

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Mike Halligan, on February 2, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. Mike Halligan, Chair (D)
Sen. Dorothy Eck, Vice Chair (D)
Sen. Bob Brown (R)
Sen. Steve Doherty (D)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John Harp (R)
Sen. Spook Stang (D)
Sen. Tom Towe (D)
Sen. Fred Van Valkenburg (D)
Sen. Bill Yellowtail (D)

Members Excused: None.

Members Absent: None.

Staff Present: Jeff Martin, Legislative Council
Bonnie Stark, Committee Secretary

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

Committee Business Summary:

Hearing: SB 235
Executive Action: None.

HEARING ON SB 235

Opening Statement by Sponsor:

Senator Bruce Crippen, representing Senate District 45, presented Senate Bill 235, which is Governor Racicot's comprehensive tax reform plan. Senator Crippen showed a slide series explaining Senate Bill 235. A hard copy of that slide series is attached to these minutes as Exhibit No. 18.

Senator Crippen reviewed a 10-year history, leading to the current \$200 million deficit in the state. Senate Bill 235 calls for a 4% sales tax and a reduction in income taxes, residential

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property taxes, commercial property taxes, and business equipment taxes.

Jeff Miller, Administrator, Income Tax Division, Department of Revenue, presented an overview of the components in Senate Bill 235 (see Exhibit No. 18 attached to these minutes). The sales tax is the vehicle for tax reform contained in the tax proposal. It is expected that \$313 million will be raised by this proposal. Senate Bill 235 is subject to voter control at two junctions. First, it must be submitted to the public, and approved by a public vote. Second, voter approval is required for any change in the rates.

The time schedule identifies a public vote on June 8, 1993, and, if approved, implementation of the sales tax on April 1, 1994.

The tax is broad-based, which means that it is applied to sales of goods, and services, or the use of those goods and services. One would pay either a sales tax, or a use tax, but not both. The 4% general sales tax is imposed on the purchaser of goods and/or services except those specially exempted or non-taxable by law. The use tax is imposed on property and services either acquired out of Montana or manufactured by the person using the property or service in Montana. The use tax is imposed on the purchaser or the user, it is based on the selling price, and is collected by the seller.

This tax starts with the presumption that all goods and services are taxed except two categories. The first are specifically-identified exemptions, notwithstanding their use. The second are non-taxable transactions, which are goods and services that would otherwise be taxable, except for their use.

There are 19 sections of law that address exemptions in Senate Bill 235. These are streamlined into five main categories. (1) Family consumer expenditures, including non-prepared food or groceries; prepared foods in restaurants, etc.; prescription drugs; medical or counseling services by licensed health care professionals; rent or mortgage payments; wages, salaries and other compensation paid by an employer; day care services for children or elderly. (2) Agricultural, including supplies, services, and sale or crops or livestock. (3) Mining and manufacturing, including processing services, sale or lease of minerals or the sales of any chemical used in a mining process. (4) Financial and insurance services or real estate sales, including interest and dividend income, insurance premiums, bonds, securities, or the sale or real estate and improvements. (5) Catch-all, including advertising services whether electronic or printed media; isolated sales, such as garage sales; non-profit fund raising; licensed gambling; gasoline, gasohol and special fuels to the extent Montana fuel taxes have already been paid; newspapers, magazines and books;

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vehicles with a gross vehicle weight in excess of 46,000 pounds so long as they are used exclusively in interstate commerce.

New vehicle tax will go from 1.5% under present law to 4%; used vehicles will be taxed at 4%: 2% for the current property tax and 2% in the year of purchase as a sales tax. These taxes will be collected upon registration.

Non-taxable transactions are goods or services not subject to sales or use tax because of their intended use. The reason behind this is to avoid "tax pyramiding", which is a tax on a tax. The object of the sales tax is to tax the ultimate user or consumer. The method to allow intermediary sales which would not be taxed is called non-taxable transactions. Non-taxable transactions fall into two categories: documented purchases for re-sale, or sales of goods or services in interstate commerce.

Tax administration requirements include statewide registration of all vendors; monthly filing; vendor allowance up to \$600 per year to a licensed vendor for assisting the Department in collecting this tax; Income Tax Return filed to take advantage of low income relief for households with gross income under \$13,000. Low income sales tax relief is calculated by taking the number of exemptions in the household x \$90, and is a refundable credit.

The low income sales tax relief is expected to cost \$18.75 million in FY 95, and \$25 million in FY 96 and thereafter. Fiscal Year 95 is only 3/4 of a year, since it is the year in which the sales tax becomes effective.

Under SB 235 individual income tax reform, the personal exemption is \$3,500, and standard deductions are \$6,000 for single, \$8,000 for head of household, \$5,000 for married couples filing separately, and \$10,000 for married couples filing jointly.

Property tax reform, under SB 235, allows a \$20,000 market value exclusion for homesteads. A homestead is defined as owner/occupied for greater than six months. The average property tax savings under the homestead exemption is \$241. There is a maximum renters' refundable credit of \$200, allowed when the person submits receipts to vouch for his declared residence in the state for greater than six months.

The commercial property tax reform measures include business equipment rate reduction from the current 9%, down to 3.86%. In addition, every commercial building in the state will be allowed a \$10,000 market value exclusion.

Larry Finch, Economist with the Department of Revenue, defined tax burden as the share of income paid in taxes, and defined two kinds of tax: Progressive, which means as income rises, the percent of income paid in tax rises; and Regressive,

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which means as income rises, the percent of income paid in tax falls. Mr. Finch said Montana's present income tax is a progressive tax.

Mr. Finch provided estimates of the tax burden impacts imposed by SB 235, which are included in Exhibit No. 18 to these minutes. He explained graphs comparing the current tax with the proposed tax under SB 235 for individual income and pensioners' income, and explained the average property tax homestead exemption for Montana residents is \$241.00. There is a \$200 property tax renters' credit refundable against income tax for every renter household.

Mr. Finch explained the sales tax percentage burden on various income groups and said households with income below \$13,000 would receive a refundable sales tax credit of \$90 for every exemption in the household.

Under the tax reform impact on businesses, Mr. Finch said the business equipment tax would reduce from 9% to 3.86%, and there is a proposed \$10,000 exemption on business improvements.

The pie chart shows distribution of the \$313 million anticipated sales tax revenues in Fiscal Year 1996, with approximately half the revenue provided as relief to individuals, 16% relief to businesses, 32% for deficit reduction, and a small percentage for vendor allowance and administration.

Senator Crippen summed up the presentation by saying it is time Montanans were competitive in the market place, and we need to have some sort of financial stability through a balanced tax system. Senator Crippen said this tax proposal by Governor Racicot addresses structural imbalance, will provide a tax base for the future, and provides a source of revenue to fund state government.

Proponents' Testimony:

Governor Marc Racicot spoke on SB 235, saying the state has experienced a decade of spending more than its income, and to balance the books, we have expended all of our savings, and it is time to begin anew in a number of ways. The Governor said SB 235 is just a beginning; it is an invitation for everyone to come together to look at the issues confronting our state, address them, and fashion a proposal that is acceptable to the people of the state of Montana.

Governor Racicot said SB 235 not only addresses the unfunded deficit and the provision of needed and necessary services, it sets the course for the future and that is the intent of it. Governor Racicot said the point of SB 235 is to not provide anyone an advantage, but to try to offer an opportunity for prosperity in Montana for everyone.

Don Peoples, President and CEO of Montana Technology Company, spoke in favor of SB 235 as someone who has been involved in local government for over 30 years. Mr. Peoples said he came to the conclusion long ago that there is no other acceptable alternative than to consider a general sales tax as part of a total tax reform package in Montana. Montana's tax system is faulty in many ways when looking at fairness, competitiveness, and adequacy of providing revenue. Mr. Peoples said the present tax system does not have the revenue to provide the services Montanans expect and demand. Mr. Peoples' testimony is Exhibit No. 23 to these minutes.

Dennis Burr, representing the Montana Taxpayers Association, spoke in favor of SB 235, saying this bill will add progressivity to Montana's tax structure as well as raise revenue for needed government services and provide an aspect of competitiveness to business and industry.

John Shontz, Public Policy Coordinator for the Mental Health Association of Montana (MHAM), said the MHAM supports a retail sales tax provided it does not impose a heavy burden on low-income people in the state, and provided that funding from the tax is used to fund human services programs. Mr. Shontz's testimony is Exhibit No. 3 to these minutes.

Ben Havdahl, representing the Montana Motor Carriers Association (MMCA), said MMCA supports the concept of a sales and use tax as proposed in SB 235. Mr. Havdahl presented Exhibit 2 to these minutes, which is his testimony with suggestions from MMCA regarding intrastate transportation services and interstate commerce.

Dan Erving, representing the Montana Association of Theater Owners, and the Montana Video Software Dealers Association, said these organizations do support SB 235, and presented Exhibit No. 4 to these minutes. Mr. Erving said they are asking for clarification of one of the exemptions, as listed in their exhibit.

Charles Brooks, representing the Montana Retail Association, presented Exhibit No. 1 to these minutes, which is his testimony in support of SB 235. Mr. Brooks said the MRA has long advocated a comprehensive tax system overhaul with a sales tax as one of the components, provided there would be tax relief in property and income taxes.

Jim Scott, representing the Montana Tax Reform Coalition (MTRC), gave his written testimony, attached to these minutes as Exhibit No. 5. Mr. Scott said the MTRC feels SB 235 is a good start in addressing their concerns expressed in their exhibit, and they stand by to assist in any way they can.

David Steen, President of the Montana Building Industry Association (MBIA), presented Exhibit No. 6 to these minutes.

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The MBIA supports a comprehensive tax reform in Montana, but they have serious problems with the inequities which exist in SB 235. Their exhibit includes proposed amendments which they would like considered by the Committee, which seek to exempt construction of single-family and multi-family housing from the sales tax. Mr. Steen said there are thousands of families on waiting lists because of a shortage of affordable housing in Montana, and, like food and medicine, housing should be recognized as a necessity of life.

Walt Webb, an employee of Shell Oil Company, presented Exhibit No. 7 to these minutes. Mr. Webb spoke in support of SB 235 and offered amendments which he thinks may clarify the bill and help make Montana's proposed sales tax competitive with other states as it relates to the oil and gas industry.

Gene Quenemoen, Chairman of the Montana State Legislative Committee of American Association of Retired Persons (AARP) presented Exhibit No. 8 to these minutes. The AARP will support a broad-based sales tax that is part of the comprehensive reform, providing the features and outcomes are compatible with the principles of their position in Exhibit No. 8.

Bob Small from Missoula said he is involved in two businesses, one of which manufactures instruments to be shipped out of the state and country. Mr. Small spoke in support of SB 235 and said Montana is in a situation now to bring in more businesses of this kind which will put new money into the state's economy.

David Owen, employed by and representing the Montana Chamber of Commerce, said the business community, which will receive some of these tax breaks, will also be paying the sales tax. The Chamber supports SB 235 as a fairer base of taxes.

Stuart Doggett, Executive Director of the Montana Innkeepers Association, went on record in support of a broad-based state-wide tax reform of which a sales tax is a component. Mr. Doggett, as Executive Director of the Montana Manufactured Housing & Recreational Vehicle Association, presented Exhibit No. 9 to these minutes which list some amendments they would like considered in SB 235.

Alec Hansen, Montana League of Cities and Towns, presented Exhibit No. 10 to these minutes, stating the League supports SB 235 because it is consistent with the intent of the League's resolution supporting a public vote on a 4% sales tax. Mr. Hansen said the League would like consideration of the amendments listed in their exhibit which they feel are needed to protect local governments and provide direct financial assistance to cities and counties.

Others who appeared in favor of SB 235, are: Jim Ahrens, President of the Montana Hospital Association; Tom Harrison for

the Montana Society of Certified Public Accountants; John Alke, Montana Dakota Utilities Company; Riley Johnson, National Federation of Independent Businesses, and Montana Broadcasters Association; Dan Walker, U.S. West; Gene Phillips, Pacific Power and Light; Sue Winegartner, Montana Solid Waste Contractors (see Exhibit No. 15 to these minutes); and Carl Schweitzer, Montana Contractors Association.

Opponents' Testimony:

Robert VanDerVere, spoke in opposition to SB 235 as a concerned citizen, saying he didn't see any relief in this bill for college students or mothers of youngsters.

Donna Small, Chairman of the Montana Democratic Party, spoke in opposition to SB 235, and expressed the democratic party's willingness to cooperate with Governor Racicot in placing the sales tax on the ballot. Ms. Small presented Exhibit No. 11 to these minutes.

Bob Gannon, President and Chief Operating Officer of Montana Power Company, said MPC agrees with a general tax reform; however, the specific impact SB 235 would have on their customers requires him to speak in opposition to the bill. Mr. Gannon presented Exhibits 12 and 13 to these minutes which include amendments they would like to have considered.

Joe Tropila, Cascade County Clerk and Recorder and a member of the Legislative Committee for the Montana Association of Clerks and Recorders, said he was not here as an opponent or a proponent of SB 235. He was speaking in protest to a provision in SB 235 which requires the County Clerks to have an election in June without any funding being provided for it. He said the counties do not have the money budgeted to conduct this special election. He suggested the Legislature either pass SB 235, without an election, or wait and include this issue in the November General Election. Mr. Tropila also said the County Clerks would be hard-pressed time-wise to meet all the required deadlines to place this item on a June 8th ballot.

Steve Mandeville, Chairman of the Montana Association of Realtors Legislative Committee, spoke in opposition to SB 235. Mr. Mandeville presented a copy of their position statement, attached to these minutes as Exhibit No. 14. Mr. Mandeville said the MAR supports an equitably balanced tax structure reform, but feels SB 235 puts a broad-based tax on services which is a pyramiding process and ends in double taxation.

Vicki Hammond, First Vice President, Montana Association of Realtors, spoke in opposition to SB 235, and said their position is stated in Exhibit No. 14 to these minutes, as presented by Mr. Mandeville. She said a home buyer would have a 4% sales tax imposed on a purchase, and this amount could be the additional amount which would prevent that family from purchasing a home.

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George Paul, Montana Farmers Union (MFU), spoke in opposition to SB 235. Mr. Paul said Montana's experience over the past 12 years in giving tax benefits to businesses in an effort to stimulate the economy has not worked. What the MFU suggests is that tax reform is fine, but other alternatives to a sales tax need to be explored, such as going back to the tax revenues that were in place in the 1970's.

Dorothy Stevens presented Exhibit No. 16 to these minutes and spoke in opposition to SB 235. Ms. Stevens said her research shows a state sales tax is part of a bigger picture and would be subject to consent of Congress on imports and exports.

Ed Sheehy, a retired Federal employee, spoke in opposition to SB 235 saying it would create more taxes for him by taxing the dollar that goes into his pocket as well as the dollar that leaves his pocket.

Don Judge, representing the Montana State AFL-CIO, presented the AFL-CIO's opposition to the SB 235 sales tax in his written testimony, attached to these minutes as Exhibit No. 17. Mr. Judge said if a sales tax is instituted in Montana, the working families will be paying for the tax breaks given to businesses and the rich.

Alvin B. Svalstad spoke in opposition to SB 235, saying the income tax proposal in it would favor the wealthy.

Scott Sargent, a student at MSU, said he has some problems with SB 235, he thinks a sales tax is a hidden tax, and that income tax is a more fair tax. Mr. Sargent said many Canadians come to the Kalispell, Havre and Great Falls areas because they do not want to pay Canada's sales tax, and with the Free Trade Agreement, he is concerned about the impact on those trade areas.

Tim Dean, Tim Dean Construction in Bozeman, is a representative for the Montana Building Industry Association (MBIA) who spoke in opposition to SB 235. Mr. Dean presented Exhibit No. 19 to these minutes which address some of the concerns of MBIA and the impact SB 235 would have on the building industry. He said a \$100,000 home would have approximately \$3200 in sales tax imposed which would have a devastating effect on new home purchasers and would greatly affect Montana's economy.

Dan Shea, representing the Low Income Coalition, spoke in opposition to SB 235, saying the people he represents have no voice in society and they cannot afford a sales tax.

Other written testimony, attached to these minutes is as follows: John P. Crowley, Jr., Exhibit No. 20; Walter J. Kero, CPA, Exhibit No. 21; Conetta Eckel, Pan Handler Plus, Exhibit No. 22; Bonnie Tippy, Montana Funeral Directors Assoc., Exhibit No. 24; James T. Harrison, Jr., Montana Society of Certified Public Accountants; Tom Hopgood, Montana Assoc. of Realtors.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked for clarification of what is covered under SB 235, as follows: Is all agricultural machinery and equipment is covered? Jeff Miller said "yes". If a farmer buys a combine for \$100,000, he pays \$4,000 tax? Mr. Miller said "yes". Is timber equipment covered, and if a timber company buys a new processor or harvester for \$1 million, they would pay a \$40,000 tax? Mr. Miller said "yes", that everything is in unless there is a particular exemption to take it out. Senator Towe asked if all trucks are included in the tax, unless used exclusively for interstate commerce. Mr. Miller said "yes". Senator Towe asked if mining machinery or manufacturing machinery is specifically excluded under Section 30. Mr. Miller said what is incorporated in the manufacturing process is not taxed, but what is used as equipment is taxed. Mr. Robinson said that if the property is an ingredient or component part of the product, and the Department interpretation is that it is a direct materials component, or if that material or product that is purchased becomes part of that final component or final product, then it is not subject to the sales tax. Senator Towe asked if a coal company purchased a \$40 million drag line, they would pay \$1.6 million sales tax. Mick Robinson said "yes".

Senator Towe asked if attorneys' fees, accountants' fees, engineering fees, except out-of-state use, architects, designs, consultants, and real estate commissions, repair bills, automobile repairs, furnace repairs, TV repairs, lawn mower repairs, and agricultural equipment repairs, are all subject to tax. Mr. Robinson said "yes".

Senator Towe asked if mobile home purchases, unless they are leased out, are subject to a tax. Mr. Robinson said the mobile home is subject to the tax.

Senator Towe asked about personal property that is inherited from one's parents on their death, such as cars, antiques, gun collections, and other valuable personal property. Mr. Robinson said that situation, as well as an individual moving into the state of Montana who brings his personal property, is not subject to the sales tax.

Upon further questioning by Senator Towe, Mr. Robinson said airline tickets that are purchased for flights within Montana are subject to the tax; theater tickets, sporting tickets, fair tickets, and other amusement tickets, are subject to the tax. Mr. Robinson said we are adding an additional 4% tax to the current 4% lodging tax, and beer, wine and liquor taxes.

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Senator Doherty asked if the sale of newspapers, magazines, books, VCR tapes, CDs, and cassettes, etc., are exempt. Mr. Robinson said newspapers, magazines and books are exempt; VCR tapes, CDs and cassettes are not exempt. The rationale is that there are too many administrative complications in collecting the tax on reading material, magazines, and newspapers, especially if a national subscription is involved where there are some constraints in terms of Montana collecting a tax because of interstate commerce situations. The Department determination regarding the video tapes is that they fall more under the amusement category, rather than an educational category.

Senator Doherty questioned the over-all tax burden, saying it is his interpretation this proposal would generate \$313 million in revenue, it would provide approximately \$100 million in income tax relief, \$100 million in property tax relief, and does that mean we have \$100 million of new tax burden for Montana? Mr. Robinson said the administration's approach toward a tax reform is the tax reform vehicle should only provide new revenue for fiscal stability in terms of the imbalance we are presently facing in our tax system within the State of Montana. Senator Doherty asked if the \$100 million is new, additional money, new taxes? Mr. Robinson said the amount of money that would go to help cover the present fiscal imbalance would be new tax revenue. He also said there is going to be some new tax revenue that will be transported, or exported, outside the State of Montana, but much will be absorbed by businesses and individuals within the state.

Senator Doherty asked for clarification of some of the graphs and asked if information is available for above-\$50,000 income groups. Mr. Finch said the Department is limited, for the over-all tax burden, to income groups they found in the consumer expenditure survey, and that tax rates are reduced for every household up to \$150,000, under the new plan.

Senator Doherty asked if there would be any reduction in the amount of retail and commercial trade that comes into the border communities as a result of imposing a sales tax. Mr. Finch said the imposition of a sales tax will increase the price of goods and services, but the Department has no studies which place an exact dollar amount of any reduction in revenues for those border communities.

Senator Stang asked if SB 235 allows for collection of a sales tax for purchases by a non-Indian who purchases products from a business located within the boundaries of an Indian Reservation. Mr. Robinson said the DOR is presently involved in on-going discussions with the 7 Indian Reservations in the State to enter into negotiated agreements over a wide range of taxes and situations dealing with Reservation/non-Reservation transactions. After further questioning, Mr. Robinson said there is no law saying the Tribes have to negotiate such an agreement.

Senator Stang asked if the administration would accept an amendment to SB 235 requiring the DOR to enter into negotiations with the Tribes regarding the sales tax. Mr. Robinson said the Department would look at such an amendment.

