

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Bob Brown, on January 25, 1989,  
at 8:00 a.m.

ROLL CALL

Members Present: Senator Brown, Senator Hager, Senator Eck,  
Senator Norman, Senator Bishop, Senator Halligan,  
Senator Walker, Senator Harp, Senator Gage, Senator  
Severson, Senator Mazurek, Senator Crippen

Members Excused: None

Members Absent: None

Staff Present: Jill Rohyans, Committee Secretary  
Jeff Martin, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 137

Presentation and Opening Statement by Sponsor:

Senator Nathe, District 10, sponsor of the bill, said it allows an election to forego the carryback of a net operating loss and applies a net operating loss only as a carryforward for the purposes of determining net income for corporation license tax or corporation income tax. Currently, the net operating loss must be carried back three years before it can be carried forward. SB 137 changes that so that there can be a carryforward without a carryback. The carryforward remains at seven years as it is currently.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony: None

Questions From Committee Members:

Senator Norman asked about the federal guidelines.

Senator Nathe replied that all he knew about the federal regulations is that the carryforward is fifteen years.

Mr. Bennett indicated this bill brings Montana law into compliance with federal law.

Closing by Sponsor: Senator Nathe closed.

HEARING ON SENATE BILL 184

Presentation and Opening Statement by Sponsor:

Senator Severson, District 32, sponsor of the bill, reviewed the history of the livestock tax. He pointed out that the Montana Constitution and the United States Constitution both contain an equal protection clause which requires that comparable property be treated the same for tax purposes. The Montana Constitution further contains a uniformity provision that requires that taxes on comparable property be equalized. Historically, livestock has been treated the same as any other business inventory for tax purposes.

In 1975, following 56 years of equal classification of livestock and other business stock, the Legislature relabeled stocks of merchandise as business inventory and moved then into a new classification with reduced tax rates. That was the first time livestock inventory was treated differently than all other business inventories in Montana. In 1981, the Legislature acted to equalize all business inventories through SB 47. However, that session also passed SB 283 which created a tax exemption for all business inventories except livestock inventories. The result was an unconstitutional classification.

Virtually all the western states have eliminated taxes on business inventories, including livestock. Montana's livestock inventories are therefore at a serious competitive disadvantage. The Montana Constitution cites Agriculture as the sole industry in

the state to be protected, enhanced, and developed by legislative action. Livestock producers are not asking for preferential treatment, only equal treatment with other businesses in the state.

The District Court has held, in a class action suit, that it is unconstitutional to tax livestock inventories while exempting other business inventories from taxation. The Court has declared that livestock producers are entitled to a refund of property taxes collected after January 1, 1983. It is essential that the legislation be passed this year to keep that refund amount from swelling any further. The case is now before the Supreme Court.

List of Testifying Proponents and What Group they Represent:

Jerry Jack, Agriculture Coalition and Montana Stockgrowers  
Ron Waterman, Montana Stockgrowers Association  
Chase Hibbard, Rancher and Vice Chairman of the Montana Stockgrowers Tax Committee  
Michael Lane, Agriculture Preservation Association  
Dennis Burr, Montana Taxpayers Association  
Don Engels, Montana Chamber of Commerce

List of Testifying Opponents and What Group They Represent:

Greg Groepper, Office of Public Instruction  
Linda Stoll Anderson, Lewis and Clark County Commissioners and Montana Association of Counties  
Bruce Moerer, Montana School Boards Association  
Phil Campbell, Montana Education Association

Testimony:

Jerry Jack, Agriculture Coalition and Montana Stockgrowers, presented his testimony in support of the bill (Exhibit #1) and also submitted written testimony from John C. Hoyt, attorney for the Montana Stockgrowers and ranchers Bud Maurer and Tom Lorang in the class action suit (Exhibit #2).

Ron Waterman, Montana Stockgrowers Association, said the bill provides for the agriculture industry inventory to be treated equitably with other industries. He felt if the legislature imposes a tax on business inventory, it should apply to livestock as well. The reverse should

also hold true. He noted this is an important bill which addresses the continuing refund issue. He felt the refund exposure should be capped. He said the people and groups who brought the suit are well aware of the impact of the refund situation on school districts and counties and intend to address that problem head on. He urged the committee to restore the tax exemption on livestock inventory as a matter of fairness and equity.

Chase Hibbard, Rancher and Vice Chairman of the Montana Stockgrowers Tax Committee, said he wanted to speak to two issues: basic fairness and the level of equity in taxation in Montana business. He pointed out agriculture is the largest industry in Montana; it is 1.8 times larger than the industry in second place. He felt it is very unfair to tax livestock inventory when no other business inventory is taxed in the state.

The state of Montana has one of the most unbalanced tax structures in the United States rating 47th in tax balance and 43rd in business climate. A survey recently conducted by the Montana Ambassadors found 79% of its respondents rating the Montana system of state and local taxes at the "D" or "F" level. It also showed 87% of the respondents felt the legislature needed to deal with tax reform in the 1989 session. Montana property taxes are some of the highest in the country at 8% to 16%. Our neighboring states rates run from 0% to 4%. Montana is the only western state that taxes livestock. In order to develop a competitive business climate, help our existing businesses and attract new ones, we must address the tax equity situation.

Michael Lane, Agriculture Preservation Association and a rancher from Three Forks, said he agreed with the previous testimony and urged the committee to pass the bill.

Dennis Burr, Montana Taxpayers Association, urged the committee to support the bill. He submitted the livestock industry is being treated very inequitably especially when compared to our surrounding states.

Don Engels, Montana Chamber of Commerce, agreed with the previous testimony and urged support of the bill.

Opponents:

Greg Groepper, Office of Public Instruction, said he did not want to argue about the policy of the bill. His major concern is with the fiscal impact. He said the bill affects about \$550 million in market value and \$22 million in taxable value in 1988. At an average statewide mill levy of 271 mills, it amounts to a \$5.6 million tax reduction of which \$1.220,000 is general fund money. He expressed concern about the impact on county and school funding citing a projected 11.7% reduction in the tax base in Carter County, 8.9% in Beaverhead County, 4.7% in Fergus County, and similar reductions from 4% to 8% in most other rural counties. He was also concerned about the bonding capacities of counties if their levies are severely reduced.

Linda Stoll Anderson, Lewis and Clark County Commissioner also representing the Montana Association of Counties, said her organization opposes any legislation which will further erode the county tax base.

