

## MINUTES

### MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON TAXATION

**Call to Order:** By Senator Mike Halligan, Chairman,, on March 28, 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)  
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

#### HEARING ON SENATE BILL 464

#### Presentation and Opening Statement by Sponsor:

Senator Gage, District 5, said the bill was introduced at the request of the Senate Taxation Committee. The bill provides for a cooperative agreement between the state and tribal governments for allocation of taxes from oil and natural gas to avoid the problem of double taxation. It would allow the tribes to enter into a tax agreement if their tax is the same as the state's and would apply only to new wells drilled after the effective date of the agreement that might be entered into.

**Proponents' Testimony:**

Janelle Fallon, Montana Petroleum Association, said she worked with the Fort Peck Tribes to try to work around some of the impediments to increased exploration activity on the reservation. Legislation such as this is an important aide to that effort.

Lawrence D. Wetsit, Chairman, Assiniboine and Sioux Tribes of the Fort Peck Reservation, presented his testimony in support of the bill (Exhibit #1.) He also presented a copy of the Supreme Court decision Cotton Petroleum Corporation, et al., v. New Mexico et al. (Exhibit #1a).

Doug Abelin, Northern Montana Oil and Gas Association, and the Blackfoot Tribe, said the bill will help with potential development on the Blackfoot reservation.

**Opponents' Testimony:**

There were no opponents.

**Questions From Committee Members:**

Senator Yellowtail asked how this would apply to county taxes and existing wells.

Senator Gage said he envisions the bill applying only to future wells. It would be very difficult for counties to negotiate on existing wells because of the effect on their tax base.

Senator Yellowtail asked Mike Stephen to respond to his concerns.

Mr. Stephen said it would have to be done county by county basis with the reservation.

Mr. Wetsit said the Cotton Petroleum Decision says both the state and counties can collect their taxes.

Senator Yellowtail asked if the tribes have the same claim to the counties.

Mr. Wetsit and Senator Towe agreed they did.

**Closing by Sponsor:**

Senator Gage closed.

EXECUTIVE ACTION ON SENATE BILL 461

Amendments, Discussion, and Votes:

Jeff Martin presented the DOR amendments to the committee (Exhibit #2).

Senator Van Valkenburg questioned whether amendment #8 is within the scope of the title of the bill.

Senator Towe said he questioned the vagueness of the amendment also. He said it makes no sense for the employee to pay a penalty if the employer doesn't pay the withholding.

Senator Towe moved to adopt amendments #1, and #1-#7.

The motion CARRIED.

Recommendation and Vote:

Senator Eck moved SB 461 Do Pass As Amended.

The motion CARRIED unanimously.

EXECUTIVE ACTION ON SENATE BILL 459

Motion:

Senator Van Valkenburg moved SB 459 Do Pass.

Amendments, Discussion, and Votes:

Senator Gage made a substitute motion to amend the bill with an effective date on passage and approval.

The motion CARRIED.

Recommendation and Vote:

Senator Van Valkenburg moved SB 459 Do Pass As Amended.

The motion CARRIED with Senator Gage voting no.

HEARING ON HOUSE BILL 883Presentation and Opening Statement by Sponsor:

Representative Roger DeBruycker, District 13, said the bill changes the personal property tax on a foreclosure. Currently, personal property can be attached to real property at only \$1000 of taxable value in a foreclosure. The bill raises that level to \$10,000. The law has not been changed since the 1930's. It is fair to the taxpayer. On page 3, the filing is required every year.

Proponents' Testimony:

Gordon Morris, Montana Association of Counties, expressed support for the bill on behalf of MACo and the County Treasurers Association.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

Senator Towe asked if any property in the county owned by the taxpayer is given a priority on the real estate of the same taxpayer over and above all liens.

Mr. Morris said it is his understanding that the personal property becomes a lien on the real property regardless of who owns it. If the person is in foreclosure, the lien amount is being raised from \$1000 to \$10,000 which would go back as a liability against the personal holding the mortgage or the title for the real property.

Closing by Sponsor:

Rep. DeBruycker said the bill just raises the lien amount from \$1000 to \$10,000 and requires yearly filing.

