MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on January 18, 1991, at 8:00 a.m.

ROLL CALL

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

Members Excused:
John Harp (R)

Staff Present: Jeff Martin (Legislative Council).

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

HEARING ON SENATE BILL 86

Presentation and Opening Statement by Sponsor:

Senator Eck, District 40, sponsor, said the bill was introduced at the request of the Department of Revenue. "Interim production" is stricken throughout the bill because the interim has passed.

Proponents' Testimony:

Denis Adams, Director, Department of Revenue, indicated this is a housekeeping bill. Interim was defined as production from a well that began interim production after June 30, 1985, and before April 1, 1987. The only reason to make a distinction

between interim and new production, now taxed at the same rate, was to clarify that interim production does not receive a twelve month tax holiday. Since no additional interim wells can be drilled there is no further need for the language in the statute.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Gage referred to page 8, lines 10 and 22, "wells completed after December 31, 1986". He said leaving the December 31, 1986, date in the statute cuts off six months of producing wells that may be eliminated from classification. He suggested the date be changed to June 30, 1985.

Mr. Adams said because those years have already expired and the taxes have been paid, DOR does not think there is any problem with that language.

Closing by Sponsor:

Senator Eck closed.

EXECUTIVE ACTION ON SENATE BILL 86

Motion:

Senator Eck moved SB 86 DO PASS.

Discussion:

Senator Gage expressed further concern about the date discrepancy. He felt there needs to be a definite clarification of the dates of interim and new production.

Senator Towe agreed with Senator Gage and asked Jeff Martin to investigate the matter further and report back to the Committee.

Senator Eck withdrew her motion.

HEARING ON SENATE BILL 81

Presentation and Opening Statement by Sponsor:

Senator Grosfield, District 41, sponsor, said the bill was introduced at the request of the Department of Revenue. The bill places into the statute the law as recently determined by the Montana Supreme Court in the case of the Department of Revenue versus Kaiser Cement. It says that centrally assessed taxpayers cannot avoid taxes by selling their property. He noted there is no change in the five year statute of limitations.

Proponents' Testimony:

Denis Adams, Director, Department of Revenue, said the Supreme Court decision was handed down in December, 1990. He noted DOR lost the decision at the State Tax Appeals Board, appealed to District Court where they were successful, Kaiser then appealed to the Montana Supreme Court where the lower court decision was upheld in favor of DOR. Taxpayers who own centrally assessed property notify DOR of the values which are then subject to taxes. If DOR finds, in the course of an audit, that adjustments are needed, DOR then can go back against the former owner of the property. The sale of the property does not absolve the former owner of the tax liability levied by DOR. This decision only applies to centrally assessed property.

John Alke, MDU Resources Group, Inc. expressed support for the bill. He pointed out a related issue involving the statute of limitation. The legislature must clearly specify that omitted assessments or centrally assessed property are under 15-23-116 instead of 15-8-601 in order to clear up any question that may apply to this statute. The Supreme Court said the five year statute of limitation applies, but the two statutes do not match. He asked for a clarification on the five year statute.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Towe said it was his understanding that 15-23-116 is the five year statute that applies to centrally assessed property. He asked for an explanation of the issue in the Kaiser case.

Dave Woodgerd, Chief Counsel, Department of Revenue, explained that Kaiser reported the value and tonnage of limestone mined as per DOR policy. They then sold the property. An audit later determined the report was inaccurate and DOR sought to recover the amount in dispute. Kaiser maintained they did not have to pay as they had sold the property. The District Court said that DOR still had the authority to levy the tax even though Kaiser had sold the property. The bill is simply putting that decision into the statutes.

He pointed out that a regular taxpayer is assessed by the Department and DOR does not have a right to go back to them for additional taxes after the property has been sold. Centrally assessed taxpayers submit a report to DOR and DOR then certifies a value based on that report.

Senator Towe asked if both the former owner and new owner would be attached if it is necessary to attach a lien.

Mr. Woodgerd replied the former owner would be attached. The new owner has protection under the lien statutes.

Senator Towe wondered if specific language was needed to specify the liability of the former owner.

Mr. Woodgerd said it was the opinion of DOR that the liability is inherent in the language of the bill.

Senator Van Valkenburg questioned the adequacy of the time limit in 15-23-116.

Mr. Alke said he felt it was adequate.

Senator Thayer asked if there is an either/or option as to which owner of the property DOR would assess.

Mr. Woodgerd replied the statute is clear that the person or corporation that owned the property at the time of the assessment is responsible for payment.

Closing by Sponsor:

Senator Grosfield closed.

HEARING ON SENATE BILL 85

Presentation and Opening Statement by Sponsor:

Senator Eck, District 40, sponsor, said the bill was introduced at the request of the Department of Revenue. It also addresses issues that have come up in appeals and court

decisions. The bill defines "institutions of purely public charity" and specifies property owned by such institutions and used for purely public charitable purposes.

Senator Eck referred to the case of Steer, Inc. vs the Department of Revenue is which the steers were sold with the proceeds being donated to further missionary work of the charitable group, Steer, Inc. In that decision, the steer was deemed taxable.