Bruce Moerer, Montana School Boards Association, expressed concern about the small rural schools and depletion of the tax base without a replacement mechanism. He commented he had no argument with the equity problem but found there is a real fairness issue as it relates to both agriculture and schools.

Phil Campbell, Montana Education Association, said his organization would remain opposed to the bill unless replacement revenue can be found.

Questions from Committee Members:

Senator Gage expressed concern about filing assessment returns with the county and the penalty for not filing.

Mr. Waterman responded that the intent of the language is to turn the collection provision for this particular tax over to the general tax collection procedures. There is a separate cross-reference which is the mechanism through which the tax collection and the penalties are triggered.

Senator Eck questioned the fee assessment funding of the Department of Livestock.

Senator Severson responded by saying the Department of Livestock is the only department in state government funded solely by the individuals it for whom it works. He said the cattlemen want it that way.

Les Graham, Director, Department of Livestock, said the per capita levy or fee amounts to approximately 50% of the budget of his department and in some cases provides 100% of the funding of specific programs within the Department. The total income from that in any given year ranges from \$1,800,000 to \$2,000,000 per year depending on the headcount of the livestock in the state.

Closing by Sponsor:

Senator Severson closed by saying "it's time, it's right, and it's fair" to pass this bill this session. He urged the committee to support the bill.

DISPOSITION OF SENATE BILL 137

Discussion:

Senator Norman pointed out that the one effect this bill will have is decreased revenue. It probably will not be too much but it is hard to pinpoint because it will only be used when a taxpayer has to pay less taxes, not more.

Senator Gage said the election to carryforward has to be made by the due date of the year in which you have a loss. This means you cannot make the election in the past years when a loss was sustained.

Senator Eck asked how the provisions of this bill fit with federal statute.

Senator Gage replied in general the federal adjustments that are made in carrybacks and carryforwards are pretty much the same as the state.

Senator Eck said this is a situation that must be kept in mind when the committee gets into a larger tax reform package.

Senator Gage said if we don't have this bill cannot deal with just a carryforward. You must deal with the carrybacks first which means using a whole lot of different numbers.

Senator Mazurek asked if anyone from the Department of Revenue had evaluated the bill.

Steve Bender, Department of Revenue, replied that they had looked at the bill and their only concern was the numerous changes of "shall" to "may". There is some concern that this is a substantive change and gives them more discretion. He noted there is no problem with the carryover provisions at all, in fact, that section is very beneficial.

Mr. Bender pointed out there is a one time avoidance of refunds built into the bill. Right now they are carried back three years and that could wipe out the previous two years tax. That should be paid right away but under this bill it is spread out.

DOR feels financial institutions may be willing to carryforward just for local public relations.

Mr. Bender felt this is also a matter of simplicity. He said that being able to follow federal statutes with state statutes avoids paying extra accounting charges.

Amendments and Votes: None

Recommendation and Vote: Senator Gage moved SB 137 DO PASS.  
The motion CARRIED unanimously.

#### DISPOSITION OF SENATE BILL 132

#### Discussion:

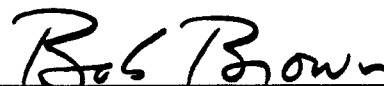
Senator Mazurek reviewed the proposed amendments to the bill (Exhibit #3). It was decided that further work needed to be done on the amendments for clarification. Jeff Martin will work with Senator Mazurek on amendments for the next meeting.

Amendments and Votes: None

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 10:00 a.m.



---

SENATOR BOB BROWN, Chairman

BB/jdr

MIN125.JDR



ROLL CALL

TAXATION

COMMITTEE

51<sup>st</sup> LEGISLATIVE SESSION -- 1989

Date 1/25/89

---

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	X		
SENATOR BISHOP	X		
SENATOR CRIPPEN	X		
SENATOR ECK	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
SENATOR MAZUREK	X		
SENATOR NORMAN	X		
SENATOR SEVERSON	X		
SENATOR WALKER	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 25, 1989

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 137 (first reading copy -- white), respectfully report that SB 137 do pass.

DO PASS

Signed: \_\_\_\_\_

*Bob Brown*

Bob Brown, Chairman

*J.C. 1/25/89  
11:25 p.m.*

# MONTANA STOCKGROWERS ASSOCIATION, INC.

P.O. BOX 1679 - 420 NO. CALIFORNIA ST. - PHONE (406) 442-3420 - HELENA, MONTANA 59624

OFFICERS:

WIL. J. BROWN, JR.	SAND SPRINGS	PRESIDENT
JAMES COURTNEY	ALZADA	FIRST VICE PRESIDENT
EDWARD J. LORD	PHILIPSBURG	SECOND VICE PRESIDENT
JEROME W. JACK	HELENA	EXECUTIVE VICE PRESIDENT
KIM ENKERUD	HELENA	NATURAL RESOURCES COORDINATOR



EXECUTIVE COMMITTEE:

CLARENCE BLUNT	REGINA	WIL. T. HARRER	FORT BENTON
BILL CHRISTENSEN	HOT SPRINGS	KNUTE HERREM	MARTINSDALE
LYNN CORNWELL	GLASGOW	EARL LINDGREN	JOLIET
M.E. EDDLEMAN	WORDEN	ROLAND MOSHER	AUGUSTA
NANCY ESPY	BOYES	GREG RICE	HARRISON

SENATE TAXATION

EXHIBIT NO. 1 31

DATE 1/25/89

BILL NO. SB 184

January 24, 1989

Mr. Chairman and Members of the Taxation Committee, I am Jerry Jack and today represent the following members of the Montana agriculture coalition. These members include the Montana Farm Bureau, ~~Montana Farmers Union~~, Women Involved with Farm Economics, Montana Stockgrowers Association, Montana Cattlemen's Association, Montana Cattlefeeders Association, Montana CattleWomen's Association, Montana Woolgrower's Association, Montana Association of State Grazing Districts *and Mt Dairymen's Assoc*

We rise in support of Senate Bill 184. As Senator Severson's opening statements point out, since 1981 livestock business inventories have been treated differently and unfairly from all other business inventories. Unfortunately, this puts Montana livestock producers at a basic disadvantage since virtually all western states adjacent to Montana have eliminated taxes on all business inventories, including livestock. Moreover, District Court Judge Thomas M. McKittrick found in May of 1988 for the Montana Stockgrowers Association and individuals Bud Maurer and Tom Lorang that livestock does constitute a business inventory and should be exempt from taxation. Montana's constitution, as well as the constitution of the United States, contain Equal Protection clauses which require that comparable property be treated the same for tax purposes. This bill, if passed, will return livestock producers to equitable and fair treatment as compared with other businessmen in Montana.

