

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB GILBERT**, on January 19, 1993, at
9:00 a.m.

ROLL CALL

Members Present:

Rep. Bob Gilbert, Chairman (R)
Rep. Mike Foster, Vice Chairman (R)
Rep. Dan Harrington, Minority Vice Chairman (D)
Rep. John Bohlinger (R)
Rep. Ed Dolezal (D)
Rep. Jerry Driscoll (D)
Rep. Jim Elliott (D)
Rep. Gary Feland (R)
Rep. Marian Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Vern Keller (R)
Rep. Ed McCaffree (D)
Rep. Bea McCarthy (D)
Rep. Tom Nelson (R)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Bob Ream (D)
Rep. Rolph Tunby (R)

Members Excused: Rep. Anderson

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Jill Rohyans, Committee Secretary

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

Committee Business Summary:

Hearing: HB 184, HB 160, HB 186, HB 154
Executive Action: None

The Committee heard a presentation on the Railroad Regulatory, Reform, and Revitalization Act (4R's Act) from **Ken Morrison, Administrator, Property Assessment Division, Department of Revenue (DOR)**. Mr. Morrison reviewed the information in the attached **EXHIBITS #1 and #2**.

HEARING ON HOUSE BILL 184Opening Statement by Sponsor:

REP. TOM NELSON, HD 95, Billings, said the bill was introduced at the request of the Department of Revenue to establish a committee to study and recommend changes in taxation of the telecommunications industry. The committee would be comprised of no less than five members including industry representatives.

REP. NELSON said major changes in mobile and cellular communications, the cable television business environment, deregulation of AT&T and its regulated companies, and interexchange (WATTS) resellers competition have necessitated a complete revision of the current communications tax system. For property tax purposes, long distance telephone companies, rural telephone companies, and rural cooperatives are assessed centrally, based on the value of the company as an operating unit. Other telecommunication companies including rural telephone companies and cooperatives within one county, cable companies, WATTS resellers, and cellular service companies are assessed locally based on the value of the individual pieces of property. Locally assessed companies are generally assessed at a lower rate than centrally assessed companies. The rates vary from 3.86% to 9% and 12%. There are various exceptions in assessments at 3% and 8% which apply to rural telephone companies. These varying rates complicate taxation of a competitive industry. Tax policy should not establish an unfair tax advantage within an industry. The tax structure should be reviewed for its overall effectiveness and fairness. A determination should be made as to whether Montana taxes competing industries equitably.

Proponents' Testimony:

Ken Morrison, DOR, said DOR has been considering changes in the telecommunications tax structure, but it has been very difficult because of the ripple effect created when one segment is changed. A comprehensive study is needed with input from consumers and industry.

Dan Walker, U. S. West Communications, said he is happy with the bill. The industry is changing rapidly and the current tax system applies primarily to local small phone companies. He said the state needs to look at all the components and arrive at an equitable progressive tax policy.

Opponents' Testimony: There were no opponents.

Questions From Committee Members and Responses:

REP. HARPER asked what impact the two proposed sales taxes have on the telecommunications industry.

Mr. Walker said telecommunications would not be exempt. The administration bill would tax the industry with no commensurate property tax relief.

REP. HARPER asked if this bill would be moot if the sales tax bill passes.

Mr. Walker said he did not know what form the proposed sales tax would ultimately take.

REP. HARPER asked if the Revenue Oversight Committee might not be a better committee to conduct the study.

Mr. Morrison said DOR used this same approach on the telephone license committee and it worked well. This committee would work under the direction of the Director with industry representatives and legislators comprising some members of the committee. Although loathe to assign ROC another study, Mr. Morrison said they would not object to an ROC study of the telecommunications tax.

REP. GILBERT said the committee should be selected and funded internally by DOR.

Mr. Morrison said it could be done internally. DOR wants the study to have legislative credibility which the bill would establish. Also, the bill also provides for travel reimbursement for non-governmental members of the committee.

Closing by Sponsor: REP. NELSON closed.

HEARING ON HOUSE BILL 160Opening Statement by Sponsor:

REP. DeBRUYCKER, HD 13, Floweree, said he introduced the bill on behalf of the Choteau County Treasurer and County Commissioners. He said that in the 1980's many farms were foreclosed by the FHA. Property taxes were not paid in 90% of those cases. The law states a federal government entity does not have to pay those property taxes. If the farm is leased back to the owner, the taxes are still not paid because the lease is with FHA, not the county, and a lot of tax money is just lost. Page 7, lines 17-19, state that whenever the interest in the property is acquired through foreclosure, the lessor is liable for property taxes. This new language and the technical changes on pages 1 and 2

would obligate the payment of property taxes by the federal government entity.

Proponents' Testimony: There were no proponents.

Opponents' Testimony: There were no opponents.

Questions From Committee Members and Responses:

REP. KELLER asked who is exempt from paying property taxes in foreclosures under current law.

REP. DeBRUYCKER replied only federal government entities are exempt.

REP. McCAFFREE asked if the foreclosure would affect the PILT fund (payment in lieu of taxes).

Gordon Morris, Executive Director, Montana Association of Counties (MACO), said he believes any land taken by a federal agency through a foreclosure procedure would not impact the PILT fund. The PILT is a tax in lieu of the ability of states and local governments to tax federally owned land in the state.

REP. ELLIOTT asked if there is a constitutionality problem.

Dave Woodgerd, Chief Counsel, DOR, said Congress has authorized states to tax the federal government in many foreclosure situations. If Congress has not authorized taxation, the state would not be able to tax even if the bill is passed.

Closing by Sponsor:

REP. DeBRUYCKER said he understands other states are collecting the property taxes. He said this bill would help many counties and they need this authorization.

HEARING ON HOUSE BILL 186

Opening Statement by Sponsor:

REP. ED McCAFFREE, HD 27, Forsyth, said the bill requires the County Treasurer to deposit the 2% penalty on delinquent property taxes in the county general fund. It does not change the current penalty or amount. There are extra administrative costs involved in collecting delinquent taxes. The 2% would fund those costs and, in turn, more delinquent taxes could be collected.

Proponents' Testimony:

Gordon Morris, MACO, expressed support for the bill. He said allowing counties to retain the 2% penalty on delinquent taxes will fund the administrative costs of the collection process and thereby be an incentive for more vigorous pursuit and collection of delinquent taxes.

Cort Harrington, County Treasurer's Association, said his organization supports the bill. When taxes become delinquent, additional administrative duties are required. It is appropriate that the 2% penalty be used for those additional administrative costs.

Opponents' Testimony:

Lynda Brannon, Montana Association of School Business Officials, spoke in opposition to the bill. The penalties on delinquent taxes are a revenue source for the permissive fund for school districts which reduce the state subsidy for the guaranteed tax base. Removal of the 2% penalty will increase the state's responsibility to some school districts.

Questions From Committee Members and Responses:

REP. RANEY asked if this bill would significantly impact the state general fund by taking money from the general fund and the school foundation program.

Mr. Harrington replied the 2% penalty and interest assessed until the taxes are collected is spread out over various funds including the foundation program. The interest is currently paid to the county general fund. The Treasurers believe the penalty was intended to make the counties whole in the delinquent tax process. Instead the penalty is distributed and the interest is retained.

REP. RANEY asked how large a sum of money is involved.

Mr. Harrington said Yellowstone County collects about \$95,000 per year. He said he believes that 30% of the entire foundation program amount is paid by Rosebud County and those taxes are never delinquent. He said he was not sure of the impact of the Yellowstone County funds on the foundation program because of some large taxpayers who pay the bulk of the money into the fund.

REP. DOLEZAL asked how much of the 2% penalty is supposed to go to the counties.

Mr. Morris, MACO, said the 2% is spread across the tax matrix. Traditionally, 18% of it would go to the counties, 15% to municipalities, and 65% to the schools. That is based on the number of mills assessed by those entities, including the University System.

REP. BOHLINGER said if Yellowstone County is paying \$96,000 he would like to know total statewide delinquent penalty figures.

Mr. Morris said the figure he has used for years is an assumption that 7% of the taxes billed will go delinquent annually.

REP. RANEY asked if Yellowstone County could possibly be spending \$96,000 in administrative costs to recover delinquent taxes.

Mr. Harrington said the Yellowstone County Treasurer thinks he spends even more than \$96,000. He uses 3.5 FTE's collecting delinquent mobile home taxes which are a significant percentage of the delinquent property taxes in that county. Mobile homes have a very high percentage of delinquencies; however, those delinquencies are mostly paid within six or eight months.

Closing by Sponsor:

REP. McCAFFREE said this bill provides an incentive for Treasurers to collect delinquent taxes. He urged the Committee to pass the bill.

HEARING ON HOUSE BILL 154

Opening Statement by Sponsor:

REP. TIM WHALEN, HD 93, Billings, said the bill was introduced as a result of an experience with a client. The client settled a claim with a major corporation. The corporation underwent a corporate reshuffling with various of the corporate entities being renamed. Because the suit was settled before the reshuffling, but settlement payment was made following the reorganization, the taxpayer identification number on the W-4 form was not for the entity named in the settlement. REP. WHALEN contacted the Department of Revenue (DOR) to attempt to determine which entity was reporting the income to his client. DOR refused to identify the corporate entity from the taxpayer ID number because of confidentiality statutes. Attempts to obtain the information were fruitless until REP. WHALEN talked with the Director, Denis Adams, at which time some information was disclosed. REP. WHALEN felt that information would not have been offered if he had not been a Representative. He felt the bill should be unnecessary, but it is important to clarify the statute. He said the taxpayer should have the right to know what corporate entity is reporting taxpayer information to DOR.

Proponents' Testimony: There were no proponents.

Opponents' Testimony:

Jeff Miller, Administrator, Income and Miscellaneous Tax Division, DOR, said DOR takes all its duties seriously, but protecting the confidentiality of taxpayer information is the most serious segment of their operations. The only person who has access to that information is the taxpayer or his legal representative. Mr. Miller said the bill would enable an astute employee, a creative newsperson, or any other curious person to access that information. He said DOR receives many requests for information; however, their first obligation is to the confidentiality and privacy of the taxpayer's information. He said the bill would erode that policy.

Questions From Committee Members and Responses:

REP. HIBBARD asked REP. WHALEN if there was any other way to obtain the necessary information.

REP. WHALEN said there was none.

REP. DRISCOLL asked if the employee or the employer is the taxpayer when taxes are withheld.

MR. MILLER said the employer is the taxpayer.

REP. ELLIOTT said if the employee has access to the W-4 there should not be any problem.

REP. WHALEN said because the subsidiary companies are all under one company with different tax numbers, the taxpayer identification number is the only way to identify which entity is, in fact, the taxpayer.

REP. HARRINGTON asked if a court order could be used to obtain the information.

REP. WHALEN replied it would take at least six months and a lot of money. He said a person should not have to go to court. The bill specifically provides that the information would be released only to the taxpayer or his specific legal representative.

REP. HARPER asked if the language on line 19 could be directly tied to employee related information so that all other information would be protected.

Mr. Miller said he believed that would work, but he would rather not erode the confidentiality at all.

REP. HARPER asked if it is the identification of the taxpayer rather than the identification number that REP. WHALEN wants.

REP. WHALEN said yes, the identification is what he wants.

Closing by Sponsor:

REP. WHALEN said it is important as far as the administration of the tax code is concerned to ensure privacy and that must be protected. Taxpayers are upset because they cannot get information that is important to them and relates to them. If you cannot access your own information, then the privacy issue becomes different altogether. He asked the Committee to seriously consider the bill.

ADJOURNMENT

Adjournment: The meeting was adjourned at 10:35 a.m.



BOB GILBERT, Chairman



JILL ROHYANS, Secretary

BG/jdr

HOUSE OF REPRESENTATIVES

TAXATION

COMMITTEE

ROLL CALL

DATE

1/19/93

NAME	PRESENT	ABSENT	EXCUSED
REP. GILBERT, CHAIRMAN	✓		
REP. FOSTER	✓		
REP. HARRINGTON	✓		
REP. ANDERSON			✓ arrived at end of mtg.
REP. BOHLINGER	✓		
REP. DOLEZAL	✓		
REP. DRISCOLL	✓		
REP. ELLIOTT	✓		
REP. FELAND	✓		
REP. HANSON	✓		
REP. HARPER	✓		
REP. HIBBARD	✓		
REP. KELLER	✓		
REP. McCAFFREE	✓		
REP. MCCARTHY	✓		
REP. NELSON	✓		
REP. ORR	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. TUNBY	✓		

