	13154.9	106582
	TOTAL THIS PAGE	15712	350	15712	359270	306911

		Current Law 172 PAIA	Current Law SIL Division excl. vs int.	Tax Under SB 335 Int. Offset	Tax Under SB 263 Dep x .0009 mil	Tax Under H.B. 536 Gross Rec. x .0065
1		50	50	50	52772	45376
2		3003	50	3003	41679	37738
3		2435	2080	2382	2744	2415
4		50	50	50	7862	68767
5		50	50	50	116139	93100
6		50	50	50	99210	90676
7		50	50	50		581
8						
9	Total This Page	5688	2380	5635	320406	338653
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	Current Law	Current Law/ SIL Decision	Tax Under SB 335	Tax Under SB 263	Tax Under HB 536	
	Tax Paid 11/1/81 or 1/1/81	2nd 1/2 Int.	Int. Credit	Dep. x .0009 mil	Gross Rec. x .0065	
1	50	50	50	93456	84735	1
2	50	50	50	56907	15223	2
3						3
4	TOTAL THIS PAGE	100	100	150363	129958	4
5	TOTAL - PAGE 1	15712	350	359270	306971	5
6	TOTAL - PAGE 2	5688	2380	320406	338653	6
7						7
8	GRAND TOTAL	21500	2830	830039	795582	8
9						9
10						10
11						11
12						12
13						13
14						14
15						15
16						16
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Broken down By County

County	1 Invest. Am for Paid For 12-31-81 in FY 81	2 Invest. Am for Paid For 12-31-81 in FY 81	3 Total Under S.B. 33-35	4 Total Under S.B. 33-35	5 Total Under S.B. 33-35	6 Total Under S.B. 33-35
Beaverhead	370140	27451	380993	44433	416029	1
Bighorn	56848	26713	54621	44139	41908	2
Blaine	37565	82	35931	30000	29723	3
Carbon	85154	320	69469	34192	31529	4
Cascade	377161	16567	376073	11065	11065	5
Chouteau	13430	8553	12575	11343	11343	6
Dawson	90844	27211	83637	7085	74710	7
Deer Lodge	59342	80	51762	73600	71940	8
Fallon	39722	2693	24038	2031	18768	9
Fergus	78531	19907	90678	7700	72472	10
Flathead	196405	37780	187212	253020	253020	11
Gallatin	92436	23459	82335	189614	190886	12
Glaucier	63339	15135	56577	78005	42436	13
Hill	10054	43007	100490	11200	131015	14
Jefferson	6662	80	6417	11091	7586	15
Liberty	105405	19523	93391	68503	68394	16
Lewis & Clark	89181	7663	27794	11795	17225	17
Lincoln	20197	11600	19830	14467	42171	18
Madison	37462	120	31271	2692	21500	19
Mineral	9770	6853	9770	7109	810	20
Missoula	40888	12192	40888	11785	29103	21
Muskegon	61220	27403	57107	24761	26128	22
Nevada	82035	47308	33675	95782	94656	23
Phillips	31850	13644	36906	11732	32111	24
Pondera	65183	47	65230	41001	41001	25
Powell	13132	120	11214	11000	24000	26
Ravalli	61453	6197	68450	63100	19500	27
Richland	191172	64181	166826	13384	20000	28
Roosevelt	111617	17451	20204	7352	24712	29
Sagebrush	41197	7202	34094	5100	36000	30
Sanders	37831	40	30776	4361	24707	31
Shelton	72370	80	54316	30000	30000	32
Shoshone	46026	124	46026	64365	73904	33
Stillwater	36393	19076	34490	11200	21294	34
Sweet Grass	19406	80	16141	20040	20166	35
Teton	51645	642	40306	26100	20400	36
Trail	77966	6371	64397	47300	43643	37
Valley	44403	106	22116	47700	13318	38
Yellowstone	582155	20756	572440	548227	675840	39
Total	3449458	806273	3154471	2440000	3659041	40

Banks
(Countries with only 1 financial institution.)

County	Amo. I. Tax Tax Paid for 1871/72	Amo. I. Tax Sec. Division 1871/72	Tax Order S. B. 325	Tax Order S. B. 325	Tax Order H. B. 536
Proctor					
Carter					
Choteau					
Hayfield					
Helmuth					
Judith Basin					
Liberty	271874	75723	235643	194216	122315
McCabe					
Margen					
Park Co. River					
Proctor					
Treasure					
Whitland					
Wabau					

Bo. b.s

County	Current Low Low Point For 2-4 P. F. 21	Current Low Low Point For 2-4 P. F. 21	Low Under S.R. 235	Low Under S.R. 235	Low Under H. P. 235
Broadwater					
Meagher	40228	4207	33081	25500	41149
Wheatland					
Carter					
Wilboux	30501	14671	59469	47700	37215
Fallon					
Clatsop					
Liberty	123108	71445	175722	123492	120573
Hall					
McCone					
Esame	20250	16421	56243	11505	51320
Harfield					
Rolland					
Charito					
Jessie Basin	70744	21714	57250	51468	44517
Powder River					
Prairie					

Amendment to SB 335

Third Reading Copy

Page 4 Following Line 9	Insert: Section 4. In filing the required Corporate License Tax returns, banks, savings and loan associations or other financial institutions are prohibited from filing consolidated returns under 15-31-141.
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BROWNING, KALECZYC & ASSOCIATES, INC.

Securities Building
Box 162
Helena, Montana 59624
406/449-6220

TESTIMONY OF BURLINGTON NORTHERN, INC.
IN OPPOSITION TO SENATE BILL 335
BEFORE THE HOUSE TAXATION COMMITTEE
MARCH 17, 1983

Mr. Chairman and Members of the Committee:

My name is Stanley T. Kaleczyc of the firm of Browning, Kaleczyc & Associates in Helena. I am appearing today on behalf of our client, the Tax Department of the Burlington Northern, Inc., in opposition to Senate Bill 335. For the reasons set forth below, the Burlington Northern opposes this bill because it imposes an illegal tax upon the taxpayers of this State.