We would strongly urge the committee to give a "do-pass" consideration to Senator Severson's bill. Thank you.

*Jw Jack*

SUMMARY OF DECISION OF DISTRICT JUDGE THOMAS MCKITTRICK  
IN MONTANA STOCKGROWERS ASSOCIATION, ET AL.  
V. DEPARTMENT OF REVENUE, ET AL.

Historically, livestock and all other business inventories have been recognized to be comparable property and have been classified together for tax purposes. The first legislative determination that they should be classified together was made in 1919. That classification endured for 56 years, until 1975.

In 1975, the Legislature divided the class, relabeled stocks of merchandise as business inventory and moved it to a more favorable tax class. That act unfairly placed a greater tax burden on ranchers than on all other businesses in Montana.

In 1981, the Legislature acted with the express intent to remedy that disparity by ~~equalizing treatment of all business inventory.~~ SB 47, sponsored by Senator Severson, once again consolidated all business inventory, including livestock, in the same tax class. However, the Legislature then passed ~~SB 283 during the same session.~~ That bill exempted business inventory from taxation but inexplicably and ~~irrationally retained livestock inventories as taxable property.~~

Because of the widespread impact of SB 283, the Montana Stockgrowers Association in February of 1985

sought supervisory review of the classification scheme in the Montana Supreme Court. When the Supreme Court instructed that the case first be considered in the District Court, the Montana Stockgrowers Association, joined by two representative ranchers, filed a class action suit in the District Court in Cascade County.

District Judge Thomas McKittrick issued his Opinion and Order in that case on May 17, 1988. Judge McKittrick held that the Legislature in enacting Senate Bill 283, and the Defendants' actions in assessing and taxing the livestock business inventories of the Plaintiffs while exempting all other business inventories, ~~violated the Plaintiffs' right to equal protection under the United States and the Montana Constitutions.~~ He also held that the Plaintiffs' livestock inventories constituted ~~business inventories~~ within the scope of Section 15-6-202, the exemption statute.

He ruled that the classification scheme in issue could pass neither the "rational basis" test nor the "heightened scrutiny" test of equal protection.

In support of those holdings, Judge McKittrick ruled that the Legislature in enacting SB 47 acknowledged that ~~no substantial distinction exists between the Plaintiffs' livestock and other business inventories to justify~~

~~inconsistent tax treatment.~~ He determined that the two inconsistent legislative acts amending Sections 15-6-136 and 15-6-202 rendered the classifications ambiguous, and that the rule of strict construction against the taxing authority was applicable.

As a separate determination, Judge McKittrick took judicial notice of basic facts concerning the nature and characteristics of cattle and the cattle business in Montana, including the fact that the overwhelming majority of livestock inventories ~~are destined for ultimate sale and consumption as a food source, and that cattle are held primarily for sale and not for lease.~~

Finally, Judge McKittrick held that the Plaintiffs and similarly situated class members are entitled to a ~~refund of property taxes paid based upon assessments of~~ their livestock business inventories after the January 1, 1983, effective date of the business inventory tax exemption. However, that Order does not require refund of the amounts collected pursuant to Department of Livestock levies authorized by Article XII, section 1, subsection (2), of the 1972 Constitution.

In reaching his decision, Judge McKittrick acknowledged the express preference granted to agriculture in the 1972 Montana Constitution at Article XII, section 1,

requiring the Legislature to ". . . enact laws . . . to

~~protect, enhance and develop all agriculture."~~

The Department of Revenue has appealed the District Court decision to the Montana Supreme Court. It is not expected that the Court will render its decision on the appeal during the 1989 legislative session.

If the Court affirms the district court decision, the case will be remanded back to Judge McKittrick for a determination of ~~who is eligible for~~ membership in the class of taxpayers to receive refunds.

It is possible that the Supreme Court may affirm in part and reverse in part. For example, the Court may determine that the ~~tax is unconstitutional yet limit the refund to taxes paid after suit was filed, or even after~~ Judge McKittrick's decision was rendered.

If the decision is affirmed, it is likely that the Montana Stockgrowers Association and the other class representatives will make a proposal to the District Court ~~as to how the refund can and should be administered.~~ Both the statute under which this suit was brought and the District Court's broad power to manage class action lawsuits vest the Court with great latitude to fashion a workable remedy.

3131H

LIVESTOCK INVENTORIES SHOULD BE EXEMPT FROM TAXATION

There are a number of compelling reasons why livestock should be exempt from taxation. Some of those reasons are legal in nature and others just make good sense business wise and for the health of Montana's economy.

The legal reasons arise from the constitution. The Equal Protection clauses of the United States and Montana Constitutions require that ~~comparable property be treated the same for tax purposes.~~ The Montana Constitution further contains a uniformity provision that requires that taxes on comparable property be ~~equalized.~~

Historically, the Montana Legislature has treated livestock inventories and all other forms of business inventory the same for tax purposes. In 1917, a Tax and License Commission was appointed by the Fifteenth Legislative Assembly to analyze the state's tax system and prepare recommendations for legislative changes which would provide for the financial needs of the state and distribute the burden of taxation more equitably and fairly than in the past.

One of the most significant changes proposed was a system of classifications of property with varying percentages of taxable value. Significantly, the Commission



recommended that livestock and all other stocks of merchandise be classified together. The Legislature agreed with the Commission's proposal and in 1919 made a legislative determination that livestock inventories and all other stocks of merchandise are comparable and classified them together.

They remained together for 56 years, until 1975, when the legislature relabeled stocks of merchandise as business inventories and moved them to a new classification with a reduced tax rate.

~~As a result, livestock business inventories were, for the first time in the history of taxation in Montana, treated differently than all other business inventories.~~

In 1981, the Legislature acted to remedy that disparity by once again equalizing the treatment of all business inventories. SB 47, introduced by Senator Severson, moved livestock to the same tax classification as all other business inventories. Senator Severson explained the intent of SB 47 by stating that, "[I]f we must have a ~~business inventory tax then everyone in business should be treated equally.~~" SB 47 was a second, modern legislative determination that livestock inventories and all other business inventories are comparable property.

