MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 20, 1987

The forty-fifth meeting of the Senate Taxation Committee was called to order at 8:10 A.M. on March 20, 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 Crippen.

CONSIDERATION OF HB 539: Representative Hoffman, House District 74, presented this bill to the committee. This is an act requiring a published notice of application for tax deed to include the names and addresses of persons having an ownership interest in the property. He said that is the extent of the bill. Tax sale notices are printed in the paper with the legal description of the property and so often people lose their property without being aware it is advertised and up for sale. If the names of those people are on the notices, it might save these people a great deal of hardship.

PROPONENTS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Bishop said didn't we have a bill like this on tax deeds.

Jim Lear said we did have a bill that was passed out by the committee that was requested by the Revenue Oversight Committee. That was a general bill addressing the subject of tax debts. He does not know if it overlaps with this bill.

Representative Hoffman closed.

CONSIDERATION OF HB 703: Representative Gilbert, House District 22, presented this bill to the committee. This bill is a revision of the Montana state unitary tax method of accounting. At the present time we use the worldwide unitary method in the state of Montana. According to a lot of people, this method has kept a lot of multi-national companies out of the state of Montana. The obvious reason is they tax everything they have worldwide. Multi-national companies believe it is an unfair tax. Foreign countries will not allow companies to operate in their country if they are based in a state that has worldwide unitary taxation as it takes taxation away from their country. It is a time to let things happen and a time to make things happen and this is the time to make things happen. Time to eliminate the unitary taxation method in the state of Montana. In 1983 twelve states in the nation still had the unitary method of taxation worldwide. Today there are only three, Montana, North Dakota and Alaska. North Dakota already passed their bill through the House which is identical to this one. Idaho passed one in 1986 identical to this bill. If we want to attract multi national corporations, that is where the dollars are. If you can get them in the state, we are talking about thousands of jobs. The fiscal note said we will lose a lot in taxes but we will gain a lot in jobs and property taxes. This is an opportunity to bring new jobs to the state of Montana.

PROPONENTS: George Anderson, CPA, Helena, representing the Montana Chamber of Commerce, gave testimony in support of this bill. He said this bill is a clarification bill of the unitary method of computing taxes. This has been a very controversial bill. There really is no such thing as unitary tax but there is a unitary method of computing income in order to compute the tax. The multi-national companies, foreign companies, will not locate in Montana as long as we use the worldwide method of computing under the unitary method. He furnished the committee with testimony in support of this bill, attached as Exhibit 1. He does not believe the fiscal note is completely correct. At the present time the Department of Revenue interprets the unitary method that you can virtually use only the worldwide income. Their interpretation depends on which will result in the largest amount of income for the state. The Department of Revenue discriminates against domestic corporations and application of the unitary method. Domestic parent corporations must use all worldwide income, foreign parents do not have to. There isn't anything in the law that says that should be the way, the Department of Revenue has always interpreted it that way. What this bill does is it allows the company to make the election to be on the worldwide method or waters edge method. In the waters edge a portion of the foreign dividend is included.

Gordon Bennett, attorney from Helena, registered lobbyist for the Northern Border Pipeline, gave testimony in support of this bill. The Northern Border Pipeline operates in Canada, which makes them multi national.

He has done a lot of work in the unitary area in the last 15 years. The reason that corporations look on the worldwide approach as unfair, results from the fact that once you go beyond the borders of the U.S. you run into no man's land in terms of what are taxes, what are royalties, general accounting practices, a whole host of things. The corporations that do business in foreign countries and who have been subjected to the unitary, feel this can be manipulated by the state. That is why the unitary approach on a worldwide basis is looked on with such disfavor by businesses. You can have a small operation in Montana that is losing money and can prove that, and Montana will put all of your income into the pool, from any other source. That is why Montana's worldwide approach is looked at with such disfavor. The federal government essentially uses a waters edge method. They treat foreign source income as foreign source income and allow adjustments for deductions or credits for foreign taxes. Montana relies very heavily on what the federal government does. If we go to the waters edge it will be much easier for taxpayers and tax administrators to handle domestic income. There is concern of a revenue shortfall. There have been a lot of disputes over the worldwide method and a lot of money is tied up in protest. A lot of staff people in the Department of Revenue are tied up in audits. He thinks this will be a much easier approach in determining what is income if we go to a waters edge where you can rely on federal audits.

Dennis Burr, representing the Montana Taxpayers Assn., gave testimony in support of this bill. Last summer there were several economic seminars discussing the tax policy and economic system of Montana. Everyone that came into Montana to give advice, recommended that we eliminate the unitary method of filing corporation tax returns. One gentleman said that on economic ground unitary was okay but he still recommended that Montana go to the waters edge approach. The reason being is the unitary method is keeping companies out of Montana. The alternative bill simply puts the current practice of the Department of Revenue into law. The other method tends to treat foreign parent corporations better than American domestic corporations. The Department seems to have the ability to run corporate tax returns both ways and settle on the one that produces the best revenue for the state of Montana. We should treat domestic corporations in the same manner as foreign corporations.