As the fiscal note accompanying this bill explains, Senate Bill 335 disallows deductions related to excluded interest income derived from United States Government obligations for Montana corporation license tax purposes. And, as this Committee is aware, Senate Bill 335 is one of three bills originally introduced in the Montana Legislature this Session to address the problem which arose in the First Federal Savings and Loan Association v. Department of Revenue case decided by the Montana Supreme Court earlier this year. (The other bills are Senate Bill 263, which was tabled by the Senate Taxation Committee, and House Bill 536, which this Committee heard on February 8.)

In the case mentioned above, which has given rise to the alternatives now before the Legislature, the Montana Supreme Court held that the Department of Revenue could not disallow the exclusion of interest earned on United States obligations from the net income of the financial institutions who were the taxpayers in that case. The Court based its holding upon the plain reading of Section 742 of Title 31 of the United States Code. That section provides:

All stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under state or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except nondiscriminatory franchise or other nonproperty taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes.

In the view of the Supreme Court, the effort of the Department of Revenue to include the tax-exempt interest in net income was nothing more than an effort by the Department to tax indirectly what it cannot tax directly.

Judged by the clear and concise terms of the federal law and decision of the Montana Supreme Court, Senate Bill 335 offers no solution, as its proponents would suggest, for Senate Bill 335 is every bit as illegal as the actions of the Department of Revenue which the State Supreme Court struck down in the First Federal case.

Senate Bill 335 requires the taxpayer to first determine the amount of interest excluded from gross income by federal law (i.e. interest income excluded by virtue of Section 742), then determine the total amount of interest income from all sources, calculate the ratio of the excluded interest income to all interest income, and, finally, use that ratio to reduce all deductions otherwise allowable under Montana law.

By way of example, Senate Bill 335 works this way: Suppose you earned ten dollars (\$10.00) in interest on United States Government Securities for the taxable year. Suppose further that your total interest income from all sources, including United States Securities, was one hundred dollars (\$100.00) for that same year. The ratio of the exempt interest income (\$10.00) to all interest income (\$100.00) is 1/10th, or ten percent (10%). Suppose, finally, that your total deductions allowed under Montana law were equal to one thousand dollars (\$1,000.00) for that year. Senate Bill 335 provides that, if you do not declare as taxable income the ten dollars which is exempt from taxation under federal law, then you must reduce your deductions by ten percent, up to the amount of your exempt interest income. So, in this sample, your allowable deductions would be decreased by \$10.00, the full amount of your exempt interest income.

There is no question that Senate Bill 335 exacts this penalty upon you for following the federal law in the form of an indirect tax upon the interest income which is protected by Section 742 of the federal law.

Moreover, there is no relationship between the exempt income and the deductions which are disallowed under this bill for treating that income as exempt. It is both bad tax policy and an unconstitutional taking of property without due process of law to disallow a deduction because of an event that is not related to the production of that deduction.

The proponents of this legislation, however, state that SB 335 is patterned after a recently enacted provision contained in the Tax Equity and Fiscal Relief Act of 1982 (TEFRA), and therefore SB 335 is legally permissible. The TEFRA provisions, however, do not deal with tax exempt interest income. Rather, the TEFRA provision addresses a related, but separate and legally distinct, problem.

As you may know, over the last several years banks have borrowed money to invest in tax exempt securities. They would then deduct the interest on that borrowed money, and, of course, the interest income from the securities itself was exempt. The TEFRA provision, upon which the formula found in SB 335 is patterned, disallows a portion of the deduction generated by that borrowed money; it does not disallow the exemption from taxable income of the interest generated from the investment itself. This is a critical distinction which makes the TEFRA provision consistent with 31 U.S.C. §742, and which leaves SB 335 in conflict with federal law.

The only thing which Senate Bill 335 provides, if it were to be enacted, is an open invitation to the first taxpayer to challenge this legislation, and to prevail in the courts, thereby putting the State, and this Legislature, precisely where it is today.

The problem is not simply that this bill is bad tax policy--which it is--but that it authorizes the Department of Revenue to undertake a scheme for the collection of revenue which is illegal. It was an illegal method of revenue collection which resulted in the First Federal decision; this Committee and this Legislature do not have to, and can ill afford to, require the taxpayers of this State to bring another case like First Federal in order to protect their legal rights.

We urge you to vote against Senate Bill 335.

NERCO Testimony on SB264
Before the
Montana House Committee on Taxation
March 17, 1983

Introduction

Mr. Chairman, for the record, I am Tom Ebzery, an attorney from Billings, representing NERCO, Inc. I have been asked by my principal to make the following statement on behalf of Gerard K. Drummond, President of NERCO, Inc.

NERCO Inc. is the mining and resource development subsidiary of Pacific Power and Light Company. NERCO is the owner and operator of Spring Creek Coal Company, and fifty percent owner of the Decker Coal Mine located in Big Horn County.

Purpose

I am here today to express NERCO's support for SB 264 sponsored by Senator Graham. This Bill establishes economic incentives for a coal company to improve the quality of its product by the use of beneficiation processes. Enhancing the quality and value of raw Montana coal could be a giant step towards marketing it in areas where Powder River Basin coal generally is not now competitive.

Market Factors

It is a fact that the overall market for steam coal is depressed at this time. However, there are several other important factors which uniquely affect the marketability of Powder River Basin coal.

First, the market advantage of low-sulfur "compliance coal" was virtually eliminated by amendments to the Clean Air Act in 1977 requiring all new coal-fired plants to use scrubbers. This enhanced the market for high-sulfur coal located closer to major consuming areas.

