MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Dan Harrington, on January 18, 1991, at 9:05 a.m.

ROLL CALL

Members Present: All present

Dan Harrington, Chairman (D)
Bob Ream, Vice-Chairman (D)
Ben Cohen, Vice-Chair (D)
Ed Dolezal (D)
Jim Elliott (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
Marian Hanson (R)
David Hoffman (R)
Jim Madison (D)
Ed McCaffree (D)
Bea McCarthy (D)
Tom Nelson (R)
Mark O'Keefe (D)
Bob Raney (D)
Ted Schye (D)
Barry "Spook" Stang (D)
Fred Thomas (R)
Dave Wanzenried (D)

Staff Present: Lee Heiman, Legislative Council
Mona Spaulding, Committee Secretary

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

HEARING ON HB 151

An act revising the property taxation of migratory property; providing for the proration of personal property used on an interstate basis according to the number of days the property is in the state; providing for a refund on property taxes paid on migratory property for a period longer than the actual number of days the property is in the state; amending sections 15-24-303 and 15-16-613, MCA; and providing an immediate effective date and a retroactive applicability date.

Presentation and Opening Statement by Sponsor:

REP. BARRY STANG, House District #52, said legislation identical to HB 151 was passed in the 1987 session. It was deleted under HB 20 in the last special session. There are amendments. **EXHIBIT 1**

The bill originates as a result of loggers and contractors in **REP. STANG'S** district who are double taxed since they are based in Montana but work much of the time in Idaho. Property in Montana January 1 is subject to property tax for the entire year. Property in Idaho is subject to property tax for the time it was actually in the state. This bill provides a mechanism to refund tax paid in another state stipulating the refund will not exceed what would have been paid in Montana for the same time period. The issue is one of fairness. Current policy creates an incentive to move to Idaho.

Judy Rippingale, Deputy Director, Tax Policy, Department of Revenue (DOR), will provide information for the subcommittee relative to the number of persons using the refund procedure after the 1987 session. There will be a new fiscal note reflecting the amendments.

Keith Olson, Executive Director, Montana Logging Assoc., Kalispell, submitted written testimony in support of HB 151. **EXHIBIT 2**

Proponents' Testimony:

Dennis Burr, Montana Taxpayers Association (MTA), said MTA supports the bill which prorates property taxes to reflect time property is actually in Montana. The bill affects migratory livestock. A full year's tax is currently paid in Montana if cattle are in the state only a few months. Some people were affected last year when they were not expecting it and plan to leave Montana. A proration system has been in effect in the past. The bill does not reduce revenue; it returns policy to the way it was before.

REP. STEVEN BENEDICT, House District #64, said the bill affects his area which borders Idaho and has timber production. He whole-heartedly supports the bill as a fairness issue.

SEN. ELEANOR L. VAUGHN, Senate District #1, said her district borders Idaho. There have been problems with truckers and contractors who go back and forth and who must pay license in both states. The problem has been discussed at length with the assessor who is in favor of the bill. Provisions made for refund will not create budget problems and will create a better working relationship encouraging industry in Montana.

Keith Olson, Executive Director, Montana Logging Association (MLA), Kalispell, said for all the reasons stated MLA supports the bill. This is an equity issue. No taxation of personal property should exceed 12 months.

Forrest H. Boles, President, Montana Chamber of Commerce, said the bill addresses an equity issue. People are being double taxed. The affected industries bring some of the better paying jobs to the state - construction, wood products.

Opponents' Testimony: None

Questions From Committee Members:

REP. ED MCCAFFREE said budgets are prepared and mill levies assessed according to need. He does not disagree with refunding money but is concerned about counties' ability to manage budgeted funds. He asked if counties would have flexibility to pay refunded tax back in another budget period. **REP. STANG** said county treasurers will have to estimate the expense in their budgets. The amendment gives taxpayers six months to apply for the refund. After that time refund will not be allowed. **REP. MCCAFFREE** asked if accounting flexibility allowed paying refunds in another budget period. **REP. STANG** said the bill doesn't address that issue.

REP. BOB RANEY asked for a definition of personal property included in the bill. **REP. STANG** said mobil equipment, such as logging equipment, caterpillars and oil rigs. Vehicles are included in another section of the code involving heavy construction equipment. Some states with migratory oil rigs have a sales tax, but not a personal property tax. If personal property taxes are not paid in another state, a refund is not allowed.

REP. REAM asked if adjoining states have similar provisions and if information could be cross-checked. **REP. STANG** said the practice has worked well in Idaho for three years. Problems were created when Montana changed its law last year: Anyone from Idaho bringing equipment into Montana is taxed for a full year whereas anyone from Montana taking equipment into Idaho is taxed only for the portion of the year it is in Idaho. Idaho has tentatively indicated that it will reciprocate with Montana if Montana changes its law to prorate the tax.

Closing by Sponsor: **REP. STANG** made no closing statement.

HEARING ON HB 147

An act imposing a tax on certain transfers of real property; providing for the distribution of the proceeds; providing penalties; amending sections 15-7-301, 15-7-302, 15-7-303, 15-7-305, 15-7-306, 15-7-307, and 15-7-310, MCA; repealing section 15-7-311, MCA; and providing an effective date.

Presentation and Opening Statement by Sponsor:

REP. BEN COHEN, District #3, Whitefish, welcomed the many REALTORS attending the hearing, which coincides with their quarterly meeting. HB 147 imposes a tax on transfers of real property and provides for the distribution of proceeds. The proposed tax is 1/10 of 1%, or $1.00 for every $1,000 of value: For example; A $50.00 tax would be imposed on the sale of a $50,000 home. There is a pressing need to fund planning in city/county planning areas, especially in areas like Flathead County where a tremendous number of transactions are taking place. County planning boards are under-funded. Mill levies are frozen. County Commissioners have continued to adjust the mill levy with increases in assessment. They feel an obligation to taxpayers to meet the requirement of I105. Without proper planning, many property values will decrease as urban sprawl and uncontrolled development occur.

