

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 12, 1983

The twenty-fifth meeting of the Taxation Committee was called to order at 9:05 a.m. by Chairman Pat M. Goodover in Room 415 of the Capitol.

ROLL CALL: All members were present except Senator Elliott.

CONSIDERATION OF SENATE BILL 375: Senator Larry Tveit, Senate District 27, the sponsor of SB 375, submitted written testimony in support of it, attached as Exhibit A.

PROPOSERS

Doug Faulconer, representing Conoco, Inc., said he prepares, files and pays Conoco's state income taxes. Montana law says that Montana can tax income from a source within Montana and from no other sources, but recently foreign source income has been taxed along with the Montana income. They must do a separate accounting to determine how much was earned within a state's borders. There are sales made in one state and refineries are located in another. It makes it hard to determine how much goes back to each state. The unitary tax is one unit. As long as the tax is administered consistently, they have no complaint. Conoco has been filing that way in many states for many years. The company has subsidiary companies. It is reasonable that all companies should be combined into one return, but they are filing separate returns. He had no quarrel with combining the two. These large companies were doing the same thing overseas that they are doing in Montana. Why not bring foreign corporations into the tax returns? Foreign corporations do not employ the unitary concept. This is the area where promotion of the unitary concept ran into problems. Foreign countries tax that income, and they should be permitted to deduct that foreign tax on the return. He opposed being taxed by the foreign countries and then being taxed again on the whole amount in the United States. Mr. Faulconer felt Montana should either give a deduction for the foreign taxation or eliminate foreign income from the returns.

Pat Kyle, representing Gulf Oil, submitted written testimony, attached as Exhibit B.

Janelle Fallan, representing the Montana Chamber of Commerce, supported SB 375.

Don Allen, representing the Montana Petroleum Association, said they are concerned about the difficulty in attracting investment dollars into Montana. The land commissioners have changed royalties from a sliding scale of 12½%-25% to a straight 13%. They hoped that it would help attract big dollars for work in the Overthrust Belt. SB 375 has a bearing on potential exploration in Montana.

OPPONENTS

Jerry Foster, administrator of the Natural Resources Division of the Department of Revenue, gave a history of the situation. So far, we have effectively avoided this legislation, he said. But now, there is litigation throughout the United States on charges made. The U.S. Supreme Court has consistently said the unitary basis is fair and legal. In an Asarco case, the Idaho Supreme Court said the combination basis was not unconstitutional, just not unitary. We have to establish the payor/payee relationship between parent and subsidiary corporations. Even in the Asarco case, the Supreme Court affirmed the decision. In the South Peru and mines of Australia cases, the income was excluded. We do not have the powers to take any income we see fit. SB 375 makes it worse.

Mr. Foster, referring to the fiscal note, said it will cost \$5 million to \$6 million here, or even double or triple that amount. On one audit, not one year, they collected \$8 million. It doesn't matter whether they take Phillips' oil and tax it. It won't drop the price of gas or oil. He said they are strong supporters of multinational and state compacts. They pay \$50,000 in audit fees and bring in millions of dollars a year on combination audits in Montana. If SB 375 passes, they will have to drop out of the audit process. In the last three years, they have collected \$18 million from the worldwide combination process. Does the legislature think these huge blocks of income should be exempted? He urged the legislature to join in with our Congressional delegation in defeating this at the national level as well. That is what the unitary-combination is all about--using income to shift across boundaries.

Questions from the committee were called for.

Senator Lynch asked if because of the litigation, the money was being held in escrow, or if they were paying under protest or what. Mr. Foster responded that they are paying under protest.

Senator Crippen, addressing Mr. Foster, said the proponents claim that the process is inequitable because it takes gross income and applies it to gross income, and we don't give credit for foreign or federal income taxes. Mr. Foster said if that income is picked up, Montana is still only taxing its percentage of it. If we combine foreign corporations, the dividends would be eliminated. A company's ranch in Canada and their ranch in Montana are unitary because you can shift income from Montana to Canada. He said he has been in state taxation for over 20 years and has not yet seen a corporation prove that application of the unitary concept is distorting.

Senator Towe said that in the Canada/Montana example, the shift of income could be charging fertilizer costs incurred in Canada to the Montana ranch, and likewise, insurance and wages to the Montana ranch, leaving all the income in Canada and none in Montana.

Mr. Foster referred to the Uniform Division of Income for Tax Purposes Act (UDITPA). It takes all property in Montana and the costs. Their factor on the property would be 10%, then their percentage of the total income would be 10%.

Senator Gage asked Mr. Faulconer or Ms. Kyle if the average corporate taxes in the U.S. are higher or lower than foreign corporate taxes. Mr. Faulconer said they are lower in the U.S. than in foreign countries--46% foreign; states' rates are from 5%-15%. He said 90% of the income is vanishing overseas. If every state did this, can you imagine what the picture would be, he asked. Texas, South Dakota, and other states do not have income tax laws, but they have something else to compensate. Texas has a capital stock franchise tax law. Conoco paid \$10 million to Texas under the franchise tax law last year. The western states have newer income tax laws. Eastern states have old laws and most of these do not go for the combined rate as is done in the west. If the losses persist, they will probably get out of the area, he said, to the disadvantage of all taxpayers.

