MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - 2nd SPECIAL SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Harrington, on May 23, 1990, at 10:00 a.m.

ROLL CALL

Members Present: All members except:

Members Excused: Rep. Driscoll and Rep. Swysgood

Members Absent: None

Staff Present: Lee Heiman, Legislative Council

Announcements/Discussion: Chairman Harrington reminded the audience to sign the visitors' register.

HEARING ON SENATE BILL 1

AN ACT REVISING OIL AND NATURAL GAS LOCAL GOVERNMENT SEVERANCE TAX RATES; IMPOSING A REVENUE NEUTRAL LOCAL GOVERNMENT SEVERANCE TAX RATE ON NONWORKING INTEREST OWNERS OF OIL AND NATURAL GAS PRODUCTION; ESTABLISHING A BASE YEAR FOR THE DISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAXES; DISTRIBUTING LOCAL GOVERNMENT SEVERANCE TAXES TO ELIGIBLE TAXING UNITS; PROVIDING FOR A PERCENTAGE DISTRIBUTION MECHANISM FOR LOCAL GOVERNMENT SEVERANCE TAXES UNDER CERTAIN CONDITIONS; CLARIFYING THE APPLICATION OF THE LOCAL GOVERNMENT SEVERANCE TAX TO NATURAL GAS STRIPPER WELLS; CLARIFYING THE LOCAL GOVERNMENT SEVERANCE TAX ON OIL STRIPPER WELLS; CLARIFYING THAT LOCAL PRODUCTION TAXES ON OIL, NATURAL GAS, AND COAL ARE INCLUDED IN THE GUARANTEED TAX BASE CALCULATION; CLARIFYING THE DEFINITION OF THE GUARANTEED TAX BASE; AMENDING SECTIONS 15-36-101, 15-36-112, 15-36-121, AND 20-9-366, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Presentation and Opening Statement by Sponsor:

SEN. GAGE, District 5, Cut Bank, said he would speak briefly about SB 1 since the committee has heard three bills that are identical to SB 1, with the exception of rates. Assuming that committee members were familiar with those figures, Sen. Gage focused on his philosophy regarding the bill's intent. He handed out EXHIBITS 1 and 2 to the committee. EXHIBIT 1, "Is There an Incentive to Convert from Regular Production to Stripper?", answers the query, why don't operators reduce production to get at the lower rates? The figures and narrative show there is "a narrow band" where that does make sense. That narrow band is somewhere between 10.8 and 10.9 barrels down to 9.2 to 9.3 barrels on oil and between 68,000 and 69,000 feet of gas and 52,000 and 53,000 feet of gas. In between there, if an operator can get down to the stripper level, he will save money. But if he goes below the lower rates, he will lose money. It is difficult to hit this rate on an annual basis when an operator is a year behind in making that determination. For example, if production is at 10.1 barrels and the operator wants to manipulate production to get to the lower stripper rate of 4.2, and he gets down to 9.1 barrels, then he will have less net revenue with the 9.1 barrels and at the lower rates than he would have if he sold 10.1 barrels at the higher rate. The same is true with gas production. With the stripper status in oil, the first five barrels are not subject to state severance tax. The next five barrels are taxed at 3%, if production is right at 10 barrels. Sen. Gage did not include RIT or conservation tax because those vary, depending on whether or not it is a stripper well. He then referred to page 3 of EXHIBIT 1. These rates are based on 1987 figures, which were used in the 1989 special session to set rates. The right column shows the revenue impact of a 1% change. Page 4 of EXHIBIT 1 shows the Montana Petroleum Association's (MPA) proposal that had consensus support from those who met May 10, 1990. It shows the rates that are currently in SB 1, based on 1987 production, to show what would have been produced in tax revenue from those categories converting from net proceeds tax to a local government severance tax (LGST) rate. It compares that total with what the Department of Revenue (DOR) says is the net proceeds tax paid based on 1987 production laws. Sen. Gage calculates the top total to be over $50,000 of tax neutral. Others have calculated it to be $70,000 to $77,000 over tax neutral. Comparing those rates with the bottom, the figures with an asterisk show about a $1.5 million difference. The original figure in SB 1, $48.9 million, was from the DOR. This erroneously included production from the wrong school district, which had different mill levies assessed, and new production in one producer's net proceeds calculation. Page 5 of EXHIBIT 1 includes the best guesstimates of carryover from one year to another. He took 1987 base information from DOR and calculated what deductions oil and gas operators got on their net proceeds tax returns. Using 1989 gross production, he took off the royalty and the deductions from 1987, with no adjustment for inflation, just the dollar-for-dollar deductions, and arrived at what would have been taxable under net proceeds tax. Taxable would have gone down $81 million. Page 6 shows that total revenue decreased about $97 million due to decreased production.

Sen. Gage then referred to Table 7 on page 12 of the <u>Local Government Severance Tax: Issues and Options</u> (EXHIBIT 2). In oil, from calendar years 1981 to 1988, there was a sizable decrease in gross value, about one-fourth. The effective tax rate for the same time period, however, has increased. This says that as an operator's revenue decreases, his tax rate increases. Sen. Gage compared this to income tax rates that increase with higher income. He illustrated the absurdity of a business operation that suffers a catastrophe then the owner must pay higher taxes despite the loss of the business's value. Sen. Gage would like more consistency in sharing the tax burden between all taxpayers in the state. It is unfair that the oil and gas industry is being taxed on 100% of market value compared to something that's taxed at 4% of market value. Oil and gas is being taxed at 100% of more than market value of its product. Net proceeds have nothing to do with profit from a lease. The percentages in Table 7 are based on net proceeds taxes. Net proceeds calculations were based on gross value of production less specified allowed deductions, including insurance and bonding. This provides an idea of the nonsensical nature of the net proceeds tax: no tax deductions of any kind; no supervision deductions; no accounting deductions; etc. For example, if a company based in Denver decided to move its office and staff operations to one of the leases in Montana, there would be no deductions on staff. Further, each lease stands on its own. An operator with a $50,000 net on one lease that is subject to net proceeds tax and who has a $50,000 loss on another lease is theoretically at zero. Under net proceeds tax, the operator pays net proceeds tax on $50,000. That's the nonsense, and that is why the Legislature opted to go to the LGST, a flat tax.

In the 1989 special session, the Legislature decided to base the flat rate taxes on tax that was paid in 1987 on 1987 net proceeds. At the time the question was asked, "What will happen in the future?" Sen. Gage responded that these rates are tax neutral only if there is constant production and price. Otherwise there will be a drop in values, and they won't bring in the revenue that was brought in in 1987. Percentages in HB 28 were based on 1987 production that were to apply to future year production beginning with January 1, 1989. There are ways, in order to bring in the same revenue year after year, that 100% taxes can be reached despite declining production. From the Legislature's perspective, every other year the Legislature will be out of tax neutrality if it uses rates in a bill unless production and price are identical to the past figures. The 1989 special session decided to set rates to be tax neutral in order to raise the same revenue from 1987 that the net proceeds tax did. In the future, those rates would be assessed against production starting in 1989. Sen. Gage would be happy to answer any questions from the committee.

Testifying Proponents and Whom They Represent:

Janelle Fallan, Executive Director, Montana Petroleum Association

Jerome Anderson, Attorney, Shell Oil Western Exploration Company

Doug Ablin, Montana Oil and Gas Association

Sen. Larry Tveit, District #11, Fairview

Proponent Testimony:

JANELLE FALLAN said that the problem with the additional 40 mill statewide for school equalization is that not everyone is paying an additional 40 mills. The statewide levy went up; local levies went down. Statewide there is an average increase of 3.07 mills. To put an additional cost of 40 mills on one industry lacks fairness. The Legislature is here to correct a mistake made last summer. House Bill 28 was so massive that if these were the only mistakes made, the whole process went pretty well. The mistake resulted in a tax increase on regular oil. Part of the reason is that regular oil is the dominant part of production in Montana. The state is about 14th in the nation in regular oil production and 19th in natural gas production. Thus, when tax changes are made with oil production, it has a much greater revenue impact than with the same point difference in other areas of production. The oil and gas industry, which has been singled out for special tax treatment since 1919, has made a good faith effort. A lot of producers have been paying the stripper well tax even though they do not legally owe it. The industry has been willing to work with the state on rates and number crunching, and understanding and correcting mistakes. Under this bill, the industry will have a tax increase. But the industry understands that this lives up to the promise made at the 1989 special session. Royalty owners are taxed more. With the switch from net proceeds tax to LGST, oil royalty owners received a tax reduction of about $2.9 million. The rates in SB 1 recapture part of that. While their tax rate is increasing, the effective tax rate is lower. She encouraged passage of SB 1.

JEROME ANDERSON supports this bill. The company he represents produces about 30% of the crude oil in Montana. The rate on oil set in HB 28 and this bill at 8.4% places the industry at about 1% over revenue neutrality, compared with 1987 production. This means that Shell will pay $1 million more in taxes under the 8.4% rate than it would have paid if this bill were actually revenue neutral as to regular oil production. Although it is illogical for a taxpayer to assume paying higher taxes, Shell is willing to assume this in order to get to a flat rate to avoid the cost and expense of ongoing audits that are associated with net proceeds tax. Shell is now waiting for audit decisions dating back to

1976. Audits are being conducted on all tax returns covering tax years 1976 through 1987. This means that DOR auditors are in Shell's offices in Houston, Texas on a continuing basis. Shell must allocate personnel time solely to this purpose. Shell is willing to pay the additional $1 million in taxes to achieve a stable tax structure that erases audit problems and establishes a stable financial picture to work with in the future.

DOUG ABLIN supports this bill. His organization includes primarily stripper well owners from northern Montana. His organization also took a hit with the switch from net proceeds taxes to the flat tax system. Many of his producers did not pay a net proceeds tax, but now pay the flat tax rate of 4.2%. They believe the flat tax is an advantage because of the time consumed with litigation, bookkeeping, etc. under net proceeds. Flat taxes provide these producers with stability and the ability to predict their future, which is very marginal.

SEN. LARRY TVEIT spoke in favor of the bill. Tax stability is very important. The Legislature must look at alternative funding for schools because production levels are variable. To remain revenue neutral, the Legislature keeps raising the tax, even as production levels go down. Oil industry is moving to North Dakota and Wyoming. When oil prices are low, tax structure in a given state makes a big difference. To raise taxes only for the oil and gas industry sends a signal that Montana will regret in years to come.

<u>Testifying Opponents and Whom They Represent:</u>

Greg Groepper, Office of Public Instruction (OPI)

Tom Bilodeau, Montana Education Association

Pat Melby, Underfunded Schools Coalition

Bruce Moerer, Montana School Boards Association

George Miller, self

<u>Opponent Testimony:</u>

GREG GROEPPER marginally opposes this bill. The Office of Public Instruction is pleased that the Legislature is recognizing the need to get to a revenue neutral rate as well as fixing the stripper well problem. OPI's target figure is still $35.9 million. This year, school districts adopted local levies using the figures in HB 28, which were 104% of last year's budget or 135% of the foundation program. Before school districts decide what they can levy, they must subtract out all their anticipated revenues. The best information school districts had this year was 1988 production under net proceeds tax, because that was all that was available. 1989 figures were not available until mid-May. The districts calculated budgets using the $35.9 million figure because that was the most current at the time. Receiving less than $35.9 million in revenue means that an oil and gas district will have to levy more mills because its revenue stream is not as great as they anticipated. One year from now when OPI makes the calculation for the guaranteed tax base using the figures decided at this session, a district that had no oil and gas but was eligible for guaranteed tax base aid will not receive as much guaranteed tax base aid. They are limited by how much money they can raise, but without the revenue there is a tax shift. The tax stream shifts from this stream of revenue to the property tax base. This is the concern of local school districts. They thought that they were making a trade by giving up the property tax base. They thought they were making a trade in giving up 40 mills statewide levy against this property tax base. They also thought they were giving up the ability to have any future tax increases on this base. This trade was an exchange to get the same amount of revenue they would have in the first year of implementation. He reminded the committee that Montanans are paying a 5% income tax surcharge, and all state homeowners are paying an additional 40 mills to support education. This is why the educational community thinks the $35.9 million figure is a reasonable goal.

TOM BILODEAU opposes this bill because there are three serious problems with the state generating any amount less than $35.9 million. These are outlined in EXHIBIT 3. For these reasons, Mr. Bilodeau urged the committee to look at bills that raise at least $35.9 million or HB 28 through oil and gas in the initial year of implementation, fiscal 1991.

PAT MELBY opposes this bill and urges the Legislature to seek a responsible way to ensure that counties and school districts do not suffer substantial revenue losses because of the incrementations of the flat tax. He urged legislators to plan for the future, because this bill is only a 1-year fix. Production is declining, and state needs a long-range solution to school equalization problems.

BRUCE MOERER supports the concept of SB 1 being revenue neutral. There are many unknowns with the tax changes; their impacts will not be known until they get further into the budget process for schools in the upcoming year. Most of the numbers on the most recent spreadsheet are far off for certain school districts, given the magnitude of the changes that hit the schools at once. His organization understands that revenue will decline when production declines. The question is: what is the revenue that should be generated in the first year when the Legislature sets the rate? It was their expectation that when they made the transition from the last year of the old system to the first year of the new system that they would not lose revenue at that point. Yet they understood that revenue would decline after that. Their concern is with the initial dollar amount of revenue generated with the flat tax; they expect that it will be around $36 million.

