

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON INCOME/SEVERANCE TAX

Call to Order: By CHAIR BOB REAM, on January 18, 1991, at 8:00 am.

ROLL CALL

Members Present:

Rep. Bob Ream, Chair (D)
Rep. Jim Elliott (D)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Marian Hanson (R)
Rep. Jim Madison (D)
Rep. Bea McCarthy (D)
Rep. Tom Nelson (R)
Rep. Bob Raney (D)
Rep. Barry Stang (D)

Staff Present: Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

VICE-CHAIR REAM stated Jeff Miller, Department of Revenue (DOR), will present an informational overview on corporation income tax.

Informational Presentation:

Jeff Miller, Administrator of Income and Miscellaneous Tax - DOR, introduced coworkers Neil Petterson and Lynn Chenoweth. Together they presented an overview on corporation income tax. **EXHIBIT 1.** Tax forms were distributed to the subcommittee and explained. **EXHIBIT 2.** Mr. Miller responded to questions raised at the last subcommittee meeting (1-16-91) concerning breakdown of returns filed. **EXHIBIT 3.**

ADJOURNMENT

Adjournment: 8:45 am.



BOB REAM, Chair



LISA FAIRMAN, Secretary

HOUSE OF REPRESENTATIVES
INCOME/SEVERANCE TAX SUBCOMMITTEE

ROLL CALL

DATE

1-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. JIM ELLIOTT	X		
REP. MIKE FOSTER	X		
REP. BOB GILBERT	X		
REP. MARIAN HANSON	X		
REP. BEA MCCARTHY	X		
REP. JIM MADISON	X		
REP. TOM NELSON	X		
REP. BOB RANEY	X		
REP. BOB REAM, VICE-CHAIR	X		
REP. BARRY STANG	X		
REP. DAN HARRINGTON, CHAIR			

EXHIBIT 1

DATE 1-18-91

~~Income/Severance~~
Tax Subcomm.

Corporations with Fiscal Year Ending 12 / 31
FY 90

	<u>Number</u>	<u>Percent</u>
Ending 12 / 31	13,298	61.6%
Other	8,278	38.4%
	<u> </u>	<u> </u>
Total	21,576 *	100.0%

* Includes 5,425 S Corporations

Corporations With Net Losses FY 90

Standard Industrial Code	Number		Amount of Net Losses		
	Regular	S Corp	Total	Regular	S Corp
0100 - 0999	708	459	1,167	(22,590,119)	(19,274,745)
1000 - 1499	561	104	665	(61,192,607)	(3,799,603)
1500 - 1799	322	122	444	(11,715,187)	(3,119,199)
2000 - 3999	324	133	457	(50,378,042)	(7,284,491)
4000 - 4999	243	109	352	(30,960,454)	(4,471,502)
5000 - 5999	781	467	1,248	(34,130,785)	(14,032,432)
6000 - 6999	733	208	941	(74,566,266)	(5,081,743)
7000 - 8999	984	447	1,431	(32,744,660)	(11,526,915)
Other Nos.	18	11	29	(559,647)	(1,501,262)
No SIC	342	106	448	(21,651,123)	(2,408,165)
	5,016	2,166	7,182	(340,488,890)	(72,500,057)
					(412,988,947) *

* Current Year Losses Available for Carryback or Carryover

EXHIBIT _____

DATE 1-18-91HB N/A*Income/Severance
Tax Subcomp*

UNITARY CORPORATIONS

NUMBER OF RETURNS

REGULAR	3,618
SMALL BUSINESS	<u>338</u>
TOTAL	3,956

	<u>NUMBER</u>	<u>TAXABLE INC.</u>	<u>TAX</u>
REGULAR CORPORATIONS WITH POSITIVE TAXABLE INC.	1,902	491,546,700	34,257,900
REGULAR CORPORATIONS WITH ZERO TAXABLE INCOME*	<u>1,716</u>	<u>0</u>	<u>85,800</u>
TOTAL	3,618	491,546,700	34,343,700

