

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

January 29, 1985

The sixteenth meeting of the Taxation Committee was called to order by Chairman Thomas E. Towe at 8:06 am in Room 415 of the Capitol Building.

ROLL CALL: Senator Mazurek was excused. All other members were present.

CONSIDERATION OF HB 28: Representative Mel Williams, House District 85, was recognized as chief sponsor of the bill introduced at the request of the Department of Revenue and approved by the Revenue Oversight Committee. The bill basically revises the definition of wine and table wine from seven percent alcoholic content downwards. It is a response to a number of wine cooler products now marketed that have alcoholic content of less than seven percent.

PROPOSERS

Howard Hefflefinger, Administrator of the Liquor Division for the Department of Revenue, said the language to define wine in other states also stipulated alcohol minimums. Several states use the same .5 percent suggested in this bill. He said the product is growing in popularity and it will become increasingly important for the state to have authority to regulate and tax this as a wine.

Roger Tippy, lobbying for the Beer and Wine Wholesalers Association, concurred with the remarks made by Mr. Hefflefinger. He said all parties involved have benefited by treating it as a wine product and the ambiguity in the law should be corrected to reflect this.

Mr. Tippy called to the attention of the committee a House amendment which moves table wine's definition from 14 percent up to 16 percent. He said that 14 percent was previously considered the highest natural level of fermentation, and that now late harvest zinfandels are fermenting naturally up to 16 percent.

OPPOSERS

None were heard.

Questions for the committee were called for.

Senator Neuman asked why some alcohol is dealt with by weight and others by volume. Mr. Hefflefinger explained that alcohol molecules are soluble in water and that distilled spirits and wine, having less water, can be reasonably assessed for alcoholic content. Malt beverages on the other hand have an 85 to 89 percent water content and are therefore dealt with by weight.

Senator McCallum asked what an alcoholic beverage above the 16 percent would be called. Mr. Hefflefinger said that fortified

wines have brandy or alcohol added and an 18 to 24 percent alcoholic content.

Senator Towe was concerned that any mixture with a wine in it could be taxed and classified as a wine.

With no further questions, Representative Williams closed on HB 28.

CONSIDERATION OF HB 31: Representative Williams was again recognized as chief sponsor of the bill requested by the Department of Revenue and with the approval of the Revenue Oversight Committee. He explained that the bill merely removes the legal requirement that a duplicate set of assessment books be kept. He said that many counties use computers and make this requirement unnecessary.

PROPOSERS

Greg Groepper, Administrator of the Property Assessment Division, said that one copy is run from the computer and that the cost of an extra print doesn't make sense, when the information is more readily available at a computer terminal.

OPPOSERS

None were heard.

Questions from the committee were called for.

Senator Severson asked if one copy was run to back up the computer. Mr. Groepper said, yes; and added that the back-up copy is open to public inspection.

Representative Williams closed without comment on HB 31.

MOTION: Senator Severson moved that HB 28 be concurred in. The motion carried unanimously.

MOTION: Senator Brown moved that HB 31 be concurred in. The motion carried unanimously.

CONSIDERATION OF HB 42: Representative Rex Manuel, House District 11, said that he had introduced this bill at the request of the Code Commissioner and Jim Lear of the Legislative Council staff was recognized to explain the bill.

PROPOSERS

Mr. Lear explained the bill was simply in keeping with Code Commissioner Diana Dowling's responsibility to keep the code conflict-free and consistent. He went through the bill section by section explaining each change. Most dealt with internal references that were erroneous. He did call the committee's attention to Section 9 which added 15 lines to the statute. He said this was necessary because the language had been stricken for other reasons, but was needed by small business corporations which cannot have a trust or

or corporation for a shareholder unless these provisions were to apply. Without this language there would be no definition to allow that to occur.

#### OPPONENTS

None were heard.

Questions from the committee were called for.

Senator Hager asked for more clarification on the added language.

Senator McCallum asked to have page 15, paragraph one explained. Senator Towe said that it simply differentiated between whether the tax would be levied and whether the state has the jurisdiction to levy the tax.

Representative Manuel closed without comment.