The bill provides a mechanism to fund planning boards. There are some technical problems with the bill which **Judy Rippingale, Deputy Director - Tax Policy, DOR,** will address in subcommittee.

Proponents' Testimony:

Gordon Morris, Executive Director, Montana Association of Counties (MACo), said the bill should be no surprise. There is no fiscal note at this point. Based on available information it can be assumed that approximately 64,000 transactions are taxable per year. The average price range is estimated to be from $42,000-$44,000 per transaction which reflects an estimated revenue of $2.9-$3.2 million annually. Revenue is dedicated to fund planning, subdivision review, and other county functions which provide adequate roads, public works facilities and so on. There are currently 37 states plus the District of Columbia which have a similar tax. The proposed rate is relatively low compared to other states. **EXHIBIT 3**

Alec Hansen, Montana League of Cities and Towns, said the bill is one of few which providing funds for cities and towns. Cities and towns need additional help and can not continue to take losses. This bill isn't enough but could be part of an overall program to insure stable funding. Because of I105, revenues are absolutely static. In fact, since I105 passed, municipal tax collections have gone down about 2%. At the same time, there is 20% inflation. There is a 22% gap in real dollars in spending power used to provide basic services. This bill provides for at least larger cities to have a guaranteed source of funding for planning. Planning is critically important for orderly growth and development of cities and towns and Montana.

Kathy Macefield, Montana Association of Planners, said they support this bill. Planning is very important for the economic development of the state, and communities and counties. Planning intends concerns to be addressed before they become problems.

Planning includes more than long-range plans - parks and neighborhoods, improvement and economic development plans... These interests need to be adequately funded.

Blake Wordal, Lewis and Clark County Commissioner, said the commissioners support the bill for several reasons. First, it gives an alternative to property taxes allowing for a levy reduction. The realty transfer tax replaces 2 mills now being levied and is a good approach to I105.

Christine Kaufmann, Montana Environmental Information Center, said they support the bill because of the importance of planning. Planning provides one of the best ways to protect natural resources and aesthetic values in the community. Most states have a realty transfer tax between 1-1/2% - 3%, rather than 1/10th of 1%.

Janet Ellis, Montana Audubon Legislative Fund, said they support planning as an important investment in Montana's future. The bill provides a vehicle through which the private sector can contribute toward protecting the quality of life in their communities.

Opponents' Testimony:

Dennis Burr, Montana Taxpayers Association (MTA), said he was sympathetic to local governments and their financial problems but the bill doesn't go far to solve them. He said he has been involved with the transfer certificate for a long time and was previously Administrator of the Property Assessment Division, DOR. Prior to passage of the realty transfer certificate, the Legislature asked DOR to assess property while providing no means to determine market value. Since there was no reporting system to provide sales information, DOR was reduced to asking REALTORS for information on property sales and current listings.

This legislation was originally introduced in 1973, did not pass; introduced again in 1974; amended in 1975 because it didn't apply to agricultural land which isn't taxed on market value. **Mr. Burr** said he believed the bill finally passed by one vote in 1975. That was the first time DOR had sales information on which to base assessments. It is his feeling that imposing the tax now will jeopardize the flow of information to DOR. If the bill passes this session, repeal efforts will follow. The amount of money expected to be raised doesn't justify putting the flow of information to the state in jeopardy. **Mr. Burr** said the mill levy book indicates fewer than ten counties and less than ten cities currently have a planning levy. There are mechanisms to fund planning through other sources. While it's true, in the past few years, legislation has kept the tax from being imposed, the majority have not found it necessary to impose the levy in the past. For administrative reasons more than the imposition of the tax, he speaks in opposition to the bill.

Tom Hopgood, Montana Association of REALTORS (MAR), said MAR was in strenuous opposition of HB 147 which imposes a realty transfer tax. **Mr. Hopgood** called attention to the fact that **REP. COHEN**, the Association of Counties, Montana League of Cities and Towns, MAP and a County Commissioner from Lewis and Clark County all advocated a selective and regressive sales tax. He said it was notable due to historic opposition in some of these groups. MAR supports the rights of private property owners and the concept of tax equity and believes the bill adversely affects those rights imposing an unfair and inequitable tax contrary to sound tax policy. The tax can be seen either as a sales tax, which is applied to an incredibly small number of people, or as a property tax. **Mr. Hopgood** said it was a blatant end run on I105. Proponents talked about having their hands tied by I105 but the electorate does not want additional property taxes. The tax will inhibit the sale and exchange of property and is contrary to the rights of property ownership. It has been said that the tax is small: 1/10 of 1% on a $100,000 sale is only $100. Typically the sale of property in the present market profits the owner/seller only $2,000-3,000. Taking the middle figure, $2,500, a $100 tax is actually 4%. On average, property sells every seven years. The tax is highly inflationary.

Al Littler, Democrat, Businessman, MAR, Billings, said the Legislature, over the years, has turned down this tax. It is important to see that proponents for the tax are associations, planners, cities and counties - not the electorate. The tax will affect buyers and sellers. MAR's opposition to the tax is in keeping with its philosophy of representing private property ownership. **Mr. Littler** said he has discussed the bill with **REP. COHEN** who stated one of the reasons he moved to Whitefish from Philadelphia is the 3-1/2% realty transfer tax imposed there. That would be $3,500 on the sale of a $100,000 home. Once implemented, the tax will easily be increased. Of the 29 states having the tax, 27 are stopping increases or repealing it. Such a tax applied to farm/ranch and commercial properties inhibits economic development. **Mr. Littler** said REALTORS did not question the need for planning. In Montana, one of the most difficult problems is that planners in local counties and cities utilize the present subdivision bill as a lever to stop decent development and planning. They confuse zoning and land-use planning with the subdivision act. Cities and counties now have the ability to use a mill levy for planning, as well as a local option tax or fees. These other means of funding need to be used. No one wants their property values diminished by improper land use; or to have development impeded arbitrarily. MAR supports good planning and land use but takes the position that the realty transfer tax is inappropriate at this time.