Second, escalating rail rates have turned the remote location of Powder River Basin coal one thousand miles from major markets into a great disadvantage. Anywhere from two-thirds to three-fourths of the total delivered cost of the product is attributable to transportation.

Third, diligent development requirements imposed upon existing leases have promoted increased supply even though demand has lagged, placing downward pressure on price.

Finally, Powder River Basin coal is lower in Btus than coal from many other regions. Foreign export and domestic industrial consumers prefer and often require fairly high Btu values for steam coal. At this time, Utah and Colorado coals are clearly better suited for some of these markets because of their significant Btu advantage and proximity to consumers.

The question then is, how can Montana coal compete? We believe that coal beneficiation can open the door to new markets for our product.

Coal Beneficiation

Coal beneficiation is the use of drying, cleaning, or other similar technology to improve the quality of raw coal. Coal beneficiation processes are fairly common not only in the United States but throughout the coal producing countries of the world.

The basic techniques developed to enhance coal quality are cleaning and drying. Cleaning reduces the mineral and sulfur matter in coal to control ash and sulfur dioxide. This helps utilities operate boilers and pollution control devices more efficiently.

- A second technique is thermal drying which increases Btu value by reducing the moisture content of coal. In the Powder River Basin, 20 to 30 percent of the total weight of coal can be comprised of internal or inherent moisture. Therefore, reducing inherent moisture to increase the heating value of the coal would significantly enhance the product.

The process of removing moisture from coal is very common in the eastern United States and has been used by eastern producers. This process is technologically straight forward and affordable for eastern producers because moisture is on the surface of the coal. However, the moisture of Powder River Basin coal is locked inside the coal and, consequently, the technological complexity and cost of drying is much greater.

NERCO and other coal producers are currently involved in research and development of coal beneficiation processes to overcome these problems. We are specifically looking at coal drying technology for our Spring Creek Mine. At the present time we are conducting a pilot project which implements state-of-the-art thermal drying technology. However, current economics may preclude commercialization of this technology in Montana.

Description of the Bill

Senate Bill 264 would do much to remove the economic obstacles encountered by those who would develop coal beneficiation technology in Montana. The bill creates the necessary economic incentive to improve Montana coal and make it more competitive without reducing existing coal tax revenues.

The bill would not provide tax relief for those processes which are currently taxed including primary and secondary crushing, loading and storage. Senate Bill 264 will simply direct the Department of Revenue to exclude from applicable taxes the increase in contract sales price that results from coal beneficiation. The ultimate effect may be that more coal can be sold in the next few years resulting in significantly improved revenues and more jobs for Montana.

We support Senator Graham's proposal and stand prepared to work with the Legislature and state government to improve the marketability of Montana coal.

TESTIMONY

ON SENATE BILL 264

BY

MIKE FITZGERALD

President

MONTANA TRADE COMMISSION

Suite 612 - Power Building

Helena, Montana

Before the House Taxation Committee

March 17, 1983

Helena, Montana

WORLD COAL RESERVES*

Total Estimated	11,500 Billion Metric Tons
Measured Reserves	1,300 Billion Metric Tons
Economically Recoverable	740 Billion Metric Tons
(High Heating Value Coal Reserves)	600 Billion Metric Tons ¹

The following five regions have 95% of these known reserves:

North America	@ 31%	229.40 Billion Metric Tons
USSR And Satellites	@ 26%	192.40 Billion Metric Tons
Western Europe	@ 17%	125.80 Billion Metric Tons
China	@ 15%	111.00 Billion Metric Tons
Australia	@ 6%	<u>44.40 Billion Metric Tons</u>
Total	@ <u>95% or @</u>	<u>703 Billion Metric Tons</u>

*World Coal Production; Scientific American 1-79; Volume 240, Number 1; PP. 38-47.

¹740 Billion Metric Tons Adjusted for Inferior Heating Quality Coal to 600 Billion Metric Tons.

ECONOMICALLY RECOVERABLE COAL RESERVES
IN SELECTED WESTERN STATES*

STATE	ANTHRACITE (000 Tons)	BITUMINOUS AND LIGNITE (000 Tons)	TOTAL (000 Tons)
Arizona	-	350,000	350,000
Colorado	27,700	14,841,500	14,869,200
Montana	-	108,396,200	108,396,200
New Mexico	2,300	4,392,500	4,394,800
North Dakota	-	16,003,000	16,003,000
South Dakota	-	428,000	428,000
Texas	-	3,271,900	3,271,900
Utah	-	4,420,500	4,420,500
Washington	-	1,954,000	1,954,000
Wyoming	-	53,336,100	53,336,100
WESTERN STATES TOTAL	30,000	207,393,700	207,423,700

*Communication with George Krimpasky, United States Bureau of Mines, Helena, Montana (1974 Data).

MONTANA COAL PRODUCTION

<u>MINES</u>	<u>1979 (Tons)</u>	<u>1981</u>
Coal Creek	63,858	64,142
Decker East	5,492,702	5,350,113
Decker West	5,422,588	5,277,648
Knife River	297,694	204,492
Western Energy	10,220,911	10,352,966
PM	11,081	7,404
Westmoreland	4,974,984	4,450,296
Spring Creek	94,368	4,368,885
Peabody	2,909,320	3,193,570
Beartooth	7,321	Closed
Divide	<u>8,245</u>	<u>8,165</u>
Total 1979 Production	<u>29,503,072</u> (1)	<u>33,277,681</u> (2)

Source: State Department Of Lands (1)
By WESCO Resources.