CONSIDERATION OF HB 32: Representative Nancy Keenan, House District 66, chief sponsor of the bill, explained that there is a void in the Montana Alcoholic Beverage Code that doesn't include licensing them as brewers. This bill would treat them in the same manner as brewers.

#### PROPOSERS

Mr. Howard Hefflefinger said that in the absence of any specific language the category of brewer had been used. He pointed out that there are some discrepancies in the fee schedules, but that the Department isn't seeking to address that with this bill.

Roger Tippy of the Beer and Wine Wholesalers Association said that the Importers Association in Washington, D.C., had no interest in the bill. He noted for the record that wine importers pay only \$25 for their licenses and that beer importers would be paying \$500. He felt a somewhat lower fee, perhaps \$200, would bring more variety in the imported beer market. He acknowledged that the House committee had rejected that as competition for Montana's own small breweries.

He also wanted it understood that only one license need apply, and that it be specifically understood that an importer is other than a brewer.

#### OPPONENTS

None were heard.

Questions from the committee were called for.

Senator Towe asked if a wholesaler could also be an importer. Mr. Tippy explained that most importers are based on the coasts or in

large cities importing product from Canada or Mexico. Mr. Hefflefinger added that any product coming to the state from out of the country must come from someone holding a federal importer's license. He said the Department's intention is to license the last entity getting the malt beverage into the state. He saw no reason why a wholesaler couldn't do this.

Senator Eck asked for clarification of the definition of importer and wondered if it referred to import into the state, or import into the country. Mr. Hefflefinger answered that they sought a definition as broad as possible. He said the purpose was to enhance selection in the state and the Department would have the legal discretion to look at the intent.

Senator Hager asked if grocery chains could distribute beer. Mr. Hefflefinger said there is a case pending on that issue now. He said wholesalers frown on the idea, and added that once in the past it was allowed for beer to pass from a wholesaler to a grocery warehouse. Mr. Tippy discussed the "come to rest" statute which means that beer must come to rest in a state licensed warehouse where it can be accounted for according to state law. He said that importers would be under that same kind of restriction whereas grocery warehouses would not.

Senator Neuman asked how this interfaced with a bill passed out of committee previously on defining a subwarehouse. Mr. Hefflefinger said that some language intended for that bill had been amended into this one inadvertantly so it was proper that the House had taken it back out.

Senator Neuman inquired about two different effective dates on the bill. It was explained that one was effective for allowing rule making and hearings, while the other was effective for the law itself.

Senator Towe asked why Section 8 had been stricken? Mr. Tippy said that the language referred to those who manufacture beer in the state and there is no need to amend it regarding importers.

Senator Keenan closed on SB 32 without further comment.

FURTHER CONSIDERATION OF SB 106: Chairman Towe recognized Rick Bartos of the Office of Public Instruction. Mr. Bartos explained the bill to the committee and presented an Attorney General's opinion (Exhibit 1) that explained the necessity for the change proposed by this legislation,

Senator Towe asked what the opinion of OPI was on the bill and Mr. Bartos said that office supported the bill.

Senator Eck asked if adequate instructions would be given to the county superintendents of schools. Mr. Bartos responded that they issue workbook instructions to those people at the conclusion of each session.

MOTION: Senator Brown moved that SB 106 do pass.

Senator Neuman asked if corporations other than subchapter S corporations could be included in the bill. He said all should be treated equally. Senator Towe noted that those involved in a subchapter S corporation pay individual taxes, and in other instances the corporations would pay the tax.

With Senator Neuman voting no, Senator Mazurek excused, and all other members voting yes, the motion carried.

FURTHER CONSIDERATION OF HB 32: Discussion clarified that Section 8 as stricken in the bill was proper.

MOTION: Senator Goodover moved that HB 32 be concurred in. The motion carried unanimously. Senator Towe agreed to ask Senator J. D. Lynch to carry the bill, stating that he would like Senator Goodover to do that if Senator Lynch could not.

