

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

March 8, 1985

The thirty-seventh meeting of the Taxation Committee was called to order in room 312-1 of the state capitol building by Chairman Devlin at 8:05 a.m.

ROLL CALL: All members were present except Rep. Bob Gilbert, excused, and Reps. Asay and Iverson. Also present were Dave Bohyer, Researcher for the Legislative Council, and Alice Omang, Secretary.

CONSIDERATION OF HOUSE BILL 925: Representative Hal Harper, District 44, said people need property tax relief as the burden falls more and more on the residential property owner. He said the property tax base in the past 10 to 12 years has been narrowed as 94 percent of the tax relief has gone to income producing property (commercial and industrial) and 5 percent has gone to residential. Rep. Harper mentioned that Robert Watt, former legislator from Missoula, has been working for years on a dream to eliminate property taxes on residential property and replace it with a small percentage flat tax on income. He said that tax died because it was too complicated. Rep. Harper said HB 925 would cost 4 and a half million dollars as it would be in effect only one year of the biennium. He said this bill would play off the existing elderly tax credit which accounts for 2 and a half million a year. Rep. Harper said this bill would extend that existing elderly tax credit to all residential property owners. He said statistics show that the share paid by the wealthiest 10 percent of the taxpayers have declined since 1956, while that share has increased for the lowest one-fifth of taxpayers, remained steady on the next lowest group, and rose slightly for everyone else except for the top 10 percent. He said the main question is why? Why are the people who are least able to afford the extra tax burden bearing the burdens? He said the bill addresses this.

PROPONENTS: Louise Kunz, Montana Low Income Coalition, gave testimony in support of the bill. See Exhibit 1.

Tom Ryan, Montana Senior Citizen Association, spoke about the erosion of the property tax base caused by actions of the Montana State Legislature, the federal government and the courts. He said the present state revenue predicament is caused from the legislature not distinguishing between income producing property (commercial and industrial) and residential property for taxation purposes. Due to this the courts have been used to grant property tax relief

to commercial and industrial properties. He said this has resulted in a revenue need, chiefly educational, being met by permissive and voted levies. He said because the legislature and the courts have favored revenue producing commercial and industrial property tax relief by such things as removing business inventory and exempting stocks and bonds from property taxation, the safety net for the necessary functions of state and local government has been the residential-dwelling property owners.

Eric Feaver, President of the Montana Education Association, said he was neither a proponent nor an opponent. He said the legislature will need to address the issue of property taxes in other than a piece-meal fashion. He said MEA recognizes the inequity of eliminating the business inventory tax and then charging farmers and ranchers for their livestock saying it is not business inventory. He said there is something wrong with the way we are doing business by hacking just little portions of the property tax and undermining the capacity of school districts to fund the operations they are mandated to do. Therefore, he said, this may be the direction to go as the property tax on residential property may be as regressive as the sales tax in some people's minds. He said the property tax cannot continue to be eroded beneath our feet and expect working and retired folks, trying to hold onto their homes, to continue to bear the burden.

Don Judge, Montana State AFL-CIO, also neither an opponent nor a proponent, urged the members to keep the bill in committee until such time as they knew what the overall revenue situation will be. He said the bill presents a fair idea and an idea whose time has come, but there will be a need to replace the revenue that will be lost by the bill.

There were no further proponents and no opponents.

QUESTIONS ON HOUSE BILL 925: Rep. Hart asked where the blame should be placed. He said he was aware that the Department of Revenue had settled out of court with Burlington Northern for some \$15 million. He said the 34% cases had been discussed, particularly in 1981. He mentioned also the oil windfall tax deductions of that year with no increase in taxes, although that had been discussed.

Greg Groepper, Revenue Department, said if there is blame it is probably with the grassroots US Congress. However, he said if something isn't done with one of the many versions of property classification restructuring before them this

session, than the blame might rest with the legislature in part. He said the 34% cases was a lousy administrative decision which occurred back in 1977/78 and they have been coming out from under that ever since. He said the Department of Revenue will take care of that in the next appraisal cycle. Mr. Groepper said the best way to introduce some property tax relief is to do it one session and act on it the next session, as then you will have some time to consider the ramifications of that action on all the rest of the taxpayers. He said where you don't give any reductions, exemptions, you will find the property tax base can be dynamic but when you start messing with it every session it loses any dynamics.

Rep. Raney asked how the money to replace this would be found. Rep. Harper responded that for this reason he would request that no action be taken on the bill or that it be tabled for the present as the state can't afford it. He said we don't want to balance the budget on the back of the foundation program or the medically needy. Rep. Harper said this bill or one like it will be back until the situation improves. But, he said, if the committee starts passing out tax relief, tax incentives, that will cost these residential property people more money, he'd be back before the full house asking for further action.

Rep. Patterson gave the following scenario: Husband, 50, wife, 45, combined income less than \$14,000, they live in a house trailer on a rented lot. How does this apply to their tax credit? Mr. Morrison, Revenue Department, said in that particular case you would figure the rental part going to the rental formula and the owned part going to the property tax formula and then both figures will be brought together. Rep. Patterson asked how much would this be. Mr. Morrison said it would depend on the property tax date on the trailer and the rent paid on the land. He said they would get the same benefits as if they owned the land and the trailer, they would not be excluded.

Rep. Patterson asked if they felt the fiscal note was on the high side. Mr. Morrison said it might be but it has the elderly tax credit sheltered in it. He felt it was in the ball park.

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CONSIDERATION OF HOUSE BILL 838: Representative Janet Moore, District 65, said this is a revenue enhancement bill. She said this bill is to equalize taxes on all tobacco products as up to now taxes on snus and pipe tobacco have been taxed only about half of what cigarettes are taxed. Fifty percent of the increased revenue will stay with the long-range building program, 25 percent will go to cities and towns for road improvement, and the other 25 percent will go to the school equalization program.

PROPOSERS: Eric Feaver, President of the Montana Education Association, said if we piecemeal away the property tax base perhaps it is appropriate to piecemeal in a sales tax and this is a good example of that. He said they think they should support it as it involves significant dollars for the foundation program - the fiscal note indicates \$872,000 for the biennium. He said chewers should pay as well as smokers.