Montana Coal Council (2)

PROJECTED/ADJUSTED

Montana Coal Production (1979-2000)
(Million Tons)

<u>1970</u>	<u>1975</u>	<u>1980</u>	<u>1990</u>	<u>2000</u>
3.5	22.1	36.4	128.5(1)	270.1(1)
			280 (2)	

1981 Adjusted Estimates for the Year 2000

100 Million Tons Annually
Total Estimated Montana Coal Production

Source: (1) Montana State Department of Lands
(2) U.S. Department of Energy

MONTANA COAL PRICES FOB MINE

Montana steam coal averages about 8600 BTU's per pound. At \$10.00 per ton Montana sub-bituminous steam coal averages about .58¢ per million BTU's which, at the mine, is one of the least expensive energy sources in the world.

HYPOTHETICAL CASE

Estimated delivered price
of Montana Coal in Tokyo.

<u>1982</u>	
\$ 10.00	Per Ton FOB Mine
22.00	Rail Freight
6.00	Port Loading
11.00	Ocean Freight
6.00	Port Off Loading (Japan)
<hr/>	
\$ 55.00	Delivered Tokyo - or about \$3.19 per million BTU's. ¹

Australia, the largest supplier to Japan is now delivering 12,000 BTU per pound steam coal to Tokyo for \$65.00 per ton or about \$2.70 per million BTU.

1) Source: Westmoreland Resources - February, 1983.

By increasing the BTU value of Montana's coal we could become more competitive in U.S. and international markets and likely sell more coal.

If Montana coal producers could increase the BTU value of their coal and increase the FOB mine mouth price by 10%, look what happens to the price delivered in Japan ($\$55.00 \times 10\% = \60.50 Tokyo).₁

- 9,000 BTU Coal equals @ \$3.36 per mm BTU
- 10,000 BTU Coal equals @ \$3.00 per mm BTU
- 11,000 BTU Coal equals @ \$2.75 per mm BTU
- 12,000 BTU Coal equals @ \$2.52 per mm BTU

- 1) Price per million BTU's is calculated by dividing the price by the Ton x BTU value:

$$\begin{array}{r} \$60.50 \\ \div 2000 \text{ lbs (ton)} \times 9000 \text{ BTU} \\ \hline = \$3.36 \text{ per million BTU's} \end{array}$$

1982 Montana coal production was 32,160,075 tons. 1982 coal severance taxes totaled \$86,186,845.61.

- Increasing Montana's 1982 coal production by 10 million additional tons annually by 1990 at an average price per ton of \$10.00 would increase annual coal severance tax revenues by an additional \$30 million.
- Increasing 1982 production by an additional 25 million tons annually by 2000 at an average price per ton of \$12.00 would increase annual coal severance tax revenues by an additional \$100 million.

Montana coal producers are competing in the world market with coal producers from Canada, South Africa, Poland, Australia and the Soviet Union and China in the not too distant future.

To increase sales of Montana coal we must improve the delivered price per million BTU's. Only two ways are possible to do so.

- Coal benefaction can increase the BTU content of the coal at the mine.
- Competitive transportation. We have only one railroad serving the largest coal deposit in the U.S. Because of the demise of the Milwaukee Railroad we are not likely to ever again have competitive rail transportation.
- Raising the BTU content of the coal may be one of the only strategies Montana coal producers can use to become more competitive.
- To apply the state coal severance tax to the added value of Montana coal would neutralize the potential competitive edge of the Montana producers. Likewise, not to tax the benefacted value may serve as an investment incentive to Montana coal producers.
- I recommend that the state coal severance tax not be applied to the increased value of Montana coal by benefaction or a similar process.

COMMITTEE OF THE WHOLE AMENDMENT

EXHIBIT 10
3-17-83

MR. CHAIRMAN: I MOVE TO AMEND SB 264

Page 2

line 1

Following:

insert:

"Crushing"

"and to oiling"

1. Page 8, line 4.

Following: line 3

Insert: "THERE IS A NEW MCA SECTION THAT READS:

Section 11. Source of funds for tax credit. The alternative energy research development and demonstration account established in 90-4-103 is the source of funding for the tax credit allowed under [section 3]. The amount of money in the account that is available for purposes of the tax credit is subject to availability of funds and to the appropriation of such funds by the legislature for the purposes of [section 3]."

Renumber: subsequent sections

PERSONAL TAX CREDITS FOR ENERGY CONSERVATION & RENEWABLE ENERGY SYSTEMS

STATE	MAXIMUM PERSONAL INCOME TAX CREDIT	SYSTEMS INCLUDED	COMMENTS
	% COST/MAX. CREDIT		EXHIBIT 12 3-17-83
ALABAMA	15%/\$1000	Active Solar	Passive Solar: 10%/\$1000
ALASKA	10%/\$200	Fuel Conservation	Residence, Joint Return
ARIZONA	35%/\$1000	Solar	
CALIFORNIA	*50%/\$75,000 *55%/\$3000	Solar Pumping Solar	For Farm Irrigation For Single Family Dwelling
COLORADO	30%/\$3000	Solar, Wind, Geoth.	
DELAWARE	No%/\$200	Solar Hot Water	
HAWAII	10%/No Max.	Solar, Wind	Includes Heat Pumps
INDIANA	25%/\$3000	Solar, Wind	For Single Family Dwelling
KANSAS	30%/\$1500	Solar, Wind	
MAINE	20%/\$100	Solar, Wind, Wood	
MASSACHUSETTS	35%/\$1000	Solar, Wind	
MICHIGAN	25%/\$500	Solar, Wind, Hydro.	15% Of Next \$8000
MINNESOTA	20%/\$2000	Solar, Methane	
MONTANA	5%/\$50 5%/\$150	Non-Fossil Fuel En. E. Consvtn. Impvt	5%/1st \$1000; 2%/Next \$3000. For Residential Buildings
NEBRASKA	20%/\$3000	Renewable Energy	For Residential Buildings
NEW MEXICO	25%/\$1000	Solar	Taxpayer's Residence
NEW YORK	55%/\$2750	Solar, Wind	For Residential Buildings
N. CAROLINA	25%/\$1000	Solar	
N. DAKOTA	5%/No Max.	Active Solar, Wind	
OHIO	10%/\$1000	Solar, Wind, Hythml	(Hythml. = Hydrothermal)
OKLAHOMA	35%/\$10,000	Passive Solar, Wind	For Residential Buildings
OREGON	25%/\$1000	Solar, Wind, Hydro.	For Residential Buildings
RHODE ISLAND	20%/\$1000 10%/\$1000	Energy Conservation Solar, Wind	Residential Rental Property Taxpayer's Residence
S. CAROLINA	25%/\$1000	Renewable Energy	Cons. Impymts. Included
UTAH	10%/\$1000	Solar, Wind, Hydro.	
VERMONT	25%/\$1000	Solar	Taxpayer's Residence
VIRGINIA	25%/\$1000	Solar	