Senator Eck referred the committee members to the stricken material on page 5, line 2, referring to facilities for the care of the retired or aged or chronically ill. This material is reinserted on page 4, line 9, which provides a total exemption for facilities for the mentally ill, developmentally disabled and vocationally handicapped. However, the exemption is not because they are institutions of purely public charity.

Senator Eck said the Department of Revenue had submitted proposed amendments defining educational facilities and an explanation which she presented to the Committee (Exhibit #1).

The Supreme Court clarified the public charity exemption and further established that the dissemination of religious doctrine is not a qualifying charitable use. A 1965 Supreme Court decision concluded educational purposes are not limited in terms to the common scholastic institutions of grammar schools, high schools, colleges or universities. Many groups have set up programs disseminating information and a classification mechanism must be developed for those groups to determine what is an educational purpose.

Senator Eck said the whole issue of exempt organizations need to addressed. The intent of the bill is to clarify the court decisions. The impact of educational restrictions needs to be carefully considered and is certainly a broader issue than just defining institutions of purely public charity.

Proponents' Testimony:

Denis Adams, Director, Department of Revenue, presented his testimony to the Committee (Exhibit #2). He said the amendment also includes a clarification of "educational purposes". He said DOR recently lost a District Court decision involving the Highline Radio Fellowship. The appeal time has not expired and they are waiting to see how the Legislature will deal with the problem. Mr. Adams said they are looking for guidance from the Legislature in hopes of avoiding further costly litigation.

Opponents' Testimony:

Doug Kelly, Helena attorney whose law firm represented Steer, Inc. and Highline Radio Fellowship, said the District Court in Havre found the Highline Radio Fellowship to be an educational charity. Mr. Kelly explained the Steer, Inc. case stating the cows were owned by Steer, Inc., a 501-C3 organization in North Dakota. The cows in question were on a ranch in Garfield County, Montana, and carried the Steer, Inc. registered brand. The question was whether the cows were tax exempt and the county assessor determined the cows should be taxed. That decision was appealed to the County Tax Appeal Board which ruled in favor of the assessor. The case was ultimately appealed to the Montana Supreme Court which upheld the original decision to tax the "holy cows".

Mr. Kelly said he is concerned with the far-reaching impacts of the changes being proposed which go as far back as the Flathead Lake Methodist Camp decision in 1965. He said that if the legislation passes as written all church camps will be taxed. He questioned if that was really the intention of the legislation. The new definition of "educational" is more of a classic definition that will eliminate many programs and be strictly interpreted as education in a classroom type setting. He does not dispute the necessity of investigating the whole area of exemptions as litigation has been ongoing for a number of years and clarification is certainly indicated.

Mr. Kelly suggested there are several key points to be considered. He referred to the page 5, line 15. He submitted "gain or profit" is not the determining factor, citing a church which some years does make more money than it spends but other years is not as successful. He questioned whether that falls under the "gain or profit" distinction and said that is a lawyer relief term which simply contributes to litigation. He suggested striking the language "makes no gain or profit as evidenced by a ruling or determination by the internal revenue service that it". That then qualifies all organizations under 501-C3 which is well defined and hinges on the nature of the organization.

He further questioned the language on page 5, line 21, "indefinite in number". He wondered if any organization could qualify under that criteria. Again, he felt the language is vague and simply encourages litigation.

Mr. Kelly referred to the language on page 5, lines 22-24, "The organization's activities prevent persons benefitted from becoming charges or burdens on society or the state.". He asked about the YMCA, Boy Scouts and similar organizations which could not be designated a charitable entity as they do not keep people from becoming a burden to the state. This would require tracing a line of fiscal benefit to the state.

Mr. Kelly also felt there was a certain ambiguity in the provisions of subsection (iv), pages 5 and 6, which would indicate it is all right to have bingo but not "holy cows". He concluded his testimony but saying there needs to be careful study before these far-reaching changes are made and acknowledged the questions and decisions are difficult.

Ed Matter, Havre, General Manager of KXEI, Highline Radio Fellowship, said his station is the only non-commercial radio station in the state. The station went on the air in 1983 and exists solely on contributions. He said as a school board member for six years he felt he understood the definition of education. He thought the District Court decision was well worded and that his station fit the definition of educational. His concern is with the educational amendment proposed by DOR. He agrees with DOR that clarification is necessary and serious consideration needs to be given to the many entities that may end up being taxed that really should be exempt.

Bryan Asay, partner in the Kelley and Asay law firm, said he represented both Steer, Inc. and Highline Radio Fellowship in the recent court cases. The basic issue, when attempting to create an exemption for property used for educational purposes, is to define "education". Mr. Asay suggested the adoption of a comprehensive application of the term as case law in Montana has done for many years. He quoted from the Flathead Lake Methodist Camp decision which said "the term 'educational purposes' is not by the weight of authority defined in terms of the common scholastic institutions of grammar school, high school and university or college". "Organizations for the social, intellectual, physical, or religious welfare of children are exempt equally." Mr. Asay said he felt legislative intent was to consider the comprehensive definition.

