

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 9, 1985

The second meeting of the Taxation Committee was called to order by Chairman Gerry Devlin on January 9, 1985 at 9:00 a.m. in room 312-1 of the state capitol building.

ROLL CALL: All members were present except Representative Sands, who was excused. Also present was Dave Bohyer, Legislative Researcher for the Legislative Council and Alice Omang, secretary.

HOUSE BILL NO. 42: Representative Manuel, District 11, stated that this bill was at the request of the Code Commissioner and he introduced Jim Lear, who explained the bill.

Jim Lear, Staff Attorney from the Legal Services Division of the Legislative Council said that there were four items in this bill which he would like to explain. Item #1 was in the first section on page three of the bill lines 19 and 20. He noted that in the green summary page, there was an error in that section 108 should read 801. He informed the committee that section 15-23-801 is being stricken.

The next item was in section 4 on page 6 of the bill, line 17. He said that this section was repealed in 1979 and the property previously contained in this section is now included in 15-6-134.

The next item was in section 9, page 12, line 10 and 11 and this was another internal reference. He indicated that this was being replaced by a new subsection 8 on page 14 of the bill. He referred the committee to the green summary sheet. See Exhibit 1.

The last item he wished to refer to was in Section 12, page 17, line 11. He said that back in 1983, chapter 539 repealed parts 1 and 2 of Title 80, chapter 4, part 2 and that this reference is now erroneous. He noted that the correct reference is now merely to Title 80, chapter 4.

He indicated that the other changes in the bill are self-explanatory.

There were no further proponents.

There were no opponents and no questions asked by the committee. Representative Manuel closed and the hearing was closed.

HOUSE BILL 54: Representative Marks, District 75, presented a handout to the committee. See Exhibit 2. He stated that this bill, which will eliminate the assignment of a county's interest in property acquired at a tax sale, attempts to correct a problem that has occurred from time to time in the situation where property taxes have not been paid by the landowners or the person on the contract and where some other person comes in and takes an assignment on the property. He said that there have been some real horror stories in this connection. He explained that the law provides that if the taxes have not been paid, anyone can pay the taxes and the penalty and then there is an assignment made to that person; and in cases where the owner has moved, notification of that assignment is not usually made to them. He indicated that this bill would preclude the use of these assignments. He continued that these delinquent taxes would be saved up and at the end of the third year, the property would be put on the block and sold to the highest bidder.

PROPOSERS:

Don Luraski, a private citizen from Helena, cited an experience he had in which he almost lost 20 acres of land for back taxes of \$236.00. He said that it was just a matter of days in which he was able to get his land back.

Charles Gravely, representing the County Treasurers' Association, stated that he supported the idea of the bill. He noted that they do have a lot of 'scalpers', as they are known, that go through delinquent tax lists and pay the back taxes hoping to get a tax deed at a later date. He informed the committee that there is a requirement that notification of an assignment must be served by registered or certified mail upon the owner of the property, the person occupying the property, anyone having a contract for deed on the property and any mortgagee.

He said that the notice must be directed to the address as reflected by the county clerk and recorder. He indicated that the thing that is happening in so many cases is that individuals applying for a tax deed are not giving notification of the proper address. He stated that this bill may not go far enough because the 'scalpers' can still obtain this property on delinquent taxes - all that is required is that the 'scalper' appear at the tax sale, which must be held annually - some time in July. He suggested that a law could be implemented that

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requires scalpers to bring an action in district court to convert title to that property and, as a condition, the judge could issue an order so that the 'scalper' must give proof of personal service upon the owner of that property. He indicated that he felt that should be done in any case as they do have people that lose property because of negligence on their part. He questioned if this bill would go far enough to protect the rights of individuals.

Gordon Morris, representing the Montana Association of Counties informed the committee that there would be a bill introduced that would call for an interim study committee to look at this entire section of the code, but the Association does support this bill.

There were no further proponents.

