

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on January 17, 1991, at 8:00 p.m.

ROLL CALL

Members Present:

Mike Halligan, Chairman (D)
Dorothy Eck, Vice Chairman (D)
Robert Brown (R)
Steve Doherty (D)
Delwyn Gage (R)
John Harp (R)
Francis Koehnke (D)
Gene Thayer (R)
Thomas Towe (D)
Van Valkenburg (D)
Bill Yellowtail (D)

Members Excused: None

Staff Present: Jeff Martin (Legislative Council).

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

Announcements/Discussion:

Denis Adams, Director, Department of Revenue, presented a draft of a proposed committee bill which would amend 15-24-1203, MCA (exhibit #1). The bill would correct an oversight in the original legislation exempting state-owned railroads which did not anticipate exemptions for any federally owned railroads. The state does not want to be in the position of discriminating against federally owned property.

Dave Woodgerd, Chief Counsel, Department of Revenue, said the problem is an alleged discrimination between federal and state owned railroad as it applies to beneficial use taxation. The state has been involved in protracted litigation with utilities over beneficial use taxation of federally-owned powerlines. Over \$20 million is held in protest accounts as a result of that litigation. One of the allegations made before

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the Supreme Court is that Montana is discriminating against the federal government in its beneficial use taxation of property. The Montana Supreme Court rejected that argument in a recent decision. That decision will be appealed to the United States Supreme Court.

Mr. Woodgerd said DOR would like to amend the statute to what it believes was the original intent of the legislature - to exempt both state and federally owned railroads. By amending the railroad statute, the allegation of discrimination against the federal government that the utilities have raised will be eliminated. He emphasized that this is an alleged problem, as both the Supreme Court and DOR agree that no discrimination problem exists.

Chairman Halligan asked the committee members to consider this as a committee bill. He felt it would assist the DOR in their litigation efforts with the end result being the possible release of the tax protest monies.

Senator Towe MOVED the draft be adopted as a committee bill. The motion CARRIED unanimously.

HEARING ON SENATE BILL 69

Presentation and Opening Statement by Sponsor:

Senator Eck, District 40, sponsor of the bill, said the bill has been introduced at the request of the Department of Revenue. The bill deals with the definition of agricultural land and the attempt to ensure that land that is classified agricultural is used for agricultural purposes. As written, the statute indicated that if land that was restricted could not be used for agricultural purposes it should not be assessed as agricultural land. The problem that arises is that the restriction applies only to subdivided land. The amended language refers to any land that has restrictions.

DOR has assured Senator Eck that land that does not have an agricultural or commercial use would be valued at a low rate. However, that has never been reflected statutorily.

Proponents' Testimony:

Denis Adams, Director, Department of Revenue, said this problem results from a problem with a tract larger than 20 acres which, because of restrictions, was prohibited from being used for agricultural purposes. DOR then taxed the tract based on market value rather than on a productivity base. The owner appealed the assessment to the county tax appeal board, was denied and then appealed to the state tax appeal board. The appeal was again denied and so the case was taken to district court. The district court ruled in favor of the taxpayer stating the definition of a subdivision only includes parcels of less than 20 acres. The court held the taxpayer did not meet the

subdivision requirements and therefore did not have to be concerned with the agricultural restrictions even though the property could not be used for agricultural purposes. Mr. Adams said there are other parcels that will be coming in for the agricultural exemption even though they are currently valued at market value. The bill is an attempt to amend the law to restrict the agricultural benefits to property which is being used for agricultural purposes.

Hugh Zackheim, Nature Conservancy, expressed support for the bill and the intention to provide an appropriate tax rate for land that has a potential to be used for residential and commercial development. He pointed out a possible unintended consequence in lands dedicated to public purposes such as recreational access and wildlife habitat. In rare cases, values of the land or covenants may make the land incompatible with agricultural purposes. He urged the committee to preserve the status quo for those restrictions that are made for public purposes.

Opponents' Testimony:

There were no opponents.

Questions from Committee Members:

Senator Koehnke asked if the bill would affect divided homesteads in any way.

Mr. Woodgerd said there would be no impact. Current law classifies the one acre surrounding the farmstead as Class 4 and all the rest of the land is classified as agricultural.

Senator Towe asked Denis Adams to respond to the comments by Mr. Zachheim.

Mr. Adams said the assessment would depend on what the restrictions are. If the land cannot be used for agriculture, many easements prohibit developments. It is not the intent of the bill to tax those parcels at a higher rate. He said the Committee may want to look at the language in the bill in relation to that concern. He noted, however, even if the parcel is taxed at market value, if it cannot be used for anything, it will have a very low market value.