Chip Erdmann, Montana School Boards Association, said they rise in support of the bill. He said the bill will provide needed funding by bringing other tobacco products up to a more equal level with the cigarette tax, and that is a reasonable approach.

Terry Minnow, Montana Federation of Teachers, said they rise in support of this bill. She said they feel this bill represents a fair way to raise some revenue for the funding of education.

Representative Ben Cohen said he would like to go on record as a proponent.

There were no further proponents.

OPPOSERS: Tom Maddox, Executive Director, Montana Association of Tobacco and Candy Distributors, gave testimony in opposition to HB 938. See Exhibit 2 and 2a.

Jerome Anderson, Tobacco Institute, spoke in opposition. He urged the members to read the pamphlet on excise taxes which he had handed out. See Exhibit 3.

There were no further opponents.

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QUESTIONS ON HOUSE BILL 838: Rep. Patterson asked if some of the money could be put into the county road funds rather than 50 percent to the long-range building fund. Rep. Moore said it's alright with her if it doesn't cause an earthquake.

Rep. Sands asked what the wholesale price of a package of cigarettes was. Rep. Moore said she understands that cigarettes are taxes on the retail level and the other tobacco products on the wholesale level.

Rep. Cohen said the states of New York and Michigan had taxed these products and then removed them. When did that occur. Mr. Maddox responded about 1969.

Rep. Cohen asked about the size of increased sales. Mr. Anderson indicated that the sales of these tobacco products have tripled in the past ten years - \$237,000+ in 1974 to \$692,000+ in 1984.

Rep. Cohen asked what part of the price of a can of pipe tobacco (about \$1.25 retail) is taxes. Mr. Anderson said tobacco products are taxed 12 1/2 percent of the wholesale price.

Rep. Williams said the comment was made that the repeal of these taxes in New York and Michigan was due to too high administrative costs. He asked is there any reason why administrative costs should go up if the tax is increased from 12 1/2 to 25 percent. Jim Madison, Department of Revenue, said he could see no reason why the administrative costs should increase substantially from what it is today.

Chairman Devlin asked if the Department of Revenue spent any money on collection enforcement. Mr. Madison said they have one auditor whose time is mainly spent on the tobacco and cigarette products. He said they have just reached a goal of conducting an audit of tobacco products wholesalers every six months which eliminates the need for keeping records for years.

Chairman Devlin asked Mr. Anderson to respond to the question on enforcement. Mr. Anderson said their main problem in Montana is the untaxed paid sales of tobacco products. He said 15 to 20 percent of the cigarette sales are made on an untaxed paid basis - on reservations or out of state. He said every time you raise the taxes that nontaxed paid sales involvement increases and you are taking business away from Montana businessmen.

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Chairman Devlin said you see printed advertisements for cigars that you can buy through the mail, but he had not seen any for cigarettes. How come? Mr. Madison said there are offers to buy cigarettes just like cigars through the mail but not as many due to the Jenkins Act, a federal act which applies federal penalties to people who sell through the mail and do not report such sales of cigarettes. Mr. Madison said in cases they become aware of they notify the federal attorney for Montana and the attorney usually gets the FBI to conduct an investigation.

Rep. Ellison asked what figures Rep. Moore had done in deciding to tax chewing tobacco similarly to cigarettes. Rep. Moore said cigarettes are now taxed 16 cents per pack which will go to 24 when either the federal or state government puts the additional tax on line; snus is taxed 11 cents a can - so the idea was to bring the other tobacco products up to the taxed level of cigarettes. She mentioned that according to her snus using friends they get more for their money with the snus as it has a higher level of nicotine.

Rep. Sands asked what our neighboring states do in this regard. Mr. Anderson responded that the excise taxes on non-cigarette tobacco in the following states were as follows: North Dakota - 1%; South Dakota and Wyoming - 0 percent; Idaho - 35%. It was mentioned that some of these states do charge a sales tax.

There were no further questions.

Rep. Moore said she felt this was a good revenue enhancement bill to help fund some of the very serious needs we have in the state.

The hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 869: Representative William Menahan, District 67, said the bill revises the income schedule for property tax reductions from \$10,000 to \$12,000 for people of 62 years of age or older, widows/widowers, dependent children and people on disabilities. He said these people haven't had an increase in this area since 1981 and inflationary factors have been involved.

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PROPOSERS: Greg Groepper, Administrator, Property Assistance Division, Department of Revenue, said they can support the bill but have a couple of suggestions. Class 12 property has the same benefit now as this Class 4 property and should be treated similarly. He said they were also included in the fiscal note. He said the effective date should be considered as the property tax laws are structured so that application to qualify your property must be made by March 1. Mr. Groepper said if Rep. Menahan wishes to qualify these people this year the department would need some temporary method of extending that deadline date - add "25 to 60 days after passage and approval" or something like that. He said he would work with the researcher to come up with the language.

There were no further proposers.

OPPOSERS: There were none.

QUESTIONS ON HOUSE BILL 869: Representative Hanson asked if on page 2, line 9, do we need to correct this to jibe with 10 and 12 on page 3. Rep. Menahan said yes.

There were no further questions.

Rep. Menahan said this bill is for the needy and not the greedy.

Chairman Devlin asked Rep. Menahan to get together with the department and the researcher to work out the needed amendments.

#### EXECUTIVE SESSION:

DISPOSITION OF HOUSE BILL 833: Representative Raney moved that the bill DO PASS.

Rep. Sands said he didn't think this was the right way to fund education.

Rep. Zabrocki moved a substitute motion to TABLE the bill.

Motion carried with Reps. Keenan, Raney, Patterson voting no.

DISPOSITION OF HOUSE BILL 851: Representative Williams moved DO PASS. He presented the following amendments: "Page 1, line 6, following "USED" insert "EXCLUSIVELY"; page 1, line 6, following "DISTRICT" insert "CHURCHES"; page 3, line 23, following "owned" strike "and used"; following "district" insert "church". He said these amendments are to replace those suggested by Rep. Pistoria. He said they are simpler and do the same thing. Representative Williams moved the amendments.

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Rep. Cohen asked if these amendments would take care of Gene Phillips concerns at Kalispell. Rep. Williams said the amendment will say that to get the exemption it must be used exclusively for educational purposes.