OPPONENENTS

Mike Young, Finance Officer for the City of Missoula, said that there was a real problem with developers. He noted that there were 200 properties in the city of Missoula with unpaid taxes and assessments and 180 of these were owned by three developers. He felt that this bill would take away one of the ways counties and cities have to put pressure on the developers to pay their delinquent taxes; and without that threat, the only way to collect those delinquent taxes is to threaten that the county take the property. He indicated that it is not clear-cut if the county can take the property after three or four years, that it could go on for six or seven years or even indefinitely. He explained that if people don't care, if they lose their property and the county takes an assignment, the county has to advertise at fair market value and then sell it for 70 per cent of fair market value and the price of the property goes up. He indicated that the system now is too complex for them to buy property on assignment and have some assurance that they will have clear title to that property. He advised that the courts throw these claims out all the time and he also wondered how often this happens. He concluded that he felt the committee should wait for the outcome of the interim study.

There were no further opponents.

Representative Asay asked if there was not a place on your tax notice where the county alerted people of any back taxes. Mr. Gravely replied that when tax notices are sent out, most of the county treasurers stamp 'delinquent' and some of them put the amount on the notice of previous years.

Representative Asay asked if this was obligatory. Mr. Gravely responded that he was not sure.

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Representative Ream noted that part of the problem was in the area of notification and he wondered if they could tighten up the notification process.

Mr. Gravely responded that the law use to read that the notice had to be delivered by registered mail and in the last few years, they could use either registered or certified mail. He felt that if they could tighten up the notification in any way, it would be good. He informed the committee that there is a difference between registered and certified - registered must be signed by the person to whom it is addressed and certified can be signed by anyone.

Representative Ellison said that this fall he got notice that one installment on a piece of his property was delinquent and this was the first notice that he got and it had been delinquent for two years. He wondered if the counties miss these or are they obligated to send them.

Mr. Gravely responded that he would ascertain that it is mandatory that they be notified every year.

Representative Ellison asked what would be involved in personal service.

Mr. Gravely replied it would have to be served by the sheriff or some official server personally on the owner.

Representative Switzer indicated that his concern was in finding the rightful owner, that that could be an impossible task and the land could sit for a number of years.

Mr. Gravely commented that if an individual applying for a tax deed wishes to follow up his hold on the property, he is going to be paying those taxes, because if he becomes delinquent, some other person could come in and pay the taxes. He commented that the property would continue to be assessed. He informed the committee that the amount of money they are talking about varies tremendously from county to county. Some counties have low delinquent tax land and some counties have quite high rates. He noted that in municipalities, the non-payments are mostly SIDs.

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Representative Switzer said that they are assuming that all property is desirable for someone, and suppose the county did have to acquire title and have to find the rightful owner, couldn't that situation set for an indefinite period.

Mr. Gravely responded that it could create that kind of a problem and in that particular case, instead of a three-year or six-year period, it could be a deterrent to a direct issuance of a tax deed.

Representative Switzer mentioned that the developers had been mentioned as the most guilty for not paying their taxes and he wondered if this wouldn't be an added protection and asked if the penalty should be raised.

Mr. Gravely responded that a bill will be introduced that will raise the penalty from 10 per cent to 12 per cent and he noted that in Silver Bow County, they have a tremendous problem - there is just under \$1 million dollars in delinquent taxes.

Representative Williams noted on the tax notices in Yellowstone County, it states right on the tax notice that this will be the only notice that they will receive and he wondered if they become delinquent they do not get a notice for three years.

Mr. Gravely responded that there is only one issuance of one tax bill and all of them do have that notice on them. He said that if you do not pay the first half taxes and they become delinquent on December 1, there is the possibility of someone else coming in and paying those taxes and when you pay the second year, there is no longer a delinquent tax. He said that a requirement should be stamped on the tax notice that there has been a tax assignment on this property.

Representative Williams asked if under the present system do cities and counties have the privilege of taking an assignment.

Mr. Gravely responded if the taxes are delinquent, it is stricken off to the county as the purchaser.

