

**MINUTES**

**MONTANA SENATE  
52nd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON TAXATION**

**Call to Order:** By Senator Mike Halligan, Chairman, on March 22, 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)  
John Harp (R)  
Francis Koehnke (D)  
Gene Thayer (R)  
Thomas Towe (D)  
Fred 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:** None

**EXECUTIVE ACTION ON SENATE BILL 450**

**Recommendation and Vote:**

Senator Brown moved to TABLE SB 450.

The motion CARRIED unanimously with Senators Harp and Doherty absent.

EXECUTIVE ACTION ON SENATE BILL 396

Amendments, Discussion, and Votes:

Senator Towe moved to amend SB 396 as per the amendments proposed by Senator Eck (Exhibit A). Senator Towe discussed the deletion of sub (a) and (b), page 5, in the proposed new Section 8.

Recommendation and Vote:

As a substitute motion, Senator Thayer moved to TABLE SB 396.

The motion CARRIED unanimously.

EXECUTIVE ACTION ON SENATE BILL 151

Amendments, Discussion, and Votes:

Jeff Martin, Committee Researcher, reviewed the proposed amendments and "gray bill" (Exhibits 1 and 1a) requested by Senator Eck.

Senator Eck moved the adoption of the amendments.

The motion CARRIED unanimously.

Recommendation and Vote:

Senator Eck moved SB 151 Do Pass As Amended.

The motion CARRIED with Senators Thayer and Gage voting no.

HEARING ON SENATE BILL 459

Presentation and Opening Statement by Sponsor:

Senator Van Valkenburg, District 30, said the bill has been introduced at the request of the Taxation Committee. It addresses the concern for a community college relief provision from the effects of I105. The bill also includes other taxing units under the county jurisdiction such as fire districts and hospital districts who were unduly restricted by I105. It is the committee's feeling that the taxpayers were not intending to

restrict support for those specific taxing units when I105 was passed. The bill establishes a local option vote for specific taxing units recognizing the ultimate authority of the voters to tax in their own local districts for needed services. Sen. Van Valkenburg noted the House Taxation Committee has also passed a similar bill proposed by Rep. Kadas.

#### Proponents' Testimony:

James Lofftus, Montana Fire Districts Association, expressed support for the bill.

Chuck Stearns, City Clerk and Manager, Missoula, presented his testimony in support of the bill (Exhibit #2).

Shelly Laine, City of Helena, said I105 has not brought about tax reform, rather, it has worked to the detriment of cities and counties. She said she would prefer the total repeal of I105 but expressed support for the bill.

#### Opponents' Testimony:

Dennis Burr, Montana Taxpayers Association, said the bill is not necessary as there is a large list of exemptions already in place. He said this is simply a selective tax for cities and counties and has the effect of repealing I105 without any significant tax reform. He said he is fearful this action will simply spawn a whole new crop of ballot initiatives which would go even further than reinstating I105. He also warned the committee to take a hard look at what impact this may have on school funding.

Gordon Morris, Montana Association of Counties, presented the committee with copies of minutes from the MACO Board of Directors meetings (Exhibits #3 and #4) in which MACo voted not to support any local option repeal of I105.

#### Questions From Committee Members:

Senator Brown asked if the legislature would be inviting a new petition to stop taxes if it contravened the will of the people by repealing I105.

Mr. Morris said he felt it is a real danger. There is already talk of freezing income taxes. He said selective repeals of the I105 do nothing more than pit cities against counties and cause a great deal of confusion.

Senator Gage asked if this would affect school funding.

Mr. Burr said if one taxing jurisdiction's levies go up faster than all the rest due to this bill, they will get a larger share of the non-tax revenue.

Senator Van Valkenburg said he felt there are other ways to affect the way the guaranteed tax base is calculated in order to avoid draining the foundation program.

Closing by Sponsor:

Senator Van Valkenburg closed by saying there has to be a relief mechanism for mistakes that have been made. When the people voted for Il05 they didn't really want a property tax freeze. They really wanted a sales tax, but they were unwilling to say that. The voters have not been dealt with honestly on the issue to this point. There are some very serious needs in the fire districts, hospital districts, and city and county governments and there are voters out there who understand the needs and will vote to answer them. He said an amendment can be added to the bill to address the non-tax revenue concerns. Passage of this bill can be a positive action toward solving problems instead of creating new ones.

HEARING ON SENATE BILL 441

Presentation and Opening Statement by Sponsor:

Representative Pavlovich, District 70, sponsor, presented the bill to the committee as per his attached testimony (Exhibit #5).

Proponents' Testimony:

Roger Tippy, Manufactured Housing Dealers Association, said the bill arises from a suit filed by the Association against the Treasurer of Petroleum County (Exhibit #6). DOR and the County Treasurers do not always agree on who is to give notice when the owner of a trailer becomes delinquent in his taxes. The Treasurers and the Association have agreed on the legislation and he urged the committee to support the bill.

Don Capi, President of Montana Manufactured Housing Association, said the repossession process is very bad. There are financial losses and taxes owing which the dealer must pay. Notification has been a large problem when there is only one notice. He felt there should be a system of reminder notices put into effect.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Thayer asked why tax payments are not included in trailer mortgages as they are in regular home mortgages.

Mr. Capi said the problem is that many trailers are on a rented lot and the trailer is private real property and not subject to the tax inclusion in the mortgage payment.

Closing by Sponsor:

Rep. Pavlovich closed.

HEARING ON SENATE BILL 462

Presentation and Opening Statement by Sponsor:

Senator Mazurek, District 23, said the bill clarifies the telephone company license tax. He said since 1937 there has been a 1.75% tax on the gross income of any telephone business in the state. This has always been applied to the traditional AT&T type company with the telephone cooperatives being exempt. In the 1980's when the telephone monopolies were broken up a great many different companies were formed. Local operating companies, inter-exchange carriers, equipment dealers, local and long distance carriers all came on the scene as part of the telephone industry. The Department of Revenue issued notice to all these companies to pay their license tax and all back taxes within 90 days or be subject to a penalty. As a result of many protests, the DOR and representatives of the various companies met and worked together to adopt rules to define the telephone business which satisfied everyone. The big dispute arose over equipment dealers which would have included drug stores and general merchandise stores such as K Mart. The enforcement problem seemed insurmountable. It was determined that the tax would apply to the portion of the industry that was involved in the actual transmission of the conversation and not to the equipment used. He said the bill conforms to the Telecommunication Act of 1985. It modernizes the statutes, is revenue neutral, establishes definitions, and eliminates dual taxation on some phone company revenues, exempts equipment. In order to make the bill truly

revenue neutral, the tax is raised from 1.75% to 1.8%. There is a 10% delinquency penalty and the interest accrual on the penalty is eliminated. Senator Mazurek commended the Department of Revenue, especially Denis Adams and Jeff Miller, for the intensive effort that went into tackling and resolving the complex issue.

#### Proponents' Testimony:

Joan Mandeville, Montana Telephone Association, presented her testimony in support of the bill (Exhibit #7).

Dennis Lopach, U.S. West, expressed his appreciation to the Department and Jeff Miller for the fine work they did on the proposal. He said this is very important clean-up legislation and he urged the committee to pass the bill.

Gene Phillips, Northwestern Telephone, said this has been a very frustrating problem, but working with Adams and Miller has been very pleasant and resulted in a good solution.

Leo Berry, MCI, expressed support for the bill.

Tom Hopgood, GTE, agreed with the previous testimony and urged the committee to support the bill.

Riley Johnson, Cellular Information Systems, congratulated Mr. Adams and Mr. Miller on their outstanding cooperation. He said he was reluctant to automatically raise the tax to 1.8% for revenue neutrality if it isn't firmly established it is necessary. He said he would like to have a report on the first year collections to make sure it does not end up being a windfall. If it appears there is an excess, he suggested the tax go back to 1.75%.

Duncan Ryan, Tax Manager, AT&T, presented his testimony in support of the bill (Exhibit #8).

Leona Williams, Pioneer Telephone Service and Montana Communications Services Association, presented her testimony and that of her husband, Howard, in support of the bill (Exhibits #9, #10 and #11).

#### Opponents' Testimony:

Senator Williams, District 15, expressed his objections to the bill. His concern is that the tax is on the customer's bill month after month, but it cannot be itemized on their bill. A city or county cannot impose a 2% or 3% tax without notice to the taxpayers. He said it should be an "up front" tax and the taxpayers should know what and how much it is.

Questions From Committee Members:

Senator Koehnke asked if communications between two way radios such as on his farm between the house and field can be taxed.

Mr. Miller replied only two way communications for a fee are subject to the tax. If you paid a fee to call to the field from the house on the two way radio, the fee would be taxed. He said that is a critical element of the bill.

Senator Brown asked if hotels have to pay when they charge a fee for long distance calls made by their customers.

Ms. Mandeville said hotels use an alternate service provider to handle their long distance calls. They contract with that provider and it is the carrier that would pay.

Closing by Sponsor:

Senator Mazurek closed by saying this is a growth industry. Tax collections will grow and there will be increased revenue. He noted it may be necessary to reinsert the \$250 threshold limit.

ADJOURNMENT

Adjournment At: 10:00 a.m.

  
\_\_\_\_\_  
SENATOR MIKE HALLIGAN, Chairman

  
\_\_\_\_\_  
GILL D. ROHYANS, Secretary

MH/jdr

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 3/22/91

52nd LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. HALLIGAN	X		
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.



DATE

3/22/91

COMMITTEE ON

Tahiti

SB 459 SB 462

HB 411

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
GENE PHILLIPS	NORTHWESTERN TELEPHONE	SB 462	X	
DUNCAN RYAN	AT&T	SB 462	X	
JAMES A. LOFFTUS	NIT FIRE DIST ASS	SB 459	L	
DAVE W. Pappas	Touch America	SB 462		
Tom K Hopgood	GTE	SB 462	✓	
DAN MANDEVILLE	MT TEL. ASSOC	SB 462	✓	
Shelly Laine	City of Helena	SB 459	✓	
Dorion Morris	MHC	SB 459		✓
Riley Johnson	Cellular Information Systems	SB 462	✓	
Deora Williams	Mont. Communication Assn.	SB 462	X	
Deora Williams	Beemer Del Serv	SB 462	X	
Howard Williams	Pioneer Tel. Serv.	SB 462	X	
Chuck Stearns	City of Missoula	SB 459	X	
DEBORAH SCALESINGER	MT. LIBRARY ASSOC	SB 459	X	
Roger Tappan	M M H & RV	HB 411	X	
Tom Eszery	US WEST	SB 462	X	
Steve Tappan	MT Manufactured Housing & RV Association	HB 411	X	
Leo Beery	MCI	SB 462	X	
Dennis Lopez	US WEST Comm	SB 462	X	
Don Cape	M M H & RV Assn	HB 411	X	

(Please leave prepared statement with Secretary)

PROPOSED AMENDMENTS TO SB 396 (SEN. ECK)

To: Senate Taxation Committee

By: Children's Trust Fund board of directors

Page 1, line 6: after "TAX", add: "ESTABLISHING A NONEXPENDABLE CHILDREN'S TRUST FUND MANAGED BY THE BOARD OF INVESTMENTS; PROVIDING FOR APPROPRIATION OF THE INTEREST AND INCOME FROM THE CHILDREN'S TRUST FUND TO THE STATE CHILD ABUSE PREVENTION PROGRAM;"

Page 1, line 8: after "FUND," delete "ACCOUNT"

Page 1, line 8: after ";;", add: "AMENDING SECTIONS 15-30-155, 15-30-157, AND 25-1-201;"

Page 3, line 6: after "fund", delete "account"

Page 3, line 18: delete "account"  
after "established in", add: "[section 8]"

Page 5, after line 25: add:

"NEW SECTION. Section 8. Children's trust fund. (1) There is a children's trust fund in the nonexpendable trust fund type to be managed as provided in [this section].