Senator Stang asked what the mechanism is to replace the lost revenues to the counties under SB 235. Mr. Robinson said it is a dollar for dollar replacement, and it is the DOR's intent to construct a formula so a percentage, rather a fixed dollar amount, would be devoted to the replacement and reimbursement, allowing the dollar amount to move over a period of time.

Senator Stang asked if there is any proposal to safeguard the rural people from the urban people coming in and changing the formula, which would force an increase in property taxes to maintain rural services. Mr. Robinson said he hopes the Legislature and the Governor are looking at the whole tax situation for the good of all those living in the state, and not channeling the decisions to benefit a particular segment. As they have drafted and modified SB 235, they have tried to not focus on special interest or special groups, and have tried to present a balanced tax reform proposal, and Mr. Robinson has faith in the Legislature for a continued, balanced approach in future years, no matter what the composition of the Legislature may be in terms of rural and urban representation.

On questions from Senator Yellowtail, Mr. Robinson said the comments made, and the exemption amendments asked for, by the various groups at this hearing will need to be studied and evaluated as to the impact they would have. The main goal in SB 235 was to provide as few exemptions and non-taxable situations as possible, recognizing that they would have to address the regressivity that is normally found in a basic sales tax. They want to maintain a broad-based tax structure under the sales tax; however, there may be room for some flexibility in terms of different tax reform approaches by adding or deleting some of the exemptions.

Senator Yellowtail asked if there is any protection or guarantee in this bill as to the deletion or addition of various exemptions? Mr. Robinson said there is no specific language in the bill which indicates that exemptions will not be eliminated or that exemptions will not be increased. One concern is what would prevent the Governor or Legislature from increasing the rates for goods and services that are taxed, or to increase the rates that have been moved downward in terms of property taxes and income taxes.

Senator Yellowtail asked Mr. Robinson if the DOR would provide some analysis regarding which sectors in Montana would actually be paying more taxes under SB 235. Mr. Robinson said in terms of individuals, there is an increase in over-all taxes the higher the income goes, i.e., incomes of \$30,000, \$40,000, \$50,000 and above, and the greatest increase is to the \$50,000

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and above income group. A portion of the new revenue generated is going to be exported outside Montana, and there is no way for the Department to calculate what that percentage would be. There will be increases in taxes paid by businesses, but it is difficult for the DOR to calculate the impact on specific businesses because many of the services and supplies businesses now utilize would be taxed under a sales tax. There is no national data to give the DOR figures upon which to base sales tax revenues from businesses.

Senator Eck asked if there is something to specify how the money is to be used toward deficit reduction, i.e., public education, university education, and maintaining our safety net. Mr. Robinson said the mechanism built in to SB 235 provides for the replacement of the property tax revenue that would be lost to the counties, recognizing that they would look at the same distribution formula coming back to the state in terms of university funding and educational funding, etc. The revenue that is the replacement revenue for income tax changes would flow into the present funding sources, general fund, school equalization, etc., in the same manner that it presently does. The mechanism hasn't been changed in terms of the way the funding presently comes into the State.

Senator Eck asked if there is anything in SB 235 which will give assurance to groups, such as the low-income people, or the university system, that the state will be able to maintain those systems. Mr. Robinson said there is no specific language present in SB 235 which flows the extra revenue into a specific component.

Senator Eck asked how much revenue would be available for those purposes. Mr. Robinson said the full implementation doesn't take place until FY 96, and based on the present estimate, there is \$100 million a year that is not accounted for at this time in terms of tax reform and relief. The administration's approach is that SB 235 should only be a tax measure that raises enough new money to meet the on-going needs for the State of Montana, not new spending. The \$100 million is necessary for continued spending versus additional tax reform.

Senator Eck asked if new spending is looked at, would it be after \$99 million has been cut? Mr. Robinson said there is a recognition all through the Legislature and the Governor's office, that a \$200 million biennial deficit cannot be met by new tax revenues alone so there needs to be a valid effort to identify areas of spending reduction within State government.

Senator Eck asked if there would be an amendment to amend in the MACO property tax reform package, and would other parts of the MACO bill be considered? Mr. Robinson said there are on-going discussions with MACO and Senator Waterman, and there are some valid issues in the MACO bill that will be looked at, such as flow of revenues into school equalization.

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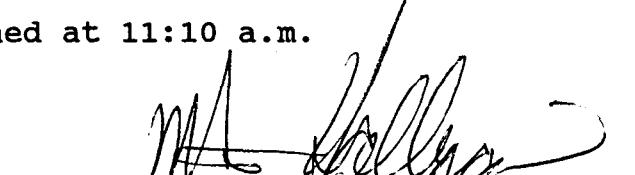
Closing by Sponsor:

In closing, Senator Crippen addressed some of the questions and comments offered during the hearing. Regarding SB 235's affect on border communities, he said he did an informal study of the effect of a sales tax on some of the northern Wyoming trade in Billings, found there would be very little effect, and the main concern would be the sale of new cars. Relating to a sales tax on Indian Reservations, Senator Crippen said most of SB 235 is patterned after the sales tax in New Mexico, a state that has several Indian Reservations, and that state has worked successfully with Reservations through interlocking agreements.

Senator Crippen said SB 235 is a start toward tax reform in the state, and he is willing to work with the Committee, Senator Waterman, and anybody else so we can draft a program we will be proud to present to the people.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:10 a.m.



MIKE HALLIGAN, Chair



BONNIE STARK, Secretary

MH/bjs

ROLL CALL

SENATE COMMITTEE ON TAXATION

DATE 2-2-93



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TESTIMONY
FEBRUARY 2, 1993
ROOM 325
SB 235

SENATE TAXATION

EXHIBIT NO. 1

DATE 2-2-93

BILL NO. SB 235

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

FOR THE RECORD, I AM CHARLES BROOKS EXECUTIVE VICE PRESIDENT OF THE MONTANA RETAIL ASSOCIATION.

FOR A NUMBER OF YEARS THE MONTANA RETAIL ASSOCIATION HAS BEEN A ADVOCATE FOR COMPREHENSIVE OVERHAUL OF OUR TAX SYSTEM, WITH A SALES TAX BEING ONE OF THE COMPONENTS. THE BILL BEFORE YOU GOES A LONG WAY IN ACCOMPLISHING THIS OVERHAUL.

LAST FALL WE CONDUCTED A POLL OF OUR MEMBERSHIP ON THIS ISSUE AS WELL AS OTHER ISSUES THE RESULTS OF THAT POLL IS ATTACHED FOR YOUR REVIEW. YOU WILL NOTE 63% OF THOSE THAT RESPONDED STATED THEY WOULD SUPPORT A SALES TAX PROVIDED THAT THE LEGISLATION GAVE TAX RELIEF IN PROPERTY AND INCOME TAXES. THIS BILL APPEARS TO ACCOMPLISH THIS RELIEF.

THERE ARE SEVERAL CONCERNS ABOUT THE BILL WHICH WE WOULD LIKE TO EXPRESS AT THIS TIME. SECTION 46 VENDOR ALLOWANCE. I HAVE ATTACHED TO MY TESTIMONY A SURVEY BY THE NATIONAL ACCOUNTING FIRM OF PRICE WATERHOUSE, WHICH INDICATES THE COST TO RETAILERS TO COLLECT SALES TAX AVERAGES 3.48%. WE RETAILERS FIND THE VENDOR ALLOWANCE IN THIS BILL TO BE TOTALLY UNACCEPTABLE. THEREFORE, WE ASK THAT YOU CAP THE MONTHLY ALLOWANCE AT \$150.00 RATHER THAN \$50.00 AS SHOWN IN THE BILL.

SECTION 49. SECURITY DEPOSIT AND PERSONAL GUARANTY OF OFFICERS AND DIRECTORS. WE NOW WITHHOLD TAXES, FILE A REPORT AND PAY TAXES WITHOUT THIS BURDEN. WE SEE NO NEED FOR THIS TYPE OF REGULATION, AND ASK THAT THIS SECTION BE CHANGED TO REMOVE THIS UNNECESSARY REQUIREMENT.

A FINAL THOUGHT MR CHAIRMAN, IT IS OUR RECOMMENDATION THAT THE LEGISLATURE ENACT THIS LEGISLATION AND PLACE IT IN OPERATION AS SOON AS POSSIBLE WITH A VOTE OF THE PEOPLE SCHEDULED IN NOVEMBER 1994. THIS WILL GIVE THE CITIZENS OF THIS STATE AN OPPORTUNITY TO SEE THAT THERE TRULY IS TAX REDUCTION AND RELIEF.

1. What is your vision for Montana?

Re:
Education

see attached summary

Environment

see attached Summary

Business climate

see attached summary

Jobs

see attached summary

2. Do you feel business taxes are adequate to support state government?

Please indicate whether you are 100 yes 3 no 0 no ans
100% in favor of the following statement

3. Do you feel personal taxes are adequate to support state government?

Please indicate whether you are 101 yes 3 no 0 no ans
100% in favor of the following statement

4. The expenditures of state government are exceeding tax revenues.
Would you:

Cut spending and increase taxes	<u>14</u> yes	<u>45</u> no	<u>45</u> no ans
Increase taxes	<u>3</u> yes	<u>55</u> no	<u>46</u> no ans
Cut spending	<u>96</u> yes	<u>1</u> no	<u>2</u> no ans

5. How would you address the following?

	Cuts	Additional funding	no ans
State government in general:	<u>94</u>	<u>1</u>	<u>9</u>
Public welfare:	<u>88</u>	<u>2</u>	<u>14</u>
University system:	<u>45</u>	<u>24</u>	<u>25</u>
Public Schools:	<u>38</u>	<u>26</u>	<u>40</u>
Vo-techs:	<u>27</u>	<u>37</u>	<u>40</u>
Community colleges:	<u>42</u>	<u>24</u>	<u>38</u>
County government	<u>DATE 2-2-93</u>	<u>70</u>	<u>27</u>
City government:	<u>SR-235</u>	<u>64</u>	<u>32</u>
Health care	<u>37</u>	<u>23</u>	<u>44</u>
Corrections	<u>38</u>	<u>23</u>	<u>42</u>

6. Do you feel the state of Montana needs tax reform?

94 yes 6 no 4 no ans

7. Would you support the enactment of a sales tax?

63 yes 33 no 8 no ans

8. Should a sales tax be enacted to address:

Current shortfalls 51 yes 47 no 6 no ans
 Additional funding for existing and added state funded programs 16 yes 22 no 16 no ans

9. If a sales tax were to become law, would you prefer:

To relieve existing personal income taxes 75 yes 14 no 15 no ans
 To relieve existing property taxes 83 yes 12 no 9 no ans
 To eliminate personal property taxes (furniture, fixtures, etc.) 67 yes 18 no 19 no ans

10. Should the revenue from the Coal Trust Fund be tapped?

71 yes 20 no 13 no ans

To rebuild municipal water, sewer systems and other infrastructures 65 yes 8 no 31 no ans

Other (name) _____

Should the revenues be:
 loaned and repaid 48 yes 14 no 42 no ans
 given and not repaid 33 yes 30 no 41 no ans

11. Workers' Compensation:

Rates should be raised

6 yes 73 no 25 no ans

Should be sold to a private insurance company

65 yes 18 no 21 no ans

Place a cap on settlements

97 yes 4 no 3 no ans

ATTACHED YOU WILL FIND A COPY OF THE RESULTS OF THE RECENT SURVEY MAILED TO OUR MEMBERS. 26% OF THOSE RECEIVING THIS SURVEY REPLIED AND WE APPRECIATE THEIR COOPERATION. I THOUGHT YOU MIGHT APPRECIATE READING SOME OF THE RESPONSES TO THE FIRST QUESTION, THEREFORE BELOW IS A SAMPLING OF ANSWERS TO QUESTION NO. 1

"WHAT IS YOUR VISION FOR MONTANA?"

RE:
EDUCATION

"STREAMLINE SYSTEM. MERGE INTO A TRUE UNIVERSITY SYSTEM. ELIMINATE DUPLICATIONS AND CUT SOME UNNECESSARY PROGRAMS."

"WE NEED TO CUT ADMINISTRATIVE COSTS AND MOVE TO CONSOLIDATE SCHOOLS FROM ELEMENTARY THROUGH COLLEGE AND UNIVERSITY SYSTEM."

"I FEEL EDUCATION IN MONTANA IS WELL FINANCED. STAFF IS TOP HEAVY AND WE SHOULD HAVE ONE UNIVERSITY PRESIDENT AND ADMINISTRATORS AT OTHER UNITS. DEPARTMENT OF HIGHER EDUCATION SHOULD BE DISBANDED AND A FIVE MEMBER COMMISSION APPOINTED."

"EDUCATION OF OUR CHILDREN IS OUR FUTURE, KEEP IT SOUND FINANCIALLY."

ENVIRONMENT

"WE ALL WANT A GOOD ENVIRONMENT, BUT PROGRESS DOES NOT HAVE TO ENDANGER ENVIRONMENT....." WE DO NOT NEED ANYMORE WILDERNESS, WE NEED MORE JOBS."

"WE NEED A BALANCE OF JOBS AND ENVIRONMENT. WE DO NOT NEED EXTREMISTS ON BOTH SIDES."

"OUR ENVIRONMENT SHOULD BE PROTECTED, BUT NOT AT THE EXPENSE OF JOBS AND OUR ECONOMIC STABILITY."

BUSINESS CLIMATE

"WE NEED TO GET THE WORKERS COMP. PROBLEM HANDLED - WE NEED TO TEACH FREE ENTERPRISE IN THE SCHOOL SYSTEM."

"MONTANA IS EXTREMELY HOSTILE TOWARDS SMALL BUSINESSES. THE STATE GOVERNMENT HAS TO REALIZE WE NEED TAX RELIEF OR SMALL BUSINESSES WILL DRY UP AND BLOW AWAY."

"TEACH PEOPLE PROFIT IS NOT A DIRTY WORD."

"WE NEED TO STOP THE OUTFLOW OF BUSINESSES TO OTHER STATES. STOP CATERING TO THE WORKERS COMP PROGRAM AND THE LEGAL INDUSTRY THAT IT SUPPORTS."

JOBS

"A POSITIVE ECONOMIC CLIMATE SHOULD BE ENCOURAGED THROUGH LESS GOVERNMENT REGULATIONS AND NO NEW TAXES. GOVERNMENT DOES NOT CREATE JOBS, BUSINESSES DO. TAX AND SPEND POLICIES ONLY PUSH JOBS FROM MONTANA TO OTHER STATES."

"IF WE CHANGE GOVERNMENT TO LIVE WITHIN ITS REVENUE, BUSINESS WILL GROW AND JOBS WILL FOLLOW."



Price Waterhouse

EXHIBIT 1

DATE 3-2-93

SB-235

August 30, 1990

Mr. William Kay Daines
Vice President
American Retail Education Foundation
1616 H Street, NW
Washington, DC 20006

Dear Mr. Daines:

We are pleased to submit the final report for the Study to Estimate the Costs of Collecting State and Local Sales and Use Tax. We believe that the national cost estimate contained in this report allows a direct comparison between retailers' costs of complying with sales and use tax laws and the compensation currently granted by state and local governments.

In addition to the current cost estimate, the computer model that generated this result should prove to be a valuable tool for future analysis. Because its parameters can be easily changed, the model provides a framework for future studies at the state and local level.

We wish to express our appreciation to those firms and individuals that participated in the study. Special gratitude is also due to the members of the steering committee for their guidance, availability, and responsiveness at all phases -- from initial planning to reviewing the final report.

If you have any questions regarding any aspect of the report or study, please call Dr. Fredric Laughlin at (202) 296-0800.

Very truly yours,

Price Waterhouse

EXECUTIVE SUMMARY

A. Background and Purpose

Retailers in 46 states are required to collect sales and use taxes from their customers on behalf of state and local governments. To comply with the state and local tax regulations, retailers must expend time and resources collecting and remitting the taxes and documenting their compliance. Some states (28) provide a collection allowance to compensate retailers for undertaking the tax collection and remittance responsibility. However, other states (18) do not attempt to compensate retailers for their costs. In determining whether or not to grant a collection allowance (or set its level), state and local legislatures often require compelling evidence of the costs retailers incur in complying with sales and use tax laws.

Past studies that examined this issue have shown that the collection allowance granted by state and local governments has been well under the amount needed to cover retailer's costs. Although these studies used different approaches and examined different states, they indicated that retailers were being undercompensated for their services.

Over the past decade, trends in retailing and tax collection have affected retailers' costs. For example, improved technology has allowed retailers to collect and remit sales tax to governments more efficiently. What may not be so apparent, however, are trends that have added to the time and resources a firm must expend, e.g.:

- o electronic payments,
- o advanced payments,

American Retail Education Foundation

- o changing tax bases and rates, and
- o an increasing number of taxing jurisdictions (presently over 7,000 nationwide).

In response to these changing retail and tax collection trends, the American Retail Education Foundation (AREF) commissioned Price Waterhouse (PW) to develop a new cost estimate. Unlike previous studies which focused on individual states, the goal of this study was to develop a nationwide average cost estimate for retailers.

B. Approach

To develop the nationwide cost estimate, PW collected data from retailers in all 46 states with a state sales tax. Two approaches were used to collect this data:

- o On-Site Interviews -- collected detailed data from 45 retailers in 18 states concerning the costs that retailers incur in collecting and remitting sales tax. From this data, PW estimated the overall cost to the firm and identified the key factors influencing those costs (e.g., type of point of sale (POS) equipment and frequency of audits).
- o Mail Survey -- conducted a mail survey of 5,000 retailers concerning the key factors identified in the on-site interviews. Based on the responses, PW developed a distribution of retailers in each state (e.g., percentage of retailers that have scanner POS equipment, percentage of retailers that were audited last year).

The data collected from the on-site interviews and mail survey, along with published government retail population data, was used as input to a PC-based computer model. The model contains mathematical equations that calculate the cost associated with each activity and expense that a retailer must make in collecting, reporting, remitting, and documenting sales tax. By summing the outputs of the model, we

developed the national average cost estimate.

C. Results

The analysis yielded a national average cost estimate of 3.48 percent of total sales tax liability. This means that, on the average, for every \$100 of sales tax a retailer collects and remits, it costs \$3.48. To help assess the accuracy of this estimate, PW developed a confidence interval that summarizes the error attributable to random sampling for the data collected through the mail survey. The calculation yielded a 95 percent confidence interval of +/- 0.28 percent around the 3.48 percent estimate (i.e., a confidence interval of 3.20 percent to 3.76 percent).

PW's confidence interval calculation only reflects the effect of random sampling for the mail survey portion of the data collection effort. The analysis assumes that the cost to collect sales tax for an individual retailer (the output of the model) is accurate. These cost estimates rely in large part on information collected during the site visits. As such, they are subject to certain non-sampling errors, which cannot be measured statistically, but which were estimated from PW research and professional judgement.

The 3.48 percent national estimate is consistent with the estimates of previous state-based studies, even though the earlier studies differed in approach and timeframe. Thus, even with today's more efficient equipment (e.g., sophisticated POS terminals), the average retailer's cost of collection and remittance is still substantially greater than the amount they are compensated.

1
DATE 2-2-93
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Vendor's Discounts by State

Alabama	SALES 5% ON 1ST 100 OF TAX 2% OVER 100 SELLERS USE 3%
Arkansas	2% ON 4.5 STATE RATE ONLY NO DISCOUNT ON LOCALS
Colorado	3.33% STATE. LOCALS VARY
Dist. Columbia	1%
Florida	2.5% ON THE FIRST \$1200 OF TAX. MAX \$30 PER LOCATION
Georgia	.5%
Illinois	1.75%
Indiana	1.0%
Kentucky	1.0%
Louisiana	1.1% ON STATE. LOCALS VARY
Maryland	.6%
Michigan	.75% ON PREPAYMENT. .5% ON FINAL RETURN.
Mississippi	2% TO A MAXIMUM \$50 PER LOCATION
Missouri	2%
North Dakota	1.5% NOT TO EXCEED \$65 PER LOCATION (PERMIT NUMBER)
Nebraska	.5%
Nevada	1.25%
Ohio	.75%
Oklahoma	2.25%
Pennsylvania	1.0%
South Dakota	1.5% TO A MAXIMUM \$70 PER LOCATION
Texas	1.75% ON PREPAYMENT, .5% ON RETURN
Virginia	1.71% ON 3.5% STATE RATE ONLY. NONE ON COUNTIES.
Wisconsin	2% OF 1ST \$10,000 IN TAX, 1% ON 2ND \$10,000 OF TAX, AND .5% THEREAFTER.

STATEMENT OF MONTANA MOTOR CARRIERS ASSOCIATION
TO THE SENATE COMMITTEE ON TAXATION
ON SB 235 - SALES & USE TAX BILL

Mr. Chairman and members of the Committee. For the record, my name is Ben Havdahl and I am the executive Vice President of the Montana Motor Carriers Association.

MMCA has some 450 motor carrier members ranging in size from one truck operators to carriers with fleets of 300 plus trucks. 95% of them operate in interstate commerce and a large number operate in both interstate and intrastate commerce. MMCA also has some 180 supplier members. All MMCA members will be impacted by the enactment of SB 235.