Representative Williams asked if it is delinquent, would that be after three years.

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Mr. Gravely responded for the purpose of a tax deed, that is correct. He continued that the law says the redemption period is 36 months, but some individuals don't immediately apply for a tax deed and wait for years for an assignment. He informed the committee that this is a very complex procedure and if not followed, the courts will give the property back to the true owner.

Representative Asay addressed Mr. Young and asked about his concern that the county does not have the authority to assign title.

Mr. Young replied that their county attorney has apparently said that this could go on indefinitely and he would like to be able to see citizens take assignments so additional pressure can be put on them to pay their taxes.

Representative Asay asked him if he had any suggestions.

Mr. Young responded that his real suggestion is to take a look at the interim study and see what is proper notice. He commented that the counties are in control - they issue the tax bill and the property owners need some assurance that they are not going to lose their property because of an oversight.

Representative Zabrocki said that he understood it didn't matter who paid the taxes as long as they are paid - was that right?

Mr. Gravely replied that he could pay his taxes but he has no right unless he paid them after they have been allowed to go delinquent.

Representative Zabrocki asked if he was absolutely sure of that.

Mr. Gravely responded that he was absolutely sure and that he understands that Mr. Young just wants the taxes paid no matter who pays them.

Representative Ream asked Mr. Young what the extent of the problem was in Missoula and why are the developers avoiding payment of their taxes and he wondered if the penalty was higher, would they pay them then.

Mr. Young replied that he thought they would probably pay them if the penalty was higher. He noted that one of the

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developers has the money and the other is in such a legal entanglement, it would be impossible to send notices. He explained that the third one lives in Las Vegas and, in the case of a personal notice, someone would have to fly to Las Vegas. He said he felt raising the penalty would help.

Representative Ream asked what the extent of the problem was.

Mr. Young answered that there were 200 properties in 1980 and they could go another three years without payments and this consisted of millions of dollars - he did not know the exact amount and 180 of these properties belonged to three developers.

Representative Ream questioned why they are avoiding payment.

Mr. Young responded that they can make better investments elsewhere and one developer said that he would pay when he has to, but not before.

Representative Patterson noted that he mentioned the 1980 taxes in Missoula and wondered if this amount included the developers.

Mr. Young responded it is in the millions - both SIDs and taxes.

Representative Devlin asked if he would be able to get some figures and bring them back to the committee.

Mr. Young answered that it was \$1.4 million on SIDs only and he did not know what the figures were for the taxes.

Representative Patterson asked what did the other 20 per cent consist of.

Mr. Young said they were scattered around - some on apartment buildings, some single-family dwellings and some who just can't afford to pay.

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Representative Raney inquired as to why the 'scalpers' haven't been around if the taxes have been delinquent since 1980.

Mr. Young responded that he couldn't answer that - some have taken assignments in the last few months.

Representative Raney asked if the taxes are \$300.00 and the property is worth \$20,000.00, why doesn't the county get it and sell it.

Mr. Young said they should ask the representatives of the clerks and treasurers - they control the ball game.

Representative Raney asked the same question of Mr. Morris.

Mr. Morris replied that he thought the real fact is that in almost all instances of delinquency, the taxes outstanding are in excess of fair market value so they would be selling them at a loss. He said that if there is a real potential gain on the property, it will turn over on the market place. He continued that they have no interest in taking over taxes and in talking about SIDs; they are owed to municipalities and, if those properties go delinquent and are taken over for a tax deed, the county is obligated for payment of the SIDs. He commented that there were \$30,000.00 in delinquent SIDs in Missoula and they would be better back on the tax rolls. He explained that there was some confusion on the taking of an assignment and he said that this is a lien against the property and that is all it is. He continued that after December 1, anybody can come in and pay the taxes; all they have is a lien against that property and if the owner of record makes the next tax payment, there is still a lien against the property. He emphasized that as the owner of record, you have the absolute right of redemption.