Chairman Devlin asked the permission of the committee to ask Greg Groepper, Department of Revenue, to explain how the variance enters in with profit and nonprofit educational properties. Permission was granted.

Greg Groepper said under the real property exemptions only schools and churches would get it if property was used for educational purposes. He said he had been unable to get hold of the person in the department who worked with the personal property exemption but Mr. Groepper was of the opinion that organizations like girl scouts, boy scouts, etc., would come under public charity and so be exempted.

Chairman Devlin asked about the fiscal note. Rep. Williams said there would be no change.

Mr. Groepper said what Rep. Williams is doing is including church owned vehicles. He said he didn't feel this would cause a problem with other organization vehicles as they would be covered under another section of law since they are charitable in nature.

Rep. Abrams asked just what this would do to the private bus lines who testified if they don't get the exemption the schools would have to pay more. The answer was given that there is no way to prove that the school gets the benefit of this tax exemption. That if they get a tax reduction it has to be made up by property taxes paid. Rep. Williams said some bus contracts include a clause that if extra costs come up they would have to be added to the payment for the bus. Rep. Patterson mentioned some private school bus operators who use their buses for other commercial uses like transporting other groups (and charge them commercial rates) when not on their school routes. Rep. Ellison pointed out this could effect both their insurance and legal status. Rep. Williams pointed out that they are in the business to make a profit but as such they should pay taxes like everybody else.

Rep. Sands said he preferred Rep. Pistoria's version of the amendments better than Rep. Williams. He said this is a narrowly defined problem which is the school buses, and Rep. Pistoria's amendments are tailored to that problem. He felt Rep. William's amendments might be excluding some legitimate non-profit educational function from this exemption. He said

Pistoria's amendments make the distinction based on whether or not the property is privately owned and operated for a profit and he felt this was the appropriate way to do it. He said as he understood Rep. Williams' amendments you would provide the tax exemption only to school districts, churches and private schools. Rep. Sands said the Dept. of Revenue felt the other organizations were covered, but didn't know for sure. He said since we specifically have the vehicle problem we better deal with it.

Rep. Williams said his amendment was offered by the churches and the reason he went that route was that the Revenue Department felt there was no problem for the other organizations as they would come under the "charitable" category. He felt his amendments made it a cleaner bill.

Rep. Raney said his main concern was the huge church in Park County. He felt this would be a wide open interpretation that would include these people. He said basically their whole church is for education. He warned that this might be their county's problem now but could soon be a problem for other counties also.

Rep. Williams said this problem had been discussed by the Revenue Oversight Committee. He asked permission of the committee to have Mr. Groepper speak on how the department is handling this now. Rep. Williams felt putting in the word "exclusively" gave the department grounds to work on.

Permission was granted for Mr. Groepper to speak. Mr. Groepper said the law is very open for educational use and if used exclusively for educational purposes no matter what the property, it qualifies. He said they don't solicit exemptions but when people make applications for exemptions they rule on them. He said Rep. Pistoria shut the door to include only the schools and then opened it up again to include public and private schools. Mr. Groepper said then the Council of Churches came forward and said they were concerned that they would lose their exemptions for school buses used for legitimate church purposes. He said that is the spirit in which they discussed the amendments of Rep. Williams which opens it to churches. He said the way he reads the bill the property would have to be used exclusively for educational purposes. Mr. Groepper said as the law stands right now they can qualify if they were using the property exclusively for educational purposes. This would put it in the ownership of the church or school and would have to pass the use test. He said he didn't know if the amendments address that problem. The church right now is the church building, the parsonage, and a reasonable bit of ground on the real property for religious purposes,

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then they would have to meet the educational test on any other property. Again, he said he didn't know if this would be addressed. But, he said, whatever you do with or without the amendments they will still be able to loosely interpret the laws. It would take a different statute to address that on educational purposes. If you want to limit the amount of property tax exemption in that particular situation, than I would think you are talking about other limitations - education, property value, etc.

Question was called on the Williams amendments. There was one additional amendment included: page 1, line 5, following "USED" insert "EXCLUSIVELY". The motion carried with the following voting no: Devlin, Hanson, Cohen, Harp, Sand, Switzer,

Chairman Devlin asked for a roll call vote on the DO PASS AS AMENDED motion. The motion carried with 10 voting yes and 8 no (Devlin, Abrams, Cohen, Hanson, Harp, Keenan, Sands, Switzer).

CONSIDERATION OF HOUSE BILL 925: Rep. Harp moved that this bill be TABLED. Motion carried with Reps. Patterson, Raney, Cohen, Keenan and Koehnke voting no.

CONSIDERATION OF HOUSE BILL 838: Rep. Patterson moved to amend on page 2, line 24, instead of having the revenue go to the school fund have it earmarked for counties to be deposited in the county road fund; and on page 3, lines 1 and 2, instead of having the money go to the county treasurer have it go to the cities and towns for construction, maintenance and repair of streets. Rep. Patterson replied to a question that they had to keep the long-range part in to make it work otherwise it would mess up the bonds that are already sold.

Rep. Harp objected as he felt the main need is to find money for the school foundation.

Rep. Williams also objected to removing the revenue from the equalization fund.

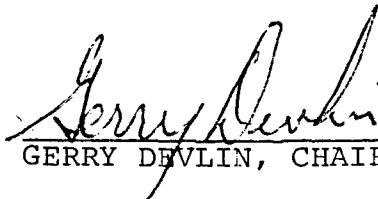
Rep. Patterson withdrew his amendments.

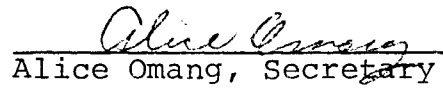
Rep. Ellison moved to amend on page 2, line 7, by striking 25 and inserting "17 1/2". The motion failed with Reps. Hanson and Ellison voting yes.

Rep. Harp moved to pass consideration for the day so more information can be gathered. This motion carried with Reps. Koehnke, Cohen, Keenan, Williams and Raney voting no.

ADJOURNMENT: There being no further business, the meeting adjourned at 10:42 a.m.

