

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 23, 1987

The thirtieth meeting of the Senate Taxation Committee was called to order at 8:00 A.M. on February 23, 1987 by Chairman George McCallum in Room 413/415 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Hager.

CONSIDERATION OF SB 335: Senator Mazurek, Senate District 23, presented this bill to the committee. He said he introduced this bill at the request of a group of attorneys who regularly represent taxpayers on appearances before the State Tax Appeal Board. The present law, with respect to questions of law that arise in tax appeals, provides on page 3, subsection (2) that the only way that a question, which is purely a question of law, interpretation of the meaning of a provision of the constitution, statutes or administrative rules, can be made is if both parties agree to raise that question and take it to the district court. It has been the experience of those who frequently handle these matters that they seldom agree to take these matters to the court. This is purely a question of law and interpretation. We are not talking about questions as far as market value, those sorts of things. This bill is introduced to allow essentially if either party believes that there is a question involving the interpretation of a constitutional provision, a statute or a rule, that party may file with the district court a petition for interlocutory adjudication. This will get those questions of law before the court as soon as possible so that the taxpayer or the Department can avoid going through a lengthy hearing before the Tax Appeal Board. The bill provides for a retroactive effective date to allow for questions in the law on matters pending.

PROPOSERS: Ward Shanahan, representing Tax Lawyers Committee, gave testimony in support of this bill. A copy of his written statement is attached as Exhibit 1. He suggested amending the bill on page 2, line 16, by striking the language, "At the time of filing" and inserting, "Either party within 30 days of the filing of an answer to an appeal" and on line 17 starting with "the taxpayer", strike all language down to "tax appeal board" on line 20. Then on page 3, line 4, after "questions"

insert "relevant to the case" and on line 6, strike "at the time of filing" and insert the same language that he suggested being inserted on page 2, line 16. He is not sure where the applicability date came from, it is not in the proposal that he made. The new section on line 25, page 3 could be eliminated and the problem would be taken care of.

Dave Woodgerd, Department of Revenue, said those amendments would take care of the Department's concerns.

Tom Clary, attorney from Great Falls, stood in support of this bill by stating taxpayers could save a lot of legal fees if this bill is passed. He furnished the committee with a letter from Jardine, Stephenson, Blewett and Weaver, P.C., in support of this bill and attached as Exhibit 2.

John Alke, Montana/Dakota Utility Company, gave testimony in support of this bill. He is in agreement with the amendment suggested by Ward Shanahan to delete the new section (3).

Dennis Burr, Montana Taxpayers Association, gave testimony in support of this bill. He said anything that will speed up the appeal procedure is of benefit to the taxpayers and the state of Montana.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen said if you strike the section (3) dealing with the retroactive date, how will that affect cases that are in the mill now that may have been heard by the County Tax Appeal Board and the decision has been returned and there hasn't been an appeal to the state. He asked Ward Shanahan to respond.

Ward Shanahan said it will not apply to those cases. The problem is most of the cases that are coming up and this would apply to those. Matters now pending are already complete and the answer has already been filed and they were stuck with the law as it stands now, where both parties would have to agree before a question.

Senator Crippen said the point is to resolve some of these matters before the State Tax Appeals Board.

Dave Woodgerd said the way it reads now it is meaningless because the petition has to be filed within 60 days after an answer is filed. All the cases going back, the answer has been filed long ago and it would not come under that. There would have to be additional language put in the bill so that we have a cut off date.

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Senator Crippen asked if he would have any objection to doing that.

Dave Woodgerd said he does not think they do.

Ward Shanahan said you might make a provision "all pending actions, effective date of this act".

Senator Crippen said you are leaving a lot of area that is untouched.

Dave Woodgerd said he hasn't thought about this and he is not sure what the effect is on cases that have already been started. We are changing the rules of the game after we have done some battle under existing rules. He is not sure what the effect will be. He does not want to stand in the way of taxpayers who can use this procedure.