GEORGE MILLER explained that if he rented his house for only part of a year, he cannot change the house's tax rate because his cash flow is down 25%. The basic nature of a property tax is that it is levied on the value of the property, not on the income generated from the property. With the flat tax, the power to tax was transferred from local county commissioners and school boards to the state Legislature. The oil and gas industry cut a deal with Montanans. Oil said their property taxes will bring in "X" amount of tax dollars. While he laments the fact that the industry's production and revenue are down, their tax bill is still $35.9 million.

Those neither proponents nor opponents and whom they represent:

William Delfield, County Commissioner, Fallon County

Dennis Adams, Director, Department of Revenue

Carl Knudsen, Superintendent, Saco Public Schools

Informational testimony:

WILLIAM DELFIELD was neither a proponent nor an opponent of this bill. Shell Oil is the largest producer in Fallon County and in the state. He clarified that a new well drilled on an old lease is not classified as old production. The 1987 Legislature made the change: any new well was new production, regardless of whether it was on an old or new lease. With production declining over the years, eventually only stripper wells will remain. In Fallon County, about 90% of oil produced is old production. Ten percent of the 90% is stripper wells. It is not feasible for oil producers in Fallon County to have stripper wells; the wells are too deep and the volume is not sufficient to justify costs. In Fallon County, the life of the field is out third-stage recovery and if continued drilling new wells happens, the fields have a life expectancy of 10 to 20 years without this third-stage tertiary recovery. If and when this comes in, the old production will be half tertiary with incremental oil. So only half of the oil will be old production, the other half taxed on another tax. There is one chunk of old production, and it will keep growing smaller and smaller.

DENNIS ADAMS presented EXHIBIT 4 to the committee, which is an analysis of SB 1, HB 3, and HB 4. The first page compares net proceeds taxes, which are paid in FY 90 (which is $35.9 million), with the projected revenue from SB 1 under the LGST. This is a shortfall from FY 90 to FY 91 of $4.1 million. He encouraged the committee to be aware of the level of new and interim production at the same time in order to have the complete picture of production taxes paid to local governments by the oil and gas industry. Under post-1985 production, the $4.4 million that is included as taxes on new and interim production is not included in the guaranteed tax base calculation, as OPI has testified, because it is an insignificant amount. Yet other amounts that are being discussed as significant are less than this, and therefore not included in the guaranteed tax base calculation. The second page compares HB 3 and HB 4 with SB 4 (which is now SB 1). This is based on the LGST under both scenarios for FY 91. Page 3 includes net proceeds taxes for FY 89, which is based on calendar year 1987 production. Then they show 1988 production, which is FY 90. Page 4 shows that SB 1 produces $77,000 more than was produced under the net proceeds taxes on calendar year 1987 production or FY 1989 taxes. It also breaks down the classes of taxpayers that received either reductions or increases from what they paid under net proceeds taxes. The regular oil people are the only ones who are paying more under the LGST in SB 1 than what they paid under net proceeds. Page 5 shows that HB 3 in FY 91 under LGST, would generate $43.7 million, which is more than what was paid under net proceeds paid on 1987 production. Page 6 shows that HB 3 would generate $15.4 million more in LGST, based on 1987 production, oil and gas paid in net proceeds. Page 7 shows HB 4 comparisons of net proceeds paid with LGST revenue generated. The bottom line is almost revenue neutral, but notice the changes in various counties on page 7; 18 counties have decreases; 13 have increases, with Fallon County having a 10% increase in their tax revenues compared to what they received under the net proceeds taxes for the previous year. Page 8 shows, using 1987 as a base year, that HB 4 would collect $5.5 million more using LGST than was paid with net proceeds. The most significant tax increase would be borne by both gas and regular oil. Oil and gas production is significant to those counties that have the production.

Page 9 shows mill levies in each of these taxing units compared to the 89-90 statewide average mill levy for the state, counties, and school districts. The statewide average for those entities was 239.94 mills. Approximately 80% of these taxing units with oil and gas production are below the statewide average. This shows that oil and gas production has permitted them to hold mill levels down and is an important part of the overall tax base.

CARL KNUDSEN encouraged the committee to look at the shortfall that the conversion makes for Phillips County (on page 3 of EXHIBIT 4). We go from $1.7 million to $1.4 million, which is a $300,000 loss. This forces the county to raise levies, which is difficult with I-105 restraints. Their's was once a rich district, with a $16 million tax base. With the conversion, they now have a $3 million tax base. Prior to the conversion, the district could raise $37,000 with about

1/4 mill; now it takes about 10 mills to make up that shortfall. The district does not mind sharing its wealth with poorer counties and school districts. However, it is not fair that in sharing their wealth they become poor themselves and have to go to the district's taxpayers and raise their taxes significantly this first year. They had agreed with the conversion because it was meant to be revenue neutral, "dollar-for-dollar." They knew that it would not maintain that in the long-term; the next Legislature will have to look into long-term solutions. The issue of declining production is being thrown around because it was based on all wells drilled prior to July 1, 1985. Mr. Knudsen asked, why not move that date to 1986 and have more production because all wells drilled after July 1, 1986 would prohibit that decline in production. Make that a 5-year gap between new production and old.

<u>Questions from Committee members:</u>

CHAIRMAN HARRINGTON asked Janelle Fallan to clarify her statement that taxes went up 3.3 mills plus 3.6 mills statewide on all property owners. Was she using all counties in this figure or does she have figures on what it would be with the 32 counties that have oil and gas production? Ms. Fallan replied that she does not have the latter figure. Chairman Harrington stated that these 32 counties are the ones that are most impacted by this conversion, and having those figures would be helpful in arriving at a decision. Ms. Fallan said that there was the understanding that the eastern counties would see tax hikes while the western counties would have tax decreases. That has happened. Chairman Harrington said that it would be more useful to compare tax figures between oil and gas producing counties with those that don't than using statewide averages.

REP. GILBERT asked Doug Ablin how the Legislature could make it taxably feasible for old oil to stay in production. Mr. Ablin responded that they could extend production by new technology with horizontal drilling. With old production, whether stripper or regular oil, if one re-enters an existing bore it is old production. Drilling a new well in an existing field is new production. They have a lot of stripper category that may well be horizontally drilled in old production for volume increases. Their field is 96% stripper; if they can gain another 10-20 years from a field because of the advantages given to stripper and regular production in old fields, they are going to do it if at all possible. In his area, production is as low as 1-2 barrels. The industry deserves the chance to increase the tax base through new development in old fields by entering the old wells and increasing their volumes through new technology.

REP. KADAS clarified with Mr. Ablin that a new horizontal well drilled in an old field is taxed at 7% at new well rates. Mr. Ablin responded that any new well is new production. If it is to enter an old well, it is old production, regardless of whether it uses new technology. Rep. Kadas, referring to Mr. Ablin's testimony, said that some share of stripper wells do not pay any net proceeds. Can he provide any idea of how large that share is? Mr. Ablin said that with oil, 35% of the stripper producers did not pay net proceeds. They must now pay 4.2%. He did not have gas figures.

REP. PATTERSON asked Sen. Gage about the amended fiscal note to SB 1, the last page where oil and gas rates are listed. Sen. Gage said that the only changes from the current rates are in regular and stripper royalty rates. The new oil figures for regular and stripper royalties is 12.5%, and on gas the rate should be 7.625%. This is only a minor change for gas, but for oil, a tenth of a percent makes some $300,000 difference. Sen. Gage said the non-royalty stays the same. Then he said that gas under stripper royalty will be 15.25%.

REP. RANEY asked Dennis Adams if SB 1 means a tax increase or decrease for stripper wells. For example, a stripper pulls out an $18 barrel of oil under net proceeds and pays a $1 tax; then he pulls out the same $18 barrel under SB 1, how much tax would he pay? Mr. Adams replied that he would pay more than a dollar. Rep. Raney asked, then SB 1 is a tax increase on stripper wells over net proceeds? Mr. Adams replied that the tax rate varies from well to well and from lease to lease. These are statewide averages. The DOR had 1,000 leases that paid zero net proceeds that would be paying the LGST; that is 1/3 of the leases. It varies according to what the operating expenses were under net proceeds, and now those expenses are not deductible under LGST. Under net proceeds, producers took what the product was sold for, deduct operating expenses, come down to the taxable value, and then apply the local mill levy to that value. Under LGST, take the product's price times the percent that is applicable for that type of production. Rep. Raney asked, so it is impossible for Mr. Adams to answer his question? Mr. Adams said yes, because it varies so much from lease to lease. These figures were averages that DOR came up with as to what the effective rates were before.

REP. O'KEEFE said that he has LFA figures (EXHIBIT 5) that show that the 1987 net proceeds average effective tax rate on those strippers was 8.22%. If SB 1 takes them down to 4.2, it is definitely a tax cut. Dennis Adams replied that those figures are a statewide average. Rep. Raney was asking specifically as to how a well paid under net proceeds. There would be a reduction on a barrel-for-barrel or mcf basis.

REP. SCHYE asked Sen. Gage if he thought there are other industries in the state that work under decreasing profits. He does not see them included here. Does Sen. Gage believe that the oil industry is the only one? Sen. Gage replied, "absolutely not", other than metal mines and micaceous that are also under net proceeds and did not want to go under LGST. There is no one else who is taxed under this method, so profit does not really enter into their tax picture. Nor does it enter into net proceeds tax on oil and gas. Profit does not have anything to do with the taxation method. Rep. Schye said that there are a lot of small businesses whose profits have gone down drastically in the last 10 years with drought, etc. Their taxes are going up. Does Sen. Gage agree with that? asked Rep. Schye. "Absolutely," replied Sen. Gage. Rep. Schye continued, but the oil industry taxes have gone down drastically in the last 10 years. Sen. Gage does not agree with that.

REP. KADAS was concerned about the new tax for royalty owners. He asked Sen. Gage about the constitutionality of instituting a new tax retroactively. Sen. Gage referred to a memo drafted by Mr. Lou Moore, an attorney from Billings, on this subject. Sen. Gage's understanding is that they can correct the stripper gas exemption as a curative type thing without any problem. Sen. Gage then referred to Mr. Moore, and Rep. Kadas asked him to speak on this issue.

Mr. Lou Moore was asked by a client for an opinion on the constitutionality of retroactive legislation. He referred to the memo (EXHIBIT 6). Essentially, retroactive legislation is legal in Montana. It is legal because a Montana statute implies that retroactive legislation is legal. It says that no law contained in any of the statutes in Montana is retroactive unless expressly so declared. That implies, he believes, retroactive legislation is proper. The Montana Supreme Court has indicated that retroactive legislation is legal provided it does not take away or impair vested rights to a degree that is unconscionable. Naturally what is unconscionable in any given situation depends on the viewer. The state does not have any significant cases on the subject. The U.S. Supreme Court, however, and other states have considered such matters as the elimination of deductions and exemptions. The U.S. Supreme Court, in a case from Wisconsin, said that such matters do not violate the due process clause of the U.S. Constitution. Based on this and no definitive case from the Montana Supreme Court, retroactive legislation, especially when it is enacted in the following legislative session and most especially when it is followed by a special session, is legal under the Montana and U.S. Constitutions.

Rep. Kadas asked Mr. Moore if he generally represents oil and gas interests. Mr. Moore does.

REP. KADAS asked Dennis Adams about DOR's position on retroactive legislation. Did the Department research this question at all? Mr. Adams replied that they have done only a limited amount of research. They believe there is opportunity for it to be challenged. Rep. Kadas asked if this opportunity is increased by the implementation of a totally new tax, as opposed to changing rates of an existing tax. Mr. Adams said that it has more to do with the change in all the rates.

REP. O'KEEFE commented to Mr. Adams that it appears what DOR is saying is different than what was presented to the Senate by Valencia Lane of Legislative Council. Is that true? Mr. Adams replied that DOR thought that she was focusing on a slightly different aspect than what they were, and that is why there is a problem with the difference. Rep. O'Keefe asked, wasn't Ms. Lane concentrating on the question that Rep. Kadas just asked? The question is that it is not just changing the rates, but implementing a new tax on royalty owners in this special session. Mr. Adams said their position is that royalty owners were already subject to the other tax because the law was very specific that it covered all production. All this bill does is switch the rates they would be paying, so there is an adjustment. They were paying the net proceeds tax and also under the LGST. But the Legislature would be changing the rates here, and that is where DOR believes the issue is.

REP. PATTERSON asked Mr. Gordon Morris, representing the Association of Counties, about the effects of the LGST on affected counties. Mr. Morris replied that they believed there would be no opportunity to effect any change in the rates during this special session. Thus, their position was to get the stripper exemption corrected, and insofar and SB 1 does that, he is limited in that regard. Rep. Patterson asked, does Mr. Morris believe that SB 1 will resolve the problems that the counties may have had with the shortfall? Mr. Morris said no. The way the bill stands now it does not address the shortfall in terms of the figures that the Director of DOR has provided. He was not prepared to comment on what those rates should be, on behalf of the member counties. If the Legislature here tried to achieve revenue neutrality, they would certainly applaud the effort.