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GERRY DEVLIN, CHAIRMAN

  
\_\_\_\_\_  
Alice Omang, Secretary

## DAILY ROLL CALL

HOUSE TAXATION

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/8/85

NAME	PRESENT	ABSENT	EXCUSED
DEVLIN, GERRY, Chrm.	X		
WILLIAMS, MEL, V. Chrm.	X		
<del>A</del> ABRAMS, HUGH	X		
<del>A</del> ASAY, TOM		X	
<del>A</del> COHEN, BEN	X		
ELLISON, ORVAL	X		
<del>A</del> GILBERT, BOB <i>21</i>			X
HANSON, MARIAN	X		
HARRINGTON, DAN	X		
HARP, JOHN	X		
<del>A</del> IVERSON, DENNIS		X	
<del>A</del> 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

Page 1 of 2.

.....March 8,..... 19 85.....

MR. ....SPEAKER:.....

We, your committee on .....TAXATION.....

having had under consideration .....HOUSE..... Bill No. 851.....

first reading copy ( white )  
color

AN ACT TO CLARIFY THAT PROPERTY USED FOR EDUCATIONAL PURPOSES IS  
EXEMPT FROM PROPERTY TAXATION ONLY IF OWNED BY THE SCHOOL DISTRICT  
OR PRIVATE SCHOOL USING IT;

Respectfully report as follows: That.....HOUSE..... Bill No. 851.....

Be amended as follows:

1. Title, line 5.  
Following: "USED"  
Insert: "EXCLUSIVELY"

2. Title, line 6.  
Following: "DISTRICT"  
Insert: ", CHURCHES,"

3. Page 3, line 23.  
Following: "owned"  
Strike: "and used"  
Following: "district"  
Insert: ", church,"

XXXXXX  
DO PASS

.....March 2,..... 19 55.....

4. Page 3, line 24.  
Following: "school?  
Insert: "and used exclusively"

AND AS AMENDED,  
DO PASS.

# ROLL CALL VOTE

HOUSE COMMITTEE TAXATION

DATE 3-8-85 AB BILL NO. 851 TIME \_\_\_\_\_

NAME	AYE	NAY
DEVLIN, GERRY, Chrm.	✓	✓
WILLIAMS, MEL, V.Chrm.	✓	
ABRAMS, HUGH		✓
ASAY, TOM	—	—
COHEN, BEN		✓
ELLISON, ORVAL	✓	
GILBERT, BOB	✓	
HANSON, MARIAN		✓
HARRINGTON, DAN	✓	
HARP, JOHN		✓
IVERSON, DENNIS	—	—
KEENAN, NANCY		✓
KOEHNKE, FRANCIS	✓	
PATTERSON, JOHN	✓	
RANEY, BOB	✓	
REAM, BOB	✓	
SANDS, JACK		✓
SCHYE, TED	✓	
SWITZER, DEAN		✓
ZABROCKI, CARL	✓	
	10	8

Secretary Alice Omang

Chairman Gerry Devlin

Motion: Do Pass As Amended

Exhibit 1  
HB 935  
3/8/85

WITNESS STATEMENT

NAME Louise Kunz BILL NO. HB 935  
ADDRESS 107 LAURENCE DATE 3/8  
WHOM DO YOU REPRESENT? MT Low Income Coalition  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We support HB 935. Property taxes have  
been decreased unfairly, with low income people  
suffering the most severely.

We agree that this is a poor time to be asking  
for tax relief, especially when we are opposing  
other bills that give corporate tax relief, so I  
propose that if not one dollar of tax relief  
for corporations is voted this session then ignore this  
bill. But if we give even one cent to those  
who have the hard better, pass this bill  
and give some income incentives to our low  
income people who are suffering.

Re: HB 838 - 100% increase in tax on smokeless tobacco and cigars, by Tom Maddox, executive director, Montana Association of Tobacco and Candy Distributors, Helena MT

Exh. 61 + 2  
HB 838  
3/8/85

Notes in opposition:

Montana HB838 should be killed. No 100% tax increase can be justified on this special sales tax on smokeless tobacco and cigars. The present tax is not being adequately enforced and until it is enforced — or unless it is enforced -- the tax should be repealed. The inability to enforce this special sales tax against out of state suppliers, combined with strict enforcement of Montana distributors, has combined to impose substantial injury to legitimate Montana businesses. For the state government, this tax fails to meet the cost—benefit test!

New York state enacted a 15% tax on cigar and other smokeless tobaccos. Two years later it was repealed.

Michigan enacted a 20% tax on tobacco other than cigarettes. One year and a half later this was repealed. In all 10 states have repealed noncigarette tobacco tax as not worth the cost of enforcement or admitting inability to enforce it, and due to popular demand. A study showed that in the short time these taxes were imposed, retailers in these states suffered substantial losses. Sales were reduced in New York by 25%, and in Michigan 19%.

Such reductions in any state's sales are not wholly due to users deciding to quit use. The nature of noncigarette tobacco is that there are sources other than within the state.

The higher the tax, the greater targets such states become for mail order cigar business. State cigar taxes are easily evaded by vacationers, day to day business travelers and Montanans on our borders. Wyoming and South Dakota have no tax on noncigarette tobacco. I regularly receive mail order forms from New York and other east coast states. Twice we pressed the federal attorney general's office for action. In one instance we were informed by the FBI that the east coast mail order business had been charged and convicted. However, that same business was soon in the mail order business again, and to my knowledge may still be.

Instead of proposing higher taxes, the state administration should be enforcing the laws and regulations on smokeless tobacco we already have on the books. Our licensed Montana distributors of smokeless tobacco inform us that eastern and western Montana retail stores are selling smokeless tobacco which they obtain from sources in neighboring states at wholesale prices which are about 12 per cent under the basic cost of the same product the Montana wholesaler offers. In other words, legitimate Montana distributors have to add 12 per cent state tax to their products, and they have lost business, and are continuing to lose business on this account.

Their complains have been made to state tax employees who regularly police or audit the books and tax records of all Montana tobacco distributors. We would like to have visible evidence that smokeless tobacco products sold in Montana do include the Montana state tax that is already on the books.

No one knows how much revenue on out of state smokeless tobacco is being lost in Montana because of this problem.

The Montana Association of Tobacco and Candy Distributors propose that if there is to be any legislation on noncigarette tobacco products that present laws and regulations be enforced.