Bob Correa, representing the Bozeman Chamber of Commerce, gave testimony in support of this bill. It has been a long standing policy of the Bozeman Chamber of Commerce for total repeal of the unitary tax. We should be going further than this bill goes.

Riley Johnson, representing the National Federation of Independent Business, gave testimony in support of this bill. He furnished the committee with the ballot results from 5,000 independent businesses in the state of Montana in 1987, attached as Exhibit 2. He referred to question number four, which indicated that 63% of the businesses were in support of the waters edge unitary tax. In a poll taken three years ago on the same question, 47% of the small businesses were in favor. Small business does live on big business and we need to wake up to that fact.

Robert N. Helding, Montana Association of Realtors, gave testimony in support of this bill. He feels this would be a major step forward in Montana's sound economic reform. They support the enactment of HB 703.

Ken Williams, representing Entech, a Montana Power Company, gave testimony in support of this bill. They purchased a great deal of mineral rights in western Montana, somewhere in excess of 800,000 acres. They will be contacting international firms to get involved in some of these projects. They have found the unitary method of taxation as a concern to these people. For these reasons they support this bill.

Jack Traxler, representing the Missoula County Freeholders, gave testimony in support of this bill. They feel our state will not get any outside business while the unitary system is in place.

<u>OPPONENTS</u>: John LaFaver, Director, Department of Revenue, gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 3.

Phil Campbell, representing the Montana Education Assn., gave testimony in opposition to this bill. When the session first started his organization took a position of supporting a change in the unitary method of taxation to help the business climate. This bill is different than the Governor's proposal and carries a fiscal impact that will have a negative impact on schools. This bill will have a total impact of $3.8 million each year and 25% of that goes to the school equalization fund. After 1989 the school equalization fund will lose almost $1 million a year by using this method. They support the waters edge concept proposed in SB 307 but not this method.

Sue Fifield, representing Montana Low Income Coalition, gave testimony in opposition to this bill. They are strong supporters of jobs and economic development. Jobs are one of their first priorities. They question how many jobs would be affected by a change in taxation from unitary to waters edge. Is there not already tax breaks offered to new companies. Don't companies get a tax break already for investments made outside of Montana. They do not feel it would be fair to shift the tax burden to our middle and low income people.

Barbara Archer, representing the Women's Lobbyist Fund, gave testimony in opposition to this bill. She opposes this bill for three reasons: 1) fairness based on ability to pay; 2) this would benefit few corporations and cost the state millions in the coming years and provide inadequacy to fund state and local government; and 3) investment in the state's economy. Where is the evidence that these kinds of incentives work. Our evidence is that the rich are getting richer and the poor are getting poorer.

Earl Riley, Montana Senior Citizens Association, gave testimony in opposition to this bill. Incentives have been going on since 1981 to give Montana businesses an investment in Montana. Where are the jobs and increased investment. Since 1981 we have seen our surplus of $120 million go to a deficit of $200 million plus. We are told we must wait, this will take time. How much time will it take. You want to give these people more incentives, it is about time the ordinary taxpayer gets an incentive.

Don Judge, AFL-CIO, gave testimony in opposition to this bill. There is a question in the minds of the people of Montana as to the effect of tax breaks. The tax breaks talked about in this bill would affect 15-20 major multi national corporations. The maximum amount this bill proposes to give these companies is $3.8 million, which is quite a tax break if spread between the 20 corporations affected. We are talking about perceptions of the business climate that appears to be out of line with what we feel needs to be done in Montana for growth. As you debate this bill, remember that if this legislation is enacted, you will be taking necessary funds from state and local governmental services and will be placing an extra tax burden on the people of this state who are screaming for tax reform.

Ken Peres, Montana Alliance for Progressive Policy, gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 4.

QUESTIONS FROM THE COMMITTEE: Senator Eck asked Dan Bucks if we are looking at a revenue neutral corporation tax package, what kind of percentage increase would be needed to make up for this.

Dan Bucks said about a 1/2% increase in the corporation tax rate if it were an increase in the corporation tax. The corporation tax would need to go from the current 6-3/4% to 7-1/4%.

Senator Eck asked how much of the $3.8 million loss would come from the part taxing 15% and how much from the provision for new investments.

Dan Bucks said he did not believe the estimate included any loss because of the new investment feature.

Senator Lybeck asked George Anderson if he really thought it was in the best interest of Montana and the United States to send this kind of a message to foreign countries. He was referring to a comment made by Mr. Anderson that California changed their unitary method of taxation and immediately 3 Japanese companies came in and established business in California.