FURTHER CONSIDERATION OF SB 33: Senator Severson said that he had agreed to pull SB 33 from second reading at the request of President Norman, but that having conversed with President Norman he felt that he was asking the unreasonable. Senator Severson said it seemed that SB 33 was being held hostage until SB 48 could be moved out. He recognized Senator Norman's concern that taxation not be shifted from agriculture to urban residential taxpayers. He said that he objected to SB 33 being used as a pressure point for SB 48, and added that SB 33 had been heard better than any bill as it was developed by two committees.

Chairman Towe asked Senator Severson to wait until Thursday to move on the bill.

Senator Eck said that she was concerned about the definition of bona fide agricultural residence that would be heard in Senator Aklestad's bill January 30.

Consensus was reached to act on SB 33 in Thursday's executive session.

FURTHER CONSIDERATION OF SB 4 (IN RELATIONSHIP TO SB 156): Senator Towe briefly discussed and explained the bill and asked the committee for questions.

Senator McCallum asked if most impact problems weren't handled. Senator Towe said yes, that Rosebud County now has the second lowest mill levy in the state. He emphasized again, however, that the impact of decline ought to be addressed.

Senator Eck said if the bill didn't pass the money would divert into the educational trust fund and she thought it was more needed there.

Senator Severson agreed.

Senator Towe said that two separate issues were in the bill. First, was the impact of decline and second was the change in percentage

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for funding in designated and nondesignated counties.

Senator Goodover suggested that the infrastructure could be addressed by these funds.

Senator Towe said Senator Manning had wanted Coal Board funds to be available for roads. Currently the Coal Board does not have statutory authority and the deterioration of \$3 million worth of roads is directly traceable to coal. He said less than half of that damage has been addressed. Secondly, Senator Towe pointed out that the Governor's budget proposals would switch the amount received by the Coal Board and education, making education recipient of the higher percentage. Senator Brown noted that those bills are not related to consideration of SB 4.

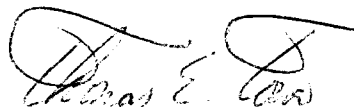
Senator Goodover asked why the \$20 million figure was used. Senator Towe said the Coal Board wanted to have a sum available for other impacts if the original allocation was used up. The committee discussed that as a practical matter there has been very little reversion to the educational trust fund, \$6.2 million since 1976.

MOTION: Senator Neuman moved that SB 4 be tabled.

Senator Hager asked to clarify the vote needed to get a bill from the table. Senator Towe said a simple majority would do it and that confusion came because a motion to reconsider required a two-thirds majority.

The motion carried unanimously.

Chairman Towe adjourned the meeting at 10 am.



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Chairman

# ROLL CALL

## SENATE TAXATION COMMITTEE

49th Legislative Session -- 1985

Date January 29, 1985

Location -- Room 413-415

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Name	Present	Absent	Excused
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Senator Brown	✓		
Senator Eck	✓		
Senator Goodover	✓		
Senator Hager	✓		
Senator Halligan	✓		
Senator Hirsch	✓		
Senator Lybeck	✓		
Senator Mazurek			✓
Senator McCallum	✓		
Senator Neuman	✓		
Senator Severson	✓		
Senator Towe	✓		

DATE \_\_\_\_\_

COMMITTEE ON \_\_\_\_\_

## VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)



STATE  
OF  
MONTANA

Exhibit 1 -- SB 106  
Senate Taxation Committee  
January 29, 1985

ATTORNEY GENERAL  
MIKE GREELY

JUSTICE BUILDING 215 N. LANDERS HELENA, MONTANA 59601  
TELEPHONE 455-4111

CORPORATIONS - Eligibility of Subchapter S shareholder  
for tuition offset;

PARENT - Eligibility of Subchapter S shareholder for  
tuition offset;

SHAREHOLDER - Eligibility of Subchapter S shareholder  
for tuition offset;

TUITION OFFSET - Eligibility of Subchapter S shareholder  
for;

MONTANA CODE ANNOTATED - Sections 1-2-106, 20-5-303,  
20-5-305, 35-1-510(1), 40-6-102, 41-5-103(9).

HELD: A shareholder in a closed, or family, type  
Subchapter S corporation is not eligible to  
claim tuition offset under section 20-5-303,  
MCA, when the corporation is the taxpayer  
responsible for the district and county  
property taxes referred to in that section.

