

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 14, 1983

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

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 307: Senator Harold Dover, Senate District 24, sponsored the bill and submitted written testimony in support thereof, attached to these minutes as Exhibit A. He stated that Mr. Irving Dayton, Commissioner of Higher Education, would submit an amendment to the introduced bill at a later date.

PROPONENTS

Rodric Pence, president of Big Sky Bible College in Lewistown, Montana, submitted written testimony, attached as Exhibit B.

Russ Ritter, vice president of college relations at Carroll College, and representing Montana independent colleges, stated that at Carroll College this past year, they had 3,896 Montanans make contributions to Carroll College. He would appreciate the committee's support of the bill.

Mr. Irving Dayton, Commissioner of Higher Education, said he supported the push for private funding of colleges. Colleges are an important part of education, but by law, there are some things they cannot do. The principle of the bill is sound. If the fiscal impact is too high, please just get the principle into the statutes. From a long range policy view, this is a good approach. The University system should be the one who certifies educational institutions. The word "department" is not defined in this bill and he hoped it was defined elsewhere in the codes. He suggested other wording, such as in 20-30-102(1), MCA.

OPPONENTS

Jesse Long, executive secretary of the School Administrators of Montana, said the fiscal note indicates a considerable loss in dollars. The position of the association is that they are opposed to tuition-type tax credits. They are not intended for the state of Montana.

David Sexton, representing the Montana Education Association, also opposed the bill. It is not the responsibility of the government to finance private institutions. We have enough trouble keeping state-run schools funded and we don't need private schools competing with public schools for funds.

Senator Dover, in closing, said he didn't think \$73,500 was too much for the benefits earned. This addresses those higher institutions. We are going to have trouble funding our institutions if we try to depend totally on tax dollars.

Questions from the committee were called for.

Senator Norman asked where the 3,500 figure for people contributing came from. Mr. Bucks said the Department of Revenue contacted the Commissioner of Higher Education's office and obtained the figure. He also said there is no solid predictable basis for this figure.

Mr. Ritter commented that of the 3,896 contributions made to Carroll College, 2,591 were alumni contributions, 501 were business contributions, and 804 were friends of the college. These figures are for fiscal year 1981-82 which ended June 30, 1982.

Senator Elliott asked Mr. Dayton how much was contributed to the University system. Mr. Dayton said he didn't have the figures. They go to the foundation, he said. Senator Elliott asked what the difference was between the foundation and the University system. If SB 307 passed, he asked, would there be a change in donations from the foundation to the University system? Mr. Dayton replied that foundations are separate from the institutions.

Senator Towe asked Senator Dover if it was his intent that contributions would also include what Mr. Dayton had just talked about. Senator Dover said he was thinking more directly of contributions to institutions. Senator Towe asked Mr. Dayton if the foundation would dry up. Under the wording of the bill, he said, the foundation doesn't qualify.

Senator Eck mentioned to Mr. Dayton that she has a bill similar to this (to be heard March 1) which provides tax credits for University-affiliated research.

Senator Crippen asked Mr. Dayton if he considered the foundations as being involved in this. Given the nature of foundations and their relationships with the University system, wouldn't it be a good idea? The foundation serves as a vehicle by which the donations come to the University system. Mr. Dayton said the foundation does the legwork to raise these funds. Take the Fine Arts Center in Missoula, for example.

Senator Dover said a lot of that money is raised for scholarships.

Senator Goodover pointed out to Mr. Ritter that the fiscal note says the average gift is \$50 and asked if that was in line with what they actually receive. Mr. Ritter replied it was.

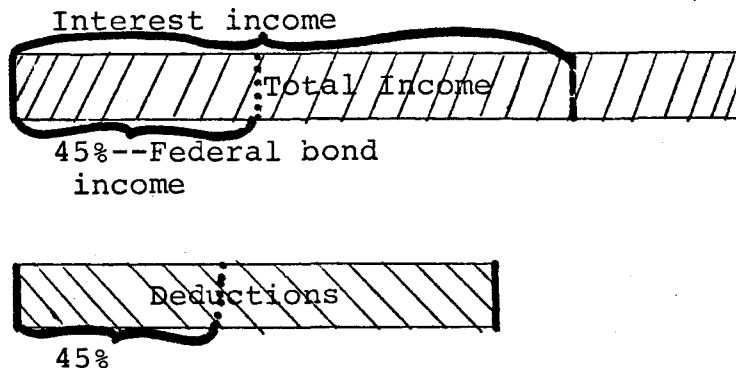
Senator Lynch asked if the Chamber of Commerce had a direct grant to the institution or the foundation. Mr. Ritter explained that all foundation moneys pass through as they have been previously designated. Senator Lynch then wondered if a person

would be precluded from the benefit of this bill if the money goes through the foundation first. Mr. Ritter said the entity must hold IRC § 501(c)(3) status.

The hearing on SB 307 was closed.

JOINT CONSIDERATION OF SENATE BILL 263 and SENATE BILL 335:

Senator Towe opened with discussion on SB 335, which he is sponsoring. As you can see from the preamble in the bill, he said, we enacted a bill which related to the taxation of banks. In effect, it repealed the bank stock tax to which there was some objection and problems. We have used the approach of using municipal bond income. The law was challenged by savings and loan institutions and was declared to be not in conflict with federal laws regarding federal bond obligations. We are back to the situation we were in before we repealed the bank stock tax. The decision is on appeal to the U.S. Supreme Court. We will be faced with claims for refund. Three and a half million dollars times 3 years (1979, 1980, and 1981) is about \$10 million. The tax is so large that it would be extremely difficult for banks to get their money back. This will bring the tax back to the same current level, so we can get around the court case if it is unsuccessful. Eighty percent of tax collection goes to local governments. Local schools will be pinched if we can't resolve this. If we proportionately reduce the allowable deductions by the same rate of interest that is disallowed, we will come up with a tax collection that is about the same. In effect, this statute says that if allowable under federal law, you don't have to exclude interest income. This approach has been used and applied in the past. How can you come up with no loss of revenue?



