MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 9, 1983

The twenty-second meeting of the Taxation Committee was called to order at 8:30 a.m. by Chairman Pat M. Goodover in Room 415 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 204: Senator Thomas Keating, Senate District 32, sponsor of the bill, said it repeals the right of entry tax. A right of entry is inherited with a severed mineral interest. It is not ownership of minerals but is the right to go on land to extract minerals. According to law, the right of entry is to be taxed at 100% of its market value. It is difficult to determine the value of the minerals themselves because minerals in place have a value only to the extent that someone is willing to buy and accept an offer of them. The right of entry is even more confusing because it is valueless in itself. The process of taxing a right of entry has been undeterminable and very confusing and has caused problems for county assessors and owners of severed minerals. Senator Keating pointed out that a conveyed right of entry is not taxable.

PROPONENTS

Patty Yedlicka, who was the Golden Valley County Assessor for four years, and who is representing the county assessors association, said there are many discrepancies in taxing the right of entry. Their main concern is in the wording on the deeds themselves. They are not attorneys and cannot determine whether a deed means a right of entry. When a deed indicates "50% of all minerals," does that mean a right of entry? If a warranty deed contains a reservation of 50% of all minerals and a prior reservation of 75% of minerals, what percentage of the minerals is reserved? Is an "undivided interest in oil and gas and other minerals" a right of entry? When her office does tax someone for a right of entry, they get phone calls asking why the tax was assessed. They do not have problems with the railroads, because they want their name on the tax roll before anyone else, but they do have problems with other landowners. There is a Colorado man who has picked up several delinquent tax deeds on rights of entry in Golden Valley and Musselshell counties. In the Musselshell County case, the right happens to be on a producing well. The gentleman claims he has a royalty coming, and the oil company claims he does not. What does he have? We may be charging people for something they don't have. Can these people sue the county? They cannot put figures on this.

Dennis Burr, representing the Montana Taxpayers Association, said the problem in the past is that it got involved with surface owners and retention of property rights. The right of entry is not taxed in Lewis and Clark County (as a result of a district court decision) but it is taxed in all other Montana counties. It is associated with mineral rights everywhere else.

Charles Graveley, representing the Montana County Assessors Association, said the Big Horn County assessor thinks the right of entry taxes are a pain. They are not on their rolls. All assessors don't assess the taxes in the same manner. They made no specific request to have this bill drafted, but the tax serves no good purpose. Prairie County's right of entry tax is handled the least accurately of all taxes. Mineral interests are reserved from generation to generation and heirs end up with 1/64 interests in the reservation of mineral interests. The right of entry has no value in and of itself unless it is attached to reserved mineral interests. The Montana County Assessors Association favors SB 204.

John Rabenberg, representing himself and the Hi Plains Land and Mineral Association, favored the bill and submitted a resolution in support of the repeal of the right of entry tax, a copy of which is attached as Exhibit A.

Don Allen, representing the Montana Petroleum Association, also supported the bill.

OPPONENTS

There were no opponents to SB 204.

Questions from the committee were called for.

Senator Norman wondered what this would cost local governments. Senator Keating responded that in the 56 Montana counties listed, the reserved right of entry taxable valuation totals $1.6 million. Senator Towe said that actually then, $191,000 in revenue is derived.

Senator Keating said there is no clear cut definition of right of entry. There is a question of reserved minerals versus reserved royalties. Reservations have been written in many different ways. Sometimes they say 1/2 of all in, on, and under, and that are saved. It sometimes takes adjudication to determine whether a mineral right has a right of entry with it. He said the Burlington Northern felt it was cheaper to obtain title to severed minerals by paying the taxes than by going any other route. The laws are written to avoid litigation and this law should be repealed for that reason.