William M. Spilker, 801 Harrison, Helena, Chairman, Legislative Committee MAR, said MAR has long opposed any taxes on the transfer of real estate. The tax will be paid primarily by low income people. To illustrate he used an example of the most recent Helena Multiple Listing Service (MLS) book. Total value of sales is about $48 million, 90% of which represent single family residences. Residential, not commercial, property owners will pay the tax. The example of a $100,000 home sale is not ordinary. Only about 8% of single family residences are $100,000 or above. The average residential sale in Helena is $63,000. More important, and illustrating the regressivity of the tax, $52,000-$53,000 is the level at which the Farmers' Home Administration will make loans in this community. Those loans are aimed at lower income people and, in some cases, are subsidized to the extent of the interest. Homes priced at $53,000 or less represent 35% of the sales in the Helena market. Therefore, the tax is really aimed at moderate and lower income people. First time home buyers typically finance properties to the maximum allowed - often 98-100%. If they are then forced to sell due to transfer, loss of a job, health, or family situation there is often no equity, or even a loss - due to the flat market in the West. A transfer tax would tax 98-100% of value, which really is the interest of the lienholder - the bank.

Forrest Boles, President, Montana Chamber of Commerce, said the Chamber has been opposed to selective sales taxes historically. This is how they view this bill. The Montana Tax Coalition has found the taxation of services to be one of the most contentious issues during the past two years. He urged the committee to look at the whole tax reform issue and not a single tax issue.

Don Chance, Montana Building Industry Association (MBIA), said MBIA is comprised of 22,000 families in the state which make a living primarily through small businesses relating to the construction of residential properties. MBIA strongly opposes the bill due to its ramifications on housing affordability and lack of a comprehensive approach to the tax problem. Housing and housing affordability are highly sensitive to tax and development fee policies, which are inseparable. In 1986 the municipal tax code changed significantly. Multi-family construction in the United States fell about 40%. In Montana the decline was significantly greater. "Nominal" municipal and code development fees are now curtailing development activities in the state, adding to housing costs and causing inappropriate land use distortions which are resulting in rural sprawl. For example, development fees in Helena are as high as $29,000; in Great Falls, $800 plus; Billings water hookup fees are in excess of $69,000, and sewer hookup fees are at $55,000. Recently a $60,000 sewer fee was incurred to hookup a new nursing home facility with a sewer line just feet from the curb. The new subdivision reform bill introduced in this Legislature, which MBIA does support, will add significantly to the cost of land and lot development costs. There is discussion in the current Legislature relating to an upgrade of current energy codes for construction. The changed being discussed, if adopted, would add $3,800 to the typical cost of a new residential unit.

Many states represented as having realty transfer taxes are sales tax states. Residential transactions have been exempted in most of those states because they recognize that a full 4%-8% sales tax on the transaction is unrealistic. **Mr. Chance** said the point is housing affordability. There is truly a housing affordability crisis in Montana which is rarely discussed. In an earlier hearing, low income and homeless people told about horrible problems involved in finding any type of housing they could afford. They were not taken seriously, but drew chuckles. They were essentially pleading with builders to build housing they could afford. That is a financial impossibility. The housing industry is approaching the point where affordable housing can't be built for middle income people. More and more people are being forced into "throw-away" housing - depreciating, energy inefficient mobile housing, which is not a good financial investment. Montana has no comprehensive policy. Until the issue is comprehensively addressed, MBIA will continue to oppose piece-meal approaches which further aggravate the problem.

Gene Stumvell, MAR, Billings, said a group conspicuous by their absence are land developers. He has been a land developer of both residential and commercial subdivisions for fifteen years. There is a critical problem when properties can not be marketed to recover development costs. For example, he started a commercial subdivision ten years ago: purchased the land, held it - paying taxes and providing maintenance, put in improvements which cost $1.08/square foot (SF). This past week, four acres were sold for $1/SF. It is apparent that people can't stay in a business where they lose money. Any more taxes of any kind added to the cost of development will make the solution more difficult.

Kathy Anderson, Montana Wood Products Association, a group representing approximately 90% of the logs going through the sawmills in the state, said the bill does not specifically address the measurement of growing timber. She asked the committee to consider the extensive work done in this area during the past two years by both the Revenue Oversight Committee and the DOR.

Susan Brooke, Montana Stockgrowers Association, said they are opposed to the bill as a regressive tax.

<u>**Questions From Committee Members**</u>:

REP. JIM ELLIOTT asked **Mr. Hopgood** to clarify whether he opposed the bill because it was viewed as a sales tax or as a property tax. Since he said both, it was confusing. **Mr. Hopgood** said he didn't want to seem inconsistent, but he opposed it for both reasons. The bill is a selective and regressive sales tax. It is a blatant and thinly disguised "end-run" on I105. Either way it was bad tax and bad public policy. **REP. ELLIOTT** said I105 applied only to property taxes and not to sales taxes, so it couldn't be an "end-run" on I105 if it is a sales tax. **Mr. Hopgood** said it was a thinly disguised yet blatant "end-run" on

I105 because property taxes can not be raised for the proponents' purposes. If property taxes could be raised to support this function, that would be done. However the electorate has spoken through I105 saying that additional property taxes were not

wanted. **REP. ELLIOTT** said he would restate the questions, but was sure **Mr. Hopgood** would restate his answer.

REP. TED SCHYE said that this bill and the sales tax bill have been heard before. He asked for clarification that MAR testified in favor of the sales tax bill when the REALTOR tax was off. **Mr. Hopgood** said the position of MAR on sales tax is to favor a general sales tax on the sale of consumable goods. MAR does not advocate a tax on services which is the production of income. A tax on services represents a double tax on income. **REP. SCHYE** asked if that was not a selective sales tax. **Mr. Hopgood** said he did not believe it was. **REP. SCHYE** said Legislators get confused when MAR testifies for one sales tax calling it a selective sales tax, and saying another one is not; in reality he, and many other people, think it is. **REP. SCHYE** asked if MAR would still favor a general sales tax as long as the sale of real property is excluded. **Mr. Hopgood** said he could only restate the official MAR position.