Senator Eck wondered if this effort had been successful in other states. Mr. Faulconer said the governor of Illinois, last September, wrote an amendatory veto that told the state of Illinois that they could tax only income in the continental United States.

Senator Norman, addressing Mr. Foster, said suppose Montana abandoned the unitary concept altogether and just taxed what occurs and exists in Montana. Would the tax return be greater or less than using the unitary tax? Mr. Foster said it would go back 10 or 15 years when they got practically nothing.

In closing, Senator Tveit said SB 375 addresses the situation from worldwide to U.S. boundaries, not to the Montana boundaries. It will help with out-of-state business, whether it is coal or some other natural resource. This is one more onerous tax burden that will affect Montana's ability to conduct business.

CONSIDERATION OF SENATE BILL 363: Senator Mazurek, Senate District 16, was the sponsor of the bill. It was introduced at the request of Robert B. Morris, principal at Rossiter School in Helena, Montana. The purpose is to encourage distributors and manufacturers of computer equipment to donate computers or other technological equipment to secondary and elementary schools. The meat of the bill is on pages 6 and 7, where a new subsection (9) to 15-31-114, MCA, has been added, which allows a deduction from corporate income of the value of such equipment, sets forth the criteria for such equipment, and a new section which allows a deduction for small business corporations, also. "Value" should be clarified to be "fair market value" and where the computer terms are referred to in subsection (9), "apparatus" should be defined. Subsections (8) and (9) should be reworked so as not to permit a double deduction. See also the 1982-83 Computer Usage Survey for Montana Schools, attached as Exhibit C.

Senator Mazurek said SB 363 will encourage cooperation between the business world and schools.

PROPOSERS

Brad Morris, principal of Rossiter School in Helena, said this will answer the problem of high technology and low financing. He wanted to get a computer for his students and approached a dealer who said he could pay for it in 90 days or return it. See his written testimony, attached as Exhibit D.

Daryl Bertelsen, a computer science teacher at Capital High School, said they have an older model Hewlett Packard that the kids work with. He could have gotten \$5,000 worth of computer parts for nothing from Montana Power Company in Butte, but they gave them to Montana State University instead because Montana Power could take a deduction for that.

Jesse Long, representing the School Administrators of Montana, supported the bill. The schools at this point are not able to purchase through the general fund. We need to get the students involved. See his written testimony, attached as Exhibit E.

Wayne Buchanan, representing the Montana School Boards Association, said small schools have trouble acquiring access to this type of technology. SB 108 warrants your favorable approval.

Rod Svec, Office of Public Instruction, also supported the bill. They have a tight budget.

Larry Weinberg, assistant chief legal counsel to the Commissioner of Higher Education, submitted written testimony, attached as Exhibit F.

OPPOSERS

There were no opposers to SB 363.

TECHNICAL INFORMATION

Dan Bucks, representing the Department of Revenue, said the double deduction matter has been discussed. One other difference is that the federal contribution statute limits a deduction to 10% of net income. He felt the bill should define, or give to someone rulemaking authority to define "computers" and "apparatus". They see a lot of farfetched things, such as experimental automobiles and body building equipment. He suggested limiting it to academic purposes. Clear it up now so there are fewer problems later.

Mr. Weinberg noted that the bill provides the same treatment for small business corporations, where money flows down through a corporation to the individual taxpayer. Federal law does not pass this deduction down. There is no income tax law in Montana to back up that deduction. He asked that the committee look at that, too.

Questions from the committee were called for.

Senator Lynch wondered if there was any type of blue book on computers. Mr. Bertelsen thought somewhere there should be one.

Senator Severson noted that office equipment has 5 years' depreciation. Mr. Bucks stated that if the donation is made, the remaining value not depreciated out would be the value assigned to the equipment.

Senator Towe didn't agree. You are donating property for a purpose for which the institution was designed so you get fair market value instead of cost basis value. He noted that the codification instruction placed this in the income tax section.

Mr. Weinberg explained that when a Montanan does an individual tax return, he will go to 15-30-114 or 15-30-115, MCA, which say Montana adjusted gross income is gross income less this and less that. There is no mechanism to bring the deduction down.

Senator Towe asked if there was a reason individuals were not included in this. Senator Mazurek, the sponsor, said he had no objection to individuals being included. Proposed section 15-31-114(9)(b) would have to be changed though.

Mr. Weinberg noted that the way it is now, it is aimed at manufacturers and distributors.