Let's take the proportion of federal bond income to total interest income. If 45% of income is federal bond income, then take 45% of deductions.

Senator Jean Turnage, Senate District 13, the sponsor of SB 263, then discussed SB 263. SB 263 has certain advantages over SB 335, he said. This is a "valentine" to local taxpayers instead of a "Dear John" letter. The loss to local government is obvious because of litigation. The legislature cannot adopt both of these bills. He hoped both the House and the Senate would look at both of these before adjournment. SB 263 will have amendments offered--the most important one dealing with

rates. The 2.5 mills was a technical error. The amendment will reduce the tax rate to .9 of a mill. They will raise the same amount of money that was assumed to be raised under the existing tax law prior to the court decision. The attraction for SB 263 is that there will be no litigation; he doubted that that would be the case if SB 335 was the only bill enacted. All of the proponents will agree that litigation is like a horse race--no one can be sure who is going to win. All we can expect if litigation goes the wrong way is loss to local government and a more severe approach in future legislation when people realize we addressed the problem incorrectly. Understanding of SB 335 and SB 263 involves an understanding of the corporation license tax law, particularly as it applies to financial institutions, holding companies, and to consolidation of corporation license tax returns. There is no intent at all to extract unfair taxes from anyone, particularly from savings and loans. Under existing law, as you know, savings and loans challenged the law. In challenging it, they saved millions of dollars in taxes. Senator Turnage said he didn't know how SB 335 would interface with savings and loans. SB 335 has retroactivity which is offered in good faith and which prohibits refunds. The banks will continue to support the retroactive application of the law. They are not asking for refunds; they are encouraging members not to claim refunds.

Senator Turnage said SB 263 has one feature which is a simplified method of computing a tax. Why measure a tax on the deposits in savings and loans and banks? That is its ability to earn a profit. In that regard, it cannot be sold as being an unfair measure in a stock. Almost everyone is in the business of renting money. The only taxed renters are the banks. It is not fair to have one side of the football field always on the defensive. SB 263 has potential of leveling that field and treating all the financial institutions on an equal basis.

John Cadby, representing the Montana Bankers Association, spoke in favor of SB 335 and against SB 263. In the 10 years' experience he has had in the banking community, they have been responsible citizens and have paid \$10 million in taxes. In 1979, national banks and state banks were taxed the same for the first time. It was the first time they were taxed equally because the tax was based on net income. It was the first time banks were taxed the same as savings and loans. It was the first time that banks and savings and loans were treated and taxed the same as all other corporations in the state. Please preserve tax equality by passing SB 335.

Erle Gross, president of the Little Big Horn State Bank in Hardin, and representing the Montana Bankers Association, said the Montana Bankers Association was instrumental in the creation of SB 335. We are excluding income and federal securities but disallowing deductions on acquiring the same.

George Bennett, counsel for the Montana Bankers Association, said we are here with a problem created by the courts. Predicting what the Montana Supreme Court will do is difficult. The problem was created because of two basic policies of Congress. National

banks are instrumentalities of the federal government to carry out the policies of the federal government. Congress protected them from state taxation. Until 1923, Congress dictated what could be taxed. In fairness to state banks, they treated state banks the same way. Savings and loan associations had a net capital tax. Last September, the Montana Supreme Court said that statutes provided that federal obligations were exempt from state taxation. During the Civil War, the federal government started taxing federal obligations indirectly. Then they started taxing savings and loans who were paying a net capital tax when banks were paying a bank share tax. Because of federal statute, you can't tax this. The banks made the same contentions. In 1978, the Supreme Court held that because of a 1959 amendment that Congress wrote, you had to exclude federal obligations from state taxation. You can impose a nondiscriminatory franchise tax on corporations. We thought the 1917 corporation license tax was a franchise tax. The Supreme Court argued as to whether that was the case. The Supreme Court was saying the corporation license tax was not a franchise tax. The Supreme Court did not understand the history. Today, we are trying to address that problem to find something that works.

Secondly, he said, SB 335, in adjusting deductions for corporate taxpayers, holds in place the Montana Corporation License Tax Act. It applies only as to taxpayers for the past two years if a request for audit adjustment tries to exclude interest on federal obligations or, if excluded, the corporation has to adjust deductions that address the problem of loss of revenue to local government. SB 335 applies only if the corporate taxpayer initiates action. SB 263 will not meet the retroactivity muster. Its tax on deposits is a tax on liabilities. It creates a creditor-debtor relationship to the depositor but not to the bank. Federal laws require that this be a franchise tax or a nonproperty tax.