For the people — those who enjoy smokeless tobacco and cigars, this tax is the worst of all the sales taxes. It is an ad valorem tax —hidden in the cost at retail. As tax costs go up, consumers complain against the industry and their local business people — without being aware that their legislators have imposed yet another special tax.

Amend HB838 to provide for enforcement, or kill it—that's our recommendation and respectful request.

(NOTE: )  
(Due to the complexity of the overall tobacco tax matters )  
(and with all kinds of legislation coming this session, )  
(for those interested in a more in-depth treatment of )  
(the subject, additional materials and statistics are )  
(attached for your future reference. )

Thank you, for your consideration.

Montana Association of Tobacco and Candy Distributors, a non profit organization  
Tom Maddox, executive director, P. O. Box 123, Helena MT 59624 (406) 442-1582

HELENA MT — Did you hear the one about the cigarette smoker who suffered a nightmare? Well, he went to his neighborhood store and asked for a carton of his latest favorite cigarettes. The clerk said, "That's \$6.21 for the cigarettes, sir, and, um-m-m, let's see, and another \$7.08 for the state-federal sales taxes." The smoker cried, "Oh, no, Can't be." The clerk was firm, "Yes, it is—tax to help reduce the federal debt; tax to balance Montana's state budget; tax to aid public schools, and for the teachers' pensions, tax to service the debt on state buildings, and there's more tax on smokeless tobacco to fix our city streets. ..."

The smoker groans, opens the carton and extracts a cigarette.

"Oh, sir. You can't smoke here," the clerk admonishes. "The legislature has outlawed smoking in public places."

Shocked, the smokeless smoker awakes at 4 a. m., to the sounds of his own screaming. Finally, he dozes off again, until the sound of his telephone ringing brings him to wakefulness. "Hello," he answers.

"Good morning, sir," the caller says. "I'm calling to invite you to attend our new state-sponsored clinic on how to stop smoking. It doesn't cost you anything. The smokers' tax pays for it."

Does all that sound a little wierd to you? If it does, then you're not aware of what all is being proposed to those legislators we elected to congress and to the legislature in Helena.

The \$7.08 state-federal tax on a carton of cigarettes is the total tax being proposed in the smoker's worst real life scenario. At the federal level, a \$4 a carton federal tax is proposed; another proposal is for a mere 100 per cent increase from today's \$1.60 U. S. tax a carton. Then at least five bills in the

Based on the latest minimum costs computed by the Montana Department of Revenue, regular and king size cigarettes among major brands cost \$9.12 a carton. Of this Montana smokers today pay 35.1 per cent of this cost in state-federal tax on the sale.

Congress increased the federal tax 100 per cent in 1983 to \$1.60 a carton. Then the Montana legislature increased the state sales tax 33 per cent to \$1.60, to make the total carton tax \$3.20. (The carton size is used here because the state department calculates tax units on a carton basis. The Tobacco Institute reports about half of cigarette sales are by the carton of 10 packs of cigarettes.)

Governor Ted Schwinden has asked for the state tax to be increased 100 per cent within two years, to \$2.40 a carton in HB45. His bill beat another bill to the Legislative Council (HB120), which also asks for \$2.40 state tax a carton, for research into certain diseases. Senate Bill 442 states that even if HB45 is enacted, another 50 cents a carton is wanted, to help fund teachers' pensions. Whatever tax prevails, HB833 wants a cut of one per cent to fund educational programs on how to stop smoking, to be supervised by the state superintendent of public instruction.

State law defines a pack of cigarettes as containing 20 cigarettes. Now major manufacturers have produced a pack containing 25 cigarettes. So this has generated SB249 to tax each cigarette in excess of 20 in a pack at the rate of 1/20th of the base 20-pack tax. Thus, if the state tax is \$2.90 a carton of 20, the state tax would be \$3.04-1/2 for a pack of 25.

Montana started taxing cigarettes in 1957, and has increased the tax 700 per cent since then — before the 1985 proposals. Our record keepers report that cigarette smokers have paid the state in taxes \$256 million through 1984.

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Smoker for smoker, they made their finest contribution to build state buildings in fiscal 1982. By then the state-federal tax rates had prevailed for several years, at \$2 a carton (\$1.20 for the state, 80¢ for the federal tax). They paid tax of \$11,649,438.

Some might think if the government doubled such tax, it would double revenue, say to more than \$23 million for the next fiscal year. Budget Director David Hunter's fiscal note on HB45 tells the legislature he expects doubling from 1982 should gross the state only about \$20 million. What happens to the missing \$3 million?

The Tobacco Institute of Washington, D. C., supports calculations showing a "loss" would ensue. Not only in tax, but the TI declares there would be further losses in businesses.

The institute adds:

"For Montana, a specific state econometric demand model indicates a possible sales decline of 3.76 per cent for every 8 per cent increase in the tax rate. Therefore, it could be expected that an addition of an eight cent excise tax increase to the current average retail price will lead to a decline in legitimate fiscal year '86 cigarette sales in Montana of about 3.41 million packs.

"This decline would probably consist of an actual cutback, combined with increased illegal purchases and interstate smuggling. As a result, legitimate wholesalers and retailers would experience significant revenue losses."

The Montana Association of Tobacco and Candy Distributors states that, "As sales of state-taxed cigarettes decline, there has been a substantial increase in cigarette purchases without the state tax from Indian reservation-based retail outlets, called 'smokeshops', on heavily trafficked highways. The Department of Revenue reports millions of dollars in losses, and rapidly escalating with the latest state cigarette tax increase."

The institute report goes on, "In other states where high cigarette taxes exist, the criminal element has become involved. If Montana were to raise its tax on cigarettes, the bootlegging problem will grow in proportion to the tax increase."

There is a statistical indicator to trends in purchases of cigarettes from legitimate or state-taxed cigarettes to purchases from stores which do not pay state taxes. A markedly lower per capita consumption is reflected in states with growing federal reservation sales, or with substantial smuggling from other states by individuals or organized crime. On the other hand, states with substantial cigarette sales for out-of-state consumption exhibit relatively higher per capita consumption figures.

A new Tobacco Institute report states, "Data for 1984 show that overall per capita consumption in Montana was 96.9 packs. The U. S. unweighted average per capita was 122.7 packs.