EFFECTIVE TAX RATE: 6.987 %

*\$50 MINIMUM TAX

Corporations Paying Minimum Tax

FY 90

Industry	Corporation Type:		Total	Active	Inactive
	Standard	Industrial Code			
Agriculture	0100 -	0999	1,099	1,085	14
Mining	1000 -	1499	977	799	178
Construction	1500 -	1799	825	520	305
Manufacturing	2000 -	3999	611	485	126
Trans., Comm., Public Util.	4000 -	4999	377	331	46
Wholesale/Retail Trade	5000 -	5999	1,349	1,236	113
Finance, Ins., Real Estate	6000 -	6999	1,563	1,099	464
Services	7000 -	8999	1,746	1,487	259
	Other Nos.		25	21	4
	No SIC		844	503	341
			9,416	7,566	1,850

EXHIBIT 1DATE 1-18-91HB N/A**MINIMUM TAX ON S CORPORATIONS***Income/Severance
Tax Subcomm.*

There are 44 states which impose an income tax. Of these 44, 35 recognize a S Corporation election. Of these 35 states, 9 states require a minimum tax for S Corporations. Those states and the amount of minimum tax are shown in the following table.

STATE	MINIMUM TAX
Idaho	\$20
Massachusetts	\$400
Mississippi	\$25
Montana	\$10
New Mexico	\$50
New York	\$325
North Carolina	\$25
Oregon	\$10
Pennsylvania	\$75

MINIMUM TAX REQUIREMENTS FOR OTHER STATES

STATE	MINIMUM TAX	ALT. MINIMUM TAX
Alaska		18% of Federal AMT
Arizona	\$50	
California	\$800	7% of Federal AMTI Exceeding \$40,000.
Connecticut	\$250	
D.C.	\$100	
Florida		3.3% of Federal AMTI
Iowa		7.2% of Federal AMT exceeding \$40,000.
Maine		2.25% of Federal Preference Items in Excess of \$1,500 or Me. Income Tax.
Massachusetts	\$400	
Minnesota	\$100 to \$3,000	Excess of 5.8% of MN AMTI over regular MN tax liability.
Montana	\$50	
New Jersey	\$25/\$50	
New York	\$325	
North Dakota		6% of ND AMTI
Ohio	\$50	
Oregon	\$10	
Rhode Island	\$100	
Utah	\$100	
Vermont	\$75	

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1-18-97

Income/Severance
Tgt Subcomm.

Location of Corporate Headquarters
FY 90

	<u>Number</u>	<u>Percent</u>
Located in Montana	14,745	68.3%
Located Out of State	6,831	31.7%
	<u> </u>	<u> </u>
Total	21,576	100.0%

UNITARY BUSINESS CONCEPT

Income/Severance Tax
Subcomp

The unitary business concept is an accounting method that is used for tax purposes. There are two distinct elements to this concept. The first is apportionment which is the attribution of income to geographic locations by the use of a formula. Montana uses a 3 factor formula of property, payroll, and sales. The second is combined reporting of income of corporations who are related and affiliated through stock ownership. Montana's use of the concept dates back to 1967 and is not new. The unitary business concept's foundation in law dates back to the late 1800's. The unitary business concept in conjunction with formulary apportionment attempts to attribute income from an integrated enterprise to this state for purposes of measuring the tax. The formula works as such:

$$\begin{array}{rclcl}
 \text{MT Sales} & & \text{MT Payroll} & & \text{MT Property} \\
 \text{-----} & + & \text{-----} & + & \text{-----} \\
 \text{Total Sales} & & \text{Total Payroll} & & \text{Total Property} \\
 & & & & = \text{Apport. Factor} \\
 \\
 \text{Apport. Factor} & \times & \text{Total Income} & & = \text{Taxable Income} \\
 \\
 \text{Taxable Income} & \times & \text{Tax Rate} & & = \text{Tax Liability}
 \end{array}$$

A unitary business is defined by law to be one in which the operations within the state are dependent upon or contributory to the operations outside the state. When this situation exists, the tax is calculated using the above formula. Montana has been applying the unitary concept on a worldwide basis since 1967. If the operations of an affiliated group of corporations are unitary, all operations will be included in the combined return regardless of where such operations are located. However, starting for years beginning in 1988, multinational corporations can elect to be taxed only on their unitary operations within the United States. This is commonly called a "Water's Edge Combination".