CHAIRMAN HARRINGTON said it was not unusual for proponents of a sales tax to want certain items exempted. The newspaper, for instance, is in favor of the sales tax but wants to be exempt from it. Most states with a sales tax are moving toward including services under the tax. **Mr. Hopgood** said it was his understanding that very few states have yet expanded their sales tax from the consumption of goods to the production of services. Florida did tax services under their sales tax statute and has repealed it.

REP. RUSSELL FAGG asked what sort of housing a typical middle income person could afford ($25,000/year); what are typical up-front fees; is it more difficult to buy a first home now compared to 10 years ago. **Mr. Littler** said Montana per capita income was still around $12,000; A working couple might earn $24,000-30,000 together. The formula to figure qualification is different for different types of financing. Using the example of FHA financing: A $50,000-$60,000 house might require $1,500 down payment and closing costs of $1,000-$1,500. FHA requires a mortgage insurance premium which will cost about $2,000; the purchaser may pay it outright or include it in the loan.

REP. FAGG asked about the ability of the middle income person to purchase a house. **Mr. Littler** said across the country, as well as in Montana, young people find it harder to afford average housing than ten years ago. Salaries are going up but so is the cost of construction and the cost of housing. In Montana values have stayed low.

REP. MIKE FOSTER asked who is intended to pay the tax. Testimony implies that perhaps it is the seller; the bill as drafted implies perhaps it is the buyer. **REP. COHEN** said that was one of the technical issues. The bill does not specify who will pay the tax. Closing costs often represent decisions which are made within the terms of the sale contract. **REP. FOSTER** asked for comment from **Ms. Rippingale** who said she would work with the committee on the technical issues.

REP. FOSTER, said the term "open market" is used to determine the value of the property. Who will pay for the appraisal and how will it be specified? **REP. COHEN** said DOR now determines market value for purposes of assessment by examination of a realty transfer certificate which is proprietary information. No change is suggested. REALTORS seem to be very concerned about the proposed realty transfer tax. **REP. COHEN** said he didn't feel it was the small fee but something else, undetermined, which was the real issue. **REP. FOSTER** said it still was not clear if the bill anticipated one particular party paying for the appraisal. **REP. COHEN** said an appraisal is ordinarily required to obtain a mortgage. If the sales price is significantly different from the appraised price, he believes the sales price is used.

REP. SCHYE asked if he understood correctly that REALTORS do not like planning boards. **Mr. Littler** said the records show REALTORS strongly support good planning and land use. Private owners should have every opportunity to develop their properties to their highest and best use. When a REALTOR represents a client and has a fiduciary relationship, no information can be divulged without the client's permission. Confidentiality is one of the fiduciary duties.

REP. ORVAL ELLISON said tax reform is a major issue this session. He asked if it was a good philosophy to fund a service which everyone uses with tax money generated from property sales.

REP. BOB GILBERT referring to **REP. FOSTER'S** question, asked, in the case of a gift or a transfer with nominal consideration or in the case of a transaction without a stated consideration, how appraisal value would be determined and who would pay for the appraisal in order to determine the realty transfer tax on that transaction. **REP. COHEN** said in the case of gift transfer it was necessary to report it as income and appraisal is required. **Ms. Rippingale** said the realty transfer act did not require an appraisal be done if the property is transferred for nominal value. She said existing law does not require an appraisal be done, but is based on simple report. **REP. GILBERT** asked if he said he paid $1.00 for a house would the governing authority settle for that value, or would they require an appraisal to determine the fair market value. Who would pay for the appraisal? **REP. COHEN** said the point was made and would be addressed in subcommittee. He said he believed much of the information was available from the MLS.

REP. RANEY said language was used which supposed the deed would be immediately transferred, which might not happen. The tax should be due when the transaction is consummated. **REP. COHEN** said yes. **REP. RANEY** asked if the sale must be recorded in the county where property is located. **REP. COHEN** said he did not know. **REP. RANEY** said the tax had been called regressive. One way to address that is to make it more progressive by establishing a base. **REP. COHEN** said some states specified exemptions. **EXHIBIT 3** He said he believed the tax to be progressive as it was a proportional tax.

REP. FRED THOMAS asked for clarification of the fiduciary duty of confidentiality. **Mr. Spilker** said the MLS book was information given only to MLS members. It is not available to the public. There are penalties and fines for members who violate MLS policies.

REP. DAVE WANZENRIED asked how many REALTORS in the room supported good planning. By a show of hands, most all were in favor. **REP. WANZENRIED** asked how many felt there was adequate local planning. A simple show of hands did not prove to be sufficient and the question was deemed too complex to be answered with a show of hands.

REP. DAVID HOFFMAN asked if the intent of the bill was to fund planning in local governments. **REP. COHEN** said distribution of funds was addressed in Section 10, page 6. **REP. HOFFMAN** said that was the section in question. **REP. COHEN** said it would be addressed in subcommittee. **REP. HOFFMAN** asked if he would consider a repealer on the final mills levied. **REP. COHEN** said yes, and also would consider making the tax a local option tax. **REP. HOFFMAN** asked if transfers which have nothing to do with development are addressed: Agricultural, commercial property, for example. **REP. COHEN** said the bill was written to include all transfers. **REP. HOFFMAN** asked if he would consider an amendment to exempt some of the non-developmental transfers. **REP. COHEN** said the fiscal note indicated that approximately $3 million/year would be raised state-wide. Approximately half of that would be from the sale of agricultural land. He said he would be willing to entertain amendments. **REP. HOFFMAN** referring to page two, transfers for nominal consideration, said realty transfer certificates require a written statement of the actual consideration transferred but there are exceptions: for example, father-son transfers where no money changes hands; transfer documents which help clear clouded title. The way the bill is written, the tax could be collected several times on a single transfer. **REP. COHEN** said those technical issues would be addressed in subcommittee.