Wouldn't they have difficulty with tax on deposits, he asked. The tax has to be nondiscriminatory as to the obligations themselves because in a recent Tennessee case, Tennessee did not tax its own state and local obligations and that was discriminatory. It has to be nondiscriminatory. Senator Turnage talked about a level playing field. SB 263 will carve out savings and loans and banks and leave everyone else not subject to the tax. It creates unfair competition. Sears Roebuck & Co. already has a branch in Montana. They are in the banking business. Most states tax on an income basis. When you start carving, you will do to the corporation license tax the same that has been done with property tax. I think that the Department of Revenue will win its case and uphold the present corporation license tax because of a case we ran into, Reuben L. Anderson-Cherne, Inc. v. Commissioner of Revenue of Minnesota, 423 U.S. 886 (1975), where the Minnesota Supreme Court upheld the state franchise tax. The case was appealed to the U.S. Supreme Court. A dismissal on that basis is binding upon all other cases. SB 335 discourages taxpayers from going back and claiming refunds and it is a fair way to do it.

George Anderson, CPA, Anderson ZurMuehlen & Co. in Helena, representing the Montana Bankers Association, said the history is important and should have some bearing upon the decisions this committee and the legislature make on this. In 1976 and 1977, local governments only collected \$2 million from the tax. In 1977, the Montana Bankers Association came to the legislature stating that they knew they needed some kind of tax. They made a deal with the legislature. For the next two years, banks paid \$10 million into local governments. In 1979, the Montana Bankers Association came before the legislature regarding HB 150. We thought it was a nondiscriminatory franchise tax. Since they could do that, they could tax federal obligation income. This governs banks as well as other corporations that have federal obligation income in Montana. Then the savings and loans brought suit, saying you can't tax them that way; you must leave out federal obligation income. For the years 1980, 1981, and 1982, there is a possibility of a considerable refund. The corporation license tax for 1982 without the Supreme Court decision would be somewhere around \$4.9 million. That is under the old law. Up to about \$1 million could come in from corporations other than banks and savings and loans. Under the present law, with the Supreme Court decision, they could file claims for refund which could amount to \$10 million to \$11 million and an additional \$3 million to \$3.5 million for 1982. This could run as high as \$15 million if they choose to go with the court decision and claim refunds. One bank did claim a refund but stalled on it and had the Department of Revenue hold it. The banks know they are going to be taxed. The basic working of SB 335 would have the corporation license tax as it was before except you do not have to declare federal obligation income. If you have interest excluded from income, we are going to disallow certain deductions you have relative to that income. In the years 1979 and 1980, SB 335 would have a lower tax collected from banks--4% to 5% in 1980; 6% to 7% in 1981; and 7% in 1982. Without this bill, \$4.9 million would be collected; under this bill, \$4.7 million would be collected. The corporation license tax in 1981 brought in \$690,000 in tax revenue. The same amount would come in as came in the previous year.

Mr. Anderson favored SB 335 over the others. The banks are taxed as other corporations are taxed. They have shown that they are responsible corporations and deserve to be treated as other corporations. The retroactivity feature is important. I doubt the banks will use it. If the Supreme Court decision now being appealed should fail, we feel this bill would still stand up. The tax could be 7% to 8% lower, but there wouldn't be much more fallout than that. This is based on ability to pay. Economics would not agree that the best measure to pay a tax is ability to pay. Please pass SB 335.

Mr. Anderson said SB 263 doesn't measure ability to pay. There is no correlation between deposits and net income. In 1981, a Montana bank showed a loss of \$419,000. If they had to pay a deposit tax on top of this, they would have paid another \$70,000 in deposit tax. He said he surveyed five savings and

loans losses, and they totalled \$6.1 million. Under SB 263, it would be \$6.5 million. The only way you get deposits now is by buying them. Having a tax on deposits is not at all fair. He urged the committee to not pass SB 263.

Frank Stock, executive vice president of the Security State Bank of Polson, submitted written testimony in favor of SB 263, attached as Exhibit C.

Mike Young, finance director of the city of Missoula, supported SB 263. Historically, bank taxes were levied as a property tax. Under the bank shares tax, they received about \$100,000. When that changed to income, they got \$15,000. In Missoula, there are six banks, three of which have been completed in the last few years. After depreciating buildings, they have little net proceeds so they don't want to pay. Local government services are hurt. Mr. Young said that if SB 335 passes, it will make refunds. Don't do them any favors, he said. They can raise by raising property taxes. See his written comments attached as Exhibit D.

Senator Turnage said his amendments, attached as Exhibit E, will reduce the tax rate to .9 of a mill, and include other corporations upon which there is paid interest from a deposit if deposits are received. The amendments repeal the tax on savings and loans. The reference in the bill to this being a Revenue Oversight Committee bill should be stricken and his name put on the bill, he said.

Pat Hooks, from Townsend, representing the Montana Savings and Loan Association, testified in support of SB 335 and in opposition to SB 263. We are talking about 11 institutions in Montana. If you have picked up the Wall Street Journal any time in the last two years, you know that savings and loans are "poor cousins", based on the fact that savings and loans are based on mortgages of client's property. Senator Turnage's bill is a tax on liabilities. Most of the savings and loan associations weren't making money. Seven eighths of their assets are deposits. Like farmers, savings and loans have to pay taxes when they're not making any money. The federal reserve board mandates forced mergers. Because of that lack of tying to ability to pay, we are opposed to SB 263. We are good members of local communities. It has been suggested that savings and loans started lawsuits. Two independent savings and loan associations initiated them, not the league members. Each of them in 1979 went to the Department of Revenue and then filed declaratory judgment actions.

Stan Kaleczyc, representing Burlington Northern, Inc., submitted written testimony, attached as Exhibit F.

Tom Harrison, representing the Montana Bank System and the Bank of Montana System, supported SB 335 and opposed SB 263. Merrill Lynch deposits are made to the Bank of New York. Can SB 263 capture a tax on Bank of New York deposits? SB 263 is a tax that has a propensity to pyramid within itself. To put a gross

tax on deposits is an attempt to force the money out of the state. We should not be stressing that.