Senator Crippen said if it has been to the district court and back those questions have long been raised.

Dave Woodgerd would ask that language such as "if the question has already been raised with the district court, this procedure would not apply" be used.

Senator McCallum asked Senator Mazurek if most of these cases that were filed in 1982 would have already been decided.

Senator Mazurek said it is his understanding that there are a number of matters that haven't been decided. The way this would come up is if an audit is conducted and it is determined that there is additional tax due. The audit was done this year but it was for the years 1982, 1983 and 1984. That is an example of why the issue might be raised before the State Tax Appeal Board now.

Senator Mazurek closed.

CONSIDERATION OF SB 332: In the absence of Senator Hager, Senator Crippen presented this bill to the committee. He said this bill will exclude social security and tier 1 railroad retirement benefits from adjusted gross income in computing state individual income tax liability. He reviewed the changes in the bill with the committee. Senator Hager provided a tape recording of his presentation, in which he stated twenty-eight states, at this point, do not tax social security benefits. This bill would make Montana a better place for retired people to live.

PROPOSERS: None

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

Senator Crippen closed.

CONSIDERATION OF SB 342: In the absence of Senator Meyer, chief sponsor of this bill, Senator Crippen, Senate District 45, presented this bill to the committee. He said this would exempt the total benefits received under an armed forces pension from the calculation of adjusted gross income. He reviewed the changes in the bill with the committee and noted that the fiscal note indicates an impact of \$1.7 million.

PROPOSERS: George O. Poston, United Veterans Committee of Montana, gave testimony in support of this bill. He said all we are asking for is equity for the retired members of the armed forces. In some cases, especially the lower ranking members, this bill might mean the difference between getting an outside job or not to make ends meet. If you are going to let some of the income earned on pensions in Montana be exempt, then these retirement incomes should also be exempt.

Dick Hoy, retired from the U.S. Army, gave testimony in support of this bill. He said there are 10 states that have no income tax at all and five states that do exempt all military retirees pay.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Dick Hoy if he received the benefit of the \$3600 exemption presently.

Dick Hoy said the military pay must be considered separate from all the civil service pay.

Senator Mazurek asked Mike Walsh if he knew if the military pension was treated the same way as FER. Do they get the \$3600 exemption.

Mike Walsh said that is what is in the fiscal note that they get a \$3600 exemption.

Senator Eck said we should consider putting a cap on the allowance of the exemption to pensions under \$36,000 or maybe \$24,000. There are some people she knows with very substantial military pensions.

Senator Crippen said it seems like we are making a distinction between armed forces pensions, which would be totally exempt, and the benefits received from federal retirement.

George Poston said a retired enlisted man with 30 years of service, would not make \$20,000 in retirement funds. Granted a full Colonel or General would make more. His retirement pay is less than \$17,000.

Senator Crippen asked how his pension is treated now.

Mr. Poston said we are allowed the \$3600 exemption.

Senator Neuman asked if those federal retirements go up as inflation goes up.

George Poston said yes and sometimes they hold them back. It never meets the rate of inflation.

Senator Severson said this is an area that has always bothered him and it seems to him that somewhere along the line we should get to the point of treating everybody alike. There should be some uniformity.

Senator Crippen said the only way we are going to have equity is to either tax them all or exempt them all.

Hearing closed.

DISPOSITION OF SB 335: Senator Mazurek said he had presented amendments to the researcher which will insure that either party can request the question of law and the other changes would allow retroactive application and a 90 day grace period for any pending case.

Senator Neuman asked if he was concerned that this bill was a non-revenue bill.

Greg Petesch said under the rules this does not qualify as a revenue bill.

Senator Crippen said we have to assume, in view of the testimony given, that we are trying to help the system in tax appeals, reappraisals, whatever, and anything that we can do to speed up the process is beneficial to the Department and taxpayers.