<u>**Closing by Sponsor**</u>:

REP. COHEN said the bill did not represent a major burden compared to other fees and commissions. A reliable source of funding is needed in order to insure proper planning and to preserve property values. It should directly relate to the kinds of pressures counties feel when they experience rapid growth.

HEARING ON 136

An act providing a three-year waiting period before a resolution concerning the imposition of a resort tax may again be placed before the electors when a resolution is rejected; and amending Section 7-6-4464, MCA.

Presentation and Opening Statement by Sponsor:

REP. JIM SOUTHWORTH, House District 86, Billings, said the idea is to require a three-year waiting period when a resolution has twice been voted down.

Proponents' Testimony: None

Opponents' Testimony:

Alec Hansen, Montana League of Cities and Towns, said the bill was opposed for several reasons. It puts a three-year waiting period which is inconsistent with many other sections of law: For example, SID, special districts, types of bond issues. The waiting period is an odd number which means it can't be cycled with elections. There are two ways to deal with the problem in Red Lodge if people don't want this issue continually on the ballot: They can replace the people who are putting it on the ballot; they can go through petition. Perhaps an amendment for a two-year waiting period, to cycle with elections, could be made. People should have an opportunity to refer to the electorate frequently.

Questions From Committee Members:

REP. ED DOLEZAL asked **REP. SOUTHWORTH** if he would object to changing the cycle to two years. **REP. SOUTHWORTH** said he would like the committee to table the bill.

Closing by Sponsor:

REP. SOUTHWORTH said he sponsored the bill at the request of constituents who were not present to defend it. He recommended tabling the bill.

EXECUTIVE ACTION ON HB 136

Motion/Vote: **REP. RANEY MOVED HB 136 BE TABLED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 58

Discussion:

CHAIRMAN HARRINGTON said the bill had to do with Pierce Packing. It has to do with economic development issues. It forgives taxes for a period so that the property can be sold.

Motion: **REP. STANG MOVED DO PASS.**

Motion/Vote: **REP. STANG** moved to amend HB 58. **EXHIBIT 4** Motion carried unanimously.

Discussion:

REP. COHEN said he didn't know what the word "subordination" meant. **REP. HOFFMAN** said, from a legal standpoint, it means to put into second position or behind what one is subordinating to. **REP. BEA MCCARTHY** said it means the person who is second in line for the mortgage.

REP. DOLEZAL asked if the intent was to forgive taxes and never collect them, or would taxes eventually be collected. **CHAIRMAN HARRINGTON** said it was his understanding taxes would never be collected. The reason for the bill is to allow sale of property. **Denis Adams, Director, DOR,** said taxes would only be deferred. If property goes into bankruptcy, taxes could not be collected. The bill will assist financing the property by allowing the tax lien to be moved to second position.

REP. MARK O'KEEFE asked for clarification on prior testimony. It has been stated that the only way taxes can be forgiven is by a bankruptcy court and that this bill would change that. **Mr. Adams** is saying that is not so. **REP. BOB REAM** restated that the taxes were deferred.

REP. ELLIOTT said Big Sky Airlines previously asked for endorsement of a bill which would have forgiven their taxes because they could not go through bankruptcy proceedings. The bankruptcy court could not do anything about the taxes owing local government. He asked if anyone else remembered the case differently. **CHAIRMAN HARRINGTON** said by forgiving the taxes in that case, the company would have had a second chance to continue to operate.

REP. MCCAFFREE asked for clarification whether taxes would be forgiven in the case of HB 58. **Mr. Adams** said no, they would be deferred. **REP. MCCAFFREE** asked at what point in time they would be due. **REP. RANEY** said they were not being deferred, but made subordinate, meaning when someone wanted to collect, the mortgagee collects before the county.

REP. HOFFMAN said the legislation, under Section 4 which is existing law, says subordination does not diminish any other claim to tax. It provides for the Commissioner to defer taxes for three years after which time taxes may be forgiven at the discretion of the governing body.

REP. DOLEZAL and **REP. O'KEEFE** asked for confirmation that HB 58 gave the local governing body the option to forgive taxes.

CHAIRMAN HARRINGTON said yes, that was current law. The word, subordination, is the key to HB 58.

Vote: **HB 58 DO PASS AS AMENDED.** Motion carried unanimously.

Discussion:

REP. RANEY asked for clarification on his earlier motion to table HB 136. Should a bill like HB 135 be sent out on adverse committee report or, to avoid having it on the floor, should it be tabled. **CHAIRMAN HARRINGTON** said action needed to be taken. It had to be sent to the floor or tabled. In this case the sponsor asked for the bill to be tabled.

EXECUTIVE ACTION ON HB 153

Motion/Vote: **REP. REAM MOVED HB 153 DO PASS.** Motion carried unanimously.

Announcements/Discussion:

CHAIRMAN HARRINGTON referred HB 34 to Income Tax Subcommittee; HB 147 and HB 151 with amendments to Property Tax Subcommittee.

ADJOURNMENT

Adjournment: 11:40

Dan Harrington

DAN HARRINGTON, Chair

Mona Spaulding

MONA SPAULDING, Secretary

DH/mls

HOUSE OF REPRESENTATIVES

TAXATION COMMITTEE

ROLL CALL DATE 1-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. DAN HARRINGTON	✓		
REP. BEN COHEN, VICE-CHAIRMAN	✓		
REP. BOB REAM, VICE-CHAIRMAN	✓		
REP. ED DOLEZAL	✓		
REP. JIM ELLIOTT	✓		
REP. ORVAL ELLISON	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. MARIAN HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. JIM MADISON	✓		
REP. ED MCCAFFREE	✓		
REP. BEA MCCARTHY	✓		
REP. TOM NELSON	✓		
REP. MARK O'KEEFE	✓		
REP. BOB RANEY	✓		
REP. TED SCHYE	✓		
REP. BARRY "SPOOK" STANG	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
	✓		

1-18-91

HOUSE STANDING COMMITTEE REPORT

January 18, 1991

Mr. Speaker: We, the committee on Taxation report that House Bill 58 (first reading copy -- white) do pass as amended.