Dan Bucks, from the Department of Revenue, supported both measures and also the measure in the House regarding bank taxation (HB 536). The department has detailed comments regarding matters of law and fiscal impact. He requested that he be notified when executive action would be taken on these bills. See the comparison of fiscal impact of these alternative bank bills, attached as Exhibit G.

Mike Stephen, representing the Montana Association of Counties, supported SB 335, and his written comments are attached as Exhibit H.

Because of a lack of time, other witnesses were asked to leave their names, whom they represent, and which bills they are supporting and which they are opposing:

John Reichel, representing the First Bank System, Western Montana Region, supported SB 335 and opposed SB 263;

Dale Anderson, representing Northwestern Bank of Great Falls, supported SB 335;

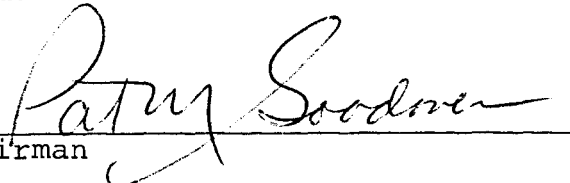
Paul Caruso, First Security Bank of Helena, opposed SB 335 and supported SB 263;

David Wendte, representing Security Banks of Montana, spoke in favor of SB 335 and opposed SB 263;

Paul Johnson supported SB 335; and

Bob Pennington, American Federal Savings and Loan, Helena, opposed SB 263.

The meeting adjourned at 10:05 a.m.


Chairman

ROLL CALL

SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/14/83

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 14' 1983

COMMITTEE ON TAXATION

VISITORS' REGISTER

NAME (PLEASE PRINT)	REPRESENTING	BILL #	Check One	
			Support	Oppos
GENE PHILLIPS	FIRST INTERSTATE BANK	SB335	X	
" "	" "	SA263		X
IRVING E DAYTON	MT UNIVERSITY SYSTEM	SB307	X	
TOM HARRISON	Mt. Bank System + BK of MT system	SB335	X	
"	"	SB263		X
RODRIC H PENCE	BIG SKY BIBLE COLLEGE	SB307	X	
STAN KALECZYC	BURLINGTON NORTHERN INC	SB335		X
GAY STAFFORD	Big Sky Bible College	SB307	X	
Larry A. Dreyer	American Federal S & L Assn., Helena	SB263		X
ROBERT L. FERRINGTON	AMERICAN FEDERAL S & L HELENA	SB263		X
STEPHEN C GROSE	WESTERN FEDERAL S & L MOIN	SB263		X
PAT HOOKS	MONT. SNOWBIRDS & LODGE	SB263		X
		SB335	X	
Paul Lindgren	American Federal Savings	SB263		X
R. Ritter	Carroll College	SB307	✓	
David Sexton	MEA	307		✓
Jess W Long	SAM	307		✓
Ed Shedd		335		
Gorge D Anderson	Montana Bankers Assn	263	✓	
Mike Young	CITY OF MISSOULA	335	✓	✓
		263		

(Please leave prepared statement with Secretary)

DATE February 14, 1983

COMMITTEE ON ~~TAXATION~~

VISITORS' REGISTER

NAME (PLEASE PRINT)	REPRESENTING	BILL #	Check One	
			Support	Oppose
GEORGE T. BENNETT	MT. BKRS. ASS'N	335	X	
" " "	" " "	263 263		X
DALE W. ANDERSON	N.W. BANK Great Falls	335	X	
ERLE C GROSS	Montana Bankers Assoc	335	X	
JOHN REICHEL	First Bank System - ^{Western} MT. Region	335	X	
" "	" " " "		263	X
DAVID WENDTE	SECURITY BANKS OF MT	335	X	
✓	✓	263 263		X
MIKE STEPHEN	MACO	335 263	X	
JOHN CADDY	MT BANKERS ASSOC	263		X
" "	" " "	335	X	
E. Dean Ratz	Valley Bank of Helena	335	X	
" "	" " "	263		X
PAUL D. CARUSO	1ST SEC BANK of Helena	335		X
" " "	" " " "	263	X	
John Teale	Rep. Harmonis -			

(Please leave prepared statement with Secretary)

SENATE BILL 307
Feb 14 1983
Senate SENATOR HAROLD L. DOVER

SENATE BILL 307

Senate Bill 307 is very straightforward - it provides for a tax credit on income tax in an amount equal to 50% of a contribution made to a Qualified Institution of Higher Education. Section 2 and 3 define these institutions as a unit of the Montana University System or a non-profit institution located in Montana and which "awards credits for its curriculum that are transferrable to any units of the Montana University System..."

Section 5, page 3 reads: (The credit allowed by (Section 1) must be taken in the taxable year the contribution is made and may not exceed 20% of the taxpayer's tax liability for that year.)

Section 6, page 6 reads: (A taxpayer who is allowed a credit under (section 1) for a contribution to a qualified institution of higher education may not claim a deduction for the contribution under 15-30-121.)

There is a limitation of use of the contribution.

Page 2, line 13 reads: (Contributions made to an institution of higher education for which a tax credit is received under (section 1) may be used only for secular purposes and may not be a payment in lieu of tuition.)

Why should a tax credit ~~of~~^{for} education be given when we need all the revenue we can get this biennium - I believe there are many ways to justify the tax credit.

1. We must begin to depend less on the tax dollar to support our institutions of higher education.

Dr. Tietz, when visiting in Lewistown, told them higher educational institutions are getting in trouble financially, and we must depend more and more on outside sources for financial support.