*These Are Combined Federal & State Credit Ceilings



EXHIBIT 13
3-17-83

Alternative Energy Resources Organization

424 Stapleton Building, Billings, Montana 59101

(406) 259-1958

324 Fuller, C-4, Helena, Mt. 59601

443-7272

FACT SHEET IN SUPPORT OF SB 283

- SB 283 will increase Montana's alternative energy tax credit
Montana's current credit: 5% with a \$125 ceiling - for residential taxpayers
Proposed credit: 20% for residential both with a \$1000 ceiling
25% for other uses
- Eligible systems: active and passive solar, wind, photovoltaics
- Conservation work done in conjunction with installing an alternative energy system may be included in the credit.
- 4-year carryover of the credit
- 4-year sunset on the credit (expires 12/31/86)
- Pass through provision: builders who install alternative energy systems in new homes may pass the credit on to the first purchaser of the home. This may encourage the construction and sale of solar homes.
- Expected revenue impact: The fiscal note predicts about \$500,000 in credits granted during each of the next two years. This figure does not take into account additional revenue the state will receive resulting from the increased sales and job creation in the alternative energy field. Although its difficult to predict the level of this additional revenue the state will receive, recent federal studies have found that the federal credit brings in more tax dollars than it costs. The Arthur D. Little study concluded that the federal credit could be raised to 75% and the treasury would still come out ahead because of the increased tax revenues generated.
- Federal subsidies used to stimulate U.S. energy production from 1918-1976

	<u>Billions of 1976 \$</u>	<u>% of total</u>
oil	77.2	60
nuclear	15.3-17.1	13
gas	15.1	12
hydro	9.2-17.5	10
coal	6.8	5
	<hr/>	<hr/>
	123.6-133.7	100

AERO'S

PROPOSED AMENDMENTS TO SB 283

1. Page 2, Line 24.

Following: "applications."

Insert: "It includes only those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy and that are not standard components of a conventional building."

2. Page 3, Line 19.

Following: "photovoltaic systems,"

Insert: "solid wastes, the decomposition of organic wastes,"

February 7, 1983

TEXT OF PRESENTATION TO SENATE ENERGY COMMITTEE

HEARING ON S.B. 283

BY JAMES R. KOONTZ

SUN WISE, INC. GREAT FALLS, MONTANA

1. All forms of energy have been heavily subsidized by the Federal Government; Hydro-electric dams, nuclear plants, natural gas, crude oil and wind generators, All receive huge subsidies to develop and distribute their respective energy forms.

2. President Carter was a strong supporter of solar energy - setting a goal of 20% of our energy from solar, by the year 2,000. The Carter administration signed the bill providing tax incentives for the purchases of solar and other alternative energy equipment. These incentives are offered to both residential and business users of solar equipment.

3. Many states offer generous tax incentives also. - Arizona, 35%; Colorado and Kansas, 30%; Nebraska, 25%; and New Mexico, 20%; to mention a few.

4. The development of the solar industry has been slow. This may be considered a disappointment to some persons, who expected too much too soon. President Carter's goal was unrealistic. The industry had not developed sufficiently to fill the role that was expected. Solar energy is not new, but the industry as we see it today is new.

5. Any incentives offered for the installation of solar equipment should be viewed as methods of economic development, rather than giveaway programs. Major issues facing all of us today are: high unemployment, loss of primary jobs, high energy costs, transportation, and the erosion of our work force.

6. Our company was formed in 1977 as a locally owned small business. Our company was involved in solar before any tax incentives existed. The first few years were spent primarily in research and development of a highly efficient, durable solar collector.

Employment figures for 1980, 1981, and 1982 reveal the following:

1. Wages paid in Montana - \$1,849,000
2. Unemployment taxes paid in Montana - \$32,200.00
3. State withholding taxes - \$50,400.00
4. Goods and services acquired locally - \$1,700,000
5. Direct employment - 20 full time jobs.

7. Our Montana dealers would approximately double the above figures. These dealers have installed approximately 1,000 systems in our state. The retail value of these systems would be approximately 5 million dollars.

8. We feel the proposed tax credit would have a great impact on the following:

1. The number of new jobs here in Montana.
2. The investment in plant and equipment.
3. Increased tax base.
4. Higher awareness of energy and energy conservation.
5. Less unemployment.

9. We currently spend money to subsidize low income residential utility cost. As energy rates increase this subsidy will escalate to gigantic proportions and never solve the problem. In comparison, the proposed tax credit for alternative energy would provide a permanent fix for part of our energy problem, while creating jobs at the same time.

10. Our company does not support the grants and give away programs that existed in both federal and state governments in the past. We do not believe that the state should necessarily pay citizens' utility bills. We do, however, support the tax incentive program proposed in this bill because we feel it will help expand the alternative energy industries in Montana at this time. We feel that this bill should be viewed as an economic development tool. We feel it has the support of economic development organizations and could eventually provide more in benefits to the state than it costs.

