

MINUTES*OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 17, 1983

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

ROLL CALL: All members were present except Senator Lynch. Several of the members were excused for part of the meeting (see the roll call sheet) to attend other committee meetings they were involved in, but were otherwise present.

CONSIDERATION AND DISPOSITION OF SENATE BILL 399: Senator Halligan moved that SB 399 be tabled. The motion was seconded. Chairman Goodover stated that the sponsor had requested that the bill be tabled. A vote was taken on the motion, and the bill passed unanimously.

CONSIDERATION OF SENATE BILL 414: Senator Roger Elliott, Senate District 8, said this bill conforms the Montana statutes to the Internal Revenue Code as far as subchapter S corporations are concerned. Sub S corporations are taxed similar to partnerships. SB 414 recognizes that the IRC allows up to 35 shareholders, up from the 15 shareholders allowed in the past. Senator Elliott directed a question to Cort Harrington, the committee's staff attorney, concerning a statement of intent, and Cort stated that none was required for this bill. The stricken material on pages 3, 4, and 5 duplicates what is in the federal code.

PROPOSERS

Joe Loendorf, an accountant at Anderson ZurMuehlen & Co. in Helena, submitted written testimony, attached as Exhibit A.

OPPOSERS

Jerry Foster, representing the Department of Revenue, opposed the bill. A similar bill in the House was introduced by Representative Dan Yardley (HB 621). Please consider that version rather than this one. This one causes retroactive application in going back 5 years. This doesn't require taxpayers to file their election with the state (on Department of Revenue forms), and we don't like that. The House version provides a time by which a taxpayer has to file an election with the state.

In closing, Senator Elliott noted that the IRC requires an election to be filed 30 to 60 days into the fiscal year, while the Department of Revenue allows the election to be filed any time within the year to which it applies (if they can prove the intent was there to be a subchapter S corporation).

Questions from the committee were called for.

Senator Turnage moved that the following amendments to SB 414 be adopted:

Page 1, line 24.

Following: "1954"

Insert: ", and thereafter has filed a copy thereof with the department"

Page 6, line 7.

Following: "1982"

Strike: ", "

Insert: "."

Page 6, lines 8 and 9.

Strike: lines 8 and 9 in their entirety

The motion was seconded.

Senator Norman asked why we couldn't just say that the state law will follow the federal law. Mr. Foster replied that SB 414 will bring Montana law into conformity with the federal law. Mr. Foster objected to filing a copy of federal returns with the state and didn't think it would be burdensome to file a separate form with the state. Some corporations want to file a sub-S election with the federal government but not with the state.

Senator Turnage wondered what the Department of Revenue could do controlwise by requiring a separate election to be filed with the state and said language would have to be put in the bill to that effect. A corporation may not want to file an election with the state. The only difference is that federal returns elect to the federal code and Montana elects to the Montana code.

Senator Brown called for the question. Senators Brown, Elliott, Crippen, Severson, Norman, Gage, Halligan, Turnage, and Goodover were present for the vote, and all voted aye. The motion to amend passed.

Senator Crippen then moved that SB 414 DO PASS AS AMENDED. The motion was seconded and passed unanimously among those members present.

CONSIDERATION OF SENATE BILL 330: Senator Jack Galt, Senate District 23, the sponsor of this bill, introduced George Donnelly, representing the National Guard Association.

PROPOSERS

Mr. Donnelly recommended the bill favorably. He recalled that when the Guard had institutions duty during the strike, the special license plates were a good means of entry control and could be used that way in any state duty or state disaster.

Major Dick Mooney, the National Guard state recruitment and retention manager, submitted written testimony, attached as Exhibit B.

Mr. Mooney stressed that the plates are issued on a voluntary basis.

Roger Hagan, vice president of the National Guard Enlisted Association, said the existing special license plates are currently on the front of the vehicle only and are only registered with the Department of Military Affairs. The new plates would be displayed on the front and back of a vehicle and registered through the county treasurer and also by the Department of Military Affairs. See his written testimony, attached as Exhibit C.

Representative Gay Holliday, House District 46, submitted written testimony, attached as Exhibit D.

James A. Greytak, representing the Montana National Guard Association, was present also and supported the bill (see Exhibit E).

Larry Majerus, from the Motor Vehicles Division of the Department of Justice, noted that the old plates were yellow and blue, and the new ones will be red, white and blue. He suggested the following amendments:

Page 1, line 10.
Strike: "Distinctive license"
Insert: "License"

Page 1, line 13.
Strike: "distinctive"

Page 1, lines 14 and 15.
Strike: "bearing the words "national guard" and "Montana",
said plates"

Page 2, line 10.
Following: "3,"
Strike: "part"
Insert: "parts 3 and"

OPPONENTS

There were no opponents to SB 330.

Questions from the committee were called for.

Senator Turnage wondered if there was any problem mandating the distinctive logo (of a militiaman) on the plates.

Senator Brown moved that the amendments suggested by Larry Majerus be adopted. The motion was seconded and passed unanimously.

Senator Elliott asked what the definition of "active guard" was. John F. Walsh, military personnel management officer for the Guard, explained the difference between active national guard, inactive guard and retired guardsmen. The plates, he said, will be available to active guardsmen only.

Senator Brown moved that SB 330 DO PASS AS AMENDED. The motion was seconded and passed unanimously.

RECONSIDERATION OF SENATE BILL 108: Senator Turnage moved that the committee reconsider its action taken on SB 108. The motion was seconded and carried unanimously.

Senator Turnage then moved that Cort Harrington, the committee's staff attorney, prepare amendments in proper form with the view of just striking the new material at page 2, line 17. The motion was seconded and passed unanimously.