2. Tax credit is a way to get the flow of public contributions - charities, etc., toward education. This bill is an incentive for people to support education.

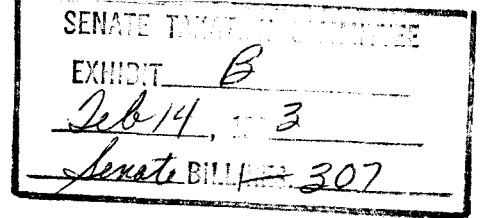
3. Our colleges are full - thinking of putting restriction on out of state students in certain areas of education, cutting out some remedial courses and setting up stiffer entrance requirements. Things are going great if an increase in numbers is a sign of a thriving educational system - but it also makes a need to maintain, improve and build buildings. Our buildings represent a big investment by the taxpayers and these investments are probably the least protected; yet they are the easiest to get public funding for if there is a tax incentive.

4. We are not going to be able to fund higher education from state revenue as much this session or the future as they need. For every \$1 deducted from income taxes paid to the state, the colleges will collect at least \$2.00. This gives a 2-1 leverage in funding higher education.

5. Other states are experiencing serious problems funding their state institutions - Montana isn't immune - Senate Bill 307

can help prevent us from getting in this financial problem.
It can help protect our capital improvements, build necessary
new structures, fund special programs with less tax dollars.
Senate Bill 307 will actually give more for our tax dollars
toward education.

REPORT TO THE COMMITTEE ON TAXATION
Montana State Senate
February 14, 1983



By: Rodric H. Pence, President, Big Sky Bible College, Lewistown, MT.

It is my intention here today to speak in support of the bill providing tax incentive for gifting to institutions of higher education in the State of Montana. The 1981 report of Giving in the United States reports that giving to education has increased over 100 percent from 1970 to 1980, from \$3.24 billion to \$6.88 billion dollars, establishing education as the second largest recipient of philanthropy.

Another study asserts that "private institutions of higher education must have these funds to ensure their autonomous survival." This study concluded that private funds provide a flexibility within both the public and private sector of education that cannot be supplied by governmental funding, further private funding gives and "important measure of stability to help offset sudden shifts in federal funding."

Most Colleges and Universities in the independent sector must raise from 15% to 30% of their annual budget from private sources. As an annual percentage education in the United States receives some 14 % of total charitable giving. While the percentage of individual gifts has declined over the past years, gifts from corporations and foundations has increased providing educational institutions in both the private and public sector funding that is both dynamic and vital.

While over 80 percent of governmental spending is limited to services, the bulk of charitable giving to institutions is for research and development and forms the bulk of much of the private research going on today within the educational community. Approximately 79 cents of every governmental dollar given to the field of health services is for the support of existing service activities, while 89 cents of every dollar given by foundations is spent in the field of

projects and research. This same flexibility is also available in the field of education. Giving from the private sector provided all of education with what is called an "edge of quality" through special programs and expenditures above and beyond what governmental appropriations can or usually do allow.

This is not to say that education in the private sector does not recognize that there are serious challenges to the system of tax immunities affecting nonprofit activity, either at the national or state level. We do recognize that there are serious philosophical and pragmatic challenges to the charitable gift. The historic arguments as to whether all of a persons income should be viewed as being the governments and thus any immunities are to be viewed as a subsidy by the government to the institutions or charities that are recipients of gifts, or whether income should be defined in categories and that personal charitable giving is in a totally different category than other spendable income, and thus a special or peculiar kind of personal spending of ones own resources, surely will not be resolved here today.

The point in fact is, massive amounts of funding are available from the private sector for educational institutions, both in the public and private sector. State tax immunities would not only impact private educational institutions in this State, but would also impact public institutions and could effectively lessen the load on tax dollars to public institutions through private in-state contributions.

It is a matter of record that some of the largest corporate and foundation gifts during the latest reporting year were given to public educational institutions as a result of tax immunities provided both at the federal and state level. While some might view them as only a tax subsidy, an objective view would clearly see that

such gifting as this in the public sector decreases the aid necessary from governmental sources and lessens the pressures on available tax dollars.

Today over one quarter of the students in institutions of higher education are in private Colleges and Universities. Without the massive aid received by these Institutions from the private sector in charitable giving there could be a rapid decline in the number of and quality of educational institutions in the private sector. Such a decline would put a staggering load upon the public sector to provide educational opportunities to all available students.

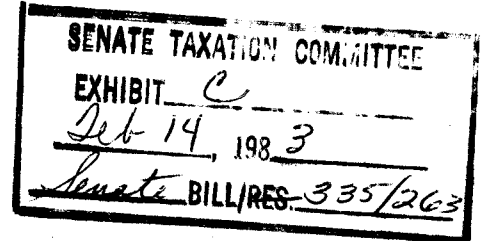
It is my opinion that the government is much better advised to provide tax immunities to the private sector, where dollars normally are stretched farther, where research is often needed to preserve and maintain standards of excellence and preserve a degree of independence not available in the public sector. There is a great desirability in a pluralistic society of there existing nongovernmental organizations operating for public purposes alongside government, and this is certainly impossible without our system of tax immunities. Surely if these organizations are to remain autonomous these organizations cannot depend upon the government for subsidy.

While the bill as structured will not impact Big Sky Bible College at this time, we none-the-less support this legislation as a means to assist private education in Montana. I believe that any revenue lost to the state as a result of this bill will be more than compensated by donations to educational institutions from the private sector. Further I believe that the key to a strong public educational program, is a strong private educational program, which though it may not provide all the timber in the program, will keep the cutting edge of the axe sharp and properly focused. Thank you.