During the same session, the Legislature passed SB 283 which created a tax exemption for all business inventory but ~~left livestock inventories as taxable property.~~

SB 47, a bill clearly intended to equalize and remedy the disparate tax treatment of comparable property which passed both houses of the Legislature with near-unanimity, was succeeded by SB 283, a bill which ~~created a wider gap in the tax treatment of livestock inventories and other business inventories than that which existed before the first remedial bill was passed.~~ The result was an unconstitutional classification.

The substantial interest of Montana stockgrowers in equality of tax treatment to that afforded to all other businesses in the state is even more apparent when a regional perspective is considered. The business inventory exemption was justified to enhance the competitiveness of Montana businesses.

~~Virtually all of the western states have eliminated taxes on all business inventories, including livestock.~~ Because it is surrounded by similar agricultural states which do not tax livestock inventories, Montana has placed its livestock industry at a serious competitive disadvantage.

Agriculture's importance to the economy of Montana cannot be overstated. It is the single industry in the

state to receive express constitutional recognition.

Article XII, section 1 of the 1972 Constitution requires the Legislature to ". . . enact laws and provide appropriations to protect, enhance and develop all agriculture."

Montana is a uniquely agricultural state, and the business of raising cattle is one of the primary agricultural industries. Livestock growers do not seek more favorable treatment than their Montana business peers who operate department stores, furniture stores, or toy stores. Rather, they ask only that ~~they be treated equally with those other businesses in view of agriculture's strong constitutional preference.~~

Finally, a Montana district court has held in a class action suit that it is unconstitutional to tax livestock inventories while exempting all other business inventories from taxation. That court has declared that livestock growers are entitled to a refund of property taxes collected after the ~~January 1, 1983~~, effective date of the business inventory tax exemption. It is essential that the tax on livestock inventories ~~be repealed this year to~~ prevent the refund due from swelling with each passing year.

**Hoyt & Blewett**  
Attorneys at Law

John C. Hoyt  
Alexander (Zander) Blewett, III  
Kurt M. Jackson  
Michael J. George

SENATE TAXATION #.  
EXHIBIT NO. 2 pg 1  
DATE 1/25/89  
BILL. NO. SB 184  
501 Second Avenue North  
Post Office Box 2807  
Great Falls, Montana 59403-2807  
Telephone (406) 761-1960

January 23, 1989

Honorable Bob Brown, Chairman  
Committee on Taxation  
Montana State Senate  
Capitol Building  
Helena, MT 59601

Re: Senate Bill No. 184

Dear Mr. Chairman and Members of the Committee:

As I am unable to attend the Senate hearing on SB 184 proposed by Honorable Elmer Severson, I respectfully submit the following short writing in support of this bill.

The Montana Stockgrowers and ranchers Bud Maurer and Tom Lorang requested my assistance in bringing a class action to provide relief for Montana farmers and ranchers adversely affected by two legislative enactments assessing personal property taxes upon livestock business inventory as unreasonable and a violation of the equal protection clauses of both the United States and Montana Constitutions.

The district judge before whom this case was filed examined extensive briefs on the part of the Stockgrowers and the Department of Revenue. Finally, after listening to extensive oral arguments and considering the voluminous written material submitted, Honorable Thomas M. McKittrick, District Judge, filed his opinion and order emphatically finding that the livestock inventories of ranchers Maurer and Lorang constitute business inventories within the scope of § 15-6-202, MCA, and are exempt from taxation.

A copy of this order and opinion is attached for the benefit of those Senators who have specific questions concerning it.

You will hear testimony that the Stockgrowers have not pursued the certification of a class as yet and that the litigation to date has been extensive and expensive.

The undersigned has provided his services to the Stockgrowers pro bono and submits this to this committee in the same spirit.

Honorable Bob Brown  
January 23, 1989  
Page Two

It is legally and morally impermissible to discriminate against ranchers and farmers or any class of people in Montana, or elsewhere, in violation of the rights to equal protection. In other words, the tax is not fair. It is not equal, it provides a tax on the means of earning a livelihood which applies to ranchers and farmers, as opposed to veterinarians, dentists, doctors and other professional people - yes, even lawyers. Although this was not exactly the legal thrust of the Court, it is the effect of the legislation which Senator Severson is attempting to correct.

We fully realize that the tax impact on rural counties may be extreme. We are not suggesting that county governments should be required to fold. It is, however, constitutionally and equitably, wrong to impose this double standard of taxation. Therefore, this SB 184 should be passed.

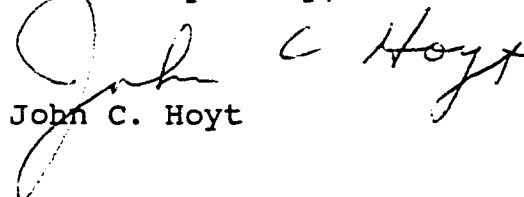
Obviously, our State is in a political turmoil over the ways and means of providing a just and fair tax, or the most just and fair tax, that can be levied in order to fund those things that should be funded including perhaps county government.

This can be done in a way that will levy a tax on all persons equally. I know we must have taxation and I would hope that it would be equal taxation, which personally I support.

In conclusion, I would be happy to share my views on an equitable and fair tax (not a general sales tax) with anyone who might be interested. In the meantime, this bill should receive the support of everyone.

Thanking you for your consideration and with best wishes for a tranquil and speedy session, I remain

Yours very truly,

  
John C. Hoyt

JCH:tcb

Enclosure

SENATE TAXATION

EXHIBIT NO. 2 ps3

RECEIVED

DATE 1/29/89 MAY 19 1988

BILL NO. SB 184 GOUGH, SHANAHAN,  
HINSON & WATER

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

-----

MONTANA STOCKGROWERS ASSOCIATION, :  
a Montana Corporation; JOSEPH F. : No. ADV-85-792  
"BUD" MAURER; and TOM LORANG, :  
Plaintiffs, : O P I N I O N  
vs. :  
THE STATE OF MONTANA, DEPARTMENT : AND  
OF REVENUE, JOHN D. LaFAVER, the :  
Director of the Department of : O R D E R  
Revenue, :

-----

This action was brought by Joseph F. "Bud" Maurer and Tom Lorang, individually, and by the Montana Stockgrowers Association, as a class action pursuant to Rule 23(b)(1) and (b)(2) M. R. Civ. P. The Plaintiff's are Montana farmers and ranchers engaged in the business of raising and selling livestock.