The DOR amendments would provide an exemption only if there are four walls and a teacher in front. He felt those stringent qualifications would eliminate from exemption the great majority of programs and organizations throughout the state, including the Flathead Lake Methodist Camp. He further stated the DOR interpretation is consistent with a comprehensive definition of education. He felt the bill is specifically intended to remove the exemption that Highline Radio has gained through their court challenge. This case started in 1984 and has gone through the process from local tax appeals through district court. Now, six years later, the Department wants to change the rules. He urged the committee members to carefully consider the amendment in light of the case law which has already been established in Montana and is working well.

Bill Driscoll, attorney, Catholic Church, said he shares the same concerns as Mr. Kelley and Mr. Asay. The Flathead Camp case has been a good statement of law for everyone. The proposed changes will encourage more litigation rather than less. History has shown that DOR has attempted to deny exemptions in the past

as the Catholic Church was involved in extensive litigation over their previously exempt facilities. He urged the members not to pass the proposed bill.

Katherine Donnelley, a Helena lawyer, stated she was an associate lawyer assigned to write the explanation letter for a medical research institute. They had found, to their dismay, that they did not fit any of the categories of exemption clearly except for purely public charities. They were very concerned about their ability to receive grants if they were not tax exempt. She felt the real ambiguity in the bill is on page 5, lines 22-24, which references persons benefitted prevented from becoming a burden on the state. She urged the members of the Committee to consider clarification of that section.

Charles Brown, Helena Family YMCA, said he was concerned about the broad and ambiguous definition of education. He cited the many programs of the YMCA which would be impacted if their exemption was denied. He asked the Committee to carefully consider the ramifications of the proposed amendments and to clearly define the language in the bill.

Questions from Committee Members:

Senator Gage expressed concern about people such as Donald Trump, Ted Turner, and Jane Fonda establishing residences and applying for exemption under the proposed language on page 4, lines 9-12 relating to facilities for retired, aged, or chronically ill. He felt we should consider carefully leaving it in the original position in the bill under institutions of purely public charity.

Senator Towe noted he had written an article for "Law Review" where he predicted this issue would be the most volatile in the next decade. He asked Mr. Adams if he intended to exempt the property of such organizations as the Boy Scouts, YMCA, and church camps.

Mr. Adams said DOR is trying to prevent the expansion of the exemption base and certainly did not intend to exclude any of those groups. He was concerned that expansion could open exemptions to ballet schools, karate schools, and homes that are used for day care centers. He said there is no prohibition that limits to non-profit organizations. He said the Department could accept 501-C3 criteria if the legislature so defined.

Senator Towe said he was bothered by the language on page 5, lines 20-24, which refers to benefiting persons who are indefinite in number and also the provision for preventing people from becoming burdens to the state. He asked if DOR could do without that section.

Eric Fehlig, DOR tax counsel, responded with some clarification of the four points in the definitions of purely public charity. The not-for-profit corporation and a 501-C3 organization are two different entities. The not-for-profit organization can make money; the money cannot be used for the enrichment of the people who own the organization.

Senator Towe asked if Mr. Fehlig agreed with Mr. Kelley's suggestion to strike the language on lines 15-18, page 5.

Mr. Fehlig answered the language "no gain or profit as evidenced by" does not absolutely require the 501-C3 status, however, it would be eligible for 501-C3. There are a lot of not-for-profit organizations that are not 501-C3 designated by the Internal Revenue Service. He felt there is room for both designations.

Mr. Fehlig continued with the discussion regarding purely public which means not limited to members of the organization.

Senator Towe said General Motors is purely public also. Anyone who wants to buy a share can join. The difference is that General Motors shares its profits. A 501-C3 doesn't share its profits. He also felt the definition should say the organization's activities do not benefit persons who are substantial contributors. That is in federal law and in order to be a 501-C3 the organization has already done that.

Mr. Fehlig referred to the language page 5, lines 22-24 referring to persons benefitted from becoming burdens on society or the state. He stressed this is not intended to be a catch-all category. He indicated we need to be serving the public benefit, not relieving a burden. A symphony would not be classified under this category, however, the YMCA could qualify.

Finally, on the question of absolute gratuity, Mr. Fehlig said there is a difference between operating a business to raise revenue and receiving contributions. Payments based on ability to pay or providing benefits at minimum charge are still classified as a gratuity because they do not provide the overall profit for the organization.

Senator Towe asked if an organization that receives most of its funds through government grants is included in the absolute gratuity category.

Mr. Fehlig replied such an organization would be so classified.

Senator Towe said he is introducing legislation to allow exemption for museums. Under current law, museums and art galleries cannot be exempt if they charge admission, therefore,

they have qualified for exemption under the educational classification. He asked if it is the intent of the amendment to take that classification away.

Mr. Fehlig said educational purposes is characterized by having teachers, students, and an educational curriculum and that is consistent with the Flathead Lake Camp decision. The question is the broad interpretation we are now dealing with which, in effect, says if it provides information it must be educational. This is a very broad expansion and interpretation of the definition.