Portions of the material in this paper were taken from:

GIVING IN AMERICA Toward a Stronger Voluntary Sector
(Report of the Commission on Private Philanthropy and Public Needs)

GIVING USA 1981 Annual Report
(A publication of the American Association of Fund Raising
Counsel, Inc.)



MY NAME IS FRANK STOCK, I RESIDE AT POLSON, MONTANA, I AM EXECUTIVE VICE PRESIDENT OF THE SECURITY STATE BANK OF POLSON AND I APPEAR HERE AS AN INDIVIDUAL EXPRESSING MY OWN PERSONAL VIEWS.

I AM HERE TO SPEAK IN FAVOR OF SENATE BILL 263. THERE ARE A NUMBER OF REASONS FOR SELECTING THIS BILL OVER SB 335.

FIRST THE PURPOSE OF THESE BILLS IS TO RAISE MONEY TO SUPPORT LOCAL GOVERNMENT. SB 263 WILL RAISE THE NECESSARY MONEY ON A STABLE BASIS BECAUSE IT IS A FRANCHISE TAX ON TOTAL PRIVATE DEPOSITS OF A BANK. UNLIKE AN INCOME TAX WHICH IS DEPENDENT ON PROFIT AND MAY NOT BE STABLE FROM YEAR TO YEAR. HOWEVER, THE SCHOOL TEACHERS WANT THEIR SALARY, THE COUNTY ROAD CREW WANTS TO BE PAID, AND ALL PEOPLE IN LOCAL GOVERNMENT WANT A STABLE SALARY BECAUSE THE LEVEL OF SERVICE MUST STAY STABLE. A TAX ON INCOME IS NOT STABLE. SB 263 WOULD PROVIDE STABLE FUNDS FOR LOCAL GOVERNMENT.

THE BANKS MAY NOT WANT TO PAY TAX WHEN UNPROFITABLE BUT FARMERS PAY REAL ESTATE TAXES IN GOOD YEARS AND BAD YEARS. SINCE REAL ESTATE TAXES SUPPORT LOCAL GOVERNMENT. SHOULD THIS TAX BE ANY DIFFERENT?

SECOND, THIS TAX ON DEPOSITS WILL AUTOMATICALLY GROW WITH INFLATION. TO SOME/^{EXTENT}INFLATION IS CAUSED BY INCREASE IN MONEY SUPPLY. IF MONEY SUPPLY INCREASES, BANK DEPOSITS WILL INCREASE AND INCOME WILL INCREASE FROM A FRANCHISE TAX ON DEPOSITS.

THIRD, THIS TAX IS FAIR BECAUSE IT TREATS ALL BANKS ALIKE. THE UNIT BANK WITHOUT A HOLDING COMPANY WILL PAY THE SAME TAX AS A UNIT BANK WITH A HOLDING COMPANY. THE INTEREST ON DEBT THAT A HOLDING COMPANY IS SERVICING WILL NOT BE DEDUCTIBLE ON THE FRANCHISE TAX ON DEPOSITS BUT WOULD BE UNDER SB 335. THIS WILL BOTHER SOME OF THE INDEPENDENT BANKS BECAUSE THIS WILL MAKE THEIR HOLDING

COMPANY DEBT HARDER TO SERVICE BECAUSE THE INTEREST WILL NOT BE TAX DEDUCTIBLE. I AM THE EXECUTIVE VICE PRESIDENT OF AN INDEPENDENT BANK WHOSE HOLDING COMPANY WILL BE AFFECTED BY SB 263 AND WILL, UNDER THE BILL CONCEIVABLE PAY MORE TAXES.

FOURTH, THE MULTI BANK HOLDING COMPANIES WILL NOT HAVE AN ADVANTAGE OVER THE INDEPENDENT BANKS UNDER SB 263 BECAUSE THE MULTI BANK HOLDING COMPANY WILL NOT BE ABLE TO SHIFT INCOME FROM A HIGHLY PROFITABLE BANK TO A BANK THAT MAY BE LOSING MONEY. THE BANK COULD BE LOSING MONEY BECAUSE IT IS BRAND NEW AND NOT ESTABLISHED OR BECAUSE OF ECONOMIC CONDITIONS OR BECAUSE OF BAD CREDIT JUDGMENTS OR BAD INVESTMENT DECISIONS. WHY SHOULD A MULTIPLE BANK HOLDING COMPANY HAVE THE ADVANTAGE OF HAVING THE START UP COST OF A NEW BANK OR ERRORS IN JUDGMENT SUBSIDIZED AT THE EXPENSE OF THE TAX PAYERS OF MONTANA, PARTICULARLY IF IT IS AN OUT OF STATE NON RESIDENT MULTIPLE STATE BANK HOLDING COMPANY. THIS IS AN UNFAIR COMPETITIVE ADVANTAGE TO THE MULTIPLE BANK HOLDING COMPANY THAT WILL EXIST UNDER SB 335 BUT NOT WITH SB 263.

YOU MIGHT ASK HOW A MULTIPLE BANK HOLDING COMPANY CAN MANAGE ITS INCOME TO SECURE A TAX ADVANTAGE UNDER SB 335. EASY; IT CAN SELL ITS HIGH INTEREST RATE LOANS OR INVESTMENTS TO A SISTER BANK THAT MAY OR MAY NOT BE LOCATED IN MONTANA; FURTHER, IT CAN PURCHASE LOW INTEREST LOANS OR INVESTMENTS FROM A SISTER BANK. SUCH BANK COULD ALSO BUY C.D.'S IN A SISTER BANK AT BELOW MARKET RATES. THESE METHODS WILL CURE A HIGH PROFIT. THE MULTIPLE BANK HOLDING COMPANIES MAY NOT BE DOING THIS, BUT WE SHOULD NOT TEMPT THEM.