We have two court cases which the Montana Supreme Court has decided concerning the unitary business concept. These are:

Ward Paper Box/Russell Stover Candies - In this case the court found the instate operations of Ward Paper, consisting of cattle ranching, to be unitary with the out-of-state operations, consisting of paper box manufacturing.

American Smelting & Refining Company (ASARCO) - In this case the court found ASARCO and six of its subsidiary companies to be engaged in a unitary business. ASARCO and the subsidiary companies were engaged in different steps in a vertically integrated process involving mineral exploration, production, refining and marketing.

In addition, the U.S. Supreme Court has upheld the validity of the unitary business concept.

Ex. 1
1-16-91
Income/Severa
Tax Subcomm.

MULTISTATE TAX COMMISSION (MTC)

Montana has been a member of the Multistate Tax Commission (MTC) for the last 22 years. The MTC is an organization of states created for the purpose of bringing some order to the state taxation of multistate businesses. The purposes of the MTC are: to facilitate proper determination of state and local tax liability of multistate taxpayers, to promote uniformity or compatibility of tax systems, and to avoid duplicative taxation.

In addition, the MTC conducts a joint audit program. Under the joint audit program, MTC staff perform audits just as though they were part of a state's own audit staff. A single MTC audit takes the place of separate and duplicative audits by member states, and provides economies of scale to the states. At the same time, it relieves the taxpayer of the burden of multiple audits. During FY90 this division issued assessments totaling \$872,000 as a result of MTC audits.

Additional benefits of belonging to this organization are the cooperation and uniformity developed with other states in the region. The pursuit of uniformity is important not only as a means of easing the taxpayer's burden of compliance, but as a means of demonstrating that the states, working together through the MTC, can develop solutions to these problems without federal preemption. The MTC is currently working on these uniformity issues:

1. Determination of Business Income or Non-business Income.
2. Sales Factor Computation Concerning Recent California Court Decisions.
3. Unitary/Diverse Business Issue.
4. Taxation of Multistate Financial Institutions.
5. Taxation of Broadcasting and Print Media Industries.
6. Uniform Withholding for Pass-Through Entities.
7. Post McKesson/ATA State Remedies.

The MTC has been successful in the adoption of regulations concerning past uniformity issues involving:

1. Interstate Trucking.
2. Interstate Airlines.
3. Interstate Construction Companies.

Exchange of valuable audit information with other MTC states has also proven to be very beneficial. The MTC is sponsoring two programs which provide for the exchange of information among the member states involving nexus and unitary information. Montana is participating in both programs which will provide information that could not be obtained without considerable additional cost to the state.

Exhibit 2 consists of 1990 Montana corporation tax forms. The originals are available at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

EXHIBIT 3
DATE 1-18-91
HB 1/4

DATE: December 18, 1990

TO: Jeff Miller, Administrator

FROM: *RT* Robert Turner, Office Audit Supervisor

Below is a breakdown of how the returns were filed in 1989:

<u>FILING STATUS</u>	<u>NUMBER</u>	<u>PERCENTAGE</u>
SINGLE	162,839	38.8%
JOINT	93,190	22.2%
MARRIED FILING SEP.	<u>163,605</u>	<u>39.0%</u>
TOTAL	419,634	100.0%

The breakdown of how married couples filed in Montana is:

<u>FILING STATUS</u>	<u>NUMBER</u>	<u>PERCENTAGE</u>
JOINT	93,190	36.3%
MARRIED FILING SEP.	<u>163,605</u>	<u>63.7%</u>
TOTAL	256,795	100.0%



DATE:

Income / Severance
TAXATION
Submitted

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