The Plaintiffs' Amended Complaint requests declaratory relief pursuant to MCA 27-8-101 et seq. and MCA 15-1-406 for Montana farmers and ranchers adversely affected by two legislative enactments assessing personal property taxes upon livestock inventory.

Prior to 1981, the livestock inventories were classified as Class Seven property (MCA 15-6-137) and taxed at 8% of their market value. All other business inventories were classified as Class Six property (MCA 15-6-136) and taxed at 4% of their market value.

In 1981, livestock was transferred from Class Seven to Class Six with the passage of Senate Bill 47, amending Sections 15-6-136

and 15-6-137, MCA. Senate Bill 47 was signed into law as Chapter 330. The Plaintiffs contend the transfer equalizes the tax treatment of livestock business inventories with all other business inventories.

Secondly, Section 15-6-136 (Class Six) was further amended by Senate Bill 283, later signed into law as Chapter 613. This Bill removed business inventory and its definition from the section and incorporated them into Section 15-6-202, MCA as tax exempt.

The Plaintiffs' argue, the classification and taxation of livestock business inventory is unreasonable. No distinction exists between stockgrowers (or livestock business inventory) and other business inventory granted tax exemption as defined in Section 15-6-202(5). Secondly, any attempt to make a distinction undermines the express intent of Senate Bill 47 to equalize the classification and taxation of all business inventories. Finally, the Plaintiff's argue the Legislature's classification scheme and the Defendants' actions discriminates against persons in the business of raising and selling livestock. Consequently such actions violates equal protection under both the United States Constitution, the Montana Constitution, and Article XII, Section 1 of the Montana Constitution (1972).

The Defendants' Counterclaim requests declaratory rulings regarding the Legislature's authority to classify and tax property. Secondly, they request declaratory judgment, stating the Plaintiffs' suit "is baseless, groundless, specious, frivolous, pursued in bad faith, and brought for purposes of harassment" and seek damages for "expenses, costs, attorneys' fees, and losses of salaries."

The Plaintiff's have filed the following Motions:

1. Motion for Judgment on the Pleadings.

2. Motion for an Order Granting a Summary Ruling.
3. Motion for Sanctions.
4. Motion to Compel.
5. Motion for a Protective Order.
6. Motion to this Court requesting judicial notice of certain facts.

The Defendant's have filed a Motion for Judgment on the Pleadings and a Motion to Compel.

All Motions have been fully briefed and argued before the Court.

Resolution of the issues arising from this case involves both constitutional equal protection analysis as well as statutory interpretation.

#### 1. JUDICIAL NOTICE

The Defendant's have denied requests for admissions stating the requests call for legal conclusion. The Plaintiff's request this Court take judicial notice of the matters denied by the Defendant's.

Specific requests denied by the Defendant are as follows:  
(numeric references correspond to Plaintiffs' numeration):

1. a commercial enterprise which raises livestock intended for sale in the ordinary course of business constitutes a "business";

2. that livestock are things which are movable at the time of identification to a contract for sale;



3. that livestock constitute "personal property";

4. that "inventory" designates personal property held for sale in the ordinary course of business;

5. that livestock raised and intended for sale in the ordinary course of business constitute "inventory"; and

6. that livestock raised and intended for sale in the ordinary course of business constitute "business inventory."

The Defendant's denials of the above referenced requests for admissions were improper. The matters requested to be admitted are not subject to reasonable dispute. Those matters are "generally known within the territorial jurisdiction" of this Court and are "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Those are the standards governing judicial notice of facts. Rule 201, Montana Rules of Evidence. Therefore, this Court takes judicial notice of the above mentioned facts.

2. UNREASONABLENESS OF LEGISLATIVE CLASSIFICATION SCHEME

In Fletcher v. Peck, Cranch's Reports, vol. vi. p. 87, Chief Justice John Marshall wrote:

"The question whether a law be void for its repugnancy to the Constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligations which that station imposes. But it is

not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other . . ."

The Plaintiffs concede, the Legislature has the power and authority to classify property for the purpose of taxation, provided, they exercise such power subject to constitutional limitations.

Montana decisions dating back to Hilger v. Moore (1919), 56 Mont. 146, 182 P. 477, have held that the legislative branch has the right to make reasonable classifications of subjects for property taxes. Wetzel v. Mont. Dept. of Revenue (1979), 180 Mont. 123, 589 P.2d 162. Conversely, the Montana Supreme Court has repeatedly struck down unreasonable classifications. The controlling principle of law concerning tax classification is:

The classification must be reasonable, in that it must be based upon substantial distinctions which really make one class different from another.

Garrett Freight, Inc. v. Montana Rail. & P. S. Com'n (1973), 161 Mont. 482, 507 P.2d 1040, 1043; Peter Kiewit Sons' Co. v. State Board of Equalization (1973), 161 Mont. 140, 505 P.2d 102.

The test of the constitutionality of class legislation is whether the classification has some reasonable, just, and practical basis and whether the law operates equally upon every person within the class.

Reeves v. Ille Electric Co. (1976), 170 Mont. 104, 113, 551 P.2d 647, 652.

### 3. TAX CLASSIFICATION

The Supreme Court invalidated a tax classification in Victor Chemical Works v. Silver Bow County (1956), 130 Mont. 308, 301 P.2d 730. The legislature classified industrial property as Class Four property, "except as such property may be included in Class Five."

The court held that to treat the property as Class Five property "permits the grossest discrimination between property of the same class" and doing so allowed "for special treatment that there it may enjoy a partial exemption from the taxes laid upon other property found originally with it in Class Four" which "is to work a patent and undenied discrimination . . . ."

Here, Plaintiff's contend, the Legislature acted unreasonably in classifying livestock business and business inventories together and subsequently deleting "business inventory" from the classification (Class Six), creating an exemption from taxation for business inventory. The contention being no substantial distinction exists for such a classification to be justified.

Accordingly, I hold that the Legislature's treatment of livestock pursuant to Senate Bill 283 is arbitrary and unreasonable and violates the equal protection guarantee of the Fourteenth Amendment of the United States Constitution and the Equal Dignity clause of the Montana Constitution.

### 4. AMENDMENTS TO SECTION 15-6-136b SENATE BILL 47 and 283

In 1981, two separate bills were passed which amended Section 15-6-136 MCA, (Class Six property) affecting livestock inventories.