Senator Mazurek reviewed the amendments, which are outlined on the standing committee report for SB 335, and which were discussed by Ward Shanahan.

Greg Petesch said the amendment would include a new applicability section. Section 3 would read "This act applies to all actions now pending before the State Tax Appeal Board, where there has been no previous district court action. Petitions may be filed within 90 days after notice from the State Tax Appeal Board of the petition. The board shall give notice to the parties in such cases, as soon as practicable after the effective date of this act."

Senator Mazurek said the reason for the notice being given is to allow people who do not follow the legislation to be able to utilize this.

Senator Eck said the title would need to be amended.

Senator Halligan said the way it is written, it only applies to pending appeal. Should we insure that it applies to future appeals.

Greg Petesch said the act, as written, would apply to future appeals and the new applicability section only applies to those that have already been filed.

Senator Mazurek would move the amendments, including the amendment to the title to provide "retroactive" on line 9, page 1 and inserting an applicability provision.

The motion carried.

Senator Mazurek made a motion that SB 335 DO PASS AS AMENDED. The motion carried.

FURTHER CONSIDERATION OF SB 342: Senator Meyer said that military pay is approximately 20% below the private sector and in looking at this bill he thinks that should be taken into consideration.

Senator Eck said some military men will retire from the military and then work for some years in the private sector. That retiree may have more than one retirement.

Senator Meyer said sometimes a retiree will work at a gas station or something like that. This bill will keep him going.

Senator Eck said she agreed but she also knows of some military retirees that receive over \$45,000 and hold down another job.

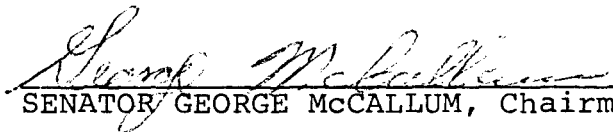
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Senator Meyer said he knows of a few of those too.

Senator Mazurek asked if he knew if the military retiree continues to receive commissary privileges and health care benefits.

Senator Meyer said they continue health care benefits if they go to a VA facility, and they do get PX privileges.

ADJOURNMENT: The meeting adjourned at 9:30 A.M.


SENATOR GEORGE McCALLUM, Chairman

ah

ROLL CALL

TAXATION

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 2-23-87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR NEUMAN	✓		
SENATOR SEVERSON	✓		
SENATOR LYBECK	✓		
SENATOR HAGER			✓
SENATOR MAZUREK	✓		
SENATOR ECK	✓		
SENATOR BROWN	✓		
SENATOR HIRSCH	✓		
SENATOR BISHOP	✓		
SENATOR HALLIGAN, VICE CHAIRMAN	✓		
SENATOR McCALLUM, CHAIRMAN	✓		

Each day attach to minutes.

NAME: John Albe DATE: 7/73

ADDRESS: 406 Fuller Ave.

PHONE: 443-3690

REPRESENTING WHOM? MDY

APPEARING ON WHICH PROPOSAL: SB 335

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ward A. Shanahan

BILL NOL SB 335

ADDRESS: 301 First National Bank Building, Helena, MT

WHOM DO YOU REPRESENT: TAX LAWYERS COMMITTEE

SUPPORT

Mr. Chairman and Members of the Committee:

I have been a practicing lawyer in Helena for almost 29 years. During that period of time I have had a considerable amount of experience in representing clients before the old State Board of Equalization and the present Department of Revenue. I regularly represent clients with problems before County Tax Appeal Boards and the State Tax Appeal Board.

As most of you know, a county property tax case usually originates at the County Tax Appeal level and is appealed level to the State Tax Appeal Board. Centrally assessed property and corporation license tax cases originate before the Department of Revenue and a direct appeal to the State Tax Appeal Board is provided. Neither the County Tax Appeal Board nor the State Tax Appeal Board can make statutory interpretations or interpretations of administrative rules without a review by the District Court. In fact, Section 15-2-301, MCA, provides:

The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful.