(2) After deduction of reasonable expenses by the department of revenue to administer [this act], 15-30-155, 15-30-156, AND 15-30-157, the following money shall be deposited in the children's trust fund:

(a) videotape rental tax receipts as provided in [section 4];

(b) income tax contributions as provided in 15-30-155, 15-30-156, and 15-30-157;

(c) dissolution of marriage fees as provided in 25-1-201(4);

(d) money appropriated under [subsection 4] to the children's trust fund account provided in 41-3-702 which remains unallocated and unexpended as of the final day of each odd-numbered fiscal year; and

(e) other monies specifically appropriated, granted, donated, or otherwise provided for deposit in the children's trust fund.

(3) The children's trust fund shall be managed by the board of investments for the benefit of the child abuse and neglect prevention program provided in 41-3-702.

(4) The interest and income from the children's trust fund is available for appropriation to the children's trust fund account established in 41-3-702 for use only as provided in title 41, chapter 7. Not more than 15 percent of the money appropriated to the children's trust fund account may be used for administration by the children's trust fund board and the department of family services under 2-15-121 and 41-3-704.

Section 9. Section 15-30-155 is amended to read:

"15-30-155...

(3) Money received under this section must be deposited in the children's trust fund ~~account created under 41-3-702~~ established in [section 8] after the

~~department of revenue has deducted the amount necessary for the department to administer this section."~~

Section 10. Section 15-30-157 is amended to read:

"15-30-157. Deposit of deductible contributions. (1) All money received under 15-30-156 must be deposited in the children's trust fund account established in ~~41-3-702~~ [section 8].

(2) The department of revenue shall immediately forward for deposit in the children's trust fund account all checks and other orders of payment made as contributions under 15-30-156..."

Section 11. Section 25-1-201 is amended to read:

"25-1-201..."

(4) Of the fee for filing for dissolution of marriage or legal separation, \$40 must be deposited in the state general fund, \$35 must be remitted to the state to be deposited as provided in 19-5-404, \$5 must be deposited in the children's trust fund account established by ~~41-3-702~~ in [section 8], and..."

(renumber subsequent sections)

Page 6, line 5: after "Effective", delete "date", add "dates -- expiration date --"

Page 6, line 6: after "applicability.", add "(1)"

Page 6, line 6: after "[", delete "This act", add "Sections 1 through 7, section 12, and section 13"

Page 6, line 6: after "]", delete "is", add "are"

Page 6, line 7: after "and", delete "applies", add "apply"

Page 6, line 9: after "agent.", add "(2) [Subsections 8(1), 8(2)(a), 8(2)(e), 8(3), and 8(4)] are effective on passage and approval.

(3) [Subsections 8(2)(b), 8(2)(c), and 8(2)(d), and sections 9, 10, and 11] are effective July 1, 1992.

(4) [Sections 1 through 7, section 12, section 13, and subsection 8(2)(a)] expire July 1, 1995."

Amendments to Senate Bill No. 151  
Second Reading Copy

Requested by Senator Eck  
For the Committee on Taxation

Prepared by Jeff Martin  
March 19, 1991

1. Title, line 12.  
Following: "QUARTER;"  
Insert: "TO PROVIDE FOR THE ADMINISTRATION AND COLLECTION OF THE  
TAX;"
2. Title, line 18.  
Following: "DATE"  
Insert: "AND AN APPLICABILITY DATE"
3. Page 2, line 1.  
Strike: ":"
4. Page 2, lines 2 through 4.  
Strike: "(1)" on line 2 through "(2)" on line 4
5. Page 2, lines 6 through page 3, line 5.  
Strike: page 2, line 6 through page 3, line 5 in their entirety
6. Page 7, line 4.  
Following: "UNDER"  
Insert: ":"  
(a)"
7. Page 7, line 5.  
Following: "33"  
Insert: "; or  
(b) an employee welfare benefit plan approved under the  
federal Employee Retirement Income Security Act (29 U.S.C.  
1001, et seq.)"
8. Page 7, lines 17 through 23.  
Strike: "The" on line 17 through "threshold" on line 23  
Insert: "The tax is \$1 per calendar week or fraction of a  
calendar week of employment of each employee described in  
subsection (1)."
9. Page 8, line 6.  
Following: "taxes"  
Insert: "-- annual payment"  
Strike: "Employer"  
Insert: "Except as provided in subsection (3), employer"
10. Page 8, line 7.  
Following: "payable"  
Insert: "on or before the last day of the month"

11. Page 8, line 8.

Strike: "September 30, 1991"

Insert: "March 31, 1992"

12. Page 8.

Following: line 11

Insert: "(3) Whenever the department determines that the estimated annual tax payable by an employer will be less than \$40, the department may authorize the employer to file an annual return in lieu of the quarterly return required by subsection (1). Annual statements must be filed and payments must be made on or before February 28 for the preceding calendar year."

Renumber: subsequent subsection

13. Page 8, lines 18 through 21.

Strike: ":" on line 18 through "providing" on line 21

Insert: "that provide the"

14. Page 8, line 21

Strike: "calculation,"

15. Page 8, line 22.

Following: "payment"

Strike: ",",

16. Page 9, line 1.

Strike: "All"

Insert: "Except as provided in subsection (3), all"

17. Page 9.

Following: line 3

Insert: "(3)(a) Beginning April 1, 1992, and ending March 31, 1993, the department of revenue may retain up to 15% of the amount of taxes collected under [section 4] for the administration of the collection and enforcement of the tax.

(b) Beginning April 1, 1993, and thereafter, the department may retain up to 5% of the amount of taxes collected under [section 4] for the administration of the collection and enforcement of the tax."

Renumber: subsequent subsection

18. Page 9, lines 8 through 10.

Strike: "if" on line 8 through "threshold" on line 10

19. Page 9.

Following: line 10

Insert: "NEW SECTION. Section 7. Retention of records. Each employer subject to the tax under [section 3] shall retain for 5 years after the date a return is filed all relevant records necessary for the calculation of the tax and any other information relating to the return as required by the department.

NEW SECTION. Section 8. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not

be assessed or collected with respect to the taxable period for which a return is filed unless the notice of the additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the employer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the taxable period for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the employer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the employer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the employer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the employer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

**NEW SECTION.** Section 9. **Estimated tax on failure to file.** (1) If an employer fails to file a return as required, the department of revenue is authorized to make an estimate of the tax due from the employer from any information in its possession.

(2) For the purpose of determining the correctness of a return or for the purpose of making an estimate of the tax due from the employer, the department also has the power to examine or to cause to have examined by any agent or representative designated by it for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return and may require the attendance of any officer or employee of the employer rendering the return or the attendance of any other person having knowledge in the premises and may take testimony and require proof material for its information.

**NEW SECTION.** Section 10. **Deficiency assessment -- hearing -- interest.** (1) If the department of revenue determines that the amount of tax due is greater than the amount reported, it shall mail to the employer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the employer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an

opportunity to present additional evidence relating to his tax liability. If a protest is not filed, the amount of the additional tax proposed to be assessed becomes final upon expiration of the 30-day period.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the employer. The tax is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date specified in [section 4] for the payment of the tax.

(3) The amount required to be paid under [section 3] accrues interest at the rate of 1% a month or part of a month from delinquency until paid."

**NEW SECTION. Section 11. Credit for overpayment -- interest on overpayment.** (1) If the department of revenue determines that the amount of tax, penalty, or interest paid for any taxable period is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the employer and the balance refunded to the employer, to the employer's successor through reorganization, merger, or consolidation, or to the employer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the employer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by [sections 2 through 14] is considered an overpayment with respect to which interest is allowable.

**NEW SECTION. Section 12. Application for refund -- appeal from denial.** If the department of revenue disallows any claim for refund, it shall notify the employer accordingly. At the expiration of 30 days from the mailing of the notice, the department's action becomes final unless within the 30-day period the employer appeals in writing from the action of the department to the state tax appeal board. If an appeal is made, the board shall grant the employer an oral hearing. After consideration of the appeal

and evidence presented, the board shall mail notice to the employer of its determination. The board's determination is final when it mails notice of its action to the employer.

NEW SECTION. Section 13. **Closing agreements.** (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any employer relating to the liability of the employer with respect to the tax imposed by [sections 2 through 14] for any taxable period.

(2) An agreement is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in a suit, action, or proceeding under the agreement or a determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

NEW SECTION. Section 14. **Confidentiality of tax records.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department of revenue or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the information disclosed in any report or return required under [sections 2 through 14] or any other information secured in the administration of this [sections 2 through 14].

(2) The officers charged with the custody of reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding to which the department is a party under the provisions of [sections 2 through 14] or any other taxing act or on behalf of any party to an action or proceeding under the provisions of [sections 2 through 14] or any other act when the reports or facts shown by the reports are directly involved in the action or proceeding, in either of which events the court may require the production of and may admit in evidence as much of the reports or of the facts shown by the reports as are pertinent to the action or proceeding.

(3) Nothing in this section may be construed to prohibit:

(a) the delivery to an employer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics classified so as to prevent the identification of particular reports or returns and the information contained in the reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of an employer who brings action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted.



(4) Reports and returns must be preserved for at least 5 years or until the department orders them to be destroyed."

Renumber: subsequent sections

20. Page 9, line 17.

Strike: "6"

Insert: "14"

21. Page 9, line 19.

Strike: "6"

Insert: "14"

22. Page 9.

Following: line 19

Insert: "NEW SECTION. Section 17. Coordination instruction. If Senate Bill No. 445 is passed and approved and it if contains a section providing for a uniform tax appeal procedure, [sections 9 and 10 of this act] are void and the provisions of Senate Bill No. 445 govern the appeal procedures."