REP. RANEY asked Sen. Gage to clarify the confusion that exists regarding the dollar-for-dollar issue, the switch from net and gross proceeds to the flat tax. It seems that industry is saying "dollar-for-dollar is fine, but we're talking about different dollars." This is to say, Rep. Raney continued, that the industry was making good money in 1988 and making lousy money in 1989. Therefore it is not possible to go dollar-for-dollar. The schools and counties are saying that has nothing to do with it; the bill said that the industry had adjusted the rates so that we get the same amount of money. Rep. Raney asked whether Sen. Gage told the counties and school districts at the 1989 special session that they would get the same amount of money, no matter what happens with production, in the first year that this bill is in effect? No, Sen. Gage said. Rep. Raney should refer to Sen. Gage's testimony then. He said then that assuming there is constant production and price, it would be revenue neutral. He also said then, "you are now asking us to come in here and put different rates in based on what we think 1988 is going to do when it looked like there would be a $101 million decrease in production and you're asking us to come up with $3 million more tax. And if that's tax neutral, I don't want anything to do with it."

REP. SCHYE referred to a committee hearing with Sen. Gage during the 1989 special session. House Bill 28 was Rep. Schye's bill to begin with, and he eventually voted against it. He said that Sen. Gage refers to the flat tax in it, and the bill had an amendment put in it at 17 and 9. The Legislature would not be here if those numbers had stayed in HB 28. Sen. Gage put in his numbers and made the same statement at that committee hearing, that if this was tax neutrality, he did not want any part of it. If the Legislature had stayed with Rep. Schye's percentages, they would be tax neutral now. Rep. Schye does not understand how Sen. Gage could argue with that. Sen. Gage said that he did not run the figures using Rep. Schye's percentages.

REP. GILBERT asked Sen. Gage if he agreed that the Legislature wouldn't be here now if, regardless of the numbers, the Legislature had not made a mistake on the stripper exemption. Sen. Gage replied that, excepting the workers' compensation issue, that is true.

REP. RANEY asked Greg Groepper if the education community and local governments understood that tax neutrality meant revenue would be the same in the first year following enactment as in the previous year, regardless of whether production or prices were up or down. Mr. Groepper said that when OPI testified, they understood that they were getting revenue in the first year of implementation that would replace the net proceeds revenue stream. They knew that it would decline over time. They thought they were trading future revenue, the ability to tax, and holding these people harmless from the 40 statewide mills. In exchange for all that, they would have a revenue neutral figure in the first year. They understood that 1987 figures were used to arrive at that level because those were the best figures at the time. Rep. Raney asked if OPI was led to believe that $35.9 million was the amount of revenue. Mr. Groepper said they were led to believe that they would get the same amount. Not until recently did they arrive at the $35.9 million figure because they had 1988 production figures. Of course, with all the audit issues and differing figures, one never knows from one year to the next what is out there. He is trying, and OPI is, to represent that they considered a revenue neutral number is one that would generate about the same amount of revenue that was generated in the first year of implementation.

REP. ELLISON wondered where OPI got the figures they used to get to that assumption. Mr. Groepper said that everyone in the 1989 special session was working off the same figures, which were based on 1987 production. One can look back at previous years or look forward with projections; one is anticipating at base year what production will be in the future. OPI arrived at revenue neutral by assuming the rates, applied to a projection of the 1987 production, would generate about the same amount of money. They did not expect to get exactly the same amount, but they were projecting out 4 to 4.5 [million]. Rep. Ellison said that the Revenue Estimating Committee estimated falling production with the same prices. Mr. Groepper said that these figures, in amendments, showed up during the regular session at the 11th hour at a free conference committee. Again, they were under the assumption that whatever figures were there, that 1987 production, declining production, what have you, that these rates would generate about the same amount of money that they had before, which was $40 million. $35.9 million was the best figure they could give school districts that were setting mill levies in April. He emphasized to the committee that the school districts used the $35.9 million figure to build their budgets on this year.

Rep. Ellison remarked that under SB 1, the oil companies would pick up part of that shortfall. Doesn't Mr. Groepper think, in fairness, that the shortfall should be distributed between all the state's taxpayers or not? Mr. Groepper said that OPI tries to stay clear of tax policymaking. Their role is to provide data so that legislators can decide policy. OPI suggests only that the school districts are using a budget figure that is higher than the Legislature is at now.

REP. REHBERG asked Jerry Anderson of Shell Oil about the base year debate. Mr. Anderson said that, based on his extensive personal files from the 1989 regular and special sessions, that everything was based on 1987 production. They did not have anything else. At the end of the 1989 special session, information began to arrive about 1988 production, but it was inconclusive. Rep. Raney has been trying to find out what the comparative payment between an operator if he were paying under 1987 net proceeds as compared to what he paid under the LGST. As far as Shell Oil is concerned, if they had been taxed at the 1987 rate of net proceeds at the 1987 mill levy, they would have paid $5 million plus. Under LGST, they actually paid $7.5 million, so there has been a substantial increase.

REP. REHBERG asked Judy Rippingale, former Director of the Legislative Fiscal Analyst's office, what the figure was on the fiscal note for the 1989 special session regarding the anticipated shortfall. Ms. Rippingale said that this fiscal note accompanied SB25; the rates that were in this were the same rates that became law. The fiscal note indicated that there would be a $2.9 million revenue loss. It appears that when they moved that section into HB 28 people lost track of the fiscal note.

REP. KADAS said that LFA at the 1989 special session made some estimates on what the rates ought to be. Does Ms. Rippingale recall what those rates were? She does not remember exactly what those rates were, but recalled that they were somewhat higher than the rates in the bill. LFA said that the rates would have to be higher than 8.4 and 15.25 in order to be revenue neutral. Rep. Kadas asked if Ms. Rippingale remembered who supplied the rates that were put into the bill. Ms. Rippingale did not know.

REP. KADAS asked Mr. Anderson if he remembered who supplied those rates. Mr. Anderson recalled that the rate structure was put into the bill by Sen. Gage as the bill was drafted. Shell had some input in the design of the rate structure. But the rate structure was Sen. Gage's work. They had some arguments with him over the extent of the structure, because at that time they believed for regular oil to be revenue neutral the rate should have been at 8.1 or 8.2 percent. It turned out it should have been 7.3%. Rep. Kadas said that Mr. Anderson had as much influence on those numbers as anybody.

REP. GILBERT asked Mr. Anderson what net proceeds tax total did he use when he worked on the rates, as far as total collections were concerned. Mr. Anderson said he understood the revenue neutral number is $40.4 million. They were in the ballpark. His handouts indicated a number around that level.

Closing by Sponsor:

SEN. GAGE said that Mr. Groepper indicated twice that the best estimate that OPI had, which was supplied to the schools to base their budgets on, was 1988 net proceeds tax. Although he respects Mr. Groepper's and OPI's sharpness, Sen. Gage suggested that OPI is not communicating, that they are not willing to share with the school districts what is happening out there, or that they just missed this thing. One of the benefits of the flat tax is that officials will have the information they need a year ahead of time on which to base their budgets. Sen. Gage has a printout, and does not know why OPI does not have it, that shows quarterly production. By January 1, records of almost the first three quarters of 1989 production were available. This would have provided them with 3/4 of the revenue that would be available for this year's budgets. The fourth quarter information arrived in early April, which was an estimate, but it was a close estimate. Sen. Gage says that OPI could have had the best up-to-date information.

Many people have mentioned the guaranteed tax base and that the oil and gas industry is responsible for the tax base going down. But nobody mentions that the oil and gas industry is responsible for that new oil production, which is bumping that guaranteed base up. Nobody has mentioned that $180 million of oil and gas property is still on the tax roll, still in the guaranteed tax base.

The primary factor in new business location is how stable the state's tax system is. Someone will talk about 83% to 85% of the costs being covered by HB 28. And it's dwindling. But he does not think that one industry should maintain that average at 83% or 85% in the state. Hindsight does not help; let's look forward. What if oil goes down to $9 a barrel and the LGST goes down to $15 million? How far is enough? It is not reasonable to set a $35.9 million level, given the variables of price and production. The deal was not that oil and gas would pay $40.4 million. The deal was that the industry would give the state a percentage of its future production in future years. Another person said that their tax base used to be $16 million but it is now down to $3 million. He did not mention that they used to be at "X" number of dollars in non-tax revenue and now they are clear up here. Some have asked "why don't we put all new production together?" This gets us back to the stable tax base situation. In 1985, the state enticed developers of new oil and gas production by removing new production out of net proceeds and setting a 7% rate for new oil wells and 12% for gas wells after July 1. A few years later, the Legislature tried to change that; this is not stable tax policy or good faith effort. SB 1 is an attempt to put some stability in tax policy on our natural resource extraction. Now the tax rates are uniform across the state.

DISPOSITION OF SENATE BILL 1

Motion: Rep. Gilbert moved that Senate Bill 1 do pass.

Amendments, Discussion, and Votes: Rep. Raney moved an amendment that called for the Revenue Oversight Committee (ROC) to study new methods of taxation, specifically the flat tax and its impacts on local governments, school districts and the oil industry. The amendment says that the ROC should study the new methods of taxing coal, oil, and gas production that were mandated by HB 28 in the 1989 special session and by SB 1 in the 1990 special session.

REP. REHBERG asked Rep. Raney what the purpose of the study was. Is the conclusion of the study to prove that this is bad tax policy and to propose more comprehensive tax policy, such as sales tax or some other form of revenue to offset declining oil and gas production? Rep. Raney said he is trying to leave the specific purposes of the study up to the ROC. He wants the ROC to learn as much as possible about the flat tax, its impacts, and conclude whether that is fair taxation. Rep. Rehberg asked, so it would be a policy study rather than the debate we are currently having simply on rates and short-term policy? Rep. Raney concurred with that.

CHAIRMAN HARRINGTON informed the committee that Legislative Council attorney, Lee Heiman, said that this study would be appropriate to amend into SB 1. Rep. Raney wondered then what the appropriate language should be.

REP. GILBERT does not disagree with the purpose of this study. However, he wonders if it would be more appropriate for the ROC to study this issue in the 1991 session primarily because the ROC probably has more work to do than they have time for. Perhaps the amendment would cloud the issue by adding this mandate. The committee should have some right to determine what they will study. He thinks the idea is good.

REP. RANEY responded that no legislators will be pleased with any of the legislation passed this special session. If the Legislature waits until the 1991 regular session to approve this study, they will not have the report until 1993, and they will all be confused for another 2 1/2 years. Now, at least the ROC could gather the information and present it in a manner that people who know nothing about oil and gas production and taxation would be able to understand.

REP. GILBERT asked Chairman Harrington, who is a member of the ROC, if the committee's time frame would allow a study of this nature.

CHAIRMAN HARRINGTON did not want to respond for the ROC as a whole, but as a member he thinks this is a very important issue. Despite their heavy workload, he believes the committee should address this issue.

REP. REHBERG clarified with Rep. Raney that the study would not entail any appropriations, that it is only a request.

REP. REHBERG asked whether the ROC could decide to do this study without this amendment. Chairman Harrington said no.

REP. GILBERT asked Rep. Good, Vice-chairman of the ROC, if the committee's time frame would allow this study. Rep. Good said the ROC could certainly take the time to examine this very important issue.

REP. RANEY read the amendment: The Revenue Oversight Committee will study the new methods of taxing coal, oil, and natural gas production that are mandated by HB 28, Special Session Laws of June, 1989 and by Special Session Laws of May, 1990 and report its findings to the 52nd Legislature.

A voice vote was taken, and the amendment passed unanimously.

REP. REAM moved an amendment on page 1, line 9, striking "REVENUE" and inserting "TAX". This makes the important distinction between tax neutral and revenue neutral. Rep. Ream then read dictionary definitions of "revenue" and "tax". The definition of "tax" more clearly defines the scope of SB 1. Rep. Ream appreciated Sen. Gage's use of the term "tax neutral" and thinks that this simple amendment would clarify the bill's intent.

A voice vote was taken, and the amendment passed with Rep. Kadas opposed.

REP. KADAS moved amendments that would make SB 1 revenue neutral. The amendments eliminate the separate rate for royalty, and they eliminate the stripper rate. There would be one rate for oil and one rate for gas. The rate for oil would be 8.93, and the gas rate would be 16.21. These rates generate $35.9 million. This is the level that districts expect, and that is the level he is going to. He is consolidating the rates for simplicity. The Legislature has a tendency to make tax structure more and more complicated over the years. They have heard repeatedly from the oil and gas industry that they want tax stability. To Rep. Kadas, one of the key aspects to stability is simplicity, so that the industry knows clearly what its rates will be and there is not as much fudging around with different options. Royalty owners, with the transition from net proceeds to flat tax, receive a break. He is concerned about losing that in court, with the Legislature imposing a retroactive new tax. He is also concerned about having a royalty rate higher than the regular rate. He can envision creative attorneys putting a very small portion of the operating costs into the royalty contract, therefore making the royalty owner a part of the operator so that he gets a lower rate. He does not want to see this happen, so it would be simpler to go with just one rate. With stripper, refer to the LFA sheet (EXHIBIT 5), which shows that strippers are paying a higher rate than regular oil (under 1987 net proceeds average tax column). The way SB 1 is now, they are getting a significant tax cut. He does not think this is justified. The Legislature should not be re-writing tax policy in that way, making a big change from the way industry was taxed in the past. The Legislature is making incentives that are not necessarily justified. The other problem is that when they put in half rates for strippers, that means that rates on regular oil and gas go up. Industry has a real concern keeping that regular oil rate down by putting everything at the full rate, which is essentially how we can keep the regular rate down a little lower.