Senator Towe said that under that narrow definition all art galleries, museums, and zoos would be taxed, which is a brand new tax policy for the state.

Mr. Fehlig said if they don't fall in those parameters now, they should currently be taxed.

Closing by Sponsor:

Senator Eck said this is one of a long line of bills requested by the Department of Revenue and addresses an area that has grown without direction. She said the definition could be limited, but the expanded list of organizations is necessary to rule out organizations that are important and have traditionally been exempt. She felt the bill will take a great deal of work and if the Committee feels it is too broad an area to deal with during the session, it could be assigned to the Revenue Oversight Committee for further study.

EXECUTIVE ACTION ON SENATE BILL 67

Motion:

Senator Koehnke moved Senate Bill 67 be TABLED.

Discussion:

Senator Halligan said he would like to table the bill until action is taken later in the session on medicaid rates.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion to table Senate Bill 67 carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 70

Discussion:

Senator Gage said the Department of Revenue has no problem incorporating the federal penalty into the bill.

Senator Towe said he had serious concerns about removing the word "willfully" from the bill.

Jeff Martin, Committee Researcher, presented information from the "Federal Tax Coordinator" on willfulness re certain civil penalties (Exhibit #3). Establishing the intent to defraud is not necessary under the federal regulations.

Senator Van Valkenburg said "willful" is a standard that applies to criminal penalties and should only apply to criminal penalties. There should not be a mental element requirement for civil penalties. Civil penalties are collected for failure to do that which the law requires.

Senator Towe said he does not agree that "willful" is a term of art that can only be applied in the criminal context. The problem in the bill is a person is held responsible by law but is not actively involved in any way in the activity. That person is still liable for the penalty even though there was nothing they could have done, and in fact, they probably were totally unaware of any wrongdoing.

Senator Van Valkenburg said the tax is still payable by the corporation.

Senator Towe said he had no argument with the tax being due. If the corporation has gone bankrupt, the tax can still be collected from the responsible individual according to federal law. He said that is fine as long as the individual had some control over the situation leading to the loss of funds and his actions contributed to the failure to pay.

Senator Doherty said willful does conjure up mental element requirements. He suggested "voluntary or conscious" would take care of Senator Towe's concerns.

Senator Van Valkenburg said he did not see how the difference between a partnership or sole proprietorship and a corporation is justified. He reiterated the collection of the tax is the issue.

Dave Woodgerd, Chief Counsel, DOR, said the bill states "the officer whose duty it is". DOR drafted the language that way because if the person whose duty it is to collect the tax from the employees and turn it over to DOR does not fulfill that responsibility, that person should then be personally liable. If the Committee wishes to place a restriction in the bill, DOR would suggest using "willful" as used by the IRS under the internal revenue code. He felt that would be the best standard.

Senator Thayer expressed concern that a stockholder with no management control could be held liable for the manager's failure to comply even though he, in effect, is a silent partner. He felt the onus should be on the person running the business or corporation.

Senator Towe said he would accept Mr. Woodgerd's suggestion.

Senator Gage pointed out that an officer or employee would not be liable in the case where there is no withholding even though there should have been.

Senator Halligan asked Jeff to work with Mr. Woodgerd to draft amendments for the Committee's consideration.

EXECUTIVE ACTION ON SENATE BILL 15

Discussion:

Senator Gage presented to the Committee a copy of the information requested from the Department of Revenue regarding royalty payments (Exhibit #4).

Senator Towe said he is satisfied with the vigorous collection efforts of the Department of Revenue from the producers. He agreed that, in addition to Indian tribes, which are exempt, Indians under a trust status are also exempt. The United States cannot be taxed indirectly on their oil and gas.

Senator Halligan expressed concern about the fiscal note impact of $81,000 per year.

Senator Gage pointed out the $81,000 is coming out of the producers pocket. He said they are paying tax on oil they don't own. The general fund is not affected. Only the interest earning on the trust is affected as the trust has not reached $100 million.

Recommendation and Vote:

Senator Gage moved Senate Bill 15 DO PASS. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 26

Discussion:

Senator Towe said his concern is that the provisions of I95 state that 25% of the collections of the coal tax trust was to be invested in Montana. He pointed out that, according to the Board of Investments representative, that amount has not been totally invested in Montana. When this issue arose in the past, the Board of Investments had been told to invest the money in certificates of deposit in Montana banks, if need be, to preserve the investment in Montana. Senator Towe proposed going back to the original base. Instead of 25% of the total trust fund, Senator Towe suggested going back to the original base. That could be accomplished by amending page 12, line 6, by striking the words "up to", on line 10, strike the words "endeavor to" and "up to", and insert "all revenue deposited after June 30, 1983," following "25% of". At the end of the paragraph, the following language should be inserted: "should such investments in Montana not be available, the Board shall invest the balance, up to 25% of all revenue deposited after June 30, 1983, in other Montana investments including Montana housing mortgages, SBA loans, commercial real estate loans, and Montana banks (certificates of deposit) even if it is necessary to reduce the interest rate or yield to do so".