Senator Turnage then moved that SB 108, as further amended, DO PASS. The motion was seconded and passed, with Senator Elliott voting no.

DISPOSITION OF SENATE BILL 242: At the time SB 242 was heard, Senator Towe questioned why the exemption had to be \$100, which is what the federal exemption is. The Department of Revenue had stated that they would have no objection to the exemption for both estates and trusts being raised to the amount of personal exemption an individual is allowed on his or her individual income tax return.

Senator Turnage moved that the following amendment be adopted:

Page 10, line 4.

Following: "(2)"

Strike: remainder of line 4 through line 8

Insert: "The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8)."

The motion was seconded. Dan Bucks, representing the Department of Revenue, asked if it was the intent that it be for an estate or trust to have a single exemption allowed, and if the motion was being made based on that assumption, the Department would be agreeable to it. The committee stated that that was the intent.

A vote was taken on the amendments, and the motion passed unanimously.

Senator Gage then moved that SB 242 DO PASS AS AMENDED. The motion was seconded and passed unanimously.

CONSIDERATION OF SENATE BILL 288: Senator Harold Dover, Senate District 25, was the sponsor of this bill. He introduced John Braunbeck from Montana Intermountain Oil Marketers Association.

PROPOSERS

John Braunbeck submitted written testimony in support of SB 288. It is attached as Exhibit F. Mr. Braunbeck then introduced Howard Wheatley, the president of IOMA.

Mr. Wheatley testified regarding a local option tax. There isn't a marketer in Montana who doesn't operate in more than one county. The motor fuels are taxed at destination or pipeline terminal. It is impossible to make equal distribution the way this is written.

Sam Hubbard, representing the Department of Highways, supported the concept of making the 1-cent increase permanent, but he said HB 16 might be a more appropriate vehicle for this. He suggested that the committee look at it, too.

Jim Halverson, representing the County Commissioners in Roosevelt County, supported the concept of SB 288 with the idea that the tax was to be used to improve streets and alleys. The local option tax has created problems in some areas. It is difficult to get citizens to support a local option tax. See his written statement attached as Exhibit G.

OPPOSERS

Larry Huss, chairman of the Montana Highway Users Federation, said HB 16 has been passed by the House and is in the Senate. They continue to oppose the use of earmarked highway account funds for other than highway purposes. The current trust fund would not need any more money if the money in there had been used only for highway purposes in the past.

Leon Stalcup, representing the city of Missoula, urged the defeat of SB 288. He submitted a written statement signed by Joseph Aldegarie, P.E., Director of Public Works in Missoula, attached as Exhibit H.

Al Thelen, representing the Billings City Council, said Larry Huss has said this wasn't workable. They (the City of Billings) tried it and had no cooperation. Last year, they did get together with the Department of Revenue, and it is working now. The option tax is really a property tax. It is said we are almost blackmailed into this. Billings did pass the local option hotel-motel tax. Just because it is not used is not a good argument. Don't take away one of local government's tools by passing this bill.

Questions from the committee were called for.

Senator Crippen asked Mr. Thelen if it would be okay if the local option part of the bill were deleted. Mr. Thelen said they would support that.

Larry Huss then explained what HB 16 was about. Each 1-cent increase brings in about \$5 million a year.

Mr. Thelen stated that large amounts of city street maintenance are paid for as part of the highway system by the Highway Department in HB 16 money allocated to local governments. The Highway Department will make a contract with a city to maintain those streets. In HB 16, cities and counties get an additional one-half cent.

Mr. Huss stated that there is a statutory amount of money allocated to the cities. It doesn't rise and fall with the amount of taxes that are collected.

Senator Gage noted that another bill, HB 17, establishes special fees in lieu of taxes on diesel fuel.

Senator Halligan wondered why there was a dollar amount instead of a percentage in the statutes for the money referred to by Mr. Huss. Senator Towe said the history of it is that cities shouldn't partake of an extra amount. Now the reverse is true.

Senator Dover, in closing, asked the committee to look at HB 16 in conjunction with SB 288. Don't take the local option tax lightly, he said. How do you keep up with the bookkeeping with gas going here, there, and everywhere?

The hearing on SB 288 was closed.

CONSIDERATION OF SENATE BILL 337: Senator Thomas Towe, Senate District 34, said SB 337 deals with municipal bonds. This is a D.A. Davidson bill. It will allow Montana to have municipal bond investment companies like other states. If you want to invest in a diversified portfolio of regular bonds, you can do so. You can also go into the municipal bond account and get tax-free income. There are no companies in Montana that can do that. The company itself has to pay a tax. In Montana that tax would probably put investment companies out of business in terms of not making them competitive. This bill would exempt from the corporation license tax investment companies with 80% or more tax-exempt investments. Senator Towe said he didn't know if 80% was the right figure. Twenty percent shouldn't escape taxation, he said. Bruce MacKenzie, general counsel to D.A. Davidson, has suggested amending everything after the enacting clause. The bill would also exempt fee income. Section 1 (amending 15-31-102, MCA) would be stricken from the bill (not from the codes), and we would add, "Municipal bond income is exempt if received by an investment company whose investments are at least 80% exempt bonds." This will create competition and make the interest rates come down.

PROPONENTS

Bruce MacKenzie, vice president and general counsel, D.A. Davidson, submitted written testimony, attached as Exhibit I.

The 80% requirement must be Montana municipal bonds, he said. The 20% is buying some very high yield to bring up the yield to be competitive with others on AAA rating. Banks are included in investment companies under Montana statutes. This is a tax on income paid out. Mr. MacKenzie referred to the ruling in the Bankshares of Baker case concerning dividends. He also said HB 550 should not pass, you should not double tax dividends received by a corporation.