SB 263 ALSO TREATS SAVINGS AND LOAN ASSOCIATIONS THE SAME AS BANKS. UNDER THE FEDERAL DE-REGULATION POLICIES, THE SAVINGS AND LOANS OFFER CHECKING ACCOUNTS AND CAN MAKE CONSUMER AND COMMERCIAL

PAGE 3

LOANS. AS A PRACTICAL MATTER AN S & L IS NOW A BANK. THE SAVINGS AND LOANS WOULD ALSO PAY THEIR FAIR SHARE OF TAX UNDER SB 263.


LATER WE MAY WANT TO ALSO INCLUDE THE MONEY MARKET MUTUAL FUNDS THAT COLLECT CONSUMER DEPOSITS. IN ADDITION FINANCE COMPANIES ARE ADVERTISING SALE OF NOTES TO THE PUBLIC. THESE NOTES ARE QUITE SIMILAR TO C.D.'S. A NOTE AND A C.D. BOTH ARE OBLIGATIONS OF ISSUES TO RETURN THE PRINCIPAL AFTER A FIXED PERIOD OF TIME PLUS ACCRUED INTEREST AT A CONTRACTED RATE. SB 263 COULD BE EASILY EXPANDED TO KEEP THE PLAYING FIELD LEVEL AS EVERYONE ENTERS THE BANKING BUSINESS.

LASTLY, SB 263 WOULD BE EASY TO ADMINISTER BECAUSE THE AMOUNT OF DEPOSITS IS REPORTED REGULARLY TO GOVERNMENTAL REGULATORY AGENCIES. THE TAX WOULD BE EASY TO FIGURE AND AUDIT.

FOR THESE REASONS PLEASE CONSIDER SB 263.

1. THE INCOME FROM FRANCHISE TAX ON DEPOSITS IS A STABLE SOURCE FOR LOCAL GOVERNMENT.
2. THE INCOME WILL GROW WITH INFLATION.
3. IT IS FAIR BECAUSE THE UNIT BANK WITHOUT A HOLDING COMPANY, A UNIT BANK WITH A HOLDING COMPANY AND A MULTIPLE BANK HOLDING COMPANY ARE ALL TREATED THE SAME.
4. IT ALSO TREATS OTHER FINANCIAL INSTITUTIONS EQUALLY.

RESPECTFULLY,


FRANK S. STOCK
BOX 1291
POLSON, MONTANA 59869

WITNESS STATEMENT

SENATE TAXATION COMMITTEE

EXHIBIT D

Feb 14, 1983

Senate BILL/RES 263/335

NAME Mike Young

BILL No. 263/335

ADDRESS _____

DATE 2-14-83

WHOM DO YOU REPRESENT CITY OF MISSOURI

SUPPORT ^{SB} 263

OPPOSE ^{SB} 335

AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Support SB263 as the best, most equitable means of taxing banks to support local government services. It is based upon deposits & not net income which is usually an understatement of actual profit.

~~For~~
Oppose SB 335 as it reduces revenue available to local governments

Local services are supported by a property tax which are not based on an ability to pay. SB 335 is an unfair break to banks.

Feb-14, 1933Senate BILL/RES. 263

PROPOSED AMENDMENTS TO S.B. 263

1. Title, line 3.
Following: line 2
Strike: line 3 in its entirety
2. Page 1, line 6.
Following: "ASSOCIATIONS"
Insert: "AND CERTAIN CORPORATIONS"
3. Page 1, line 9.
Following: "ASSOCIATION"
Insert: "OR CORPORATION"
4. Page 1, line 10.
Following: "DEPOSITS;"
Insert: "TO PROVIDE CREDITS FOR TAXES PAID AGAINST CERTAIN CORPORATION TAXES;"
5. Page 1, line 19.
Following: "Purpose."
Insert: "(1)"
6. Page 1, line 25.
Following: "deposits."
Insert: "It is also the intent of the legislature that in addition to banks and savings and loan associations, every other corporation doing business in the state as a corporation under the provisions of 15-31-101 shall pay to the state treasurer a financial institutions franchise tax, unless such tax is prohibited by federal law, for the privilege of receiving and processing deposits."
7. Page 2, line 4.
Following: "means"
Insert: ": (i)"
8. Page 2, line 13.
Following: "32-1-231"
Insert: "; and (ii) the average total deposits for a taxable year of all other corporations as reported under [section 8] upon which there is paid interest if the deposit is received with the payment of interest as a consideration in whole or in part for the making of the deposit"

9. Page 2, line 23.

Following: "association"

Insert: "or other corporation"

10. Page 3, line 2.

Following: "rate of"

Strike: "0.25%"

Insert: "0.09%"

11. Page 3, line 4.

Following: line 3

Insert: "(2) There is imposed upon every other corporation for each taxable period a financial institutions franchise tax at the rate of 0.09% of total deposits."

Renumber: subsequent subsections

12. Page 3, line 8.

Following: "association"

Insert: "or other corporation"

13. Page 3, line 9.

Following: "association"

Insert: "or other corporation"

14. Page 3, line 11.

Following: line 10

Insert: "(5) The rate of tax imposed under this section may not be less than 0.075% nor more than 0.125% of total deposits without approval of 2/3 of each house of the legislature."