Signed: ______________________
Dan Harrington, Chairman

And, that such amendments read:

1. Page 2, line 9.
Following: line 8
Insert: " and the governing body may grant a"

HOUSE STANDING COMMITTEE REPORT

January 18, 1991

Mr. Speaker: We, the committee on Taxation report that House Bill 153 (first reading copy -- white) do pass .

Signed: ______________________________

Dan Harrington, Chairman

EXHIBIT 1
DATE 1-18-91
HB 151

Amendments to House Bill No. 151
First Reading Copy

Requested by Property Tax Subcommittee
For the Committee on Taxation

Prepared by Lee Heiman
January 18, 1991

1. Title, lines 5 through 7.
Strike: "PROVIDING" on line 5 through "STATE;" on line 7

2. Title, line 9.
Strike: "DAYS"
Insert: "MONTHS"

3. Title, lines 10 and 11.
Strike: "SECTIONS 15-24-303 AND"
Insert: "SECTION"

4. Page 1, lines 15 through 25.
Strike: section 1 in its entirety
Renumber: subsequent sections

5. Page 2, line 3.
Following: "<u>property</u>."
Insert: "(1)"

6. Page 2, line 10.
Following: "~~time~~"
Insert: "and upon proof that a tax was paid in another state"

7. Page 2, line 12.
Strike: "~~days~~"
Insert: "months"

8. Page 2, lines 13 through 17.
Strike: "<u>. The</u>" on line 13 through "<u>due.</u>" on line 17
Insert: ", as provided in this section.

(2) To obtain a refund, a taxpayer shall file an application for refund with the county treasurer in the county where the property was originally taxed."

9. Page 2, line 19.
Following: "<u>assessment</u>"
Strike: "."
Insert: ", and the county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department of revenue and may require information as prescribed by rule of the department.

(3) The amount of the refund must be determined by multiplying the amount of the original tax paid by the ratio of the number of months remaining in the year at the time the property was removed divided by 12."

10. Page 2, line 21.
Strike: "Sections 1 and 2] apply"
Insert: "Section 1] applies"

1-18-91 HB 151

MR CHAIRMAN ... MEMBERS OF THE COMMITTEE:

EXHIBIT 2
DATE 1-18-91
HB 151

KEITH OLSON ... EXECUTIVE DIRECTOR
MT. LOGGING ASSN ... KALISPELL

MLA represents over 600 independent logging contractors ... all of which are family-owned business operations.

We rise in support of HB 151 ... because it addresses an issue of equity.

Many of MT.'s logging contractors live near the Id. border ... and as such they frequently work in both states.

Current law requires that logging equipment which is in MT on the 1st of January owes personal property taxes for the entire year ... EVEN IF That Equipment Migrates to Id. for the Entire Logging SEASON!!!

While in Id, logging equipment is taxed for the period of time that it operates in-state. Thus, many loggers are being assessed double taxation.

Ex. 2
1/18/91
HB 151

HB 151 intends to allow an off-set against MT's personal property tax for duplicate out-of-state taxes paid.

This would bring MT's tax policy in line with Id's ... which strives for equity.

No one is trying to avoid their tax obligation ... we simply believe that no personal property should be assessed more than 12 months of tax.

EXHIBIT 3
DATE 1-18-91
HB 147

Table 40

States with Transfer and Real Estate Taxes, September 1989

State	Basis of Tax: Total Sales Price	Basis of Tax: Sales Price Exclusive of Mortgage or Other Liens	Rates[1]: Deed Transfer Tax	Rates[1]: Mortgage Tax
Alabama*		Yes	0.100%	0.150%
Arizona		flat fee	$2.00	
Arkansas	Yes		0.220	
California		Yes		
Colorado	Yes[2]		0.010	
Connecticut*	Yes		0.450	0.110
Delaware*	Yes[3]		2.000	
District of Columbia*	Yes		1.100	1.100
Florida*	Yes		0.550	0.150
Georgia*		Yes	0.100	0.300
Hawaii	Yes[3]		0.050	
Illinois*	Yes[3]		0.100	
Iowa		Yes	0.110	
Kansas			0.250	
Kentucky	Yes		0.100	
Maine	Yes		0.220	
Maryland*	Yes		0.110	
Massachusetts*		Yes[3]	0.400	
Michigan*	Yes[3]		0.110	
Minnesota		Yes	0.330	0.230
Nebraska	Yes		0.150	
Nevada		Yes[3]	0.110	
New Hampshire*	Yes		0.350	
New Jersey*	Yes[3]		0.350	
New York*		Yes	0.400	1.000
North Carolina*		Yes	0.100	
Ohio*			0.300	
Oklahoma*		Yes	0.150	0.100
Pennsylvania*	Yes		1.000	
Rhode Island	Yes[3]		0.280	
South Carolina*		Yes[3]	0.220	
South Dakota	Yes		0.100	
Tennessee		Yes	0.330	0.115
Vermont*	Yes		0.500	
Virginia*	Yes	Yes	0.250	
Washington*	Yes[3]		1.280	
West Virginia*	Yes		0.220	
Wisconsin	Yes[3]		0.300	

Notes

[1] Taxes are listed as a percentage of the tax base even though statutory rates are sometimes listed as cents/$100 or cents/mills.

[2] Transfers under $500 are exempt.

[3] Transfers under $100 are exempt (for Virginia this applies only to the grantor's tax).

Sources: ACIR staff compilation from Commerce Clearing House, *State Tax Reporter.*

*State Notes

General Information: Deed transfer taxes are generally paid by the seller; however, if the seller fails to pay, the buyer is liable for the tax. Mortgage taxes are paid by the buyer on the amount borrowed. Most states grant a variety of exemptions to these taxes.