Senator Hager wondered how Mr. Weinberg's proposed amendments (on Exhibit F) would affect home schools or non-accredited schools. Mr. Weinberg said barber schools, trade schools, College of Great Falls, etc., would qualify under that language.

Senator Eck wondered why the University System could get a tax write-off but a public school couldn't. Dan Bucks stated that he was informed that contributions to public schools qualify as federal charitable contributions under state laws.

In closing, Senator Mazurek said he had requested a fiscal note, and it does not predict the effect of this bill.

CONSIDERATION OF SENATE BILL 108: Senator Bob Brown, Senate District 10, said SB 108 deals with the same situation we dealt with in SB 72 but with the metal mines tax, and he turned discussion of the bill over to Dan Bucks from the Department of Revenue.

PROPONENTS

Mr. Bucks said the bill required quarterly reporting and quarterly payment of tax. The amendments attached as Exhibit G have made quarterly reporting and an annual tax. The penalty, if the return is not timely filed, can be waived if good cause is shown. Annual payments of tax will be due on March 1. This makes two changes in existing law that are not comparable to what we did

in SB 72. Right now, an annual report of gross yield is made on or before April 15. Payment is due on June 30. The department prefers that the tax be self-assessing, and they prefer to move the reporting date to March 1 for uniformity and standardization. We are trying to move from the 1920s and 1930s to the mid-1970s. There hasn't been any change in administrative practices since then. Mr. Bucks also submitted a grey bill with the Exhibit G changes incorporated therein, and it is attached as Exhibit H.

OPPONENTS

Ward Shanahan, representing Stillwater PGM Resources, said SB 108 makes this consistent with the resource indemnity trust tax, and from that standpoint, they are agreeable to the bill. He had a problem, though, with the bill title which says payment of the tax accompanies the return. He assumed the next step would be to make taxes payable quarterly, but he asked the committee to remember that it is a property tax.

Questions from the committee were called for.

Senator Towe asked when the resource indemnity trust tax was due. Mr. Shanahan replied that you don't have a total annual yield until the end of the year. He was not in agreement with moving the reporting date up, but was in agreement with having the same reporting date.

Senator Towe noted the coal tax is paid 30 days after the end of a quarter. Mr. Bucks replied that all others are basically due 60 days after the end of a quarter.

Mr. Shanahan said that when coal is sold, you get paid right away, but that is not the case with metals.

Senator Gage thought this was a license tax rather than a property tax.

The hearing on SB 108 was closed.

DISPOSITION OF SENATE BILL 254: Senator Gage moved that SB 254 DO NOT PASS. The motion was seconded and a roll call vote was taken. The motion passed 7-5, with one member abstaining and two members absent at the time the vote was taken. Senator Gage will prepare the adverse committee report and will carry the bill on the floor.

CONSIDERATION OF SENATE BILL 329: Senator McCallum moved to lay SB 329 on the table. The motion was seconded. Senator Severson stated that he had made a comparison of the inventory tax, livestock tax, and unprocessed produce tax, all in the same category. Everyone should pay his fair share to support the government, he said. We have eliminated the unprocessed produce and the inventory tax, and to be consistent, he said he would sponsor a committee bill to delete the livestock tax also.

Senator Eck said that of the phone calls she has had, only one individual knew he had the credit. People should be made aware that they have the credit coming.

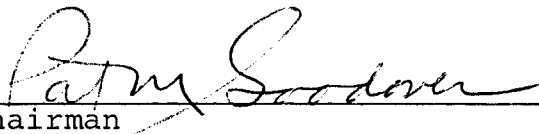
A roll call vote was taken and the motion passed 12-1, with two members of the committee absent at the time the vote was taken.

DISCUSSION RE GAGE COMMITTEE BILL RE SEVERANCE TAX AND NET PROCEEDS TAX ON OIL AND GAS: Senator Crippen said the committee should give its preliminary approval for drafting the bill today.

Senator Norman stated that if the committee asks for a drafting request, it doesn't mean you have to vote favorably on the bill.

Senator Turnage said that for the record, we would approve the draft for introduction with the understanding that, before introduction, we get to reconsider the matter.

Upon motion, the meeting adjourned at 11:03 a.m.


Chairman

ROLL CALL

SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/12/83

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	✓		

February 12, 1983

~~TAXATION~~

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

Testimony SB375
Senator Larry Treit

SENATE TAXATION COMMITTEE

EXHIBIT A

Feb 12, 198 3

Senate BILL/RES 375

This bill would exclude foreign source income from Montana's calculation of corporate state income taxes for the following reasons:

Montana's Corporate License Tax is currently based on a combined unitary method, by which the incomes of a parent corporation and its affiliated group of subsidiaries (who depend upon and contribute to each other) are lumped together and a portion of their income which is assigned to Montana is then taxed. This income is apportioned to Montana by means of a three-factor formula giving effect to the relationship of the taxpayer's sales, property, and payroll in Montana to the taxpayer's overall sales, property, and payroll.