15. Page 4, line 5.

Following: line 4

Insert: "NEW SECTION Section 7. Credit allowed against corporation license taxes - when. (1) The amount of the financial institutions franchise tax imposed in [section 4 (2)] is allowed as a credit against any other corporation tax liability for the taxable year under Title 15, chapter 31.

(2) The credit may not exceed the corporation tax liability for the taxable year in which the credit is claimed.

(3) The credit may not be carried back to prior years nor may it be carried forward to future years.

NEW SECTION Section 8. Reports to the department of commerce. Every corporation subject to the financial institutions franchise tax imposed in [section 4 (2)] must file a report each year on or before January 1 with the department of commerce, commissioner of financial institutions, in which is exhibited in detail and under appropriate schedules the total deposits of the corporation."

Renumber: subsequent sections

16. Page 5, line 11.

Following: "States"

Insert: "and every corporation organized under the laws of this state, or any other state, or of the United States"

17. Page 5, line 21.

Following: "associations"

Insert: "and other corporations"

18. Page 5, line 24.

Following: "associations"

Insert: "and other corporations"

19. Page 6, line 4.

Following: "association"

Insert: "or other corporation"

20. Page 6, line 7.

Following: "association"

Insert: "or other corporation"

21. Page 6, line 16.

Following: "associations"

Insert: "and other corporations"

22. Page 6, line 18.

Following: "association"

Insert: "or other corporation"

23. Page 7, line 1.

Following: "associations"

Insert: "and other corporations"

24. Page 7, line 3.

Following: "associations"

Insert: "and other corporations"

25. Page 7, line 9.

Following: "association"

Insert: "or other corporation"

26. Page 7, line 15.

Following: "association"

Insert: "or other corporation"

27. Page 7, line 20.

Following: "association"

Insert: "or other corporation"

28. Page 7, line 22.

Following: "association"

Insert: "or other corporation"

29. Page 8, line 6.

Following: line 5

Insert: "NEW SECTION Section 13. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: subsequent sections

30. Page 8, line 6.

Following: "effective"

Strike: "date"

Insert: "dates"

31. Page 8, line 7.

Following: "applicability."

Strike: "This"

Insert: "(1) Except as provided in subsection (2), this"

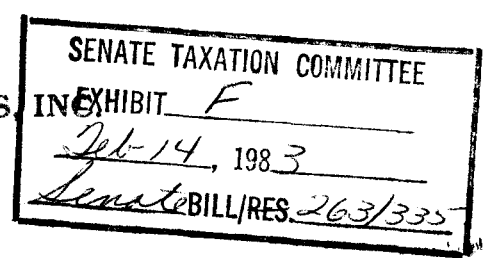
32. Page 8, line 9.

Following: "1982."

Insert: "(2) Subsection (2) or section 4 applies to taxable years beginning after December 31, 1984."

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 SENATE TAXATION COMMITTEE
FEBRUARY 14, 1983

Mr. Chairman and Members of the Committee:

My name is Stanley T. Kaleczyc of the firm of Browning, Kaleczyc and 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 ~~from~~^{for} Montana corporation license tax purposes. And, as this Committee is aware, Senate Bill 335 is one of three bills 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 the Committee is also hearing today, and House Bill 536, which the House Taxation Committee heard on February 8.)

In the case mentioned above which has given rise to the three 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 the 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) to all interest income (100) is 1/10, or ten percent (10%). Suppose, finally, that your total deductions allowed under Montana law were equal to one thousand dollars (1000.00) 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, permitting you to declare on your Montana return only nine hundred dollars (900.00) in deductions, instead of the one thousand dollars to which you are otherwise entitled by Montana law.

We submit that Senate Bill 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 only thing which Senate Bill 335 provides, if it were to 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.

DEPARTMENT OF REVENUE

SENATE TAXATION COMMITTEE

EXHIBIT 1Feb 14, 1983Senate BILL/RES. 335/263 MITCHELL BUILDING

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

HELENA, MONTANA 59620

February 10, 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
interest offset, S. B. 263 deposits bill .001 tax rate,
H. B. 536 .01 gross receipts.

Based on the information in our files, had these taxes been in place for 1981, we would have collected the following amounts:

	Current Law	Current Law/S&L Decision	S. B. 335	S. B. 335 263	H. B. 536	H. B. 536 Amend to .72%
Banks	4,768,069	1,112,538	4,457,152	4,558,197	6,337,554	4,563,039
Savings & Loans	21,500	2,830	23,820	922,266	1,193,204	859,107
Total	4,789,569	1,115,368	4,480,972	5,480,463	7,530,758	5,422,146

Numbers on H. B. 536 are provided for comparison even though they were not requested. It was necessary to exclude a very few taxpayers from our survey due to incomplete information. However, we do not feel their exclusion materially alters the above results.

Finally, we would emphasize that all of this information relating to a specific bank or savings and loan is confidential. If it is necessary to provide copies of the workpapers we will need to remove the names.

WITNESS STATEMENT

SENATE TAXATION COMMITTEE

EXHIBIT H

Feb-14, 1983

Senate BILL/RES 335

NAME Mike Stephen

BILL No. SB 335

ADDRESS 1802 11th

DATE 14 Feb 83

WHOM DO YOU REPRESENT MT Assoc. of Counties

SUPPORT 4 OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Support the retro-active feature of the bill.
2. Collect approx. the same amount of money.
3. Provide for a mechanism for future collections of this tax which are critical to the well being of local governments