EXHIBIT NO. 2 pg 9  
DATE 1/25/89  
BILL NO. SA 184

The first bill, Senate Bill 47, deleted livestock, poultry, and the unprocessed products of both from Class Seven (Section 15-16-137) shifting them to Class six. The final bill was signed into law as Chapter 330 and was entitled (in part) "AN ACT TO REMOVE LIVESTOCK, POULTRY AND THE UNPROCESSED PRODUCTS OF BOTH FROM CLASS SEVEN AND PLACE THEM IN CLASS SIX FOR PURPOSES OF PROPERTY TAXATION."

The purpose of Chapter 330 was to place livestock in Class Six. However, the final form of the act did not identify livestock as Class Six property. It deleted unprocessed agricultural products as an exception.

The full text of Section 15-6-136 as amended by Chapter 330 read as follows:

(1) Class six property includes:

(a) Business inventories as defined in this section; and

(b) All unprocessed agricultural products on the farm or in storage except perishable fruits and vegetables in farm storage and owned by the producer.

(2) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade. The market value of business inventories, for property tax purposes, is the cost to the person subject to the inventory tax.

(3) Class six property is taxed at 4% of its market value.

The second bill to amend Section 15-6-136 was Senate Bill 283. That bill was signed into law as Chapter 613 and entitled, in part:

"AN ACT TO EXEMPT BUSINESS INVENTORIES FROM TAXATION." The full text of Section 15-6-136 as amended by Chapter 613 read as follows:

(1) Class six property includes:

(a) livestock and poultry and the unprocessed products of both;

(b) all unprocessed agricultural products on the farm or in storage and owned by the producer.

(2) Class six property is taxed at 4% of its market value.

In this form, "business inventories" was deleted, and moved along with its definition, to Section 15-6-202, the exemption statute. However, "livestock" was specifically identified as a separate subclass of Class Six property by chapter 613.

#### 5. INTERPRETATION OF SECTION 15-6-136

The two separate amendments to Section 15-6-136 by Chapters 330 and 613 create an ambiguity in the statute.

The Defendant Department of Revenue acknowledged the ambiguity of the two acts in proposed rules implementing Chapters 330 and 613. Proposed Rule III, published in the Montana Administrative Register on 12/17/81, stated that:

Unprocessed agriculture products, including  
livestock . . . .

\* \* \*

. . . are not considered to be business inventory.

The notice goes on to state that:

Chapter 330 standing alone presents no difficulty.  
However, late in the Session, Chapter 613 was enacted.

\* \* \*

Because of the language employed in Chapter 613 to amend 15-6-136, MCA, vis-a-vis the language employed in Chapter 330, it is not clear from the text what the treatment of livestock is to be for tax year 1982 for property tax purposes.

MAR Notice No. 47-2-181, 23-12/17/81, pages 1695-1698.

Proposed Rule III became effective on 1/12/82 as Rule 42.21.120.

Plaintiff's contend the intention of Chapter 330 was to equalize and remedy the inequitable tax treatment of comparable property. Chapter 330 was succeeded by Chapter 613 which created a wider gap between the tax treatment of livestock and other business inventories. The ambiguity is apparent from a comparison of the language of the acts and the uncertainty in the Department of Revenue's proposed rules.

The Supreme Court has repeatedly stated that "In interpreting tax statutes it should always be kept in mind that they are to be strictly construed against the taxing authorities, and in favor of the taxpayer." Butte Country Club v. Dept. of Revenue (1980), 186 Mont. 424, 608 P.2d 111, 115, citing Cherry Lane Farms of Montana, Inc., v. Carter (1969), 153 Mont. at 249, 456 P.2d, Swartz v. Berg (1966), 147 Mont. 178, 182-183, 411 P.2d 736, 738.

This interpretation is adopted. Bill 47 acknowledged no substantial distinction existed between livestock and other business inventories to justify inequitable tax treatment.

6. LIVESTOCK CONSTITUTE BUSINESS INVENTORY AS DEFINED  
IN SECTION 15-6-202(5) MCA

The definition of "business inventories" is contained in subsection (5) of Section 15-6-202, the exemption statute, and reads as follows:

"Business inventories" includes goods primarily intended for sale and not for lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories do not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade.

That language was lifted verbatim from Section 15-6-136 by Chapter 613.

As a preliminary consideration, I note the language of the exemption statute is clear and unambiguous. Therefore, the rule of strict construction against taxpayers involving the interpretation of exemption statutes is not applicable. Montana Bankers Ass'n v. Montana Department of Revenue (1978), 177 Mont. 112, 580 P.2d 909.

Montana is an agricultural state. This Court recognizes and takes judicial notice that the overwhelming majority of the livestock inventories of stockgrowers are destined for ultimate sale and consumption as a food source.

Those types of livestock are raised and maintained in the livestock business "primarily for sale and not for lease." Such livestock meet the statutory definition of business inventory under Section 15-6-202(5) MCA.

7. CONSTITUTIONAL VALIDITY OF CLASSIFICATION SCHEME UNDER  
EQUAL PROTECTION CLAUSE

However, there is a more compelling reason why the discrimination effected by the classification scheme created by Senate Bill 283 and implemented by the Defendants is invalid. Article XII, Section 1 of the Montana Constitution (1972) confers a special status upon agriculture in Montana. There, subsection (1) of Section 1 directs the Legislature to: "...enact laws...to protect, enhance, and develop all agriculture."

Agriculture's importance to the people and the economy of Montana is grounded in the Constitution itself.

In a recent decision the Montana Supreme Court reviewed the status of equal protection analysis under the Montana Constitution in Butte Community Union v. Lewis (1986), 43 St. Rptr. 65, 712 P.2d 1309.

In that case, the Court considered whether a legislative classification constituted an impermissible, discriminatory classification which violated equal protection by eliminating welfare payments to able bodied individuals under 35 with no minor children and restricting payments to another class of individuals.

The Court acknowledged that:

Equal protection analysis traditionally centers on a two-tier system of review. If a fundamental right is infringed or a suspect classification established, the government has to show a "compelling state interest" for its action. If the right is other than fundamental, or the classification not suspect, the government has only to show that the infringement or classification is



rationaly related to a governmental objective which is not prohibited by the Constitution.

Ibid, at page 1311.