George Anderson said he thought that the world has become a worldwide economy. If we want to try and be selective within the United States, it will be very difficult to continue doing business.

Senator Lybeck remembers World War II and worries about foreign counties taking over more and more in the United States.

Senator Severson asked George Anderson how we compare with our neighboring provinces of British Columbia and Alberta.

George Anderson said he is sure that the companies in Canada are getting a much better tax break than the companies operating in Montana. He is not an expert on Canadian taxes but the companies will go to where they can make money.

Senator Hirsch referred to Section 7 on page 6. In eastern Montana they have a foreign company, who has gotten their corporate structure in order to buy large portions of land and he has heard they are already doing business in Montana. He asked how they would be affected by Section 7.

John LaFaver said he does not know exactly what their financial situation is. They could allocate their expenses in Montana and allocate their income away. That is a way of eliminating their tax bill in Montana.

Senator Mazurek referred to George Anderson's comment in his testimony that he did not believe the fiscal note was correct. He asked him to expand or to furnish the committee with his idea on what is correct.

George Anderson said we have never felt that the fiscal note that came out on this particular tax was correct but we have no idea on how it should be computed. He is not sure the Department has the data base to make those computations.

Senator Halligan asked if there was some fiscal impact that could be agreed on, some negative revenue that as a result of this other individuals will make that up.

George Anderson said there may be a negative impact, he has no idea. Whatever that impact is, even if it is what the Department is saying, it would be worth it. Without getting rid of this unitary method, we don't stand a chance.

Senator Brown said to George Anderson you say you can guarantee more foreign investment from these big corporations. It seems to him that the bill deducts money to be made in Montana with a $3.8 million impact. Businessmen are in business to make money. Isn't the affect of this tax the real governing factor.

George Anderson said as far as foreign parent companies are concerned they do not want the state of Montana to be able to get at their income from out of Montana, that they did not make in Montana. Given a choice of investments, they would not invest in Montana over another state.

Representative Gilbert closed by stating this is a pro-business bill. This bill is designed to try to attract business to the state of Montana. What we are saying is give us fairness in taxes and we will give you jobs. We are losing jobs because we have a bad business climate.

CONSIDERATION OF HB 583: Representative Donaldson, House District 43, presented this bill to the committee.

What this bill does is to extend what we did in the June session, which was to fund the Public Service Commission out of fees to the utility companies and those fees are passed on to the consumers. A couple of things have changed. The original bill called for a special revenue account. In this particular bill we do not feel we need a special revenue account. They changed the bill so the money collected would be deposited in the general fund. He believes the scrutinized budget should be the general fund. The language on page 2, lines 13-14 is new language dealing with gross revenues from sales to other regulated companies for resale. He said the Department has some amendments dealing with an immediate effective date.

Dan Bucks, Deputy Director, Department of Revenue, gave technical comments concerning this bill. He furnished the committee with proposed amendments to the bill dealing with rulemaking authority for the Department and an applicability date of July 1, 1987, so that it would not apply to the current taxable period, attached as Exhibit 5. They believe that the collection of this tax will ultimately be brought into question because they do not have rulemaking authority. The law will require us to calculate a fee annually and to allow for a deduction for gross revenues from sales to regulated companies for resale. The calculation of this fee, which will ultimately allow the collection of this tax, can be found invalid. In one instance it was used as a defense in that the legislature had not granted rule making authority and the defense was you can't do what you are doing without rules.

PROPONENTS: Howard Ellis, Public Service Commission, fully supports this concept of taxing the utilities. This is the fairest of all taxes, something that is adopted public policy in most states of the country. He would suggest that the sunset in the bill be removed. If there is a problem, a bill can be brought in without guaranteeing a bill on the docket next session.

Gene Phillips, representing Pacific Power and Light Company and Northwestern Telephone Systems, supports this bill. Of the six states that Pacific Power and Light operates in, Montana was the only state that did not use this method until June of last year. This is in the best interest of the Public Service Commission for balance and stability. It provides that a better job will be done. With regard to the amendments proposed by the Department, he is opposed to the rule-making authority by the Department.

Bob Quinn, representing the Montana Power Company, gave testimony in support of this bill. Extending this method is a legitimate way to fund regulated agencies. He opposes the rulemaking amendments proposed by the Department.

John Alke, Montana Dakota Utilities Company, gave testimony in support of this bill. He has no objections to withdrawing the sunset. He is very much opposed to the rulemaking authority required by the Department of Revenue in their proposed amendments. This identical tax has been in place for 14 years without rulemaking authority. There has never been a problem.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Eck asked Dan Bucks if this process is exactly the same as for the Consumer Counsel.