MMCA supports the concept of the sales and use tax as proposed in SB 235. We support the general property tax relief on personal property taxes assessed on our industry's trucks and trailers. We do feel that the sales and use tax concept that SB 235 will enact is a logical way to adequately finance the needs of state government and other major needs that this Legislature has to address.

MMCA does have some problems with certain provisions, or the lack of certain provisions in SB 235 as it now stands and would like to offer suggestions for amendments to the bill in the areas affecting the motor carrier industry in Montana.

We support the exemption of diesel and special fuels upon which the tax has been paid.

MMCA supports the concept in section 34 on page 26 dealing with non taxable transactions in interstate commerce to the extent that the imposition of the sale or use tax would be unlawful in the U. S. constitution. We would respectively suggest some modified language that clarifies the non taxable transaction under sub paragraph (3), which now reads, "the sale of a vehicle with a gross vehicle weight in excess of 46,000 pounds used exclusively in interstate commerce is non taxable."

We would suggest the following to better clarify the application of the non taxable transaction, "(3) the sale or lease of motor vehicles with a maximum gross registered weight over forty six thousand (46,000) pounds, which shall be immediately registered under the international registration plan or similar proportional registration system, whether or not base plated in Montana, and the sale or lease of trailers or semitrailers which are part of a fleet of vehicles registered under such proportional registration system when such vehicles and trailers are used in interstate commerce.";

Section 35 on page 27 further extends the non taxability to the movement of property and persons in intrastate transportation service, but only if the movement is an extension of transportation of property and persons in interstate or foreign commerce. Montana distributorship businesses, under this language, would be placed at a definite disadvantage in competition with similar distributors based outside of Montana. Freight charges to the Montana business would be taxed at 4% and outside competitors 0%.

It would be difficult and costly for interstate carriers delivering commodities within Montana to split the freight charges between which are taxable and which are not. The amount of tax collected would probably not be cost productive to collect.

MMCA would respectfully suggest that all intrastate freight charges for movements of property and persons be non taxable under this section.

We are opposed to the double taxation of the cost of intrastate freight services. Commodities moved in intrastate would be taxed and paid by the carrier, then would be included in the mark-up of prices by merchants and taxed a second time in the ultimate price of the commodity.

Prior sales and use tax bills considered by this body, resolved the problem with an amendment to include in the non taxable category, freight charges from the transportation of property or persons from one point within this state to another point within the state for all transportation modes and commodities. MMCA would ask that SB 235 be amended in the same manner.

MMCA feels that further clarification of an exemption is needed as it applies to the receipts from rentals or leasing of vehicles used in transportation of property or passengers by for-hire carriers in intrastate or interstate commerce under regulations prescribed by ICC or the Montana Public Service Commission.

We would suggest that language be incorporated to cover the deduction. A considerable amount of freight is moved by owner operators whom have leased their vehicles to motor common carriers and operate under the carriers authority. Thank You.

EXHIBIT 2
DATE 2-2-93
YL SB-235



Mental Health Association of Montana

An Affiliate of the National Mental Health Association

State Headquarters • 555 Fuller Avenue • Helena, Montana 59601

(406) 442-4276 • Toll-Free 1-800-823-MHAM

SENATE TAXATION

EXHIBIT NO. 3

DATE 2-2-93

BILL NO. SB 235

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TESTIMONY OF THE MENTAL HEALTH ASSOCIATION OF MONTANA

IN SUPPORT OF SENATE BILL 235

FEBRUARY 2, 1993

BEFORE THE MONTANA SENATE TAXATION COMMITTEE

Mr. Chairman and members of the committee:

My name is John Shontz. I am the public policy coordinator for the Mental Health Association of Montana. The Association supports a retail sales in Montana provided the legislation does not impose a heavy burden on Montanans living on fixed incomes and the tax results in increased funding for human service programs, including services to mentally ill Montanans.

The budget problems faced by the state are, while severe, not so large that we should not focus on the needs of our people. The national discussion about health care is leading us, as a people, to the conclusion that physical and mental health care is a right in the United States (as it is in most of the industrialized world), rather than a privilege.

It is clear that the future of health care for all Americans will be built upon the Medicaid program at the federal and state levels. We note that the Congress has used the Medicaid program to expand health care services to people across the United States during the past four years.

Montana must be financially prepared to participate in this

A Non-Profit Education & Advocacy Organization

Working for Montana's Mental Health and Victory over Mental Illness

A National Voluntary Health Agency

Montana Chapter of the National Mental Health Association

forthcoming federally mandated effort now, least we face another financial crisis later in 1994 because we did not properly plan today. A sales tax may be the only vehicle available to Montanans to assure adequate funds are available to purchase the state's share in a national health care program.

Second, we note that the legislature is again examining the reduction of funding for institutional services for mental ill Montanans. We support that effort. We strongly believe in community based mental health services, understanding that there will always be a need for a state supported inpatient psychiatric hospital.

We note that today, one of every four visits made by a Montanan to their doctor is due to mental illness. The temptation exists to reduce institutional services without properly funding community based services for mentally ill Montanans. The result of such a strategy manifests itself on Pacific Avenue in Tacoma, Washington and 15th & Pennsylvania Avenue in Washington, D.C. where thousands of mentally ill people live on the streets.

While community based services are less costly than the cost of institutional care, community based care is not free. We advocate committing any savings generated by reductions in institutional care to fully community based services for mentally ill Montanans.

We encourage the legislature to use revenues generated from a sales tax to fund the deficit created by a decade of unbalanced budgets. THANK YOU.

National Association of Theatre Owners



SENATE TAXATION

EXHIBIT NO. 4

DATE 2-2-93

BILL NO. SB 235

"A Tradition of Service to Theatrical Exhibition"

116 NORTH ROBERTSON BOULEVARD • SUITE F • LOS ANGELES, CALIFORNIA 90048 • 310/652 1093 • FAX 310/657 4758

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January 13, 1993

Senator Bruce D. Crippen
Senate Minority Leader
Montana State Senate
Capital Station
Helena, Montana 59620

Dear Senator Crippen:

It has been called to my attention by Dan Irving of the Montana Association of Theatre Owners that Montana is once again considering a sales tax. I know from living in Montana for over forty years that the sales tax issue is very controversial. However, the reality of the budget is going to force the state legislature to look at many options.

I do not envy your position as Senate Minority Leader, but I know you and the other members of the State government will ultimately come to a conclusion that will best serve the needs of the people of Montana.

I am writing to you on behalf of the theatre owners and operators of Montana, as well as on behalf of our industry and the movie patrons throughout the state, since they are ultimately the ones who will pay any sales tax that is placed on the admission ticket or licensing agreement. Since I have been intimately involved with the theatre industry in Montana for many years, the purpose of my letter is to make you aware of our industry's unique perspective on the sales tax issue. I would like to briefly outline why we feel that any adopted sales tax should exempt both admission tickets and film licensing agreements.

1. A Sales Tax on theatre admissions is an extremely regressive tax considering the make-up and age of those who attend movies. According to industry figures, 76% of families with children & annual income of less than \$25,000 attend the movies. The \$25,000 figure would be substantially less in Montana because of the average income, but the percentage of attendance would be similar. Also, 11% of the admission tickets are sold to people under the age of 15, 20% to those under 20, 25% under 30, and 12 % over 50. This translates into the fact that 68% of the tax would be paid by people in either lower or fixed income categories, and by the youngest and oldest members of our society.
2. Every time there is a price increase at the box office, there is a corresponding drop in attendance due to competition from video, sports and other entertainment events. This not only impacts theatres but corresponding industries such as restaurants, lounges, etc... This drop in attendance would lead to less employment in an industry which customarily employs a substantial number of teenagers.
3. Over 99% of the movie admissions in Montana are purchased by in-state residents, not tourists. We would be forced to increase the cost of one of the few outside the home entertainment activities that families, teenagers and the elderly can afford.
4. Unlike video stores who buy and own the tapes they rent, the film itself is never owned by the theatre operator. Operators enter into licencing agreements with the studio for each and every showing of the film. It never becomes tangible property of the theatre exhibitor. Therefore, any tax on the licensing agreements would be passed directly on to the consumer.
5. The theatre business has been a marginal business since the advent of television, and any increase cost would prove very detrimental, especially for small town operators throughout the state of Montana.

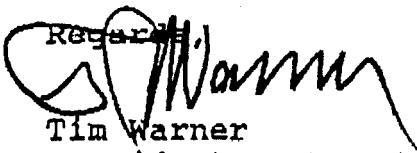
Page 3
January 13, 1993

EXHIBIT 4
DATE 2-2-93
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6. Even California, which has had a sales tax for many years, has exempted all entertainment events including movies, as well as film licensing agreements because film is an intangible property to the theatre owner.

I sincerely appreciate the opportunity to give input into what I know has to be a very difficult situation. I will make myself available to answer questions or to provide additional information at your request. However, for the sake of the movie going public in the state of Montana, I do hope that if a sales tax is adopted it does exempt both box office admissions and film licensing agreements.

Thanking you in advance for your time & consideration.

Regards,

Tim Warner
President, NATO of California

CC: Dan Irving
Dion Smith
Bud Rifkin

(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.

(5) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property. For purposes of this paragraph, "transferor" shall mean the following:

(A) A person from whom the lessor acquired the property in a transaction described in subdivision (b) of Section 6066.5.

(B) A decedent from whom the lessor acquired the property by will or the laws of succession.

(C) A mobile home, as defined in Sections 18068 and 18211 of the Health and Safety Code, other than a mobile home originally sold new prior to July 1, 1980, and not subject to local property taxation.

(7) Paragraphs (1) and (5) and Section 6094.1 shall not apply to rentals or leases of video cassettes, video tapes, and video discs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, video tape, or video disc.

(Amended by Stats. 1987, c. 915, § 4, eff. Sept. 21, 1987.)

Historical and Statutory Notes

1987 Legislation

The 1987 amendment provided for animated motion pictures in subd. (c)(1).

Code of Regulations References

Manufacturers, producers and processors, see 18 Cal. Code of Regs. § 1524 et seq.

§ 6010.6. "Sale" and "purchase" exemptions; definitions; exceptions

(a) Except as provided in subdivision (c), "sale" and "purchase," for the purposes of this part, do not include any of the following:

(1) The performance of any qualified production services in connection with the production of all or any part of any qualified motion picture. Persons performing those qualified production services are consumers of paintings, models, and art work used by those filming special effects, titles, or credits, and of film, tape, or other embodiment upon which sound, visual images, or computer-generated graphics are created or recorded, notwithstanding that title to the property may be transferred pursuant to the qualified production services contract.

(2) Any transfer of all or any part of any qualified motion picture, or any interest therein or any rights relating thereto, under either of the following circumstances:

(A) The transfer is made prior to the date that the qualified motion picture is exhibited or broadcast to its general audience.

(B) The transfer is made to any person or persons holding, either directly or indirectly, or by affiliation, any exploitation rights obtained prior to the date that the qualified motion picture is exhibited or broadcast to its general audience.

(b) For purposes of this section:

(1) "Motion picture" means any audiovisual work (at any stage of the production thereof) consisting of a series of related images, either on film, tape, or other embodiment, whether photographic, or otherwise, and for these purposes, includes all physical materials comprising part of, or synchronized with, the motion picture, including the original, duplicate, and other negatives, intermediary film products, tapes, prints and original, duplicate, and other sound or visual recordings created to accompany the pictorial material depicted in the motion picture.

(2) "Produce or production of any qualified motion picture" means to originate, create, invent, design, devise, develop, photograph, edit, record, imprint, adapt, alter, make, process, fabricate, assemble, construct, or manufacture all or any part of that qualified motion picture by any means, method, or devise of any kind or character, whether before or after commencement of principal photography.

Additions or changes indicated by underline; deletions by asterisks * * *

(c) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

(d) The furnishing, preparing, or serving for a consideration of food, meals, or drinks.

(e) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(f) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(g) Any lease of tangible personal property in any manner or by any means whatsoever, for a consideration, except a lease of:

(1) Motion pictures or animated motion pictures, including television, films, and tapes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

(4) Mobile transportation equipment for use in transportation of persons or property as defined in Section 6023.

(5) Tangible personal property leased in substantially the same form as acquired by the lessor or leased in substantially the same form as acquired by a transferor, as to which the lessor or transferor has paid sales tax reimbursement or has paid use tax measured by the purchase price of the property. For purposes of this paragraph, "transferor" shall mean the following:

(A) A person from whom the lessor acquired the property in a transaction described in subdivision (b) of Section 6006.6.

(B) A decedent from whom the lessor acquired the property by will or the laws of succession.

(6) A mobilehome, as defined in Sections 18008 and 18211 of the Health and Safety Code, other than a mobilehome originally sold new prior to July 1, 1980, and not subject to local property taxation.

(7) Paragraphs (1) and (6) and Section 6094.1 shall not apply to rentals or leases of video cassettes, video tapes, and video discs for private use under which the lessee or renter does not obtain or acquire the right to license, broadcast, exhibit, or reproduce the video cassette, video tape, or video disc.

(Amended by Stats.1987, c. 915, § 8, eff. Sept. 21, 1987.)

Historical and Statutory Notes

1987 Legislation

The 1987 amendment provided for animated motion pictures in subd. (g)(1).

Sections 1 and 9 of Stats.1987, c. 915, provide:

"Section 1. This act shall be known and may be cited as the Condit-Mollo-McClintock Tax Rebate Act of 1987."

"Sec. 9. This act shall become operative only if Senate Bill 47 of the 1987-88 Regular Session [Stats.1987, c. 908] is chaptered."

EXHIBIT 4

DATE 2-2-93

SB-235

Notes of Decisions

Incidental transfers 8

Repairing or reconditioning property 7

3. Transfer of title or possession

Parent corporation's transfers of its operating divisions to preexisting wholly owned subsidiaries did not constitute "sales," even though divisions' liabilities were transferred to subsidiaries, where parent remained jointly liable for liabilities of its transferred divisions and, therefore, transfers were not subject to sales tax. *Macrodyne Industries, Inc. v. State Bd. of Equalization* (App. 2 Dist.1987) 237 Cal.Rptr. 537, 192 C.A.3d 579, review denied.

6. Leases or rentals

Lease payments made to taxpayers by record clubs in accordance with contracts under which clubs produced

records and tapes with duplicate masters or acetate masters which taxpayers leased to them did not involve leases of "tangible personal property leased in substantially the same form as acquired by the lessor" within meaning of sales tax exemption; leased property was not actual master tapes originally acquired by taxpayers. *A & M Records, Inc. v. State Bd. of Equalization* (App. 2 Dist.1988) 250 Cal.Rptr. 915, 204 Cal.App.3d 358, rehearing denied and modified on other grounds.

7. Repairing or reconditioning property

Water purification company's replacement of customers' depleted tanks with regenerated tanks constituted taxable "sale"; company delivered tanks which were "reconditioned," and which were different but "exactly the same" as tanks which they replaced. *Continental Water Conditioning Co. of the Bay Area, Inc. v. State Bd. of Equalization* (App. 1 Dist.1989) 255 Cal.Rptr. 98, 207 Cal.App.3d 783.

Additions or changes indicated by underline; deletions by asterisks *

number of working days necessary for the assessor to determine the value of the manufactured home and for the auditor to extend tax liability.

(e) The issuance, alteration, forgery, or use of any tax clearance certificate or conditional certificate in a manner contrary to the requirements of the Controller constitutes a misdemeanor. (Amended by Stats. 1987, c. 1339, § 6; Stats. 1988, c. 830, § 28; Stats. 1991, c. 796 (A.B.2227), § 17; Stats. 1992, c. 523 (S.B.1663), § 36.5.)

Historical and Statutory Notes

1987 Legislation

The 1987 amendment rewrote the section.

1988 Legislation

The 1988 legislation inserted new subd. (d), and redefined prior subd. (d) as subd. (c).

Confirmation, validation and legality of acts and proceedings of revenue districts and taxing agencies, see Historical Note under § 7670.

Application of 1989 legislation, see Historical Note under § 7670.

1992 Legislation

The 1992 amendment rewrote subd. (a).

CHAPTER 6. ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

§ 6841. Countywide report of new registrations and titles

The Department of Housing and Community Development shall furnish to the county assessor of the county in which a *** manufactured home is sited, on or before the last day of each calendar month, a listing of all new registrations and titles to *** manufactured homes sited, or to be sited, in that county.

(Amended by Stats 1991, c. 796 (A.B.2227), § 18.)

§ 6842. Exchange of information between officials; confidentiality; public inspection

The board, the Department of Motor Vehicles, the Department of Housing and Community Development and any county assessor shall exchange or otherwise provide to one another any information relevant to the regulations, titling and taxation of *** manufactured homes. Such information shall be held confidential by the party receiving the information, except to the extent the information is open to public inspection pursuant to Sections 108, 105.1, and 838 of the Revenue and Taxation Code, and Section 1808 of the Vehicle Code.

(Amended by Stat.1991, c. 796 (A.B.2227), § 19.)

DIVISION 2. OTHER TAXES

PART 1. SALES AND USE TAXES

Chapter	Section
3.3. Vehicle Smog Impact Fee.....	6261

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Section

6010.6. "Sale" and "purchase" exemptions; definitions; exceptions.

6010.65. Sale and purchase.

6012.8. Factory-built school buildings; gross receipts; place of sale or purchase.

§ 6006. Sale

"Sale" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession ***" includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

Additions or changes indicated by underline; deletions by asterisks ***

Code of Regulations References

Manufacturers, producers and processors, see 18 Cal.
Code of Regs. § 1524 et seq.

Notes of Decisions

2. Sales for resale

Sellers of overhead materials were relieved from liability for sales tax by resale certificate given by the

buyer of the overhead materials. Aerospace Corp. v. State Bd. of Equalization (App. 2 Dist. 1990) 267 Cal. Rptr. 686, 218 Cal.App.3d 1300, review denied.

§ 6007.5. Retail sale; sale of contractor for use in federal construction contract; measure of taxes

Historical and Statutory Notes

1988 Legislation

Section 6007.5, as added by Stats. 1986, c. 70, § 1, was repealed by Stats. 1988, c. 160, § 169, leaving § 6007.6.

as added by Stats. 1966, c. 795, § 2, in full force and effect.

§ 6008. Storage

Code of Regulations References

Application of tax, see 18 Cal. Code of Regs. § 1803.
Manufacturers, producers and processors, see 18 Cal.
Code of Regs. § 1524 et seq.

§ 6009. Use

Code of Regulations References

Manufacturers, producers and processors, see 18 Cal.
Code of Regs. § 1524 et seq.

§ 6009.1. Property for export; exclusion from "storage" or "use"

Code of Regulations References

Application of tax, see 18 Cal. Code of Regs. § 1803.

§ 6010. Purchase

"Purchase" means and includes:

(a) Any transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. "Transfer of possession" *** includes only transactions found by the board to be in lieu of a transfer of title, exchange, or barter.

(b) When performed outside this state or when the customer gives a resale certificate pursuant to Article 3 (commencing with Section 6991) of Chapter 2 **, the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(c) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(d) A transfer for a consideration of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Any lease of tangible personal property in any manner or by any means whatsoever, for consideration, except a lease of:

(1) Motion pictures or animated motion pictures, including television, films, and tapes.

(2) Linen supplies and similar articles when an essential part of the lease agreement is the furnishing of the recurring service of laundering or cleaning the articles.

(3) Household furnishings with a lease of the living quarters in which they are to be used.

Additions or changes indicated by underline; deletions by asterisks ***

MD TAX GENERAL 11-221
Code, Tax-General, s 11-221

EXHIBIT 4
DATE 2-2-93
XL SB-235

ANNOTATED CODE OF MARYLAND, 1988
TAX-GENERAL.

TITLE 11. SALES AND USE TAX.

Subtitle 2. Exemptions.

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* 11-221 Taxation by other law.

(a) Taxed under other law. -- The sales and use tax does not apply to:

(1) a sale of an admission by a person whose gross receipts from the sale are subject to the admissions and amusement tax;

(2) a sale of a communication service, other than a taxable service, rendered by a person whose charge for a communication service is or would be subject to the federal excise tax as described in s 4251 of the Internal Revenue Code in effect on July 1, 1979;

(3) a sale of a motor fuel that is subject to the motor fuel tax or the motor carrier tax;

(4) except for a rental, a sale of a motor vehicle, other than a house or office trailer, that is subject to the motor vehicle excise tax under s 13-809 or s 13-811 of the Transportation Article;

(5) a rental of a motion picture, motion picture trailer, or advertising poster for display on theater premises by a person whose gross receipts from the activity related to the rental is subject to the admissions and amusement tax; or

(6) except for a rental, a sale of a vessel that is subject to the excise tax under s 8-716 of the Natural Resources Article.

(b) Use by person paying sales and use tax. -- If a person who buys tangible personal property or a taxable service in a retail sale pays the sales and use tax when the retail sale is made, the person is not required to pay the tax again when the person uses that tangible personal property or taxable service in the State.