The present law, Section 15-2-304, MCA, provides for a petition for interlocutory adjudication. This is a petition to have the district court:

Make an interlocutory adjudication of an issue pending in the state tax appeal board if that issue involves only the interpretation of a constitutional provision, statute, or regulation and does not require the hearing of evidence.
(Section 15-2-305, MCA) (Emphasis added)

The problem with the existing statute is that a petition must be signed by each party to the proceeding. I have been confronted with situations many times where a

SENATE TAXATION

EXHIBIT NO. 1

DATE 2-23-87

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question of constitutional, statutory or regulatory interpretation needs to be decided, only to have the counsel for the Department of Revenue deny my request. At the present time, they have a statutory right to do this. However, I'm here to testify that they have never agreed with me, that such a petition could be filed.

Now the reason for this kind of petition is to clarify the law on a subject, so that the State Tax Appeal Board will know where it is going. Many times, the principal disagreement between the taxpayer and the Department of Revenue arises over a question of constitutional, statutory, or regulatory interpretation. In many cases, the case could be resolved if the legal question was resolved. The Department's refusal forces the taxpayer to stand the expense of a complete factual analysis of its problem before the State Tax Appeal Board. This involves unnecessary attorneys' fees and other expenses, and costly delays during which time interest is running on the tax liability.

It is clearly in the interest of the Department of Revenue to refuse these petitions for interlocutory adjudication. Counsel for the Department know that most taxpayers cannot afford the extra expense and the delay. Because of this, the taxpayer will usually "knuckle under" to the Department's view of the law, and pay the deficiency which the Department may have assessed against them. The practical affect is to defeat the intention of the Montana Constitution in Article VIII, Section 7:

Tax Appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessment, equalization, and taxes. The legislature shall include a review procedure at the local government level.

The Department of Revenue has more resources and more determination than most taxpayers to see these tax cases through to the end and the "end" in most cases in my experience, is the Montana Supreme Court. It would be helpful if a clear determination of laws and regulations could be made well before the court of last resort.

I expect that the Department of Revenue might tell you in opposition to this bill, that the taxpayer could always bring a declaratory judgment action if he or she wanted the court to determine the question of law or interpret a statute or regulation. Unfortunately, the Uniform Declaratory Judgment Act in Montana, Section

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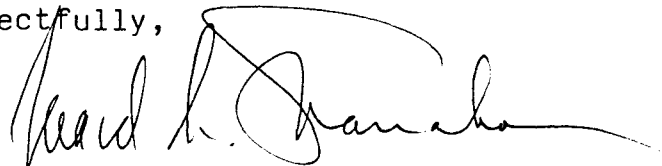
DATE 2-23-87

BILL NO. SB 335

27-8-101, MCA, is not always appropriate in these cases. It involves an independent lawsuit for that purpose. In a tax case, there are often fact questions which cannot be properly determined until a question of law has been decided. It is certainly more appropriate, and certainly more inexpensive if this can all be done in one proceeding. The members of the State Tax Appeal Board are not lawyers and all of their legal rulings are subject to later review. Therefore, if they had a clear statement of the law before they considered the facts in a tax case, the taxpayer would be saved time and expense. The State Tax Appeal Board might also be able to make a more speedy resolution of the cases before it.

PLEASE GIVE SB 335 A DUE PASS RECOMMENDATION.

Respectfully,



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P.O. Box 1715
Helena, MT 59624
Tel: (406)442-8560

4238W

SENATE TAXATION

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DATE 2-23-87

BILL NO. SB 335

JARDINE, STEPHENSON, BLEWETT & WEAVER, P. C.