Dan Bucks said there are differences. This bill now provides for a deduction from gross revenues from sales to other regulated companies for resale and that is not a clear cut matter or issue. This bill is changing the base of the tax and getting into an area where there will be controversy. If someone takes us to court, the actions will be thrown out because we did not adopt rules and public participation was not allowed.

Representative Donaldson closed.

ADJOURNMENT: The meeting adjourned at 10:15 P.M.

George McCallum

SENATOR GEORGE McCALLUM, Chairman

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MONTANA STATE SENATE

TAXATION COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS:

Senator George McCallum, Chairman
Senator Mike Halligan, V. Chairman
Senator Al Bishop
Senator Bob Brown
Senator Bruce Crippen
Senator Dorothy Eck
Senator Tom Hager
Senator Les Hirsch
Senator Ray Lybeck
Senator Joe Mazurek
Senator Ted Neuman
Senator Elmer Severson

STAFF ATTORNEY: Jim Lear

COMMITTEE SECRETARY: Aggie Hamilton

BOOK: 2 of 3

INCLUSIVE DATES: March 3 - March 31, 1987

ROLL CALL

TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 3-20-87

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.

DATE March 20, 1987

COMMITTEE ON Senate Taxation

VISITORS' REGISTER HB's 539, 583, 703

NAME	REPRESENTING	BILL #	Check One Support	Oppose
F.H. Buck Boles	MT CHAMBER	HB 703	✓	
GENE PHILLIPS	PP&L and NTS	HB583	✓	
George D Anderson	Mont Chamb	HB703	✓	
JACK E TRAXLER	Missoula Co. Freeholders	HB703	✓	
Howard F Ellis	Mt PSC	HB583	✓	
Ken Williams	Entech	HB 703	✓	
Bob Quinn	Mt Power Co.	HB-583	✓	
EARL J. REILLY	M.S.C.A.			X
Sue Fifield	MCIC	HB703		X
BOB HELDING	MT. ASSOC. OF REALTORS	HB 703	✓	
Bob Correa	Boz. Chamber	HB703	✓	
Ted Rollins	ASARCO, INC	HB 703	✓	
Barbara Archer	Women's Lobbyist Fund	HB 703		X
Jan Cool	Exxon	703	✓	
Phil Campbell	Mont. Ed. Assoc.	703		X
Janelle Fallan	Mt. Petroleum Assoc.	703	✓	
Bryan Enderle	Missoula Chamber of Com	703	✓	
George T. Bennett	NORTHERN BORDER	703	X	
Dennis Burr	MONTAX	703	X	
Bill Kirkpatrick	CHAMPION INT'L	703	X	
Kenneth Peres	Montana Alliance	703		✓
Jim Mockler	MT. Coal Council	703	✓	
Mary A Langley	Montana Mining Assn.	703	✓	

(Please leave prepared statement with Secretary)

House Bill 703

March 20, 1987

Testimony - George D. Anderson, CPA
Montana Chamber of Commerce

Unitary Method of Computing Corporation License Tax Income - Unitary Companies

"World Wide"

$$\frac{\frac{\text{MT Sales}}{\text{WW Sales}} + \frac{\text{MT Property}}{\text{WW Property}} + \frac{\text{MT Payroll}}{\text{WW Payroll}}}{3} \times \text{WW Income} \times 6.75\% = \text{Montana Corporation License Tax}$$

"Waters Edge"

$$\frac{\frac{\text{MT Sales}}{\text{US Sales}} + \frac{\text{MT Property}}{\text{US Property}} + \frac{\text{MT Payroll}}{\text{US Payroll}}}{3} \times \text{US Income}^* \times 6.75\% = \text{Montana Corporation License Tax}$$

* Under HB 703 15% of foreign dividends (as defined in bill) are included in US income.

"World Wide"

$$\frac{\frac{\$500{,}000}{\$5{,}000{,}000} + \frac{\$150{,}000}{\$3{,}000{,}000} + \frac{\$50{,}000}{\$750{,}000}}{3} \times \$300{,}000 \times 6.75\% = \text{Tax}$$

$$\frac{.10 + .05 + .07}{3} = .0733 \times \$300{,}000 = \$22{,}000 \times .0675 = \$1{,}485$$

SENATE TAXATION
EXHIBIT NO. 1
DATE 3-20-87
BILL NO. HB 703

"Waters Edge"

$$\frac{\frac{\$500{,}000}{\$2{,}000{,}000} + \frac{\$150{,}000}{\$1{,}000{,}000} + \frac{\$50{,}000}{\$400{,}000}}{3} \times \$130{,}000 \times 6.75\% = \text{Tax}$$

$$\frac{.25 + .15 + .125}{3} = .175 \times \$130{,}000 = \$22{,}750 \times .0675 = \$1{,}535$$

NFIB Montana 1987

SENATE TAXATION
EXHIBIT NO. 2
DATE 3-20-87
BILL NO. HB703

National Federation of Independent Business

) N. Last Chance Gulch
Helena, MT 59601

Important Notice:

NFIB has commissioned the Institute for Enterprise Advancement to gather and publish valuable information from NFIB members pertaining to small business issues in your state.