HEARING ON HOUSE BILL 877Presentation and Opening Statement by Sponsor:

Representative Ream, District 54, said the bill lifts the sunset provision on the 1 mill levy for economic development.

Proponents' Testimony:

Gordon Morris, MACo, said the sunset was the result of a political compromise and never has been completely clear. The Attorney General issued an opinion which said the imposition of new taxing authority approved by the voters is exempt from 1105. Therefore, the sunset provision never did make sense in the bill.

Kay Foster, Billings Chamber of Commerce, said the city and county school districts and representatives of labor and industry met last year and agreed to support this bill.

Forrest Boles, President, Montana Chamber of Commerce, expressed support for the bill.

Opponents' Testimony:

There were no opponents.

Questions From Committee Members:

There were no questions.

Closing by Sponsor:

Representative Ream closed.

EXECUTIVE ACTION ON HOUSE BILL 877

Recommendation and Vote:

Senator Van Valkenburg moved HB 877 Be Concurred In.

The motion CARRIED with Senator Gage voting no.

EXECUTIVE ACTION ON SENATE BILL 468

Amendments, Discussion, and Votes:

Senator Gage moved to adopt the amendment as per Exhibit #3. He said it deals with the amortization of chemical costs on tertiary production. Now that the flat tax is in effect, that provision is no longer needed.

The motion CARRIED unanimously.

Recommendation and Vote:

Senator Gage moved SB 468 Do Pass As Amended.

The motion CARRIED unanimously.

EXECUTIVE ACTION ON SENATE BILL 359

Motion:

Senator Eck moved to take SB 359 off the table.

The motion CARRIED with Senator Harp voting no.

Amendments, Discussion, and Votes:

Senator Koehnke moved to amend the 50 mile provision to 30 miles. He said his concern was with towns like Townsend and Polson that are within 50 miles of a larger city. He felt that might cause doctors to move away from the smaller towns.

Senator Van Valkenburg was concerned that the credit could really be abused by those people who live thirty miles away from the larger towns and commute back and forth.

Senator Harp felt the amendment was not necessary. He was just concerned that someone who lives on a little "ranchette" and drives into town to work should not qualify for the \$15,000 exemption.

Senator Towe pointed out the language "sets up his practice" does not dictate where the doctor lives might choose to live.

Senator Eck said there is a crisis in health care in rural areas of the state and incentives are needed to get doctors to locate in those areas. The cost will be minimal to the state and the incentives indicate to small communities there is concern and help available in the form of incentives to help them obtain and keep a physician.

Senator Gage felt the incentives should be broken into yearly increments for three years with the physician only receiving the full exemption if he were to stay in the area for the full six years.

Mr. Frazier said the medicaid rates have been changed, there are loan repayment bills introduced, and this bill would provide incentives for physicians to locate in small communities. Help is desperately needed in the search for health professionals and this bill helps meet the needs. The incentives could be limited to WICHE-WAMI students which would mean Montana students would probably be applying.

Senator Halligan asked Mr. Frazier how he felt about Senator Gage's graduated incentives.

Mr. Frazier replied he preferred the bill the way it is. This is such a crucial situation and need that disincentives are not needed. But, he said, he would agree with the committee decision.

Senator Eck asked Mr. Frazier how he felt about the 30 mile provision.

Mr. Frazier said he felt Senator Koehnke had a good point. He doesn't know if there will be abuse or not, but the need is so critical that it is worth a try.

The motion to amend to 30 miles CARRIED with Senators Halligan and Van Valkenburg voting no.

Senator Towe suggested amending the bill on page 2 following line 11, by inserting " If a physician terminates his practice, or his involvement in the practice, in the rural area within three years following the allowance of the credit, the credit shall be disallowed and repaid to the state".

Senator Harp asked if this is enforceable.

Mr. Miller, DOR, said it is difficult to do. It would require reciprocal agreements with other states.

Senator Gage moved Senator Towe's proposed amendment.

Senator Thayer made a substitute motion to leave the bill as it is and sunset it in years.

The motion CARRIED with Senators Gage and Halligan voting no.

Senator Gage restated his motion (Senator Towe's proposed payback language).

The motion CARRIED with Senators Harp, Thayer, Yellowtail, and Eck voting no.

Recommendation and Vote:

Senator Eck moved SB 359 Do Pass As Amended.

As a substitute motion, Senator Harp moved SB 359 Be Tabled.

The motion FAILED on a roll call vote.

Senator Thayer asked the sponsor to draft amendments which would more tightly define the dates to which the incentives would apply.

Senator Eck said the bill is in danger of being amended to death.

The committee was unable to reach a consensus on what action to take at this time.

ADJOURNMENT

Adjournment At: 10:00 A.M.

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

  
\_\_\_\_\_  
JILL D. ROHYANS, Secretary

MH/jdr



ROLL CALL

SENATE TAXATION COMMITTEE

DATE 3/28/91

52<sup>nd</sup> 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 3/26/91

COMMITTEE ON Sen Jay

HB 877

(Please leave prepared statement with Secretary)

# FORT PECK TRIBES

Assiniboine & Sioux

SENATE TAXATION

EXHIBIT NO. 1

DATE 3/28/91

BILL NO. SB 464

Testimony of

Lawrence D. Wetsit

Chairman

Assiniboine and Sioux Tribes

of the Fort Peck Reservation

on

S.B. 464

Senate Committee on Taxation

March 28, 1991

Mr. Chairman and members of the Committee, I am Lawrence D. Wetsit, Chairman of the Fort Peck Tribal Executive Board. I am pleased to appear here today on behalf of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation to support S.B. 464, proposed legislation authorizing the State of Montana to share oil and gas severance and resource indemnity tax revenues with Indian Tribes in the State.

The Assiniboine and Sioux Tribes very much appreciate the opportunity to testify in support of this important reform, which we believe is necessary to avoid double taxation and discrimination against oil and gas development on Indian lands. Let me explain how this problem occurs.

Since 1982, the Fort Peck Tribes have imposed a severance tax on oil companies doing business on our Reservation trust lands; severance tax payments amounted to \$357,000 in last fiscal year. Indian tribes have clear governmental authority to tax activities and transactions on Indian lands, and need to exercise this authority to raise desperately needed governmental revenues for the services and programs they provide on reservations.

The Supreme Court's 1989 decision in the Cotton Petroleum case also allows states to tax some activities of non-Indian companies on Indian trust land. This decision is disastrous for tribes, for it discourages economic activities on Indian lands. On Indian lands, two taxes must be paid -- one to the tribe, one to the state. Outside Indian lands, only one tax is owed. This double taxation is bad for states as well, for it discourages development

Up # 1

in some of the very poorest areas in the state. That is precisely the opposite of any rational economic policy, which should be to promote Indian economic development and tribal self-sufficiency.

Since Cotton, my Tribes have had to reduce our royalty rate in an attempt to attract mineral lessees to our Reservation. Even so, no major oil company has expressed interest in leasing our lands since Cotton, and some existing oil producers have reduced or ceased their activities. This of course makes the poorest areas of the State poorer, and creates grave social consequences both for tribes and the State.

My Tribes were so concerned by the Cotton Petroleum decision that we sponsored several meetings last year of all Montana tribes, state officials, and representatives of industries which do business on Montana reservations. The purpose of our meetings was to seek common ground with State leaders, industry and other Indian tribes in finding a solution. Industry representatives, Senator Gage and officials of the State Department of Revenue attended these meetings. Everyone who attended was as concerned about the effect of Cotton as are tribes.

Our Tribes greatly appreciate Senator Gage's introduction of this bill. If enacted, it would allow Montana tribes to forge a successful intergovernmental relationship with the State to avoid crippling double taxation.

We applaud the bill's leaving the precise terms of the agreement, and the revenue split, to be negotiated between tribes

and the State. This allows for a desirable flexibility. There are seven tribes in Montana, although only two now produce oil and gas. The factual circumstances of each reservation differ. We think no single formula should be imposed.

We have a couple of questions about S. 464. First, we believe that the bill as drafted does not cover the tax revenues counties receive for Indian oil and gas development. We think counties should be authorized to share oil and gas tax revenues with tribes if they wish to do so. We also would amend Section 8, which appears to limit the bill's application to new wells. We would like to include existing wells, since otherwise double taxation may force operators to shut down operations earlier on Indian lands than elsewhere.

Thank you very much for the opportunity to appear before you. I should be delighted to answer any questions you may have, and to work with the committee in enacting this important bill.

COTTON PETROLEUM CORPORATION, ET AL., APPELLANTS

v.

NEW MEXICO ET AL.

No. 87-1327

The LEXIS pagination of this document is subject to change pending release of the final published version.

SUPREME COURT OF THE UNITED STATES

490 U.S. 163; 109 S. Ct. 1698; 1989 U.S. LEXIS 2133;

104 L. Ed. 2d 209; 57 U.S.L.W. 4445

Argued November 30, 1988

April 25, 1989

PRIOR HISTORY: [\*1] ON APPEAL FROM THE COURT OF APPEALS OF NEW MEXICO SYLLABUS: Pursuant to authority granted by the Indian Mineral Leasing Act of 1938 (1938 Act), the Jicarilla Apache Tribe (Tribe) leased lands on its New Mexico reservation to appellant Cotton Petroleum Corp. (Cotton), a non-Indian company, for the production of oil and gas. Cotton's on-reservation production is subject to both a 6% tribal severance tax and appellee State's 8% severance taxes, which apply to all producers throughout the State. In 1982, Cotton paid its state taxes under protest and then brought an action in state court under, inter alia, the Commerce Clause of the Federal Constitution, contending that the state taxes were invalid on the basis of evidence tending to prove that the amount of such taxes imposed on reservation activity far exceeded the value of services the State provided in relation to such activity. The Tribe filed a brief amicus curiae arguing that a decision upholding the state taxes would substantially interfere with the Tribe's ability to raise its own tax rates and would diminish the desirability of on-reservation leases. The trial court upheld the state taxes, concluding, among other things, that the State [\*2] provides substantial services to both the Tribe and Cotton, that the theory of public finance does not require that expenditures equal revenues, that the taxes' economic and legal burden falls on Cotton and has no adverse impact on tribal interests, and that the taxes are not pre-empted by federal law. The State Court of Appeals affirmed. This Court noted probable jurisdiction and invited the parties to brief and argue the additional question whether the Commerce Clause requires a tribe to be treated as a "State" for purposes of determining whether a state tax on nontribal activities conducted on a reservation must be apportioned to account for taxes the tribe imposed on the same activity. Held: The State may validly impose severance taxes on the same on-reservation production of oil and gas by non-Indian lessees as is subject to the Tribe's own severance tax. Pp. 8-27. (a) Under this Court's modern decisions, on-reservation oil and gas production by non-Indian lessees is subject to nondiscriminatory state taxation unless Congress has expressly or impliedly acted to pre-empt the state taxes. See, e. g., Helvering v. Mountain Producers Corp., 303 U. S. 376, 386-387. Pp. 8-11. (b) The [\*3] state taxes in question

Amendments to Senate Bill No. 461  
First Reading Copy

Requested by Department of Revenue  
For the Committee on Taxation

Prepared by Jeff Martin  
March 27, 1991

1. Title, line 10.

Strike: "AN ADDITIONAL AMOUNT"

Insert: "A PENALTY"

2. Title, line 11.

Following: "QUARTER;"

Insert: "TO REQUIRE PAYMENT OF A PENALTY FOR FAILURE TO PAY THE  
PROPER AMOUNT OF EMPLOYER WITHHOLDING;"

Strike: "SECTION"

Insert: "SECTIONS 15-30-202 AND"

3. Page 5, line 16.

Strike: "an amount"

Insert: "a penalty"

4. Page 5, line 18.

Strike: "additional amount"

Insert: "a penalty"

5. Page 5, line 22.

Strike: "additional"

6. Page 5, line 23.

Strike: "amount"

Insert: "penalty"

7. Page 6, line 2.

Strike: "an additional amount"

Insert: "penalty"

8. Page 6.

Following: line 16

Insert: "Section 2. Section 15-30-202, MCA, is amended to read:

"15-30-202. Withholding of tax from wages -- penalty  
for underwithholding. (1) Every employer making payment of  
wages shall deduct and withhold upon such wages a tax  
determined in accordance with the withholding tax tables  
which shall be prepared and issued by the department.

Persons on active service as members of the regular armed  
forces of the United States, as defined in 10 U.S.C.

101(33), and members of the national guard and reserves  
participating in training as provided in 5 U.S.C. 5517(d)  
shall not be subject to the provisions of this section.

(2) If a taxpayer subject to employer withholding fails  
to pay the amount of employer withholding required by 15-30-  
241, there must be added a penalty equal to 10% a year of



the amount not withheld."  
Renumber: subsequent sections

SENATE JOURNAL  
EXHIBIT NO. 3  
DATE 3/28/91  
BILL NO. SB 468

Amendments to Senate Bill No. 468  
First Reading Copy

Requested by Senator Gage  
For the Committee on Taxation

Prepared by Jeff Martin  
March 27, 1991

1. Page 18, lines 14 through 21.  
Strike: "subsection (4) in its entirety"

ROLL CALL VOTE

SENATE COMMITTEE ON TAXATION

Date 3/28/91 SB Bill No. 359 Time       

NAME	YES	NO
SEN. HALLIGAN	X	
SEN. BROWN	X	
SEN. ECK		X
SEN. GAGE	X	
SEN. VAN VALKENBURG	X	
SEN. HARP	X	
SEN. YELLOWTAIL		X
SEN. THAYER		X
SEN. TOWE		X
SEN. KOEHNKE		X
SEN. DOHERTY		X

Bill Radtke  
Secretary

Sen. Mike Halligan  
Chairman

Motion: by Senator HARP to PASS SB. 359

Filed

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 28, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 461 (first reading copy -- white), respectfully report that Senate Bill No. 461 be amended and as so amended do pass:

1. Title, line 10.

Strike: "AN ADDITIONAL AMOUNT"

Insert: "A PENALTY"

2. Page 5, line 16.

Strike: "an amount"

Insert: "a penalty"

3. Page 5, line 18.

Strike: "additional amount"

Insert: "a penalty"

4. Page 5, line 22.

Strike: "additional"

5. Page 5, line 23.

Strike: "amount"

Insert: "penalty"

6. Page 6, line 2.

Strike: "an additional amount"

Insert: "a penalty"

Signed: 

Mike Halligan, Chairman

 3-28-91  
App. Coord.

SR 3-28 11:45  
Sec. of Senate

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 28, 1991

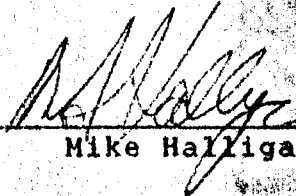
MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 459 (first reading copy -- white), respectfully report that Senate Bill No. 459 be amended and as so amended do pass:

1. Title, line 9.  
Strike: "AND"

2. Title, line 10.  
Following: "UNIT"  
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"

3. Page 2.  
Following: line 15  
Insert: "NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval."

Signed: 

Mike Halligan, Chairman

for 3-28-91  
And. Coord.

SR 3-28 11:45  
Sec. of Senate

671130SC.Sj1

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 28, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 877 (third reading copy -- blue), respectfully report that House Bill No. 877 be concurred in.

Signed: \_\_\_\_\_

*Mike Halligan*  
Mike Halligan, Chairman

LB 3/28/91  
Amd. Coord.

JD 3/28  
Sec. of Senate

11:15


SENATE STANDING COMMITTEE REPORT,

Page 1 of 1  
March 28, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 468 (first reading copy -- white), respectfully report that Senate Bill No. 468 be amended and as so amended do pass:

1. Page 18, lines 14 through 21.  
Strike: subsection (4) in its entirety

Signed: 

Mike Halligan, Chairman

*Am. Coord.*  
Am. Coord.

*3-28-91 11:45*  
Sec. of Senate

671127SC.Sjl