Renumber: subsequent section

23. Page 9, line 20.

Following: "date"

Insert: "-- applicability"

24. Page 9, line 21.

Following: "1991"

Insert: ", and applies to taxable quarters beginning after December 31, 1991"

SENATE EXAMINATION  
EXHIBIT 1  
DATE 3/22/97  
BILL NO. SB/51

SB 0151/02

APPROVED BY COMMITTEE  
ON PUBLIC HEALTH, WELFARE  
& SAFETY

SENATE BILL NO. 151

INTRODUCED BY ECK, JACOBSON,

WATERMAN, BARNHART

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE MEDICAID  
ELIGIBILITY TO PREGNANT WOMEN AND TO INFANTS IF FAMILY  
INCOME DOES NOT EXCEED 185 PERCENT OF THE FEDERAL POVERTY  
THRESHOLD; TO REQUIRE EMPLOYERS TO PAY A TAX FOR EACH  
EMPLOYEE WHO DOES NOT HAVE HEALTH INSURANCE COVERAGE PER--A  
PREGNANT--WOMAN--OR--AN--INFANT--WHO--IS--A--MEMBER--OF--THE  
EMPLOYER'S--IMMEDIATE--FAMILY AND WHOSE WAGES ARE LESS THAN  
\$6,000 IN THE CALENDAR QUARTER; TO PROVIDE FOR THE ADJUSTMENT OF THE  
TAX TO FINANCE THE INCREASED COSTS OF THE MONTANA MEDICAID  
PROGRAM ATTRIBUTABLE TO PROVIDING MEDICAID ELIGIBILITY TO  
PREGNANT WOMEN AND TO INFANTS IF FAMILY INCOME DOES NOT  
EXCEED 185 PERCENT OF THE FEDERAL POVERTY THRESHOLD;  
AMENDING SECTION 53-6-131, MCA, AND SECTION 15, CHAPTER 649,  
LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE."

AND AN APPLICATION  
DATE

STATEMENT OF INTENT

A statement of intent is required for this bill because  
[section 5] grants the department of revenue authority to  
adopt rules necessary to implement the provisions of  
[sections 2 through 4].

It is the express intent of the legislature that the

department may adopt rules  
(1) determining the amount of taxes required to be paid  
by each employee under section 51 and  
(2) providing necessary procedures for the payment and  
collection of employer taxes.

~~It is the intent of the legislature that the taxes be  
paid by all employers subject to [section 3] be an amount  
sufficient, in each fiscal year, to finance the state's  
share of the increased cost of the Montana medicaid program  
attributable to providing medicaid eligibility to pregnant  
women and to infants if their family income does not exceed  
185 of the federal poverty threshold, as mandated under  
this bill. The state's share of the increased cost of the  
medicaid program should be determined based on the level of  
federal financial participation in the program during the  
fiscal year. In addition, the increase in the cost of the  
Montana medicaid program should be based solely on the  
increase in cost attributable to raising current medicaid  
income standards for pregnant women and for infants to 185  
of the federal poverty threshold.~~

The legislature further intends that each employer pay  
the tax at the same rate for each employee described in  
[section 3(1)] based on the total hours of employment for  
each employee during the calendar quarter in which the tax

SECOND READING

~~Finally, the legislature intends that, if appropriate,~~  
 procedures for the payment and collection of employer taxes  
 be similar to procedures established by the department of  
 revenue for the collection of the workers' compensation  
~~reimbursement.~~

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

Section 1. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical  
 assistance under the Montana medicaid program may be granted  
 to a person who is determined by the department of social  
 and rehabilitation services to be eligible as follows:

(a) The person receives or is considered to be  
 receiving supplemental security income benefits under Title  
 XVI of the federal Social Security Act (42 U.S.C. 1381, et  
 seq.) or aid to families with dependent children under Title  
 IV of the federal Social Security Act (42 U.S.C. 601, et  
 seq.).

(b) The person would be eligible for assistance under a  
 program described in subsection (1)(a) if he were to apply  
 for such assistance.

(c) The person is in a medical facility that is a  
 medicaid provider and, but for residence in the facility, he  
 would be receiving assistance under one of the programs in  
 subsection (1)(a).

(d) The person is under 19 years of age and meets the  
 conditions of eligibility in the state plan for aid to  
 families with dependent children, other than with respect to  
 school attendance.

(e) The person is under 21 years of age and in foster  
 care under the supervision of the state or was in foster  
 care under the supervision of the state and has been adopted  
 as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the  
 categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the medically  
 needy income level specified for federally aided categories  
 of assistance and his resources are within the resource  
 standards of the federal supplemental security income  
 program; or

(ii) the person, while having income greater than the  
 medically needy income level specified for federally aided  
 categories of assistance, has an adjusted income level,  
 after incurring medical expenses, that does not exceed the  
 medically needy income level specified for federally aided  
 categories of assistance and his resources are within the  
 resource standards of the federal supplemental security  
 income program.

(g) The person is under 1 year of age and:  
 (i) has income that does not exceed income standards as

1 may-be-required-by-the-federal-Social-Security-Act-and  
 2 ~~(ix) has resources that do not exceed standards--the~~  
 3 ~~department--determines--reasonable--for--purposes--of--the~~  
 4 ~~program--~~  
 5 ~~(j) A person who is pregnant--is--eligible--for~~  
 6 ~~pregnancy-related--medical--assistance--under--the--Montana~~  
 7 ~~medicaid-program-if-she~~  
 8 ~~(k) has income that does not exceed income standards as~~  
 9 ~~may-be-required-by-the-federal-Social-Security-Act--and~~  
 10 ~~(l) has resources that do not exceed standards--the~~  
 11 ~~department--determines--reasonable--for--purposes--of--the~~  
 12 ~~program--~~  
 13 (g) The person is a qualified pregnant woman or child  
 14 as defined in 42 U.S.C. 1396d(n).  
 15 ~~(3)(2) The Montana medicaid program shall pay for the~~  
 16 ~~premiums necessary for participation in the medicare program~~  
 17 ~~and may, within the discretion of the department, pay all or~~  
 18 ~~a portion of the medicare deductibles and coinsurance for a~~  
 19 ~~medicare-eligible person who:~~  
 20 ~~(a) has income that does not exceed income standards as~~  
 21 ~~may be required by the federal Social Security Act; and~~  
 22 ~~(b) has resources that do not exceed standards the~~  
 23 ~~department determines reasonable for purposes of the~~  
 24 ~~program.~~  
 25 ~~(4)(3) The department, under the Montana medicaid~~

1 program, may provide, if a waiver is not available from the  
 2 federal government, medicaid and other assistance mandated  
 3 by Title XIX of the federal Social Security Act (42 U.S.C.  
 4 1396, et seq.), as may be amended, and not specifically  
 5 listed in this part to categories of persons that may be  
 6 designated by the act for receipt of assistance.  
 7 ~~(5)(4) Notwithstanding any other provision of this~~  
 8 ~~chapter, medical assistance must be provided to pregnant~~  
 9 ~~women and to infants whose if their family income does not~~  
 10 ~~exceed 185% of the federal poverty threshold, as provided in~~  
 11 ~~42 U.S.C. 1396a(a)(10)(A)(i)(IX) and 42 U.S.C.~~  
 12 ~~1396a(i)(2)(A)(i). (5) Subsection--(5)--terminates--June--30~~  
 13 ~~1993--sec--157-GH-6497-br-1989-r.~~  
 14 NEW SECTION. Section 2. Definitions. As used in  
 15 (sections 2 through 6), the following definitions apply:  
 16 (1) "Calendar quarter" has the same meaning as provided  
 17 in 39-51-201.  
 18 (2) "Employee" means a person who is employed to  
 19 provide services for hire to an employer. The term does not  
 20 include a member of an employer's immediate family.  
 21 (3) (a) "Employer" means any firm, corporation,  
 22 organization, or person who:  
 23 (i) employs the services of another for hire; and  
 24 (ii) is subject to the payment of social security taxes  
 25 under the Federal Insurance Contributions Act.

(b) The term does not include the state of Montana, a political subdivision of the state, or the United States.

(4) "HEALTH INSURANCE COVERAGE" MEANS THE PROVISION OF HEALTH CARE SERVICES UNDER A POLICY OR CONTRACT OF INSURANCE

AS PROVIDED IN TITLE 33, (b) AN EMPLOYEE WELFARE BENEFIT PROGRAM

(4)(5) "Immediate family" means an individual's spouse and children.

(4)(6) "Infant" means a person under 1 year of age.

(4)(7) "Tax" means the tax required to be paid by employers as provided in [section 3].

NEW SECTION. Section 3. Employer tax to finance

medicaid. (1) Each employer shall pay a tax for each

employee who does not have health insurance coverage for--a pregnant--woman--including--the--employee--or--an--infant--who--is

a--member--of--the--employee's--immediate--family AND WHOSE WAGES

ARE LESS THAN \$6,000 IN THE CALENDAR QUARTER

(2) The department of revenue shall determine the

amount of the tax to be paid by each employer based on the total revenue needed, in each fiscal year, to finance the

state's share of the increased costs of the Montana medicaid program attributable to providing medicaid eligibility to

pregnant women and to infants if their family income does

not exceed 185% of the federal poverty threshold.

(3) The tax must be paid at the same rate for each employee described in subsection (1) based on the total

hours of employment for each employee in the calendar quarter in which the tax is due.

(4) Taxes paid by an employer may not be deducted in whole or in part from the wages of his employees.

NEW SECTION. Section 4. Payment and collection of employer taxes -- penalty. (1) Employer taxes are due and payable <sup>ON OR BEFORE THE END OF EACH CALENDAR QUARTER</sup> following the end of each calendar quarter <sup>MARCH 31, 1992</sup> commencing with the quarter ending September 30, 1991.

(2) Taxes must be paid to the department of revenue.

The department of revenue shall prepare appropriate forms to be filed by each employer with payment of the tax.

(3) WITHHOLDING TAXES not paid when due must bear interest at a rate of 1% a month. The employer shall also pay a penalty

equal to 10% of the amount of delinquent taxes.

NEW SECTION. Section 5. Rulemaking. The department of

revenue may adopt rules necessary to implement the provisions of [sections 2 through 4]. Rules adopted by the

department may include rules--

(1) determining the amount of taxes required to be paid

by each employer under section 3 and

(2) providing necessary procedures for the calculation,

payment, and collection of the tax.

NEW SECTION. Section 6. Medicaid tax account. (1) There is a Medicaid tax account in the state special revenue fund in the state treasury.

*except as provided, subsection (3)*

*(3)(c) Beginning April 1, 1992, ...  
(b) Beginning April 1, 1993,*

1 (2) ~~the~~ collections of employer taxes required in  
2 [section 3], including interest and penalties on the tax,  
3 must be deposited in the account.