Alabama Alabama does not have a stock transfer fee; however, there is a recordation tax and a privilege or license tax on the registration of securities. The rate of the tax is $.25 per $100 of par value or principal amount for the recording of the securities. This rate also applies to the filing and recording of lists of securities.

California Counties have the authorization to impose a .11% documentary transfer tax. Charter cities, such as Berkeley, Oakland, Piedmont, Santa Clara, San Jose, Campbell, and others, impose an additional tax at one-half the county rate per $500. The Los Angeles County documentary tax is $1.10 per $1,000 of the value. The Los Angeles City tax is $.55 per $1,000.

Connecticut Farm and Forest Land Conveyance Tax is an additional tax levied on the sale of land classified for property tax purposes as open space land that is sold within ten years of classification. Also, if land classified as farm or forest land is sold within ten years from acquisition or classification, whichever is earlier, it, too, is subject to the conveyance tax. The tax rates are applied to the sales price or, if the classification of the land is changed but there is no sale, to the fair market value on a scale from 10% within the first year to 1% within the tenth year.

Delaware There is a realty transfer tax imposed by the City of Wilmington at the rate of 1%.

District of Columbia The mortgage tax is known as the recordation tax on deeds.

Florida Until October 1, 2011, counties are authorized to levy a surtax on documents at a rate not to exceed $.45/$100. The county tax is levied on the same items as the state tax, except any document which involves a single family residence.

Georgia $1 for the first $1,000 and $.10 for each additional $100.

Illinois Counties are authorized to impose a real estate transfer tax at the rate of .05% of the full consideration. Chicago imposes a transfer tax at the rate of .75% of the transfer price.

Table 40 (cont.)

States with Transfer and Real Estate Taxes, September 1989

Maryland A realty transfer tax is imposed by the state at 0.5% of actual consideration paid. The first $30,000 of the sales price of a home is excluded from the tax base. Counties may impose an additional transfer tax not to exceed 0.5%. Counties and municipalities may impose an additional recordation tax. The rate of tax varies between the counties; the range is from $1.10 to $3.50 per $500. There also is an agricultural land transfer tax of 5% of actual consideration paid (less full cash value of any improvements) when the land being transferred is a parcel of 20 acres or more; 4% when the land is a parcel of less than 20 acres and is assessed on the basis of its agricultural use or on the basis of unimproved land; and 3% when land being transferred is a parcel of less than 20 acres and is assessed as improved land or land with site improvements. The rate is reduced further by 25% for each consecutive full tax year in which real property taxes were paid on the basis of a nonagricultural use assessment. Counties also impose additional deed transfer taxes.

Massachusetts If the sale price is greater than $100 and less than $500, the fee is $2, and for each additional $500 or fractional part, $2. In addition, a 14% surtax per $500 is imposed.

Michigan The $.55 per $500 rate increases to $.75 per $500 for counties with a population of 2 million or more.

New Hampshire The buyer and the seller each pay $.35 per $100 of the full consideration, the total tax being $.70 per $100 (minimum tax $14 from buyer and seller).

New Jersey The rate is .35% on the first $150,000: the rate on the excess over $150,000 of the consideration is an additional $.75/$500. There is a reduction in the tax rate to $.50/$500 when the transfer involves the sale of low or moderate-income housing. The sale of any one or two-family residence owned and occupied by a senior citizen, blind or disabled person who is the seller also qualifies for the reduction.

New York New York City imposes a mortgage recording tax of 1%, in addition to the state tax, with respect to real property securing a principal debt or obligation of less than $500,000. The tax on mortgages secured on one, two or three-family houses, individual cooperative apartments, and individual residential condominium units, securing a principal debt or obligation of $500,000 or more is $.625/$100. The tax on mortgages secured on all other real property is 1.25%. The mortgage recording tax is a state tax that is administered by localities. New York City imposes a realty transfer tax on each deed when the consideration exceeds $25,000. The tax is imposed at the following rates: 1% for a one, two or three-family house, individual cooperative apartment, individual residential condominium unit or individual dwelling unit in a four-unit dwelling, or where the consideration for the transfer is less than $500,000; and 2% of the consideration with respect to all other transfers. The real property gains tax is imposed at a rate of 10% on the gain from the transfer of real property if the consideration is $1 million or more.

North Carolina Authorizes an excise stamp tax on transfers of real estate at the rate of $.50 per $500, or fraction thereof. The levy is administered by county governments in accordance with procedures established by the state. Proceeds of the excise stamp tax are retained by the county and deposited in its general fund.

Ohio Counties may levy a realty transfer tax on each deed with a rate not to exceed $.30 per $100 of value. There is an additional tax of $1 or $.10 per $100, whichever is greater, imposed by counties; however, there are 22 exemptions to this second tax.

Oklahoma The real estate mortgage tax rates, for each $100 and remaining fraction thereof, increase with the time of the mortgage as follows: $.10—5 years or more, $.08—4 to 5 years, $.06—3 to 4 years, $.04—2 to 3 years, and $.02—2 years or less. If mortgage is less than $100 a tax of $.10 is levied. County treasurers impose a $5 fee on each mortgage presented for certification.

Pennsylvania Municipalities may impose an additional 1% tax on a deed transfer. The responsibility of paying the taxes is customarily shared equally by the buyer and the seller.

South Carolina Counties may impose an additional $1.10 per $1,000 deed transfer tax.

Tennessee Mortgage Tax—County registrar receives $.50 recording fee at time of payment. Also entitled to a commission of 5% of tax collected. Not liable for the first $2,000 of indebtedness.
Real Estate Transfer Tax—County registrar receives $.50 recording fee at time of payment. Also entitled to a commission at 5% of tax collected. Maximum tax $100,000.