The court determined that the right to welfare was not "fundamental". Noting, it was neither found within Montana's Declaration of Rights nor a right "without which other constitutionally guaranteed rights would have little meaning." However, the court determined that welfare benefits are grounded in Article XII, Section 3(3) of our Constitution and thus are "deserving of great protection."

Article XII, Section 3(3) provides that:

The Legislature shall provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have need for the aid of society.

The court developed a middle-tier equal protection test in that:

A benefit lodged in our State Constitution is an interest whose abridgement requires something more than a rational relationship to a governmental objective.

A need exists to develop a meaningful middle-tier analysis. Equal protection of law is an essential underpinning of this free society.

Ibid, at page 1314.

The court thus held as follows:

Because the constitutional convention delegates deemed welfare to be sufficiently important to warrant reference in the Constitution, we hold that a classification which abridges welfare benefits is subject to a heightened scrutiny under an equal protection analysis and the HB 843 must fall under such scrutiny.

Ibid, at page 1311.

The court employed two factors in this new, "heightened scrutiny" test. First, it required that the classification be "reasonable," and second, that the state's interest in classifying welfare recipients override the interest of those people in obtaining their constitutionally protected benefits.

Butte Community Union, (supra), is controlling authority for this case. Here, as in Butte Community Union (supra), the protected status of agriculture is grounded in Article XII of our Constitution and is entitled to heightened scrutiny and "great protection." As I concluded the classification scheme itself is unreasonable. It does not overcome the "rational basis" test utilized in tax cases, nor can it withstand the "heightened scrutiny" test required under Butte Community Union (supra).

#### 8. JUDGMENT ON THE PLEADINGS

The Plaintiffs' motion for judgment on the pleadings and motion requesting judicial notice of certain facts is granted. The Defendants' motion for judgment on the pleadings is denied. No decision has been made on the Plaintiffs motions to compel or motion for a protective order.

DATE 2 pg 16  
11/25/84  
BILL NO. SB 184

The Plaintiffs' motion for sanctions is granted pursuant to Rule 11 M. R. Civ. P. and Section 25-10-711 MCA. The Defendants shall pay \$513.23 for Plaintiff's attorney fees and costs.

Under the existing law, the Plaintiffs had a legitimate basis for seeking declaratory relief under the Uniform Declaratory Judgments Act and Section 15-1-406, MCA. Secondly, in opposing the Plaintiffs' motion for judgment on the pleadings, the Defendants failed to comply with Uniform District Court Rule II, which provides that such failure ". . . shall be deemed an admission that in the opinion of counsel, the motion is well-taken."

Finally, this Court sua sponte grants judgment on the pleadings in favor of the Plaintiffs and against the Defendants on their counter-claims. The pleadings are closed. The issues have been briefed and argued before the Court. I agree with the Defendants' contention no factual dispute exists. Only issues of law are before the Court for resolution. The matters of which this Court has taken judicial notice do not require or create an issue of fact. See Moore's Federal Practice, Vol. 6, 56.11(9), Vol 2A 12.15.

In Hereford v. Hereford (1979), 183 Mont. 104, 598 P.2d 600, our Supreme Court held that:

By the great weight of authority, no formal cross-motion is necessary for a court to enter summary judgment. The invocation of the power of a court to render summary judgment in favor of the moving party gives the court power to render summary judgment for his adversary provided the case warrants that result.

Hereford, (supra), at page 602, citing Moore's Federal Practice.

Additionally, the Supreme Court upheld summary judgment granted in favor of the Department of Revenue with no cross-motion before the trial court. See also Abrams v. Feaver (1984), 41 St. Rptr. 871, 685 P.2d 378 and Harbeck v. Orr (1981), 38 St. Rptr. 668, 627 P.2d 1217.

Since only legal issues are before this Court, and since this Court finds that the Defendants as the original moving party have had full and fair opportunity to address any question of whether an issue of fact exists and whether the Plaintiffs are equally entitled to judgment as a matter of law, I conclude the holding of Hereford v. Hereford (supra), is applicable in the circumstances.

ORDER

This Court thus finds and declares:

1. That the livestock inventories of Plaintiff's, Maurer and Lorang, constitute "business inventories: within the scope of Section 15-6-202, MCA, and are exempt from taxation;
2. That the Legislature in enacting Senate Bill 283, effective as Chapter 613 of the Statutes of 1981, and the Defendants' actions in assessing and taxing the business inventories impermissibly discriminate against the Plaintiffs Maurer and Lorang and similarly situated ranchers and farmers in Montana in violation of their rights to equal protection under both the United States and Montana Constitutions.
3. That Plaintiff's, Maurer and Lorang, are entitled to a refund of property taxes paid based upon assessments of their livestock business inventories after the effective date of the business inventory tax exemption created by Chapter 613.

ADDITIONAL  
E. 2 25 18  
DATE 7/25/89  
BILL NO. SA 184

4. That the Plaintiffs are entitled to costs and attorneys' fees in the amount of \$513.23.

The relief afforded by this Order shall be extended to such other individuals as may qualify as class members upon certification of the class under Rule 23, M. R. Civ. P.

This opinion and order is rendered in lieu of separate findings and conclusions. It is so ordered.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED this 17 day of May, 1988.

THOMAS M. MCKITTRICK

-----  
Thomas M. McKittrick  
DISTRICT COURT JUDGE

cc: Thomas E. Hattersley  
Larry O. Schuster

NAME: Mrs Mary E Dorehek DATE: 01/25/89

ADDRESS: 7645 N. Montana Ave

PHONE: 458-9525

REPRESENTING WHOM? my husband & myself who have a 400 acre <sup>family</sup> ranch

APPEARING ON WHICH PROPOSAL: SB 184

DO YOU: SUPPORT? ✓ yes AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: I think this bill should pass on its merits & its fairness.

It should not be rejected simply because schools (or other interests) want the money.

Otherwise we could expect other unfair practices used to obtain revenue.