OPPONENTS

There were no opponents to SB 337.

Questions from the committee were called for.

Senator Turnage asked what the definition of "investment company" was. Mr. MacKenzie responded with the MCA definition of the term.

Senator Eck mentioned that there is a proposal for health facilities authority. She wondered if SB 337 would be competing with that sort of thing. Mr. MacKenzie said those are state agencies doing that, and the bill refers to the private sector.

Senator Elliott suggested striking subsection (1)(a)(i) of 15-31-113, MCA (see Mr. MacKenzie's amendments in Exhibit I).

Senator Norman asked Mr. MacKenzie what experience he had had with this type of investing. Mr. MacKenzie said D.A. Davidson offers two tax-exempt trusts with over \$1 million a month invested in trusts. SB 337 is an opportunity to diversify the portfolio. There would be no loss of revenue; if anything, there would be an increase. It is exempt at the federal level and is not added back on the Montana tax return. We create a Montana company investing in Montana bonds. It can only be an increase in the state.

Senator Gage asked Senator Towe if 100% of the cost was deducted from non-exempt income. Senator Towe said the cost is excluded from income on the return where interest from obligations of the state of Montana and political subdivisions are.

Senator Turnage wondered what would happen if we changed it from 80% to 100%. Senator Towe said that Mr. MacKenzie thought it would hurt his portfolio. Interest income is excluded from tax. Fee income will be taxable, and expenses will be charged against the fees.

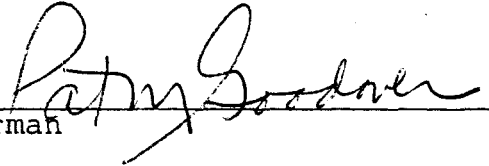
Senator Turnage asked about unitizing the returns of D.A. Davidson. Senator Towe said that would dilute the pass-through, and it wouldn't work. You want to get the maximum advantage of the pass-through.

The hearing on SB 337 was closed.

CONSIDERATION OF SENATE BILL 384: Senator Turnage said we should give flexibility to give these options: If a taxpayer paid in full in the first half, he should get a refund; if he paid the first half taxes in the first half, he should get an adjustment in the second half; if the taxpayer's taxes are delinquent, an adjustment should be made for that.

Senator Goodover stated that the committee would take executive action on SB 80 and SB 334 (Senator Hager's bills) on Friday, February 18.

The meeting adjourned at 9:55 a.m.


Chairman

ROLL CALL

SENATE TAXATION

COMMITTEE

48th LEGISLATIVE SESSION -- 1983

Date 2/17 /83

NAME	PRESENT	ABSENT	EXCUSED
SENATOR GOODOVER, CHAIRMAN	✓		
SENATOR McCALLUM, VICE CHAIRMAN	✓ 9:30		
SENATOR BROWN	✓		
SENATOR CRIPPEN	✓		
SENATOR ELLIOTT	✓		
SENATOR GAGE	✓		
SENATOR TURNAGE	✓		
SENATOR SEVERSON	✓		
SENATOR HAGER	✓		
SENATOR ECK	✓ 9:20		
SENATOR HALLIGAN	✓		
SENATOR LYNCH		✓	
SENATOR NORMAN	✓		
SENATOR TOWE	✓ 9am		
SENATOR MAZUREK	✓ 9:20		

DATE February 17 , 1983

COMMITTEE ON TAXATION

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

NAME: JOSEPH G LOENDORF CPA ^A Feb 17 3 44 DATE: 2-17-83

ADDRESS: Box 1147
HELENA MT

PHONE: 442-3540

REPRESENTING WHOM? ANDERSON JUA MUCHLENY CO
CERTIFIED PUBLIC ACCOUNTANTS

APPEARING ON WHICH PROPOSAL: S.B. 414

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: ¹¹
DUE TO THE ENACTMENT OF THE SUBCHAPTER S REVISION ACT
OF 1982" (OCTOBER 19, 1982) IT IS IMPORTANT THAT MONTANA
CONFORM TO THE "NEW ACT" FOR PURPOSES OF TAX ADMINISTRATION.
THE "NEW ACT" ACCOMPLISHES A MAJOR GOAL OF REDUCING THE
DIFFERENCES IN TAX TREATMENT BETWEEN A CORPORATION ELECTING SUB S
AND A PARTNERSHIP. THE "NEW ACT" ALSO ELIMINATES SOME OF THE
UNINTENDED "TRAPS" THAT HAVE CAUSED PROBLEMS FOR THE UNWARY.

(35)

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT B

Feb 17 1923

DATE:

17 Feb 23

Jan.

330

NAME:

Dick Mooney

ADDRESS:

2037 Gold Rush Av - Helena, MT 59601

PHONE:

406-442-5535

REPRESENTING WHOM?

Montana National Guard Officers/Enlisted Associations

APPEARING ON WHICH PROPOSAL:

SB 330 - Lic Plate

DO YOU:

SUPPORT?

X

AMEND?

OPPOSE?

COMMENTS:

Support because of the following factors: Advertising, Recognition,
Sense of Belonging, and Recruiting and Retention.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT C

Feb 17, 1983

Sen. Bill 330

NAME: ROGER A. HAGAN

DATE: 17 FEB 83

ADDRESS: 1817 20th Ave. So, BT Falls, MT

PHONE: 761-2397

REPRESENTING WHOM? NATIONAL GUARD ENLISTED ASSOC.

APPEARING ON WHICH PROPOSAL: SB 330

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: The bill clarifies the NATIONAL GD.
license plate authorization and moves the
administration of the issuance of plates to the
county treasurers.