4 (3) The money in the account is allocated to the  
5 department of social and rehabilitation services to finance  
6 the state's share of the increased cost of the Montana  
7 medicaid program attributable to providing medicaid  
8 eligibility to pregnant women and to infants ~~if their family~~  
9 ~~income does not exceed 100% of the federal poverty~~  
10 ~~threshold.~~

11 Section 7. Section 15, Chapter 649, Laws of 1989, is  
12 amended to read:

13 "Section 15. Program termination. The--provisions--of  
14 this act [Sections 1 through 10] and [sections 12 through  
15 14] terminate June 30, 1991."

16 NEW SECTION. Section 8. Codification instruction.  
17 [Sections 2 through 6] are intended to be codified as an  
18 integral part of Title 53, chapter 6, and the provisions of  
19 Title 53, chapter 6, apply to [sections 2 through 6].

20 NEW SECTION. Section 9. Effective date. [This act] is  
21 effective July 1, 1991.

-End-



# FINANCE/CITY CLERK OFFICE

435 RYMAN ST. • MISSOULA, MT 59802-4297 • (406) 523-4700  
FAX (406) 728-6690

FINANCE AND DEBT MANAGEMENT  
BUDGET AND FINANCIAL  
ACCOUNTING  
CITY CLERK  
UTILITY  
RISK MANAGEMENT  
GRANT ADMINISTRATION

SENATE TAXATION

EXHIBIT NO. 7

DATE 3/23/91

SB 459

## **CITY OF MISSOULA** **CHUCK STEARNS TESTIMONY ON SENATE BILL 459** **March 22, 1991**

The City of Missoula strongly supports SB459, a bill to allow a local option repeal of Initiative 105. Initiative 105 was passed by a statewide vote in a general election on November 4, 1986. Although this election was a state general election and was not a City of Missoula election, an analysis of the precinct votes indicates that I-105 was defeated by city residents, approximately 50.5% to 49.5%.

While this margin is not large, it was a defeat of I-105 on a local basis, even though the Initiative was enacted by statewide passage. Since 1986, Missoula has labored under the law which a majority of its citizens did not want. Missoula voters approved two separate \$900,000 general obligation bond issues at the 1988 presidential general election which had a local turnout of 57.2% by city voters. One bond issue was for fire equipment and it passed by a margin of 72% to 28% against; the second bond issue was for an expansion of City Hall and it passed by a margin of 54% to 46%.

City of Missoula officials believe that the local electorate deserves the ability to decide whether or not they wish to continue the constraints of I-105. We strongly encourage the Senate Taxation Committee to endorse this small measure for local control.

**MONTANA  
ASSOCIATION OF  
COUNTIES**

SENATE 1 1 1  
EXHIBIT NO. 3  
DATE 3/23/91  
2711 Airport Road  
BILL NO. Helena, Montana 59601  
(406) 442-5209  
FAX (406) 442-5238

**BOARD OF DIRECTORS  
December 10, 1990  
Radisson Northern Hotel  
Centennial North  
MINUTES**

**EXECUTIVE COMMITTEE**

XX John Witt, President	XX Don Bailey, 1st Vice Pres.
XX Dave Fuller, 2nd Vice Pres	XX Mona Nutting, Fiscal Officer
___ Dick Gasvoda, Urban Rep.	XX Al Kaschube, Past President

**DISTRICT CHAIRS**

XX Sherman Doucette, Dist #1	XX Tubby Ziegler, Dist. #2
XX Gerald Himelspach, Dist. #3	XX Art Kleinjan, Dist. #4
XX Geneva Sisk, Dist. #5	XX Vern Petersen, Dist. #6
XX Mike Mathew, Dist. #7	XX Dave Anderson, Dist. #8
XX Jane Jelinski, Dist. #9	XX Ray Harbin, Dist. #10
XX Ann Mary Dussault, Dist. #11	XX Randy Tommerup, Dist. #12

OTHERS PRESENT: Sheriff Tim Solomon, Hill Co.; Treasurer Susan Spurgeon, Fergus Co.; Commissioner Shelly Boeckel, Big Horn Co.; Assessor Marian Olson, Hill Co.; Superintendent of Schools Shirley Barrick, Fergus Co.; Assessor Rick Hartz, Beaverhead Co. and Sheriff Steve Knecht, Judith Basin Co.

1. Approval of September 18, 1990, minutes as mailed.

Board member Ray Harbin moved the approval of the September 18, 1990 minutes as mailed. This was seconded by Tubby Ziegler and the motion passed unanimously.

2. Budget and Dues Report - Mona Nutting, Fiscal Officer

Fiscal Officer Mona Nutting updated the board on the MACo budget status as of November 1990. We have expended the budget at the rate of 42%. This is on target in relation to the fiscal year. She explained that the taxes on the land have not been paid and the \$9,000 anticipated revenue from the land sale was reduced



since we accepted an interest only payment of \$3,000 in July. Gordon reported that a letter has been sent to the purchasers with notice that they have until December 31st to make the tax payment or, under the terms of the contract, forfeit the land to MACo. He added that at that point we would then have to make the delinquent tax payment plus interest then apply for association tax exempt status. Dave Fuller moved acceptance of the budget report, Dave Anderson seconded and the motion passed unanimously.

3. District Meetings - Comments, President Witt/Gordon Morris

President John Witt indicated that he was pleased to attend the majority of the district meetings and found them an excellent opportunity to learn more about the respective interests of the various counties. He listened carefully to the discussions on the Big Sky Dividend program and the Council of County Officials Salary proposal. He felt there appears to be general support for an infrastructure funding proposal as presented by the Governor. He noted a change of attitude regarding the salary proposal and he believes there was more support among counties at this time relative to the need for elected officials salaries to be statutorily revised. This is in sharp contrast to the action taken by the membership at the June Convention in Kalispell.

4. Legislative Update - Gordon Morris, Executive Director

Gordon distributed a legislative update and indicated that all of the MACo bill draft requests have been filed. He indicated that the MACo resolutions, plus other items identified for bill draft requests had all been submitted prior to the December 5th deadline for open bills. Ann Mary Dussault commented that an area legislator had spoken to her about the possibility of introducing legislation to authorize local repeal of I-105 based upon a vote. She wondered if the Board would have any interest in pursuing this. Jane Jelinski felt the proposal would pass the buck one more time back to local governments and take the onus off the state legislature in terms of the need to address property tax reform as a requirement for the repeal of I-105. Ray Harbin said if it was subject to a vote some counties would be stuck with I-105 forever versus those counties that would be able to deal with it because of changes in their economy that would be reflected in the willingness of the voters to repeal I-105 on a local basis. Dave Fuller suggested we keep this in our back pocket and as we get down to transmittal date use it as a means of speaking in regard to our destiny and maybe seek a legislator to carry it for us at that time. He would rather support a statewide repeal but never-the-less it might be a good eleventh hour strategy. Ann Mary Dussault commented that some counties did not support I-105 and the question is should they not now be allowed to lift it on

an individual basis. Jane Jelinski reiterated that the legislature should fix the problem. This should not be based on local option. She moved to not support any local option repeal of I-105 if introduced. This was seconded by Don Bailey.

In discussion, Gerald Himelspace asked if Don Bailey would support a statewide repeal. Don indicated he would. The question was called, the motion carried 17-1. Mike Mathew commented that repeal was unlikely without the mandatory reform, and perhaps we should be looking at a means of indexing I-105 to inflationary adjustments in the economy. Gerald Himelspace said in his county's case, being hit by the 40 mill school equalization has been dramatic. People are convinced the commissioners raised their taxes. Geneva Sisk commented that Toole County had 225 tax protests filed. This is an unusual number when compared to past tax periods.

5. Council of County Officials Report/Salary Proposal  
(Materials in Packet) - John Witt/Gordon Morris  
Dave Fuller, Don Bailey

President John Witt indicated that at several of the district meetings he had had a favorable response when the Salary Proposal was discussed. Several commissioners appear to have changed their position on the issue. At the Council of County Officials meeting held in early November chaired by 1st Vice President Don Bailey and attended by 2nd Vice President Dave Fuller and Gordon Morris the Council recognized the need to establish and live with a compromise. Don Bailey told the CCO group he would be able to report positively to the Board, however he reserved the right to express his concerns regarding the proposal's overall funding considerations. Dave Fuller indicated that the funding issue was foremost in the minds of the commissioners calling him. He added that while we had made a first step to overcome problems in developing a consensus, it could possibly come unraveled very easily. He suggested looking at a mechanism making the proposal county optional as a possible solution to the associated costs. Jane Jelinski stated concern regarding the freeze language in the proposal calling for a majority vote of elected officials. Assessor Marian Olson explained that the elected officials were concerned that future raises approved by commissioners would come at the expense of budget cuts elsewhere. Ann Mary Dussault commented that the freeze language is not acceptable to her since it requires majority approval. She recommended lifting that language and reinserting the Commissioners' authority to determine whether or not salaries should be frozen. Randy Tommerup indicated that under the proposal, in Beaverhead County the Assessor's salary raise would amount to \$6,000 alone and asked if the state would pay that additional amount under the current 70/30

MONTANA  
ASSOCIATION OF  
COUNTIES

SENATE TAXATION

EXHIBIT NO. 4

DATE 3/23/91

BILL NO. SR 459

2711 Airport Road  
Helena, Montana 59601  
(406) 442-5209  
FAX (406) 442-5238

BOARD OF DIRECTORS  
February 12, 1991  
Clark Room, Colonial Inn  
Helena, MT  
MINUTES

MEMBERS PRESENT:

XX John Witt, President	XX Gerald Himelspach, District #3
XX Don Bailey, 1st VP	XX Art Kleinjan, District #4
XX Dave Fuller, 2nd VP	XX Geneva Sisk, District #5
XX Mona Nutting, Fiscal Officer	XX Vern Petersen, District #6
___ Dick Gasvoda, Urban Rep.	XX Mike Mathew, District #7
XX Al Kaschube, Past Pres.	XX Dave Anderson, District #8
	XX Jane Jelinski, District #9
District Chairs	XX Ray Harbin, District #10
XX Sherman Doucette, Dist #1	___ Ann Mary Dussault, District #11
XX Tubby Ziegler, Dist #2	___ Randy Tommerup, District #12

OTHERS PRESENT: Gary Buchanan, Billings; Linda Stoll-Anderson, Legislative Committee Chair; Norm Grosfield, Helena Attorney; Beverly Gibson, Assistant Director; Ray Barnicoat, Risk Manager and Gordon Morris, Executive Director

1. Approval of Minutes of December 10 and 12, 1990 Meetings

Mike Mathew moved approval of the minutes of December 10 and 12th as mailed. This was seconded by Tubby Ziegler and carried.

2. Articles of Incorporation Resolution

Upon presentation, Vern Petersen moved the adoption of the restated Articles, Al Kaschube seconded and the motion carried.