16 March 1984

Ed Argenbright, Superintendent  
Office of Public Instruction  
Room 106, State Capitol  
Helena MT 59620

Dear Mr. Argenbright:

You have requested my opinion concerning the following  
question:

Whether a stockholder in a "family type"  
Subchapter S corporation is entitled to a  
tuition waiver for individual tuition for  
elementary pupils where a particular  
stockholder's portion of the corporation's tax

exceeds the rate of tuition determined under section 20-5-305, MCA, in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which a child will attend school.

Section 20-5-303, MCA, provides in part that, when a child attends public elementary school outside the school district of his residence, tuition will be assessed but that it "shall be reduced by the amount the parent of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school." The issue presented is whether district and county property tax payments by a closely-held or family corporation constitute payments by a "parent" for tuition offset purposes under section 20-5-303, MCA.

The term "parent" is not defined in sections 20-5-301 to 314, MCA. "Parent" is commonly defined as "a father or mother...[and] is sometimes used popularly and in statutes to include persons standing in loco parentis other than the natural parent...." Webster's New International Dictionary 1776 (2d ed. 1941). See also §§ 40-6-102 and 41-5-103(9), MCA. The Legislature in enacting section 20-5-303, MCA, is presumed to have used nontechnical terms contained therein in their ordinary and usual meanings. See, e.g., § 1-2-106, MCA; Jones v. Judge, 176 Mont. 251, 254, 577 P.2d 846, 848 (1978); Montana Power Co. v. Cremer, 182 Mont. 277, 279-80, 596 P.2d 483, 484 (1979). Therefore, no plausible argument can be made that the term "parent," as used in section 20-5-303, MCA, includes a closely-held or family corporation.

Section 20-5-303, MCA, would logically extend to property tax payments made by a parent's agent on behalf of the parent. However, it is well established that "[a] corporation has a real individuality...and is in law an entity separate and distinct from its stockholders...." Noble v. Farmers Union Trading Co., 123 Mont. 518, 523, 216 P.2d 925, 927 (1950); Wortman v. Griff, 39 St. Rptr. 1916, 1920, 651 P.2d 998, 1001 (1982). This general rule applies equally to corporations with many shareholders and to those, commonly known as closed corporations, in which ownership and management are substantially identical. Thisted v. Tower Management Corp., 147 Mont. 1, 14, 409 P.2d 813, 820 (1966); see generally Flemmer v. Ming, 37

St. Rptr. 1916, 1919-20, 621 P.2d 1038, 1042 (1980); accord Quick v. Quick, 305 N.C. 446, 290 S.E.2d 653, 662 (1982); Grayson v. Nordic Construction Company, Inc., 92 Wash. 2d 548, 599 P.2d 1271, 1274 (1979).

Further, while the corporate identity, or veil, may be pierced to assess liability directly against shareholders on either an "agency" or an "alter ego" theory, the circumstances attendant to going behind the "corporate cloak" must establish it "is [being] utilized as a subterfuge to defeat public convenience, to justify wrong, or to perpetrate fraud." Monarch Fire Insurance Company v. Holmes, 113 Mont. 303, 307-08, 124 P.2d 994, 996 (1942); see generally Comment, Piercing the Corporate Veil in Montana, 44 Mont. L. Rev. 91 (1983). The mere fact that a corporation is closely-held does not warrant piercing the corporate veil. Flemmer v. Ming, supra; accord Team Central Inc., v. Teamco, Inc., 271 N.W.2d 914, 923 (Iowa 1978); Amfac Foods, Inc. v. International Systems & Controls Corporation, 294 Or. 94, 654 P.2d 1092, 1100 (1982); Sampson v. Hunt, 233 Kan. 572, 665 P.2d 743, 751 (1983). Shareholders are, therefore, generally not liable for corporate debts. § 35-1-510(1), MCA. Consequently, no basis exists for finding agency status for tuition offset purposes under section 20-5-303, MCA, merely because a student's parent has vested property ownership in a closely-held corporation which makes school district and county property tax payments.