Amendments, Discussion, and Votes:

Senator Towe made the motion to amend the bill on page 12, line 6 through the end of the paragraph as stated in the preceding discussion.

Senator Thayer said he was concerned that more Montana corporations are not seeking loans. He felt the general tax policy in Montana is at fault and discourages investment in new business opportunities in the state. He cautioned against forcing the Board of Investments to make the loans if good and safe loans are not available.

Senator Towe said he was not referring only to loans. His concern is that the entire 25% be invested in Montana, whether through loans, secondary mortgage markets, or in Montana banks.

Senator Van Valkenburg said as long as Senator Thayer expressed his opinion that Montana tax policy is the cause of the lack of investment in Montana he wanted the record to reflect his opinion on the matter. He said he feels the lack of investment is because we do not adequately invest in the University system in the state.

ADJOURNMENT

Adjournment At: 9:45 a.m.

SENATOR MIKE HALLIGAN, Chairman

JILL D. ROHYANS, Secretary

MH/jdr

DATE 1/18/91

COMMITTEE ON Legislation

SB 81 85 86

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
[illegible]	DOR			
Doug Kelley	attorney	85		X
Don Lichman	KXEI radio Chairman	85		X
Bryan Asay	KXEI	85		X
Ed Matter	KXEI	85		X
Katharine Donnelley	Browning Kaleczyc et al	85	☒	X
Eric Feilig	DOR	85		
Gloria [illegible]	Arts Culture Assn	85		
GENE PHILLIPS	PP&L and NTS	81	✓	[illegible]
Dave Woodgerd	Dept. of Rev.			
[illegible]		85		X
[illegible]	[illegible]	[illegible]		
Dan Walker	USWEST COMM	81		
Charles Brown	Helena YMCH	85		✓
Richard Miller	Helena - State Library	85		
Debbie [illegible]	Mt. Library Assn	85		
[illegible]		85		✓
John Calvert	MT Catholic Conference	85		✓

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 1/18/91

____ LEGISLATIVE SESSION ____

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

Each day attach to minutes.

SENATE TAXATION
EXHIBIT NO. 1
DATE 1/18/91
BILL NO. SB85

AMENDMENTS
SENATE BILL NO. 85
INTRODUCED BILL

Requested by the Department of Revenue
For the Committee on Taxation
Prepared by the Department of Revenue
January 16, 1991

1. Title, line 6.
Following: "OF THE"
Strike: "TERM"
Insert: "TERMS"

2. Title, line 6.
Following: "PUBLIC CHARITY"
Insert: "AND "EDUCATIONAL PURPOSES"

3. Page 6, line 9.
Following: "of education only."
Insert: "(c) The term "educational purposes" includes only those uses which are normally associated with the common scholastic institutions of grammar or elementary school, high school, vocational-technical schools and university or college which are not operated for gain or profit."

EXPALNATION FOR AMENDMENT TO SB 85

The intent behind the exemption for property used exclusively for educational purposes has poorly established parameters. The leading interpretive case, Flathead Lake Methodist Camp (1965) which concluded educational purposes are not limited in terms to the common scholastic institutions of grammar schools, high schools, colleges or universities. Since that decision the educational purposes exemption has been expanded by the District Courts to include "Healthy Eating" seminars held aboard cruise ships and yoga seminars at private retreats (Feathered Pipe Ranch) and religious radio stations (Hiline Radio Fellowship). Political research groups have also been granted educational exemption. The Department's long standing interpretation requiring a planned curriculum, a student body, and teachers has been called into question. If educational purposes is not defined, any group or program which simply provides information in any form may be eligible for a property tax exemption for educational purposes.

The proposed amendments to the code will limit the exemption to uses which are normally associated with common scholastic institutions which have a curriculum, teachers and students.

SB 85, with the proposed amendment, is an attempt to more clearly define property tax exemptions for "institutions of purely public charity" and "property used exclusively . . . for educational purposes" found in § 15-6-201, MCA. Although these exemptions have been on the books since the 1889 Constitution they have always lacked comprehensive definitions. The determination of legislative intent has been left to the courts.

INSTITUTION OF PURELY PUBLIC CHARITY

Montana Supreme Court cases have established some parameters for the intent behind "institutions of purely public charities." The recent decision in Steer, Inc. v. Department of Revenue, decided December 11, 1990, clarified some more disputed points. Steer, Inc. clarified, in order to be exempt from taxation, the property must be directly used for the charitable purpose. It is now clear a business operation which raises revenues which are in turn are applied towards a charitable purpose, is not eligible for a charitable exemption. Property must be used for purely public charitable purposes rather than owned by a charitable institution. The Steer, Inc. decision also established that the dissemination of religious doctrine is not a qualifying charitable use, a point that has been in dispute since the 1965 Montana Supreme Court decision in Flathead Lake Methodist Camp which stated: "A charity may be devoted to bringing people under religious influence."