(c) Sales tax paid in other jurisdiction. -- (1) To the extent that a buyer pays another state a tax on a sale or gross receipts from a sale of tangible personal property or a taxable service that the buyer acquires before the property or service enters this State, the sales and use tax does not apply to use of the property or service in this State.

(2) If the tax paid to another state is less than the sales and use tax, the buyer shall pay the difference between the sales and use tax and the amount paid to the other state in accordance with the formula under s 11-303(b).

(An. Code 1957, art. 81, ss 326, 375; 1988, ch. 2, s 1; ch. 337, s 1; 1991, chs. 525, 639, 653, 654; ch. 671, s 1; 1992, 1st Spec. Sess., ch. 1, s 2.)

Code, Tax General, s 11-221

SENATE TAXATION
EXHIBIT NO. 5
DATE 2-2-93
BILL NO. SB 235

TESTIMONY ON S.B. #235 PROVIDED TO THE
SENATE TAX COMMITTEE, ON BEHALF OF OF
THE MONTANA TAX REFORM COALITION.

Mr. Chairman and members of the committee, my name is Jim Scott. I live in Billings, am Vice-Chair of First Interstate BancSystem of Montana, and president of the FIBM Foundation. I am here today to present testimony on behalf of the Montana Tax Reform Coalition (MTRC).

MTRC represents a bi-partisan, broad-based group of individuals and organizations that have been involved in the tax-reform issue for many years. In the mid and late 80's there began to develop an awareness by this group that our revenue structure no longer served the best interests of the state as a whole. Inflammatory rhetoric on tax issues had been used as partisan ammunition for too long. People from all walks of life-- business owners and workers, educators and students, people with handicaps and those living in poverty, and local governments officials, all understood that something was severely wrong with our revenue system.

In 1989, after several years of informal communications, these concerned citizens formally organized MTRC and began a process to find common ground that would result in a solution that would address the interests of all. During the last half of 1989 and 1990 MTRC participants held hearings and organized meetings throughout the State. We listened to Montanans as well as experts from outside the State. After listening we negotiated a set of tax policy recommendations that we believed best met the needs of all of Montana. We published a report which spelled out those recommendations in every daily newspaper on New Years Day, in 1991.

We learned yet another lesson in partisan political reality when the leaders of both parties refused to put comprehensive tax reform on the agenda in the 1991 session. We suffered with the rest of the State through two painful and unproductive special sessions. In 1992 we all went to our respective partisan corners for the gubernatorial race with some satisfaction knowing that both candidates had embraced many of the tenets that MTRC had espoused.

Now that the election is over, MTRC would again ask our legislative leaders to address comprehensive reform, for the good of our State and it's people. We would like to congratulate the Governor and Senator Crippen for their courage in proposing S.B.#235, and while it is not yet a proposal that MTRC can fully support, it is an extremely worthwhile beginning, and a step in the right direction.

In the spirit of sharing with this committee what we believe to be the valuable lessons we learned about good tax policy and the process of constructive compromise, our testimony is offered today.

MTRC found that making difficult decisions regarding tax structure was made more possible if; 1. the structure is looked at in its entirety, and 2. the basic criteria for a strong tax system is agreed; and 3. there is a balance between tax reform and relief, and funding necessary services.

Taxes are paid in various ways, by different entities; on income, on consumption, on property owned, by individuals and businesses, and as fees paid by users of specific services. Each has different implications. Evaluating each separately loses sight of their fit into an overall system of taxing and spending. It is this overall system, that in the final analysis, strengthens or weakens our state.

MTRC also found that extremely diverse individuals could agree on a

broad set of criteria for a strong system. After much initial discussion and thought, we were able to agree that the optimism system would balance these basic values: fairness, competitiveness, and providing adequate revenue.

By fairness, MTRC means horizontal equity, a broadbased system where people in like circumstances pay like amounts; and vertical equity, where burden is based on ability to pay, and which increases progressively with income.

By competitiveness we mean a system that doesn't unintentionally discourage economic activity because taxes are too high, too unpredictable, or otherwise create undo obstacles to economic growth. MTRC has never supported, however, a tax structures that is intended to attract business activity by being much lower than other places.

Our third basic criteria is adequacy. The most difficult area to measure objectively, to MTRC adequacy means the ability to make strategic human and physical infrastructure investments, and to provide the necessary care a civilized society must provide for those who are less able to care for themselves.

While the concepts of fairness, competitiveness, and adequacy seem simple and universally supportable, we found that in fact they are often in conflict with one another when it comes to tax policy. A system that optimizes one will do so at the expense of the others. For example, a system can be adequate and not competitive, fair and not adequate, etc. In fact it is finding the right balance of these factors that determines "good" policy.

With scarce resources and urgent needs, the balance with which funds are distributed in a reform proposal is critical. In 1990 MTRC

EXHIBIT 5
DATE 2-2-93
XL SR-235

proposed a 4% broad based sales tax, and that the net proceeds be distributed roughly 50% for tax relief and reform, and 50% for funding of strategically important spending. Participants felt the design of the overall program met the basic criteria, and that the distribution was equitable overall.

We support the sales tax component of S.B. #235, because it will allow changes to our revenue system that will make it much more balanced and competitive. We also believe the bill includes reforms intended to add to the fairness of the overall system. We are, however, concerned that adequate revenue is not available in the proposal for education and human services. We urge you to consider whether the proposed balance between relief and funding truly results in a system that is competitive, adequate and fair.

On behalf of the Montana Tax Reform Coalition, I implore this committee, and each and every legislator, the Governor and the Administration, take bold action, and bring to the people of Montana a comprehensive solution to the fiscal problems we suffer. We must act so that this issue can be finally addressed and we can move on to achieve the better future that we all seek.

MTRC pledges its full cooperation and support in that effort.

omebuilders Assoc. of Billings
52-7533

S.W. Montana Home Builders Assoc.
585-8181

Great Falls Homebuilders Assoc.
52-HOME

Flathead Home Builders Assoc.
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

SENATE TAXATION

EXHIBIT NO. 6

DATE 2-2-93

SB 235



Nancy Lien Griffin, Executive Director

Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-5179 NO.

Mr. Chairman, Ladies and Gentlemen of the Committee:

I am David Steen, President of the Montana Building Industry Association, representing six local associations with over 800 small business members and their 32,000 employees. Our organization supports comprehensive tax reform in Montana. I am here to speak in favor of tax reform; but our association has serious problems with the inequities which exist in SB 235. I offer for the committee's consideration amendments which allow a gross receipts deduction for businesses which supply materials and services for the purposes of construction of single family or multifamily residences.

Montana has a housing shortage crisis. Billings reports 2,200 families on housing waiting lists and a reduction of 34% of multiple listing homes for sale; Great Falls reports 1,365 families on housing waiting lists and a reduction of 28% in multiple listing service properties; Helena reports 975 families on waiting lists, with a multiple listing reduction of 30%; the list goes on to include Flathead, Missoula and Butte.¹

Also in Montana we have a per capita income level of \$14,000 and an average family income of \$28,000, figures well below the national average.² Unfortunately federal agencies which develop mortgage qualification criteria use national income averages, not Montana's income averages. So we have in Montana not just a housing shortage crisis; but an affordable housing shortage crisis!

The average Montana family earns \$29,500 per year. The bottom cap for qualification for a FHA guaranteed home mortgage is \$28,500.³ This income level could qualify a family for a maximum mortgage of \$75,500. The family would be required to have in cash or property at least 5% of total loan, or \$3,775. Average lots costs in most Montana cities are conservatively estimated at \$20,000. That leaves \$59,275 for construction of a new home. Also added to this cost are financing costs, appraisals, property insurance, title insurance and mortgage insurance premiums, estimated to be about \$2,500 for the average home. Now lets add the sales tax. Nearly 80% of a finished home is composed of materials and special trades services. For the \$60,000 home mentioned above (and anyone building a home today knows that \$60,000 provides a minimum of housing space), that same home owner needs to add \$1,896 in sales tax. A \$100,000 home would result in \$3,200 in sales tax.

It has been stated that one of the goals of the State of Montana is to create units of affordable housing for Montana's citizens. I submit that the tax proposal as proposed in SB 235 creates a tax disincentive to the creation of these much needed units of housing. The Administration claims that this legislation also establishes property and income tax relief. Although the Administration's proposals may, indeed, make it easier to maintain a home; their proposal makes it much more difficult to build that home in the first place. The exemption of housing makes long term fiscal sense, adding to community property values and creating a long term community property tax resource. Without tax policy which fosters the creation of housing; the development of needed housing inventory and addition to community tax values will not happen.

A request for a housing exemption is not a special interest request. Whether you are a farmer, a lawyer or a construction worker, every Montanan must have a roof over their heads. Our amendments do not exempt commercial, remodel or maintenance construction--only family housing. Revenue projections indicate only 6 million will be lost to this exemption.⁴ This could easily be retrieved by other mechanisms including a renegotiation of the larger sums proposed for property tax rebate. Let's let Montanan's, already on the fringe of mortgage qualification, have the opportunity to own their own home. Like food or medicine, we must recognize shelter as a basic necessity of life!

1. Source: Montana Association of Housing and Redevelopment Officials
2. Source: Legislative Council
3. Source: Montana Board of Housing & U.S. Census data
4. Source: Projections: Montana Building Industry Association, using figures generated by Montana Department of Revenue. (See attached explanation)

Proposed Amendments
SB 235

Page 4, Line 22

The term does not include construction, except for the construction of single family or multi family structures.

Page 16, Line 8

Add: (5) the nontaxable transaction certificate may be issued to the builder or homeowner at the time of application for an electrical permit for the purposes of construction of a new single family or multi family residence.

Page 16, Line 21

Add: (3) A nontaxable transaction certificate issued to a builder or an owner for the purposes of construction of a new single family or multi family must:

(a) have an expiration date of one year from the date of issuance, and shall contain a property description.

(b) The person to whom the nontaxable transaction certificate shall be issued may provide the certificate to any supplier of materials or services for the purposes of construction of that single family or multi family residence only.

(3) (4) The department shall adopt rules to provide.....

Page 25, Line 7

Add: (3) the buyer incorporates the property as an ingredient or component part of a single family or multifamily residence.

Page 25, Line 8

Add: NEW SECTION: Section 31. Nontaxability -- sale of tangible personal property to person engaged in construction business. (1) Sales of tangible personal property or the sale of a construction service is nontaxable if the sale is made to a buyer engaged in the construction of a single family or multifamily residence who delivers a nontaxable transaction certificate to the seller.

(2) The buyer delivering the nontaxable transaction certificate shall incorporate the tangible personal property or construction service as an ingredient or component part of a construction project that is under construction for the purpose of a single or multi family residence.

Re-number succeeding sections.

Homebuilders Assoc. of Billings
252-7533

S.W. Montana Home Builders Assoc.
585-8181

Great Falls Homebuilders Assoc.
452-HOME



Flathead Home Builders Assoc.
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

EXHIBIT

DATE 2-2-93

SB-235

Nancy Lien Griffin, Executive Director
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Exemption of Single & Multi Family New Construction - Revenue Projections

	Net Sales (Thousands \$)	Revenue Projection (Thousands \$)
SB 235 Sales Tax Projections for Special Trades Contractors Only (Source: DOR projections based on model of 1982-1987 U.S. Census business data)	\$395,771	\$ 17,645
New single family construction (\$100,427). New Multi family construction (\$ 9,022). Ratio of single & multi family new construction (\$109,449) to total of all construction, incl. commercial, residential, remodel, maintenance & repair (\$512,334) (Source: 1982-1987 U.S. Census business data)	.21	Ratio of Single & Multi Family to All Construction
New Housing portion of Net Sales of Special Trade Contractors (\$512,334 * .21)	\$ 107,590 @ 4%	(\$ 4,300)
DOR Retail Trade Projections (Total)	\$ 14,156,352	\$ 147,462
1987 Single Family Construction = \$100,427 Project: 1992 Increase of 42% = \$142,606 (Source: Actual permit increase from 1987-1992)		
Taxable Value of Materials in Single Family Home - 1992 \$142,606 * .34 (Source: U.S. Census Business Data - 1987)	\$ 48,486 @ 4%	(\$ 1,939)
1987 Multi Family Construction = \$ 9,022 Project: 1992 Increase of 28% = \$11,518		
Taxable Value of Materials in Multi Family - 1992 \$ 11,518 * .25 (Source: U.S. Census Business Data - 1987)	\$ 2,879 @ 4%	(\$ 115)
Revenue Loss from Housing Exemption		<u>(\$ 6,357)</u>



MONTANA PETROLEUM ASSOCIATION
*A Division of the
Rocky Mountain Oil and Gas Association*

Janelle K. Fallan
Executive Director

SENATE TAXATION
EXHIBIT NO. 7
DATE 2-2-93
BILL NO. SB 235

Helena Office
2030 11th Avenue, Suite 23
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(406) 442-7582

Billings Office
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Billings, Montana 59103
(406) 252-3871

Testimony of Walt Webb
Shell Oil Co. Tax Department
Chairman, Tax Committee, Montana Petroleum Association
SB 235
Senate Taxation Committee
February 2, 1993

Mr. Chairman, members of the Committee:

My name is Walt Webb. I work in the tax department of Shell Oil Company in Houston and chair the tax committee of the Montana Petroleum Association. I am here today in support of SB 235, and to offer several amendments that will clarify the bill and help make Montana's sales tax competitive with other states.

1. Section 7, page 15, lines 19-20. Delete "at the time a nontaxable transaction occurs." This language has proven difficult to comply with in other states. The certification usually follows in a few days.

2. Section 13, Page 19, line 16. Modify this line to read: "from the sales and use tax"

Line 17. Add an additional paragraph to read: "There are exempt from the sales and use tax service transactions among affiliated entities at least one of which is a corporation that reports its income to the Internal Revenue Service on a single consolidated return for the tax year in which the transaction occurs. For purposes of this section, affiliated entity includes an entity that would be classified as a member of an affiliated group under U.S.C. Section 1504." This provision should be added so services between parent companies and affiliates that report their income on a single consolidated return would not be subject to the tax.

3. Section 16, Page 20, line 16. Modify this line to read: "from the sales and use tax."

4. Section 17, Page 20, line 18: Modify this line to read: "from the sales and use tax."

5. Section 19, Page 21, line 14: After the word "and" add: "includes, but are not limited to sales..." This will exempt occasional sales of business operating assets from sales tax. Most states have this exemption.

Section 19, line 17: Add a paragraph to read: "If an interest in property is sold, under the terms of a good faith, bona fide contractual relationship, to another person who either before or after the sale owned or owns a joint or undivided interest in the property with the seller, and if the sales or use taxes herein imposed have previously been paid on the property, the property is exempted from the sales and use tax." This provision exempts joint interest transfers. It is based on the similar Texas provision.

6. Section 26, Page 23, lines 21 - 24 should be modified to read: "is normally used or consumed in the exploration, production or processing of ores, oil, gas, or petroleum, in a mill, smelter, refinery, treating, processing, or reduction facility or in oil or gas wells is exempt from the sales and use tax."

7. Section 27, Page 24, line 4. After the word "mining", add: "including oil and gas exploration and production,"

Section 27, line 6. Add a new paragraph, to read: "Property exclusively used for the exploration for or production of oil or gas and the processing of such gas is exempt from the sales and use tax." Many states have such a provision, including: Utah, Arizona, Idaho, Alabama, Illinois, Missouri, West Virginia, Ohio and Michigan. This would make Montana competitive with these states for exploration and production investments.

8. Add a new section (after section 30?) to read: "The sale of a pollution control device or system shall be exempt from sales and use tax. Pollution control device or system shall mean any property sold or leased and used or intended for the purpose of eliminating, preventing, treating, or reducing the volume or toxicity or potential hazards of pollution of air, water, groundwater, noise, solid waste, or hazardous waste." Most states now have an exemption for equipment purchased for pollution control, including: Utah, Washington, Idaho, Wisconsin, Illinois and Ohio. This provision will help keep Montana competitive when investment decisions are made, and encourages pollution control activities.



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VICE CHAIRMAN
Mrs. LeDean B. Lewis
6425 Timber Trail
Helena, MT 59601
(406) 458-6195

SECRETARY
Mr. Robert J. Souhrada
915 - 13th Street West
Columbia Falls, MT 59912
(406) 892-4642

**Montana AARP State Legislative Committee
1992 Position Paper**

SENATE TAXATION

EXHIBIT NO. 8

DATE 2-2-93

BILL NO. SB 235

PROGRESSIVE AND EQUITABLE TAX REFORM

POSITION:

Montana citizens are willing to pay higher taxes to support selected programs in education, social services and state institutions, however, people express unhappiness with the current mixture of complex and inequitable tax measures. We need comprehensive reform. Such reform should achieve a balanced fiscal plan based on public consensus regarding improved public services and a better system of raising revenue. The AARP Montana State Legislative Committee will support a reform plan that:

1. Reduces the loss of jobs and people.
2. Improves personal income levels.
3. Improves funding levels for education.
4. Improves basic governmental services; e.g., roads, police protection, youth programs, court system, etc.

The specific tax plan should:

1. Be composed of elements that function well together including the finances of both local and state governments.
2. Produce revenue in a reliable and stable manner.
3. Have diversification of revenue sources over broad basis.
4. Be equitable; shield genuine subsistence income from taxation and insure all households with a given income pay approximately the same tax.
5. Be understandable, accountable, raise revenue efficiently, minimize compliance costs for taxpayers and be simple to administer.
6. Result in equalization of resources available to local governments that they provide adequate level of services.
7. Minimize interstate tax competition.

PROBLEM: Following a decade of nearly stagnant funding of basic public services, Montana citizens are confronted with the need to identify additional sources of revenue in order to solve the state's fiscal crisis. The tax system should be modified not only to provide more revenue, but contribute to economic growth and improve tax equity.

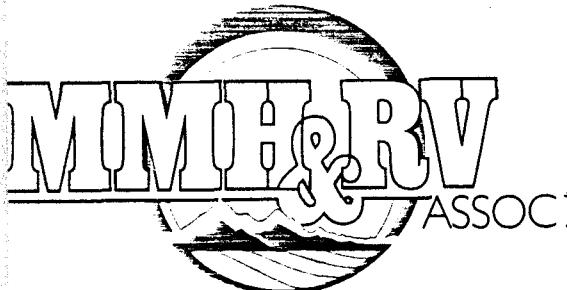
SOLUTION: Studies, plans and position papers have been developed to provide solutions to correct Montana's structural budget deficit. From the alternatives proposed in these sources, the Montana legislature should cause to be enacted:

1. Property tax relief for business firms.
2. Property tax equity among residential properties.
3. New sources of revenue from income and/or sales taxes. Sales tax should exempt food and prescription drugs.

It should be expected that an additional one to two percent of Montana personal income needs to be taken as tax revenue to achieve a balance between needed funding and revenue sources. (One percent of personal income for Montana amounts to some \$128 million.)

CONTACT: Mr. Gene Quenemoen, State Legislative Committee Chairman
606 Frank Road
Belgrade, MT 58714
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MT 8/31/92
POSPAPER:001



MONTANA MANUFACTURED HOUSING & RECREATIONAL VEHICLE ASSOCIATION

1215 ELEVENTH AVENUE
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HELENA, MONTANA 59604
406/442-2164

February 2, 1993

Senator Mike Halligan, Chair
Senate Taxation Committee
Capitol Station
Helena, MT 59620

SENATE TAXATION

EXHIBIT NO. 9

DATE 2-2-93

BILL NO. SB 235

Dear Senator Halligan,

On behalf of the Montana Manufactured Housing and RV Association I would like to express our general support for statewide tax reform and the concepts presented in SB 235.

While our board of directors is in support of tax reform there are provisions in SB 235 that we request be amended. They are:

1. The association ask that the current provision in SB 235 to impose a sales tax on the **sales of all used mobile homes be deleted from the bill**. Our position is that a sales tax on a mobile, or manufactured home, should only be collected once and placed on new units, not used.
2. Secondly, we have concerns with the provisions in SB 235 that places the full 4% sales tax on the purchase of a new manufactured home. We request, and support the concept of, exempting labor cost from the purchase price of a manufactured home and only taxing the actual material cost. For example, it is estimated by most manufacturers that 54% of the purchase price of a manufactured home is related to the cost of materials, and 46% of the cost of a manufactured home is related to labor.

Our goal is to make sure that SB 235 treats new manufactured homes the same as new site-built homes by only taxing the costs relating to materials and exempting labor cost.

We welcome any questions you or the committee may have regarding our industry and SB 235.

Sincerely,

Stuart Doggett, Executive Director

Montana League of Cities and Towns

SENATE TAXATION



EXHIBIT NO. 10

SENATE BILL 235
FEBRUARY 2, 1993

DATE 2-2-93

BILL NO. SB 235

At its annual meeting last fall, the Montana League of Cities and Towns adopted a resolution supporting a public vote on the question of imposing a four percent sales tax in Montana. Our organization supports Senate Bill 235, because it is consistent with the intent of the membership resolution.