AMENDMENTS TO SB 283
Third Reading (Blue Copy)

1. Title, line 6
Following: "OF"
Strike: "Solar"
2. Page 1, lines 18 through 22
Strike: subsection (1) in its entirety
Renumber: subsequent subsections
3. Page 2, lines 3 through 8
Strike: subsection (3) in its entirety
Renumber: subsequent subsections
4. Page 2, lines 20 through 24
Strike: subsection (6) in its entirety
Renumber: subsequent subsections
5. Page 3, line 5 through line 5, page 4
Strike: subsections (8), (9) and (10) in their entirety
Insert: "(5) "System" means a recognized nonfossil form of energy generation as defined in 15-32-102."
6. Page 4, line 6
Following: "for"
Strike: "solar"
7. Page 4, line 6 and 7
Following: "on which a" on line 6
Strike: "solar energy"
8. Page 4, line 11
Following: "THE"
Strike: "SOLAR ENERGY"
9. Page 4, line 14
Following: "THE"
Strike: "SOLAR ENERGY"
10. Page 4, line 23
Following: line 22
Strike: "Energy"
Insert: "Investments made for energy"
11. Page 4, line 23
Following: "conservation"
Strike: "measures"
Insert: "purpose, as defined in 15-32-102,"
12. Page 4, line 24
Following: line 23
Strike: "solar energy"

13. Page 5, line 7
Following: "THE"
Strike: "Solar Energy"

14. Page ⁷8, line 11
Following: "Leased"
Strike: "solar energy"

15. Page ⁷8, line 12
Following: "a"
Strike: "solar energy" .

16. Page 7, line 19
Following: "the"
Strike: "solar energy"

3/17/83

Amendments to Senate Bill 283

Page 5, line 23

Following: "available"
Strike: "to any"

Page 5, line 24

Strike: "taxpayer"
Following: "\$1,000"
Insert: "for a taxpayer filing a separate return and \$2,000
for each joint return"

1. Page 5, line 2.

Following: "CLAIMED"

Strike: "FOR ENERGY CONSERVATION MEASURES"

2. Page 5, line 4.

Following: "1"

Insert: "or part 2"

WITNESS STATEMENT

Name EDWARD C. BINGLER Committee On Taxation
 Address BUTTE, MT Date 3-17-83
 Representing Montana Tech Support ✓
 Bill No. SB 459 Oppose _____
 Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Attracting private sector capital investment for building the capability of University research and
2. development will strengthen Montana's technology base and improve employment opportunities.
3. The modest inducements offered to private sector
4. supporters of research through this bill is appropriate at a time when other states across the country are providing major programs of support for research and technology development. Montana will be left far behind if a greater effort is not made to attract private capital for research.

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

WITNESS STATEMENT

Name HANK SMIT Committee On TAXATION
Address 904 BROADWAY, HELENA Date 3/17/83
Representing MONTSEIA Support ✓
Bill No. SB 283 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. PRACTICALITY: ~~A~~ YEARLY AVG. BTU'S PER ACRE OF MONTANA EQUALS 3 TONS COAL OR 370 GALS OIL. (SAVE OIL TO MAKE PLASTICS, FERTILIZER & INSULATION)
2. REDUCE UNEMPLOYMENT BY CREATING JOBS IN THE SOLAR RELATED FIELDS
3. 700% RETURN ON INVESTMENT IN TAX REVENUES
4. GOVERNMENT INTERVENTION & HELP NEEDED.

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

WITNESS STATEMENT

Name George Duffy Committee On _____
Address St Falls Date MAR 17, 1983
Representing Wagner Energy Support ✓
Bill No. SB 283 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. THIS TAX CREDIT IS ESSENTIAL TO AVERAGE WAGER EARNER TO BE ABLE TO HAVE A WAY TO REALLY CONTROL THE HIGH ENERGY BILLS.
2. THIS SOLAR TAX CREDIT IS A ~~RE~~ WAY THAT HAS LASTING EFFECT ON THE ENERGY PROBLEM NOT A STOP GAP MEASURE
3. THIS CREDIT ON SOLAR IS ALSO A WAY FOR US TO REALLY EXCLUDE DEPENDENCE ON FOREIGN OIL SUPPLIERS
4. IT ENCOURAGES CLEAN AIR & IS POLLUTION FREE
& SOLAR PROVIDES A NO-NOSENSE ANSWER TO PART OF THE ENERGY PROBLEM

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

WITNESS STATEMENT

Name Lynn Lundborg Committee On Defamation
Address 315 Euclid Helena Date 3-17-83
Representing Solar Industry Support ✓
Bill No. SB 283 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

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

Taxation

COMMITTEE

SB 2041

17 Mar 83

Canal Graham

			PORT	POS
Mike Reynolds	Helena	mt. Tel. Coun	✓	
Jim Feltner	"	MT Coal Council	✓	
Tom EBZery	Billings	NERCO	✓	
Grand Marshal	Helena	Meridian Land	✓	

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

TAXATION

COMMITTEE

BILL SB 283DATE 3-17-83SPONSOR Fuler

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Kirt Harding	Bozeman	MONT. S.E.I.A.	✓	
George Duffy	Gt Falls	Wagner Energy	✓	
Ross Kapp	Fairfield, MT	SELF	✓	
Gar Wagner	Gt. Falls	Wagner Solar	✓	
Fred Feltz	Gt. Falls	Wagner met.	✓	
Bruce Gordon	Helena	mt. S.E.I.A.	✓	
Hal Burman	Helena	Solar Growth	✓	
WADE WILKINSON	HELENA	Mont SEIA	✓	
Bill Riley	Helena	Solar Energy Int'l.	✓	
Vic Robinson	Helena	Sun. wise Solar	✓	
Lynn Lundborg	Helena	Lynn Stone & Solar	✓	
Dick Wagner	Gt Falls	Wagner Solar	✓	
Jim McNairy	Helena	AERO	✓	
HANK SMIT	HELENA	MONT SEIA	✓	
Don MacArthur	HELENA	ANRC		
Sam D. Fuller	Helena	DIST #15	✓	
Dave Leimb		OBPP		✓