Many other questions regarding what is a charity still remain and will certainly be litigated if not defined by the legislature. Is charity limited to traditional humanitarian efforts which relieve a government burden or can it include any activity which generally benefits society? Other states have included in their definition of charity, cultural and recreational uses such as a symphony or a park. Must the property be owned by the charitable institution as well as used for the charitable purposes? Some property which may be used for a charitable purpose is owned by an entity other than the charity institution. The owner is in the business of owning and operating rental properties for a profit. Should his property be exempt from taxation based upon the use by the renter?

The proposed amendments to the code will clarify that a charity includes only humanitarian purposes and that the property must be owned and used by the charitable organization for humanitarian purposes relieving a government burden.

Alec Adams

SENATE TAXATION
EXHIBIT NO. 2
DATE 1/18/91
SB NO. 5885

GENERAL DISCUSSION

SB 85, with the proposed amendment, is an attempt to more clearly define property tax exemptions for "institutions of purely public charity" and "property used exclusively . . . for educational purposes" found in § 15-6-201, MCA. Although these exemptions have been on the books since the 1889 Constitution they have always lacked comprehensive definitions. The determination of legislative intent has been left to the courts.

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SENATE TAXATION
EXHIBIT NO. 3
DATE 1/18/91
BILL NO. SB 70

Civil

V-2657. Tax Court review of penalty determinations.

The reasonable cause and good faith exception (see ¶ V-2656) is designed to permit the courts to review penalties under the same standards that apply to additional tax asserted by IRS (see Chapter T). The exception is intended to provide a greater scope for judicial review of IRS determinations of the accuracy and fraud penalties. Congress believes that providing greater scope for judicial review of IRS determinations of these penalties will lead to greater fairness of the penalty structure and minimize inappropriate determinations of these penalties.[14]

For returns due (without regard to extensions) before Jan. 1, '90,[15] the Tax Court held that it can overturn an IRS determination of the substantial understatement penalty on reasonable cause and good faith grounds only if the Tax Court finds that IRS abused its discretion in asserting the penalty.[16]

V-2700. Willfulness Essential for Certain Civil Penalties.

Heavy civil penalties are imposed on persons who willfully fail to perform duties imposed upon them by the Code. These penalties are aimed chiefly at persons on whom income tax withholding duties are imposed. Severe penalties also are imposed on persons who willfully fail to pay or willfully attempt to evade stamp taxes. The common element is willfulness.

V-2701. Civil penalties involving a willful failure to act or attempt to evade tax.

A willful failure to pay tax or to perform some other required act or a willful attempt to evade or defeat the tax is essential to the following civil penalties:

. . . 100% penalty for willful failure to collect, or truthfully account for and pay over, or for willful attempt to evade or defeat a tax[1] (¶ V-2112).

. . . $50 penalty for willful failure to furnish or for willfully furnishing false or fraudulent income tax withholding receipts to employees.[2]

. . . 50% penalty for willful failure to pay or willful attempt to evade or defeat any tax payable by stamps, coupons, etc.[3] (¶ V-2110).

. . . 100% penalty for repeated or willful and flagrant acts of omissions resulting in the imposition of excise taxes with respect to private foundations[4] (¶ V-2435).

. . . $1,000 penalty for willful failure to comply with the public inspection requirements with respect to private foundations[5] (¶ V-2006).

. . . $1,000 penalty for willful failure to comply with the public inspection requirement with respect annual returns applications for exemption of certain tax-exempt organizations[5.1] (¶ V-2339).

Before Jan. 21, '88, the Code Sec. 6685 penalty (footnote 5.1) with respect to exemption applications was not in effect if the application was submitted to IRS:

. . . (1) after July 15, '87,[5.2] or

. . . (2) before July 16, '87, if the organization possesses a copy of the application on July 15, '87.[5.3]

With respect to annual returns for years beginning before '87, the Code Sec. 6685 penalty (footnote 5.1) with respect to annual returns was not in effect.[5.4]

V-2702. Burden of proof in willfulness cases.

Where IRS has determined that taxpayer wilfully failed to pay a tax or to perform some other required act, IRS' determination is presumptively correct and the burden is on the taxpayer to overcome this presumption.[6]

V-2703. Willfulness.

There need be no intent to defraud or deprive the U.S. of taxes collected or withheld for its account nor need bad motives be present to sustain a penalty requiring an act of willfulness.[7]

IRS, the First, Seventh, Eighth and Ninth Circuits, and some district courts have held that willful meant only that the act was voluntarily, consciously and intentionally done.[8]