Closing by Sponsor:

Senator Eck said she would further investigate Mr. Zachheim's concern and indicated the bill might have to be modified slightly.

HEARING ON SENATE BILL 70

Presentation and Opening Statement by Sponsor:

Senator Gage, District 5, sponsor of the bill, said the bill is introduced at the request of the Department of Revenue. The bill clarifies the responsibility and liability for withholding taxes. The word "willfully" is eliminated from the statute and the responsible person is identified. Senator Gage said there is not a fiscal note and no anticipated fiscal impact.

Proponents' Testimony:

Jeff Miller, Administrator, Income and Miscellaneous Tax Division, Department of Revenue, presented his testimony in support of the bill (Exhibit #2).

Proposed amendments to the bill were presented by Jeff Martin, Committee Researcher (Exhibit #3).

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Towe asked why the federal standards haven't been adopted.

Mr. Miller replied DOR would be happy to adopt those standards if that is the wish of the Committee. However, he pointed out the penalty provision is extremely harsh, equaling 100% of the tax. The responsible person would be liable for 100% of the tax and a penalty of 100% of the tax. Montana penalties are much less stringent. However, DOR would not object to adopting the definition itself.

Senator Van Valkenburg asked if current law provides for any jail sentence in its penalty provisions.

Mr. Miller replied there is no incarceration penalty, just a civil penalty clause.

Senator Van Valkenburg said he does not feel it is appropriate to have a mental element if there is no threat of incarceration. A considerable burden of proof is required if a mental element is included.

Closing by Sponsor:

Senator Gage closed.

HEARING ON SENATE BILL 67Presentation and Opening Statement by Sponsor:

Senator Halligan, District 67, sponsor of the bill, said the problems in medicaid funding for medical services for the poor have been ongoing in Montana for several years. This bill specifically addresses the medicaid reimbursement rate to obstetricians who are serving poor people. Senator Halligan noted the rate is so low that most obstetricians will no longer accept medicaid cases, especially in rural areas of the state where there is already a shortage of medical services. He noted the cost of malpractice insurance is so high it cannot begin to be offset by the low reimbursement. He referred the members to the attached fiscal note assumptions 4, 5, and 6 (Exhibit #4). The average delivery cost is \$1369.54 with the medicaid reimbursement being only \$755.

SB 67 offers income tax credit a refundable state income tax credit to physicians providing obstetrical services to medicaid recipients. The credit is allowed for a percentage of the difference between the usual and customary charges or fees for obstetrical services and the medicaid reimbursement amount for obstetrical services. An urban doctor will get a 40% credit, a rural doctor will receive 75% of the difference. Senator Halligan referred to page three of the fiscal note for a general summary of the costs associated with the credit. Total costs per year are \$896,167.

Senator Halligan acknowledged the high cost of the bill but noted he wanted to take a clean understandable approach to the problem on a common sense basis. He further noted if medicaid payments are increased, there will be no need for the bill.

Senator Halligan said 40% of all deliveries are in rural areas. This past summer Senator Halligan had to have emergency care for his son while vacationing in West Glacier and had to drive forty miles to the nearest physician. He said the trauma is obvious for those folks in rural communities where there are no medical services. It becomes necessary to provide incentives attractive enough to keep doctors in those rural areas. Oregon has adopted a system of incentives with a \$5000 cap for rural doctors to stay in rural communities. It appears the incentives are working after a year and a half as Oregon has lost none of its rural doctors. SB 67 provides a \$5000 cap for urban doctors and a \$10,000 cap for rural doctors.

Proponents' Testimony:

Jerry Loendorf, Montana Medical Association, expressed support for the bill although the MMA does not prefer a tax credit because it creates an appearance of favor. The MMA prefers that doctors are paid directly by a medicaid payment increase. Twenty-two counties are currently without obstetrical services. Federal law mandates are increasing the number of women covered for obstetrical services and the number of obstetricians is decreasing. Mr. Loendorf believes the tax credit should apply equally to both rural and urban doctors as Montana is essentially a completely rural state with the exception of three large cities.

Richard Brown, Montana Hospital Association, submitted his testimony to the members in support of the bill (Exhibit #5).

Steve Browning, Montana Hospital Association, expressed support for the bill on behalf of Kay Foster, Chairman of the Governor's Task Force on Availability of Health Services.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Eck asked what amount of increase in medicaid reimbursement would be needed to raise \$897,000.

Mary Dalton, Bureau Chief, Medicaid Division, Social and Rehabilitation Services, said the Executive Budget includes a \$2.7 million increase in general fund which would increase the OB fee to 90% of what private payers pay. She said that is what is needed to have the state plan approved by the Health Planning Financing Administration (HCFA).

Senator Eck said if Montana increased medicaid rates the federal government would pay 72%.

Senator Harp asked if for clarification. He understood an additional \$2.7 million plus the 72% match would be needed from the general fund to get to the 90% level.

Ms. Dalton said those figures are correct. The total proposal under the Governor's budget is to raise the OB fee to 90% of what Blue Cross/Blue Shield pays, 80% of what pediatricians receive from Blue Cross/Blue Shield. The OB portion is approximately \$6.7 million, the total is approximately \$9.7 million. Ms. Dalton will provide the figures to the committee members.

Senator Van Valkenburg asked what the effect would be in HCFA did not approve the state health plan.

Ms. Dalton said HCFA does not approve the state health plan. Instead, they approve the reimbursement for service plan. That plan has not yet been approved. The end result, if no approval is received, is that the 72% match would not be paid. They can chose not to participate in just the OB/pediatric portion or they can opt out of any participation in the whole medicaid program.

Senator Doherty asked if figures are available about medicaid deliveries in rural and urban areas.

Senator Halligan said the only figure he has indicates 22.5% of the total births were medicaid.

Ms. Dalton said over 50% of the births occur in urban areas.

Senator Doherty asked why Senator Halligan chose the tax credit instead of a deduction.

Senator Halligan replied the deduction was not a large enough incentive.

Senator Eck said since April the number of medicaid deliveries has increased substantially. The federal maximum has been increased to 185% of poverty level. She asked what kind of an increase over the previous year is likely at 133% of poverty eligibility.

Ms. Dalton replied when Montana went from 100% to 133% of poverty the increases were 708 births.

Senator Eck asked for the proportionate figures of medicaid deliveries to normal deliveries based on the 133% figures.

Senator Thayer expressed concern that other providers are going to ask for incentives if this is passed.

Senator Halligan said the greatest interest is in OB/pediatrics. Public interest and need is the criteria that was used to target this area.

Closing by Sponsor:

Senator Halligan closed by saying he felt that a tax credit is not the best tax policy to use. He wanted to present the bill early so that all the alternatives can be discussed. He said he felt the answer lies in increasing the medicaid reimbursement rate for all practitioners. When there are 18 counties with no physician and 22 counties with no OB services, there is a very serious problem. It needs to be addressed and Oregon has been successful with the tax credit policy. If you are one of those people affected by the lack of services, access is a critical issue.

ADJOURNMENT

Adjournment At: 9:15 a.m.



SENATOR MIKE HALLIGAN, Chairman

JILL D. ROHYANS, Secretary

MH/jdr

DATE Jan. 17, 1991

COMMITTEE ON INFLUENCE

5B 67, 70, 69

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 1/17/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. HALLIGAN			
SEN. ECK	X		
SEN. BROWN	✓		
SEN. DOHERTY	X		
SEN. GAGE	✓		
SEN. HARP	X		
SEN. KOEHNKE	X		
SEN. THAYER	X		
SEN. TOWE	X		
SEN. VAN VALKENBURG	✓		
SEN. YELLOWTAIL	✓		

Each day attach to minutes.

SENATE TAXATION

EXHIBIT NO. 1

DATE 1/17/91

BILL NO. COMMITTEE

BILL

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 15-24-1203, MCA, TO EXEMPT FROM BENEFICIAL USE TAXATION RAILROAD TRACKS AND RIGHT-OF-WAY OWNED BY THE UNITED STATES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-24-1203, MCA, is amended to read:

"15-24-1203. Privilege tax on gainful use of tax-exempt property - exceptions. After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and

facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track owned by the United States or acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state or the United States retains ownership and the right-of-way or track is used exclusively for rail transportation."

Section 2. Applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1986.

Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective on passage and approval.

-End-

Senate Bill 70 is before you today by request of the Department of Revenue as an attempt to improve the Department's position in its efforts to collect delinquent withholding accounts.

Fortunately, the vast majority of our 23,000 employers in the state file timely and this law change will not concern them. It is the exception we are addressing here today. When the Department is faced with a delinquent employer who has ignored all of our efforts to affect collection ~~that~~ this law will come into play.

What this section of the law addresses is an employers individual liability for delinquent withholding taxes. As you may recall from Director Adams' presentation last week, the Department has a material amount of delinquent withholding accounts. As of Dec 31, 1990 our delinquent withholding accounts totaled \$3,476,000.

This is the equivalent of \$6.9 million however because in the instance where an employer withholds and fails to remit the monies to the Department, we are short the money on the front end but then too, we honor the claim of credit for withholding when the employee files his or her return. In this manner, the employee is not placed in the middle of the delinquency issue which is really between the Dept. and the employer.

When we encounter an employer who fails to withhold or forward the withholding he/she has collected, we first must of course go through the full cycle of statutory notices of assessment, final notices, ~~notice of intent to file liens~~, filing of liens and so on before we are in a position to assert individual liability.

The purpose of individual liability statutes is to underscore the fact that the monies withheld by the employer are "trust monies" withheld on behalf of the employee. Too individual liability counters the temptation to use funds collected from the employee for private purposes.

The present statute without the amendments and changes proposed here today permits the Department to assert individual liability against the responsible person provide we first :

1. identify who is the responsible person
2. and secondly we must prove such person willfully refused to pay over amounts withheld.

In applying these standards, we follow the federal model and consider the responsible person to be any person who is connected with an employer in such a manner that he or she has the power to see the taxes are paid. That is a person with the authority to direct which bills or creditors will be paid or not.

typically that will be the sole proprietor or the corporate officer who has ultimate control over the financial affairs of the business. Although each case of responsible party must be determined on the individual facts and circumstances this determination has not usually presented a problem.

The issue comes with proving the willful failure to pay. this section has been interpreted in Montana to require a showing of an intent to defraud or deprive or that a person had operated from a bad motive or wicked design. In contrast the federal requirement to show willful failure is a more reasonable standard of showing the act of failing to pay was voluntary, consciously & intentionally done by the person who has the ability and responsibility of issuing payments to various creditors.

frequency
This has been evidenced by choosing to pay themselves or other creditors knowing the withholding debt was due.

Our interest in eliminating the term "willfully" from the statute is to move from the requirement to prove intent and adopt the more reasonable federal standard. Thereby placing us in the position of being able to rely on the body of federal case law to assist in making these determinations in the future.

Amendments to Senate Bill No. 70
First Reading Copy

For the Committee on Taxation

Prepared by Jeff Martin
January 16, 1991

1. Title, line 5.

Strike: "PROVIDING"

Insert: "CLARIFYING"

2. Title, line 6.

Strike: "PERSON"

Insert: "OFFICER OR EMPLOYEE OF A CORPORATION"

3. Page 1, line 23.

Strike: "A person required"

Insert: "The officer or employee of a corporation whose duty it
is"

4. Page 1, line 25.

Strike: "employer's"

Insert: "corporation's"

4
11/17/91
SB 67

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB-67, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing a refundable state income tax credit to physicians providing obstetrical services to medicaid recipients; and providing an immediate date and a retroactive applicability date.

ASSUMPTIONS:

1. Obstetrical services are defined as all prenatal, delivery, and post-partum services associated with a global vaginal delivery.
2. There are 2,570 medicaid deliveries annually in Montana performed by 128 physicians. Of the 128 physicians, 52% (66 physicians) provide services in cities with a population larger than 10,000 (urban), and 48% (61 physicians) provide obstetrical services in cities with a population less than 10,000 (rural) (SRS, 1989).
3. The annual refundable credit is 40% of the difference between usual & customary charges and the medicaid reimbursement up to a total of \$5,000 for "urban" physicians and 75% of the difference between usual & customary charges and the medicaid reimbursement up to a total \$10,000 for a "rural" physician.
4. The medicaid reimbursement amount for a delivery (includes prenatal and post-partum) is \$755.00 (SRS, 1990).
5. The average amount of the usual & customary charges for a delivery (includes prenatal and post-partum) is \$1,369.59 (SRS, 1989).
6. Under the proposed legislation, the average credit per medicaid delivery would be \$245.82 for an "urban" physician and \$460.91 for a "rural" physician.
7. The credit would cap for the average "urban" physician at 20 medicaid deliveries; the average "rural" physician would cap at 22 medicaid deliveries.
8. The average number of medicaid deliveries per physician practicing obstetrics in Montana is 20.1 per year.

FISCAL IMPACT:

Revenues: The proposed legislation would cause revenue to the general fund to decrease by \$897,000 during FY 1992 and annually thereafter.

Personal Income Tax	FY '92		FY '93	
	Current Law	Proposed Law	Current Law	Proposed Law
	\$ 311,176,000	\$ 310,279,000	\$ 327,201,000	\$ 326,304,000
		\$ (897,000)		\$ (897,000)

ROD SUNDSTEDT, BUDGET DIRECTOR
Office of Budget and Program Planning

MIKE HALLIGAN, PRIMARY SPONSOR

Fiscal Note for SB-67, as introduced.

Expenditures:

The proposed legislation would require modification to the tax processing system within the Department of Revenue. Total development and operating costs during FY 1992 would be \$22,000. Operating costs would be \$ 2,920 in FY 1993 and annually thereafter.

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Development Costs	\$ 0	\$ 19,080	\$ 19,080	\$ 0	\$ 0	\$ 0
Operating Costs	0	2,920	2,920	0	2,920	2,920
Total	\$ 0	\$ 22,000	\$ 22,000	\$ 0	\$ 2,920	\$ 2,920

EXHIBIT NO. 4
 DATE 1/17/91
 BILL NO. SB 67

DERIVATION OF ESTIMATES

A. Number of Urban vs. Rural Physicians
 0.52 128 = 67 Urban
 0.48 128 = 61 Rural

E. Derivation of Fiscal Impact					
	Physicians	Credit/Birth	Avg # Births	Total Credit	Avg Credit
Urban	67	245.82	20.1	331,045.79	4,940.98
Rural	61	460.91	20.1	565,121.75	9,264.29
Total				896,167.55	

3. Calculation of Credit per Delivery

Average Usual & Customary Charge \$1,369.54
 Medicaid Reimbursement \$755.00
 Difference \$614.54

Credit per Urban Delivery 0.40 614.54 245.82
 Credit per Rural Delivery 0.75 614.54 460.91

C. Average Number of Medicaid Deliveries per M.D.

Total Medicaid Deliveries 2,571.00
 divided by:
 Total Physicians* 128.00
 =====
 20.09

D. Number of Deliveries to Cap Credit

URBAN
 Total Allowable Credit 5,000.00
 divided by:
 Average Credit per Deliver 245.82
 =====
 20.34

RURAL
 Total Allowable Credit 10,000.00
 divided by:
 Average Credit per Deliver 460.91
 =====
 21.70

DATE 1/17/91
 BILL NO. 8867

NAME: Richard Brown DATE: 1-17-91
BILL NO. SB 67

ADDRESS: 728 N. S. Helena, MT 59601

PHONE: 442-5507

REPRESENTING WHOM? Montana Hospital Association

APPEARING ON WHICH PROPOSAL: SB 67

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: Attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

**Testimony by
Richard Brown, Senior Vice President
Montana Hospital Association
before the
Senate Taxation Committee
January 17, 1991**

SENATE TAXATION

EXHIBIT NO. 5

DATE 1/17/91

BILL NO. SB 67

Thank you, Mr. Chairman for this opportunity to testify.

My name is Richard Brown. I am the senior vice president of the Montana Hospital Association.

The Montana Hospital Association represents 58 community hospitals. Over half of these facilities are located in our state's smaller rural communities.

I read with great interest the article in Sunday's *Great Falls Tribune* about the physician recruitment problems facing the Liberty County Hospital in Chester. Until August of last year, I was the administrator of that facility.

Chester's situation is being replicated all over Montana. Our state's health care system is suffering a severe shortage of health care professionals, especially physicians.

In many communities -- especially those one physicians towns -- this shortage has reached crisis proportions. It has had a particularly devastating impact on access to OB care.

As a result, many Montanans -- particularly low income women -- are not able to receive the medical treatment they need during the critically important months of their pregnancy.

The Governor's Task Force on the Availability of Health Care Services, chaired by Van Kirke Nelson, concluded that there is no physician in 18 counties.

Twenty two counties, they concluded, do not have a physician who delivers babies.

In these areas, pregnant women often must drive as far as 100 miles for prenatal care and delivery. For poor women, who often lack transportation, prenatal care is just not available.

MHA supports SB 67. We believe this bill would encourage physicians to accept Medicaid OB patients.

Ex. 5
1-17-91
SB 67

Although we do not believe an income tax credit in itself will cause physicians in the state to accept Medicaid recipients, we do believe this incentive coupled with improved Medicaid reimbursement for OB services and reforms in Montana's liability laws would result in improved access to OB services for Montana's Medicaid beneficiaries.

That, in turn, will result in fewer problem pregnancies, and improved outcomes for Medicaid recipients and their newborn.

We encourage you to support SB 67.

Thank you.