The effectiveness of this survey will be enhanced by returning the entire ballot. Thank you for your participation.

TAXES/FISCAL:

General Taxation

1. After cutting state expenditures as much as possible, should the Legislature:

a. Institute a state sales and use tax?

☐ Yes 1 61% ☐ No 2 32% ☐ Undecided 3 7% 11

b. Institute a state lottery?

☐ Yes 1 71% ☐ No 2 23% ☐ Undecided 3 6% 12

c. Pass a local option sales tax, including a "bed" tax?

☐ Yes 41% ☐ No 49% ☐ Undecided 3 10% 13

d. Increase motor fuel taxes?

☐ Yes 1 16% ☐ No 2 77% ☐ Undecided 3 7% 14

e. Increase the personal income tax

☐ Yes 1 7% ☐ No 2 89% ☐ Undecided 3 4% 15

f. Increase the corporate income tax?

☐ Yes 1 10% ☐ No 2 84% ☐ Undecided 3 6% 16

g. Reinstate the business inventory tax?

☐ Yes 1 4% ☐ No 2 93% ☐ Undecided 3 3% 17

h. Increase the tax on tobacco and liquor products?

☐ Yes 1 59% ☐ No 2 34% ☐ Undecided 3 7% 18

Tax Preference

2. As a guide to the Legislature, which two of the following methods are the most acceptable to you as a way of helping balance the state's budget? (Select two)

27% ☐ a. Institute a sales and use tax 1

24% ☐ b. Institute a state lottery 2

2% ☐ c. Increase the personal income tax 3

3% ☐ d. Increase the corporate income tax 4

17% ☐ e. Increase the tax on tobacco and liquor products 5

27% ☐ f. A ten percent across-the-board cut in state spending 6 19-20

BACKGROUND: State revenues have slid into the basement due to the generally poor economy of the state. A combination of spending cuts and tax increases will be needed to balance the state's budget.

The Legislature met in late June and early July for 14 days to balance the state's budget deficit, which was estimated at that time to be nearly $100 million. One of the major actions taken was to reduce highway funding by $16.5 million, and increase the gasoline tax by two cents a gallon.

In January, the Legislature will no doubt take additional actions to cut state spending, but lawmakers will have to find ways to increase state revenues. All of the actions listed above will be up for consideration.

Your answer to question 2 will help lawmakers determine which action is most preferable, if such action is absolutely necessary.

Tax Incentives

3. Should the Legislature enact a property tax incentive for new or expanding business?

☐ Yes 1 72% ☐ No 2 18% ☐ Undecided 3 10% 21

BACKGROUND: Although Montana has several tax incentives on the books, none contain specific property tax enticements that would lure new industry into the state.

A specific incentive that frequently has been mentioned would tax new or expanding business that meets certain requirements at 50 percent of its valuation for the first five years of operation. Taxable value would increase by ten percent each of the following years until full valuation is obtained after the tenth year of operation.

Supporters of the proposal say it would attract new business into Montana and encourage existing firms to modernize and expand, thus increasing their production and employment. Because the incentive could be enacted at the discretion of a local government, they say it would not be forced on any city or county that does not want to provide it. Local governments would not lose any money because they would immediately receive taxes from half the business' valuation once it commenced operation.

Opponents of the idea question whether specific property tax incentives really would attract new business. Moreover, they contend that an incentive for new or expanding business would place existing firms at a competitive disadvantage. They also argue that the tax incentive would prevent local governments from receiving their "fair share" from new or expanding industry because such businesses would not immediately be taxed at full valuation.

"Water's Edge" Unitary Tax

4. Should Montana's unitary method of taxing multinational corporations be modified by eliminating taxes on any business profits earned overseas as long as the loss of revenue is not picked up by increasing some other business tax?

☐ Yes 1 63% ☐ No 2 17% ☐ Undecided 3 20% 22

BACKGROUND: The unitary tax is collected from companies that operate both in Montana and in other states or overseas. Montana's tax law presently requires these companies to take into account all of their operations, regardless of their location, when computing their

(continued)

corporate income tax. Under the proposed "water's edge" amendment, the tax would be applied only to business activities conducted in the United States.