REP. GILBERT asked whether Rep. Kadas is eliminating the stripper tax as it is now. Rep. Kadas replied that is correct. Rep. Gilbert queried what incentive remained for marginal wells to keep them running? The state would receive more money at 4.2% than at 8.93% if the wells aren't even operating because of the higher rate. Rep. Kadas replied that stripper wells, according to LFA figures, are not paying 4.2%, they are paying 8.22%. Rep. Gilbert doubted those figures. According to Rep. Kadas, the law that says 4.2% is the transition from net proceeds. Under net proceeds, stripper wells are paying about 8.2% as a statewide average. Rep. Gilbert asked, then is Rep. Kadas taking a statewide average tax and imposing a solid tax, so that stripper wells that are paying 4.2% and others that are paying more will now pay 8.2%? That is correct, Rep. Kadas replied. That is what happens when tax policy switches to statewide uniformity. That is the whole purpose of having a flat tax in the first place. Rep. Gilbert asked if Rep. Kadas is going to eliminate old and interim oil to all at one rate. No, answered Rep. Kadas. This just affects old oil; new oil is not changed. It would stay at 7% on oil and 12% on gas. Rep. Gilbert asked about the royalty owners, the nonworking interests. Is Rep. Kadas taxing them differently? Rep. Kadas said no, they would pay 8.9% on oil, the same as the operator, and 16.2% on gas, the same as the operator. He is eliminating the separate category that jacks them up higher than everyone else.

Rep. Gilbert said that under the net proceeds they were paying a higher rate than the 15.25 that was proposed in Sen. Gage's bill. When the switch was made from net proceeds to flat tax there was another error: the Legislature decreased their taxes considerably. Rep. Kadas said that the industry testified that they were cognizant of that happening. They did not know how much that would mean but were willing to take the risk. Since then, the industry has reviewed the numbers and says they do not want to do that; they want to stick most of it on royalty owners. After reviewing his own position, Rep. Kadas decided that that caused more problems than it is worth. Also, he thinks they ought not be doing a separate rate for strippers. Then, Rep. Gilbert asked, this would decrease the burden on the nonworking interest owners and transfer that burden onto the operators? Rep. Kadas replied that from Sen. Gage's bill, as introduced, it transfers burden from royalty owners to strippers and operators. Compared to net proceeds, royalty owners get the biggest break. Strippers and operators get a minor increase. Rep. Gilbert opposes the amendment because he sees it as a tax increase. He said the main problem the Legislature was called to solve was the stripper problem, and that has been fixed. The percentages are a sort of by-product that would not have brought us here under any other circumstances.

REP. REHBERG also opposes the amendment for many of the same reasons. He asked if Rep. Kadas was convinced the differentiation between working interests and royalty may be found unconstitutional. Does he base that on a personal belief or on a legal opinion? Rep. Kadas said his rationale is threefold. First, there are Valencia Lane's [Legislative Council attorney] concerns, which are strictly legal. Secondly, it is important to provide simple tax policy. When the Legislature adds another rate and another rate, etc., tax policy is made more complex. Third, and associated with that, is when there are many different rates, a person in the higher rate will make every effort to get into a lower rate. What we will see in the next year is an increase in property taxes for everybody who owns anything other than oil. Unless the Legislature does something here with these rates, there will be a reduction in taxes for those oil owners. He does not think that is justified. The second half of that, Rep. Rehberg said, is that any way the Legislature impacts the eventual additional production of oil and gas industry in Montana by forcing these people out of state, there will be a multi-fold increase in the tax burden. This is because the only problem is that government is the only industry in Montana that is not hurting. Everyone else is hurting, including small businesses, and that is why they have tried to cut the budget back. This is a bigger problem than they are talking about here. Rep. Rehberg agrees with Rep. Kadas's rhetoric; it is the basis for their entire argument for tax reform on personal property tax reduction.

REP. ELLISON also opposes the amendment. He thinks the worst that could happen with the royalty owners and a court challenge is that the state would go to court, lose, and return to the original rates. As far as royalty owners securing operating interests goes (to achieve a lower tax rate), it would cost them a lot with insurance, etc. He does not think that would happen. He does not think this is the time to change tax policy because there is not enough time to study the issue and impacts of the changes.

REP. O'KEEFE understands that Rep. Kadas's amendments do not include the 40 mills that were in HB 3 that were levied on all the other taxpayers in the state. Rep. Kadas said that is correct. By not putting the 40 mills in, Rep. O'Keefe asked Rep. Kadas, are they giving the oil and gas industry a $7.7 million break? Rep. Kadas thought that was right. Rep. O'Keefe supports the amendments even though the 40 mills are not in the amendments. This means there is a tax inequity. He likes the revenue level, which is similar to the bills heard yesterday by this committee. He likes the simplicity of the amendments, which is similar to HB 7. While SB 1 would still provide a break to the oil and gas industry, it is not as big a break as Sen. Gage has asked for. He believes the amendments make the bill more "just" to the taxpayers. This gets the revenue level back to what the educational community had expected. It provides the opportunity to avoid pushing mills up statewide and keep that guaranteed tax base high. Then they will not be compounding the problem so much in the future. He cannot concur with the stated problem in HB 28 that the $1.7 million which they would have lost with the 30 mcf exemption. These rates were costing them $2.1 million in the same counties and in the guaranteed tax base. How could the problem be with the lower number and the exemption that was let slip through? It is a combined problem. House Bill 25's fiscal note had a $2.9 million revenue loss; that is the number that should be corrected. He thinks $35.9 million gets the Legislature closer to correcting the problem than $31.7 million. These amendments would correct both halves of the problem. The royalty owners are the ones who pay taxes and vote in this state. This is a fair way to treat the taxpayers.

REP. RANEY addressed the opponent's point regarding the amendments that the special session was called only for correcting the stripper problem. They came here to correct HB 28. Legislators at the 1989 special session made a mistake because the fiscal note made a $2.5 to $3 million mistake. The fiscal note on the rates did not follow into HB 28. When they passed HB 28, it already had a $2.5 to $3 million shortfall. Therefore, the committee is properly addressing this and correcting the shortfall with these amendments.

REP. HOFFMAN said that these amendments do not create stability in their simplicity, as Rep. Kadas says they do. Can Rep. Kadas assure legislators and the industry that he will not come back and want to change the rates, even if there is only one rate next week or next year? How do they know the existing rates are not going to meet the exact requirements of OPI and everyone else who is interested in education? He suggests leaving the rates alone and sticking with the basic concept that they came to Helena to handle. Leave them alone for another year or two; in another year they may be exactly right.

REP. SCHYE referred to the Governor's call to the 1990 special session. Rep. Schye read from the Governor's letter regarding HB 28. The call includes the establishment of an LGST rate revenue neutral to net proceeds tax paid on calendar year 1987 paid on oil and gas production. The Governor called them into special session to work on the rates. Rep. Schye reminded committee members that in the 1989 special session it was considered bad tax policy to have tax policy included in an education bill. At that time he tried to separate the two but did not succeed, and it failed on a party-line vote. Now legislators are reversing that and only taking part of it. The Legislature needs to be consistent. Rep. Kadas's amendments are a good alternative.

REP. HOFFMAN reminded committee members that last regular session they put some stability in the taxation of production of talc. It was formerly under a net proceeds tax basis. They put talc on a stable basis so that talc producers knew where they stood. Now that the industry can see the stability, one of the companies is planning a $10 million development. Another talc company is opening up production in the state, and it is all because they know where they stand with their taxes. This same principle would apply to all industry.

A roll call vote was taken on Rep. Kadas's amendments, and they passed: 12 ayes, 10 nays.

REP. GILBERT said that he was impressed with Rep. O'Keefe's talk about the 40 mill tax being fair. Rep. Gilbert offered to work with him in the next session to add 40 mills to the oil industry. But we need to eliminate net and gross proceeds, move oil and gas production to class 4 property, and they will be fair to everybody.

Recommendation and Vote: A roll call vote was taken, and Senate Bill 1 passed: 12 ayes, 10 nays.

ADJOURNMENT

Adjournment At: 1:15 p.m.

REP. DAN HARRINGTON, Chairman

DH/pmc

T052390

DAILY ROLL CALL

TAXATION COMMITTEE

DATE 5/23/90

NAME	PRESENT	ABSENT	EXCUSED
REP. COHEN	✓		
REP. DRISCOLL			✓
REP. ELLIOTT	✓		
REP. ELLISON	✓		
REP. GILBERT	✓		
REP. GOOD	✓		
REP. GRADY	✓		
REP. HANSON	✓		
REP. HOFFMAN	✓		
REP. KADAS	✓		
REP. KOEHNKE	✓		
REP. NELSON	✓		
REP. O'KEEFE	✓		
REP. PATTERSON	✓		
REP. RANEY	✓		
REP. REHBERG	✓		
REP. SCHYE	✓		
REP. STANG	✓		
REP. STICKNEY	✓		
REP. SWYSGOOD			✓
REP. REAM, VICE-CHAIR	✓		
REP. HARRINGTON, CHAIR	✓		

Pany

STANDING COMMITTEE REPORT

May 23, 1990

Mr. Speaker: We, the committee on Taxation report that SB0001 (~~first~~ third reading copy -- blue) ~~do pass~~ be concurred in as amended .

Signed: [signature]
Dan Harrington, Chairman

And, that such amendments read:

1. Title, line 8.
Following: "GAS"
Insert: "STATE AND"

2. Title, lines 9 through 11.
Strike: "IMPOSING" on line 9 through "PRODUCTION;" on line 11

3. Title, lines 16 and 17.
Strike: "CLARIFYING" on line 16 through "WELLS;" on line 17

4. Title, lines 19 and 20.
Strike: "CLARIFYING" on line 16 through "WELLS;" on line 20

5. Title, line 23.
Following: "BASE;"
Insert: "PROVIDING A STUDY OF THE FLAT TAX SYSTEM BY THE REVENUE OVERSIGHT COMMITTEE;"

6. Page 9, lines 15 and 16.
Strike: "--" on line 15 through "exemption" on line 16

7. Page 10, line 6.
Strike: "Except as provided in subsection (3), the"
Insert: "The"

SB0001.1 ET
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8. Page 10, line 9.
Following: "in"
Strike: "subsections"
Insert: "subsection"
Following: "(b)"
Strike: remainder of line 9 in its entirety

9. Page 10, line 10.
Strike: "(1)(d), and (1)(e),"

10. Page 10, line 11.
Strike: "taxable"

11. Page 10, line 13.
Strike: "8.4%"
Insert: "8.93%"

12. Page 10, line 14.
Strike: "taxable"

13. Page 10, line 25.
Strike: "taxable"

14. Page 11, line 1.
Strike: "15.25%"
Insert: "16.21%"

15. Page 11, line 2.
Strike: "taxable"

16. Page 11, line 12.
Strike: ";"
Insert: "."

17. Page 11, line 13 through page 13, line 12.
Strike: subsections (1)(c) through (1)(e) in their entirety

18. Page 13, line 24 through page 14, line 18.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

19. Page 16, lines 11 through 21.
Strike: line 16 through ")" on line 21

20. Page 20, lines 9 and 10.
Strike: "-- imposition of local government severence tax"

SB 661, 1

21. Page 20, line 25 through page 22, line 3.
Strike: subsections (3) through (6) in their entirety

22. Page 22, line 3.
Strike: "Subsections"
Insert: "Subsection"
Following: "(2)"
Strike: remainder of line 3 in its entirety

23. Page 22, line 4.
Strike: "terminate"
Insert: "terminates"

24. Page 25.
Following: line 15
Insert: " NEW SECTION. Section 5. Revenue oversight study. The revenue oversight committee shall study the new methods of taxing coal, oil, and natural gas production that were mandated by House Bill No. 28, Special Laws of June 1989, and as amended by [this act]. The committee shall report its findings to the 52nd legislature."
Renumber: subsequent sections

SB0001,1

AT

DATE 5/23/90
HB SB 1
Sen. Gage

Montana State Senate

The Big Sky Country

SENATOR DELWYN GAGE
SENATE DISTRICT 5
HELENA ADDRESS:
CAPITOL STATION
HELENA, MT 59620
HOME ADDRESS:
BOX 787
CUT BANK, MT 59427
PHONE: (406) 873-4662

MAJORITY FLOOR LEADER
COMMITTEES:
TAXATION
RULES COMMITTEE CHAIRMAN

May 18, 1990

IS THERE AN INCENTIVE TO CONVERT FROM REGULAR PRODUCTION TO STRIPPER?