3. Other Business

o Mona Nutting announced that there is a rally scheduled for the Capitol at noon on Thursday, February 14th in support of Desert Storm. She indicated that many commissioners are planning to attend

MACo

and ask if we could reschedule that period to enable as many as possible to attend the rally. The Board concurred.

o Mona Nutting indicated that National Count Government Week is scheduled for April 7 - 13 and Montana counties should commemorate the week in a variety of ways. Carbon County is looking at a highway clean-up and beautification program using the adopt a highway concept. Mike Mathew moved that MACo endeavor to get a similar resolution on County Government Week passed by the Montana Legislature. This was seconded by Mona Nutting and passed unanimously.

o Mike Mathew explained that he had spoken with Gary Buchanan regarding I-105. Several board members commented that they were opposed to any repeal of I-105 on a piece meal basis. During the discussion Gary Buchanan, the principle spokesman for I-105 during the 1986 campaign period, addressed the board on the issue. His principle concerns were that I-105 is not serving any useful purpose and that the supporters of I-105 picked the wrong tax. They should have used a concurrent income tax freeze instead of the property tax approach. Gary indicated that the legislature has been knocking holes in I-105. State income taxes are becoming an increasing problem, particularly if we were to impose a limit on the federal deductions for state income tax purposes. This could potentially make us one of the highest income tax states in the country. Following this discussion, Tubby Ziegler moved to support the repeal of I-105 specifically HB 518. This was seconded by Mike Mathew. It was pointed out that HB 518 as introduced by Representative Messmore, created a higher standard for public hearing requirements and the adoption of budgets then I-105 did and that HB 518 theoretically could be viewed as repealing I-105. Tubby Ziegler withdrew his motion. Don Bailey moved to take no action on HB 518 calling for any possible repeal of I-105. This was seconded by Al Kaschube. The motion passed unanimously.

Following a legislative overview provided by Gordon Morris, the meeting adjourned.

3/22 - 8 a.m.  
SENATE TAXATION  
Sen. Tax Com. 5  
Room 443  
DATE 3/23/91  
BILL NO. SB 441

## HOUSE BILL 441-INFORMATION SHEET

This legislation is a mutually agreed upon bill by the Montana Manufacture Housing Association and the Montana County Treasurers. The purpose of the legislation is to address the problem of manufactured home dealers having to pay several years of back taxes when a mobile home or housetrailer is unfortunately repossessed.

In the House Tax Committee the bill was amended to delete language that was determined to be unnecessary to fairly meet the objectives of the legislation. In its current form the bill proposes to establish 3 basic procedures, they are:

- 1.) Requires that before a Mobile Home or Housetrailer is sold at a Sheriff Sale that the County Treasure first notify the lienholder.
- 2.) Makes clear that when a lienholder request information if the taxes on a housetrailer are delinquent and the County Treasurer fails to provide the accurate information then the lienholder is not responsible for the unpaid taxes.
- 3.) And finally, this bill limits the number of years back taxes must be paid by a lienholder who repossess a mobile home to 3 years. This is the same treatment given to real property.

The House Tax Committee worked hard on this bill and it is a good compromise that addresses the concerns of manufacture housing dealers and county treasurers. I urge your support.

SENATE TAXATION

EXHIBIT NO. 6

DATE 5/2/91

BILL NO. SB 44

1 Roger Tippy  
2 TIPPY & MCCUE  
3 P.O. Box 543  
4 Helena, MT 59624

Filed this 13 day  
of Sept 1990  
Bonny L. Allen  
Deputy Clerk

8 MONTANA TENTH JUDICIAL DISTRICT  
9 PETROLEUM COUNTY

10 GREEN TREE ACCEPTANCE, INC.,  
11 a Minnesota corporation,

No. 90-DV-1169

12 and the

13 MONTANA MANUFACTURED HOUSING  
14 AND RECREATIONAL VEHICLE  
15 ASSOCIATION, a Montana non-profit  
16 corporation,

COMPLAINT FOR  
DECLARATORY JUDGMENT

17 Plaintiffs,

18 v.

19 ROBERT COFFEY, in his capacities  
20 as Treasurer and Finance Manager  
21 of Petroleum County, a political  
22 subdivision of the State of  
23 Montana,

24 and

25 MARC RACICOT, Attorney General  
of the State of Montana,

Defendants.

1. Plaintiff Green Tree Acceptance, Inc. (Green Tree) is  
a corporation organized under the laws of Minnesota and

1 qualified to do business in Montana. Its business in Montana  
2 is financing mobile home sales and its principal office in the  
3 state is in Missoula, Montana.

4 2. Green Tree is a member of the Montana Manufactured  
5 Housing & Recreational Vehicle Association (MMH&RVA), a  
6 non-profit trade association organized under Montana law to  
7 advance the interests of vendors of mobile homes. The  
8 principal office of MMH&RVA is in Helena, Montana.

9 3. Defendant Robert Coffey (Coffey) is the Treasurer of  
10 Petroleum County, a political subdivision of the state of  
11 Montana with its seat at Winnett, Montana. He is also the  
12 agent of the state Department of Revenue in Petroleum County,  
13 a position also known as the County Assessor. He has held  
14 both such positions at all relevant times since 1982 and has  
15 his principal office in Winnett, Montana.

16 4. Defendant Marc Racicot is the Attorney General of the  
17 state of Montana. His office is in Helena, Montana. He is  
18 entitled to be heard in this action pursuant to 27-8-301, MCA,  
19 because a statute is alleged to be unconstitutional as  
20 applied.

21 5. This is an action for a declaratory judgment that the  
22 defendant Coffey has unlawfully or without valid authority  
23 collected certain taxes from plaintiff Green Tree, and that  
24 county treasurers generally in Montana who require the holders  
25 of perfected security interests in mobile homes are wrongfully

1 and without valid authority requiring such lienholders to pay  
2 certain taxes on mobile homes in similar situations.

3 6. This declaratory judgment is brought under the  
4 provisions of the Uniform Declaratory Judgments Act, T. 27, c.  
5 8, MCA, and also under the provision of 15-1-406, MCA, which  
6 states that an aggrieved taxpayer, rather than paying tax  
7 under protest, may seek a declaratory judgment in district  
8 court that a tax imposed by a county was illegally or  
9 unlawfully imposed. Such action must be brought within 90  
10 days of the imposition of the tax. Defendant Coffey imposed  
11 the tax complained of upon plaintiff Green Tree on or about  
12 August 23, 1990.

13 7. Based upon the foregoing two allegation paragraphs,  
14 this court has jurisdiction to hear this complaint under  
15 15-1-406 and 27-8-201, MCA.

16 8. At some point in the year 1979 plaintiff Green Tree  
17 contracted to finance the purchase of a mobile home,  
18 specifically a 56 foot long Regal brand mobile home, model  
19 year 1979, serial number 3347UX, by Carl and Virginia Sandman,  
20 husband and wife, who transported this mobile home to the  
21 vicinity of Winnett, Montana, in Petroleum County. The  
22 Sandmans then proceeded to reside in this mobile home.

23 9. Plaintiff Green Tree retained a security interest in  
24 the mobile home, since the Sandmans had agreed to purchase it  
25 in installments over a number of years. Plaintiff Green Tree



1 perfected its security interest in the manner prescribed by T.  
2 30, c. 9, MCA, and also filed a copy of its security interest  
3 with the Montana Department of Justice as required under  
4 61-3-103, MCA. This filing was effected at the office of the  
5 Registrar of Motor Vehicles in Deer Lodge, Montana shortly  
6 after November 19, 1979.

7 10. Upon information and belief, plaintiffs allege that  
8 the Sandmans did not affix their mobile home to the underlying  
9 land so as to render it an improvement to real property, and  
10 that the mobile home remained, under the taxation statutes of  
11 Montana, personal property.

12 11. Defendant Coffey proceeded to send notices each year  
13 to the Sandmans that property taxes were due upon the mobile  
14 home.

15 12. Beginning with the personal property tax due for  
16 calendar year 1982, the Sandmans neglected to pay the personal  
17 property tax on their mobile home due to Petroleum County.  
18 The defendant, acting as the County Treasurer, periodically  
19 mailed notices that such taxes were delinquent to the  
20 Sandmans, but the defendant never mailed any notice of such  
21 delinquency to plaintiff Green Tree.

22 13. The Sandmans did not possess real property in  
23 Petroleum County of a value and nature sufficient to secure  
24 the payment of the delinquent personal property taxes due upon  
25 their mobile home.

1 14. Defendant Coffey, as treasurer, noted, or should have  
2 noted, in the Petroleum County assessment book, each year the  
3 taxes on the Sandmans' mobile home were not paid, the fact of  
4 and reason for his failure to collect such taxes. This duty  
5 is set forth in 15-16-115, MCA:

6 (1) On or before December 1 of each year,  
7 the treasurer shall note on the assessment  
8 book, opposite the name of each person from  
9 whom taxes have been collected by him in  
10 pursuance of the report of the assessor,  
the amount of taxes received and the date  
of receipt.

11 (2) If the taxes have not been collected,  
12 the treasurer shall note in the assessment  
13 book the reason why collection was not  
made.

14 15. Defendant Coffey, acting as the agent of the  
15 Department of Revenue (DOR) in Petroleum County, knew, or  
16 should have known by looking in the assessment book, that the  
17 personal property taxes were delinquent on the Sandman mobile  
18 home after 1983. The agent of the DOR should have determined  
19 whether the Sandmans possessed real property in Petroleum  
20 County sufficient to secure the payment of the delinquent  
21 taxes; upon discovering that the Sandmans did not possess  
22 sufficient real property, the agent of the DOR notified, or  
23 should have notified, the treasurer pursuant to 15-16-111 (1),  
24 MCA:

25 It is the duty of the department of revenue

1 or its agent, upon discovery of any person-  
2 al property in the county the taxes upon  
3 which are not a lien upon real property  
4 sufficient to secure the payment of such  
5 taxes, to immediately and in any event not  
6 more than 5 days thereafter make a report  
7 to the treasurer, setting forth the nature,  
8 kind, description, and character of such  
9 property in such a definite manner that the  
10 treasurer can identify the same, the amount  
11 and assessed valuation of such property,  
12 where the same is located, the amount of  
13 taxes due thereon, and the name and address  
14 of the owner, claimant, or other person in  
15 possession of the same.

9 Defendant Coffey as treasurer must be charged with receiving  
10 such notice from himself in his capacity as agent of the DOR  
11 in Petroleum County.