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P. O. BOX 2269

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February 20, 1987

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Mr. George McCallum
Chairman
Senate Taxation Committee
Room 413-415
Capitol Building
Helena, Montana 59620

Re: Senate Bill 335

Dear Mr. McCallum:

Even though George McCabe and I are not able to attend the Committee hearing set for Monday, February 23, at which time Senate Bill 335 will be considered, we wish to express our strong support for passage of the Bill. For all of the reasons set forth in the Bill we support it. George McCabe and I are involved in a fair number of appeals before the State Tax Appeal Board, and situations have arisen where we have thought it appropriate to petition the District Court for rulings on questions of law. However, we have never been able to secure the approval of the Department of Revenue's attorneys to do the same. Because of this, speedy resolution of issues which might quickly decide all or a portion of a case is not possible, and the taxpayer is thus put to the task of preparing for and presenting his entire case, both factual and legal, at considerable time and expense. Likewise, the State Tax Appeal Board is burdened by having to hear the entire case when perhaps a legal ruling from a District Court could shorten the process considerably.

We do not feel that there is potential for abuse of the procedure outlined in Senate Bill 335, as the District Court Judge retains discretion whether to grant the petition or not.

Of course, the members of the State Tax Appeal Board are not attorneys and are more appropriately fact-finders. Thus, resolution of legal issues by a judicial body as opposed to a fact-finding body only makes sense.

SENATE TAXATION

EXHIBIT NO. 2

DATE 2-23-87

BILL NO. SR 225

Mr. George McCallum

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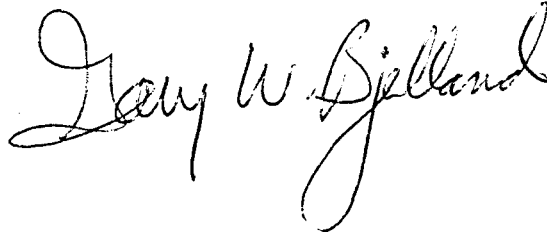
Re: Senate Bill 335

We would strongly urge your serious consideration and approval of Senate Bill 335. Thank you.

Very truly yours,

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

By



GWB:es

SENATE TAXATION

EXHIBIT NO. 2

DATE 2-23-87

BILL NO. SB 335

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MR. PRESIDENT

We, your committee on..... **SENATE TAXATION**
having had under consideration..... **SENATE BILL** No. **335**
first reading copy (white)
color

**ALLOW SPEEDY DISTRICT COURT DETERMINATION OF PRELIMINARY
ISSUE ON TAX CASE**

Respectfully report as follows: That..... **SENATE BILL** No. **335**

be amended as follows:

1. Title, line 9.
Following: "AND"
Strike: "A RETROACTIVE"
Insert: "AN"
Following: "APPLICABILITY"
Strike: "DATE"
Insert: "PROVISION"
2. Page 2, line 16.
Following: "(a)"
Strike: "At the time of filing"
Insert: "Either party, within 30 days of the filing of an answer to"
3. Page 2, lines 17 through 20.
Following: "board," on line 17
Strike: remainder of line 17 through "board," on line 20.
4. Page 3, line 4.
Following: "questions"
Insert: "raised by the pleadings"
5. Page 3, line 6.
Following: "rule"
Strike: "that exist at the time of filing"
Insert: "within 30 days of filing an answer to"

~~RR PASS~~

~~RR NOT PASS~~

CONTINUED

Chairman.

February 23, 19³⁷.....

6. Page 3, line 25.

Following: "Applicability"

Insert: "to pending actions--notice"

Following: "."

Strike: "This act"

Insert: "The right to petition for interlocutory adjudication"

7. Page 4, lines 1 and 2.

Following: "applies" on line 1

Strike: remainder of line 1 through "1994" on line 2

Insert: "to all actions pending before the state tax appeal board on [the effective date of this act], where there has been no previous district court action. Petitions under this section must be filed within 90 days after notice from the state tax appeal board of the right to petition. The state tax appeal board shall give notice of the right to petition for interlocutory adjudication to the parties in pending cases, as soon as practicable after [the effective date of this act]"

AND AS AMENDED

DO PASS

.....
SENATOR GEORGE McCALLUM, Chair