Those who support modification of the present law contend that the unitary tax is very detrimental to the state's efforts to attract new business and expand the economy. They also point out that Montana is one of the few states with a worldwide application of the unitary tax. Those states that have a unitary method of taxation have gone to the "water's edge" approach. By modifying the tax, proponents say that it will be much easier for the state to compete for new business.

Opponents of the proposed change argue that modifying the unitary tax would cost the state much needed revenue at a time when state revenues are decreasing rapidly. They also disagree with the argument that such modification would provide an incentive for attracting new business to the state.

LABOR:

Workers' Compensation

5. Should Montana's workers' compensation law be changed to eliminate lump-sum settlements?

☐ Yes ☐ No ☐ Undecided

1 89% 2 6% 3 5% 23

BACKGROUND: Montana's workers' compensation system currently allows for lump-sum settlements. Recent awards allowed by workers' compensation judges have been, in the view of many business persons, extremely generous. As a result, the state Workers' Compensation Fund is facing a deficit that can only be balanced with an increase in rates for employers. However, industries such as small logging and mining companies contend their rates already are too high. Any increase, they say, could mean the difference between life and death for their mills. In fact, they argue that the system should be restricted sufficiently to provide for a decrease in rates.

Supporters of the proposed change say lump-sum settlements should be eliminated because, in addition to being excessively generous, such awards are placing an undue hardship on the solvency of the state fund.

Opponents of change, primarily organized labor leaders and trial lawyers, maintain that the workers are entitled to the high awards they receive from the system. They also maintain that settlements, including lump-sum awards, should be allowed at the discretion of the injured party if he or she obtains a favorable ruling from the workers' compensation judge. They deny the existence of widespread fraud or that awards are made for questionable ailments.

Unemployment Compensation

6. If the federal government is forced to reduce its share of the costs of unemployment compensation extended benefits, what should be the response of the state legislature? (Select one)

78% ☐ a. The state should reduce its share of extended benefit costs in line with the federal reduction. 1

20% ☐ b. The state should continue to pay its full share of extended benefit costs, but not increase its costs by replacing lost federal funding. 2

2% ☐ c. The state should increase its share of extended benefit costs to offset the federal reduction. 3 24

BACKGROUND: Currently, the unemployment compensation extended benefits program provides for up to 13 weeks of benefits beyond regular state benefits if a state's insured unemployment rate reaches a specified "trigger" level. The costs of these extended benefits are shared on a 50/50 basis by the states and the federal government.

Under the provisions of the federal Gramm-Rudman-Hollings budget reduction legislation, the federal share of extended benefits costs is subject to mandated reductions in order to meet specified budget deficit goals. Congress has provided that the states may respond to this provision of Gramm-Rudman in one of three ways. A state may take action to: 1. reduce its share of extended benefits costs in an amount not to exceed the federal reduction, 2. continue to pay its full share of extended benefits, so that the only reduction will be on the federal side, or 3. increase its share of the costs by paying the full extended benefits payment, thereby picking up the costs of the federal cutback.

If the state legislature chooses to take no action in response to this provision of Gramm-Rudman, then the third option listed above (state increases its share of extended benefits costs) will be automatically imposed upon the state under federal law.

LEGAL:

Tort Reform

7. Should the concept of joint and several liability be abolished?

☐ Yes ☐ No ☐ Undecided

1 91% 2 4% 3 5% 25

BACKGROUND: The concept of joint and several liability allows an injured claimant to collect an entire award from any or all parties that are jointly liable for the damage, regardless of their actual percentage of fault.

For example, an injured person could collect all of the damages award from a solvent party who was only five percent responsible for the damage if the injured party was not able to collect anything from an insolvent party who may have been 95 percent at fault. If joint and several liability was abolished, then the injured party in the example could collect only five percent of the award from the defendant who was five percent responsible for the damage.

Proponents of abolishing joint liability say that a "deep pocket," such as that of a municipality or a small-business owner, should not have to bear the expense for an entire damage award if only minimally responsible for the damage. The liable party should only be responsible for his share of the damage award.

Opponents contend such a change would only serve to punish the injured party, who might be without fault, by not allowing him to receive full compensation due to the insolvency of the defendant who was most at fault for this injury.

Collateral Source

8. Should a plaintiff in a liability suit be allowed to recover damages already paid or to be paid by others?

☐ Yes ☐ No ☐ Undecided

1 9% 2 84% 3 7% 26

BACKGROUND: A successful plaintiff (injured party) is able to recover an award through a jury trial or through negotiation of an out-of-court settlement. He can also receive funds from other sources, such as insurance, pension or retirement funds, employee benefit accounts, and social security. In some cases, a plaintiff may receive monies for the same injury from more than one source.

Proponents of the current law contend that an injured party should be allowed to receive collateral payments, since the awarded amount of a jury verdict may be reduced on appeal. The additional recovery from a second source could help to make up for what might already be an inadequate award. Proponents further contend that this procedure is not "double dipping," but rather a practical proration of an award.