12 16. Upon receiving notice of delinquent taxes on the  
13 Sandman mobile home, defendant Coffey's duties as county  
14 treasurer were as prescribed by 15-16-113 (1), MCA:

15  
16 The county treasurer shall collect taxes on  
17 all personal property and, in the case  
18 provided in 15-16-111, shall immediately  
19 upon receipt of the notice prescribed by  
20 15-16-111 notify the person or persons  
21 against whom the tax is assessed and any  
22 person who has a properly perfected  
23 security interest of record with the  
24 department of justice that the amount of  
25 the tax is due and payable at the county  
treasurer's office. [emphasis added]

22 17. At no time between the first delinquency in 1983 and  
23 the summer of 1990 did defendant Coffey, as treasurer, notify  
24 plaintiff Green Tree, as holder of a properly perfected  
25 security interest in the Sandmans' mobile home, on file with

1 the Department of Justice, that personal property tax was  
2 delinquent, due and payable at defendant Coffey's office.  
3 Defendant Coffey therefore breached a statutory duty of  
4 notification he owed to plaintiff Green Tree.

5 18. After giving notice as prescribed by section  
6 15-16-113 (1), MCA, the same code section imposes a duty upon  
7 the county treasurer to seize and sell, not less than 30 days  
8 after being notified of delinquent personal property tax by  
9 the DOR agent, the personal property against with the tax is  
10 assessed. 15-16-113 (2), MCA.

11 19. Defendant Coffey did not seize and sell the Sandmans'  
12 mobile home in 1983 or at any time thereafter. This omission  
13 was due to the wilful failure and neglect of the defendant to  
14 carry out his duty. The defendant and his sureties should  
15 have compensated the taxing jurisdictions of Petroleum County  
16 under the provisions of 15-16-113 (4), MCA:

17 The county treasurer and his sureties are  
18 liable on his official bond for all taxes  
19 on personal property remaining uncollected  
20 by reason of the wilful failure and neglect  
of the treasurer to levy upon and sell such  
personal property for the taxes levied  
thereon.

21 20. During the month of August 1990, plaintiff Green Tree  
22 determined that the Sandmans were in default of their obliga-  
23 tions under their contract for the purchase of the mobile  
24 home, and proceeded to repossess it. In order to effectively  
25 repossess the mobile home, it was necessary for Green Tree to

1 transport it over the public roads and to obtain a tax-paid  
2 certificate or moving declaration from the treasurer of  
3 Petroleum County pursuant to 15-24-206 (3), MCA. The  
4 defendant refused to issue such a certificate to plaintiff  
5 Green Tree until Green Tree paid all the delinquent taxes on  
6 the mobile home owed by the Sandmans since 1982. Plaintiff  
7 Green Tree paid defendant Coffey the sum of \$2,631.18 by check  
8 issued on August 22, 1990, and defendant Coffey then issued a  
9 moving declaration with tax-paid certification to Green Tree.

10 21. Plaintiff MMH&RVA's members represent that defendant  
11 Coffey's failure to give the notices or take the actions  
12 prescribed by 15-16-113, MCA, are not a rare or unusual  
13 occurrence. Many county treasurers take no action to collect  
14 personal property taxes on mobile homes until a mobile home is  
15 either repossessed or sold and the treasurer is asked to issue  
16 the tax-paid certificate with the moving declaration.

17 22. A declaratory judgment is proper under the Uniform  
18 Declaratory Judgments Acts, T. 27, c. 8, MCA, because the  
19 rights and status of Green Tree and of all vendors who sell  
20 mobile homes in Montana on conditional sales contracts with  
21 security interests retained, are rendered uncertain and  
22 insecure by the failure of county treasurers such as the  
23 defendant to give notice of delinquency to secured lienholders  
24 or to seize and sell mobile homes when such actions are  
25 required under 15-16-113, MCA.

THEORY ONE

VIOLATION OF STATUTORY DUTIES

23. Defendant Coffey's failure to give any notice to plaintiff Green Tree that the taxes were many years delinquent on the Sandman's mobile home, together with Coffey's failure to seize and sell the mobile home, requires Coffey and his sureties to compensate Petroleum County's taxing jurisdictions under 15-16-113 (4), MCA. This obligation takes precedence over the obligation of one who applies for a moving declaration to transport a mobile home over public roads.

24. The failure of a county treasurer to give notice to a lienholder when required under 15-16-113 voids the obligation of that lienholder to pay the delinquent taxes as a condition of obtaining a moving declaration certificate under 15-24-206 (3), MCA.

THEORY TWO

MOVING DECLARATION STATUTE UNCONSTITUTIONAL (AS APPLIED)

25. The property of Green Tree which was represented by its security interest in the Sandman mobile home was taken, to the extent necessary to satisfy the delinquent taxes (\$2,631.18) without the due process of law set forth in 15-16-113 (1), MCA, and was taken for the public purposes in the mill levies of Petroleum County's taxing jurisdictions, without just compensation being paid to Green Tree.

26. The provision of 15-24-206, MCA, which requires any

1 party wishing to move a mobile home to pay all delinquent  
2 property tax applied to secured parties who were entitled to  
3 notice of delinquency under 15-16-113, MCA, and who were not  
4 given such notice. The constitutional provisions implicated  
5 are those which forbid (1) the taking of property without due  
6 process of law, and (2) the taking of property for a public  
7 purpose without just compensation being paid therefore.

8 27. The exaction of delinquent personal property taxes  
9 from an applicant for a moving declaration who has the status  
10 plaintiff Green Tree had in this case is the collection of a  
11 tax without lawful authority, since the provisions of  
12 15-24-206 (3), MCA, are invalid in this application based upon  
13 their unconstitutionality.

14 WHEREFORE, the plaintiffs pray this Honorable Court to:

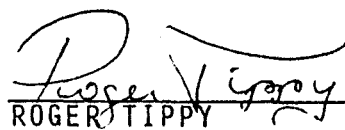
15 1. Declare that a county treasurer who has failed to  
16 carry out his duties under 15-16-113, MCA, after he receives  
17 notice from the Department of Revenue under 15-16-111 that  
18 personal property taxes are delinquent on a mobile home may  
19 not refuse to issue a moving declaration for such mobile home  
20 under 15-<sup>24</sup>16-206 (3), MCA, but must satisfy the delinquent  
21 property taxes from his bond;

22 2. Declare that the requirement of 15-<sup>24</sup>16-206 (3), MCA,  
23 that no person may obtain a moving declaration to transport a  
24 mobile home over the public roads until all property taxes  
25 have been paid on such mobile home is unconstitutional under

1 Art. II, Sec. 17 and Art. III, Sec. 29, of the Montana  
2 Constitution as applied to the holder of a properly perfected  
3 security interest in the mobile home who would have received  
4 notice of the delinquency of personal property taxes on the  
5 mobile home if the county treasurer had carried out his duties  
6 under 15-16-113, MCA, with respect to the mobile home;

7 3. Declare that Green Tree Acceptance, Inc. is entitled  
8 to recover the amount of personal property taxes paid in order  
9 to move a 1979 Regal mobile home, serial number 3347UX, from  
10 its location near Winnett, Montana or or about August 23,  
11 1990, from the sureties of the Petroleum County Treasurer.

12 DATED this 12 day of September, 1990.

13  
14   
15 ROGER TIPPY  
16 Attorney for Plaintiffs  
17  
18  
19  
20  
21  
22  
23  
24  
25



TESTIMONY OF THE MONTANA TELEPHONE ASSOCIATIONSENATE BILL 462

Good Morning Mr. Chairman, members of the Committee. My name is Joan Mandeville. I am employed by the Montana Telephone Association. A large part of my job is billing U S WEST, AT&T, and other long distance companies for a portion of long distance telephone calls on behalf of the small independent telephone companies in Montana. This is accomplished through a rather complicated system known as carrier access charges, the subject addressed by SB 462.

Ten years ago, the good old days to most people who don't want to spend their lives trying to figure out how their telephone works, all of your long distance services were provided by the Bell system. Local service was handled by either the Bell system or an independent telephone company. I've put together an example of a telephone call between Ms. Smith, in Helena, and Mr. Jones who lives in Worden and gets his local phone service from a small independent telephone company called Project Telephone.

The telephone system generally has two types of switches. The first type is your local switch. It can receive any local call and route it to the correct party. The vast majority of all calls are handled by local switches. Long distance calls are more complex because the system must figure out how to route calls to other cities or states and must handle operator calls and 800 calls. Long distance calls are given to more sophisticated long distance switches. In Montana U S WEST has one of these switches in Helena and one in Billings.

In our example, Ms. Smith picked up her phone and dialed 1+967-1234. Her local switch here in Helena saw the 1+ and

sent it on to the Helena long distance switch. That switch sent the call to Billings. The Billings long distance switch received it and sent it on to the local switch in Worden where it was sent to Mr. Jones. Mountain Bell billed Ms. Smith and shared a portion of the revenue with Project Telephone Company. One bill was issued and the Department of Revenue assessed the telephone license tax only once on the call.

#### OLD DAYS

Mountain Bell bills Ms. Smith	\$5.00
Mountain Bell gives Project	\$1.00
Mountain Bell pays tax on	\$4.00
Project pays tax on	\$1.00
	-----
Tax paid on	\$5.00
	=====

In 1984 the Bell system was broken up. A new system was designed to allow for multiple long distance companies. The industry was required to revise its methods of sharing long distance revenues.

Today, Ms. Smith still dials the same number she always did to reach Mr. Jones. Now however, the call is handled a little differently. The call is still routed through the local switch and through the long distance switch. Today, instead of placing the call onto the Bell system facilities, the long distance switch hands off long distance calls to various long distance companies. AT&T, MCI, Sprint, and Touch America are only a few of companies available.

In my example Ms. Smith has selected AT&T to carry her call. AT&T sends the call to Billings and hands it off to U S WEST's Billings long distance switch. The long distance switch reads the 967 prefix and routes the call to Worden where the local switch sends it along to Mr. Jones.

The path of the call is really not that much different today than it was 10 years ago. However, in our new competitive world, we no longer issue one bill and share revenues. Instead, U S WEST bills AT&T for the first portion of the call and for the using the Billings long distance switch. The Department of Revenue assesses the telephone license tax on this revenue. Project Telephone sends a bill to AT&T for completing the call and the Department of Revenue assesses the telephone license on Project's revenue. The amounts paid by AT&T to U S WEST and Project Telephone are called carrier access charges.

AT&T sends Ms. Smith a bill for the entire call. That bill recovers the costs, including tax, of all U S WEST and Project Telephone charges, as well as AT&T's own costs. The Department of Revenue collects the telephone license tax on the total amount paid by Ms. Smith to AT&T. As you can see, now, as opposed to 10 ten years ago, portions of this call are taxed twice.