This is a matter of the right thing to do. In ethics the end does not justify the means. We must use fair & equal means in dealing with bills, taxes & in this case agriculture & livestock. Farmers are having a hard enough time making it. Please support SB 184

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Amendments to SB Bill No. 132  
First Reading Copy

Requested by Senator Mazurek  
For the Committee on Taxation

Prepared by Jeff Martin  
January 23, 1989

1. Title, line 8.  
Following: "SECTIONS"  
Insert: "15-16-102"

2. Title, line 9.  
Following: "15-17-121,"  
Insert: "15-18-111"  
Following: "15-18-112,"  
Strike: "AND"  
Following: "15-18-114,"  
Insert: "15-18-212, AND 15-18-214,"

3. Title, line 10.  
Following: "DATE"  
Insert: "AND A RETROACTIVE APPLICABILITY DATE"

4. Page 1.  
Following: line 12  
Insert: Section 1. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment -- penalty for delinquency. All taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103 and assessments made on interim production and new production as provided in Title 15, chapter 23, part 6, and payable under 15-16-121, shall be payable as follows:

(1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, then such amount so payable shall become delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of 5/6 of 1% per month from and after such delinquency until paid and 2% shall be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-

307.

(5) If the taxes become delinquent, the county treasurer may must accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest. Partial payment of delinquent taxes extends the period of redemption as set forth in 15-18-111."

Renumber: subsequent sections

1. Page 3.

Following: line 11

Insert: Section 3. Section 15-18-111, MCA, is amended to read:

"15-18-111. Time for redemption -- interested party. (1) Except as provided in ~~subsection~~ subsections (2) and (3), redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, the occupant of the property, or any interested party within 36 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(2) ~~For~~ Except as provided in subsection (3), for property subdivided as a residential or commercial lot upon which taxes or special assessments are delinquent and upon which no habitable dwelling or commercial structure is situated, redemption of a property tax lien acquired at a tax sale or otherwise may be made by the owner, the holder of an unrecorded or improperly recorded interest, or any interested party within 18 months from the date of the first day of the tax sale or within 60 days following the giving of the notice required in 15-18-212, whichever is later.

(3) The property tax lien redemption periods set forth in subsections (1) and (2) are extended for 1 year each time partial payment of delinquent property taxes is made pursuant to 15-16-102."

~~(3)~~(4) For the purposes of this chapter, an "interested party" includes a mortgagee, vendor of a contract for deed or his successor in interest, lienholder, or other person who has a properly recorded interest in the property. A person having an interest in property on which there is a property tax lien but which interest is not properly recorded is not an interested party for the purposes of this chapter."

Renumber: subsequent sections

2. Page 5.

Following: line 22

Insert: Section 5. Section 15-18-212, MCA, is amended to read:

"15-18-212. Notice -- proof of notice -- penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, including an additional 1-year period each time partial payment of delinquent taxes is made



pursuant to 15-16-102, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, no assignment has been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk must provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), no additional notice need be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b), which failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall proceed to give notice in the manner provided in subsection (1)(a).

(b) Notice given under this subsection (3) must be given not less than 60 days or more than 90 days prior to the date on which the county treasurer will issue the tax deed.

(c) A purchaser or assignee who fails to give notice as required by subsection (1)(b), thereby forcing notification to be given under this subsection (3), must be charged a penalty of \$500 plus all actual costs of notification incurred by the county proceeding under this subsection (3).

(4) The notice required under subsections (1) through (3) must be made by certified mail to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested

party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 90 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, publish once a week for 2 successive weeks, in the official newspaper of the county or such other newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1) through (3) and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which description must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be totally liquidated;

(f) the minimum partial payment of delinquent taxes, including penalties, interest, and costs, that may be paid in order to extend the period of redemption of the property tax lien;

~~(f)~~(g) the name and address of the purchaser;

~~(g)~~(h) the name of the assignee if an assignment was made as provided in 15-17-323;

~~(h)~~(i) the date that the redemption period expires or expired;

~~(i)~~(j) a statement that if all the minimum partial payment of taxes, penalties, interest, and costs are is not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

~~(j)~~(k) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) In all cases, proof of notice in whatever manner given must be filed by the county clerk, county treasurer, purchaser, or assignee, as appropriate, with the county clerk not less than

30 days following the mailing or publication of the notice. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification.

(9) If the minimum partial payment of delinquent taxes is made in accordance with 15-16-102, the period for redemption of a property tax lien is extended for 1 year for each partial payment, provided the taxpayer is not more than 36 months delinquent, and the procedures of this section must be complied with again in relation to the expiration of the redemption period extension before a tax deed may be issued.

Section 6. Section 5-18-214, MCA, is amended to read:

15-18-214. Effect of deed. (1) A deed issued under this chapter conveys to the grantee absolute title to the property described therein as of the date of the expiration of the redemption period, free and clear of all liens and encumbrances, except:

(a) when the claim is payable after the execution of the deed and:

(i) a property tax lien attaches subsequent to the tax sale; or

(ii) a lien of any special, rural, local improvement, irrigation, or drainage assessment is levied against the property;

(b) when the claim is an easement, servitude, covenant, restriction, reservation, or similar burden lawfully imposed on the property; or

(c) when ~~an interest in the land~~ is owned by the United States, this state, or a subdivision of this state.

(2) Under the conditions described in subsection (1), the deed is prima facie evidence of the right of possession accrued as of the date of expiration of the period for redemption or the date upon which a tax deed was otherwise issued."

Renumber: subsequent sections

3. Page 6, line 2.

Following: "date"

Insert: "-- retroactive applicability"

4. Page 6, line 3.

Following: "approval"

Insert: "and applies retroactively, within the meaning of 1-2-109, to property tax payments made on or after July 1, 1988"

DATE

1/25/89

COMMITTEE ON

Taxation

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Michael Lane	APA	184	X	
John Schubert	WE TA	184	X	
Mrs. Mauri Doerbel	Self	184	✓	
John DeLuk Jr	Self - Rancher	184	✓	
Carol Mosher	Mt. Little Home	184	✓	
Roland Mosher	Tec. Serv. Rancher	184	✓	
Ed Vlatkovich	MSCA	184	✓	
Chase Hibbard	MSCA SELF (Rancher)	184	✓	
Dennis Burr	MTTAX	184	✓	
Don Sigels	Mt Chamber of Commerce	184	✓	
Larna Mack	Damn Bureau	184	✓	
John Asay	Mt. Little Leaders Assoc	184	✓	
Kay Morrison	WIFE	184	✓	
Bruce W. Mizer	MSBA	184		✓
Jinda Hall Anderson	Lewis Clark Co. (MRCO)	184		✓
Andon Morris	MRCO	184		✓
Jack Ag Coalition	MT Stockgrowers	184	✓	
Don Brennan	Rancher	184	✓	
Fred Dreyer	Office of Public Inst	184		✓

(Please leave prepared statement with Secretary)