OIL -,	11 barrels @ $ 17.50 per bbl		$ 192.50
	5% severance tax	$ 9.62	
	8.11% local government severance tax	15.62	25.24
	Net		$ 167.26
	10 barrels @ 17.50		$ 175.00
	3% X 5 barrels X 17.50	$ 2.62	
	4.06% local government severance tax	7.10	9.72
	Net		$ 165.28

By dropping one barrel of production to qualify for stripper status the operator reduces his tax by $ 15.52 but he loses $ 17.50 in oil sales so he has a net loss of $ 1.98. If he has to drop two barrels of oil to get to stripper status he has a net loss of $ 17.19 and the more oil he does not produce to get to stripper status the larger his loss is. There is a point between 10.9 barrels and 10.8 barrels at which a person ends up with the same net by reducing his average to 10 barrels. At an average of 10.9 barrels the producer loses 46¢ by reducing his production to an average of 10 barrels per day. At 10.8 barrels the producer gains $ 1.06 by reducing his daily average to 10 barrels. At 10.1 barrels the producer gains $ 11.70 by reducing his production to a 10 barrel average. Thus this says when your average daily production is just over 10 barrels per day but under 10.9 barrels per day a producer will end up with a larger net income after state severance and local government severance tax if he can limit his production to ten barrels per day average per well.

On the other end of this calculation, assuming that a producer could be producing 10.1 barrels per day but decides that if he limits his production to qualify for stripper status and ends up with production of only 9.2 barrels per day he then finds that again he would have been better off to produce the 10.1 barrels, pay the higher taxes and end up with a larger net. There is a point between 9.2 and 9.3 barrels that again is a break-even compared to 10.1 barrels per day. There are many differing effects between 9.2 barrels and 10.9 barrels. It appears to me that a producer has a very slight margin of error when he is manipulating his production to qualify for stripper status.

— House Taxation
Ex. 1 5/23/90 SB 1

Montana State Senate

The Big Sky Country

SENATOR DELWYN GAGE
SENATE DISTRICT 5
HELENA ADDRESS:
CAPITOL STATION
HELENA, MT 59620
HOME ADDRESS:
BOX 787
CUT BANK, MT 59427
PHONE: (406) 873-4662

MAJORITY FLOOR LEADER
COMMITTEES:
TAXATION
RULES COMMITTEE CHAIRMAN

GAS - There is a little different situation with gas, but not much.

70,000 mcf @ $ 1.75		$ 122.50
2.65% state severance tax	$ 3.25	
17.44% local gov't severance tax	21.36	24.61
Net		$ 97.89
60,000 mcf @ $ 1.75		$ 105.00
1.59% state severance tax	$ .83	
8.72% local gov't severance tax	9.16	9.99
Net		$ 95.01

The above says that by producing 70,000 and paying a higher tax rate the producer is still better off than if he limits his production to 60,000 to qualify for stripper rates. Again there is a point between these two production figures at which there is an incentive to limit production to qualify as strippers and again as in oil if a person does not regulate his production within a very narrow range he could produce under the 60,000 level to the point that again he would be at a lesser revenue figure than he would have received if he had produced and paid the higher tax rates.

There is no question that some unusual situations can be concockted to illustrate the point of incentive for production limitation to qualify for stripper status but in my judgement they would be very rare and unusual.

Montana State Senate

SENATOR DELWYN GAGE
SENATE DISTRICT 5
HELENA ADDRESS:
CAPITOL STATION
HELENA, MT 59620
HOME ADDRESS:
BOX 787
CUT BANK, MT 59427
PHONE: (406) 873-4662

The Big Sky Country

MAJORITY FLOOR LEADER
COMMITTEES:
TAXATION
RULES COMMITTEE CHAIRMAN

May 19, 1990

According to the latest figures that I have from the Dept. of Rev. a 1% change in the following will result in the respective dollar changes:

Regular oil rates - assuming in 1987 that 7.5% of oil production was stripper, hence 92.5% is regular - 327,112,522 X 92.5% = 302,579,083	3,025,791
Stripper oil rates - per assumptions above 327,112,522 - 302,579,083 = 24,533,439	245,334
Oil royalty rates - 43,514,296	435,143
Regular gas rates - assuming that in 1987 36% of gas production was stripper, hence 64% is regular - 57,620,826 X 64% = 36,877,329	368,773
Stripper gas rates - 57,620,826 - 36,877,329 = 20,743,497	207,435
Gas royalty rates - 8,812,001	88,120

House Taxation
Ex. 1 5/23/90 SB 1

Montana State Senate

SENATOR DELWYN GAGE
SENATE DISTRICT 5
HELENA ADDRESS:
CAPITOL STATION
HELENA, MT 59620
HOME ADDRESS:
BOX 787
CUT BANK, MT 59427
PHONE: (406) 873-4662

The Big Sky Country

MAJORITY FLOOR LEADER
COMMITTEES:
TAXATION
RULES COMMITTEE CHAIRMAN

May 19, 1990

MPA proposal that had concensus support from those who met May 10, 1990:

Regular Oil - 302,579,083 X 8.4%	$ 25,416,643
Stripper oil - 24,533,439 X 4.2%	1,030,404
Royalty oil - 43,514,296 X 12.5%	5,439,287
Regular gas - 36,877,329 X 15.25%	5,623,793
Stripper gas - 20,743,497 X 7.625%	1,581,692
Royalty gas - 8,812,001 X 15,25%	1,343,830
Total local government severance tax on 1987	$ 40,435,649
Net proceeds tax paid on 1987	40,384,717 *
Excess over tax neutral	$ 50,932

Tax distribution per percentages in the bill:

Regular oil - 302,579,083 X 8.11%	$ 24,539,164
Stripper oil - 24,533,439 X 4.06%	996,058
Royalty oil - 43,514,296 X 15%	6,527,144
Regular gas - 36,877,329 X 17.44%	6,431,406
Stripper gas - 20,743,497 X 8.72%	1,808,833
Royalty gas - 8,812,001 X 17.9%	1,577,348
Total local government severance tax on 1987	$ 41,879,953
Net proceeds tax paid on 1987	41,874,436 *
Excess over tax neutral	$ 5,517

* There is a difference of $ 1,489,719 in these two figures both of which came from the Dept. of Revenue. My calculations were based on the higher figure and after they gave me that figure they found that a producer had included new production in his net proceeds calculation and thus the net proceeds tax had been over-stated by that much.

House Taxation
Ex. 1 5/23/90 SB 1

Montana State Senate

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MAJORITY FLOOR LEADER
COMMITTEES:
TAXATION
RULES COMMITTEE CHAIRMAN

May 19, 1990

Oil - Working interest gross	$ 327,112,522	
Deductions allowed.	157,152,194	
Working interest subject to net proceeds tax	$ 169,960,328	(1)

Gas - Working interest gross	$ 57,620,826	
Deductions allowed	12,586,150	
Working interest subject to net proceeds tax	$ 45,034,676	(2)

Based on figures received from Dept. of Rev. average oil royalty percentage on 1987 production was 14.875% and on gas 20.1%. If we assume these same percentages and just use the same deductions that were used in 1987 applied to 1989 production we would arrive at a working interest subject to net proceeds tax (if we still had a net proceeds tax as follows:

Oil - 1989 gross production 17,725,727 X 17.019 =	$ 301,674,146	
Less: Royalty of 14.875%	44,874,029	
Working interest gross	$ 256,800,117	
1987 deductions allowed	157,152,194	
Working interest subject to net proceeds tax	$ 99,647,923	(1)
Gas - 1989 gross production 33,810,499 X 1.696	$ 57,342,606	
Less: Royalty of 20.1%	11,525,864	
Working interest gross	$ 45,816,742	
1987 deductions allowed	12,586,150	
Working interest subject to net proceeds tax	$ 33,230,592	(2)

Oil - 1987 working interest taxable	$ 168,960,328	(1)
1989 " " "	99,647,923	(1)
Decrease in taxable	$ 69,312,405	(3)
Gas - 1987 working interest taxable	$ 45,034,676	(2)
1989 " " "	33,230,592	(2)
Decrease in taxable	$ 11,804,084	(3)
Total decrease in taxable	$ 81,116,489	(3)

— House Taxation
Ex. 1 5/23/90 SB 1

Montana State Senate

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SENATE DISTRICT 5
HELENA ADDRESS:
CAPITOL STATION
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BOX 787
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COMMITTEES:
TAXATION
RULES COMMITTEE CHAIRMAN

The decrease in gross dollars from production from 1987 to 1989 were:

Oil -	1987	$ 384,276,967
	1989	301,674,146
	Decrease	$ 82,602,821
Gas -	1987	$ 72,124,426
	1989	57,342,606
	Decrease	$ 14,781,820
Total decrease of		$ 97,384,641

The point of this report is that there are those who are saying that to be tax neutral the oil and gas industry should pay the same tax on the 1989 production that they paid on the 1987 production, otherwise there will be a revenue loss of 8.8 million. I ask you where the fairness is in saying to an industry "We know that your total sales are down over 97 million dollars and if you were still under the old net proceeds tax law you would have about 81 million less taxable revenue, but that is too bad, we are going to raise your rates from an overall 1987 rate of 9.25% to a new overall rate of 11.55%". Anyone for talking about a regressive tax policy?????

House Taxation EXHIBIT 2
DATE 5/23/90
SB 1
Sen. Gage

Local Government Severance Tax

Issues and Options

Prepared for the

Legislative Finance Committee

by

Teresa Olcott Cohea

Legislative Fiscal Analyst

May 21, 1990

EXHIBIT 3
DATE 5/23/90
~~HB~~ SB1
Tom Bilodeau

mea
Montana Education Association
1232 East Sixth Avenue • Helena, Montana 59601 • 406-442-4250

MAY 22, 1990

THE IMPACT ON THE SCHOOLS OF LESS THAN $35.9M FROM FLAT TAX

THE STATE'S FISCAL INTEGRITY & BALANCE AMONG REVENUE SOURCES

In the face of recurring state budget deficits and repeated tax reduction incentives provided to selected interests, SB-1 proposes flat tax rates on oil and gas that will produce approximately $4m fewer state dollars than currently (FY90, on 1988 production) being paid by the oil and gas industry under the net proceeds tax law. (SB-1 fiscal note of $31.7m for FY91 compared to current FY90 oil and gas net proceeds of $35.9m.)

The precarious status of Montana's state revenue prospects to fund existing and anticipated government program requirements during the upcoming biennium is well understood. We also recognize the increased tax effort made by income earners as a result of HB28's 5% income tax surcharge. Further, we are mindful of the additional effort by some residential and commercial property taxpayers resulting from establishment of a 95 mandatory mill levy while the property value of oil, gas and coal were effectively removed from the tax base above a level equal to 55 mills. Given these circumstances and in the absence of comprehensive tax reform, reducing state revenues from any source is nonsense.

THE SUFFICIENCY & EQUITY OF MONTANA'S SYSTEM OF SCHOOL FUNDING

Despite last summer's popular discussion that HB28 would provide 85% or 83% state funding of the public schools' general fund costs, it is expected -- as predicted by the educational community during the 1989 Special Legislative Sessions -- that state support will supply only 75% of the schools' actual FY91 general fund costs. Any reduction in the level of state revenues relied upon to support the state's share of general fund costs will underfund HB28 in its initial year of implementation (and thereby increase pressure on other state funded programs), and/or simply reduce the state's share of the schools' actual general fund costs.

If the later result occurs, Montana will immediately begin to repeat our history leading up to the Underfunded Schools Lawsuit. The state's commitment to equitably fund a system of quality education for all will be at issue even before the new education funding system is implemented and the already questionable pupil spending disparities between districts anticipated under HB28 will increase.

(over)

THE TAX SHIFT TO RESIDENTIAL & COMMERCIAL PROPERTY TAXPAYERS

Apart from state support, most (although not all) revenues relied upon by the schools to fund general fund costs are produced by local property tax levies. Under HB28, districts having less than the state average property mill value per pupil (approximately 3/4ths of Montana's districts and an even larger proportion of students) were assured the state average return per mill/per pupil through state funding of the guaranteed tax base (GTB). As state flat tax receipts feed into the formulas which establish statewide elementary and high school GTB (as well as the level of county GTB for state support of the school retirement fund), any reduction in flat tax revenues diminishes the level of the GTB.

Lower GTB levels effectively reduce the state's financial assistance for poorer property wealth districts' mill effort. To recover the loss of State GTB assistance, these districts will need to raise the number of mills applied to the local property tax base. As HB28 removed oil, gas and coal from the local property tax base, the additional mill effort will be borne by other property holders -- i.e. largely by residential and commercial property taxpayers.