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

二

COMMITTEE

DATE March 17, 1983

SPONSOR SENATOR TOWE

John Cally	Helena	MT Bankers Assn	✓
Gin Bengert	Bigs	First Citizens Bank	X
George Anderson	Helena	MT Bankers Assn	X

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

TAXATION

COMMITTEE

BILL

5B 335

DATE 3-17-83

SPONSOR

70wE

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

HOUSE

Taxation

COMMITTEE

BILL

S B

549

S.B. 459

DATE _____

3/17

SPONSOR

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[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

TAXATION

COMMITTEE

513 459

DATE March 17, 1983

SENATOR ECK

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STATE OF MONTANA

REQUEST NO. 229-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 264 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 264 allows the Department of Revenue to impute a value on coal whenever the operator of a mine subjects the coal to processing that improves its quality.

FISCAL IMPACT:

It is not anticipated that the proposed legislation will have a fiscal impact during the biennium because currently no coal producers are using a benefaction process to improve the quality of the coal.

FISCAL NOTE 8/V/1

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-83

STATE OF MONTANA

REQUEST NO. 244-83

FISCAL NOTE

Form BD 15

in compliance with a written request received January 26, 19 83, there is hereby submitted a Fiscal Note for Senate Bill 283 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 283 provides a tax credit for the installation of solar energy systems in Montana; defines such systems; and provides rulemaking authority to establish criteria for such systems.

ASSUMPTIONS:

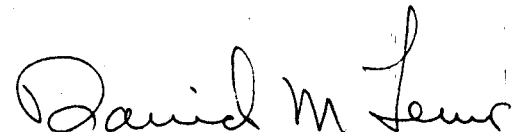
- 1) An engineer (grade 15, step 2) will be required for one year to review existing standards and develop standards for Montana.
- 2) Safety standards will be covered by building codes.

FISCAL IMPACT:

Lower bound estimates of the reduction of individual income tax collections are \$496,000 and \$592,000 for fiscal years 1984 and 1985, respectively. These estimates are based on the amount of credits likely to be produced by the continuation of the existing alternative energy credit. However, the bill would greatly liberalize the credit by increasing the credit rates, increasing the maximum credit, and increasing the types of investments which would qualify. All of these factors will lead to a greater decline in revenues.

No estimate of the reduction in corporate license tax collections is possible since no data is available.

<u>Expenditures</u>	<u>FY 84</u>	<u>FY 85</u>
Personal Services:		
Salary	\$ 21,872	\$ -0-
Benefits (@ 20%)	4,374	-0-
Total	<u>\$ 26,246</u>	<u>\$ -0-</u>

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-83

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Since the proposed state credit is tied to the federal credit, the revenue impact will be greatly increased when and if the federal credit is reduced or eliminated. The elimination of the federal credit, for example, would increase to state credit from 20% to 60%, leading to a greater impact on individual income tax collections.

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

- 1) The proposal extends credits to more types of investments than the federal government allows. Hence, the credit rate for the investments not allowed by the IRS will be 60% not 20%.
- 2) Section 4 includes energy conservation measures in eligible costs of the system. This could be construed to include conservation measures applied to the dwelling, not just the alternative energy system. In this case, the credit rate will be 45% for this portion of the investment, which would conflict with the existing energy conservation credit and possibly lead to two credits being claimed on the same investment.
- 3) The Department of Natural Resources and Conservation may not be able to develop reliability standards for passive solar systems, because passive solar systems must be an integral part of a structure and each structure tends to be different.

STATE OF MONTANA

REQUEST NO. 461-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 17, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 459 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

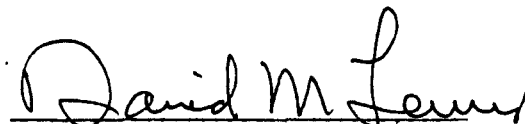
DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 459 provides for a tax credit for university-affiliated research; and provides an effective date and an applicability date.

FISCAL IMPACT:

There is no fiscal impact of the proposed legislation.

FISCAL NOTE 16: H/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

STANDING COMMITTEE REPORT

March 21, 1983

MR. **SPEAKER:**

We, your committee on **TAXATION**

having had under consideration **SENATE** Bill No. **264**

Third reading copy (Blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF REVENUE TO IMPUTE A VALUE ON COAL WHENEVER THE OPERATOR OF A MINE SUBJECTS THE COAL TO PROCESSING THAT IMPROVES ITS QUALITY; AMENDING SECTION 15-35-107, MCA."

Respectfully report as follows: That **SENATE** Bill No. **264**

~~DO PASS~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

..... 19

MR. **SPEAKER:**

We, your committee on **TAXATION**

having had under consideration **SENATE** Bill No. **283**

Third reading copy (Blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT FOR THE
INSTALLATION OF SOLAR ENERGY SYSTEMS IN MONTANA; DEFINING SUCH SYSTEMS;
AND PROVIDING RULEMAKING AUTHORITY TO ESTABLISH CRITERIA FOR SUCH
SYSTEMS; REPEALING SECTIONS 15-32-201 THROUGH 15-32-203, MCA; AND
PROVIDING AN APPLICABILITY DATE."