CONSIDERATION OF SENATE BILL 243: Senator Thomas Towe, Senate District 34, said SB 243 imposes a statute of limitations for the taxes you see listed in the title for attempting to collect refunds and past taxes. These presently have no statute of limitations, and the Department of Revenue suggested there ought to be one. It is an opportunity to cut off the time in which the state can come back and claim more taxes from a taxpayer. The state is forever barred from collecting taxes unless notice of additional tax to be assessed is mailed within 5 years from the date the return was filed. In subparagraph 2, the same thing applies for refunds to taxpayers. If by consent or agreement in writing, the taxpayer extends the time within which the department may propose an additional assessment, that will control. If an additional assessment is made within the 5-year limitation, that automatically extends the time for claiming a refund (page 2, lines 12-15). In paragraph 3, if a taxpayer fails to file a return, the department can assess or collect at any time. If a return is fraudulent, the 5 years begins with the discovery of fraud by the department. Section 3 of the bill makes it retroactive to taxable years beginning after December 31, 1977. The 5-year statute is consistent with other statutes of limitations and gives the Department of Revenue sufficient time to perform audits that need to be performed.

PROPONENTS

Dan Bucks, from the Department of Revenue, spoke in favor of the bill. He said there presently is a 10-year statute of limitation for centrally assessed property. The statute of limitations for corporation license and income taxes and personal income taxes is 5 years. They would like to establish a 5-year statute of limitations for all of these taxes. The courts could interpret that the 2-year statute of limitations applies, but there is no specific litigation that establishes that the 2-year statute applies.

Some companies assert that the Department of Revenue not only has to assert the taxes but has to start collection of those taxes within two years of assessment. The department would have a major problem there.

This bill is consistent with the corporation license tax and will establish certainty as to the length of time to keep tax records. It will change the net and gross proceeds taxes from a 10-year statute to a 5-year statute of limitations.

OPPONENTS

George Bennett, representing the Montana Mining Association, said there is a statute of limitations for all of the taxes listed in this bill. (See Exhibit 3 .)

In the Caterpillar Tractor case, the Department of Revenue asserted taxes back to 1957. Would you like the Department of Revenue to come back to you and have you put it all together for them for the past 20 years? We went to court over it, and Caterpillar Tractor won. Where a tax law does not either grant to the Department of Revenue or continue a statute of limitations, then the generic statute of limitations of 2 years applies. The 2-year statute of limitations applies now. The Internal Revenue Code statute of limitations is 3 years. Mr. Bennett requested that this not be made retroactive. When the resource indemnity trust fund was established, James Madison from the Department of Revenue, who was present at the meeting today, adopted regulations to guide taxpayers as to how to compute the resource indemnity trust tax. Taxpayers have computed the tax based on those regulations ever since the tax was applied. The Montana Administrative Procedures Act has repealed the guidelines established by Mr. Madison, and the Department of Revenue wants to go back and use SB 243 as a basis on which to assess taxes on some taxpayers.

The constitution states that the legislature shall pass no law regarding considerations already passed. (1972 Montana Const., art. V, §11(1)) Do you feel that the years already closed by a statute of limitations should be reopened to reassess taxes? He said SB 243 is a "Build Montana" bill from the Department of Revenue's point of view. It will drive everyone into bankruptcy or out of state. They think if you can afford to pay taxes, you are enjoying some privileges you shouldn't have.

Ward Shanahan, a member of the tax committee of the Montana Mining Association, said they, too, were concerned that this statute of limitations might be made retroactive. They have issues pending before the Department of Revenue and they are relying on the 2-year statute of limitations with respect to taxes. Having a 5-year statute of limitations for all of the taxes would eliminate the uncertainties that exist now.