We believe, however, that specific amendments to this bill are necessary to make it acceptable to municipal governments and to improve its prospects of public approval.

This bill, as it is written, is a Helena solution to a Montana problem. It provides no direct assistance or additional taxing authority to city and town governments, and it is apparently based on the assumption that the problems of public finance in Montana stop at the back door of the Capitol Building.

Cities and counties have been operating under one of the most suffocating tax limitation measures in the country for the past six years. They have slashed budgets, eliminated programs and laid off employees. Cities have been operating on subsistence budgets, and they should not be written out of a bill that is intended to stabilize government finance and reform the tax structure. Montana cities recommend that a fair share of the revenue from a sales and use tax be allocated to municipal and county governments through a formula based on population and point of collection. This amendment would distribute desperately needed revenues to cities and counties and would give voters some assurance that a portion of their sales tax dollars would find a way home.

Cities are skeptical about tax reduction and reimbursement program adopted by the legislature. Programs to compensate local jurisdictions for the loss of business inventory, motor vehicle and personal property taxes have all fallen apart in recent years, and local agencies have either taken the losses or covered the difference with higher tax levies.

The replacement formula in section 114 of this bill appears to be more reliable and progressive. Beginning in 1997, it will index replacement schedules against sales tax collections and it is possible that economic expansion will increase the amount of revenue distributed to cities, counties and local schools. The numbers could go in the wrong direction, but cities are willing to take a chance that better times are coming in Montana.

Cities and towns support the general intent of this bill, but we encourage this committee to provide direct financial assistance to cities and counties, because this is the element that is missing in what must be an across the board, top to bottom solution that will work for all of Montana.

MONTANA DEMOCRATIC PARTY

SENATE TAXATION
EXHIBIT NO. 11
DATE 2-2-93
BILL NO. SB 235

Mr. Chairman and members of the Committee:

For the record I am Donna Small, Chair of the Montana Democratic Party. I appear before you today to express the strong opposition of Montana Democrats to a general sales tax and to the contents of this bill, but to also express our willingness to cooperate with Governor Racicot in placing his sales tax on the ballot where it can receive an appropriate burial from the people of Montana.

It is important to firmly state at the outset that our Party strongly opposes a general sales tax. That has been our historic position and remains so today. Nothing in this bill would lead the Democratic Party to rethink that historic position.

The Democratic Party is guided by the belief that adequate money should be made available to finance needed government services, and that money should come from tax sources that are fair, understandable, and progressive. The bedrock principles of fairness and simplicity should be the foundation upon which any tax reform proposal is based. A progressive tax structure that taxes on ability to pay is fundamental to assuring that Montana's middle and lower income families get a fair shake from their government. This bill, Governor Racicot's sales tax, does not meet these important criteria.

While the Democratic Party disagrees with Governor Racicot

over the issue of his sales tax, we are willing to cooperate with him in getting his sales tax on the ballot. We expect that the Governor and the Republican Party will be equally cooperative in working with us in crafting an alternative to the sales tax which provides a workable solution to Montana's budget concerns.

To move Montana forward and get on with the business of governing this state, it is imperative that the legislature allow our fellow Montanans the opportunity to speak out on the very important issue of tax reform. The fundamental debate over what our tax system looks like, should ultimately rest with the citizens of this state, who will be asked to foot the bill. This should take place in town halls and other polling places in communities across Montana through the democratic process of voting. The Democratic Party supports having an alternative tax proposal in place at the time of the sales tax vote.

The Montana Democratic Party encourages you and your fellow legislators to take a realistic look at the type and size of government we need in Montana. While no one is suggesting that savings cannot be found in state government, it is important to make sure that we have a tax system that is adequate to cover the true cost of serving the citizens of our state in a caring, competent, and cost-effective manner.

Finally, let me say once again that the Montana Democratic Party stands firmly in opposition to and will work to defeat what many in our Party refer to as the "Tax of The Living Dead." You see, we have come to understand that even when people kill and bury the sales tax, it seems to dig itself out of the grave about every

EXHIBIT 11
DATE 2-2-93
SB-235

twenty years to once again haunt the taxpayers of Montana. So, the people of Montana are faced with zombie-like apparition of a dead tax that somehow continues to walk among us. And, once again, we must place it back into that grave for another twenty years. It will not go back into that grave unless the people put it there, and that is what the sales tax election will be all about.

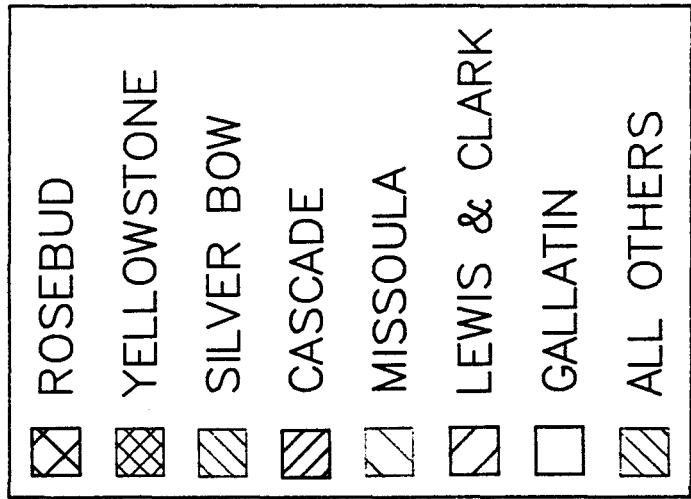
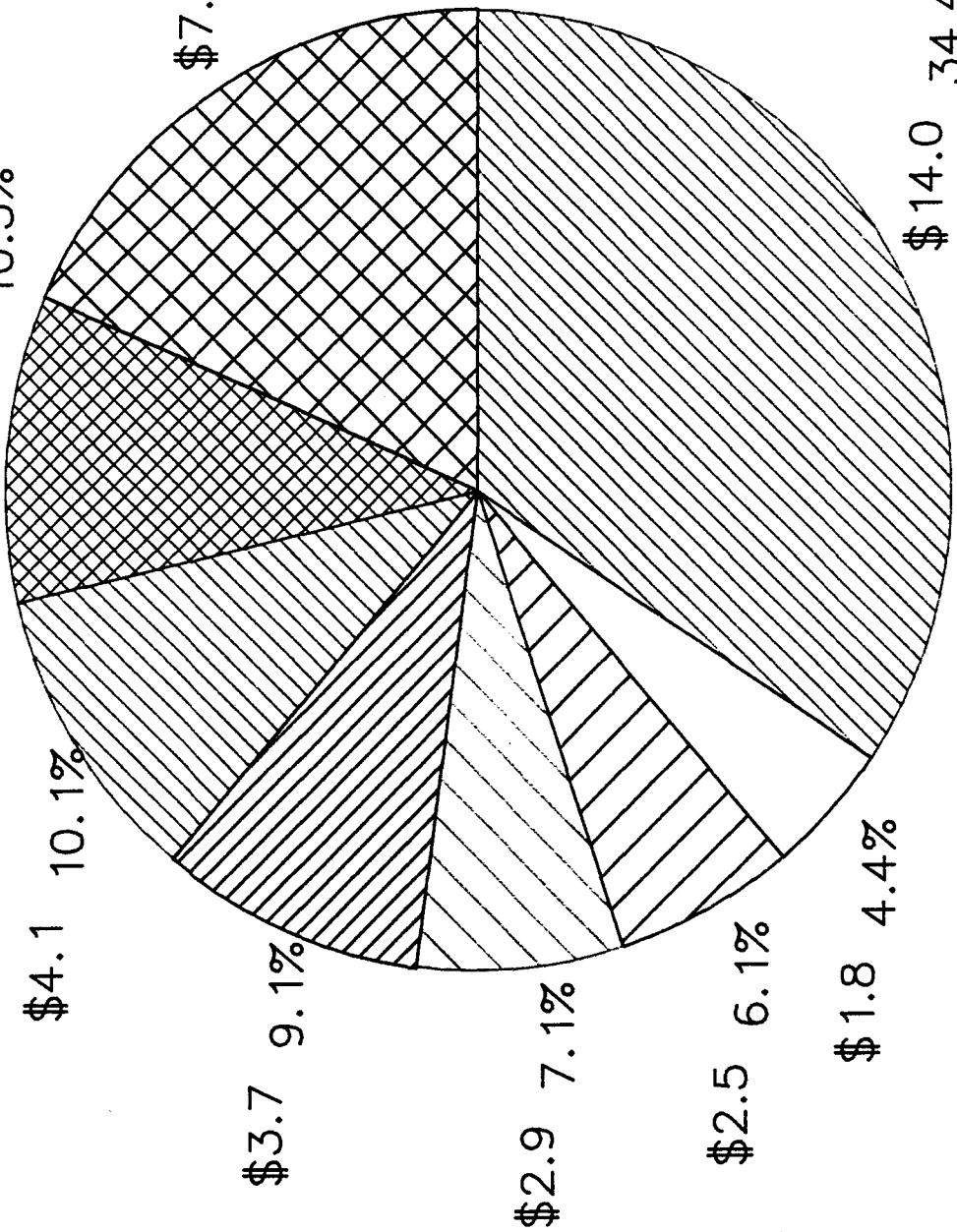
Thank you for considering our testimony and listening to our concerns. We look forward to the cooperative effort to give Montanans a real choice among tax packages and the chance to put Governor Racicot's sales tax back where it belongs -- in the grave.

THE MONTANA POWER COMPANY

UTILITY DIVISION

1992 PROPERTY TAX PAYMENTS - \$40.7 MILLION

\$4.2 10.3%



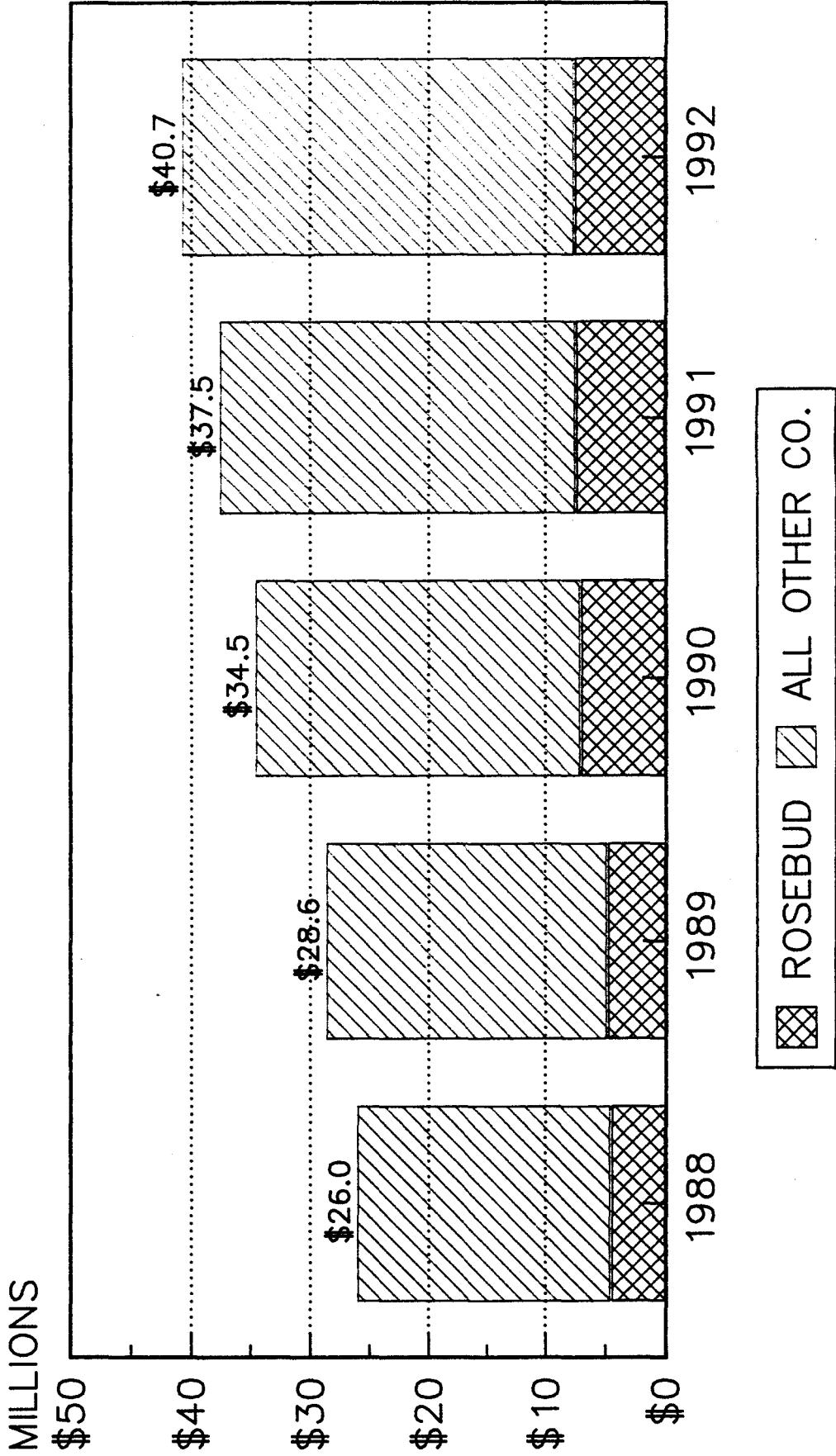
COUNTY	ORIGINAL COSTS	1990 PROPERTY TAX	1991 ORIGINAL COSTS	1991 MARKET VALUE	1991 PROPERTY TAX	1992 ORIGINAL COSTS	1992 MARKET VALUE	1992 PROPERTY TAX	% INCREASE (DECREASE) OVER 1991		
									O.C.	M.V.	P.TAX
ROSEBUD	787,210,492	7,034,073	753,721,897	510,827,410	7,447,542	752,864,307	520,825,836	7,478,636	-0.14%	1.98%	0.42%
YELLOWSTONE	146,028,145	3,875,713	149,978,514	101,846,301	3,830,279	159,408,025	110,307,222	4,251,032	8.52%	10.98%	10.98%
SILVER BOW	88,832,424	2,890,335	90,089,429	61,063,820	3,338,757	97,516,819	67,479,304	4,082,231	8.23%	10.51%	22.27%
CASCADE	92,713,518	2,871,826	99,442,940	67,398,302	3,043,768	111,366,084	77,062,680	3,677,972	11.98%	14.34%	20.84%
MISSOULA	72,331,178	2,330,668	76,085,381	51,565,998	2,633,857	80,224,721	55,513,584	2,883,294	5.44%	7.86%	9.47%
LEWIS AND CLARK	69,975,580	2,033,015	71,892,862	48,724,569	2,108,929	77,843,986	53,727,777	2,472,802	8.00%	10.27%	17.25%
GALLATIN	55,910,880	1,488,524	59,985,166	40,654,208	1,698,160	65,291,785	45,180,347	1,847,718	-	8.85%	11.13%
GLACIER	46,161,774	786,783	47,141,189	31,949,290	945,776	49,201,363	34,046,162	1,021,880	4.37%	6.56%	8.04%
PARK	29,384,757	700,363	32,238,113	21,848,988	770,575	33,800,821	23,389,358	895,741	4.85%	7.05%	16.24%
STILLWATER	28,518,869	635,585	32,658,241	22,133,718	677,962	33,877,676	23,412,537	773,071	3.73%	5.91%	14.03%
MADISON	24,516,002	484,089	26,616,927	18,040,640	584,207	34,253,487	23,702,598	766,727	28.68%	31.38%	35.89%
CARBON	24,894,102	558,90	25,925,880	17,570,896	677,367	27,022,550	18,698,980	673,745	4.23%	6.42%	-0.53%
LAKE	23,290,748	565,083	23,224,524	15,740,171	580,823	23,559,831	16,308,759	641,041	1.48%	3.62%	10.35%
TOOLE	28,323,122	571,839	30,847,275	20,770,648	681,738	29,940,100	20,717,830	632,928	-2.31%	-0.25%	8.88%
RAVALLI	20,274,271	511,303	21,188,468	14,360,208	651,861	22,328,624	15,450,866	592,262	5.38%	7.80%	7.36%
CHOUTEAU	18,941,986	484,281	20,698,971	14,027,073	610,942	22,033,642	15,248,745	573,942	6.48%	8.70%	12.40%
HILL	20,822,898	510,032	21,919,502	14,855,615	651,452	21,010,441	14,538,725	568,571	-4.15%	-2.13%	2.56%
POWELL	21,309,739	522,678	21,522,807	14,588,808	595,328	21,768,398	15,063,211	626,160	1.14%	3.27%	-11.82%
DEER LODGE	14,320,280	472,588	14,758,874	10,002,675	578,198	15,252,184	10,574,898	521,430	3.54%	5.72%	-8.82%
FLATHEAD	14,156,023	425,172	14,755,191	10,000,130	465,576	15,762,935	10,928,329	486,455	7.03%	9.28%	6.78%
FERGUS	11,486,134	349,646	12,788,302	8,673,868	414,485	13,213,406	9,143,358	445,515	3.24%	5.41%	7.49%
JEFFERSON	20,608,395	476,464	20,807,717	14,102,155	483,743	21,558,413	14,904,756	431,393	3.52%	5.89%	-10.82%
BLAINE	18,317,788	432,081	18,223,262	13,028,248	418,351	18,891,075	13,072,164	403,342	-1.73%	0.34%	-3.59%
WHEATLAND	15,470,477	338,386	15,728,312	10,659,662	370,349	16,051,080	11,108,982	373,156	2.05%	4.20%	0.78%
SANDERS	13,761,600	304,719	14,944,756	10,128,628	343,233	15,313,469	10,638,071	367,381	2.87%	5.03%	7.04%
MEAGHER	12,998,200	243,029	13,111,373	8,886,071	255,893	13,284,840	9,182,783	285,561	1.32%	3.45%	11.55%
LIBERTY	14,108,639	287,247	14,249,051	9,657,012	336,083	12,985,837	8,871,910	285,200	-9.01%	-7.08%	-15.14%
BEAVERHEAD	9,776,421	248,913	10,186,426	6,910,502	283,313	10,631,958	7,357,058	284,858	4.27%	6.48%	0.55%
BIG HORN	12,858,956	269,655	13,020,122	8,824,228	246,765	13,678,996	9,466,230	262,854	5.07%	7.28%	6.52%
PONDERA	9,445,185	241,192	9,718,695	6,595,330	251,900	9,455,481	6,512,984	257,103	-2.69%	-0.84%	2.07%
SWEET GRASS	8,861,852	226,083	9,126,467	6,185,334	231,480	9,627,478	-	6,661,983	5.49%	7.71%	10.77%
TETON	9,830,011	240,189	9,463,354	6,413,642	241,695	8,098,127	5,602,324	239,987	-14.45%	-12.85%	-0.72%
BROADWATER	11,483,798	238,058	11,588,625	7,854,045	232,877	11,820,053	8,040,796	213,860	0.27%	2.38%	-8.17%
VALLEY	6,073,950	198,468	6,592,738	4,468,120	224,882	6,151,842	4,256,926	207,671	-6.69%	-4.73%	-7.65%
JUDITH BASIN	7,561,555	170,291	8,087,867	5,467,874	189,724	8,421,135	5,827,223	200,920	4.38%	6.57%	5.80%
GOLDEN VALLEY	9,116,586	172,282	9,775,814	5,947,693	180,866	9,804,105	6,161,426	199,340	1.46%	3.59%	10.21%
GRANITE	6,315,983	164,861	6,543,745	4,434,915	168,671	7,539,181	5,216,934	157,803	15.21%	17.63%	-6.39%
MUSSELL SHELL	5,252,508	131,132	5,425,958	3,677,380	107,852	6,121,576	4,235,984	148,886	12,82%	15.18%	39.24%
MINERAL	4,161,870	121,620	4,322,755	2,929,681	128,865	4,524,700	3,130,986	125,971	4.67%	6.87%	-2.25%
PHILLIPS	5,153,824	114,523	5,521,760	3,742,278	120,760	5,178,552	3,584,126	14,687	-6.20%	-4.23%	-5.05%
TREASURE	4,835,986	105,459	4,836,171	3,277,683	106,177	4,835,542	3,352,989	108,118	0.18%	2.30%	2.77%
TOTALS	1,824,716,486	34,505,135	1,856,563,519	1,259,619,767	37,480,445	1,920,116,403	1,328,674,478	40,736,593	3.31%	5.48%	8.66%

1/2
DATE 2-2-93
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THE MONTANA POWER COMPANY

UTILITY DIVISION

PROPERTY TAX COMPARISONS (1988 – 1992)



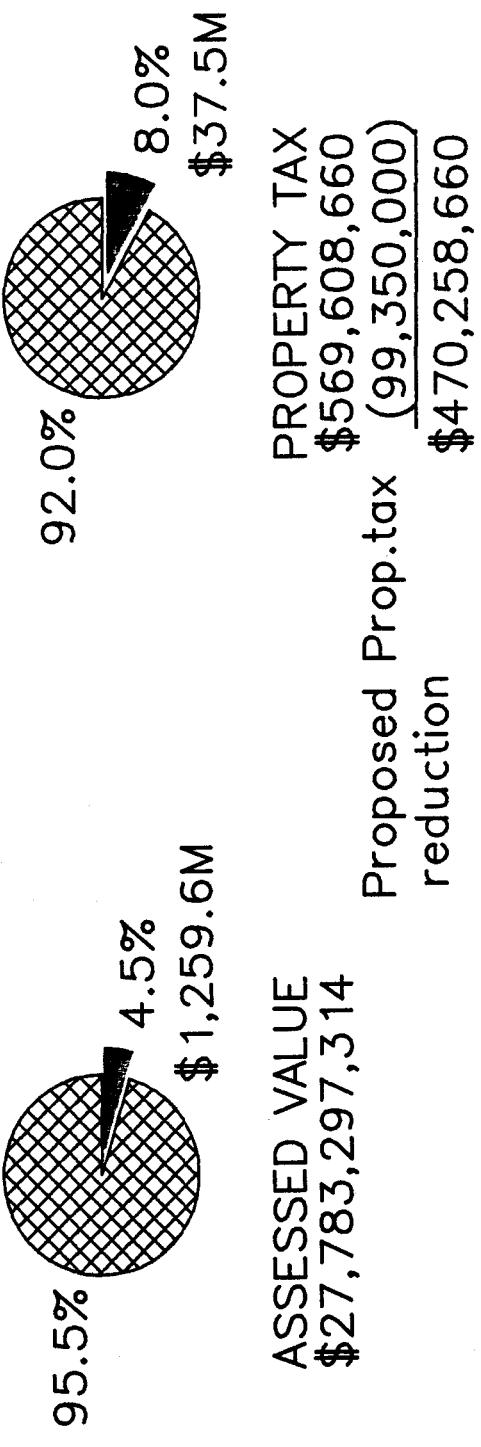
*1988 TAX AS CALCULATED ON ORIGINAL COSTS

PROPERTY TAXES LEVIED IN MONTANA

MONTANA POWER COMPANY COMPARED TO TOTAL

Recalculated with Impact of Governor's Sales Tax Proposal
(based on 1991-92 fiscal year property taxes)

■ MONTANA POWER CO.