Dennis Adams
House Taxation
EXHIBIT 4
DATE 5/23/90
~~HB~~ SB1

OIL AND GAS LGST AND NEW AND INTERIM TAX REVENUE
Production Related to Fiscal 1990 and 1991 Revenue
May 23, 1990 10:00 am

- - - - - - - - - - COMBINED OIL AND GAS REVENUE - - - - - - - - - -

	Pre-1985	Post-1985	Total
FY 90	$35,951,094	$3,497,872	$39,448,966
FY 91	31,814,364 (SB1)	4,463,999	36,278,363
Difference	$(4,136,730)	$ 966,127	$(3,170,603)

MAY 23, 1990
SB4COMP

DEPARTMENT OF REVENUE

COMPARISON OF TAX REVENUE BY COUNTY
FOR HB3, HB4 AND SB4

COUNTY	HB3 LGST TOTAL DISTRIBUTION	SB1 SB4 LGST TOTAL DISTRIBUTION	SB4-HB3 DIFFERENCE	HB4 LGST TOTAL DISTRIBUTION	SB1 SB4 LGST TOTAL DISTRIBUTION	SB4-HB4 DIFFERENCE
	***********	***********	***********	***********	***********	***********
BIG HORN	$37,305	$28,225	($9,080)	$30,471	$28,225	($2,246)
BLAINE	$2,951,071	$1,943,218	($1,007,853)	$2,476,687	$1,943,218	($533,468)
CARBON	$1,763,414	$1,297,431	($465,982)	$1,448,780	$1,297,431	($151,349)
CARTER	$0	$0	$0	$0	$0	$0
CHOUTEAU	$296,973	$193,517	($103,456)	$249,700	$193,517	($56,183)
CUSTER	$67,988	$44,303	($23,685)	$57,166	$44,303	($12,862)
DANIELS	$0	$0	$0	$0	$0	$0
DAWSON	$673,362	$509,387	($163,975)	$550,025	$509,387	($40,639)
FALLON	$8,985,668	$6,762,215	($2,223,453)	$7,347,880	$6,762,215	($585,665)
FERGUS	$14,247	$9,284	($4,963)	$11,979	$9,284	($2,695)
GARFIELD	$75,064	$56,794	($18,270)	$61,313	$56,794	($4,519)
GLACIER	$3,235,006	$2,330,444	($904,562)	$2,669,177	$2,330,444	($338,733)
GOLDEN VALLEY	$14,749	$9,686	($5,063)	$12,384	$9,686	($2,697)
HILL	$2,385,360	$1,554,513	($830,847)	$2,005,618	$1,554,513	($451,105)
LIBERTY	$922,778	$649,062	($273,716)	$764,966	$649,062	($115,904)
MCCONE	$130,689	$98,880	($31,809)	$106,748	$98,880	($7,867)
MUSSELSHELL	$1,251,076	$946,573	($304,503)	$1,021,887	$946,573	($75,314)
PETROLEUM	$133,875	$101,290	($32,584)	$109,350	$101,290	($8,059)
PHILLIPS	$2,273,745	$1,481,644	($792,101)	$1,911,802	$1,481,644	($430,158)
PONDERA	$712,683	$530,674	($182,008)	$584,079	$530,674	($53,404)
POWDER RIVER	$1,473,440	$1,114,815	($358,625)	$1,203,516	$1,114,815	($88,701)
PRAIRIE	$64,305	$48,646	($15,659)	$52,526	$48,646	($3,881)
RICHLAND	$4,652,687	$3,505,952	($1,146,735)	$3,803,618	$3,505,952	($297,665)
ROOSEVELT	$3,141,125	$2,373,493	($767,632)	$2,566,402	$2,373,493	($192,909)
ROSEBUD	$411,916	$311,658	($100,257)	$336,455	$311,658	($24,797)
SHERIDAN	$3,812,338	$2,876,881	($935,458)	$3,115,673	$2,876,881	($238,792)
STILLWATER	$139,457	$90,875	($48,582)	$117,258	$90,875	($26,383)
TETON	$174,118	$131,566	($42,552)	$142,260	$131,566	($10,694)
TOOLE	$2,085,416	$1,449,084	($636,332)	$1,732,831	$1,449,084	($283,747)
VALLEY	$373,786	$261,481	($112,305)	$310,189	$261,481	($48,707)
WIBAU·	$1,366,542	$1,032,666	($333,876)	$1,116,491	$1,032,666	($83,825)
YELLOW..IONE	$92,658	$70,106	($22,552)	$75,683	$70,106	($5,578)
	***********	***********	***********	***********	***********	***********
	$43,712,839	$31,814,364	($11,898,475)	$35,992,913	$31,814,364	($4,178,549)

Exhibit 4
5/23/90 SB 1

MAY 23, 1990
SB4COMP2

DEPARTMENT OF REVENUE

* * * * * * * * ** * * * * * * ** * * * * * * *

COMPARISON OF TAX LIABILITY BY COUNTY
FOR PRE-1985 PRODUCTION

* * * * * * * * ** * * * * * * ** * * * * * * *

COUNTY	1987 PROD FY89 NET P. TAXES	1988 PROD FY90 NET P. TAXES	SB 1 APPROXIMATE 1987 NEUTRAL
	***********	***********	***********
BIG HORN	61,082	32,072	$28,225
BLAINE	2,783,618	2,602,948	$1,943,218
CARBON	1,691,785	1,581,564	$1,297,431
CARTER	18,148	9,702	$0
CHOUTEAU	229,811	220,140	$193,517
CUSTER	21,356	79,534	$44,303
DANIELS	3,278	0	$0
DAWSON	877,399	848,536	$509,387
FALLON	5,849,371	6,712,422	$6,762,215
FERGUS	78,452	22,910	$9,284
GARFIELD	208,871	97,167	$56,794
GLACIER	3,366,557	2,680,728	$2,330,444
GOLDEN VALLEY	5,668	13,679	$9,686
HILL	1,841,595	2,020,744	$1,554,513
LIBERTY	785,547	677,954	$649,062
MCCONE	135,285	122,448	$98,880
MUSSELSHELL	1,054,196	973,775	$946,573
PETROLEUM	248,195	137,848	$101,290
PHILLIPS	1,703,499	1,772,308	$1,481,644
PONDERA	850,752	540,569	$530,674
POWDER RIVER	1,368,344	1,305,405	$1,114,815
PRAIRIE	119,887	49,271	$48,646
RICHLAND	5,268,040	4,150,789	$3,505,952
ROOSEVELT	3,235,742	2,532,629	$2,373,493
ROSEBUD	434,694	356,643	$311,658
SHERIDAN	3,605,844	3,070,923	$2,876,881
STILLWATER	178,147	123,021	$90,875
TETON	235,023	139,298	$131,566
TOOLE	1,874,669	1,623,526	$1,449,084
VALLEY	434,513	293,247	$261,481
WIBAUX	1,538,165	1,078,502	$1,032,666
YELLOWSTONE	277,183	80,793	$70,106
	***********	***********	***********
	40,384,718	35,951,094	$31,814,364

COMPARISON OF NET PROCEEDS TAXES TO SENATE BILL 1 - MPA RATES
1987 PRODUCTION
May 21, 1990

TAX REVENUE	
Fiscal 1989 Oil and Gas Net Proceeds Tax	$40,384,725
Fiscal 1989 Local Government Severance Tax - SB1	40,462,425
Total Revenue Difference	$ 77,700
TAXPAYER	
Royalty Owners - Stripper Gas Rate	($ 32,329)
Stripper Oil Rate	(255,132)
Regular Gas Rate	(199,172)
Regular Oil Rate	($ 711,550)
Total Royalty Owners	($1,198,183)
Operators - Stripper Gas Rate	($ 757,598)
Stripper Oil Rate	(975,406)
Regular Gas Rate	(256,736)
Regular Oil Rate	3,265,624
Total Operators	$ 1,275,884
Total Taxpayer Difference	$ 77,701

Exhibit 4
5/23/90 SB 1

MAY 22, 1990

NATURAL RESOURCES & CORPORATION TAX DIVISION

* * * * * * * ** * * * * * * *

COMPARISON OF TAX LIABILITY BY COUNTY
FOR PRE-1985 PRODUCTION

* * * * * * * ** * * * * * * *

COUNTY	1987 PROD FY89 NET P. TAXES	1988 PROD FY90 NET P. TAXES	HB3 LGST TOTAL DISTRIBUTION
	***********	***********	***********
BIG HORN	61,082	32,072	$37,305
BLAINE	2,783,618	2,602,948	$2,951,071
CARBON	1,691,785	1,581,564	$1,763,414
CARTER	18,148	9,702	$0
CHOUTEAU	229,811	220,140	$296,973
CUSTER	21,356	79,534	$67,988
DANIELS	3,278	0	$0
DAWSON	877,399	848,536	$673,362
FALLON	5,849,371	6,712,422	$8,985,668
FERGUS	78,452	22,910	$14,247
GARFIELD	208,871	97,167	$75,064
GLACIER	3,366,557	2,680,728	$3,235,006
GOLDEN VALLEY	5,668	13,679	$14,749
HILL	1,841,595	2,020,744	$2,385,360
LIBERTY	785,547	677,954	$922,778
MCCONE	135,285	122,448	$130,689
MUSSELSHELL	1,054,196	973,775	$1,251,076
PETROLEUM	248,195	137,848	$133,875
PHILLIPS	1,703,499	1,772,308	$2,273,745
PONDERA	850,752	540,569	$712,683
POWDER RIVER	1,368,344	1,305,405	$1,473,440
PRAIRIE	119,887	49,271	$64,305
RICHLAND	5,268,040	4,150,789	$4,652,687
ROOSEVELT	3,235,742	2,532,629	$3,141,125
ROSEBUD	434,694	356,643	$411,916
SHERIDAN	3,605,844	3,070,923	$3,812,338
STILLWATER	178,147	123,021	$139,457
TETON	235,023	139,298	$174,118
TOOLE	1,874,669	1,623,526	$2,085,416
VALLEY	434,513	293,247	$373,786
WIBAUX	1,538,165	1,078,502	$1,366,542
YELLOWSTONE	277,183	80,793	$92,658
	***********	***********	***********
	40,384,718	35,951,094	$43,712,839

Exhibit 4
5/23/90 SB 1

COMPARISON OF NET PROCEEDS TAXES TO HOUSE BILL 3
1987 PRODUCTION
May 22, 1990

TAX REVENUE		
Fiscal 1989 Oil and Gas Net Proceeds Tax		$40,384,725
Fiscal 1989 Local Government Severance Tax - HB3		55,790,904
Total Revenue Difference		$15,406,179
TAXPAYER		
Royalty Owners -	Stripper Gas Rate	($ 131,268)
	Stripper Oil Rate	(498,601)
	Regular Gas Rate	311,900
	Regular Oil Rate	(950,526)
	Total Royalty Owners	($ 1,268,495)
Operators -	Stripper Gas Rate	$ 208,741
	Stripper Oil Rate	(550,719)
	Regular Gas Rate	3,147,038
	Regular Oil Rate	13,869,614
	Total Operators	$16,674,674
Total Taxpayer Difference		$15,406,179

Exhibit 4
5/23/90 SB 1

MAY 22, 1990

NATURAL RESOURCES & CORPORATION TAX DIVISION

* * * * * * * ** * * * * * * *

COMPARISON OF TAX LIABILITY BY COUNTY
FOR PRE-1985 PRODUCTION

* * * * * * * ** * * * * * * *

COUNTY	1987 PROD FY89 NET P. TAXES	1988 PROD FY90 NET P. TAXES	HB4 LGST TOTAL DISTRIBUTION
	***********	***********	***********
BIG HORN	61,082	32,072	$30,471
BLAINE	2,783,618	2,602,948	$2,476,687
CARBON	1,691,785	1,581,564	$1,448,780
CARTER	18,148	9,702	$0
CHOUTEAU	229,811	220,140	$249,700
CUSTER	21,356	79,534	$57,166
DANIELS	3,278	0	$0
DAWSON	877,399	848,536	$550,025
FALLON	5,849,371	6,712,422	$7,347,880
FERGUS	78,452	22,910	$11,979
GARFIELD	208,871	97,167	$61,313
GLACIER	3,366,557	2,680,728	$2,669,177
GOLDEN VALLEY	5,668	13,679	$12,384
HILL	1,841,595	2,020,744	$2,005,618
LIBERTY	785,547	677,954	$764,966
MCCONE	135,285	122,448	$106,748
MUSSELSHELL	1,054,196	973,775	$1,021,887
PETROLEUM	248,195	137,848	$109,350
PHILLIPS	1,703,499	1,772,308	$1,911,802
PONDERA	850,752	540,569	$584,079
POWDER RIVER	1,368,344	1,305,405	$1,203,516
PRAIRIE	119,887	49,271	$52,526
RICHLAND	5,268,040	4,150,789	$3,803,618
ROOSEVELT	3,235,742	2,532,629	$2,566,402
ROSEBUD	434,694	356,643	$336,455
SHERIDAN	3,605,844	3,070,923	$3,115,673
STILLWATER	178,147	123,021	$117,258
TETON	235,023	139,298	$142,260
TOOLE	1,874,669	1,623,526	$1,732,831
VALLEY	434,513	293,247	$310,189
WIBAUX	1,538,165	1,078,502	$1,116,491
YELLOWSTONE	277,183	80,793	$75,683
	***********	***********	***********
	40,384,718	35,951,094	$35,992,913

COMPARISON OF NET PROCEEDS TAXES TO HOUSE BILL 4
1987 PRODUCTION
May 22, 1990

TAX REVENUE		
Fiscal 1989 Oil and Gas Net Proceeds Tax		$40,384,725
Fiscal 1989 Local Government Severance Tax - HB4		45,890,495
Total Revenue Difference		$ 5,505,770
TAXPAYER		
Royalty Owners -	Stripper Gas Rate	($ 195,578)
	Stripper Oil Rate	(539,117)
	Regular Gas Rate	96,421
	Regular Oil Rate	(1,818,806)
	Total Royalty Owners	($ 2,457,080)
Operators -	Stripper Gas Rate	($ 198,688)
	Stripper Oil Rate	(815,238)
	Regular Gas Rate	1,711,933
	Regular Oil Rate	7,264,843
	Total Operators	$ 7,962,850
Total Taxpayer Difference		$ 5,505,770

[redacted]

Exhibit 4
5/23/90 SB 1

DEPARTMENT OF REVENUE

* *

COMPARISON OF OIL AND GAS PRODUCING TAXING UNIT LEVIES
TO THE STATEWIDE AVERAGE LEVY

COUNTY	LEGAL ENTITY	89-90 MILLS	89-90 STATEWIDE AVG. MILL LEVY (1)	89-90 MILLS MINUS STATEWIDE AVG
*************	*******	********	*************	**************
BIG HORN	0026	153.860	239.94	(86.080)
BIG HORN	1023	160.920	239.94	(79.020)
BIG HORN	1025	183.440	239.94	(56.500)
BIG HORN	4023	160.920	239.94	(79.020)
BLAINE	0032	164.843	239.94	(75.097)
BLAINE	0034	204.903	239.94	(35.037)
BLAINE	0036	169.763	239.94	(70.177)
BLAINE	0043	163.473	239.94	(76.467)
BLAINE	0048	163.563	239.94	(76.377)
BLAINE	1028	203.403	239.94	(36.537)
CARBON	0068	242.020	239.94	2.080
CARBON	0075	144.590	239.94	(95.350)
CARBON	1058	229.110	239.94	(10.830)
CARBON	2058	227.070	239.94	(12.870)
CARBON	4056	243.120	239.94	3.180
CARTER	0086	219.870	239.94	(20.070)
CARTER	0090	191.810	239.94	(48.130)
CHOUTEAU	0144	219.740	239.94	(20.200)
CHOUTEAU	0161	221.590	239.94	(18.350)
CHOUTEAU	1137	280.030	239.94	40.090
CUSTER	0190	282.450	239.94	42.510
DAWSON	0211	264.520	239.94	24.580
DAWSON	0215	234.280	239.94	(5.660)
DAWSON	0B93	276.200	239.94	36.260
DAWSON	1227	275.400	239.94	35.460
DAWSON	2206	326.530	239.94	86.590
FALLON	0243	280.721	239.94	40.781
FALLON	0254	171.622	239.94	(68.318)
FALLON	1243	202.062	239.94	(37.878)
FALLON	1255	185.730	239.94	(54.210)
FERGUS	1290	249.840	239.94	9.900
GARFIELD	0380	187.010	239.94	(52.930)
GARFIELD	0392	177.830	239.94	(62.110)
GLACIER	1400	261.830	239.94	21.890
GLACIER	1402	259.000	239.94	19.060
GOLDEN VALLEY	1406	207.220	239.94	(32.720)
GOLDEN VALLEY	1410	178.360	239.94	(61.580)

DEPARTMENT OF REVENUE

* *

COMPARISON OF OIL AND GAS PRODUCING TAXING UNIT LEVIES
TO THE STATEWIDE AVERAGE LEVY

COUNTY	LEGAL ENTITY	89-90 MILLS	89-90 STATEWIDE AVG. MILL LEVY (1)	89-90 MILLS MINUS STATEWIDE AVG
*************	*******	********	************	*************
HILL	0424	224.746	239.94	(15.194)
HILL	0445	216.966	239.94	(22.974)
HILL	0507	241.046	239.94	1.106
HILL	0C07	194.216	239.94	(45.724)
HILL	0C08	252.126	239.94	12.186
HILL	0C19	284.386	239.94	44.446
HILL	1427	290.166	239.94	50.226
HILL	1445	234.906	239.94	(5.034)
LIBERTY	0506	170.070	239.94	(69.870)
LIBERTY	0507	214.520	239.94	(25.420)
LIBERTY	0510	201.340	239.94	(38.600)
LIBERTY	1224	202.900	239.94	(37.040)
MCCONE	0566	261.29	239.94	21.350
MCCONE	1547	307.29	239.94	67.350
MUSSELSHELL	0600	209.821	239.94	(30.119)
MUSSELSHELL	1605	220.22	239.94	(19.720)
MUSSELSHELL	1607	205.366	239.94	(34.574)
MUSSELSHELL	2600	209.75	239.94	(30.190)
PETROLEUM	0641	214.04	239.94	(25.900)
PHILLIPS	0662	145.23	239.94	(94.710)
PHILLIPS	1658	192.11	239.94	(47.830)
PHILLIPS	1C03	143.82	239.94	(96.120)
PHILLIPS	5658	149.23	239.94	(90.710)
PHILLIPS	6C03	147.07	239.94	(92.870)
PONDERA	0671	227.79	239.94	(12.150)
PONDERA	0681	263.64	239.94	23.700
PONDERA	0684	246.11	239.94	6.170
PONDERA	1674	287.61	239.94	47.670
PONDERA	1679	212.53	239.94	(27.410)
PONDERA	2679	212.1	239.94	(27.840)
PONDERA	4674	288.04	239.94	48.100
PONDERA	5674	287.61	239.94	47.670
PONDERA	6674	287.61	239.94	47.670
PONDERA	7674	287.61	239.94	47.670
POWDER_RIVER	0692	208.806	239.94	(31.134)
POWDER_RIVER	0695	166.189	239.94	(73.751)

Exhibit 4
5/23/90 SB 1

DEPARTMENT OF REVENUE

* *

COMPARISON OF OIL AND GAS PRODUCING TAXING UNIT LEVIES
TO THE STATEWIDE AVERAGE LEVY

COUNTY	LEGAL ENTITY	89-90 MILLS	89-90 STATEWIDE AVG. MILL LEVY (1)	89-90 MILLS MINUS STATEWIDE AVG
*************	*******	********	*************	*************
PRAIRIE	1725	233.49	239.94	(6.450)
PRAIRIE	4725	234.49	239.94	(5.450)
RICHLAND	0747	229.19	239.94	(10.750)
RICHLAND	0768	216.22	239.94	(23.720)
RICHLAND	1745	222.54	239.94	(17.400)
RICHLAND	1747	238.69	239.94	(1.250)
RICHLAND	1750	148.91	239.94	(91.030)
RICHLAND	3750	173.49	239.94	(66.450)
RICHLAND	3768	167.13	239.94	(72.810)
RICHLAND	4745	158.43	239.94	(81.510)
RICHLAND	4747	211.52	239.94	(28.420)
RICHLAND	4750	220.41	239.94	(19.530)
RICHLAND	5745	146.28	239.94	(93.660)
RICHLAND	8745	149.66	239.94	(90.280)
ROOSEVELT	0774	208.05	239.94	(31.890)
ROOSEVELT	1775	195.92	239.94	(44.020)
ROOSEVELT	1777	288.1	239.94	48.160
ROOSEVELT	1780	198.88	239.94	(41.060)
ROOSEVELT	1784	204.58	239.94	(35.360)
ROOSEVELT	1786	257.33	239.94	17.390
ROSEBUD	0607	100.149	239.94	(139.791)
ROSEBUD	1801	116.579	239.94	(123.361)
SHERIDAN	0837	151.75	239.94	(88.190)
SHERIDAN	1818	199.49	239.94	(40.450)
SHERIDAN	1821	161	239.94	(78.940)
SHERIDAN	1827	227.11	239.94	(12.830)
SHERIDAN	1830	235.21	239.94	(4.730)
SHERIDAN	1837	179.12	239.94	(60.820)
SHERIDAN	2818	201.9	239.94	(38.040)
SHERIDAN	3830	236.58	239.94	(3.360)
SHERIDAN	4821	162.97	239.94	(76.970)
SHERIDAN	5827	224.76	239.94	(15.180)
STILLWATER	0858	190.88	239.94	(49.060)
STILLWATER	1852	190.33	239.94	(49.610)
STILLWATER	4858	189.8	239.94	(50.140)

DEPARTMENT OF REVENUE

* *

COMPARISON OF OIL AND GAS PRODUCING TAXING UNIT LEVIES
TO THE STATEWIDE AVERAGE LEVY

COUNTY	LEGAL ENTITY	89-90 MILLS	89-90 STATEWIDE AVG. MILL LEVY (1)	89-90 MILLS MINUS STATEWIDE AVG
TETON	0889	199.84	239.94	(40.100)
TETON	0898	186.96	239.94	(52.980)
TETON	1892	238.93	239.94	(1.010)
TOOLE	0915	182.85	239.94	(57.090)
TOOLE	1907	173.12	239.94	(66.820)
TOOLE	1910	249.11	239.94	9.170
TOOLE	2902	170.87	239.94	(69.070)
VALLEY	0927	166.5	239.94	(73.440)
VALLEY	0941	162.92	239.94	(77.020)
VALLEY	0C03	199.92	239.94	(40.020)
VALLEY	1932	214.95	239.94	(24.990)
WIBAUX	1954	173.61	239.94	(66.330)
YELLOWSTONE	0974	257.17	239.94	17.230
YELLOWSTONE	1970	250.61	239.94	10.670

(1) THE STATEWIDE AVERAGE MILL LEVY IS FOR STATE, COUNTIES AND SCHOOLS. IT DOES NOT INCLUDE TAXES LEVIED BY CITIES/TOWNS OR ANY SPECIAL LEVIES.

House Taxation
EXHIBIT 5
DATE May 23, 1990
~~HB~~ SB 1

STATE OF MONTANA
Office of the Legislative Fiscal Ana[illegible]
STATE CAPITOL
HELENA, MONTANA 59620
406/444-2986

TERESA OLCOTT COHEA
LEGISLATIVE FISCAL ANALYST

Morning of May 23, 1990 - After Senate Passage of SB 1

Comparison of Local Government Severance Tax Bills and Definitions of "Revenue Neutral"

A. TAX RATES

Category	1987 Net Proceeds Average Effective Tax Rate	Current LGST	Gage SB 1	Gage SB 4	O'Kee[illegible] H[illegible]
OIL					
Operator					
Regular	7.32%	8.4%	8.4%	8.4%	[illegible]
Stripper	8.22	4.2	4.2	4.2	9.0
Incremental	N/A	4.2	4.2	4.2	[illegible]
Royalty					
Regular	14.72	8.4	12.5	12.5	9.0
Stripper	14.72	4.2	12.5	12.5	[illegible]
NATURAL GAS					
Operator					
Regular	15.95	15.25	15.25	15.25	15[illegible]
Stripper (exempt)	11.25	0.00	7.625	0.00	15.25
Stripper (taxable)	11.25	7.625	7.625	7.625	15[illegible]
Royalty					
Regular	17.87	15.25	15.25	15.25	15.25
Stripper (exempt)	17.87	0.00	15.25	0.00	15[illegible]
Stripper (taxable)	17.87	7.625	15.25	15.25	15[illegible]
NEW & INTERIM PRODUCTION					
Oil	7.0	7.0	7.0	7.0	9.0
Gas	12.0	12.0	12.0	12.0	15.25

Hse. Taxation
Ex. 5
5/23/90
SB 1

B. TAX REVENUE PRODUCED ON CALENDAR 1989 PRODUCTION (Millions)

	LGST Current	Gage SB 1	Gage SB 4	O'Keefe HB 7	O'Keefe HB 4	O'Keefe HB 3	Eudaily HB 5
LGST							
Oil	$22.4	$24.08	$24.08	$25.75	$25.91	$31.72	$22.39
Natural Gas	5.3	7.62	5.13	9.74	9.89	11.76	7.32
Total	$27.7	$31.70	$29.21	$35.49	$35.79	$43.48	$29.71
NEW AND INTERIM							
Oil	$ 2.09	$ 2.09	$ 2.09	$ 2.69*	$ 2.09	$ 2.09	$ 2.09
Natural Gas	1.33	1.33	1.33	1.69*	1.33	1.33	1.33
Total	$ 3.42	$ 3.42	$ 3.42	$ 4.38	$ 3.42	$ 3.42	$ 3.42
TOTAL	$31.12	$35.12	$32.63	$39.87	$39.21	$46.90	$33.13

All bills are retroactive for calendar 1989 production on LGST.
*New rates will apply to calendar 1990 production (second quarter) and beyond.

C. DEFINITIONS OF REVENUE NEUTRAL

	Net Proceeds Tax Liability (Millions)	Gross Value of Base (LGST Purposes) (Millions)
1) Tax on CY87 production/applied to CY87 tax base	$40.4	$437.27
2) Tax on CY87 production/applied to CY89 tax base	40.4	350.03
3) Tax on CY88 production/applied to CY89 tax base	35.9	350.03

	Tax on CY Production (Million)
4) New and interim production	
CY87	$ 1.54
CY88	2.19
CY89	3.42

D. TAX COLLECTION DATES

	Production Year	Tax Collected
1) Net proceeds and LGST	CY 1987	FY 1989
	CY 1988	FY 1990
	CY 1989	FY 1991
	CY 1990	FY 1992

	Production Year	Tax Collected
2) New and interim production tax	CY 1987	May 1987-Feb. 1988
	CY 1988	May 1988-Feb. 1989
	CY 1989	May 1989-Feb. 1990
	CY 1990	May 1990-Feb. 1991

TC3:pe:TABLE

amended

O'Keefe HB 4	O'Keefe HB 3	Eudaily HB 5
9.72%	11.9%	8.4%
4.86	5.95	4.2
4.86	5.95	4.2
9.72	11.9	8.4
4.86	5.95	4.2
20.6	24.5	15.25
10.3	12.25	7.625
10.3	12.25	7.625
20.6	24.5	15.25
10.3	12.25	7.625
10.3	12.25	7.625
7.0	7.0	7.0
12.0	12.0	12.0

MEMORANDUM

EXHIBIT 6
DATE May 23, 1990
~~HB~~ SB1

DATE: February 16, 1990

FROM: Louis R. Moore

SUBJECT: Suggestion for Remedial Legislation Concerning Exemption of Stripper Wells From LGST

PREMISE:

It is assumed that the existing law, as codified in §15-36-121(3), is not ambiguous but, rather, is clear in providing that an absolute exemption of all natural gas production from severance tax and LGST exists for production year 1989 and later years. The assumption that the 1989 special session amendatory statute is clear on its face is based on the facts that (a) the statute references the LGST in the last line of subsection (3), and (b) the legislature obviously was thinking of making some production not exempt because subsection (4) has an absolute exclusion from the exemption as applied to oil.