Vermont The capital gains tax on land is based on the gain and the years held: the rates are as follows:

	Gain as a Percentage of Basis (rounded to the next highest percent)		
Land Held by Transferor	**0-99%**	**100-199%**	**200% & over**
less than four months	60%	70.0%	80%
four to eight months	35	52.5	70
one year	30	45.0	60
two years	25	37.5	50
three years	20	30.0	40
four years	15	22.5	30
five years	10	15.0	20
six years	5	7.5	10

Ex. 3
1-18-91
HB 147

Table 40 (cont.)

States with Transfer and Real Estate Taxes, September 1989

Virginia

The deed transfer tax is actually a two-part recordation tax: the grantor's tax of $.50 per $500 of the consideration less any amount of any lien or debt remaining, and the recordation tax of $.15 per $100, or fraction thereof, of consideration or actual value which is imposed on the recordation of a deed, deed of trust, lease, or other contract. The recordation tax per $100 value decreases as follows:

1st $10 million	$.15
2nd $10 million	.12
3rd $10 million	.09
4th $10 million	.06
5th $10 million	.03

In addition to the state realty transfer tax, the following cities and counties impose a tax equal to 1/3 of the state tax:

Cities (with population of 50,000 or more)		Counties (with population of 100,000 or more)
Alexandria	Portsmouth	Arlington
Chesapeake	Richmond	Chesterfield
Hampton	Roanoke	Fairfax
Newport News	Suffolk	Henrico
Norfolk	Virginia Beach	Prince William

Washington

There is an excise tax of 1.28% of the total selling price, to be paid by the seller; a local county and city tax not to exceed .25% of the selling price excluding the value of any liens and encumbrances, also paid by the seller. A state surtax of .06% was scheduled to be repealed 7/1/89; the old rate was 1.34% of total selling price. In lieu of imposing an additional 0.5% local sales and use tax, a city or county may impose an additional tax on the sale of property not to exceed 0.5% of the selling price.

West Virginia

There is an additional county excise tax on transfers of property at a rate of .11%.

Source: ACIR staff compilation from Commerce Clearing House, *State Tax Reporter*, September 1989.

EXHIBIT 4
DATE 1-18-91
HB 58

Amendments to House Bill No. 58
First Reading Copy

For the Committee on Taxation

Prepared by Lee Heiman
January 17, 1991

1. Page 2, line 9.
Following: line 8
Insert: " and the governing body may grant a"

hb005801.alh

TAXATION 1063

BILL NO. HB 147

DATE 1/18/91

NAME	REPRESENTING	EXHIBIT
A.F. "Al" Littler	Mont. Assoc. of Realtors	
Dee Payne	" " " "	
Gene Sturnvoll	" " " "	
Janet Ellis	Audubon	
CARRIE GARBER	MAPP	
Laura Odegaard	Mont. Assoc of Realtors	
Robin Campbell	Mont Assn/Realtors	
Jerry Chapman	Mont. Assoc Realtors	
Dean Luptak	Mont. Assoc Realtors	
Ken Stein	" " "	
John McNaught	State Tax Appeal Board	
Bonny Milligan	M A R.	
MARVA HOARD	MT ASSOC. REALTORS	
Steve Hamper	M.A.R.	
Laurie Dazmon	MT Assoc Realtors	
Glynn Neuhardt	" "	
Dayton Fiscus	" "	
Pat Bowen	" " President	
Jerry Wrynn	" " " Director	
Steve Mandeville	Helena Assoc of Realtors Pres	
Jim Emerling	Billings Assoc of Realtors	
Jan McLendrew	Montana Assoc Realtors	
Pam Willett	Montana Assoc of Realtors	

Vicky Hammond Montana Association of Realtors

Donna J Strand " " " "

W^m M. SPILKER " " "

TAXATION

BILL NO. HB 151

DATE 1/18/91

NAME	REPRESENTING	EXHIBIT
~~Kaye Bluthe~~	~~Mt. Assoc of Realtors~~	
Laurie Bozeman	MT. Assoc. of	
Eleanor L. Vaughn	Lincoln Co. Senate Dist #1	
~~Helena Aggard~~	Bozeman - MT Assoc of Realtors	
Dennis Burr	Montana Taxpayers assoc	
J H Bole	MT Chamber of Commerce	Support
Steve Benedict	HD 64	Support
Keith Olson	MT. Logging Assn.	Support

Kaye Blythe	Mt. Association of Realtors		
Judith Wahlberg	" " " "		
Ileana Nygard	" "		
Marcia Allen	" " "		
Shirley Olds	" " "		
Judy Ruiela	" " "		
Jay Spaulding	" " "		
Marilyn Foss	" " "		
Doris E. Grimm	" " "		
P. Clluzzme	" " "		
Jan Schwartz	" " "		
Don Chance	Mont. Building Ind. Assn.		
Gene Phillips	Mont. Land Title Assoc		
Dennis Burr	Montana Taxpayers Assoc.		oppose
Colbi K. Bangs	Mont Assoc. Realtors		oppose
SH Buck Boles	Mt Chamber of Commerce		oppose
Ron Berg	M.A.R.		
Marjorie Johnson	M.A.R.		
Gordon Morris	MACo		Support
Mary Ackermann Yates	MAR		Oppose
Marty Heller	MAR		oppose
John Beagle	MAR		oppose
Marty Bahler	MAR		oppose
Kathy Macefield	Mt Assoc of Planners		support

WITNESS STATEMENT

NAME ______________________ BILL NO. ______

ADDRESS ______________________ DATE ______

WHOM DO YOU REPRESENT? ______________________

SUPPORT ________ OPPOSE ________ AMEND ________

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Chris Kaufmann	MEIC	Support
[illegible] Brooke	MT STOCKGROWERS — WOOLGROWERS	OPPOSE
Ellen Ries	MT Assoc. of REALTORS	oppose
John England	" " "	oppose
Kathy Anderson	MT WOOD PROD. ASSN.	"

TAXATION

BILL NO HB 136

DATE 1/18/91

NAME	REPRESENTING	EXHIBIT
MARLA HOARD		
Kaye Blythe	Mt. Assoc. of Realtors	
Samantha Sanchez	MAPP	
Alec Hansen	MLCT	