The three-factor apportionment formula is based on the premise that a dollar of wages or property spent and a dollar of sales receipts realized in each of the taxing states involved, produces approximately the same amount of income. While this might be relatively true within the United States; when the scope of the unitary business, and hence apportionment, is extended worldwide there are significant distortions.

Because of substantially lower plant and labor costs in foreign countries, a larger share of unitary income is apportioned to Montana than is fair. The usually substantial difference between U.S. and foreign costs voids the basis on which the U.S. Courts, including the U.S. Supreme Court, have accepted apportionment of income as appropriate. This basis requires the apportionment fairly reflect the income earned in the several states where the taxpayer does business. In addition, inclusion of foreign source income could produce the absurd result that the growth of the foreign segment of a company's business will have the effect of increasing the income attributable to Montana, even when operations in Montana remain the same.

Many people fail to realize the double taxation involved in domestic taxation of foreign source income. These other countries also tax income from within their borders, often at rates exceeding the U.S. Federal Income Tax rate. The U.S. Government recognizes this, and enters into treaties and grants credits or deductions for foreign tax paid. Montana does not allow such deductions and taxes the income in full, which is double taxation, something the Federal Government goes to great lengths to avoid.

In addition to the duplicate taxation of foreign source income and its inherent unfairness in relation to the services Montana provides for these tax dollars, this type of state income taxation goes far in discouraging new investment or the expansion of old investment in Montana's business community. This type of onerous tax burden, if allowed to continue, will seriously affect Montana's ability to create a prosperous business climate. Please consider favorably supporting this bill.

Patricia & Kyle
Gulf Oil Corp.
SB 375

MONTANA
UNITARY-COMBINED

SENATE TAXATION COMMITTEE
EXHIBIT <u>B</u>
<u>Feb-12</u> , 198 <u>3</u>
Senate BILL/RES. <u>375</u>

Business in general urges that S.B. 375 be enacted into law.

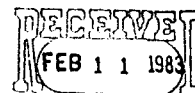
- A. We feel it will improve the business climate of Montana. Presently, the Montana Dept. of Revenue, instead of taxing only the income of the corporation doing business in Montana, as it has done in the past, has recently been taxing the income of such taxpayer combined with income of all of its subsidiaries all over the world. In most cases, these subsidiaries do not do any business in Montana but earn 100% of their income in foreign countries. If this continues, one thing is certain: no industry will seek to expand its operations in this state, and if the tax levied is onerous enough, the taxpayer may abandon its Montana market and move operations to a state where it can earn a reasonable rate of return on its investment. Moreover, this discriminatory tax against taxpayers which do business in many states and countries will result in lower employment and lower investment. In various industries, competition will be reduced, thus increasing costs to consumers.
- B. We believe that there will be ^{minimal} ~~no~~ revenue loss by enactment of S.B. 375. While a number of taxpayers did not contest assessments on the unitary/combination basis following the 1977 decision of the Montana Supreme Court in ASARCO which approved this theory of taxation (as to intangible income), a later U.S. Supreme Court decision as to the same taxpayer (ASARCO--Idaho) held that ASARCO and its subs were not unitary, thus rendering the Montana case meaningless in effect. Consequently, most all taxpayers assessed on a combined basis have protested or appealed their assessments and most intend to litigate. These taxpayers believe that ultimately the Montana law will be declared invalid. Among their reasons that taxing foreign-source income is unconstitutional are:
- 1) It misapportions income to the U.S., resulting in extraterritorial taxation (those sub corporations with no business activity in Montana and earning 100% of income from foreign countries). (Due Process)
 - 2) Unlawful double taxation results. Income is taxed by the foreign country (sometimes as high as 90%); secondly, by Montana. Montana allows no credit or deduction, as does the federal government, in order to avoid multiple taxation. (Violation of Commerce Clause)

- 3) It interferes with the federal government's constitutionally delegated right to speak with one voice in dealing with foreign governments (instead of 50 states' voices and different taxes and 50 different foreign policies of the U.S.).
- 4) It distorts substantially the tax apportioned to Montana, because property values and payroll are far less in foreign countries. U.S. corporations need to have higher rates of return in foreign countries because of higher risks--hence, higher profits (nationalization, limitation on dividends, etc.). In oil business, there is an extremely high output of a well in OPEC countries, compared to Montana. One well in OPEC countries would produce over 300 times the barrels of oil that one well in Montana would produce. Hence, a dollar of payroll or of property is not equal between OPEC and Montana, as a reasonable formula must be or else its unconstitutional.