Opponents contend that a plaintiff should not be allowed to recover twice for the same loss. They argue that the practice of "double dipping" is one more factor in a long list of items that have contributed to the liability crisis.

Punitive Damages

9. Should plaintiffs be restricted in their ability to make claims for punitive damages?

☐ Yes ☐ No ☐ Undecided

1 81% 2 11% 3 8%

BACKGROUND: Punitive damages can be awarded at the discretion of the court or jury when the conduct of the wrongdoer has been oppressive, malicious, or fraudulent. As a general rule, punitive damages are not covered by insurance and must be paid directly by the defendant(s). Punitive damage awards in Montana have been few.

Increasingly, however, claims for punitive

(continued)

REMARKS OF JOHN D. LAFAVER
Senate Tax Committee
March 20, 1987

SENATE TAXATION
EXHIBIT NO. 3
DATE 3-20-87
BILL NO. HB 703

Mr. Chairman:

I am John LaFaver, State Director of Revenue. I represent the Administration in opposing HB703.

The issue here is not whether this legislature will haul down the so-called red flag of worldwide unitary. The issue is how to eliminate it while assuring a fair tax structure for all firms doing business in our state.

Over the past several weeks we have shared with you our ideas of tax reform. They essentially involve the notion that all taxpayers should benefit from lower rates, fewer loopholes, and a flatter playing field. They should have equal opportunity to prosper under our tax laws.

This bill goes the opposite direction. It carves new loopholes for a handful of large corporations by providing lower taxes for those who find foreign tax havens. It allows large multinational firms which invest in Montana a 5-year tax holiday, but no tax break for the small Montana firms that will have to compete against them.

The bill provides a major tax break to a very few firms now doing business in Montana. The break becomes larger the more these firms shift operations overseas. So it runs contrary to the idea of attracting business here. It rewards business for leaving the United States.

You have heard in SB307 a fairer and more responsible version of dealing with worldwide unitary. That version costs $6.6 million less (on a full biennium basis) than HB703. It assures that multinationals not shift their legitimate tax responsibility to mainstreet Montana businesses. The difference between SB307 and HB703 is simply the difference between reform and ripoff. In the name of responsible, reasonable, balanced tax reform, I ask you to defeat HB703.

SENATE TAXATION
EXHIBIT NO. 4
DATE 3-20-87
BILL NO. HB 703

TESTIMONY OF KENNETH R. PERES ON HB 703
Senate Taxation Committee
March 20, 1987

Mr. Chairman and members of the committee, my name is Ken Peres. I am an economist working for the Montana Alliance for Progressive Policy. I was a former Visiting Assistant Professor of Economics at the University of Montana. I was also staff economist for the House Select Committee on Economic Development during the 1983 Montana legislative session.

We oppose HB.703 for four basic reasons:
- -it is a bad investment
- -it is bad economic development policy
- -it will lose revenue
- -it is unfair

1) HB 703 IS A BAD INVESTMENT: NOT ONE CENT OF THIS $3.85 MILLION A YEAR INVESTMENT IS GUARANTEED

***Would You Give Someone $3.85 Million A Year Without Any Assurance That It Would Lead To Any Return?**

Suppose you were a financial consultant or a banker and someone came in and asked you for $3.85 million a year. You would ask what you would get for your money - the answer given by those supporting HB 703 is "Expressed Interest," "Send a Signal," "The Hope for Future Investment."

There is no dotted line - only signals
There is no security - only concern
There is no actual return or guarantee

Not one cent of this $3.85 million is guaranteed. Financial consultants would term such a $3.85 million investment as high risk, low probable return with no security, and, thus, a very poor investment.

***What Would It Take for The State To Recover Its $3.85 million Investment?**

The size of the re-investment needed to recoup the $3.85 million in lost revenue would be enormous. Using the oil and gas mining industry as an example - In order to recover $3,850,000 in taxes the entire oil and gas extraction sector would have to:
- -increase its workforce by 3,450 employees or a 150% increase over the entire 1986 Montana Oil and Gas extraction workforce of 2,300
- -invest $1.321 billion in order to employ another 3,450 workers
- -generate an additional $22,861,000 in Montana net taxable income - a 124% increase over 1985

In this hypothetical example, the oil and gas extraction industry would have to enact a Marshall Plan for Montana JUST SO THE STATE COULD BREAK EVEN ON ITS INVESTMENT. Will the passage of HB 703 induce this scale of investment in Montana?

2) **HB 703 IS BAD ECONOMIC DEVELOPMENT POLICY**

***Special Corporate Tax Reductions Have Failed to Increase Investment At Both Federal and State Levels**

HB 703 will reduce taxes ONLY FOR MULTI-NATIONAL CORPORATIONS. These are the same corporations which primarily benefitted from the 1981 tax incentives given by the U.S. Congress which hoped to stimulate investment. These reforms failed to stimulate investment. One survey of 253 corporations found that from 1981-1983 these corporations made over $287 million profits, obtained $90 billion in tax reductions yet reduced investment by 15.5%.

A recently released study cited in the Great Falls Tribune high taxes, concluded that "high-tax, highly regulated, and heavily unionized states...do best overall."

Special tax reductions have also failed in Montana.The "New Industry Tax Credit" has failed to induce new investment Another example is provided by Burlington Northern which obtained more than $39 million in reduced property taxes so that Montana would be in compliance with the federal 4Rs Act. BN did not increase investment in Montana; instead it reduced employment by 3,000 workers, abandoned 396 miles of track, closed 31 stations and is being sued for charging Montana farmers 87% more in freight rates than Nebraska farmers for the same tonnage and distance.

***HB 703 Will Forego Money That Would Have Been Spent In Montana**

While we have no idea where the HB 703 Money will be spent, we do know that the $3.85 million in taxes collected by the state would be spent in Montana.

***HB 703 Will Provide Yet Another Incentive for Corporations to Export Capital and Jobs**

Multi-national corporations would have an 85% Incentive to locate overseas.

***HB 703 Gives Multi-National Corporations a Competitive Advantage Over Businesses Operating Entirely Within Montana or the U.S.**

3) **HB 703 WILL MEAN LOST REVENUE**

Montana will lose $2.3 million in FY 89 and at least $3.85 million a year thereafter. This loss of revenue comes at a time of deep fiscal crisis and severe budget cuts for many programs affecting many people.

This special tax provision is built on a tax structure edifice that is leaking very badly. The MAPP study found that special tax provisions cost the state $282 million in FY 85 alone.

SENATE TAXATION
EXHIBIT NO. 4
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) HB 703 WILL MEAN LESS FAIRNESS: COSTS WILL BE SHIFTED FROM MULTI-NATIONAL CORPORATIONS ONTO AVERAGE INCOME MONTANANS AND SMALL BUSINESSPEOPLE

*Smaller Businesses Operating Wholly Within Montana and the U.S.
HB 703 gives a competitive advantage to multi-national corporations in relation to businesses operating solely in Montana or the U.S.

-Businesses operating solely in Montana or the U.S. must report all their income and then subtract their allowable deductions to obtain net taxable income.
HB 703 allows multi-national corporations to
- -exclude 85% of dividend income from related foreign cororations
- -deduct all taxes for certain domestically incorporated foreign operating corporations, the so-called 80-20s
- -shelter even more income by liberalizing the apportionment formula for certain corporations

*Adopting HB 703 Could Increase The Export of Capital and Jobs

Giving a major tax break to multi-national corporations for their overseas operations may be an incentive to export capital to foreign areas with lower taxes since most of the corporation's foreign dividends would be tax exempt. In other words, HB 703 creates an "85% Loophole Incentive" for corporations to transfer operations outside the U.S.

*All Montanans Facing Budget Cuts, Reduced Government Services And/Or Higher Taxes

Removing $3,850,000 from the tax base would be another painful exercise in state economic policy.
- -Reducing the state portion of the school foundation program will increase pressure on local property taxpayers.
- -Reducing general fund appropriations will mean less jobs, and governmental services.

The Average Income Montanan Will, Mostg Likely,Have to Replace the Lost Revenue Gained by Multi-National Corporations.
- -an increase in income taxes - 70% of reported income is wage and salary income
- -a sales tax - Montanans will pay approximately 93% of a sales tax - tourists only 7%

HB 703 sets the stage for a shift in the tax burden
From Multi-National Corporations
TO Montana Wage Earners and Businesspersons

SENATE TAXATION
EXHIBIT NO. 4
DATE 3-20-87
BILL NO. H.B. 703

AMENDMENTS TO HOUSE BILL NO. 583

<u>THIRD READING COPY BLUE</u>

1. Title, Line 11.
Following: "PROVIDING"
Insert: "RULEMAKING AUTHORITY; AN APPLICABILITY DATE;"

2. Page 7, line 10.
Following: line 10
Insert: "<u>NEW SECTION</u>. Section 6. Rulemaking authority. The department of revenue has authority to make and adopt rules as necessary to administer this act.
"<u>NEW SECTION</u>. Section 7. Applicability date. This act shall apply to all taxable activities after June 30, 1987."
RENUMBER THE SUBSEQUENT SECTION.

ilb/90
amendhb583

SENATE TAXATION
EXHIBIT NO. 5
DATE 3-20-87
BILL NO. H.B. 583