"Montana now is at a 4 cents a pack tax disadvantage with three or four surrounding states. Montana also recorded a per capita sales disadvantage with all four of its neighboring states. This comparison implies some potential smuggling of cigarettes into Montana from states with lower tax rates."

The institute reports that cigarette taxes provided 2.5 per cent of the state's 1983 total tax revenue and an impressive 12.2 per cent of the state's total sales and gross receipts tax revenue. Cigarette taxes generate more revenue for Montana than taxes on beer, liquor or wine, or utilities. It credits this data to the U. S. Bureau of the Census and the Montana Department of Revenue.

The nonprofit TI sees a direct impact on the state's economy. TI explains:

"Higher cigarette taxes affect revenue and work weeks in private sectors, both directly and indirectly involved in the tobacco industry within Montana. Most of these effects will be in the form of revenue losses to wholesalers and retailers.

"Higher cigarette taxes and the resulting decline in the purchase of tax-paid cigarettes will also reduce state revenue from other sources, such as corporate income tax, and individual income tax. For example, cigarettes are a traffic-builder for the state's thousands of retail establishments which sell cigarettes. When people reduce purchase of cigarettes, or turn to bootlegged cigarettes, the revenue derived from the sales and profits of other products suffers as in-store traffic declines."

The Tobacco Institute contends, "The Montana cigarette tax is already a regressive and inequitable tax. The cigarette tax discriminates against the estimated 200,000 residents of the state who smoke, but the tax falls most heavily on those least able to afford it.

"Because the percentage of income devoted to buying cigarettes falls as income rises, Montana cigarette taxes are already levied at higher effective rates on the disadvantaged and those on fixed incomes than on the more affluent. Any increase in the current tax rate will add to the tax burden on lower income groups and will contribute further to the overall regressivity of the state tax structure. An increase of 8 cents a pack would mean a 100 per cent increase in the tax in two years. . . .

"More than 21 per cent of Montana families have an effective buying income of less than \$10,000 a year. All told, nearly 36 per cent have incomes less than \$15,000. It is these families who will suffer most from the increase.

A family with an income below the poverty level with two average smokers pays almost five times as much of its income for the pleasure of smoking as does the more affluent family making \$25,000 a year .

“In addition, about 11 per cent of Montana residents are aged 65 or older. For these plus-65 persons, many of whom are living on a fixed income, any increase in the cigarette tax rate could threaten this affordable pleasure. A household in Montana with two average smokers pays \$350 in state-federal taxes on cigarettes a year. If the state were to increase its tax another 8 cents — a 50 per cent increase, that tax figure would soar to \$438 annually.”

Some smokers may quit cigarettes, and turn to smokeless tobacco.

Some legislators have already thought of this. HB838 would increase the state tax on smokeless tobacco 100 per cent. This is earmarked: 25 per cent to build and repair city streets, 25 per cent for state aid to schools, and 50 per cent to be added to the service cost of bonded debt on construction of state building.

Finally, there's HB183 which would bar smoking in public places or provide a mandatory nonsmoking area. This squeaked through the House, 52 - 48, and now is in the Senate.

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The foregoing is submitted by Tom Maddox, former Associated Press bureau chief for Montana, and now executive director for the Montana Association of Tobacco and Candy Distributors, a nonprofit group of local independent, service wholesale distributors; P. O. Box 123, Helena MT 59624. Telephone (406) 442-1582.

*Let's set the record straight...*

# There is no tobacco subsidy!

One of the most misunderstood facets of tobacco is the government price support program, sometimes incorrectly called "the tobacco subsidy." Critics denounce a bureaucracy which—they say—gives money to farmers to grow the leaf while it discourages tobacco smoking. In fact there is *no* tobacco subsidy. There never was. So how could the government's farm and anti-smoking programs conflict?

There is a government *price support and production control* program that guarantees farmers a minimum price for their tobacco in return for strict limits on production, much as similar programs do for corn, rice, peanuts and cotton—13 different commodities altogether.

## How price support works

The money isn't a gift. It's a government-backed loan, to be paid back just like the loans the government makes to small businessmen, students, home buyers.

All tobacco types are eligible for price support. The program is voluntary, with growers of each type being given the choice, via referendums every three years, to participate. Most elect to be bound by price support guidelines.

To participate, tobacco growers agree to strict acreage and poundage allotments set annually by the U.S. Department of Agriculture. Total allotments, the "national marketing quota," equal the amount USDA estimates is necessary to meet the needs of the domestic tobacco industry and foreign buyers.

Price supports do more than control quantity. They establish a minimum price for tobacco sold at auction. This minimum price is especially important to the tens of thousands of farm families who grow tobacco on acreage so small that no other crop grown there could support a family.

Most U.S. tobacco is sold at warehouse auction after grading by U.S. standards according to type and quality. The grade determines the per-pound support price.

If a grower's tobacco fails to bring an auction bid of at least one cent per pound above the support price, and if

the grower meets USDA requirements, he is eligible for a government-backed loan based on the support price. The tobacco is taken as loan collateral by a cooperative owned and operated by growers. It's then processed and stored for future sale.

## What it costs

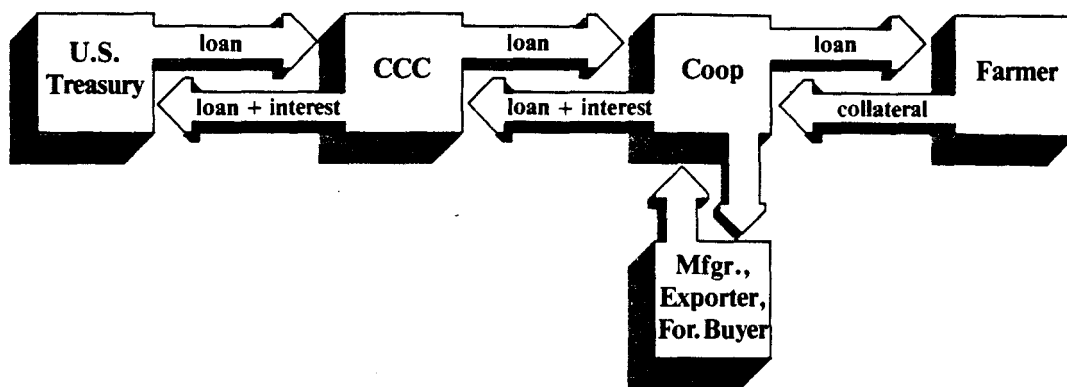
Among the most imperishable of crops, tobacco can be stored for several years before being sold in a more favorable market. It may take several years to dispose of the loan collateral leaf from a single marketing year. But when the cooperative sells the tobacco, each loan is repaid *with interest*.