For every dollar of market value, MPC would pay 1.78 times the property tax paid by the average taxpayer in Montana.

MONTANA PROPERTY CLASSIFICATION RATES

As Proposed in the Governor's Sales Tax Bill
(APPLIED TO ASSESSED MARKET VALUE)

- 12% CENTRALLY ASSESSED UTILITIES
- 3.86% LOCALLY ASSESSED UTIL. -REAL ESTATE
- * 3.86% LOCALLY ASSESSED UTIL. -GAS FIELD EQUIP.
- 3% CO-OP'S
- * <7% RAILROADS AND AIRLINES
- 3.86% MINING - REAL ESTATE
- * 3.86% MINING - MACHINERY AND EQUIPMENT
- * 3.86% INDUSTRIAL
- 3.86% COMMERCIAL
- 3.86% RESIDENTIAL

* Indicates a change from current rate.

THE MONTANA POWER COMPANY
 UTILITY DIVISION AND COLSTRIP UNIT NO. 4 ONLY
 ESTIMATED IMPACTS OF CRIPPEN SALES TAX PROPOSAL

ELECTRIC

RESIDENTIAL	\$102,652,162.00	4%	\$4,106,086.00
COMMERCIAL	\$106,858,485.00	4%	\$4,274,339.00
INDUSTRIAL	\$121,988,084.00	4%	\$4,879,523.00
INTERDEPARTMENTAL	\$943,906.00	4%	\$37,756.00

NATURAL GAS

RESIDENTIAL	\$52,293,715.00	4%	\$2,091,749.00
COMMERCIAL	\$30,732,669.00	4%	\$1,229,307.00
INDUSTRIAL	\$3,234,193.00	4%	\$129,368.00
INTERDEPARTMENTAL	\$164,620.00	4%	\$6,585.00

 \$16,754,713.00

SALES TAX ON MPC PURCHASES

ESTIMATED CASH DISBURSEMENTS (BASED UPON YTD NOV 1992)

CONSTRUCTION	\$63,842,328.00
EXPENSE WORK ORDERS	\$51,712,033.00
15% OF AMOUNTS CHARGED TO ACCOUNTS PAYABLE	\$13,748,888.00
MATERIALS & SUPPLIES (50% USED TO EXCL OTHER OWNERS)	\$13,358,893.00
75% OF VOUCHERS CHARGED TO EXPENSE	\$12,018,280.00

 \$154,680,422.00

 \$11,576,509.00

 \$166,256,931.00

4%

 \$6,650,277.00

MPC PAYROLL CHARGED TO CONSTRUCTION

NET SALES TAX

 \$23,404,990.00

11/4/92
 12
 10/18/92-12-93
 1
 58-235

COLSTRIP UNIT 4 LEASE PAYMENTSDiscussion

The Montana Power Company (MPC) owned a 30 percent share of Colstrip Unit 4, a 700,000 kW coal-fired electric generating plant which was placed in commercial operation in April, 1986. On December 30, 1985, prior to the commercial date, MPC sold and leased back its 30 percent share of Colstrip Unit 4 through a leveraged lease transaction to refinance its investment in Colstrip Unit 4. The term of the lease is 25 years and MPC has the right to renew the lease or purchase the facilities at the end of the basic term. The property's operation and use is vested in MPC during the term of the lease. MPC is assessed property taxes on this leased share of Colstrip Unit 4 as a part of its overall centrally assessed property.

It is not clear whether the provisions of the bill would apply a sales or use tax on the annual lease rental payments. MPC believes that the lease payments should not be subject to the sales or use tax for two reasons: (1) Colstrip Unit 4 would have been subject to the use tax when it was placed in service in 1986 if the tax had been effective at that time; and (2) the sale and leaseback was principally a refinancing of Colstrip Unit 4 which corresponds to the exemption for proceeds from the sale of stocks, bonds, or securities under Section 17 of the proposed bill.

MPC proposes to amend Sec. 17 of the bill to make it clear that lease payments under the leveraged lease transaction described above are not subject to the sales or use tax and that similar transactions in the future are not subject to double taxation through operation of the sales and use tax.

COLSTRIP UNIT 4 LEASE PAYMENTS

Recommended Amendment

NEW SECTION. Section 17. Exemption-- dividends and interest. The following are exempt from the sales tax:

- (1) interest on money loaned or deposited;
- (2) dividends or interest from stocks, bonds or securities; and
- (3) proceeds from the sale of stock, bonds, or securities; and
- (4) commissions or fees, as provided in (section 1 (6) (d) derived from the business of buying, selling, or promoting any stock, bond, or security; AND
- (5) PROCEEDS FROM THE SALE OF PROPERTY WHICH IS IMMEDIATELY LEASED BACK TO THE SELLER, AND THE RECEIPTS FROM THE ASSOCIATED LEASE.

AFFILIATED ENTITY

Discussion

In the utility business, it is relatively common to structure business functions and services in affiliated entities.

It is submitted that there is a strong rationale for exempting these services from the sales tax, particularly if the ultimate sale of the utility service is to be taxed. The support services obtained from affiliates are simply a substitute for internally-performed functions that would involve no taxable event.

EXHIBIT 13

DATE 2-2-93

SB-235

AFFILIATED ENTITY

Section 1. Add a definition of "affiliated entity".
"Affiliated entity" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation; or means a group of partners or corporations engaged in a legally-cognizable enterprise for a single purpose, whether or not the partners or corporations are under common control. 'Control' means ownership of stock in a corporation which represents at least eighty percent of the total voting power of that corporation and has a stated or par value equal to at least eighty percent of the total stated or par value of the stock of the corporation."

Following Section 17, add a new section:

New Section. "Exemption--sale or lease of property or services between affiliated entities. The sale or lease of property or services between affiliated entities is exempt from the sales tax and use tax."

EXEMPTION FOR MINERALS

Discussion

Section 21 of the Bill, as written, allows an exemption from the sales and use tax for all minerals produced in Montana. This exemption can be interpreted to exempt utility natural gas sales.

It is our understanding that with respect to petroleum, natural gas, uranium, oil and coal the intent is that receipts from the sale of these minerals are to be exempt only when the sale is for resale or for the purpose of energy production.

Another concern with the Bill as written is that it could result in some energy products available for sale to retail users having an unfair advantage because their sale would be tax exempt. For example, the sale of natural gas by a utility to a cement plant would be taxable, but the sale of coal to a cement plant would be exempt from tax. We are proposing to eliminate this unfairness. To accomplish this intent, we propose to amend Sec. 22 of the Bill.

EXEMPTION FOR MINERALS

NEW SECTION. Section 21 Exemption - minerals - exception.

(1) The receipts from the SALE FOR RESALE or use of a mineral as defined in 15-38-103 are exempt from the sales tax, and use tax.

(2) Minerals-refined,-reduced,-polished,-cut,-faceted,-or otherwise-processed-for-the-purpose-of-being-used-as-or-integrated into-jewelry,-art,-or-sculpture-or-as-a-decoration-embellishment-or adornment,-either-in-their-own-right-or-in-combination-with-other property,-are-not-included-in-the-exemption-provided-in-this-section.

(2) THE RECEIPTS FROM THE SALE OR USE OF COMBUSTIBLE MATERIAL, COAL, PETROLEUM, NATURAL GAS, OIL OR URANIUM FOR ENERGY PRODUCTION FOR RESALE AND IN-PLANT ENERGY USE ARE EXEMPT FROM THE SALES AND USE TAX.

EXHIBIT 13

DATE 2-2-93

SB-235

MINING EXEMPTION

Discussion

The purpose of this amendment is to clarify, through the definitions in Section 1, the references to miner and mining in subsequent sections of the bill, such as Sections 27 and 30.

MINING EXEMPTION

SECTION 1. Definitions.

(5) "Manufacturing" means combining or processing components or materials, including the MINING OR processing for ores in a mill, smelter, refinery, or reduction facility, to increase their value for sale in the ordinary course of business. The term does not include construction..

UNCOLLECTIBLES

Discussion

This appears to be an area that has not been addressed in the bill. However, it seems clear that the seller should be permitted to adjust its tax payments for billings it never collects.

EXHIBIT 13
DATE 2-2-93
SB-235

UNCOLLECTIBLES

Insert following Section 27

"New Section. Exemption -- Uncollectibles or bad debts. Receipts from sales or leases accounted for on the accrual basis that become worthless or uncollectible may be deducted from gross receipts."

SENATE TAXATION
EXHIBIT NO. 14
DATE 2-2-93
BILL NO. S.B.1935

MONTANA ASSOCIATION OF REALTORS®
LEGISLATIVE POSITION STATEMENT
APPROVED SEPTEMBER 17, 1992

The Montana Association of REALTORS® represents the nearly 2,500 real estate brokers and salespersons who are members of the association. The Legislative Committee, the MAR staff and the association examine the multitude of issues which are of vital concern to the industry and to property owners and recommend a position to the MAR Board of Directors. This Position Statement is the official position of the Montana Association of REALTORS® as approved by the Board of Directors.

TAXATION

The existing tax structure of the State of Montana inhibits rather than encourages the economic development of the state. Disproportionately high property tax, unitary tax, severance taxes, etc. serve to discourage new businesses from locating in Montana and existing businesses from expanding. The Montana Association of REALTORS® supports an equitable, balanced tax structure for the State of Montana and a general reduction in spending to balance state spending on services with revenues.

PROPERTY TAX

The Montana Association of REALTORS® supports a reduction in all classes of property tax. Montana is at a competitive disadvantage with surrounding states in attracting new business to the state. Part of this disadvantage is directly attributable to the fact that Montana's personal and real property tax is significantly higher than competing states. Real Estate taxes should be used primarily to pay for government services which serve real estate.

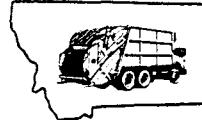
SALES TAX ON CONSUMABLE GOODS

MAR favors a sales tax on consumable goods as one means of replacing revenues lost through property tax reform and not as an additional tax. It is time for Montana to shift its tax emphasis from taxation of production to taxation of consumable goods. We support a balanced tax system for the State of Montana. MAR would support exclusions to help combat the "regressivity" of a sales tax.

Montana Solid Waste Contractors

36 S. Last Chance Gulch
Suite A
Helena, MT 59601

Phone (406) 443-1160
Fax (406) 443-4614



Growing With
Montana

SENATE BILL NO. 235

SENATE TAXATION

EXHIBIT NO. 15

DATE 2-2-93

BILL NO. SB 235

Position: Support conceptually with following amendment:

Amendment:

Section 9 Exemption (2) - government agencies - exception: page 17 - line 15

(2) The sale of natural gas, water, electricity, telephone communications services, refuse collection and disposal, or other regulated utility services are not exempt from the sales tax and use tax.

Reason:

The important components of solid waste management include collection and disposal. Collection may be accomplished by a municipally-owned or operated service or by a private service; likewise, disposal may be in a city or county-owned landfill or at a privately-owned landfill. In some communities such as Helena - refuse may be disposed of at the city-owned landfill, the county-owned landfill or a privately-owned landfill.

To exempt government-owned landfills and tax privately-owned landfills would be inequitable and would discourage use of privately-owned facilities. The services of privately-owned disposal facilities and government-owned facilities should be taxed in a like manner.

We urge your adoption of the above amendment.

Sue Weingartner, Executive Director
MONTANA SOLID WASTE CONTRACTORS
February 2, 1993



Recycled Paper

2-2-93

A STATE SALES TAX, PART OF A BIGGER PICTURE

The creation of a National Sales Tax awaits the actions of Alaska, Delaware, Montana, New Hampshire, and Oregon in implementing State Sales Taxes.

This becomes a reality through the two clauses of the U S Constitution cited below.

ARTICLE 1, SECTION 10, CLAUSE 2 says....

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

ARTICLE 1, SECTION 8, CLAUSE 1 says....

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States.

According to the decisions of numerous U S Supreme Court decisions, the definitions of State Sales Taxes, Excise Taxes, Imposts, and Duties all relate to each other.

It has been determined by the U S Supreme Court that ad valorem property taxes are not a impost or a duty. See Michelin Tire v Wages (Georgia, 1976)

The High Court has made it clear in its decisions relating to the first Article above that imports are still considered imports after they have been brought into the states. The Court has said that U S Congress will decide when immunity ends and the imported goods become subject to state taxation, and whether the state or the national government has the right to the use of the these taxes. (See Michelin v Wages.) 1976

See Brown v Maryland, 1827.

See Richfield Oil Corp. v The Board of Equalization (Cal) 1946.

See Limbach v Hooven - Allison (Ohio) 1974

Dorothy Stevens



SENATE TAXATION

EXHIBIT NO. 16

DATE 2-2-93

BILL NO. SB 235

confines it. What, then, are "imports?" The lexicons inform us, they are "things imported." If we appeal to usage for the meaning of the word, we shall receive the same answer. They are the articles themselves which are brought into the country. "A duty [* 438] on imports," then, is not merely a duty on the act of importation, but is a duty on the thing imported. It is not, taken in its literal sense, confined to a duty levied while the article is entering the country, but extends to a duty levied after it has entered the country. The succeeding words of the sentence which limit the prohibition, show the extent in which it was understood. The limitation is "except what may be absolutely necessary for executing its inspection laws."

2.

But, while we admit that sound principles of construction ought to restrain all courts from carrying the words of the prohibition beyond the object the constitution is intended to secure, that there must be a point of time when the prohibition ceases, and the power of the State to tax commences, we cannot admit that this point of time is the instant that the articles enter the country. It is, we think, obvious, that this construction would defeat the prohibition.

5. The constitutional prohibition on the States to lay a duty on imports, a prohibition which a vast majority of them must feel an interest in preserving, may certainly come in conflict with their acknowledged power to tax persons and property within their territory. The power, and the restriction on it, though quite distinguishable when they do not approach each other, may yet, like the intervening colors between white and black, approach so nearly as to perplex the understanding, as colors perplex the vision in marking the distinction between them. Yet the distinction exists, and must be marked as the cases arise. Till they do arise, it might be premature to state any rule as being universal in its application. It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has, perhaps, lost its distinctive character as an import, and has become [* 442] subject to the taxing power of the State.

6. It might with the same reason be said, that no State would be so blind to its own interests as to lay duties on importation which would either prohibit or diminish its trade. Yet the framers of our constitution have thought this a power which no State ought to exercise. Conceding, to the full extent which is required, that every State would, in its legislation on this subject, provide judiciously for its own interests, it cannot be conceded that each would respect the interests of others. A duty on imports is a tax on the article, which is paid by the consumer. The great importing States would thus levy a tax on the non-importing States, which would not be less a tax because their interest would afford ample security against its ever being so heavy as to expel commerce from their ports. This would necessarily produce countervailing measures on the part of those States whose situation was less favorable to importation. For this, among other reasons, the whole power of laying duties on imports was, with a single and slight exception, taken from the States. When we are inquiring whether a particular act is within this prohibition, the question is not, whether the State may so legislate as to hurt itself, but whether the act is within the words and mischief of the prohibitory clause.

5. All must perceive that a tax on the sale of an article is a tax on the article itself.

RICHFIELD OIL CORP. V. STATE BOARD OF EQUALIZATION.

APPEAL FROM THE SUPREME COURT OF CALIFORNIA.

No. 46. Argued October 24, 1946.—Decided November 25, 1946

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

1. Held that a tax imposed upon appellant pursuant to the California Retail Sales Tax Act, measured by the gross receipts from the transaction was an import upon an export, within the meaning of Art. I, § 10, Cl. 2 of the Federal Constitution, and therefore unconstitutional. Pp. 71-7.

2. Richfield Oil Corporation, while doing business in California, sold oil extracted from California soil. Its purchaser bought the oil to transport and use abroad. California, like many other states, raises a large proportion of its revenue by a generally applied tax on sales. The Court holds that application of the California sales tax to this transaction is a "tax on exports" and therefore violates Article I, Section 10, Clause 2 of the Federal Constitution.

2-2-83

Sales Tax

242-83-9 Docket No. 46

Sales Tax

9-8-93

Federal Gov. entitled to revenues from imported goods except where services rendered by state, county or cities for fire or police protection or other.

See these ad valorem property tax cases:

-(*Michelin V Wages*(1975) Pages 280, 281, 283, 285, 286, 287, 289, 291, 294, 301.

-(*A.J. Reynolds V Durham County*(1986) Pages 502, 503, 504, 515.

(Business + occupation tax case)

also: { *Dept. of Revenue of WA V ASSOC. of WA Stucodoring*
Pages 734, 735, 761, 762, 763, 764.

also: { *Limbach V Hoogen*(Ohio, 1984) a property tax case
Pages 358, 359, 360, 363.

No proof by State Depts. in Mt that
Sales tax revenue can be used for state
purposes except services rendered to
imports (as fire + police protection.)

See Article 1, Sec 10, Clause 2
of US Constitution

Need test case against other states
on sales tax issue to see if they
need to pay these funds to nat. gov.

Dorothy Stevens

Cases will be brought on use of
property tax.

attached: memorandum, MT. Dept. Revenue
to D. Woodgerd from Paul Van Tricht
Dated 1-14-1993. This was due to
my inquiry earlier in the month.

Case: See *E. Sugarman V St. Board of Equalization*
(Cal. (1958) Pg. 338, [9])
(use tax v sales tax)

MEMORANDUM/OPINION 93-01
Dave Woodgerd, Chief Legal Counsel
January 14, 1993
Page 2

COPY

Prior to the 1970's the cases focused on whether the taxed goods were still in transit or otherwise separately identifiable as imports. However, those cases were expressly overruled by the U.S. Supreme Court in Michelin Tire Corp v. Wages, 423 U.S. 276 (1976).

The most recent decisions of that Court have clearly limited the impact of that clause on the ability of the states to levy non-discriminatory taxes on imports or exports.

For example, the U.S. Supreme Court in Limbach v. Hooven & Allison Co., 466 U.S. 353, 358 (1984), said:

The Clause [Art. I, Sec. 10, Cl 2], while not specifically excepting nondiscriminatory taxes that had some impact on imports, was not couched in terms of a broad prohibition of every tax, but prohibited States only from laying "Imposts or Duties," which historically connoted exactions directed only at imports or commercial activities as such.

Since that decision, the U.S. Supreme Court has upheld non-discriminatory state taxes on imported goods where the tax does not interfere with federal regulation of foreign commerce, impede the collection of customs duties, or otherwise constitute the type of exaction that the framers of the U.S. Constitution sought to prevent. R.J. Reynolds Tobacco Co. v. Durham County, 107 S. Ct. 499 (1986). Also see Department of Revenue v. Association of Washington Stevedoring Cos., 435 U.S. 734 (1978).