SUMMARY OF THE NEBRASKA EXPERIENCE

Time Period

Prior to 1970	All tangible property subject to taxation at 100 percent of market value except for agricultural property which is taxed at 80 percent.
1970	Constitutional amendment is passed allowing exemption of personal property.
1973-1977	Phase-in of exemption for: Agricultural machinery & equipment; Business inventory; Livestock, fish, poultry, etc.; and Grain & seed. State general fund reimbursements, capped at 1977 levels, are provided to local governments for revenue losses.
1976	U.S. Congress passes the 4R Act, protecting railroads and railroad car companies from discriminatory taxation.
1977	The phase-in of personal property exemption complete, resulting in the exemption of 75% of the personal property.
1978	Nebraska Supreme Court upholds local government challenge of cap on reimbursement.
1982	U.S. Congress passes TEFRA, protecting airlines from discriminatory taxation.
1986	Railroad car companies file a 4R Act discrimination suit in federal court.
1987	Federal court exempts car rail car companies from tax since all of their property is considered personal. Railroads file a 4R lawsuit and the federal court enjoins collection of taxes.
1988	Pipeline companies request equalization with railroads and railroad car companies.

1989

Nebraska Supreme Court grants pipelines equalization, and rules that underground pipe is personal property. Counties required to refund the entire the \$4 million collected from the pipelines.

Over 200 taxpayers, both centrally and locally assessed, appeal to the Nebraska Supreme Court requesting equalization.

In Special Session the Legislature exempts railroad rolling stock from taxation (LB 7) and defines pipelines, telephone lines, and railroad tracks as real property (LB 1). Both measures were later declared unconstitutional.

1990

81 taxpayers request equalization with railroads based on 1989 special session laws. The equalization requests are denied and an appeal is made to the Nebraska Supreme Court.

1991

The Nebraska Supreme Court grants equalization, local governments refund the entire \$35 million to the companies.

The Legislature exempts all personal property from taxation.

The Legislature attempts to replace lost 1992 personal property tax revenues with a depreciation surcharge.

Nebraska Supreme Court grants equalization relief to railroad car companies which had not filed timely appeals.

1992

Nebraska Supreme Court declares personal property exemption unconstitutional.

Constitutional amendment creates two classes of property: real and personal, with personal to be valued based on income tax net book value.

DATE

4/19/93

HB

Reformation
Presentation**CENTRALLY ASSESSED UTILITIES IN MONTANA**January 19, 1993
Department of Revenue

	1992 PERCENT OF MONTANA PROPERTY TAX BASE *	1992 MONTANA ESTIMATED TAX ** (\$ million)
CENTRALLY ASSESSED UTILITIES WITH WITH FEDERAL PROTECTION ***		
RAILROAD (Class 12)	3.0%	14.8
AIRLINES (Class 12)	0.3%	1.5
Railroad Car Companies (Class 12) ****	0.3%	1.3
SUBTOTAL	3.6%	17.6
CENTRALLY ASSESSED UTILITIES - OTHER		
POWER & LIGHT (Class 9)	18.9%	79.2
TELECOMMUNICATIONS (Classes 7 and 9)	4.3%	17.9
TELEPHONE COOP (Class 5)	0.2%	1.0
PIPELINE (Class 9)	2.5%	10.6
ELECTRIC COOP (Class 5)	0.4%	2.2
SUBTOTAL	26.3%	110.9
CENTRALLY ASSESSED UTILITIES TOTAL	29.9%	128.5
STATE TOTAL PROPERTY	100.0%	524.4

* 1990-1992 Biennial Reoprt page P-65 "Total Taxable"

** Taxes for utilities were estimated using statewide average mill levies for each class of utility. State total taxes are the state total from the Biennial Report, less SIDs, fire and miscellaneous districts. Both utility taxes and state totals were adjusted by \$1.3 million for the railroad car company taxes.

*** The 4R Act (Railroad Revitalization and Regulatory Reform Act of 1976) gives railroads and railroad car companies special federal protection against discriminatory taxation. TEFRA (Tax Equity and Fiscal Responsibility Act of 1982) gives similar protection to airlines.

**** Railroad car companies were transferred from a gross receipts tax to the property tax during the 1992 special session. These companies paid \$1.3 million under the gross receipts tax for 1992, and are expected to pay at least this amount under the property tax. Taxable value for the railroad car companies was estimated by dividing the \$1.3 million tax by the Class 12 tax rate (7.53%).

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Taxation

COMMITTEE

BILL NO.

HB 154
HB 160
HB 184
HB 186

DATE

11

SPONSOR(S)

Walton, Milam, McElroy, McElroy, McElroy
McElroy

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dave Woodgerd	DOR		
Karl Linhart	Pres of Senate		
Gordon Morris	MACO	HB184	
Vern Foyle	DOR		
Synda Benson	MASBO		HB186
Ken Morrison	DOR		
Dave Johnson	self		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
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