Election by a corporation of Subchapter S, or "small business corporation," status under the Internal Revenue Code, 26 U.S.C. § 1372, does not alter the above analysis. That status, while significantly impacting on income tax responsibilities normally applicable to corporations, does not merge the separate legal identities of the corporation and its shareholders. See D. L. Crumbley & P. M. Davis, Organizing, Operating and Terminating Subchapter S Corporations--Law, Taxation and Accounting § 12.6 (rev. ed. 1980); I. Grant, Subchapter S Taxation § 2.1 (2d ed. 1983). Most important, the property on which district and county taxes are assessed is owned by the corporation, and the taxpayer as to that property is the corporation and not its shareholders.

Lastly, "one who accepts the benefits of a corporation must also accept the burdens that flow from the use of a corporate structure.... [T]he corporate form may not be ignored merely because a stockholder could obtain a personal benefit from another form...." Lyon v. Barrett, 89 N.J. 294, 445 A.2d 1153, 1156 (1982)

Ed Argenbright, Superintendent  
Page 4  
16 March 1984

(citations omitted); see also State v. Barreiro, 432 So. 2d 138, 140 (Fla. Ct. App. 1983). A shareholder in a closely-held corporation accordingly must bear any disadvantages resulting from corporate status. One disadvantage associated with incorporation in Montana is the unavailability of tuition offset under section 20-5-303, MCA, when the taxpayer, for property tax purposes, is a corporation and not the child's parent.

THEREFORE, IT IS MY OPINION:

A shareholder in a closed, or family, type Subchapter S corporation is not eligible to claim tuition offset under section 20-5-303, MCA, when the corporation is the taxpayer responsible for the district and county property taxes referred to in that section.

Very truly yours,



MIKE GREELY  
Attorney General



# STANDING COMMITTEE REPORT

January 29,

1985

MR. PRESIDENT

We, your committee on Taxation

having had under consideration Senate Bill No. 106

first reading copy ( white )  
color

**TO DEFINE PARENT AS SHAREHOLDER IN A FAMILY CORP FOR SCHOOL  
TUITION PURPOSE**

Respectfully report as follows: That Senate Bill No. 106

DO PASS

~~DO NOT PASS~~

Thomas E. Towe,

Chairman.

STANDING COMMITTEE REPORT

January 29, 1955

MR. PRESIDENT

Taxation

We, your committee on

House Bill 28

having had under consideration

third reading copy (blue color)

Senator Kirsch

CHANGING DEFINITION OF WINE

House Bill 28

Respectfully report as follows: That

BE CONCURRED IN

XXXXXX  
XXXXXXXXXX

Thomas E. Towe, Chairman.

# STANDING COMMITTEE REPORT

January 29, 1965

MR. PRESIDENT

We, your committee on **Taxation**

having had under consideration **House Bill** No. **31**

**third** reading copy ( **blue** )  
color

**Senator Brown**

**ELIMINATING PROVISIONS FOR KEEPING A "DUPLICATE ASSESSMENT BOOK"**

Respectfully report as follows: That **House Bill** No. **31**

**BE CONCURRED IN**

~~DO NOT PASS~~

~~DO NOT PASS~~

**Thomas E. Tove,**

Chairman.

STANDING COMMITTEE REPORT

January 29, 1985

MR. PRESIDENT

We, your committee on Taxation

having had under consideration House Bill No. 32

third reading copy ( blue )  
Senator Lynch color

BEER IMPORTER LICENSE

House Bill 32  
Respectfully report as follows: That No.

BE CONCURRED IN

DO NOT PASS

DO NOT PASS

Thomas E. Towe, Chairman.



# STANDING COMMITTEE REPORT

January 29, 19 95

MR. PRESIDENT

We, your committee on Taxation

having had under consideration House Bill No. 42

third reading copy ( blue )  
Senator Towe color

**GENERALLY REVISE LAWS ON TAX AND ALCOHOL**

Respectfully report as follows: That House Bill No. 42

BE CONCURRED IN

~~ENCLOSURE~~

~~ENCLOSURE~~

.....  
**Thomas E. Towe,**

Chairman.