/vh

This Court rejected the challenge to the state tax on the imported tires.¹ It found that in the history of the Import-Export Clause, there was nothing to suggest that a tax of the kind imposed on goods that were no longer in import transit was the type of exaction that was regarded as objectionable by the Framers. The tax could not affect the Federal Government's exclusive regulation of foreign commerce since it did not fall on imports as such. Neither did the tax interfere with the free flow of imported goods among the States. The Clause, while not specifically excepting nondiscriminatory taxes that had some impact on imports, was not couched in terms of a broad prohibition of every tax, but prohibited States only from laying "Imposts or Duties," which historically connoted exactions directed only at imports or commercial activities as such. The Court concluded that its reliance a century earlier in *Low v. Austin* "upon the *Brown* dictum . . . was misplaced." 423 U. S., at 283. Chief Justice Taney's opinion in the *License Cases*, 5 How. 504 (1847), was carefully analyzed, with the Court concluding that that opinion had been misread in *Low*. "[P]recisely contrary" to the reading it was given in *Low*, Chief Justice Taney's *License Cases* opinion was authority "that nondiscriminatory ad valorem property taxes are not prohibited by the Import-Export Clause." 423 U. S., at 301. It followed, this Court concluded, that "*Low v. Austin* was wrongly decided" and "therefore must be, and is, overruled." *Ibid.* *Hooven I* was directly cited only once in *Michelin*, and then only in a footnote in which the Court stated that it found it unnecessary to address the assertion in *Hooven I* that Congress could consent to state nondiscriminatory taxation of imports even

358	466 U. S.	353	Opinion of the Court
			"Previous cases had assumed that all taxes on imports and exports and on the importing and exporting processes were banned by the Clause. . . . So long as the goods retained their status as imports by remaining in their import packages, they enjoyed immunity from state taxation. . . ."

"*Michelin* initiated a different approach to Import-Export Clause cases. It ignored the simple question whether the tires and tubes were imports. Instead, it analyzed the nature of the tax to determine whether it was an 'Impost or Duty.' 423 U. S., at 279, 290-294. Specifically, the analysis examined whether the exaction offended any of the three policy considerations leading to the presence of the Clause:

"The Framers of the Constitution thus sought to alleviate three main concerns . . . : the Federal Government must speak with one voice when regulating commercial relations with foreign governments, and tariffs, which might affect foreign relations, could not be implemented

¹Because the respondents there, the county Tax Commissioner and Tax Assessors, did not cross-competition for certiorari, the Georgia courts' ruling that tubes still in corrugated shipping cartons were immune from the tax was not before this Court for review. *Michelin Tire Corp. v. Wages*, 423 U. S., at 279, n. 2.

²Since *Michelin*, *Hooven I* has been cited by this Court only twice. See *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 111 (1980), and *Klepe v. New Mexico*, 426 U. S. 629, 640 (1976). Neither citation bears upon the issue before us in the present case.

Opinion of the Court 466 U. S.

by the States consistently with that exclusive power; import revenues were to be the major source of revenue of the Federal Government and should not be diverted to the States; and harmony among the States might be disturbed unless seaboard States, with their crucial ports of entry, were prohibited from levying taxes on citizens of other States by taxing goods merely flowing through their ports to the other States not situated as favorably geographically.'

"The ad valorem property tax there at issue offended none of these policies. . . . The Court therefore concluded that the Georgia ad valorem property tax was not an 'Impost or Duty,' within the meaning of the Import-Export Clause" *Id.*, at 752-754.

See also *id.*, at 762 (opinion concurring in part and concurring in result).

To repeat: we think it clear that this Court in *Michelin* specifically abandoned the concept that the Import-Export Clause constituted a broad prohibition against all forms of state taxation that fell on imports. *Michelin* changed the focus of Import-Export Clause cases from the nature of the goods as imports to the nature of the tax at issue. The new focus is not on whether the goods have lost their status as imports but is, instead, on whether the tax sought to be imposed is an "Impost or Duty." See P. Hartman, *Federal Limitations on State and Local Taxation*, § 54 (1981); Hellerstein, *State Taxation and the Supreme Court: Toward a More Unified Approach to Constitutional Adjudication?*, 76 Mich. L. Rev. 1426, 1427-1434 (1977). Cf. *Montana v. United States*, 440 U. S. 147 (1979).

Hooven I held that, under the Clause, a nondiscriminatory state ad valorem personal property tax could not be imposed until the imported goods had lost their status as imports by being removed from their original packages. This decision was among the progeny of *Low v. Austin* for it, too, was decided on the original-package doctrine. Thus, *Hooven I* is

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inconsistent with the later ruling in *Michelin* that such a tax is not an "Impost or Duty" and therefore is not prohibited by the Clause. Although *Hooven I* was not expressly overruled in *Michelin*, it must be regarded as retaining no vitality since the *Michelin* decision. The conclusion of the Supreme Court of Ohio that *Hooven I* retains current validity in this respect is therefore in error. A contrary ruling would return us to the original-package doctrine. So that there may be no misunderstanding, *Hooven I*, to the extent it espouses that doctrine, is not to be regarded as authority and is overruled.

III A

Respondent *Hooven*, however, argues that because the Court in *Michelin* did not expressly overrule *Hooven I*, it must follow that state-law principles of collateral estoppel bar the imposition of an ad valorem tax upon *Hooven*'s raw materials inventory.

We reject the suggestion that we are confronted, in the present posture of the case, with a claim of collateral estoppel under state, as distinguished from federal, law. *Hooven I* was a decision concerned with the application and impact of the Import-Export Clause upon the Ohio tax. The issue, thus, was one of a federal constitutional barrier. The Supreme Court of Ohio certainly so viewed it. It referred to both *Hooven I* and *Michelin* in federal constitutional terms and it described the issue before it as whether the contested tax "may constitutionally be assessed" in light of the Import-Export Clause. 4 Ohio St. 3d, at 171, 447 N. E. 2d, at 1297. And it viewed collateral estoppel in the light of precepts set forth in *Commissioner v. Sunnen*, 333 U. S. 591 (1948), a federal income tax case. From this premise, the Ohio court moved to its judgment that the levy of the tax was "barred by the doctrine of collateral estoppel." 4 Ohio St. 3d, at 173, 447 N. E. 2d, at 1299.

Collateral estoppel, therefore, was applied as a matter of federal, not state, law. We perceive in this case no state-law

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overtones that, by any stretch of the imagination, could serve to insulate the case from review here. We are concerned with federal issues and a contention that a state court disregarded a federal constitutional ruling of this Court. The issue, then, is reviewable here. See *Deposit Bank v. Frankfort*, 191 U. S. 499 (1903); *Stoll v. Gottlieb*, 305 U. S. 165 (1938); *Toucey v. New York Life Ins. Co.*, 314 U. S. 118, 129, n. 1 (1941).

B

We move on to respondent's collateral-estoppel argument. It is true, of course, that the parties in *Hooven I* were the same parties as those before us in the present case. It is true that the property sought to be taxed for 1976 and 1977 identifies with the property sought to be taxed for 1938, 1939, and 1940 in *Hooven I*. And it is true that the tax involved is the same Ohio nondiscriminatory ad valorem personal property tax. The parties, the tax, and the goods imported and their containers are the same. The Tax Commissioner does not dispute this. Tr. of Oral Arg. 12. Collateral-estoppel concepts, therefore, might have an initial appeal.

The years involved in this tax case, however, are not the same tax years at issue in *Hooven I*. Because of this, *Commissioner v. Sunnen, supra*, is pertinent and, indeed, is controlling. That case concerned licenses granted by a patent owner and his assignment of interests in the royalty agreements to his wife. An earlier decision of the Board of Tax Appeals, involving the same facts, questions, and parties but different tax years, was held not to be conclusive under the doctrine of collateral estoppel because certain intervening decisions of this Court made manifest the error of the result that had been reached by the Board. 333 U. S., at 602-607. The reason for not applying the collateral-estoppel doctrine in the present case is even stronger than that in *Sonnen*, for here the constitutional analysis of the earlier case is repudiated by this Court's intervening pronouncement.

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Because the Supreme Court of Ohio did not apply the principles of *Sonnen*, its judgment must be vacated and the case remanded. Failure to follow *Sonnen*'s dictates would lead to the very tax inequality that the admonition of that case was designed to avoid. Hooven then would be immune forever from tax on its imported goods because of an early decision based upon a now repudiated legal doctrine, while all other taxpayers would have their tax liabilities determined upon the basis of the fundamentally different approach adopted in *Michelin*. See *Sonnen*, 333 U. S., at 599.

Petitioner, therefore, is not barred by collateral estoppel in asserting the increases in tax for 1976 and 1977.

IV

The case is before us without a developed factual record. Hooven takes the position that it is entitled to an opportunity to demonstrate that the facts of this case are significantly different from those of *Michelin*, so that the result in that case is not controlling here. Hooven suggests that in *Michelin*, the tires had been mingled with domestically manufactured tires and had been arranged and stored for sale and delivery; moreover, the tires were finished goods. Here, according to Hooven, its imported fibers are not for sale, are not finished goods, and are destined for incorporation into a manufacturing process. Hooven further asserts that, once a factual record has been developed, a court will be in a position to examine the case in the light of any other constitutional provision respondent is then in a position to invoke, including the Foreign Commerce Clause.

Any development of the record, of course, should take place in the state courts and first be evaluated there. Accordingly, we make no judgment on the merits of Hooven's constitutional claims. The judgment of the Supreme Court of Ohio is therefore vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.



Montana State AFL-CIO

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

Donald R. Judge
Executive Secretary

406-442-1708

SENATE TAXATION

EXHIBIT NO. 17

DATE 2-2-93

BILL NO. SB 235

TESTIMONY OF DON JUDGE ON SENATE BILL 235 BEFORE THE SENATE TAXATION COMMITTEE, FEBRUARY 2, 1993

Mr. Chairman, members of the Committee, for the record my name is Don Judge, representing the Montana State AFL-CIO, and we are here to discuss our opposition to the sales tax, as provided for in SB 235. A brief look at our country's history should help us decide if a sales tax is the answer to our state's economic malaise.

Twelve years ago this country elected a new President who promised to solve the budget deficit and revitalize the American economy with a solution he called "trickle down economics." All we had to do, he said, was "unleash industry" by reducing regulations and taxes on businesses. He promised that those businesses, free of the onerous obligation of helping to pay for the country's needs, would invest the money they saved by not paying taxes, to create new jobs. Americans would have new job opportunities, and the working men and women of this country would make enough money to pay back the tax breaks we gave these industries. It was called "burden shifting."

So, Americans gave "trickle down economics" and "burden shifting" a try.

And the results were astounding.

The corporations and businesses indeed invested their tax savings. We were surprised, however, to discover that they invested it by moving American factories and jobs to Mexico and Taiwan and Hong Kong and Bolivia. Some invested it in junk bonds and other get-rich-quick schemes. Some of them even invested it in friends who ran our savings and loans institutions.

And now, America is the largest debtor nation in the world. Our manufacturing base has relocated to Third World countries where workers are paid 55 cents an hour. Our national debt, which was \$79 billion in 1980, now exceeds \$4 trillion.

The jobs for American workers never materialized and federal programs for middle and lower income Americans have been cut or eliminated.

Montana, too, was seduced by the lure of quick riches promised by trickle down economics. Accusations of an "anti-business climate" and threats of closures and relocation brought the Legislature to its knees.

Since 1980, Montana has given tax break after tax break to businesses, hoping to keep them, or lure them, to Montana. Has it helped?

Business inventories were removed from the property tax base in 1983. Has it helped?

The oil severance tax was lowered to 5% in 1985. Has it helped?

The coal industry was allowed to deduct royalties from the state severance tax in 1987 -- and then in 1991, the severance tax was cut in half. Has it helped?

In 1989, oil, gas and coal were exempted from paying the 40-mill equalization levy paid by all other taxpayers in the state. Has it helped?

Then in 1991, the business personal property tax rate was reduced to 9%. Has it helped?

Did we create economic prosperity? Did we create new, good-paying jobs and new tax revenue? And, who has paid for these cuts?

The Legislative Fiscal Analyst estimates that in the 1992-93 biennium alone, Montana's state government gave back \$141.4 million in revenues through tax breaks handed to corporations and businesses. We now face a deficit estimated in excess of \$200 million.

Who should pay to replace those missing dollars?

Until now, the answer to "who pays for it" has been easy for some: Cut government. Get rid of the fat. And so, Legislature after Legislature has cut away at government.

You cut the fat four years ago. Last session you cut the muscle. This time you have hit bone. And finally, some of you are saying that you must stop cutting before you kill government and destroy the very programs that serve the people and the businesses of our state.

You know that it's time to raise some money, but, who should pay for it?

It was clear during the 1992 campaign that a sales tax would be proposed as a way of replacing the hemorrhage of revenue caused by the never-ending tax cuts for business. One such bill is before you today. As you analyze this proposal, Montana's working men and women hope that you'll look at it carefully, then ask: "Who is going to pay?"

Business? Not on agricultural products, gambling, amusement games, insurance premiums, stocks, bonds, dividends, commissions, some land sales, the sale of oil, gas and mineral interests, advertising, newspapers, the sale of real property, mobile homes, or out-of-state business purchases.

In fact, there is a substantial reduction for business if the property tax rate for Class 8 businesses is dropped to 3.86% -- a 65% cut from what those businesses were paying in 1990. It will cost the state \$130,000,000 in lost taxable value. Who is going to pay?

Big business? Not on your life. This legislation is so full of exemptions and tax breaks for business that they'll spend even more time smiling on the way to the bank.

The wealthy? Not on their investments or their dividends or elective surgery or gourmet foods. In fact, they'll be getting a reduction in their income tax rate of about 46%. Who is going to pay?

The tourists? Sure, for the few months they visit Montana. In fact, the estimate is somewhere between 7 and 12 percent of the revenue. That leaves Montana's struggling population to carry the rest of the load.

The poor? Probably, but what they pay for up front is supposedly going to be rebated to them at the end of the tax year. Then, they're supposed to hang onto that rebate in order to help them afford to pay the sales tax in the coming year. Nice trick! But when you're poor, hanging onto the cash instead of buying necessary clothing, auto repairs, toiletries, etc. (all of which are subject to the sales tax) is just a fantasy.

If a sales tax is instituted in Montana, the largest single "burden shifting" will have taken place and the wage earners -- Montana's working families -- will be paying for the tax breaks given to business and the rich.

Despite all the deductions, exemptions and rebates, this tax will raise millions of new tax dollars and SOMEONE will have to pay! All of the bells, whistles and frosting on the cake won't make that go away.

And what the proponents haven't explained to you is how much more money will be leaving Montana, if we institute SB 235. You know, like when you get your state income and property tax reductions and wind up paying higher federal taxes as a result! After all, those taxes are still deductible -- but the sales tax is not. I have yet to see an analysis of the cost to Montana's economy through this folly.

Having said all this, it would be fair to ask the Montana State AFL-CIO a couple of questions, like:

Mr. Judge, don't you agree that Montana's tax system is badly in need of reform? My answer: You bet!

Mr. Judge, don't you agree that essential governmental services are badly in need of additional revenue? My answer: Absolutely!

Mr. Judge, can't you do anything more than criticize this obviously well thought-out sales tax plan? My answer: Certainly, but so far, our state's defenders of big business refuse to hear the answers.

We will work with the legislature, the governor and anyone else who is interested in tax reform which is good for Montana's working men and women.

We want tax fairness, based upon an ability to pay. We want adequate taxes, enough to appropriately fund our essential public services. And we want a tax system that competes, not with the bottom line, but with top of the line services to encourage responsible development of our state. And, we'd like a system based upon learning from our past mistakes. Unfortunately, SB 235 looks like old policies revisited and a new tax imposed.

Rest assured we'll be a player in those discussions. In the meantime, we'll prepare to educate and encourage Montana voters to reject this last seduction by "trickle down economics".

SENATE INVESTIGATION
EXHIBIT NO. 18
DATE 2-2-93
BILL NO. SB 235

New Beginnings

Senate Bill 235

The original is stored at the Historical Society at 225 North Roberts Street,
Helena, MT 59620-1201. The phone number is 444-2694.

SENATE TAXATION

EXHIBIT NO. 19

DATE 2-2-93

BILL NO. SB 235

FROM: TIM DEAN
NATIONAL REP---MT. BIA

JANUARY 30, 1993

TO: GOVERNOR MARC RACICOT, ALL STATE REPRESENTATIVES & SENATORS

RE: SALES TAX PROPOSAL SB 235

#####

My name is Tim Dean. I am the owner of Tim Dean Construction, Inc. in Bozeman. I am also the National Rep for the Montana Building Industry Association.

I am opposed to SB 235, the Governor's sales tax proposal as it NOW READS.

As the bill now reads the Building Industry will be taxed 4% on 80% of every new home that we build for the public. A \$ 100,000 home will be taxes approxinately \$ 3200.00. This cost will then have to be passed onto the owner of a new home. This tax is a plain and simple hard cost that will have to be absorbed by the homeowner not something like carpet that the owner has a choice of picking cheaper carpet if they cannot afford the original choice.

This gives me some very grave concerns and I am deeply distressed about the impact this bill will have on the Building Industry.

We call it AFFORDABLE HOUSING. Or maybe I should call it lack of affordable housing. To put it in plain English----if this bill is passed---- a large percentage of low and middle income families will not qualify or be able to afford a home. Affordable Housing means that a low or moderate family cannot afford to RENT or BUY a decent quality dwelling without spending more than 33 percent of its income on shelter, so much that it cannot afford the other necessities of life.

The National Association of Homebuilders this year celebrates 50 years of making Americans the best housed nation in the world. Over these 50 years we, the building industry have constructed over 70 million homes. Over these 50 years we have maintained a common goal of building for our communities----comfort, convenience and safety. We for over 50 years have become the envy of the world and consequently made this the best housed nation in the world.

But slowly and surely, we are losing that distinction. The reason is because we have been burdened with so many governmental regulations, impact fees, taxes, unnecessary codes, etc. that we can no longer control the cost of our homes. The problem is completely out of control and has potential of getting much worse.

And who really suffers the most? That's right---the American family. A recent survey in the Bozeman Chronicle stated our citizens top wish list---# 1 on the list---**AFFORDABLE HOUSING.**

Decent, affordable housing has been a common quest, a national goal, since this country began. For most American, home ownership has become accepted almost as an inalienable right.

Home ownership provides security and privacy, conforms best to a lifestyle decision, and is essential to raising a family and establishing roots in the community and in turn given Americans a sense of worth, a strong vested interest in their communities and in our country.

The Building industry is the second largest industry in the nation but together we employ more people than any other industry in the nation. That's right---we provide JOBS and that is why housing always leads the nation out of recession. The reason why is because we put America back to work.

But the question looms over our industry. "Who slammed the door on the American Dream.? What is going wrong or what has gone wrong?? I can answer that question---its called governmental regulations.

Right now as I write this letter, this state, this nation and the building industry is facing one of the most critical periods in history in trying to hold down the cost of new homes. Faced with the most critical lumber shortage ever (because of the spotted owl situation), a potential for a 4% sales tax, workers' compensation rates that have escalated way beyond our wildest guess, the building industry inevitably will be hit severely. End result will be the loss of a large percentage of families that will not have the opportunity to realize the American Dream of homeownership.

The AMERICAN DREAM means choosing where to live, and for some workers, owning a home someday. In the past, the way to get ahead in America has been by getting a good education, working hard and buying a home or providing shelter for our family. THE AMERICAN EXPERIENCE. Besides providing a family with a place to live, owning a home allows them to build equity, gives them a stake in their community, a piece of the action and an investment in America.

The result is a better way of life for all Americans.

We do not argue with the need for governmental action to protect the environment, to conserve energy, to reduce harmful pollution and to protect the health and safety of all.

EXHIBIT 19

DATE 2-2-93

SB-235

Our fear is that America's lawmakers have lost sight of the social and economic benefits that have accrued from 50 years of homebuilding. Governmental spending has been the biggest reason we feel America's lawmakers have lost this vision.

America, the land of opportunity has become the land of a frustrating and often unrewarding search for the affordable home. Consequently, we take exception to the unreasonable efforts that achieve nothing more than push the opportunity of homeownership further and further away from those who need it the most.

It is time to reaffirm the traditional American values of hard work, the family, the opportunity for upward mobility and neighborhood tranquility and the American dream of home ownership.

The major task before our nation and Montana today is to recognize and confront that choice, to develop a state consensus for housing and to press for a renewed commitment to the national goal of providing decent affordable housing for all Americans.

We vigorously oppose another tax on our industry and on the citizens of this State. If you cannot amend the bill to exempt the Building Industry then we strongly oppose SB 235.

THANK YOU !!!

Tim Dean -

TIM DEAN

Mr Chairman and Members of the Committee

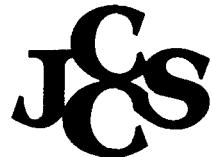
My name is John Crowley, I am a student at Montana State University. My concern with Senate Bill - 235 is the fact that it appears that the cost of education will be taxed at a 4% rate.

As a student who pays for his own education, both with my savings and with the help of the Federal Financial Aid program, the added cost of a sales tax would become a burden for me and for many other students like me. This burden will just become larger in the coming years as the cost of a university education increases.