Until recently, on the rare occasions that sale proceeds did not cover a loan, the unpaid balance was written off as a federal program cost. Since 1982, however, each participating tobacco grower has contributed to a fund held by his cooperative to ensure repayment of loans and interest.

In past years when proceeds from loan tobacco exceeded the cost of the



## Tobacco loans are repaid with interest...



loan, interest and storage charges, profits were distributed to growers. Now they, too, go into the repayment fund.

Permanent government efforts to stabilize sectors of the national economy, including agriculture, began in the depression of the 1930s. The 1932 tobacco crop had sold for only nine cents a pound. Many farmers, unable to sell their leaf at all, were using it as fuel.

Price stabilization and production control were—and are—designed to ensure the farmer a reasonable return for his considerable investment.

### A no net cost program

The Commodity Credit Corporation administers commodity stabilization programs for USDA and, as with all the other commodities, has in the past incurred some expenses in the tobacco program. For example, changes in prevailing interest rates occasionally caused gaps between the rate set by CCC at the start of the year and the rate at which CCC borrowed from the Treasury for producer association loans later in the year. Variable rate loans, begun in 1981, now minimize this gap.

USDA also has administrative costs of \$15-18 million annually—for the agents who track allotments, marketing and other tobacco program operations. They would be incurred anyway because the agents work with other crops, too, and bookkeeping separation is not feasible.

Today, CCC books show a \$58 million net loss on tobacco loans over

half a century—the result of only two or three “bad” years. This is less than *one-tenth of one percent* of all losses for all commodity price support programs. By comparison, the corn and wheat price support programs each show a *\$3 billion-plus* loss and cotton more than *\$2 billion*.

### There is no tobacco subsidy

In the 50 year span during which the tobacco program ran this relatively modest loss, purchasers of tobacco products paid federal, state and local treasuries more than *\$142 billion* in excise taxes.

So there is *no* tobacco subsidy.

Still, critics argue the program makes tobacco products more readily available. Untrue.

The program is intended to, and does, keep tobacco leaf prices *higher* than they would be without it.

The program is intended to, and does, keep domestic tobacco supplies *lower* than they would be without it.

Without the program, many more acres would be devoted to tobacco. Overplanting would bring a larger tobacco supply and lower prices for the farmers, who could then lose their land and other capital. Such widespread financial and commercial disruptions would create regional recessions with national repercussions.

### Encourages smoking?

Does the price support program encourage starting or continuing to smoke? Just what are government health and regulatory officials saying about that question?

Everett Koop, the surgeon general, told a 1982 news conference that federal health authorities consider price supports to be an agricultural and economic matter, “not an issue concerning public health. It’s hard to see how a subsidy by the government encourages young people to start smoking or keeps people who are smoking continuing,” he said.

Dr. Koop gave the program the wrong name in calling it a subsidy. But he gave an accurate assessment of its effects.

A Federal Trade Commission member and longtime foe of smoking, Michael Pertschuk, told it like it is at a session of the 1983 World Conference on Smoking and Health. The support system, he said, “*restricts* the production of tobacco as part of a program for keeping the price of tobacco and hence the income of tobacco farmers up.”

Without the program, Pertschuk said, there would be “a return to the conditions which spawned the program in the great depression.”

He’s right.

For further information on this and other tobacco-related issues write or call The Tobacco Institute.



The Tobacco Institute  
1875 I Street Northwest  
Washington, DC 20006  
(202) 457-4800

February 1984

1016.4

Montana Association of  
TOBACCO AND CANDY DISTRIBUTORS  
P O BOX 123  
HELENA MT 59624-0123

*Add to committee's file*

Exhibit 2a  
HB 838  
3/8/85  
Tom Maddox

RULES AND REGULATIONS REGARDING TAX IMPOSED ON  
TOBACCO PRODUCTS, OTHER THAN CIGARETTES  
(Chapter No. Ex 12, Session Laws 1969)

In accordance with the authority granted by Chapter No. Ex 12, Session Laws 1969, the Montana State Board of Equalization hereby adopts and promulgates the following rules and regulations for the administration of a tax on the sale of all tobacco products, not including cigarettes. This tax is effective on and after July 1, 1969.

*These rules are not being enforced!*

1. There is imposed upon tobacco products, other than cigarettes, sold or possessed in this State a tax of twelve and one-half percent of the wholesale price of such products to the wholesaler. The wholesaler shall remit the tax of twelve and one-half percent of the wholesale price paid for such products purchased and delivered from manufacturers, less five percent of the computed tax for collection, together with copies of the itemized invoices and Form No. TP-101, Tobacco Products Tax Reporting Form. Such remittance shall be made to the State Board of Equalization by the 10th of each month covering purchases of tobacco products, other than cigarettes, made during the previous month. Forms will be supplied by the Board of Equalization upon request.

*Upon 8 ways separately in 10 days or not checked*

2. In order to comply with Section 1 of these rules and regulations, the wholesaler must procure from manufacturers itemized invoices of all tobacco products, other than cigarettes, purchased from and delivered by the manufacturer. The wholesaler must obtain from the manufacturer separate invoices for tobacco products purchases and cigarette purchases. The invoices shall show the name and address of the manufacturer and the date of purchase.

3. Every wholesaler shall keep at its place of business complete and accurate records for that place of business including legible copies of all invoices for tobacco products, other than cigarettes, held, purchased and delivered, or sold in this State by the wholesaler. All records must be preserved for a period of three years from the date of purchase or from the date of last entry in the records.