With the county treasurers issuing the
plates, the civil authorities (Highway Patrol, County
Sheriffs and city police) have a more available access to
the NAMES and addresses of registered owners.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 0

Feb 17, 1983

DATE: 2/17/83NAME: Rep Ray HecidaySenSB 330

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SB 330DO YOU: SUPPORT? ☒ AMEND? _____ OPPOSE? _____

COMMENTS: Members of the National Guard have had identifiable plates in the past, but processing and distribution was a problem. SB 330 provides for plates issued in a more positive way and are more readily identified than in the past.

Especially in emergency situations, the special plates serve a useful purpose to the 3,000 Guardsmen and women who serve the State of Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME:

JAMES M. GREYAK

EXHIBIT

E

Feb 17 1983

DATE:

17 Feb 83

330

ADDRESS:

141 Elmwood Lane Helena MT

PHONE:

443-7936

REPRESENTING WHOM?

MT Nat'l Guard Assoc.

APPEARING ON WHICH PROPOSAL:

SB330

Nat'l Guard Lic Plates

DO YOU:

SUPPORT?

Yes

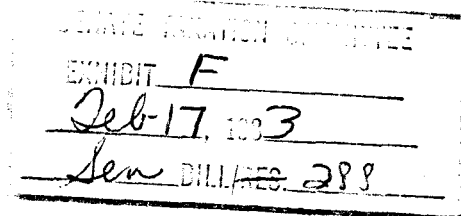
AMEND?

OPPOSE?

COMMENTS:

- Observer Only

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



Senate Bill-288 provides the following:

1. Makes permanent the temporary 1-cent motor fuels tax enacted in 1979;
2. Increases the tax on gasoline and diesel fuel by 1-cent per gallon each, for a total of 10-cents per gallon on gasoline and 12-cents per gallon on diesel fuel;
3. Provides an additional one full cent to be dedicated to the cities and counties for road, street and alley construction, reconstruction, maintenance and repair; and
4. Repeals the current mechanically unworkable statute on Local Option Tax for gasoline.

According to the Fiscal Note, total revenue generated under SB-288 is \$108.150 million (approximately \$54 million in both FY 84 and FY 85). This is an increase of about \$20.753 million throughout the biennium.

The Earmarked Revenue Account will receive approximately \$15.253 million.

Annually, to counties and incorporated cities and towns the increase of \$2.75 million brings their total to \$9.25 million.

Recent and future federal proposals in the motor fuel area along with exceedingly high state taxing will once again cause adverse demand reaction resulting in further eroding of this taxable income. At this time, I believe it prudent to reduce the current 5-cents per gallon tax proposal to an acceptable 2-cents per gallon and to provide local governments with sufficient assistance for their road requirements without resorting to a mechanically unworkable attempt at local option tax implementation. SB-288 accomplishes just that--a reasonable and workable increase.

As you know, the number of diesel fueled vehicles have increased tremendously. After reviewing present statutes, it is my understanding that cities and counties are not receiving a share of the diesel taxing revenue. Diesel fueled vehicles operate on city and county streets and roads as well as gasoline powered vehicles. Although this, quite possibly, is an oversight, a taxing program must be equitable.

Speaking of equitability, the major thrusts of SB-288 are the repealing of the Local Option Tax on gasoline and providing a reasonable tax increase. With respect to the local option tax on gasoline, SB-288 provides the only acceptable and equitable means of providing needed revenues to cities and counties without invoking the local option nightmare. Additionally, please consider the following:

1. The administrative burdens of local and state governments created when 56 counties impose the local option;

2. Impossible audit procedures when reviewing multi-county petroleum distributors;
3. Complete and separate bookkeeping systems for each multi-county petroleum distributor;
4. An impossible account varification procedure to correctly identify each customer (his mailing address may not be necessarily the same as the county in which he lives);
5. Expensive ballot procedures (signatures, placing on the ballot and the vote); and
6. Other competition and county demand reduction problems.

All considered, the money finally generated would quite possibly be less than actual administrative costs. Equitable? I hardly think so.

To address these issues, SB-288 provides the only methodology and taxing equitability that this committee may wish to consider--that is, implement the tax state-wide, assure fair-share payment and provide necessary revenue to local governments. SB-288 accomplishes exactly these things without increased administrative burdens.

With respect to opposition, it is difficult to understand how local governments can walk away from an additional \$2.75 million on the assumption that they may have to implement an impossible local option tax simply because they have no other place to turn. SB-288 precludes that. Further, as per the attached fiscal note, we believe the state highway fund can benefit from a user tax in the \$100 million dollar range and that a full 5-cent per gallon is just a little steep. Other revenue sources also can be considered.

Thank you Mr. Chairman, we will be available to answer such questions as the Committee may have.

STATE OF MONTANA

REQUEST NO. 248-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 288 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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

DESCRIPTION OF PROPOSED LEGISLATION:

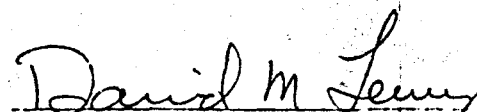
Senate Bill 288 makes permanent the 1-cent-a-gallon increment of motor fuels tax enacted in 1979; raises the motor fuels tax rate 1 cent a gallon; increases the allocation to counties, towns, and cities; repeals the local option motor fuels tax; and provides an effective date.

ASSUMPTIONS:

- 1) The Department of Revenue forecast of motor fuels tax receipts for the 1984-1985 biennium is the basis for comparison.