Respectfully report as follows: That **SENATE** Bill No. **283**

~~XXXXXX~~
~~DO PASS~~

March 21,

19 83

1. Statement of Intent, line 6.
Following: "Section"
Strike: "11"
Insert: "12"
2. Statement of Intent, line 7.
Following: "of"
Strike: "solar"
Following: "energy"
Insert: "generation"
3. Title, line 6.
Following: "OF"
Strike: "SOLAR"
4. Title, line 7.
Following: "SYSTEMS"
Insert: "; PROVIDING A FUNDING SOURCE FOR THE CREDITS"
5. Page 1, lines 18 through 22.
Strike: subsection (1) in its entirety
ReNUMBER: subsequent subsections
6. Page 2, lines 3 through 8.
Strike: subsection (3) in its entirety
ReNUMBER: subsequent subsections
7. Page 2, lines 20 through 24.
Strike: subsection (6) in its entirety
ReNUMBER: subsequent subsections
8. Page 3, line 5 through line 5 page 4.
Strike: subsections (8), (9), and (10) in their entirety
Insert: "(5) 'System' means a recognized nonfossil form of energy generation as defined in 15-32-102."
9. Page 4, line 6.
Following: "for"
Strike: "solar"
10. Page 4, line 7 and 8.
Following: "which a" on line 7
Strike: "solar energy"
11. Page 4, line 11.
Following: "THE"
Strike: "SOLAR ENERGY"

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12. Page 4, line 14.

Following: "OF THE"

Strike: "SOLAR ENERGY"

13. Page 4, line 23.

Following: line 22

Strike: "Energy"

Insert: "Investments made for energy"

Following: "conservation"

Strike: "measures"

Insert: "purposes, as defined in 15-32-102,"

14. Page 4, line 24.

Following: line 23

Strike: "solar energy"

15. Page 5, line 2.

Following: "CONSERVATION"

Strike: "MEASURES"

Insert: "purposes"

16. Page 5, line 23 and 24.

Following: "available" on line 23

Strike: line 23 through "taxpayer" on line 24

Following: "\$1,000"

Insert: "for a taxpayer filing a separate return and \$2,000 for each joint return"

17. Page 7, line 7.

Following: "THE"

Strike: "SOLAR ENERGY"

18. Page 7, line 11.

Following: "Leased"

Strike: "solar energy"

19. Page 7, line 12.

Following: "a"

Strike: "solar energy"

20. Page 7, line 19.

Following: "the"

Strike: "solar energy"

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21. Page 8, line 4.

Following: line 3

Insert: "THERE IS A NEW MCA SECTION THAT READS:

"Section 11. Source of funds for tax credit. The alternative energy research development and demonstration account established in 90-4-103 is the source of funding for the tax credit allowed under [section 3]. The amount of money in the account that is available for purposes of the tax credit is subject to availability of funds and to the appropriation of such funds by the legislature for the purposes of [section 3]."

Renumber: subsequent sections

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

..... 19

MR. **SPEAKER:**

We, your committee on **TAXATION**

having had under consideration **SENATE** ... Bill No. **335**

Third reading copy (Blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO DISALLOW DEDUCTIONS
RELATED TO EXCLUDED INTEREST INCOME FOR MONTANA CORPORATION LICENSE
TAX PURPOSES; TO APPLY THE DISALLOWANCE OF DEDUCTION RETROACTIVELY
TO ALL TAXABLE PERIODS DURING WHICH SUCH INCOME IS EXCLUDED FROM
GROSS INCOME; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
APPLICABILITY DATE."

Respectfully report as follows: That **SENATE** ... Bill No. **335**

be amended as follows:

(SEE ATTACHED SHEETS)

XXXXXX

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1983

1. Title, line 8.

Following: "GROSS INCOME;"

Insert: "PROHIBITING CONSOLIDATED RETURNS FOR FINANCIAL INSTITUTIONS UNDER THE CORPORATE LICENSE TAX; REAFFIRMING THE INCLUSION OF STATE AND LOCAL BOND INCOME IN THE DEFINITION OF NET INCOME FOR CORPORATION LICENSE TAX PURPOSES;"

2. Title, line 9.

Following: "AND"

Strike: "AN"

Following: "APPLICABILITY"

Strike: "DATE"

Insert: "DATES"

3. Page 3, line 23.

Following: line 22

Insert: "Section 2. Consolidated returns prohibited. (1) A majority of the corporation license tax collected from financial institutions is paid to local government areas in which each financial institution is located. However, consolidated returns for financial institutions do not reflect the true tax attributable to each local government. In addition, consolidated returns would permit financial institutions to offset income against losses of non-financial institutions, thereby distorting the true income of each financial organization.

(2) In accordance with subsection (1), financial institutions are prohibited from filing consolidated returns under 15-31-141.

Section 3. Reaffirmation of bond income inclusion in definition of net income for corporation license tax purposes. Notwithstanding the provisions of any other law, the income from bonds or other obligations issued by any state or political subdivision of a state are included in gross and net income for purposes of the corporation license tax. Further, such income has been included in gross and net income since the effective date of Chapter 634, Laws of 1979, which law repealed the exclusion of such income from the tax base of the corporation license tax."

Renumber subsequent sections

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4. Page 3, line 23.
Following: "instruction."
Strike: "Section 1 is"
Insert: "Sections 1 through 3 are"

5. Page 3, line 24.
Following: "as"
Strike: "an"
Following: "integral"
Strike: "part"
Insert: "parts"

6. Page 4, line 1.
Following: "applicability"
Strike: "date"
Insert: "dates"

7. Page 4, line 2.
Following: "approval"
Strike: "and applies"
Insert: ". Sections 1 and 3 of this act apply"

8. Page 4, line 9.
Following: "law."
Insert: "Section 2 of this act applies to taxable periods beginning after December 31, 1982."

AND AS AMENDED
BE CONCURRED IN