Another reason is that if an exemption were not provided in the amendatory statute the tax rates would be odd, to say the least, especially when it is considered that the exemption statute originally was conceived so as to preclude premature abandonment of stripper wells. Obviously, increased tax rates wouldn't preclude premature abandonment. For example, if no exemption were granted by the amendatory statute, the tax on the first 30,000 cubic feet of gas would be 15.25%, the tax on the second 30,000 cubic feet of gas would be taxed at 1.59% (severance) plus 7.625% (LGST), or a total of 9.215% and the tax on all production over 60,000 would be taxed at 17.9% under §15-36-101(1)(b). It is unlikely that the legislature would enact such an up-down-up method of taxation and thereby intend to preclude premature abandonment.

SUGGESTION:

Retroactive legislation at the 1991 session to amend the final two sentences of §15-36-121(3) to provide as follows:

> "The first 60,000 cubic feet of average daily production per well is taxed at 1.59% plus a local government severance tax of 7.625%."

LEGAL SUPPORT FOR RETROACTIVE LEGISLATION:

Section 1-2-109, M.C.A. provides:

> When laws retroactive. No law contained in any of the statutes of Montana is retroactive unless expressly so declared.

Thus, it is clear that the legislature can make its laws retroactive and it has done so on inumerable instances. However, when the retroactive legislation takes away or impairs vested rights acquired under existing laws or creates new obligations or imposes new duties in respect to transactions already past, the retroactive law can violate the due process clauses of the federal and state constitutions. First Federal Savings & Loan Ass'n. vs. DOR, 200 Mont. 358, 654 P.2d 496 (1982).

Whether in any given situation the retroactive law violates due process depends on such matters as timing and notice to the taxpayer.

As stated by the New York Court of Appeals in Replan Dev. Inc. vs. Dept. of Housing, 517 N.E.2d 200 (1987):

> We agree with both lower courts that the retroactive application of the tax amendment in question does not unconstitutionally deprive petitioner of due process. Retroactivity provisions in tax statutes, if for a short period, are generally valid * * * (citing cases) * * * and ordinarily are upheld against due process challenges, unless in light of "the nature of the tax and the circumstances in which it is laid", the retroactivity of the law is "so harsh and oppressive as to transgress the constitutional limitation" (Welch v. Henry, 305 U.S. 134, 147, 59 S.Ct. 121, 126, supra). Indeed, retroactive application of property taxes and benefit assessments of real estate have been distinguished from the unfavored retroactivity of other kinds of taxes (see, e.g. Untermyer v. Anderson, 276 U.S. 440, 445, 48 S.Ct. 353, 354, 72 L.Ed. 645 [retroactive taxation of inter vivos gift] on the theory that the taxpayer received some economic benefit from the conduct aside from the tax benefit (see, e.g., Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, supra [retroactive taxation of corporate dividends]). Whether the retroactive application of a tax statute is "harsh and oppressive" is a "question of degree" (People ex rel. Beck v. Graves, 280 N.Y. 405, 409, 21 N.E.2d 371; supra), requiring a "balancing of [the] equities" (Clarendon Trust v. State Tax Commn., 43 N.Y.2d 933, 934, 403 N.Y.S.2d 891, 374 N.E.2d 1242, supra).
>
> In reaching the appropriate balance, several factors may be considered. First, and perhaps predominant, is the taxpayer's forewarning of a change in the legislation and the reasonableness of his reliance on the old law * * * (citing cases) * * *. This inquiry focuses on whether "the taxpayer's 'reliance' has been justified under all the circumstances of the case and whether his 'expectations as to taxation [have been] unreasonably disappointed'" * * * (citing cases) * * *. The strength of the taxpayer's claim to the benefit may be significant if he has "obtained a sufficiently certain right to the money" prior to the enactment of the new legislation * * * (citing cases) * * *. Additionally, the length of the retroactive period often has been a crucial factor, and excessive periods have been held to unconstitutionally deprive taxpayers of a reasonable expectation that they "will secure repose from the taxation of transactions which have, in all probability, been long forgotten (Matter of Neuner v. Weyant, 63 A.D.2d 290, 302, 408 N.Y.S.2d 89, supra; see, e.g. Matter of Lacidem Realty Corp. v. Graves, 288 N.Y. 354, 357, 43 N.E.2d 440 [four-year retroactivity period excessive]; People ex rel. Beck v. Graves, 280 N.Y. 405, 409-410, 21 N.E.2d 371, supra [16-year retroactivity period excessive]).

The U.S. Supreme Court case of Welch vs. Henry, 305 U.S. 134, 59 S.Ct. 121 (1938), cited in the Replan. decision, is especially enlightening, as evidenced by the following quotation:

> Appellant, a resident of Wisconsin, received in 1933 gross income of $13,383.26, of which $12,156.10 was dividends received from corporations whose "principal business" was "attributable to Wisconsin" within the meaning of the taxing statute. By §71.04(4), Wisconsin Stat. 1933, such dividends were deductible from gross income in computing net taxable income, together with other items, including taxes, interest paid, business expenses, losses from the sale of securities, and donations, aggregating, in the case of appellant, $11,161.97, so that he had no taxable net income for the year 1933.
>
> Petitioner's income tax return was due and filed March 15, 1934. A year later c.15 of the Laws of Wisconsin for 1935, effective March 27, 1935, laid new taxes for the years 1933 and 1934 upon various taxable subjects. Section 6, with which we are alone concerned, imposed a graduated tax, with no deduction except the sum of $750, on all dividends received in 1933 which, when received, were deductible from gross income under §71.04(4).
>
> * * * *
>
> Any classification of taxation is permissible which has reasonable relation to a legitimate end of governmental action. Taxation is but the means by which government distributes the burdens of its cost among those who enjoy its benefits. And the distribution of a tax burden by placing it in part on a special class which by reason of the taxing policy of the State has escaped all tax during the taxable period is not a denial of equal protection. See Watson v. Comptroller, supra, page 125, 41 S.Ct. page 44. Nor is the tax any more a denial of equal protection because retroactive. If the 1933 dividends differed sufficiently from other classes of income to admit of the taxation, in that year, of one without the other, lapse of time did not remove that difference so as to compel equality of treatment when the income was taxed at a later date. Selection then of the dividends for the new taxation can hardly be thought to be hostile or invidious when the basis of selection is the fact that the taxed income is of the class which has borne no tax burden. The equal protection clause does not preclude the legislature from changing its mind in making an otherwise permissible choice of subjects of taxation. The very fact that the dividends were relieved of tax, when the need for revenue was less, is basis for the legislative judgment that they should bear some of the added burden when the need is greater.

The New York and U.S. Supreme Court cases suggest that the Montana Suprème Court decision in First Federal Sav. & Loan might be limited to egregious instances where the retroactivity extended over a number of years. The Montana Supreme Court may agree with the U.S. Supreme Court and hold that a retroactive statute passed at the first opportunity after knowledge of the need is valid. As stated by the U.S. Supreme Court in the Welch vs. Henry case quoted above:

> In its performance experience has shown the importance of reasonable opportunity for the legislative body, in the revision of tax laws, to distribute increased costs of government among its taxpayers in the light of present need for revenue and with knowledge of the sources and amounts of the various classes of taxable income during the taxable period preceding revision. Without that opportunity accommodation of the legislative purpose to the need may be seriously obstructed if not defeated. We cannot say that the due process which the Constitution exacts denies that opportunity to legislatures; that it withholds from them, more than in the case of a prospective tax, authority to distribute the increased tax burden in the light of experience and in conformity with accepted notions of the requirements of equal protection; or that in view of well established legislative practice, both state and national, taxpayers can justly assert surprise or complain of arbitrary action in the retroactive apportionment of tax burdens to income at the first opportunity after knowledge of the nature and amount of the income is available. And we think that the "recent transactions" to which this Court has declared a tax lay may be retroactively applied, Cooper v. United States, 280 U.S. 409, 411, 50 S.Ct. 164, 74 L.Ed. 516, must be taken to include the receipt of income during the year of the legislative session preceding that of its enactment.

To summarize, it is the opinion of the writer that retroactive tax legislation at the next succeeding legislative session can be valid even if it eliminates existing exemptions.

EXHIBIT 7
DATE 5/23/90
HB SB 1
Rep. Kadas

Amendments to Senate Bill No. 1
Third Reading Copy

Requested by Representative Kadas
For the Committee on Taxation

Prepared by Lee Heiman
May 23, 1990

1. Title, line 8.
Following: "GAS"
Insert: "STATE AND"

2. Title, lines 9 through 11.
Strike: "IMPOSING" on line 9 through "PRODUCTION;" on line 11

3. Page 9, lines 15 and 16.
Strike: "--" on line 15 through "exemption" on line 16

4. Page 10, line 6.
Strike: "Except as provided in subsection (3), the"
Insert: "The"

5. Page 10, line 9.
Following: "in"
Strike: "subsections"
Insert: "subsection"
Following: "(b)"
Strike: remainder of line 9 in its entirety

6. Page 10, line 10.
Strike: "(1)(d), and (1)(e),"

7. Page 10, line 11.
Strike: "taxable"

8. Page 10, line 13.
Strike: "8.4%"
Insert: "8.93%"

9. Page 10, line 14.
Strike: "taxable"

10. Page 10, line 25.
Strike: "taxable"

11. Page 11, line 1.
Strike: "15.25%"
Insert: "16.21%"

12. Page 11, line 2.
Strike: "taxable"

13. Page 11, line 12.

sb00105.alh

Strike: ";"
Insert: "."

14. Page 11, line 13 through page 13, line 12.
Strike: subsections (1)(c) through (1)(e) in their entirety

15. Page 13, line 24 through page 14, line 18.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections

16. Page 16, lines 11 through 21.
Strike: line 16 through ")" on line 21

VISITORS' REGISTER

Taxation COMMITTEE

BILL NO. SB 1 DATE May 23, 1990

SPONSOR Sen. Gage

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dennis Adams	DOR		
Rep Norm Wallin	HD 78	X	
Marie Hatfieldson	Broadus area 24		
Jan Corbett	MT Taxpayers		
Janelle Fallan	Helena	X	
William DeHaly	Fallon Co	X	
Lou Moore	Billings	x	
Jerome Anderson	Helena -	X	
Pat Melby	Helena		
Doug Walsh	Plentywood		
Steve Gans	Charlo		
John McNeil	Savage	X	
George Miller	Helena		
Carl Knudsen	SACO		
TOM BILODEAU	MEA		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

TAXATION COMMITTEE

DATE May 23, 1990 BILL NO. SB 1 NUMBER 1

NAME	AYE	NAY
REP. COHEN	✓	
REP. DRISCOLL	✓	
REP. ELLIOTT	✓	
REP. ELLISON		✓
REP. GILBERT		✓
REP. GOOD		✓
REP. GRADY		✓
REP. HANSON		✓
REP. HOFFMAN		✓
REP. KADAS	✓	
REP. KOEHNKE	✓	
REP. NELSON		✓
REP. O'KEEFE	✓	
REP. PATTERSON		✓
REP. RANEY	✓	
REP. REHBERG		✓
REP. SCHYE	✓	
REP. STANG	✓	
REP. STICKNEY	✓	
REP. SWYSGOOD		✓
REP. REAM, VICE-CHAIR	✓	
REP. HARRINGTON, CHAIR	✓	
TALLY	12	10

Boody McLaughlin
SECRETARY

Rep. Harrington
CHAIRMAN

MOTION: Rep. Kadas' amendments (EXHIBIT 7). Motion carried.

ROLL CALL VOTE

TAXATION COMMITTEE

DATE May 23, 1990 BILL NO. SB 1 NUMBER

NAME	AYE	NAY
REP. COHEN	✓	
REP. DRISCOLL	✓	
REP. ELLIOTT	✓	
REP. ELLISON		✓
REP. GILBERT		✓
REP. GOOD		✓
REP. GRADY		✓
REP. HANSON		✓
REP. HOFFMAN		✓
REP. KADAS	✓	
REP. KOEHNKE	✓	
REP. NELSON		✓
REP. O'KEEFE	✓	
REP. PATTERSON		✓
REP. RANEY	✓	
REP. REHBERG		✓
REP. SCHYE	✓	
REP. STANG	✓	
REP. STICKNEY	✓	
REP. SWYSGOOD		✓
REP. REAM, VICE-CHAIR	✓	
REP. HARRINGTON, CHAIR	✓	
TALLY	12	10

Pordy McLaughlin
SECRETARY

Rep. Harrington
CHAIRMAN

MOTION: Rep. Gilbert moved that SB 1 do pass. Motion carried.