FISCAL IMPACT:

	<u>FY 84</u>	<u>FY 85</u>
Gasoline License Tax		
Under Current Law	\$32.888M	\$32.588M
Under Proposed Law	41.110M	40.735M
Estimated Increase	<u>\$ 8.222M</u>	<u>\$ 8.147M</u>
Special Fuels License Tax		
Under Current Law	10.852M	11.069M
Under Proposed Law	13.022M	13.283M
Estimated Increase	<u>\$ 2.170M</u>	<u>\$ 2.214M</u>
Total Revenue		
Under Current Law	43.740M	43.657M
Under Proposed Law	54.132M	54.018M
Estimated Increase	<u>\$10.392M</u>	<u>\$10.361M</u>

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-83

DISTRIBUTION OF REVENUE:

	<u>FY 84</u>	<u>FY 85</u>
Highway Earmarked Account	\$ 7.642M	\$ 7.611M
Local Governments	2.740M	2.750M
Total	<u>\$10.392M</u>	<u>\$10.361M</u>

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES

The amount which is allocated annually to counties and incorporated cities and towns for construction, maintenance and repair of roads, streets and alleys is increased from \$6.5 million to \$9.25 million. Of this amount, counties would receive an additional \$1,248,000 per year and municipalities \$1,502,000.

between the county and any cities within or partially within the dissolved district.

History: En. 11-4512 by Sec. 12, Ch. 355, L. 1975; R.C.M. 1947, 11-4512(part).

Part 3

Local Option Motor Fuel Tax

7-14-301. Local option motor fuel excise tax authorized. (1) The people of a county by initiative may impose a motor fuel excise tax, in increments of 1 cent per gallon, not to exceed 2 cents per gallon upon gasoline sold to the ultimate consumer within the county for use in motor vehicles operated upon public highways, streets, and roads. The initiative must specify the tax is to be collected by the department of revenue.

(2) Such a motor fuel excise tax may not be assessed sooner than 90 days from the date of passage of such an initiative.

(3) Every distributor shall pay the motor fuel excise tax to the agency specified in the initiative as provided in subsection (1). When the tax is collected by the department of revenue, each distributor shall render a monthly statement to the department of all gasoline distributed during the preceding calendar month in the county in which it is sold to the ultimate consumer and such other information as the department may reasonably require in order to administer the motor fuel excise tax.

(4) The information, recordkeeping, and examination of records provisions of Title 15, chapter 70, apply to this part.

(5) The department of revenue collecting the tax authorized under subsection (1) shall establish procedures to provide a refund to a person who has paid the excise tax but who can substantiate that the motor fuel was purchased for a use other than on public highways, streets, and roads.

(6) In this part, the terms "distributor", "gasoline", "import", "motor vehicle", "person", and "use" have the meanings ascribed to them in 15-70-201.

History: En. Sec. 1, Ch. 621, L. 1979; amd. Sec. 1, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: In (1), substituted "in increments of 1 cent per gallon, not to exceed" for "of not more than"; substituted "sold to the ultimate consumer within the county" for "distributed within the county"; inserted "highways" before "streets"; added the last sentence; substituted (2) for "A county imposing the tax

authorized under subsection (1) shall provide a means to provide refunds to persons who have paid the tax on motor fuel for uses other than on public streets and roads"; substituted (3) for "The term "gasoline" has the meaning ascribed to it in 15-70-201"; added subsections (4) through (6); and made minor changes in punctuation.

7-14-302. Use of local motor fuel excise tax revenue. (1) A county or municipality receiving revenue from the tax authorized by 7-14-301 shall use the revenue derived only for the construction, reconstruction, maintenance, and repair of public streets and roads.

(2) A county shall contract with the department for reimbursement of the actual costs of collection. One percent of the motor fuel excise tax revenue collected in a county is to be reimbursed to the distributor for the cost of compliance with this part.

History: En. Sec. 2, Ch. 621, L. 1979; amd. Sec. 2, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: In (2), substituted the first sentence for "Two percent of the motor fuel tax

revenue collected in a county is allocated to the county governing body for use in administering

the tax"; inserted "excise" before "tax"; inserted "collected" after "revenue"; substituted "to the distributor for the cost of compli-

ance with this part" for "at the point of collection for use in administering the tax"; and made minor changes in phraseology.

7-14-303. Allocation of revenue and disposition of funds from county-imposed motor fuel tax. (1) Revenue derived from a motor fuel excise tax imposed by a county under 7-14-301 must be apportioned among the county and municipalities in the county:

(a) in the proportion of motor vehicles registered in the county outside of the municipalities to those registered within the municipalities during the preceding year; or

(b) as determined by an interlocal agreement.

(2) All taxes, interest, and penalties collected by the department of revenue under this part shall be promptly transmitted to the state treasurer who shall deposit such funds in an earmarked revenue fund to the credit of the department of highways account. Such funds shall be paid quarterly by the state treasurer directly to the county in which the tax was imposed.

History: En. Sec. 3, Ch. 621, L. 1979; *amd.* Sec. 3, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: In (1), inserted "excise" before "tax"; substituted "apportioned" for

"divided"; added subsections (1)(b) and (2), and made minor changes in phraseology and punctuation.

7-14-304.- Lien for delinquent tax — interest and penalty — statute of limitations. (1) The lien provisions of 15-70-211 apply to all delinquent motor fuel excise taxes, penalties, and interest due from a distributor under this part. Such a lien has the same force and effect as a lien for delinquent gasoline license tax imposed under Title 15, chapter 70, part 2.

(2) Penalties and interest for any delinquent motor fuel excise tax are the same as provided for the gasoline license tax under Title 15, chapter 70, part 2.

(3) Any action to recover a delinquent motor fuel excise tax must be initiated within 3 years from the due date of the return or the date of filing the return, whichever period expires later. Upon discovery of fraud, an action must be initiated within 3 years of the discovery.

History: En. Sec. 4, Ch. 621, L. 1979; *amd.* Sec. 4, Ch. 572, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Penalties for violation of this part shall be the same as provided in 15-70-232."

Parts 4 through 20 reserved

Part 21

**General Provisions
Related to County Roads**

7-14-2101. General powers of county relating to roads and bridges. (1) The board of county commissioners, under such limitations and restrictions as are prescribed by law, may:

DATE: Feb 17 3
Senato DATE: 3-17-78

NAME: Leon Halverson

ADDRESS: WALK POINT RT

PHONE: 553-1579

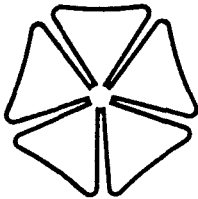
REPRESENTING WHOM? ROSCOE COUNTY ~~MACO~~ MACO

APPEARING ON WHICH PROPOSAL: 238

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

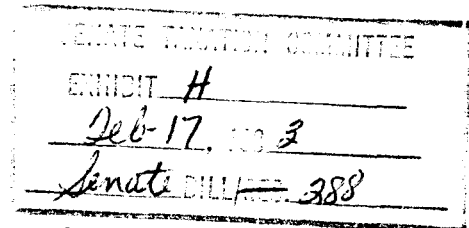
COMMENTS: Will raise much needed revenue for
the repair & maint. of state & county & city roads &
streets.
This is a very fair fee.
Support in concept.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



THE GARDEN CITY
HUB OF FIVE VALLEYS

Missoula, Montana 59802



CITY ENGINEERING DEPARTMENT
201 West Spruce Street
Phone 721-4700

E-83-0174

February 16, 1983

Mr. Pat Goodover, Chairman
Senate Committee on Taxation
State Capitol
Helena, Montana 59601

RE: Senate Bill 288

Dear Chairman Goodover:

The City of Missoula strongly urges the defeat of the portion of SB-288 which removes the option of local governments to implement a local gas tax in addition to any state wide tax.

The costs associated with maintenance and construction of Missoula's streets greatly exceed the revenue derived from the current user's fee levied in the form of the State Motor Fuels Tax. Without additional revenue, over and above that proposed in this bill, Missoula cannot hope to reconstruct and maintain its streets at the required frequency.

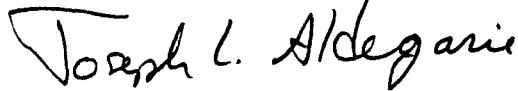
The gas tax is one of the best examples of a justifiable user fee where the tax paid by an individual is directly related to the extent to which that person uses the service.

Under the current provisions of Sections 7-14-301 through 7-14-303, the people of a county by initiative may impose a local motor fuel excise tax not to exceed two-cents per gallon. This provides a mechanism whereby the citizens have the ability to determine if the conditions of their streets justify the imposition of an additional tax on themselves. The continuance of this option is imperative if local governments with the concurrence of its residents can adequately address the problems of deteriorating streets.

E-83-0174
Mr. Pat Goodover, Chairman
Senate Bill 288
February 16, 1983
Page Two

Thank you for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Joseph L. Aldegarie". The signature is written in dark ink and is positioned above the printed name and title.

Joseph L. Aldegarie, P.E.
Director of Public Works

JLA:vm



Because you want your money to do more.

FEBRUARY 15, 1983

M E M O

TO: SENATOR PAT M. GOODOVER, CHAIRMAN
SENATE TAXATION COMMITTEE

FROM: BRUCE A. MACKENZIE

RE: SENATE BILL 337

Investment companies are formed primarily for the purpose of investing in and managing a pool of securities and distributing the income earned from the securities to its investors. The prime advantages to investors in an investment company are the diversification of risk, smaller initial investment and professional management of the investment portfolio.

Investment companies which invest primarily in municipal bonds not only provide the advantages of diversification and management, but also are capable of passing through the tax-exempt status of the interest income to the investors. This enables investors who would not normally purchase municipal bonds, because the normal denominations for such bonds are \$1,000 to \$5,000, the opportunity for tax-exempt income, as well as participating in a number of issues instead of one bond. In addition, the investment company provides an additional market for municipal bonds, especially smaller issues.

With the amendments to 15-31-101 M.C.A. in 1979, which subjected banks to the corporate license tax, it went unnoticed that this amendment included all investment companies since they are defined as banks pursuant to Section 32-1-102 and 32-1-108, M.C.A. As such, investment companies which managed portfolios of municipal bonds were faced with the payment of corporate license tax on interest income previously exempt from tax. (See letters attached.) This tax was required despite the fact that the company distributes nearly all of the interest income to the investors. The net effect of the tax is to reduce the yield to an investor to the point that a Montana investment company managing a portfolio of municipal bonds is at a competitive disadvantage to out-of-state firms.

The intent of the legislation proposed by Senate Bill 337 is to eliminate the tax upon municipal income required to be paid by the company. As drafted, however, Senate Bill 337 may go too far. The bill as drafted provides a total exemption from the corporate

I
Feb 17 3
Sen - 337

D.A.
Davidson
& Co.

Incorporated

Montana's Oldest
Investment Firm

Davidson Building
P.O. Box 5015
Great Falls, Montana
59403

(406) 727-4200

Offices: Billings,
Bozeman, Butte,
Havre, Helena, Kalispell,
Missoula, Montana;
Williston, North Dakota

Corporate Office:
Davidson Building
Great Falls,
Montana 59401

Members:
Midwest Stock
Exchange Inc.
Pacific Stock
Exchange Inc.
Securities Investor
Protection Corp.

license tax as opposed to merely eliminating the tax on municipal income. Since most investment companies receive fee income from the investors for management of the assets, a total exemption would permit an investment company to escape taxation on this fee income. Such an exemption was not intended.

Therefore, I would propose an amendment which would remove the absolute exemption provided by the bill and provide an exemption only to the extent of the municipal interest income received which is exempt from federal taxation. A copy of the amendment is attached.

Bruce A. MacKenzie
General Counsel

BAM:alc
83-15

AMENDMENT TO SENATE BILL NO. 337

Page 1:

- Line 5: Add following "FOR" the words "INTEREST EXEMPT FROM FEDERAL INCOME TAX RECEIVED BY".
- Line 8: Delete "15-31-102" and add "15-31-113".
- Line 13: Delete the remainder of the line following "Section 1."
- Lines 14-25: Delete.

Page 2:

- Lines 1-25: Delete.

Page 3:

- Lines 1-25: Delete.

Page 4:

- Lines 1-23: Delete.
- Line 24: Delete "with the department of revenue." Add "Section 15-31-113, MCA, is amended to read:
"15-31-113. Gross income and net income. (1)
The term "gross income" means all income recognized in determining the corporation's gross income for federal income tax purposes and:
(a) including:
(i) interest exempt from federal income tax, except such income shall not be included in computing the gross income of investment companies organized under the laws of this state for the purpose of managing a portfolio of securities for the benefit of its investors if not less than 80% of the principal value of such portfolio is comprised of securities the income from which is exempt from the tax imposed by Title 15, chapter 30:
(ii) the portion of gain from a liquidation of the reporting corporation not recognized for federal corporate income tax purposes pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or renumbered) attributable to stockholders, either individual or corporate, not

subject to Montana income or license tax under Title 15, chapter 30 or chapter 31, as appropriate, on the gain passing through to the stockholder pursuant to federal law; and

(b) excluding gain recognized for federal tax purposes as a shareholder of a liquidating corporation pursuant to sections 331 through 337 of the Internal Revenue Code (as those sections may be amended or re-numbered) when the gain is required to be recognized by the liquidating corporation pursuant to subsection (1)(a)(ii) of this section.

(2) The term "net income" means the gross income of the corporation less the deductions set forth in 15-31-114.

(3) No corporation is exempt from the corporation license tax unless specifically provided for under 15-31-101(3) or 15-31-102. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under 15-31-101(3) or 15-31-102 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal Internal Revenue Code in effect for the taxable year."

January 18, 1982

Mr. Irwin Hall
Department of Revenue
Room 301
Sam W. Mitchell Building
Helena, Montana 59601

Re: Montana Tax-Exempt Bond Fund

Dear Mr. Hall:

Please be advised that D. A. Davidson & Co. is contemplating participating in the offer and sale of securities which represent an interest in a management-type investment company which would purchase and manage a portfolio comprised exclusively of Montana municipal bonds. The purpose of the investment company would be to diversify the risk of the investor by providing him with an interest in a diversified portfolio of Montana municipal bonds and to distribute to the investors their proportionate share of interest income received from the bond portfolio and any capital gains or losses that may result from sales within the portfolio. The investment company would be structured in such a manner so that dividends paid to its investors would qualify as exempt-interest dividends pursuant to Section 852(b)(5) of the Internal Revenue Code.

It is our opinion that the interest received from the investment company by the investors would be exempt from federal and Montana individual income taxation pursuant to Sections 852(b)(5)(B) Internal Revenue Code and 15-30-111 Montana Code Annotated, respectively. As a result of the 1979 amendments to Montana's corporate tax laws, however, we are requesting an opinion from your department as to the treatment of the interest income received by the investment company from its portfolio of Montana municipal bonds. In the event such interest income is subject to the Montana corporate tax, the yield to an investor would be significantly affected.

Our review of the matter indicates that such an investment company would be defined as a bank pursuant to Sections 32-1-102 and 32-1-108 M.C.A. Section 15-31-101(4) M.C.A. imposes Montana's corporate tax upon "every bank organized under the laws of the State of Montana or any other state . . ." and, therefore, any investment company's net income would be subject to the tax imposed by Section 15-31-121 M.C.A.

Mr. Irwin Hall
For Montana Tax-Exempt Bond Fund
January 15, 1982

Corporate net income, under Montana law, is determined after computing a corporation's gross income pursuant to Section 15-31-113 and deducting those items allowed pursuant to Section 15-31-114. Pursuant to the 1979 amendments, gross income for corporations includes interest income exempt from federal income tax. Montana Code Annotated Section 15-31-113(1)(a)(i). Interest income earned by the investment company on its portfolio of Montana municipal bonds would be exempt from federal taxation pursuant to Section 103(a)(1) Internal Revenue Code. This interest income would, however, be recognized as gross income for Montana corporate tax purposes. Therefore, unless there is a deduction allowed from gross income pursuant to Section 15-31-114 for the payout of this interest received by the investment company to its investors, it would appear that the interest would be subject to the State's corporate tax.

It is our opinion that the interest paid out by the investment company should be treated as an ordinary and necessary business expense pursuant to Section 15-31-114(1) M.C.A., as interpreted by Administrative Rules of Montana, Section 42.23.501. The purpose of the investment company is to manage the bond portfolio for its investors and to distribute the income derived from that portfolio. The interest income is distributed to an investor to the extent of the investor's proportionate share in the portfolio. Although received by the investment company, the interest income received on the bond portfolio is required to be paid out to the company's investors. Therefore, the interest paid out should be allowed as a deduction against the interest received. An analogous treatment can be found under Section 852(b)(2)(D) of the Internal Revenue Code which provides management investment companies which receive dividends on stock portfolios with a deduction for dividends paid to its investors.

We would appreciate rulings from your department as to the status of the interest income received by the investment company and the interest income received by its investors under Montana law. Your attention to this matter is sincerely appreciated. If you have any questions or if I can be of any assistance, please do not hesitate to contact this office.

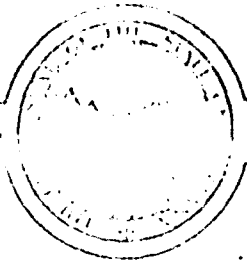
With best regards,

Sincerely,

Bruce A. MacKenzie
General Counsel

BAM:ala

DEPARTMENT OF REVENUE



TED SCHWINDEN, GOVERNOR

MITCHELL BUILDINGS

STATE OF MONTANA

HELENA, MONTANA 59601-0

February 18, 1982

Mr. Bruce A. MacKenzie
General Counsel
D.A. Davidson & Co., Inc.
P.O. Box 5015
Great Falls, Montana 59403

Dear Mr. MacKenzie:

RE: Taxation of Montana municipal interest

You are correct in your assumption that Montana municipal interest received by a corporation is includible in that corporation's gross income. We do not, however, concur with your opinion that distributions to investors are an allowable deduction. Payments of this type are more in the nature of dividends. Neither the general nor the specific provisions of Section 15-31-114, Montana Code Annotated provide for a deduction for these payments. Consequently, no deduction can be allowed for payments made by the corporation to its investors.

It is my understanding that Mr. Irwin Hall has answered the other question raised in your letter. Please contact the undersigned if you have any further questions regarding this matter.

Very truly yours,

DEPARTMENT OF REVENUE

A handwritten signature in cursive script, reading "Richard J. Marble".

Richard J. Marble, Revenue Agent
Corporation Tax Division

RJM/dh

STANDING COMMITTEE REPORT PAGE 1 OF 3

February 17 19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 109

Respectfully report as follows: That Senate 108 Bill No.

introduced bill, be amended as follows:

1. Title, line 6.

Following: "TAX"

Strike: "FROM AN"

Following: "ANNUAL"

Strike: "TAX TO A"

Insert: "REPORTING REQUIREMENT TO A"

2. Title, line 7.

Following: "QUARTERLY"

Strike: "TAX"

Insert: "REPORTING REQUIREMENT"

3. Title, line 8.

Following: "THE"

Insert: "MARCH 1"

~~EXCESS~~

(Continued on page 2)

HC

SENATE BILL 108

February 17 19 83

4. Page 2, line 17.

Strike: subsection (2) in its entirety

5. Page 2, line 23.

Strike: section 2 in its entirety

Renumber: all subsequent sections

6. Page 5, line 18.

Following: "cents"

Strike: "; and"

7. Page 5, line 19.

Strike: subsection (g) in its entirety

8. Page 6.

Following: line 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."

9. Page 6, line 20.

Following: "due"

Strike: remainder of line 20 through "date" on line 23.

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"

10. Page 7, line 9.

Following: "aforesaid,"

Strike: remainder of line 9 through line 14

Insert: "which"

11. Page 8, line 5.

Strike: "statement"

Insert: "statements"

12. Page 8, lines 6 and 7.

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,"

13. Page 8, line 12.

Following: "total"

Strike: "cumulative"

Insert: "total"

(Continued on page 3)

SP

SENATE BILL 108

February 17 19 83

14. Page 8, line 14.

Strike: "for"Insert: "during"

15. Page 8, line 15.

Strike: "quarter for"Insert: "year immediately preceding the year in"

16. Page 8, line 17.

Strike: "cumulative"

17. Page 9, lines 6 and 7.

Following: "of"Strike: "the 60th day following the quarterly reporting date"Insert: "March 1 of the year immediately following the
production year"

18. Page 9, line 9.

Strike: "10%"Insert: "8%"

19. Page 9, line 14.

Following: "waive the"Strike: "10%"Insert: "8%"

20. Page 9, lines 16 and 17.

Following: "before"Strike: "the 60th day following the quarterly reporting date"Insert: "March 1 of the year immediately following the
production year"

21. Page 9, line 18.

Strike: section 7 in its entirety

And, as so amended

DO PASS

H.C.

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 242

Respectfully report as follows: That Senate Bill No. 242

introduced bill, be amended as follows:

1. Page 10, line 4.

Following: "(2)"

Strike: remainder of line 4 through line 8

Insert: "The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and 15-30-112(8)."

And, as so amended

DO PASS

He

STANDING COMMITTEE REPORT

February 17

19 83

MR. **PRESIDENT**

We, your committee on **taxation**

having had under consideration **Senate** Bill No. **330**

Respectfully report as follows: That **Senate** Bill No. **330**

introduced bill, be amended as follows:

1. Page 1, line 10.

Strike: "Distinctive license"

Insert: "License"

2. Page 1, line 13.

Strike: "distinctive"

3. Page 1, lines 14 and 15.

Strike: "bearing the words "national guard" and "Montana", said plates"

4. Page 2, line 10.

Following: "3,"

Strike: "part"

Insert: "parts 3 and"

And, as so amended

DO PASS

1/c

STANDING COMMITTEE REPORT

February 17 19 83

MR. PRESIDENT

We, your committee on taxation

having had under consideration Senate Bill No. 414

Respectfully report as follows: That Senate Bill No. 414

introduced bill, be amended as follows:

1. Page 1, line 24.

Following: "1954"

Insert: "and thereafter has filed a copy thereof with the
department"

2. Page 6, line 7.

Following: "1982"

Strike: remainder of line 7 through line 9

Insert: "."

And, as so amended

DO PASS

y/c