*total, or not enough*

4. Every retailer shall keep at its place of business complete and accurate records for that place of business including legible copies of all itemized invoices of purchases of tobacco products, other than cigarettes, purchased and delivered from all wholesalers. The invoices shall show the name and address of the wholesaler and the date of purchase. All records must be preserved for a period of three years from the date of purchase or from the date of last entry in the records.

5. All records, invoices and other papers (or acceptable reproductions) required to be kept by Sections 3 and 4 of these regulations must be preserved for the stated period of time unless the Board authorizes their destruction or disposal after audit by formal written approval.

6. At any time during usual business hours the Board or its duly authorized agents may enter any place of business of a wholesaler or retailer to inspect the premises, examine the records required to be kept under these regulations and examine the tobacco products contained therein, to determine whether or not all of the provisions of this act are being fully complied with.

7. Any person selling tobacco products, other than cigarettes, at retail shall display in the premises where such products are sold a notice of the tax included in the selling price. A sample format is attached as an appendix to these rules and regulations.

8. Credits of the twelve and one-half percent tobacco products tax, less the five percent collection expense discount, shall be granted in accordance with the provisions of Section 84-726, R.C.M. 1947, in cases where the tobacco products purchased and delivered become unsalable. A manufacturer's credit memo will be required for proof of returned merchandise. Credits will also be granted for tobacco products shipped from Montana and destined for retail sale and consumption outside the State of Montana. Duplicates or copies of the original sales slips or invoices will be required for proof of sales to out-of-state retailers. Credits must be claimed by filing Form No. TP-102, Claim For Credit on Tobacco Products Tax. Forms will be supplied by the Board of Equalization upon request.

9. Any person aggrieved by any action of the Board or its duly authorized agents in regard to the tobacco products tax may apply to the Board in writing for a hearing thereon within thirty days after such action by the Board or its authorized agents. The Board shall promptly consider such application, set same for hearing and notify the applicant of the time and place set for such hearing. After such hearing the Board will issue an order in the matter and furnish a copy of such order to the appellant.

10. Any wholesaler who shall sell any tobacco products, other than cigarettes, without first making payment of the tax as provided for by these regulations, shall be guilty of a misdemeanor and further shall be enjoined by an action pursued in the District Court of the County of Lewis and Clark, Montana from making further sale of tobacco products, other than cigarettes, for a period of not less than one month nor more than one year.

11. It is unlawful for any person, individual, firm or corporation to sell or offer to sell any tobacco products, other than cigarettes, subject to the tax without the tax having been prepaid as provided for by these regulations. Violation shall constitute a misdemeanor, punishable by a fine of not more than \$500 or imprisonment for not more than six months.

12. The Board may in its discretion require that wholesalers be bonded under the provisions of these regulations.

*Not done  
Show error  
(if distributed)  
(at no cost  
to retailers)*

*"fines?"*

*No one  
has ever  
been  
fined  
or imprisoned*

13. Rules and regulations shall be of public record, and the Board shall furnish a copy of said rules and regulations to each wholesaler or retailer upon request.

14. All invoices or sales slips issued by wholesalers covering sales to retailers of all tobacco products, other than cigarettes, must itemize the twelve and one-half percent tax as a separate item from charges for merchandise.

15. The tax of twelve and one-half percent on all tobacco products, other than cigarettes, is effective on and after July 1, 1969. In order to comply with the provisions of the Act, all wholesalers must take a physical inventory of all tobacco products, other than cigarettes, on July 1, 1969. Such inventory must be recorded in duplicate itemizing all separate types of tobacco products, other than cigarettes. The completed inventory must be priced to reflect the cost of the items to the wholesaler. Form No. TP-101 can then be prepared listing "Inventory - July 1, 1969" under manufacturer column with the total cost of the inventory entered in amount column. One copy of the inventory must accompany Form No. TP-101 along with the tax found to be due. The duplicate copies of the inventory together with the duplicate copy of Form No. TP-101 will be maintained in the wholesaler's records as provided in Section 3 of these regulations.

16. All out-of-state wholesalers meeting the conditions of "transacting business in this state" as provided in Section 15-2299, R.C.M. 1947, and all out-of-state wholesalers doing intra-state business within Montana, are subject to all of the provisions of the Act and these regulations as Montana wholesalers.

17. Any individual, firm, fiduciary, partnership, corporation, trust, organization or association, however formed, who is engaged in the business of selling tobacco products to the ultimate consumer and who purchases tobacco products, other than cigarettes, on which the twelve and one-half percent tobacco products tax has not been precollected and paid to the Board of Equalization must comply with all the provisions of the Act and these regulations to prepay the tax before offering to sell such tobacco products. A retailer must assume that the twelve and one-half percent tobacco products tax has not been precollected and paid to the Board of Equalization in the absence of a separate charge for the tax on his invoice or sales slip for tobacco products.

*not done by out state suppliers*

APPENDIX TO "RULES AND REGULATIONS REGARDING TAX IM-  
POSED ON TOBACCO PRODUCTS, OTHER THAN CIGARETTES" --  
SAMPLE NOTICE FORMAT

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NOTICE

NOTICE is hereby given that a Montana tax of 12-1/2% of the wholesale price of tobacco products, other than cigarettes, to the wholesaler is included in the price of all tobacco products, other than cigarettes, sold in this store.

NOTICE is further given that a Montana tax of 8¢ per package of cigarettes is included in the price of all cigarettes sold in this store.

EXCISE  
TAXES:

THE  
FAIRNESS  
ISSUE

## TAXATION

BILL NO. HOUSE BILL 838

SPONSOR REPRESENTATIVE JANET MOORE

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

CS-33

ALICE

WITNESS STATEMENT

NAME TOM MADDOX House BILL NO. 838  
ADDRESS P.O. Box 123  
HELENA MT 59624 DATE 3/8/85  
WHOM DO YOU REPRESENT? MT. ASSN. of TOBACCO AND CANDY DISTRIBUTORS  
SUPPORT \_\_\_\_\_ OPPOSE ✓ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

## VISITORS' REGISTER

## TAXATION

COMMITTEE

BILL NO. HOUSE BILL 925

DATE March 8, 1985

SPONSOR REPRESENTATIVE HARPER

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

TAXATION

COMMITTEE

BILL NO. HOUSE BILL 869DATE March 8, 1985SPONSOR REPRESENTATIVE MENAHAN

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.