TSM/cp
2-3-83

1982-83

Computer Usage Survey Summary for Montana Schools



SENATE TAXATION COMMITTEE
EXHIBIT <u>C</u>
<u>Feb-12</u> , 198 <u>3</u>
<u>Senate</u> BILL/RES. <u>363</u>

Total number of schools in Montana using computers: 538

Total number of computers in use: 1,746

Number and type of machines used for student instruction:

	Schools	Machines
Apple	317	674
PET	115	317
TRS-80	234	480
Other	131	275

*Costs about \$300
w/ increase
dramatically for
reference -
course
purposes.*

Total schools with telephone interface equipment (modem): 78

Total schools planning computer purchase in next two years: 257

Total computers projected for purchase: 747

Computer usage by grade & subject area:

Subject	Grades			
	K-3	4-6	7-9	10-12
Reading	86	99	46	28
Math	109	131	142	130
Science	22	40	63	73
English	56	78	62	39
Social Studies	25	56	41	27
Business Education	4	4	33	82
Music	8	11	8	7
Art	4	4	4	1
Career Education	5	9	30	43
Special Education	68	76	70	52
Programming	17	31	74	145

*Computers are not
st math/science
oriented*

*AMAZING
possibility*

*- drill practice
patience!*

Gifted & Talented?

Number of teachers using computers in their classes: 1,829

Schools using computers for administration: 142

Schools having computer programs to share: 84

Schools having curriculum guides to share: 14

*computers will most
likely be utilized within
existing curricula, e.g.
math, social studies
and not result in a
separate curriculum -*

D

NAME: Robert B. Morris Feb-12 3 DATE February 12, 1983
ADDRESS: 1621 Stuart Helena, Montana 59601
PHONE: 406 (443-4311)

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: Senate Bill 363

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

COMMENTS: This bill supports a partnership between business and education by providing incentives to donate computer equipment in lieu of tax deductions. Such an arrangement encourages schools to seek business support at a time when school budgets do not have the flexibility to meet the demands of changing technology. A spinoff is encouraging business as the cooperative relationship will encourage schools to do business with Montana business instead of bidding to out of state competitors. Jobs in the sales and service may also be enhanced.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

The risk to business is low, the risk to state revenue is low 'and' the reward for Montana's children is high - a good investment potential

1982-83

Computer Usage Survey Summary for Montana Schools

RECEIVED
FEB 1 1983

Feb-12-83
Senate 363

Total number of schools in Montana using computers: 538

Total number of computers in use: 1,746

Number and type of machines used for student instruction:

	Schools	Machines
Apple	317	674
PET	115	317
TRS-80	234	480
Other	131	275

Total schools with telephone interface equipment (modem): 78

Total schools planning computer purchase in next two years: 257

Total computers projected for purchase: 747

Computer usage by grade & subject area:

Subject	K-3	4-6	7-9	10-12
Reading	86	99	46	28
Math	109	131	142	130
Science	22	40	63	73
English	56	78	62	39
Social Studies	25	56	41	27
Business Education	4	4	33	82
Music	8	11	8	7
Art	4	4	4	1
Career Education	5	9	30	43
Special Education	68	76	70	52
Programming	17	31	74	145

Number of teachers using computers in their classes: 1,829

Schools using computers for administration: 142

Schools having computer programs to share: 84

Schools having curriculum guides to share: 14

Office of Public Instruction
Ed Argenbright, Superintendent
Dan Dolan, Math & Computer Education Specialist
State Capitol, Helena, MT 59620
1-800-332-3402

computers will most likely be utilized within existing curricula, e.g. math, social studies and not result in a separate curriculum -

Costs about \$300 will increase dramatically for reference resource purposes.

Computers are not just math/science oriented

FAANTASTIC possibility

Gifted & Talented?

drill/practice

Feb 12, 1983

DATE: 2-12-83

Inte 303

NAME: Jesse W Long

ADDRESS: 501 N Sanders

PHONE: 442-2510

REPRESENTING WHOM? School Adm of MT

APPEARING ON WHICH PROPOSAL: SB 343

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: Helps schools meet the changing needs in Hi Tech.
Helps small businesses in Montana

Concerns:

There is a need for a introductory
training program at the time of installation

2 years may be too long to prevent the
dumping of obsolete equipment

Assurance that sufficient equipt be included
to make the computer operable

Donations to be made to rural areas
as well as urban

Line 25 Page 6 insert Public between an "elementary"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59620-2602

(406) 449-3024

SENATE TAXATION COMMITTEE

EXHIBIT F

Feb 12, 1983

Senate BILL/RES 363

COMMISSIONER OF HIGHER EDUCATION

TO: Irving E. Dayton

FROM: Larry Weinberg

DATE: February 10, 1983

Re: SB 363 relating to tax deductions for computer equipment contribution.

Senate Bill 363 provides a mechanism for corporations and the shareholders of small business corporations to take a deduction against gross income for the value of computer equipment contributed to schools. The bill accomplishes this by adding a sub-section (9) to Section 15-31-114, MCA, and by enacting a new section to deal with small business corporations.