14. H Rept No. 101-247 (PL 101-239) p. 1393.
15. Sec. 7721(d), PL 101-239, 12/19/89.
16. Alan H. Mailman, (1988) 91 TC 1079.
1. Code Sec. 6672.
2. Code Sec. 6674.
3. Code Sec. 6653; Code Sec 6653(e) before amend by Sec. 7721(c)(1), PL 101-239, 12/19/89.
4. Code Sec. 6684.
5. Code Sec. 6685.
5.1. Code Sec. 6685.
5.2. Sec. 10704(d)(2)(A), PL 100-203, 12/22/87.
5.3. Sec. 10704(d)(2)(B), PL 100-203, 12/22/87.
5.4. Sec. 10704(d)(1), PL 100-203, 12/22/87.
6. U.S. v.Strebler, (1963, CA8) 313 F2d 402, 11 AFTR 2d 792, 63-1 USTC ¶ 9278.
7. Bloom v. U.S., (1959, CA9) 272 F2d 215, 4 AFTR 2d 5868, 59-2 USTC ¶ 9772 cert den (1960) 363 US 803, 4 L Ed 2d 1146; Frazier v. U.S., (1962, CA5) 304 F2d 528, 9 AFTR 2d 1743, 62-2 USTC ¶ 9535.
8. Harrington v. U.S., (1974, CA1) 504 F2d 1306, 34 AFTR 2d 74-6082, 74-2 USTC ¶ 9772; Bloom v. U.S., (1959, CA9) 272 F2d 215, 4 AFTR 2d 5868, 59-2 USTC ¶ 9772; U.S. v. Strebler, (1963, CA8) 313 F2d 402, 11 AFTR 2d 792, 63-1 USTC ¶ 9278; Carella v. Tomlinson, 4/28/66, DC-Fla, 18 AFTR 2d 5096, 66-2 USTC ¶ 9517; Tiffany v. U.S., (1963, DC NJ) 228 F Supp 700, 13 AFTR 2d 1546, 64-2 USTC ¶ 9501; Monday v. U.S., (1970, CA7) 421 F2d 1210, 25 AFTR 2d 70-548, 70-1 USTC ¶ 9205, revg & remg (1969, DC Wis) 294 F Supp 1384, 23 AFTR 2d 69-1131, 69-1 USTC ¶ 9234, cert den (1970) 400 US 821, 27 L Ed 2d 48, on remd (1972, DC Wis) 342 F Supp 1271, 29 AFTR 2d 72-1391, 72-2 USTC ¶ 9723 affd without op (1973, CA7) 478 F2d 1404, 73-2 USTC ¶ 9589 cert den (1973) 414 US 910, 38 L Ed 2d 148; Holdner v. U.S., 4/26/73, DC-Ore, 32 AFTR 2d 73-5871, 73-2 USTC ¶ 9594.

SENATE TAXATION
EXHIBIT NO. 4
DATE 1/18/91
BILL NO. SB 15

State of Montana

Stan Stephens, Governor

Department of Revenue

Denis Adams, Director

Room 455, Sam W. Mitchell Building
Helena, Montana 59620

January 17, 1991

To: **Senate Tax Committee**

From: **Denis Adams, Director** Denis Adams

Subject: Senate Bill 15 - Committee Question

The Committee requested to know how much of the royalty payments related to the Senate Bill 15 fiscal note would be paid by the federal government, state government, or Indians. It was not possible to determine in an efficient manner which category would pay the royalties. However, we have been able to break the royalty payments out by county and product type. This information is attached. In general some counties have more of one category of owner than others.

I hope this information is helpful.

SENATE TAXATION
EXHIBIT NO. 4
DATE 1/16/91
BILL NO. SB 15

FISCAL YEAR 1990 OIL SVERANCE TAX
SCHEDULE OF GOVERNMENTAL ROYALTIES PER COUNTY
SOURCE: OIL SEVERANCE TAX SYSTEM COUNTY PRODUCTION TOTALS

COUNTY	GOVT. BBL's	GOVT. VALUE	COUNTY GOVT. PERC.	COUNTY FISCAL IMP. FY92	COUNTY FISCAL IMP. FY93
BIG HORN	8,255	$111,397.93	1.0223%	$770.89	$643.17
BLAINE	19,834	$293,465.61	2.4564%	$1,852.20	$1,545.32
CARBON	50,709	$830,228.28	6.2801%	$4,735.45	$3,950.88
CARTER	3,955	$65,533.16	0.4898%	$369.34	$308.15
DANIELS	788	$14,001.83	0.0976%	$73.59	$61.40
DAWSON	36,956	$655,364.18	4.5769%	$3,451.13	$2,879.35
FALLON	235,777	$3,929,328.19	29.2001%	$22,018.01	$18,370.05
GARFIELD	1,886	$32,517.95	0.2336%	$176.12	$146.94
GLACIER	57,393	$1,016,560.69	7.1079%	$5,359.64	$4,471.65
GOLDEN VALLEY	400	$6,546.47	0.0495%	$37.35	$31.17
HILL	0	$0.00	0.0000%	$0.00	$0.00
LIBERTY	12,030	$214,707.68	1.4899%	$1,123.42	$937.29
McCONE	0	$0.00	0.0000%	$0.00	$0.00
MUSSELSHELL	11,441	$195,341.92	1.4169%	$1,068.42	$891.40
PETROLEUM	3,825	$63,880.21	0.4737%	$357.20	$298.02
PONDERA	8,168	$141,957.49	1.0116%	$762.77	$636.39
POWDER RIVER	23,887	$447,136.37	2.9583%	$2,230.68	$1,861.10
PRAIRIE	1,858	$31,052.91	0.2301%	$173.51	$144.76
RICHLAND	62,865	$1,106,290.02	7.7856%	$5,870.64	$4,897.99
ROOSEVELT	69,120	$1,240,663.25	8.5602%	$6,454.76	$5,385.33
ROSEBUD	26,994	$470,278.94	3.3431%	$2,520.83	$2,103.18
SHERIDAN	61,260	$1,071,352.50	7.5868%	$5,720.76	$4,772.94
TETON	486	$8,504.51	0.0602%	$45.39	$37.87
TOOLE	24,348	$435,603.37	3.0154%	$2,273.74	$1,897.02
VALLEY	31,220	$495,164.32	3.8665%	$2,915.48	$2,432.44
WIBAUX	53,661	$901,269.76	6.6457%	$5,011.13	$4,180.88
YELLOWSTONE	338	$5,709.30	0.0419%	$31.56	$26.33
	807,454	$13,783,856.85	100.0000%	$75,404.00	$62,911.00