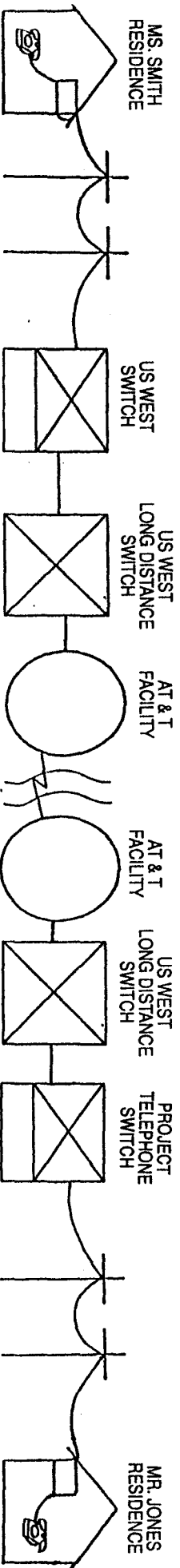
TODAY

AT&T bill Ms. Smith	\$5.00
U S WEST bills AT&T	\$2.00
Project bills AT&T	\$1.00
	-----
Tax paid on	\$8.00
	=====

Senate Bill 462 will remedy this double taxation problem.

HELENA

WORDEN



US WEST BILLS CARRIER - TAX 1

CARRIER OWNS  
NO BILL ISSUED

US WEST  
BILLS  
CARRIER  
TAX 1

PROJECT BILLS CARRIERS - TAX 1

AT & T BILLS MS. SMITH - TAX 2

Duncan A. Ryan  
AT&T Tax Manager  
State and Local Taxes

Testimony Before  
The Senate Committee on Taxation  
On Senate Bill 462 Concerning  
The Montana Telephone Company License Tax  
March 22, 1991

Good morning Mr. Chairman, and members of the committee. My name is Duncan Ryan and I am a Tax Manager with responsibility for state and local tax planning in Montana for AT&T.

Thank you for the opportunity to provide AT&T's comments on Senate Bill 462. We also appreciate the opportunity to have worked with US West and other members of the industry in developing this legislation and appreciate Senator Mazurek's support as sponsor.

AT&T supports this legislation and the much needed modernization of the Montana Telephone Company License Tax. An important principle of fair taxation has been taxpayer protection from multiple taxation in the provisioning of goods and services.

Currently, however, the Telephone Company License Tax violates that principle by allowing double taxation of carrier access services. Unlike tax laws in nearly every other state, the

Montana Telephone Company License Tax, has never been revised to address the double taxation effect.

This double taxation had not resulted during most of the history of the Telephone Company License Tax, but was an unintended outgrowth of divestiture. As of 1984 the carrier access mechanism was substituted for a sharing of revenues process that did not result in double taxation.

Senate Bill 462 eliminates this double taxation by exempting local exchange company carrier access services from taxation.

Carrier access services are charges billed, to an interexchange carrier such as AT&T, for obtaining a connection to a switching machine, owned by a local exchange carrier such as US West, for the purpose of completing intrastate interlata toll calls.

An end-user or customer decides to make an interlata telephone call by dialing the area code and telephone number. Access charges are not imposed until the interlata nature of the call is established.

When an end-user establishes an interlata communication, the communications pathway, which is established almost instantaneously, is continuous from one end to another, across the LATAs. Access services are an integral part of this continuous pathway.

8

Under current Montana law the receipts from intrastate carrier access services, provided by local exchange companies to interexchange companies, are included in the local exchange companies gross receipts subject to the Telephone Company License Tax.

The local exchange company then builds in the effect of this tax in it's intrastate access pricing to AT&T. When AT&T provides services to it's customers, access charges, which are an integral and component part of it's price for services, become taxable receipts again. Therefore double taxation of the same receipts occurs.

AT&T's position is that Senate Bill 462, with the exemption of carrier access services, will eliminate double taxation of intrastate services. AT&T expects that the exemption benefit will be passed on to AT&T, and other interexchange carriers, in the form of reduced intrastate carrier access service charges from Montana local exchange companies. Once this occurs AT&T will pass on this benefit to our Montana intrastate telecommunications service customers.

Additionally, AT&T supports the exemptions contained in SB 462 for the sale, lease, repair, installation, or maintenance of equipment and from the provision of nontransmission-related services or activities. These exemptions explicitly state the original intent

of the Telephone Company License Tax, that telephone business includes telecommunications services only, which has been validated by the Department of Revenue's enactment of the Rule interpreting this statute effective 2/1/91.

This concludes my supporting remarks and in summary AT&T supports Senate Bill 462 and requests that this committee support enactment of this legislation.

Thank you very much for your attention. If you have any questions, I'd be happy to address them.



PIONEER TELEPHONE SERVICE  
1901 NORTH MONTANA  
P O BOX 5893  
HELENA MT 59604

PH 406-442-1899

EXHIBIT NO. 9  
DATE 3/7/91  
BILL NO. 53962

TO: THE SENATE TAX COMMITTEE!  
FROM: LEDNA M WILLIAMS, PIONEER TELEPHONE SERVICE  
1901 N MONTANA, HELENA

REF: SB#462 AN ACT CLARIFYING THE TELEPHONE LICENSE TAX.

I ACCEPT THE BILL AS IT NOW STANDS. OURS IS A SMALL FAMILY OWNED INTERCONNECT THAT COULD NOT WITHSTAND BEING TAXED. WE OFFER THE COMMUNITY IN OUR AREA A SERVICE BY SELLING TELEPHONES AND INSTALLING THEM AND DO NOT HAVE ANYTHING TO DO WITH THE TRANSMISSION OF MESSAGES. IT IS OUR OPINION THAT THE ORIGINAL INTENT OF THIS LAW WAS TO TAX LONG DISTANCE SERVICES.



LEONA WILLIAMS.  
PIONEER TELEPHONE SERVICE

SENATE TAXATION

EXHIBIT NO. 10

MONTANA COMMUNICATIONS SERVICES ASSOCIATION  
P O BOX 5893  
HELENA MT 59601

DATE 5/31/81  
BILL NO. SB462

TO:

REF: SB#462

"AN ACT CLARIFYING THE  
TELEPHONE CO LIC TAX..."

SENATE TAXATION COMMITTEE:  
MIKE HALLIGAN, CHAIRMAN

DO

ROTHY ECK, VICE CHAIRMAN

BOB BROWN

STEVE DOHERTY

DALE GAGE

JOHN HARP

FRANCIS KOEHNKE

GENE THAYER

TOM TOWE

FRED VAN VAULKENBERG

BILL YELLOWTAIL

AS SPOKESWOMAN FOR MONTANA COMMUNICATIONS SERVICES ASSOCIATION  
WE ACCEPT THE **BILL** AS WRITTEN WITH NO OTHER CHANGES.

WE HAVE MET NUMEROUS TIMES WITH THE DEPARTMENT OF REVENUE AND  
BELIEVE WE CAME TO A MUTUAL UNDERSTANDING ABOUT THE DEFINITION  
OF "TELEPHONE BUSINESS" IN THE MANNER IT WAS DEFINED UNDER THE  
LAW WHEN THIS TAX WAS IMPLEMENTED AND IT WAS AGREED BY ALL THAT  
THIS WAS MEANT TO BE AS STATED IN THE BILL UNDER pg 2 (b).  
THE TAX AT THAT TIME COULD HAVE ONLY BEEN DIRECTED AT A LONG  
DISTANCE CARRIER SINCE IT WAS THE ONLY TELEPHONE CO AT THAT  
TIME.

THE ASSOCIATION IS MADE OF INDIVIDUALS, MANY RETIRED FROM  
MOUNTAIN BELL, INSTALLING TELEPHONES, SOME SELLING AND RUNNING  
SMALL BUSINESS IN THE STATE OF MONTANA AND ARE NOT INVOLVED IN  
TRANSMISSION OF MESSAGE. THEY COULD NOT ENDURE A TAX OF THIS  
SORT AND MANY WOULD FOLD. WE BELIEVE IN OUR STATE AND THE  
"BUILD MONTANA" IDEA AND ASK FOR THE SUPPORT OF THE COMMITTEE TO  
HELP KEEP SMALL BUSINESSES ALIVE. WE HOPE THAT YOU AGREE  
THAT TAX WAS DIRECTED TO ACCESS CARRIERS AS STATED IN THE BILL  
AND NOT SUCH BUSINESS AS OUR ASSOCIATION CONSISTS OF.

*Leona Williams*

LEONA WILLIAMS

SECRETARY-TREAS for

MONTANA COMMUNICATIONS SERVICES ASSOCIATION

SENATE TAXATION

EXHIBIT NO. 10

DATE 5/23/91

FILE NO. 55462

MONTANA COMMUNICATIONS SERVICES ASSOCIATION

MEMBERSHIP

A T & LEE  
2003 BRIDGER DR  
BOZEMAN MT 59715

BUSINESS SERVICES  
DON BOYER  
HARDIN, MONTANA

COMPUTEL INC  
SCOTT SMITH  
635 1/2 1ST AVE  
GLASTOW MT 59230

CURTISS COMMUNICATIONS  
645 PARKHILL DR  
KP O BOX 20202  
BILLINGS, MT 59104  
(MARK CURTISS)

CLARKS TEL SERV & rpr  
3820 SPRUGEN RD  
MISSOULA MT 59801  
(FLOYD CLARK)

ELECTRONIC SPECIALTY  
DONAL EGGEN  
330 N WASHINGTON ST  
HELENA MT 59601

EXECUTEC  
2402 KEMP  
MISSOULA MT 59601  
(LARRY ASHWELL)

EXCELL TELCO  
JOHN GREALISH  
813 36 ST N.  
GREAT FALLS MT 59401

FALLS PHONE CENTER  
1311 11TH AVE SO  
GT FALLS MT  
(MARTY MARTINEZ)

FALCON COMMUNICATIONS  
BOX 9287  
MISSOULA MT 59807  
(CHARLES W OLINGER)

FRONTIER COMMUNICATIONS  
1551 TUBE RD  
BELGRADE MT 59714

PIONEER TELEPHONE SERVICE  
1901 NO MONTANA  
HELENA MT 59601  
(HOWARD & LEONA WILLIAMS)

ROCKY'S TLECOM SERVICE  
402 S 135H ST  
LIVINGSTON MT 59047  
(ELLIS ROCKAFELLOW)

PIONEER TELEPHONE SERVICE  
1901 NORTH MONTANA  
P O BOX 5893  
HELENA MT 59604

PH 406-442-1899

SENATE TAXATION  
EXHIBIT NO. 11  
DATE 3/23/91  
BILL NO. SB 462

SENATE TAXATION COMMITTEE:

REFERENCE: SB #462  
"AN ACT CLARIFYING THE  
TELEPHONE COMPANY LICENSE  
TAX....."

I ACCEPT THE BILL IN THE CONTENT IT IS WRITTEN WITH NO OTHER ALTERATIONS. PIONEER TELEPHONE SERVICE IS A SMALL BUSINESS THAT WAS STARTED BY MY WIFE AND I WHEN I RETIRED. IT IS A RESULT OF THE DIVESTURE AND THE FACT THAT I FELT I HAD SOME EXPERTISE TO OFFER. OUR SERVICE IS SELLING EQUIPMENT, INSTALLATION AND PRE-WIRING AND COULD NOT HAVE FALLEN UNDER TAX'S ORIGINAL INTENT.

WE BELIEVE THIS TAX WAS MEANT AND SHOULD REMAIN AS A ACCESS TAX AS WE CONCLUDED UPON MANY MEETINGS WE HAD WITH THE DEPARTMENT OF REVENUE.

*Howard Williams*

HOWARD WILLIAMS  
PIONEER TELEPHONE SERVICE  
HELENA, MT

Rocky's Telecomm Service  
420 So. 13th St.  
Livingston, Mt. 59047

Senate Taxation Committee:

Mike Halligan Chairman  
Dorothy Eck Vice Chairman  
Bob Brown  
Steve Doherty  
Dale Gage  
John Harp  
Francis Koehnke  
Gene Thayer  
Tom Towe  
Fred VanVaulkenberg  
Bill Yellowtail

To All Members of the Committee:

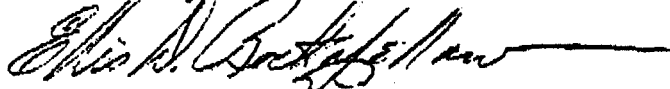
This letter is to request your support for Senate Bill 462 regarding the Telephone License Tax.

As proposed this bill would do much to clarify the tax status of most of the independent interconnects such as myself who exist mostly as a result of the break-up and divestiture of AT&T.

These independents have done and are doing much for the citizens of Montana to fill the vacancy left by divestiture, and doing it at a competitive price. Many of the technicians are retired Telephone employees, ex-employees who are not yet able to retire due to age and/or benefits and people who have chosen this craft as their vocation at a time and standard much different from the communications environment of today. If their future could include a possible additional tax on their income, some would possibly leave the craft completely which ultimately would mean both a loss to the state and the citizens of the state.

Thanking you for any consideration you may give in support of this measure.

Yours Truly



Ellis D. Rockafellow  
Acting President MCSA

Copy to:

Orval Ellison, Rep. Dist. 81  
Bob Raney, Rep. Dist. 82  
Lorents Grosfield, Sen. Dist. 41



▼ CURT  
COMM  
FAX ▲

TO: SENATOR TOM TOWE  
COMPANY: TAXATION COMMITTEE  
FAX NUMBER: 444-4105  
FROM: CURTIS COMMUNICATIONS  
FROM FAX NUMBER: 245-9256  
DATE: 3-21-91

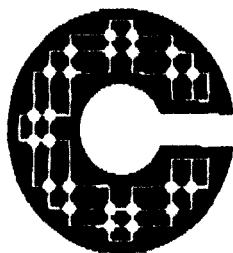
NUMBER OF PAGES TO FOLLOW: 1

REMARKS:

PLEASE DELIVER  
TO TOM

Mark Butler

11



Senate Taxation Committee  
Senator Tom Towe and Committee

20 March, 1991

Re: Senate bill 462  
An act clarifying the telephone company license tax.

Ladies and Gentlemen:

In reviewing Senate bill 462 "clarifying the telephone company license tax".

We are in favor of the Senate Bill 462 as written with NO amendments.

It is our understanding the tax is not applied to revenues of the sale, lease, repair, installation and maintenance of equipment.

Sincerely,

Steve Curtiss

Mark Curtiss

SENATE STANDING COMMITTEE REPORT

Page 1 of 7  
March 22, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 151 (second reading copy -- yellow), respectfully report that Senate Bill No. 151 do pass as amended.

1. Title, line 12.

Following: "QUARTER;"

Insert: "TO PROVIDE FOR THE ADMINISTRATION AND COLLECTION OF THE TAX;"

2. Title, line 18.

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

3. Page 2, line 1.

Strike: ":"

4. Page 2, lines 2 through 4.

Strike: "(1)" on line 2 through "(2)" on line 4

5. Page 2, lines 6 through page 3, line 5.

Strike: page 2, line 6 through page 3, line 5 in their entirety

6. Page 7, line 4.

Following: "UNDER"

Insert: ":"  
(a)"

7. Page 7, line 5.

Following: "33"

Insert: "; or  
(b) an employee welfare benefit plan approved under the federal Employee Retirement Income Security Act (29 U.S.C. 1001, et seq.)"

8. Page 7, lines 17 through 23.

Strike: "The" on line 17 through "threshold" on line 23

Insert: "The tax is \$1 per calendar week or fraction of a calendar week of employment of each employee described in subsection (1)."

9. Page 8, line 6.

Following: "taxes"

Insert: "-- annual payment"

Strike: "Employer"

Insert: "Except as provided in subsection (3), employer"



10. Page 8, line 7.  
Following: "payable"  
Insert: "on or before the last day of the month"

11. Page 8, line 8.  
Strike: "September 30, 1991"  
Insert: "March 31, 1992"

12. Page 8.  
Following: line 11  
Insert: "(3) Whenever the department determines that the estimated annual tax payable by an employer will be less than \$40, the department may authorize the employer to file an annual return in lieu of the quarterly return required by subsection (1). Annual statements must be filed and payments must be made on or before February 28 for the preceding calendar year."  
Renumber: subsequent subsection

13. Page 8, lines 18 through 21.  
Strike: ":" on line 18 through "providing" on line 21  
Insert: "that provide the"

14. Page 8, line 21  
Strike: "calculation,"

15. Page 8, line 22.  
Following: "payment"  
Strike: ", "

16. Page 9, line 1.  
Strike: "All"  
Insert: "Except as provided in subsection (3), all"

17. Page 9.  
Following: line 3  
Insert: "(3)(a) Beginning April 1, 1992, and ending March 31, 1993, the department of revenue may retain up to 15% of the amount of taxes collected under [section 4] for the administration of the collection and enforcement of the tax.  
(b) Beginning April 1, 1993, and thereafter, the department may retain up to 5% of the amount of taxes collected under [section 4] for the administration of the collection and enforcement of the tax."  
Renumber: subsequent subsection

18. Page 9, lines 8 through 10.  
Strike: "if" on line 8 through "threshold" on line 10

19. Page 9.

Following: line 10

Insert: "NEW SECTION. Section 7. Retention of records. Each employer subject to the tax under [section 3] shall retain for 5 years after the date a return is filed all relevant records necessary for the calculation of the tax and any other information relating to the return as required by the department.

NEW SECTION. Section 8. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the taxable period for which a return is filed unless the notice of the additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the employer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the taxable period for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the employer files a claim or the department of revenue determines the existence of the overpayment and approves the refund or credit. If the employer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a return is required to be filed and the employer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the employer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

NEW SECTION. Section 9. Estimated tax on failure to file. (1) If an employer fails to file a return as required, the department of revenue is authorized to make an estimate of the tax due from the employer from any information in its possession.

(2) For the purpose of determining the correctness of a return or for the purpose of making an estimate of the tax due from the employer, the department also has the power to

examine or to cause to have examined by any agent or representative designated by it for that purpose any books, papers, records, or memoranda bearing upon the matters required to be included in the return and may require the attendance of any officer or employee of the employer rendering the return or the attendance of any other person having knowledge in the premises and may take testimony and require proof material for its information.

NEW SECTION. Section 10. Deficiency assessment -- hearing -- interest. (1) If the department of revenue determines that the amount of tax due is greater than the amount reported, it shall mail to the employer a notice of the additional tax proposed to be assessed. Within 30 days after mailing of the notice, the employer may file with the department a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in his protest an oral hearing or an opportunity to present additional evidence relating to his tax liability. If a protest is not filed, the amount of the additional tax proposed to be assessed becomes final upon expiration of the 30-day period.

(2) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the employer. The tax is due and payable at the expiration of 10 days after the notice and demand were mailed. Interest on any deficiency assessment bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date specified in [section 4] for the payment of the tax.

(3) The amount required to be paid under [section 3] accrues interest at the rate of 1% a month or part of a month from delinquency until paid."

NEW SECTION. Section 11. Credit for overpayment -- interest on overpayment. (1) If the department of revenue determines that the amount of tax, penalty, or interest paid for any taxable period is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the employer and the balance refunded to the employer, to the employer's successor through reorganization, merger, or consolidation, or to the employer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on deficiency assessments from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the employer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by [sections 2 through 14] is considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 12. Application for refund -- appeal from denial. If the department of revenue disallows any claim for refund, it shall notify the employer accordingly. At the expiration of 30 days from the mailing of the notice, the department's action becomes final unless within the 30-day period the employer appeals in writing from the action of the department to the state tax appeal board. If an appeal is made, the board shall grant the employer an oral hearing. After consideration of the appeal and evidence presented, the board shall mail notice to the employer of its determination. The board's determination is final when it mails notice of its action to the employer.

NEW SECTION. Section 13. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any employer relating to the liability of the employer with respect to the tax imposed by [sections 2 through 14] for any taxable period.

(2) An agreement is final and conclusive, and except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in a suit, action, or proceeding under the agreement or a determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

**NEW SECTION.** Section 14. Confidentiality of tax records. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department of revenue or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the information disclosed in any report or return required under [sections 2 through 14] or any other information secured in the administration of this [sections 2 through 14].

(2) The officers charged with the custody of reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding to which the department is a party under the provisions of [sections 2 through 14] or any other taxing act or on behalf of any party to an action or proceeding under the provisions of [sections 2 through 14] or any other act when the reports or facts shown by the reports are directly involved in the action or proceeding, in either of which events the court may require the production of and may admit in evidence as much of the reports or of the facts shown by the reports as are pertinent to the action or proceeding.

(3) Nothing in this section may be construed to prohibit:

(a) the delivery to an employer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics classified so as to prevent the identification of particular reports or returns and the information contained in the reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of an employer who brings action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted.

(4) Reports and returns must be preserved for at least 5 years or until the department orders them to be destroyed."

Renumber: subsequent sections

20. Page 9, line 17.  
Strike: "6"  
Insert: "14"

21. Page 9, line 19.  
Strike: "6"  
Insert: "14"

22. Page 9.

Following: line 19

Insert: "NEW SECTION. Section 17. Coordination instruction. If Senate Bill No. 445 is passed and approved and it if contains a section providing for a uniform tax appeal procedure, [sections 9 and 10 of this act] are void and the provisions of Senate Bill No. 445 govern the appeal procedures."

Renumber: subsequent section

23. Page 9, line 20.

Following: "date"

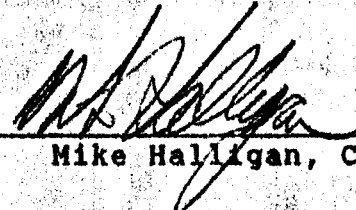
Insert: "-- applicability"

24. Page 9, line 21.

Following: "1991"

Insert: ", and applies to taxable quarters beginning after December 31, 1991"

Signed, \_\_\_\_\_

  
Mike Halligan, Chairman

3-22-91  
And. Coord.

SB 3-22-91 12:40  
Sec. of Senate