There were no further questions.

Representative Marks stated that one of the difficulties is how to serve notice of something that is going to happen - there is no notice that a 'scalper' has paid the taxes. He described a problem he had on some mining claim that he used as grazing land and also an incident that occurred in which he almost lost some of his land to an assignment. He continued that he did not understand why this would put leverage

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on a developer. He concluded that people who own land have some rights to it; taxes are penalty enough for owning land. He felt that many people are becoming victims and many of these people are the elderly. He asked the committee to not kill the bill just to put it in a study as he felt there were two separate issues there.

The hearing on the bill was closed.

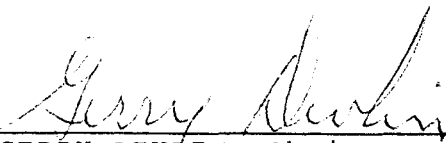
The committee recessed for about 5 minutes.

EXECUTIVE SESSION:

HOUSE BILL 42: Representative Keenan moved that this bill DO PASS. Representative Ream seconded the motion. The motion carried unanimously.

Chairman Devlin informed the committee that there would be no meeting tomorrow and by Monday, there should be fiscal notes and the meeting will probably start at 8:00 a.m.

ADJOURNMENT: There being no further business, the meeting adjourned at 10:23 a.m.



GERRY DEVLIN, Chairman



Alice Omang, Secretary

DAILY ROLL CALL

HOUSE TAXATION

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date

NAME	PRESENT	ABSENT	EXCUSED
DEVLIN, GERRY, Chrm.	X		
WILLIAMS, MEL, V. Chrm.	X		
ABRAMS, HUGH	X		
ASAY, TOM	X		
COHEN, BEN	X		
ELLISON, ORVAL	X		
GILBERT, BOB	X		
HANSON, MARIAN	X		
HARRINGTON, DAN	X		
HARP, JOHN	X		
IVERSON, DENNIS	X		
KEENAN, NANCY	X		
KOEHNKE, FRANCIS	X		
PATTERSON, JOHN	X		
RANEY, BOB	X		
REAM, BOB	X		
SANDS, JACK			X
SCHYE, TED	X		
SWITZER, DEAN	X		
ZABROCKI, CARL	X		

STANDING COMMITTEE REPORT

.....JANUARY 3,..... 19 85.....

MR. **SPEAKER:**

We, your committee on **TAXATION**

having had under consideration **HOUSE** Bill No. **42**

First reading copy (white)
color

**"AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TAXATION AND
ALCOHOL; ETC.**

Respectfully report as follows: That **HOUSE** Bill No. **42**

DQ PASS.

2/11/85

STATE PUB. CO.
Helena, Mont.

..... **REPRESENTATIVE DEVLIN**
Chairman.

COMMITTEE SECRETARY

(2)

Exhibit 1

HB 42

1/9/85 - Lear

LC 0128

1985 Legislature
Code Commissioner Bill - Summary

House Bill No. 42

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS 15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106, 15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106, 15-57-102, 16-1-205, AND 16-6-106, MCA.

Section 1. 15-1-101. In subsection (1)(k)(ii) there is a reference to all mines, minerals, and quarries in and above the land subject to the provisions of 15-23-108. Section 15-23-108 is a definitional section, and the clear intent of the statute was to refer to the metal mines gross proceeds tax, which is included in Title 15, chapter 3, part 8. The amendment to this section substitutes Title 15, chapter 3, part 8, for the definitional section of 15-23-801.

Section 2. 15-6-101. When 15-6-101 was originally amended, it included the property tax classification system contained in 15-6-131 through 15-6-141. To avoid amending this section every time an additional class is added to the property tax classification system, the reference to those sections was changed to this part.

Section 3. 15-6-140. In subsection (1)(g) there is reference to "all other property included in the preceding 9 classes". Since that reference was included, additional classes, namely class eleven and class twelve, were added to the classification system. This amendment, which substitutes any other class in this part for the preceding 9 classes, is an attempt to more clearly express the intent of the Legislature that class ten include all property not included in any other class in the part.

Section 4. 15-7-103. In subsection (5) of this section there is a reference in brackets to 15-6-112, which was repealed in 1979; and the property previously contained in that section is now included in 15-6-134.

Section 5. 15-8-201. In subsection (1)(e) there is a reference to 61-1-104(2). There is no subsection (2) in 61-1-104, and therefore subsection (2) is deleted from the section.

Section 6. 15-23-106. In subsection (1)(b) there is a reference to the assessed value as determined under 15-23-302. That section has been repealed. The Department of Revenue now determines the assessed value of utility property under the authority of 15-23-303, and that reference is substituted for 15-23-302.

Section 7. 15-24-911. Part 24 is concerned with the assessment of livestock, and "livestock" is used consistently throughout the part with the exception of a reference to "cattle" in subsection (1)(b). That reference is changed to "livestock".

Section 8. 15-24-1001. The beginning of subsection (1) contains a number of amendments which merely make the section more readable.

Section 9. 15-31-123. This section involves the investment tax credit available to certain small businesses. Prior to 1983, a small business which qualified for the investment tax credit also could elect to be treated and taxed as an individual under Title 15, chapter 31, part 2. The definition of a small business corporation contained in part 2 was changed by the 1983 Legislature and as part of that change 15-31-207 was repealed. The Department of Revenue has continued to treat trusts that were previously described in 15-31-207 as qualifying small businesses. The substance of the prior section 15-31-207 is therefore incorporated as subsection (8) of 15-31-123, to conform to the treatment currently being given to that section by the department of revenue.

Section 10. 15-31-301. Language is inserted at the end of subsection (2) for purposes of clarity.

Section 11. 15-55-106. Subsection (3) of this section refers to "freightline company tax fund", which does not exist. All money collected under this chapter is deposited in the general fund (15-55-110). The references to the freightline company tax fund created by this chapter are therefore deleted.

Section 12. 15-57-102. Subsection (2) of this section refers to Title 80, chapter 4, part 2, which was repealed during a general revision of the laws dealing with grain merchandising. The correct reference now is merely to Title 80, chapter 4.

Section 13. 16-1-205. There is a reference in this section to the initiative process provided under Title 7, chapter 5, part 22. At one time the initiative process was contained in Title 7, chapter 5, part 22, but that was repealed, and the new initiative approval procedures were contained in 7-5-131 through 7-5-137. Therefore, the reference in this section is changed.

Section 14. 16-6-106. In 1983 the Legislature eliminated the official seal, which is referred to in subsection (5) of this section. Since there is no longer a requirement for the official seal, subsection (5) is no longer needed and is therefore deleted.

A landowner on the lookout for tax speculators



Donald Luraski stands with his family on the land he says he almost lost to a delinquent property tax speculator.

A stranger could grab your land — legally

by DICK ROESGEN
R Staff Writer

Richard and Anita Larson used to own 21 acres of pasture in the Helena valley.

Though the land probably has a market value of over \$20,000, according to a local real estate agent, an Arizona man named Clifton Dillon bought it in 1980 for \$186.45. The Larsons aren't happy about having to sell the land so cheap.

But what burns them most is that they've never met Dillon and they never told him he could buy it.

In fact, they never even knew Dillon had bought the land until a county clerk called last week and told them he'd claimed it.

Strange, but true. Through a complex process, the county can sell your property to someone else without your knowing about it.

In what is a perfectly legal operation, speculators like Dillon can buy your property from the county by paying your delinquent taxes. And it's possible you may not even know your taxes are behind.

You have a little over three years after your taxes become delinquent to redeem your property.

The actual return for the speculators isn't high — about 10 percent — but the taxes within the three years and get their land or house back.

And the law does require the speculator to try to notify you before the property becomes his, through legal ads in the newspaper and through a "letter of notice" sent to your last known address.

Problem is, people like the Larsons can still lose their property and never know it. Because the law doesn't require people to read legal ads, and the law doesn't require the speculators to prove that you ever got the letter of notice.

The county clerk who told the Larsons that their land had been transferred into Dillon's name was doing them a favor, the Larsons say, because she had once employed their son.

But the Larsons also got a call from a man they didn't know at all, Donald Luraski, who said he'd read the legal notice in the paper.

Like the Larsons, Luraski lives with his family in the Helena valley. He's in the process of buying 20 acres of land there from a local realtor.

Luraski says he's paid his taxes every one of the seven years he's lived in the valley, except once. Through a bank error, he says, the 1979 taxes on the 20 acres didn't get paid.

"It was a real mixup, that's for damned sure."

Three years later, he says, he was shocked to learn that his property was about to become Dillon's.

He caught it before it was too late. Another week, Luraski says, and he'd have lost the property.

"I paid my taxes in full after I found out what was going on. We've never had any trouble paying them."

Now, Luraski checks the paper every day, looking for the legal notices placed there by the speculators — "turkey-vultures," as he calls them.

If he sees one, he'll try to contact the property owners to warn them that their property is about to become someone else's.

In the past year, he says he's reached about six people, all of whom already knew what was happening.

But Luraski says he hasn't been able to contact another 15 or so, and he wonders how many more aren't aware they've already lost or are about to lose their property.

Though Luraski didn't lose his own land, he still had to pay Dillon \$50.

Because on top of repaying the speculator for the cost of the delinquent taxes, penalties and interest, you also have to pay him an eight percent service charge.

Whether the speculator gets your property or not, the legal process ensures he'll make a profit.

That process begins each year, when the county sells off property on which the year's taxes haven't been paid.

At the "tax sale," property is "sold" to anyone willing to pay the delinquent taxes, penalties and interest.

The purchase doesn't give the buyer the deed to your property, but it does entitle him to a lien. If you want to

get rid of him you have to pay him off. If no one buys the property at the sale, it instead, "striking it off" in legal terms. Anytime thereafter, any citizen can walk into the treasurer's office and buy it from the county. That's called taking out an "assignment."

The property owner has three years and 60 days after the tax sale to redeem the property. If that isn't done, the speculator can claim the deed.

The assignee is required to send the letter of notice and run legal ads before claiming the property, but there's no guarantee that people like the Larsons or Luraskis will see either.

If the letter is returned and marked "unreceived," says a clerk in the treasurer's office, too bad.

"It's not the county's job to babysit the assignee or the property owner. The law only says you have to send the letter... the law doesn't say the property owner has to get it."

Luraski claims his letter was sent to his old address on Peosta, although he says he's been filing taxes from his valley address for the last seven years.

And the Larsons say their letter was sent to an address on Broadway, where they say they've never lived.

For that reason, the Larsons have hired a lawyer and plan to challenge Dillon's right to their land.

That might not be necessary, though, says their lawyer, Jim Rice.

With the volume of business most tax-deed speculators do, says Rice, it isn't worth it for them to go to court every time they're challenged.

And the speculators themselves would probably agree. Week-long efforts to contact Clifton Dillon either in Arizona or at his Kalispell home failed.

But another tax-deed speculator, Guy Maycumber of Kalispell, agrees that having to fight in court for someone's property can be tough. "It's not a very lucrative business... You're at the mercy of the judge."

Maycumber took out assignments on two dozen pieces of Lewis and Clark County property last year.

He says he's been at it about three years and was successful on his first try, when he obtained a piece of Jefferson County property.

Maycumber says he's acquired more than "a few" since then, but claims, "most of what I've picked up belonged to people who were dead or out of business."

Exhibit 7

HB 54

1/9/85

Rep. Manas

VISITOR'S REGISTER

HOUSE TAXATION COMMITTEE

BILL HB 54

DATE January 9, 1985

SPONSOR MARKS

[illegible]

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

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.