SENATE TAXATION
EXHIBIT NO. 4
DATE 1/18/91
BILL NO. SB 15

FISCAL YEAR 1990 GAS SVERANCE TAX
SCHEDULE OF GOVERNMENTAL ROYALTIES PER COUNTY
SOURCE: GAS SEVERANCE TAX SYSTEM COUNTY PRODUCTION TOTALS

COUNTY	GOVT. MCF'S	GOVT. VALUE	COUNTY GOVT. PERC.	COUNTY FISCAL IMP. FY 92	COUNTY FISCAL IMP. FY 93
BLAINE	401,372	$688,500.90	19.1849%	$3,048.68	$3,530.79
CARBON	34,984	$50,686.60	1.4124%	$224.44	$259.93
CHOUTEAU	29,204	$39,231.68	1.0932%	$173.72	$201.19
CUSTER	1,133	$3,163.43	0.0881%	$14.01	$16.22
DAWSON	0	$0.00	0.0000%	$0.00	$0.00
FALLON	55,665	$139,229.64	3.8796%	$616.51	$714.00
FERGUS	15,802	$25,766.22	0.7180%	$114.09	$132.14
GLACIER	125,965	$175,557.94	4.8919%	$777.37	$900.30
GOLDEN VALLEY	1,483	$1,803.08	0.0502%	$7.98	$9.25
HILL	182,409	$324,527.41	9.0429%	$1,437.00	$1,664.25
LIBERTY	36,788	$48,777.71	1.3592%	$215.99	$250.14
PHILLIPS	569,429	$1,684,684.94	46.9434%	$7,459.77	$8,639.46
PONDERA	10,263	$14,318.07	0.3990%	$63.40	$73.43
RICHLAND	18,265	$19,526.16	0.5441%	$86.46	$100.13
ROOSEVELT	4,365	$1,796.07	0.0500%	$7.95	$9.21
SHERIDAN	13,504	$11,101.13	0.3093%	$49.16	$56.93
STILLWATER	15,858	$23,174.37	0.6457%	$102.62	$118.84
TETON	11,287	$9,489.92	0.2644%	$42.02	$48.67
TOOLE	207,065	$274,956.16	7.6616%	$1,217.50	$1,410.04
VALLEY	19,533	$52,468.16	1.4620%	$232.33	$269.07
	1,754,374	$3,588,759.59	100.0000%	$15,891.00	$18,404.00

SENATE STANDING COMMITTEE REPORT

January 18, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 15 (first reading copy -- white), respectfully report that Senate Bill No. 15 do pass.

Signed: _____
Mike Halligan, Chairman

1-18-91 11:50
Amd. Coord.

1-21-91 - 10
Sec. of Senate

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 18 day of Jan., 1991.

Name: Katharine S. Donnelly

Address: 139 East Chance Gulch
Helena 59624

Telephone Number: 449-6220

Representing whom?

myself; my law firm

Appearing on which proposal?

SB 85

Do you: Support?____ Amend?____ Oppose? X

Comments:

While I generally support an idea of an amendment defining "purely public charity", the proposed definition encompasses much ambiguity, particularly the requirement that an exempt institution prevent persons from becoming burdens or charges of the state. This requirement has been interpreted in a very result-oriented fashion in other jurisdictions applying this test.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 18th day of January, 1991.

Name: Charles Brown

Address: 1530 Peosta

Helena, Mt. 59601

Telephone Number: 442-9622

Representing whom?

Helena Family YMCA

Appearing on which proposal?

Do you: Support?____ Amend?____ Oppose? X

Comments:

The bill is unclear and too broad in interpretation. This bill would hinder the charitable service to the community by 501(c)(3) organization.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 18th day of January, 1991.

Name: John Ackerman

Address: 73 Clearview

Telephone Number: 447-3650

Representing whom?

MDA

Appearing on which proposal?

SB 81

Do you: Support? ✓ Amend?_____ Oppose?_____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY