

## **MINUTES**

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

#### **COMMITTEE ON TAXATION**

**Call to Order:** By Chairman Mike Halligan, on April 29, 1991, at 7:35 p.m. The secretary noted the roll.

#### **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 HB-959**

**Presentation and Opening Statement by Sponsor:** Representative Dan Harrington, District 8, said HB-959 is the "Son of SB-461 or Son of Sam"! This bill is not near to his heart, but this is what happens in the final hours. In Montana today, if you ask for an extension on your income tax you are not charged interest and penalty. HB-959 will charge a late filing fee, and a penalty fee on estimated income tax payments. HB-959 sets aside money for the Department of Revenue to set up and administer this system. The original bill has been amended. It estimates revenue to be about \$11 million dollars.

Proponents' Testimony: none

Opponents' Testimony: none

Questions: asked in Executive Action.

Closing by Sponsor: Representative Harrington had no closing remarks.

#### EXECUTIVE ACTION ON HB-959

##### Discussion and Questions From Committee Members:

Senator Thayer asked where in the bill the penalty section is? Mr. Jeff Miller, Department of Revenue, said this bill will require that a person has met their current year tax liability, or have paid 100% of the previous tax liability to obtain an extension. Currently extensions are granted automatically up to six months upon request, and no payment required. So 100% of previous year had to be paid through estimating or withholdings, or 95% of the current liability will have been paid to secure an extension. If a person does not meet the requirements, 100% of previous or 95% of current, then the extension would be invalid, and they would be subject to the late file and late pay fee.

Senator Towe said he could not support late pay. This is not how the federal system is administered. Mr. Miller said the federal system requires payment to secure an extension. Senator Towe said if you miss the date then a penalty is paid. Mr. Miller said the federal penalty is a combination of penalty and interest. Montana's current penalty is 5% late file, and 10% late pay on the amount of tax due.

Senator Gage asked if this means that you do not have to have met the quarterly payment deadline as long as you've paid by the extension deadline? Mr. Miller said that is correct. There are no longer any changes to the existing estimated tax schedules. By April 15, if you have met the requirements, 95% paid of current, and 100% previous, the extension will be granted.

Senator Doherty stated that SB-461 had an estimated \$40 million dollars in revenue. HB-959 has an estimated \$11 million dollars. Where is the \$29 million dollars go? Mr. Miller said the reason there is \$11 million in HB-959 is that in recent years 26,000 people have filed extensions and paid \$14 million after the due date of April 15th. About \$1-\$2 million of that falls within the same fiscal year as the tax return due date. The rest, \$10-11 million falls July through October, and so it falls into the subsequent fiscal year. This is the revenue that will be accelerated. In SB-461 two full quarters were going to be accelerated into the fiscal year it was to be implemented. HB-959 does not do that. HB-959 accelerates '91 tax, and SB-461 accelerated '92 tax.

Senator Doherty asked if it will be possible to come back to this area and pick up this revenue? Mr. Miller said yes it would.

Senator Van Valkenburg asked Miss Judy Rippingail why the level of appropriation is so high? Miss Rippingail said \$215,00 was based on HB-416 requirements. The department trimmed down the appropriation and gave it to Representative Mercer. Somewhere it was overlooked. She said the level of the appropriation the department proposed was \$134,154 for the first year, and \$102,134 for the second year. The department would need to process payment(Grade 7, step 2, 1 FTE), pre-entry and file(Grade 6, 1 FTE), and an office audit to set up system (2 of these), operating and capital expenses.

Senator Harp said SB-461 had an original appropriation of \$383,000 for the biennium, and 6 1/2 FTEs. HB-959 is a lot less work, but still a lot of money.

Mr. Miller said it is difficult to predict the number of penalties in the first few years.

Senator Towe asked Mr. Miller about misjudgment in estimating a return? Mr. Miller said that 95% of the payment would be in by April 15th. Senator Towe gave an example of a person with farm income paying \$20,000, and the estimate is \$19,950. On the \$50 underpay, this person will pay 5% of \$20,000 (\$1000) + 10% of \$50 (\$5) for a total of \$1005 for under estimating \$50. Mr Miller said that was correct. Senator Towe suggested taking off the 5% of the total tax due. Mr. Miller said that this late filing could be addressed in rule making. If the person had met the threshold requirements, 100% of previous and 95% of current, and had filed the application for an extension, then the rule could be that there would be no late filing penalty.

Amendments, Discussion, and Votes: Senator Harp moved amendments to HB-959 (Exhibit #1). These amendments are coordination instructions for all bills referring to SB-461 to be replaced with HB-959.

Senator Brown wanted to be sure that the funding tied to SB-461 would be affordable under HB-959 and the \$11 million. Senator Van Valkenburg said that this amendment is a safety net. He has held off on a Conference Committee on SB-17 which would get funding from SB-461.

Motion: The motion to amend HB-959 with coordination instructions passed unanimously.

Motion: Senator Van Valkenburg moved to amend the appropriation to \$108,025 the first year, and \$78,705 the second year based on Miss Rippingail's testimony. This would be based on dropping on FTE Grade 10.

The motion to amend the appropriation passed unanimously.

**Motion:** Senator Towe moved to amend Page 5, subsection b, following "liability" insert "provided in 15-30-321, the 5% failure to file penalty shall not apply if the application is timely filed."

Senator Harp asked Mr. Miller is this could be done in rule making? Mr. Miller said that yes it could. This will be a new system that is being set up, and rules that state if #1 the applicant has met the payment threshold (100% of previous, 95% of current), and #2 application has been filed, then that would constitute filing on time. Therefore, it would not be a late filing penalty.

Senator Towe stated that if this is so easy, then anything can be done. He was suspicious.

Senator Thayer suggested having the same language as the federal penalties. Senator Towe stated that the department wanted more money than the federal penalties assess.

**Vote on the motion:** Senator Towe's amendment to Page 5, subsection b, failed 5 to 6, and was recorded as a roll call vote. Senators Brown, Gage, Harp, Van Valkenburg, Yellowtail, and Halligan voted against the motion.

**Motion:** Senator Van Valkenburg moved to concur in HB-959 as amended. The motion passed 9 to 2. Senators Towe and Doherty voted against the motion. Senator Halligan will carry HB-959.

ADJOURNMENT

Adjournment At: 8:00 p.m.

  
MIKE HALLIGAN, Chairman

  
JOYCE INCHAUSPE-CORSON, Secretary

MH/jic

ROLL CALL

Senate Taxation COMMITTEE

DATE 4-29-91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Sen Brown	X		
Sen Doherty	X		
Sen Eck	X		
Sen Gage	X		
Sen Halligan	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.

ROLL CALL VOTE

SENATE COMMITTEE Taxation

Date 4-29-91 Bill No. HB 959 Time \_\_\_\_\_

NAME	YES	NO
Sen. Brown		X
Sen. Doherty	X	
Sen. Eck	X	
Sen. Gage		X
Sen. Harp		X
Sen. Koehnke	X	
Sen. Thayer	X	
Sen. Towse	X	
Sen. Van Valkenburg		X
Sen. Yellowtail		X
Sen. Halligan		X

John Inchausti-Cohen  
Secretary

Chairman

Senator Towse:

Motion: motion to amend Page 5  
subsection B.

Senate Taxation  
4-29-91  
HB-959

Amendments to House Bill No. 959  
First Reading Copy

For the Committee on Taxation  
Requested by Senator Harp

Prepared by Greg Petsch  
April 29, 1991

1. Page 70, line 1.

Following: page 69

Insert: "NEW SECTION. Section 42. Coordination instruction.

In any bill referring to Senate Bill No. 461, the reference  
to Senate Bill No. 461 is changed to House Bill No. 959."

Renumber: subsequent sections

Towe Am. →

Provided in  
§ 15-31-321

Provided, however, the  
5% failure to file penalty under  
April 29, 1991  
shall not apply if Page 2 of 2  
the application is timely filed.

forth such facts as the department considers necessary for the proper enforcement of this chapter. There shall be annexed to such return the affidavit or affirmation of the persons making the return to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of \$1.

(2) An automatic 6-month extension of time for filing a return is allowed, provided that:

(a) on or before the due date of the return, an application is made on forms available from the department or in writing to the department; and

(b) the applicant has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 95% of the current year's tax liability or 100% of the previous year's tax liability."

NEW SECTION. Section 2. Appropriation. There is appropriated from the general fund to the department of revenue \$215,023 for fiscal year 1992 and \$173,748 for fiscal year 1993 to implement the provisions of [this act]."

Renumber: subsequent sections

6. Page 70, line 2.

Strike: "This act"

Insert: "Section 1"

7. Page 70, line 4.

Strike: "date"

Insert: "dates"

Following: "."

Insert: "(1) Except as provided in subsection (2),"

Strike: "This"

Insert: "this"

8. Page 70, line 6.

Insert: "(2) [Section 2] is effective July 1, 1991."

~~\$ 3,000,000~~  
~~330,000~~  
~~15~~  
~~\$ 49500.00~~



HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
House Bill 959  
Representative Mercer

April 29, 1991 3:40 pm  
Page 1 of 2

Mr. Chairman: I move to amend House Bill 959 (first reading copy -- white).

Signed: *Alan Hunter*  
Representative Mercer

And, that such amendments to House Bill 959 read as follows:

1. Title, lines 5 through 9.

Following: "," on line 5

Strike: remainder of line 5 through line 9 in its entirety

Insert: "PROVIDING THAT TO BE ELIGIBLE TO APPLY FOR AN EXTENSION OF TIME FOR FILING A RETURN, A TAXPAYER MUST HAVE PAID BY ESTIMATED TAX PAYMENTS, WITHHOLDING TAX, OR A COMBINATION OF ESTIMATED TAX PAYMENTS AND WITHHOLDING TAX 95 PERCENT OF THE CURRENT YEAR'S TAX LIABILITY OR 100 PERCENT OF THE PREVIOUS YEAR'S TAX LIABILITY; PROVIDING AN APPROPRIATION;"

2. Title, lines 10 through 12

Following: "AMENDING" on line 10

Strike: remainder of line 10 through line 12 in its entirety

Insert: "SECTION"

3. Title, lines 13 through 21.

Following: "15-30-144" on line 13

Strike: remainder of line 13 through "19-13-1003" on line 21

4. Title, line 22.

Strike: "AN IMMEDIATE"

Following: "EFFECTIVE"

Strike: "DATE"

Insert: "DATES"

5. Page 2, line 1 through page 69, line 25.

Strike: sections 1 through 41 in their entirety

Insert: "Section 1. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing -- extensions of time. (1)  
Returns shall be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April following the close of the calendar year. Each return shall set

ADOPT

Amendments to House Bill No. 959  
First Reading Copy

For the Committee on Taxation

Prepared by Greg Petesch  
April 29, 1991

1. Strike: House Committee of the Whole amendments in their entirety

Amend House Bill 959 as follows:

1. Title, lines 5 through 9.

Following: ";" on line 5

Strike: remainder of line 5 through line 9 in its entirety

Insert: "PROVIDING THAT TO BE ELIGIBLE TO APPLY FOR AN EXTENSION OF TIME FOR FILING A RETURN, A TAXPAYER MUST HAVE PAID BY ESTIMATED TAX PAYMENTS, WITHHOLDING TAX, OR A COMBINATION OF ESTIMATED TAX PAYMENTS AND WITHHOLDING TAX 95 PERCENT OF THE CURRENT YEAR'S TAX LIABILITY OR 100 PERCENT OF THE PREVIOUS YEAR'S TAX LIABILITY; PROVIDING AN APPROPRIATION;"

2. Title, lines 10 through 12

Following: "AMENDING" on line 10

Strike: remainder of line 10 through line 12 in its entirety

Insert: "SECTION"

3. Title, lines 13 through 21.

Following: "15-30-144" on line 13

Strike: remainder of line 13 through "19-13-1003" on line 21

4. Title, line 22.

Strike: "AN IMMEDIATE"

Following: "EFFECTIVE"

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Insert: "DATES"

5. Page 2, line 1 through page 69, line 25.

Strike: sections 1 through 41 in their entirety

Insert: "Section 1. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing -- extensions of time. (1)

Returns shall be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April following the close of the calendar year. Each return shall set forth such facts as the department considers necessary for the proper enforcement of this chapter. There shall be annexed to such return the affidavit or affirmation of the persons making the return to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return

required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of \$1.

(2) An automatic 6-month extension of time for filing a return is allowed, provided that:

(a) on or before the due date of the return, an application is made on forms available from the department or in writing to the department; and

(b) the applicant has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 95% of the current year's tax liability or 100% of the previous year's tax liability."

NEW SECTION. Section 2. Appropriation. There is appropriated from the general fund to the department of revenue \$108,225 for fiscal year 1992 and \$78,705 for fiscal year 1993 to implement the provisions of [this act].

NEW SECTION. Section 3. Coordination instruction. In any bill referring to Senate Bill No. 461, the reference to Senate Bill No. 461 is changed to House Bill No. 959."  
Renumber: subsequent sections

6. Page 70, line 2.

Strike: "This act"

Insert: "Section 1"

7. Page 70, line 4.

Strike: "date"

Insert: "dates"

Following: "."

Insert: "(1) Except as provided in subsection (2),"

Strike: "This"

Insert: "this"

8. Page 70, line 6.

Insert: "(2) [Section 2] is effective July 1, 1991."

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
April 22, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 959 (first reading copy -- white), respectfully report that House Bill No. 959 be amended and as so amended be concurred in:

1. Strike: House Committee of the Whole amendments in their entirety

Amend House Bill 959 as follows:

1. Title, lines 5 through 9.

Following: ":" on line 5

Strike: remainder of line 5 through line 9 in its entirety

Insert: "PROVIDING THAT TO BE ELIGIBLE TO APPLY FOR AN EXTENSION OF TIME FOR FILING A RETURN, A TAXPAYER MUST HAVE PAID BY ESTIMATED TAX PAYMENTS, WITHHOLDING TAX, OR A COMBINATION OF ESTIMATED TAX PAYMENTS AND WITHHOLDING TAX 25 PERCENT OF THE CURRENT YEAR'S TAX LIABILITY OR 100 PERCENT OF THE PREVIOUS YEAR'S TAX LIABILITY; PROVIDING AN APPROPRIATION;"

2. Title, lines 10 through 12

Following: "AMENDING" on line 10

Strike: remainder of line 10 through line 12 in its entirety

Insert: "SECTION"

3. Title, lines 13 through 21.

Following: "15-30-144" on line 13

Strike: remainder of line 13 through "19-13-1003" on line 21

4. Title, line 22.

Strike: "AN IMMEDIATE"

Following: "EFFECTIVE"

Strike: "DATE"

Insert: "DATES"

5. Page 2, line 1 through page 69, line 25.

Strike: sections 1 through 41 in their entirety

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"15-30-144. Time for filing - extensions of time. (1)

Returns shall be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return shall be made on or before the 15th day of April following the close of the calendar year. Each return shall set forth such facts as the department considers necessary for the proper enforcement of this chapter. There shall be annexed to such return the affidavit or affirmation of the persons making the return to the effect that the statements contained therein

are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the form shall not relieve any taxpayer of the obligation to make any return required under this law. Every taxpayer liable for a tax under this law shall pay a minimum tax of \$1.

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(b) the applicant has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 95% of the current year's tax liability or 100% of the previous year's tax liability."

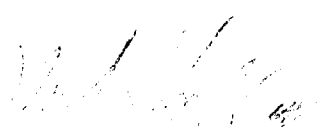
NEW SECTION. Section 2. Appropriation. There is appropriated from the general fund to the department of revenue \$108,225 for fiscal year 1992 and \$73,705 for fiscal year 1993 to implement the provisions of [this act].

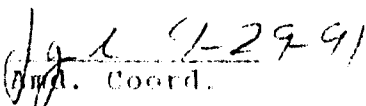
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Renumber: subsequent sections

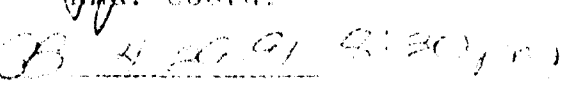
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Insert: "(1) Except as provided in subsection (2)."  
Strike: "This"  
Insert: "this"

8. Page 70, line 6.  
Insert: "(2) [Section 2] is effective July 1, 1991."

Signed:   
Mike Halligan, Chairman

  
J. L. 4-29-91  
And. Coord.

  
B. 4-29-91 9:30, p.  
Sec. of Senate