Bob Gannon, representing the Montana Power Company and Western Energy Company, said they have been assessed based upon the new rules and are in a separate situation from the others. The Department of Revenue is attempting to revoke the rules Mr. Madison made. There is no question that there is no other statute that applies but the 2-year statute. That has been in Montana law since 1895. This is not cited in the Caterpillar case, but the Montana Supreme Court has recognized it since no other statute provides otherwise. There is a need for finality in keeping a company's books open. Now, the 2-year statute applies. Under normal situations, the statute of limitations is tolled by filing of a complaint. Here, sending a deficiency letter tolls the statute. Montana Power Company is subject to assessment that goes back to 1967. In 1977, the legislature changed the taxes for centrally assessed property. If we were sent a letter now, the Department of

Revenue could reach back to 1973 to revive liabilities they think are there. As Senator Keating said, laws are made to prevent litigation. (See Exhibit C.)

Mr. Gannon said he didn't know if 5 years was necessary. He said they sent a letter to the Department of Revenue in August 1980 and they have sent four letters since then. They have had no answer from the Department of Revenue to their correspondence, and if that is why they need more time, forget it! He thought 3 years was appropriate but did not feel retroactivity was necessary.

Dennis Burr, representing the Montana Taxpayers Association, said the bill is more complicated than it seems on its face. In the net proceeds area, there is always litigation to establish what is due. When dealing with negotiated taxes, they should be prospective and not retroactive, unless a return is fraudulent, in which case the Department could go back 5 years.

Questions from the committee were called for.

Senator Towe asked Mr. Bucks to respond to the opponents' comments. Mr. Bucks suggested making the provisions retroactive to the taxable years after December 31, 1980. He also said that the case he was referring to earlier was a corporation license tax case. They do not have the staff that the IRS has, so they need 5 years to accomplish the auditing they would like to do, rather than 3 years. The Department of Revenue has six auditors in the natural resources program which covers $300 million a year in state and local revenues.

The hearing was closed on SB 243.

CONSIDERATION OF SENATE BILL 227: Senator Thomas Towe, Senate District 34, said this bill was requested by the hard-rock mining impact board. In section 90-6-303(4), the administrative and operating expenses of the board are paid from the revenue generated from the license tax on metal mines. We made an appropriation in the special session, and it needs a tracer. SB 243 poses to repeal the requirement that the metal mines license taxes go to the general fund. Under new section 3, the taxes would be placed into the earmarked revenue fund to the credit of a hard-rock mining impact account for all money specifically appropriated to that account and the excess to the general fund.

PROPONENTS

Gary Buchanan, director of the Department of Commerce, supported the bill.

Ann Mulroney, representing the Montana League of Women Voters, said they support the bill to the extent that it will pay for the administrative and operating costs of hard-rock mining impact programs, which are addressed in a series of other bills.

OPPONENTS

There were no opponents to SB 243.

Questions from the committee were called for.

Senator Towe felt the fiscal figures ($968,000 for 1984; $482,000 for 1985) were wrong because of the Sunshine Mine in Three Forks and the ASARCO Mine in Libby; it will be closer to $2 million. The money now goes into the general fund.

The hearing was closed on SB 227.

CONSIDERATION OF SENATE BILL 202: Senator Thomas Towe, Senate District 34, sponsored this bill. We might have problems if we get a large synfuel plant or some other major coal development that requires more than the 8.75% that is allocated to the coal severance tax trust fund. It is important for us in defense of our coal tax and trust fund to tie in the trust fund to the impacts. More significantly, last Thursday, Senator Dixon from Illinois introduced a bill in Congress which in effect reverses the Montana Supreme Court's decision that you don't have to go to trial to determine the coal tax.

We found out that the legislative fiscal analyst (LFA) and the governor's budget office made a mistake regarding the small business investment credit. They thought it was repealed altogether, but we had not done so. It meant a $6 million difference. Now, the budget with both sides coming in shows $10 million in there. If we want to reintroduce the small business investment credit we have to find $6.5 million in the budget. That really limits us; we have repealed a statute by budgetary action.

If we do have an impact because of Tenneco with a synfuel plant, we have no mechanism to give to the budget office to budget for that. The formula in SB 202* asks the Department of Commerce to find out how many people are projected to be employed in coal development for the next biennium. The budget office will have to make available from coal severance tax interest income the funding described in section 4 of the bill. This allows us to point out that all income from the trust fund is tied to impacts. Even though $5 million is a small amount, at least we have established the procedure. The bill in the 1981 session provided for accumulation, which Senator Towe said he was against.

PROPONENTS

Senator Eck said that under Governor Judge's administration, they projected large scale development in Montana. There were three scenarios: (1) start with conversion of all coal in Montana at site of production, (2) we are mining a million tons a year

*See Exhibit D .

and where would locations be, etc., and (3) $500 million a year. We told them that our policy would not allow development of that kind that fast. We did put together costs and they were tremendous for a normal community. We had to consider the impact to state government. The budgeting authority should look at the formula and the cost of impact. She thought they were looking at a multiplier of 8. This problem should not be set aside; this kind of direction is constructive.

OPPONENTS

Jim Mockler, representing the Montana Coal Council, felt SB 202 tried to bind future legislatures, and you can't do that, he said. He didn't see how the needs of a community could be addressed with a simple quantitative formula.

Ann Mulroney, representing the Montana League of Women Voters, opposed the bill. Her written statement is attached as Exhibit E.

Pat Wilson, representing Montco/Thermal Energy, said SB 202 will decrease or limit spending from the coal severance tax fund. This will reduce general fund revenue. Our proposed mine (at Ashland-Birney) will need to be mitigated for two years before actual mining occurs. There are 490 people to be employed there, so there is a definite need for the advanced planning. As Senator Towe stated, any tampering with coal severance tax fund would send the wrong signal to Congress. Our severance tax is for mitigating impacts, and we oppose this bill.

Murdo Campbell, Montana Coal Board administrator, submitted the written testimony of Paul Palm, a Coal Board member, and it is attached as Exhibit F.

Senator McCallum, who was chairing, stated that the committee would continue testimony of opponents on Thursday, February 10, at 8:30 a.m.

In closing, Senator Towe said this is the upper limit in this bill. Coal Board discretion is reserved.

The meeting adjourned at 10 a.m.

Pat Goodover
Chairman

ROLL CALL

SENATE TAXATION COMMITTEE

48th LEGISLATIVE SESSION -- 1983 Date 2/9 /83

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GOODOVER, CHAIRMAN	✓		
SENATOR McCALLUM, VICE CHAIRMAN	✓		
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR ELLIOTT	✓		
SENATOR GAGE	✓		
SENATOR TURNAGE	✓		
SENATOR SEVERSON	✓		
SENATOR HAGER	✓		
SENATOR ECK	✓		
SENATOR HALLIGAN	✓		
SENATOR LYNCH	✓		
SENATOR NORMAN	✓		
SENATOR TOWE	✓		
SENATOR MAZUREK	✓		

DATE February 9, 1983

COMMITTEE ON TAXATION

VISITORS' REGISTER

NAME (PLEASE PRINT)	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
GEORGE T. BENNETT	MONT. MINING ASSN	SB 243		Amend
Jean Mulvaney	League of Women Voters	202		X
Patti Yedlicka	Assessor's Assoc.	SB 204	X	
Bill McCaig	W. R. Grace & Co.	SB 243		UNLESS AMEND
[illegible]	[illegible]			
[illegible]	Sen Dist 32	SB 204	✓	
[illegible]	[illegible]	SB 204	✓	
[illegible]	G. Assessor	204	✓	
Jim MacKler	Mt. Coal Council	243 202	204	✓ ✓
Pat Wilson	Montco/Thermal Energy	202		✓
Jim Haughey	MTN SELL	243		✓
Nancy J Leifer	MT. Dept of Commerce	227	✓	
M Campbell/Paul Peterson		202		✓
Dennis Burr	Montana Taxpayers Assoc	243		✓
Don Hoffman	Dept. of Revenue	243	✓	
Don Bucks	Dept. of Rev.	243	✓	
James Madison	Dept of Revenue	243	✓	
Jesse Munro	Dept of Revenue	204		
Connie Kennedy	Aide - Sen Tveit	ALL		

SENATE TAXATION COMMITTEE
EXHIBIT A
FEBRUARY 9, 1983
SB 204

Steve Rabenberg
SB204

RESOLUTION ON RIGHT OF ENTRY TAX

Whereas: The Right of Entry Tax on severed mineral interest is an antiquated tax, which the State of Montana, and most counties within the state has viewed as not feasible to impose, and,

Whereas: Such Right of Entry Tax is unnecessary toward securing access to development of severed minerals, and,

Whereas: The imposition of the Right of Entry Tax as it presently stands under law, could cause confusion, and in some instances hardship including people who are elderly and of limited economic means, then,

Hereby: Be it resolved that all the Montana Land and Mineral Owners Associations,
go on record as opposed to the Right of Entry Tax. And, be it recommended legislation designed to terminate said Right of Entry Tax.

B

NAME: GEORGE T. BENNETT SB 243 DATE: 2/9/83

ADDRESS: 404 FULLER HELENA

PHONE: 442-8950

REPRESENTING WHOM? IS A MEMBER OF TAXATION COMM. MT. MINING AS

APPEARING ON WHICH PROPOSAL: SB 243

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: THE STATUTE OF LIMITATIONS FOR THE TAXES SET FORTH IN THE BILL SHOULD BE 3 (not 5) YEARS.

THE BILL SHOULD NOT BE GIVEN RETROACTIVE EFFECT TO YEARS CLOSED BY STATUTE.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT C
FEBRUARY 9, 1983
SB 243

Appeal from District Court, Gallatin County; F. K. Armstrong, Judge.

ACTION by the Board of County Commissioners of Custer County against Nelson Story, and action by the Board of County Commissioners of Custer County against Nelson Story and Walter D. Story. By agreement of the parties the causes were consolidated and tried together. From judgments for defendants, plaintiff appeals. Affirmed.

Mr. C. B. Nolan, and *Mr. James Donovan, Attorney General,* for Appellant.

Mr. A. J. Campbell, for Respondents.

THE HONORABLE J. B. LESLIE, District Judge of the Eighth Judicial District, sitting in the place of Mr. Justice Milburn, delivered the opinion of the court.

These actions were instituted against the defendants in the district court of Custer county on the 6th day of August, 1897. Subsequently a change of venue was ordered by said court to the district court of Gallatin county.

In the first-named action a recovery is sought against the defendant therein named on account of unpaid taxes assessed against him by the authorities of Custer county for the year 1889, amounting to the sum, with penalty added, of $759. The second action is similar in character. In two separate causes is alleged the default of the defendants in the payment of taxes assessed against them by the county authorities of Custer county for the years 1890 and 1892, amounting to the sums, with penalties added, respectively, of $7,087.15 and $187. Said sums sued for are alleged to have matured in the respective years of their assessment. To each cause answer was made traversing the material allegations, and, in addition, as against each cause of action, that statute of limitations was pleaded. By agreement of the parties the causes were consolidated, and

tried together by the court below sitting without a jury. At the conclusion of plaintiff's testimony the defendants moved for a nonsuit upon the ground that it affirmatively appeared that the actions were barred by the provisions of Subdivision 2 of Section 42 of the First Division of the Compiled Statutes, as amended by Section 1 of the Act of the Third legislative assembly, approved March 10, 1893 (Laws 1893, p. 50), which motion was sustained by the court, and judgment in favor of the defendants entered accordingly. From that judgment the plaintiff prosecutes this appeal.

No question having been raised touching the authority of plaintiff to bring these actions in the name of the board of county commissioners, its capacity to sue is assumed for the purposes of this appeal.

In addition to the material averments of the complaint, it is further alleged, relative to the property on account of which the taxes sued for were assessed, that it "was at all times while within said county situate upon the Crow Indian reservation, and that after said tax was assessed and levied and became delinquent the treasurer of said county plaintiff frequently attempted to go upon said reservation to collect said tax, and was at all times before the removal of said property from the said county hindered and prevented from so entering upon said reservation and collecting said tax by distraint of said property by the United States Indian agent and by the United States authorities in charge of said reservation, and by the injunction orders in said matter made and issued by the United States circuit court of the Ninth circuit in and for the district of Montana, and was by the action of said federal authorities and said federal court wholly prevented from seizing and distraining the property of defendants." A careful examination of the testimony had at the trial fails to disclose any proof offered in support of this contention. Whether these averments were incorporated in the pleadings for the purpose of taking the causes out of the operation of the statute of limitations it is needless to speculate, or what effect the alleged hindrance, if

established, would have upon the statute, is unnecessary to determine. The sole question presented by this appeal is whether the statute of limitations runs against the state, or a subdivision thereof, in an action to recover a judgment for an unpaid tax claim,—whether said Subdivision 2 of Section 42, as amended, contravenes the provisions of Section 39, Article V, of the Constitution.

The statutory and constitutional provisions which have application to and must determine the question under consideration are as follows: Section 28, First Division, Compiled Statutes of 1887: "Civil actions can only be commenced within the periods prescribed in this title after the cause of action shall have accrued, except where, in special cases, a different limitation is prescribed by statute." Section 42, *Id.*, as amended: "An action upon a liability created by a statute, other than a penalty or a forfeiture, shall be commenced within two years." Section 49, *Id.*: "The limitations prescribed in this act shall apply to actions brought in the name of the territory, or for the benefit of the territory, in the same manner as to actions brought by private parties." The section last quoted, as carried into Section 520, Code of Civil Procedure, reads: "The limitations prescribed in this chapter apply to actions brought in the name of the state, or for the benefit of the state, in the same manner as to actions by private parties." Section 39, Article V, of the Constitution: "No obligation or liability of any person, association or corporation held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished except by the payment thereof into the proper treasury."

Legislative intent is manifest from the language of Section 49, *supra*, that the statute should operate with equal force against an action by the state, or for the use and benefit of the state, as against a private individual. If demands of the character of those in suit are "liabilities created by statute," and

the sections of the statute above quoted are not repugnant to the provisions of the constitution, it logically follows that the lower court properly held that appellant's right to proceed by action was barred.

Is the obligation to pay a tax demand levied and assessed by the proper authorities, and in accordance with legislative direction, a "liability created by statute"? That it is such a liability is well supported by reason, and is, almost without exception, the view adopted by courts of last resort. The state, as an incident of its sovereignty, possesses the power to impose upon persons and estates within its jurisdiction their just and proportionate share of the expenses and burdens of maintaining its existence and effecting its objects, limited only in the exercise of this power by constitutional restrictions. This power to tax is strictly legislative, and its exercise must ensue from the mandate of the law-making branch of the government in the establishment of fixed and general rules insuring, as near as may be, exact impartiality and equality in the distribution of the common burden. The process by which this exaction from the individual or the estate is accomplished is the product of statutory enactment. The duty imposed is characterized and defined by and dependent upon the legislative will, and is a liability created by statute. Some of the numerous decisions adopting this construction are *Bristol* v. *Washington County*, 177 U. S. 147, 20 Sup. Ct. 585, 44 L. Ed. 701; *State* v. *Mining Co.*, 14 Nev. 226; *City and County of San Francisco* v. *Jones* (C. C.), 20 Fed. 188; *San Francisco* v. *Luning*, 73 Cal. 610, 15 Pac. 311; *County of Redwood* v. *Winona & St. P. Land Co.*, 40 Minn. 515, 42 N. W. 473; *Pine County* v. *Lambert*, 57 Minn. 203, 58 N. W. 990; 19 Am. & Eng. Enc. Law, (2d Ed) p. 282, and cases cited; Cooley on Taxation, 435.

A demand for taxes being a liability created by statute, the next inquiry is, do the provisions of said Subdivision 2 of Section 42, as amended, and Section 49, conflict with Section 39, Article V, of the Constitution? This question must be answered in the negative. The inhibitory words of the constitu-

tion are that no obligation or liability in favor of the state shall be "exchanged," "transferred," "remitted," "released," "postponed," "diminished," "extinguished." That the terms "exchanged" and "transferred" can have no application to the subject herein must be conceded; nor does the statute "postpone," or suspend for a time, the remedy for the enforcement of payment, giving a temporary respite to the debtor, to be followed by a revival of the right to collect from him; nor can a diminution follow from the statute canceling a part of the debt and leaving in force a part. If there is any conflict in the statute, it must be found in the remaining words "remitted," "released," "extinguished," and which, for the purposes of this case, may be considered as convertible terms prohibiting a cancellation of obligations of the class embraced in the constitution. The statute relied on by the defendants, which limits the right to sue within two years after the maturity of the demand, does not operate to remit, release, or extinguish the obligation. With respect to personal actions for the recovery of debt, statutes of limitation are not statutes of release or liquidation; they affect the remedy, and not the right. (*Guiterman* v. *Wishon*, 21 Mont. 461, 54 Pac. 566; Cooley, Const. Lim. p. 447; 19 Am. & Eng. Enc. Law (2d Ed), p. 147, and cases cited.)

While plaintiff's right to proceed by action is lost by delay, the debt is not extinguished, and the officers authorized so to do may pursue the other remedies provided by law and enforce collection. The laws of this state provide a summary method of seizure and sale of personal property and sale of realty for enforcing payment of taxes, and also authorize the bringing of a common-law action for the recovery of a personal judgment against the delinquent taxpayer. Neither of these remedies is dependent on the other for its existence or efficiency. The proceeding by action is a remedy in addition only to the others named; but for the statute creating it, the remedy would not exist. The lawmaking power, having authority to prescribe or withhold altogether a particular remedy, may, in its enactment, invest it with such restrictions as will, in its judgment,

best subserve the public good. Were there no statute authorizing the bringing of an action to collect a tax debt, and the legislature, in its wisdom, deemed it expedient to make provision for such a remedy, could it be reasonably contended that in the enactment of such a law the constitutional provision relied on by the plaintiff would stand in the way of a proviso that the action should be brought within a specified time, else the right to sue be denied? Or would the power of the legislature be questioned to repeal altogether the existing right to proceed by action, leaving the remedies of distraint and sale to be pursued by the collecting officers?

The power to sue for delinquent taxes existed at the adoption of the constitution, authority therefor being found in Section 9 of the Act of the Sixteenth legislative assembly of the territory, approved March 14, 1889, p. 225, and likewise, at the same time, the statute limiting the period within which such actions might be brought was in force. If it had been the intention of the framers of the constitution to exempt the state from the operation of statutes of limitations, it would have been an easy matter to incorporate a clause to that effect in the instrument.

More than two years having elapsed between the maturity of each of the claims sued on and the commencement of the actions, the lower court properly sustained the motion of the defendants for a nonsuit. The judgment is therefore affirmed.

Affirmed.

MR. CHIEF JUSTICE BRANTLY: I concur.

MR. JUSTICE PIGOTT: I concur.

MR. JUSTICE MILBURN, having been of counsel in other undetermined causes presenting the same question here involved, does not participate in the foregoing opinion.

As to the maxim, *"nullum tempus occurrit regi,"* see notes in 48 Am. Rep. 24; 101 Am. St. Rep. 144.

SENATE TAXATION COMMITTEE
EXHIBIT D
FEBRUARY 9, 1983
SB 202

SB 202
(Formula Bill)

Assume a synfuel plant plans to locate in Eastern Montana

Assume a total employment - starting in 1984 (including construction workers) of 1000 employees

a (Sec. 1, (3)) = 1000

b × 2.2 (multiplier under Sec. 2(b))

2200 people

c × 1742 (average operating cost per person - Sec. 2(c))

$3,832,400

2200 people

× $7711 (average capital cost per person, Sec. 2(c) - one year only)

16,964,200

\+ 3,832,400 - operating for 1984

\+ 3,832,400 - operating for 1985

$24,629,000 - total expected impact cost

19,400,000 - 8¾% to Coal Board for '84-'85

$5,228,500 - Unfunded balance

SENATE TAXATION COMMITTEE
EXHIBIT E
FEBRUARY 9, 1983
SB 202

NAME: Ann Mulroney DATE: 2/9/83

ADDRESS: 700 Power, Helena

PHONE: 442-6227

REPRESENTING WHOM? League of Women Voters

APPEARING ON WHICH PROPOSAL: SB 202

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: The League opposes opening the trust account to further earmarking. The binding effect of the "shall" language in Sec 4 is a chief concern. We also oppose the reimbursement concept and the proposed formula. The formula does not take into account the wide diversity of need and ability to pay in local governments. We support using severance taxes for impact programs and we support a state role in identifying and evaluating those impacts. We think any changes in funding or criteria in the coal impact program should be developed in conjunction with the Coal Board and Oversight Committee. Non-trust revenues should be the first funding source explored if more money is needed.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

F

NAME: Myrdo Campbell / for Paul Palm SB 202 DATE: 2/9/83

ADDRESS: Hardin, Mt.

PHONE: _____

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 202

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Testimony Against Senate Bill 202
to the Senate Taxation Committee

Mr. Chairman and Senators:

In my absence I have requested Mr. Murdo Campbell, Montana Coal Board Administrator to read my testimony concerning Senate Bill 202 which you are now considering.

As Vice-Chairman of the Coal Board; as a member of the Board for three years; and as a resident of an impacted area I feel qualified to address you with my concerns about this bill.

This bill places a formula for determining ways of addressing impacts on a community through direct means based solely on population directly employed by coal related companies. This bill reduces the solution of impact problems down to a numbers game that could be easily addressed by a calculator, with no human input, especially relating to human problems abused by impact. Secion 1 deals only with direct employment by coal related companies at some point in time during a fiscal year.

A sudden large increase or sudden lay-off of employees just before or after the certification process has taken place would totally eliminate any type of accurate and fair indication of employment figures.

The reasonable multiplyer addressed in section 2-1-b would be established by the Department of Commerce - and no one else.

Per capita costs addressed in section 2-1-c would vary to extremes depending upon local governments and their level of services provided.

Services provided, differ with each impacted community depending upon the uniqueness of the community.

To my knowledge there is no easily quantifiable economic coal development impact cost that can be applied to all local governments, as addressed in section 2-2.

Section 3 places the appropriation for these funds from the income of the trust fund account, based on a formula established by the Department of Commerce only on population figures acquired from the coal companies.

The bill would greatly lessen the Coal Board's decision making authority - or eliminate the Board itself by replacing it with a calculator.

This formula would be fed into and received out of a computer with the impact money distributed accordingly - based on a one time per year employment rate with no concern for past or future impact or the preparation and recovery thereof.

Thank you for your time.

SENATE TAXATION COMMITTEE
EXHIBIT G
FEBRUARY 9, 1983
SB 202

NAME: Ed McCaffree DATE: 2/9/83

ADDRESS: Roundup Mt

PHONE: 356-2251

REPRESENTING WHOM? Oil Coal & Gas Co.

APPEARING ON WHICH PROPOSAL: 202

DO YOU: SUPPORT? _____ AMEND? ✓ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.