The bill as introduced may need some clarifications. The 1981 Legislature added sub-section (8) to 15-31-114, MCA, to permit corporations to take a deduction for charitable contributions that qualify pursuant to section 170 of the Internal Revenue Code. Thus, in most circumstances a gift of computer equipment to school (whether primary, secondary, or postsecondary) would already qualify for treatment as a deduction. However, under IRC §170, a company that manufactures computer equipment would be able to take a deduction only for the basis of the equipment, not its fair market value. The language in SB 363 seems to indicate that fair market value is the appropriate "value" in computing the deduction. If this is intended, it should be clarified. Also, it should be clarified that a corporation must elect between a sub-section (8) or sub-section (9) deduction and may not receive a double deduction. The case of computer equipment presents an interesting situation. A manufacturer of equipment will wish to use sub-section (9) to obtain a fair market value measure for the deduction. A user of equipment that is subject to very rapid technological obsolescence would probably prefer sub-section (8), inasmuch as the basis may be higher than the fair market value. Clearly, the vagaries of the computer industry will produce some interesting results.

With respect to the small business corporations (referred to as sub-chapter 5 under the federal law), the language of the bill is probably insufficient. Language will need to be inserted into Title 15, chapter 30, MCA, to insure that the deduction passes through to the stockholders.

Finally, it would be useful to have the University System included within the legislation. To do this the following amendment would be appropriate.

1. Page 6, line 25
Following: "elementary"
Strike: "or"
Insert: ", "
2. Page 7, line 1
Following: line 25, page 6
Insert: " , or accredited post-secondary"
3. Page 7, line 20
Following: "elementary"
Strike: "or"
Insert: ", "
Following: "secondary"
Insert: " , or accredited post-secondary"

The suggested amendments will also extend coverage to the community colleges, the accredited private schools, the accredited vo-techs, and the accredited tribally controlled community colleges.

LW/b

Amend SB 108 as follows:

- (1) Title, page 1, line 7.
Following: "TO A QUARTERLY
Strike: "TAX"
Insert: "REPORT ON GROSS YIELD"
- (2) Title, page 1, line 8.
Following: "FILING OF THE"
Insert: "MARCH 1"
- (3) Section 1, page 2, lines 17 through 22.
Strike: subsection (2) in its entirety
- (4) Section 2, pages 2, 3, and 4.
Strike: Section 2 in its entirety
- (5) Section 3, page 5, line 18.
Strike: ;and
- (6) Section 3, page, 5, lines 19 and 20.
Strike: subsection (g) in its entirety
- (7) Section 3, pages 5 and 6
Following: subsection (3)
Insert: (4) If the quarterly statement of gross value described herein is not filed with the Department within 60 days following the calendar quarter ending, a penalty shall be assessed. The penalty shall be the greater of \$25 or 2% of the tax that would be due under (this act) if collected quarterly. If good cause is shown, the Department may waive the penalty.
- (8) Section 4, page 6, lines 20 through 23.
Following: "and is due"
Strike: "60 days following the quarterly reporting date of each quarter. The tax due under this chapter becomes delinquent as of midnight of the 60th day following the quarterly reporting date."
Insert: "and payable on or before March 1 of each year for the products produced in the preceding calendar year. The tax due under this chapter becomes delinquent as of midnight on March 1 of the year immediately following the production year."
- (9) Section 4, page 7.
Strike: subsection (2) in its entirety
- (10) Section 5, page 8, lines 4 and 5.
Following: "file"
Strike: "Statement"
Insert: Statements

- (11) Section 5, page 8, line 6.
Following: "file"
Strike: "such statement and return within the time prescribed"
Insert: "all required quarterly statements of gross yield for
a production year on or before March 1 of the year
immediately following the production year"
- (12) Section 5, page 8, line 12.
Strike: cumulative
Insert: total
- (13) Section 5, page 8, line 14.
Strike: for
Insert: during
- (14) Section 5, page 8, line 14.
Following: "calendar"
Strike: "quarter for"
Insert: year immediately preceding the year in
- (15) Section 5, page 8, lines 16 and 17.
Following: "such"
Strike: cumulative
- (16) Section 6, page 9, line 6.
Strike: the 60th day following the quarterly reporting date
Insert: "March 1 of the year immediately following the
production year."
- (17) Section 6, page 9, line 9.
Following: "of"
Strike: 10%
Insert: 8%
- (18) Section 6, page 9, line 14.
Following: "may waive the"
Strike: 10%
Insert: 8%
- (19) Section 6, page 9, line 16.
Following: "on or before"
Strike: "the 60th day following the quarterly reporting date"
Insert: "March 1 of the year immediately following the
production year."
- (20) Section 7, page 10, line 22.
Following: "true"
Strike: cumulative

5 BILL NO. 108

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO CHANGE THE METALLIFEROUS MINES LICENSE TAX FROM AN ANNUAL TAX TO A QUARTERLY REPORT OF GROSS YEILD; REQUIRING PAYMENT OF THE TAX TO ACCOMPANY THE FILING OF THE MARCH 1 RETURN; AMENDING SECTIONS 15-37-102, 15-37-103, 13-37-104, 15-37-105, 15-37-106, 15-37-108, AND 15-37-109, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-37-102, MCA, is amended to read:

"15-37-102. Gross value of metal mine yield -- computation. (1) The "quarterly reporting date", as used in this part, means the last day of the calendar quarter. The total "quarterly gross value of product", as used in this part, shall mean the market value of all merchantable metals or precious and semiprecious gems and stones extracted or produced each ~~year~~ calendar quarter from any mine or mining property in the state or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. Whenever the ores require smelting, reduction or treatment to ascertain the metal contents of such ores, the quarterly gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby as shown by the gross smelter returns of such metals or mineral product in dollars and cents

without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar ~~year immediately preceding~~ quarter for which a report is being made. Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable.

Section 2. Section 15-37-104, MCA, is amended to read: -- reports and sampling. (1) Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals, precious or semiprecious gems or stones are produced must, not later than April 15 in such year sixty days following the quarterly reporting date of each quarter when engaged in or carrying on any such business, work, or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar ~~year~~ quarter immediately preceding. If good cause is shown, the department may grant a reasonable extension of the time for filing statements. ~~Such~~ The statement shall be in the form prescribed by the department of revenue and ~~must be delivered to the department not later than April 15.~~ The department may grant a

reasonable extension of time for filing statements upon good cause shown therefor. Such statement shall show the following:

(a) the name, address, and telephone number of the owner, lessee, or operator of the mine or mining property;

(b) the mine's location by county and legal description;

(c) the number of tons of ore, concentrate, or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement;

(d) the name and location of the smelter, mill, or reduction works to which such ore or concentrate has been shipped or sold during the period covered by the statement and such other information as the department may require;

(e) the gross yield of such ores, concentrates, mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores, concentrates, or mineral products or deposits, measured by standard units of measurement, during the period covered by the statement;

(f) the quarterly gross value of product in dollars and cents;

(2) This section applies regardless of the location of any smelter, mill, or reduction works to which the ore or concentrate is shipped.

(3) Any sampling, testing, or assaying made necessary to comply with this section must be completed within this state and prior to any mixture of the ore or concentrate to be assayed with ore or concentrate from any other mine or mining property."

(4) If the quarterly statement of gross value described herein is not filed with the Department within 60 days following the calendar quarter ending, a penalty shall be assessed. The penalty shall be the greater of \$25 or 2% of the tax that would be due under (this act) if collected quarterly. If good cause is shown, the Department may waive the penalty.

Section 3. Section 15-37-105, MCA, is amended to read:

"15-37-105. Computation and notice payment of tax. (1) The department of revenue shall examine each such statement and return filed and determine and ascertain therefrom and compute and assess the amount of the license tax to be paid by the person making and filing the same and shall, not later than June 1, mail to each person making and filing such statement and return a written notice of the amount of the license tax to be paid by each respectively; that the same is due and payable; that it will become delinquent at 5 p.m. on June 30 immediately following; that if the same becomes delinquent, a penalty of 10% will be added thereto; and that the whole amount of such license tax, with penalty added, will bear interest at the rate of 1% per month or fraction thereof from the date the same becomes delinquent until paid. The tax due under this chapter is computed according to (Section 15-37-103) and is due and payable on or before March 1 of each year for the gross value of the products produced in the preceding calendar year. The tax due under this chapter becomes delinquent as of midnight on March 1 of the year immediately fol-

lowing the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of tax. During the period of any extension granted, the tax due shall bear interest at a rate of 1% per month or any part thereof.

Section 4. Section 15-37-106, MCA, is amended to read:

"15-37-106. Procedure in case of failure to file ~~statement,~~ statements. If any person shall fail, refuse, or neglect to make and file ~~such statement and return within the time prescribed,~~ all required quarterly statements of gross yield for a production year on or before March 1 of the year immediately following the production year, the department of revenue shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state and from any other information which the department may be able to obtain the total gross value of product of such person from such business during the calendar year immediately preceding the year in year immediately preceding the year in which the license tax is to be paid and shall make and file a statement showing the amount of such gross value of product and shall ascertain, determine, compute, and assess the amount of the license taxes due from and to be paid by such person and shall immediately give notice to such person in the same manner as though such statement had been filed within time and shall proceed to collect such license tax, adding thereto and collecting therewith if the same is delinquent the same penalty and interest as provided for herein for other delinquencies."

Section 5. Section 15-37-108, MCA, is amended to read:

"15-37-108. Delinquent taxes -- penalty. All license taxes assessed under the provisions of this part shall become delinquent if not paid by 5 p.m. on June 30 following the date when the same are assessed, and as the same become delinquent, on or before March 1 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax a penalty of ~~10%~~ 8%. ~~shall be added thereto and the~~ The whole amount of ~~said~~ license tax, together with penalty ~~added~~, shall bear interest at the rate of 1% per month or fraction thereof ~~from the date of becoming delinquent until paid.~~ Interest shall be computed from the date the tax becomes delinquent until it is paid. The department may waive the 8% penalty if it determines that a reasonable cause exists for failure to pay the tax on March 1 of the year immediately following the production year."

Section 6. Section 15-37-109, MCA, is amended to read:

"15-37-109. False or erroneous statements -- investigation. (1) Should the director of the department of revenue have reason to believe that any statement and return is false or erroneous in any particular, he may require the person or, if made by a corporation, association, or company, the officers thereof and the employees of any such person, corporation, association, or company to appear before the director of revenue or his agent and testify concerning the same and any statement contained therein and may examine all books, records, papers, and documents of such person pertaining to such business, upon

giving 5 days' written notice to such persons or officers or employees thereof having custody of such books, records, papers, and documents. Any person failing, refusing, or neglecting to so appear or refusing to be sworn or to testify or refusing to answer any material question propounded by the director or any of his employees or refusing to permit the director or his employees to examine such books, records, papers, or documents or any thereof pertaining to such business shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment in the county jail for a term not exceeding 6 months or by both such fine and imprisonment. If the director, after hearing such evidence and after such examination of the books, papers, documents, and records of such person, shall find and determine that such statement and return are erroneous or false in any material matter, the director shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person and may add thereto a penalty of not exceeding 50% and shall thereupon immediately mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty due and payable.

(2) The department shall collect such license tax with penalty added, and if the same has become delinquent, it shall also collect interest thereon from the date of delinquency until paid, at the rate of 1% per month or fraction thereof. In order to verify such statement and return, the department may require any person engaged in

the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the director of revenue and testify concerning the gross mineral content of any such ore or at the request of said director to furnish sworn statements showing the gross yield of such ores, mineral products, or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement, during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction, or treatment of such ores or mineral product.

(3) The books, records, papers, and documents of such person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any mine or mining property in the state shall be open to inspection and examination by the director of revenue or his employees at any time or place that the director may designate.

(4) If any person required by this part to make or file any statement or to verify, under oath, any statement shall make such statement false in any material respect or shall verify, under oath, any statement false in any respect or shall fail, neglect, or refuse to file any statement required by said department or shall refuse to appear before the director of revenue to testify concerning the gross mineral content of any such ore or shall refuse to allow the director

or his employees at any time or place to inspect or examine the books, records, papers, and documents of such person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding \$1,000 or by imprisonment in the county jail for not exceeding 6 months or by both such fine and imprisonment."

NEW SECTION. Section 8. Applicability. This act is applicable to taxable years beginning after December 31, 1983.

-END-

STANDING COMMITTEE REPORT

February 12 19 83

MR. **PRESIDENT**

We, your committee on **taxation**

having had under consideration **Senate** Bill No. **254**

Respectfully report as follows: That **Senate** Bill No. **254**

DO NOT PASS

~~XXXXXX~~

y/c

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date Feb 12, 1983 Senate Bill No. 254 Time 10:45 am

NAME	YES	NO
SENATOR GOODOVER, CHAIRMAN	✓	
SENATOR McCALLUM, VICE CHAIRMAN	✓	
SENATOR BROWN <i>Absent</i>		
SENATOR CRIPPEN		✓
SENATOR ELLIOTT <i>Absent</i>		
SENATOR GAGE	✓	
SENATOR TURNAGE	✓	
SENATOR SEVERSON	✓	
SENATOR HAGER	✓	
SENATOR ECK		✓
SENATOR HALLIGAN		✓
SENATOR LYNCH		✓
SENATOR NORMAN	✓	
SENATOR TOWE		
SENATOR MAZUREK		✓

Secretary: Barbara J. Effing
Motion:

Chairman: Pat M. Goodover

*SB 254 - moved that the bill
DO NOT PASS*

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

ROLL CALL VOTE

SENATE COMMITTEE TAXATION

Date Feb 12, 1983 Senate Bill No. 329 Time 10:50 am

NAME	YES	NO
SENATOR GOODOVER, CHAIRMAN	✓	
SENATOR McCALLUM, VICE CHAIRMAN	✓	
SENATOR BROWN <i>Absent</i>		
SENATOR CRIPPEN	✓	
SENATOR ELLIOTT <i>Absent</i>		
SENATOR GAGE	✓	
SENATOR TURNAGE	✓	
SENATOR SEVERSON	✓	
SENATOR HAGER	✓	
SENATOR ECK	✓	
SENATOR HALLIGAN	✓	
SENATOR LYNCH	✓	
SENATOR NORMAN		✓
SENATOR TOWE	✓	
SENATOR MAZUREK	✓	

Secretary: Barbara J. Effing
Motion:

Chairman: Pat M. Goodover

SB 329 - moved to lay on the table.

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