Today this tax would cost me about an extra \$50, about what it costs me to live for about 2½ weeks (excluding rent). At the proposed 100% cost of education for out of state student, this tax would cost me nearly \$300, more than a months rent.

Thank you for considering this important aspect of Senate Bill 235, as a sales tax is not considered for Financial Aid purposes.

John P. Crowley Jr.



Junkermier · Clark
Campanella · Stevens · P.C.

Certified Public Accountants

SENATE TAXATION

EXHIBIT NO. 21

DATE 2-2-93

BILL NO. SB 235

Ward F. Junkermier, CPA
George L. Campanella, CPA
Rick A. Frost, CPA
Robert E. Nebel, CPA
Joseph F. Shevlin, CPA
Ronald A. Taylor, CPA

Kent A. Borglum, CPA
Terry L. Alborn, CPA
William J. Eidel, CPA
Walter J. Kero, CPA
Jerry L. Lehman, CPA

January 30, 1993

Honorable Senator Mike Halligan
Chairman Senate Taxation Committee
Capitol Station
Helena MT 59620

FAX 444-4105

Dear Mike:

The following are comments which I have put together in response to reviewing Senate Bill #235 introduced by Senator Bruce Crippen at the request of the Governor.

The following comments are organized on the basis of the applicable new or modified sections from the Montana Code Annotated. At the end of the letter I will have general commentary in regards to this tax reform bill as a whole.

● **New Section 6(2)(b)(ix)**

This definition of an activity may not be legal in light of the most recently decided case of *Quill v North Dakota*. In this US Supreme court case North Dakota was attempting to impose sales tax on mail order sales. If a mail order catalog business does not have property or payroll in this state and conducts its sales through the use of interstate commerce the United States Supreme Court has felt that the state taxing this type of transaction is not legal under the interstate commerce clauses.

● **New Section 6(7)(a & b)**

These sections will be affected by the same comment as above.

● **New Section 6(8)**

Evidently the drafters of this bill have built in an escape clause wherein if any application of Section 6 is held invalid, then the application to other situations or persons is not affected. I don't know if this is a good disclaimer clause or if it accomplishes the intended purpose. If anything is done, this section should be re-worded.

Honorable Senator
Mike Halligan
January 28, 1993
Page 2

● New Section 7

In this section discussions are had concerning non-taxable transaction certificate requirements, forms, etc.. I believe a more definitive description of this would be "resale certificate". I'm not sure of the concept here other than it is my understanding that non-taxable transactions are primarily intended to apply to purchasers of goods and services in a wholesale or resale context. I am not aware of any other intended non-taxable transaction.

● New Section 10

This exemption for food products, like all exemptions, is an indication of favoritism to one class of products. It would be preferable to generate a grocery credit to be earned and utilized on an individual's income tax return similar to the Idaho system. In that case, this whole section could be deleted.

● New Section 11

Same comment as for New Section 10.

● New Section 12

Same comment as for New Section 10.

● New Section 14(1)(a)

Sales of a product from a grower or producer is consistent with the concept of a resale or wholesale situation. However, at subparagraph 1(b) a person engaged in the business of buying and selling wool or mohair or buying and selling livestock on a person's own account is not consistent with that of a resale or producer. If a sale is to an end consumer or user, the transaction should be taxable for sales tax purposes.

● New Section 14(2)

This subparagraph deals with the concept with providing a service in the form of feeding, pasturing, penning, and handling or training of livestock prior to a sale. Why is this service provision exempt?

● New Section 23

This exemption and other exemptions to be commented on later are a perfect example of NIMBY (not in my back yard) taxation. At subparagraph 1 the sale or use of newspapers, magazines and books is exempt from the sales or use tax, the same can be said for New Section 23(2).

● New Section 24 Exemption Daycare Services

This exemption is also an example of don't tax me, but tax somebody else.

Honorable Senator
Mike Halligan
January 28, 1993
Page 3

● **New Section 25(2)**

If the sale or use of an agricultural service is for some purpose other than in the production of a product or in a manufacturing sense, then this type of service should not be exempt. For example, management consulting fees paid by a farmer or rancher.

● **New Section 27 Exemption**

If the sale of certain services or products concerning mining or manufacturing are involved, concerned and if the sale is to an ultimate consumer or user, then the sale should be taxable and not exempt. An example of this would be the sale of sapphires either raw, cut, or finished to an ultimate consumer or user.

● **New Section 34**

Certain discussions in this section address the concerns listed above concerning the Quill decision by the United States Supreme Court.

● **New Section 39(2)**

A sellers permit is valid until revoked or suspended but is not assignable. An exception should be made where a corporation or business is purchased by another corporation or business. However, this assignment should be subject to departmental approval.

● **New Section 44(2)**

This subsection may or may not be legal in terms of the context of interstate commerce. Therefore, any need for furnishing adequate security for these types of retailers may not be legal.

● **New Section 46(1)**

The Department of Revenue is going to have a significant amount of difficulty in administering a sales tax on the cash basis. In the State of Washington, the sales tax is based upon the accrual basis and point of sale. There are no exceptions to this. This section should be rewritten so that it defaults; that a person who has a sellers permit may apply to report on a cash basis. In addition, this section does not make any provisions (for those retailers or sellers on an accrual basis) for a credit for the tax submitted to the department which later becomes a bad debt.

● **New Section 47(2)**

This sub section is good in that it allows reporting to be done either on a monthly or quarterly basis.

Honorable Senator
Mike Halligan
January 28, 1993
Page 4

● **New Section 48 Vendor Allowance**

It is my understanding, that neither the State of Idaho or Washington give a retailer or seller a remuneration for collecting and dispersing sales taxes. In fact, in the State of Washington, they have a business and occupation tax which is an overhead cost to the businesses. Although I do not advocate such a system, the idea of a vendor allowance is questionable in that the 1½ percent of the tax determined to be payable or \$50 which ever is less is probably a token reimbursement for the cost of administering, collecting, and remitting the taxes.

● **New Section 51 Penalties and Interest**

The comments with regards to this section are that a certain number of businesses will collect sales taxes in the ordinary course of business, but because of financial difficulties will fail to pay the tax over to the state. This will become a collection problem for the Department of Revenue and will require a number of state employees to administer the collection and enforcement provisions. A security deposit system will help, but there are "businesses out there already" who are borrowing on federal and state payroll taxes. A sales tax system will become one more area for businesses to borrow money.

● **New Section 56**

This section gives the Montana Department of Revenue broad powers for administering and enforcing the sales tax provisions enumerated between Sections 1-61. A significant amount of new state employees will be needed to administer and enforce these provisions. Question is, how many employees will be needed and secondly, where are they going to be housed? A new building will probably have to be erected to house all these new bureaucrats.

● **New Section 57**

This is a good section in that it would allow for the Secretary of State to revoke charters for those corporations not paying these taxes and obtaining clearance certificates. This same concept should be also applied to all of those entities registering with the Secretary of State for purposes of preserving a business name, partnership names, etc.. Also, under New Section 57(4) a discussion of a final decision of the department being appealed to the state tax appeals board points to another problem, the state tax appeals board. This board may be familiar with property tax appeals, but they are very limited in their knowledge of income taxes. To even think they would have expertise in regards to sales taxes is very remote. To follow up prior comments with regards to the fewer exemptions, the better; the more exemptions that a sales tax has built into it, the more problems which will be caused in appeals. This could be either through the state tax appeals board or into the court system. I don't know if any thought has been given to this, or to the cost.

Honorable Senator
Mike Halligan
January 28, 1993
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EXHIBIT 21
DATE 2-2-93
SB-235

● **New Section 59(3a)**

I have some concerns as to the personal liability of corporate officers, directors, and shareholders with regards to the payment of taxes for their corporations. The only time that this should be allowed to happen, is if there is willful intent, failure and neglect on the part of those officers, directors, and shareholders. How can a shareholder in Montana Power personally guarantee a sales tax collected by Montana Power be remitted to The State of Montana. I believe this is a little naive. In regards to New Section 59(1), this could be interpreted to include bookkeepers, CPA's, accountants, you name it; who ever signs a tax return, for personal liability for these taxes. This is not proper or correct.

● **New Section 64, 65, 66, 67, 68, 69 & 70**

My comments in regards to this series of sections is that they are not really needed if property tax relief is given to owners of real property. This happens because if the owners operating costs are reduced this property tax relief is pasted on to the renters in the form of reduced rents. I know this is subject to the market place, but in a competitive environment, this in fact would be the case. It may make sense from a selling point of view of this so called tax reform system, to have credits coming back to various targeted taxpayers. The concept of rebates (whether in business or governments) indicates government has charged too much tax to begin with, or business too high a price, depending upon the nature of the situation.

● **New Section 72 thru New Section 78**

Have the same comments here with regards to the home owners tax credit, as for the renters property tax credit.

● **New Section 81, 82, 83, 84**

My comments with regards to these sections are the same as stated above for renters and home owners credits. However I would also like to add that the definitions of gross household income are good in that they also define household income to include pretty much all cash receipts from all types of sources, whether taxable for income tax purposes or not. Also, why should there be a credit given those households with gross household income less than \$13,000 when groceries and daycare services and so on are already exempt?

● **Section 88**

Montana Code Section 33-7-410, New(subsection 2), specific intent should be included to give guidance as to what an ongoing business operation of a charitable or benevolent institution is. Either specifics ought to be defined or the definition of ongoing business operations should be defined somewhere, somehow.

Honorable Senator
Mike Halligan
January 28, 1992
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● **Sections 89 thru 113**

Raise percentages of debt limits by municipalities and other taxing jurisdictions. Why is it necessary to allow an increased leverage for these entities as a part of this tax bill. This is not a very conservative approach unless there is some sort of offset that I am not aware of in this bill. Seems to me these percentages of debt limits have been put in place at the stated level for a reason, so any increase in the debt levels is a increase in the leverage by the taxing jurisdiction.

● **Section 115**

There are changes made in this section as it relates to Montana Code Annotated Section 15-6-133, with regards to the levy of property taxes on agricultural land, and unproductive patented mining claims. At (2) of this section there is a change in class 3 property to be taxed at 30% of its productive capacity. This is a confusing concept: what is productive capacity? What this means is that this class of property is not taxed on value, but rather based on what this property can earn. As part of tax reform, this class of property and all classes of property should be revamped so that you have only two classes of property, real and personal. In addition, as a part of this tax reform, there ought to be limits as to the amount of tax on a piece of property whether it be real or personal, such as the following:

First, property taxes on real property should not exceed 1.5% of market value. Second, personal property, the property tax to be levied in a given year on a given piece of personal property would be, for example 2½ or 3½ % of market value. While talking about property taxes, the question arises, does the sales tax address the sales of intangible assets, such as copyrights, trademarks, computer software, and etc? If not, there should be a section discussing such an issue.

● **Sections 123 thru 136**

I have no comments with regards to these sections.

● **Section 140**

This section amends and changes the definition of adjusted gross income as indicated at MCA 15-30-111. It deletes from the definition of Montana adjusted gross income, federal income tax refunds. This is not a problem within the scope of the proposed changes overall. However, a problem arises from the concept of existing Montana taxpayers who have net operating losses as defined under current Montana law, that to carryover into future years, when this code section comes into play? Section 140 causes changes to Montana MCA 15-30-111(2)(a). There is no change from interest from obligations of the US government and Montana municipalities. However, the paragraph at (b) in this subsection I have a real concern with continuing to give an \$800 or \$1,600 exclusion for interest income for taxpayers age 65 and older in light of the increased exemption amount and standard deduction.

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At subparagraph 2c the allowance of the first \$15,000 of pension and annuity income is a very generous concept given our current fiscal state of affairs.

● **Section 141**

The bill proposes changes to Montana code annotated Section 15-30-112 which increases the exemption amount from \$800 to \$3,500 for the taxpayer, the spouse, the taxpayer and spouse attaining the age of 65 for being blind for both taxpayer and spouse and for each dependent. This increased exemption amount is giving away the farm. It should be changed to have the exemption amount follow the same amount as the federal. For those taxpayers who attain the age of 65 or are blind the standard deduction should be increased. Why can't this bill be changed to follow the federal law?

● **Section 142**

This section modifies the existing MCA 15-30-122 with regard to standard deductions and eliminates the itemizing of deductions as is currently allowed. This situation is grossly unfair in the following situations:

- A. Taxpayers with significant medical bills
- B. Taxpayers with casualty losses or theft losses
- C. Most importantly, taxpayers who have significant amounts of investment interest expense and at the same time having significant amounts of investment interest income. This can happen very easily with a farmer or rancher, selling the farm or ranch on a wrap around contract, who continues to pay interest expense on an underlying debt while receiving interest income on the wrap contract. This interest expense would become non-deductible. This concept will adversely affect people who are investing in significant amounts of portfolio assets and borrow money against those assets.

GENERAL COMMENTARY

1. This bill does fit the description of tax reform. This bill institutes a sales tax, provides some property tax relief and significantly alters our current income tax structure.

Honorable Senator
Mike Halligan
January 28, 1993
Page 8

2. I haven't seen any proposed fiscal impacts from this bill. However, the concept of tax reform is nothing more than the shifting of tax burdens between taxpayers.
 - A. The winners:
Farmers and ranchers, low income people, people age 65 and over and to some extent wealthy taxpayers.
 - B. The losers:
The middle class taxpayers who own a home and have taxable income between \$20,000 and \$100,000.
3. After reading this bill twice and assembling the comments above, it appears obvious that many of the provisions of the sales tax and income tax structure were devised to sell this bill politically. Concepts of fairness, responsibility and paying for benefits received from state government are not recognized.
4. Property tax relief from the imposition of a sales tax should be guaranteed. This guarantee should take two forms:
 1. That governmental entities, both state and local, should not be allowed to devise certain rules to circumvent mandates imposed through the will of the people and legislature. We have just witnessed this with I-105.
 2. The property taxes for both personal and real property should have a locked in ceiling. As mentioned above, a ceiling defined in law or statute would be as follows:
 - A. Real property 1.5% of market or taxable value
 - B. Personal property 2.5% of market or taxable value
 - C. A copy of the owner's depreciation schedule used for income tax purposes must accompany the annual reporting form on personal property.
5. Most people, including low income taxpayers, should be paying some taxes. This bill takes a significant number of people away from paying taxes and being responsible for government. We will be creating a class of voters who do not pay any kind of tax. I believe, if a person is going to vote then they should be paying towards the support of government. The old saying was "no taxation without representation" the new saying should be "no representation without taxation".

EXHIBIT 21
DATE 2-2-93
SB-235

Honorable Senator
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January 28, 1993
Page 9

6. Somewhere in this bill it talks about the Governor being the chief budget officer for the state. The other side of the equation to balancing budgets is not given much attention in this bill. Perhaps that is proper. However some discussion should be had with regards to the spending side of the equation. Not only does the government need so called tax reform, it also needs spending reform.
7. The current budgetary system has no incentives for spending less money; in fact it breeds wastefulness and spends money like drunken sailors. This is because budgetary departments are encouraged to spend all that is appropriated to them. An incentive system should be put in place to reward frugality and practical use of resources. An example of this could be: for each budgetary department 25% of any dollar savings under appropriated amounts could be put into a pool available for sharing between the employees as a bonus. Another possible incentive would be to guarantee budget levels for following time periods if 10 or 20% of a current budget is not spent.

If there any questions or comments please feel free to contact me at your convenience.

Best Regards,

JUNKERMIER, CLARK, CAMPANELLA, STEVENS, PC
Certified Public Accountants


Walter J. Kero, CPA
Shareholder

WJK/sf

pc: Legislation Committee of the Montana Society of CPA's

Pan Handler plus

40 South Last Chance Gulch
Helena, Montana 59601
Ph: 406-443-1915
Fax: 406-442-2239

February 1, 1993

SENATE TAXATION

EXHIBIT NO. 22

DATE 2-2-93

BILL NO. SB 235

To: Senate Taxation Committee
Mike Halligan, Chair

From: Conetta Eckel
Owner, Pan Handler

Re: Senate Bill #235

I support comprehensive tax reform for the State of Montana which would include a sales tax. Senate Bill #235 is a good start, but there are some things which concern me.

Foremost, I do not believe that the voters will pass a sales tax. Therefore, a package must be put together and passed by both house of the Legislature which will properly address revenue issues. Those elected have more information than the average citizen so must have the courage to take responsibility for what must be done. At the very worst, there must be alternatives in place should the voters turn down a sales tax.

Another concern of mine is the bonding that would be required of a business which collects the sales tax. Right now we are not required to be bonded to withhold and transfer income tax from our employees. Counterpart businesses in other states such as Colorado require no bonding. This is a burden to small business and unnecessary.

Also, there is no cap on the mill levy. Without a cap, we may be back where we started before we implemented a sales tax.

Finally, the fee to collect the tax would not cover the time involved to collect it, especially if a cap of \$50.00 per month or \$600.00 per year is in place.

Thank you for your consideration of these issues which affect small business in Montana. Please keep us in your thoughts when you ask us to be direct partners in collecting revenue for our state. Keep it simple and keep it fair.

Sincerely,



TESTIMONY ON S.B. #235 PROVIDED TO THE

SENATE TAXATION

BY DONALD R. PEOPLES

2/2/93

SENATE TAXATION

EXHIBIT NO. 23

DATE 2-2-93

BILL NO. SB 235

Testimony on Senate Bill #235

Mr. Chairman, for the record, I am Don Peoples of Butte. I am currently the President and CEO of Montana Technology Companies, operating out of Butte. Previous to my present position, I spent nearly 30 years as a local government official. From 1979 to 1989 I served as Butte-Silver Bow's elected Chief Executive. During my tenure as Butte-Silver Bow's CEO, I also served as President of the Montana League of Cities and Towns, and I was one of the original founders of the Montana Urban Coalition. I also served on the Commission on Education for the 90's and Beyond.

My presence here today is to request your careful consideration of Senate Bill #235. I commend Governor Racicot and Senator Crippen for their courage in bringing this Bill to you.

I recognize my observations here today will raise questions in many minds as to "why" I have chosen to speak publicly in support of the controversial sales tax issue. Frankly, I concluded long ago that there is no other acceptable alternative than to consider a general sales tax as a part of a total tax reform package.

Montana's tax system is seriously faulted in many ways. Fairness, competitiveness and adequacy of providing revenue are important factors to consider in evaluating a tax system.

We can argue long and hard about these issues as Montanans have done for so long now, but the fact is Montana's current tax system fails the test of fairness, competitiveness and adequacy in raising revenues. The most serious factor is that Montana is inadequate in terms of raising the necessary revenue for the state to provide basic and essential services; services that we all expect and demand.

A glance at any front page of Montana's newspapers point this out to us almost daily. Last week for example, I scanned the front page of several major newspapers and read the following:

- \$32 Mill in Cut in Correction Budget Needed;
- SRS Eyes \$21 Mill Cuts; Counties Fear Return of Welfare Programs;
- University System Looks at \$25 Mill in Cuts.

I submit that Montana needs comprehensive tax reform, and as a part of that tax reform we need to consider a general sales tax provision. We simply can not continue to keep increasing the burden on existing revenue sources as that will only exacerbate our already weak position of competitiveness.

Obviously, there are provisions of Senate Bill #235 that are objectionable, and need to be changed. This being the case, the Bill should be amended during the legislative process to make it as strong as possible so voters can make a sound decision in June of 1993.

I am not so naive to believe that our current budget problems can be solved without significant cuts in many state functions. I am of the opinion that state programs should not be allowed to grow faster than our ability to finance them, and I would urge you to consider this as you consider any tax proposal.

Mr. Chairman, and members of the Taxation Committee, I urge you to take bold action and give careful consideration to Senate Bill #235 and utilize it as a cornerstone of tax reform in Montana. Our current fiscal problems require that action, and our future as a State depends on it.



SENATE TAXATION

EXHIBIT NO. 24

DATE 2-2-93

BILL NO. SB 235

February 2, 1992

Senate Taxation Committee Members
Helena, Montana

Dear Senators:

On behalf of the Montana Funeral Directors Association, I respectfully request that an amendment to Senate Bill 235 be considered by your committee.

While we understand that many types of groups are requesting exemption from the sales tax, we believe that that exemption of funeral services fits into the spirit of the bill as it concerns health care providers.

Funeral services are as necessary---and inevitable---as health care services. In fact, at some point, everyone must have some form of final disposition. We believe that because of this very necessity, items related to final disposition (cemetery plots, caskets, urns, vaults, etc.) and services provided by funeral service personnel (such as embalming and cremation) be exempted from the sales tax.

Attached is a copy of our proposed amendment, and I thank you for your consideration.

Sincerely,

Bonnie L. Tippy
Bonnie L. Tippy

**PROPOSED AMENDMENT
SENATE BILL 235**

**Submitted by:
The Montana Funeral Directors Association
February 2, 1993**

NEW SECTION. Section_____. Exemption--Funeral Services. The sale of funeral services by burial or cremation, and the sale of real or personal property used in a funeral service, are exempt from the sales tax.

Harrison, Loendorf & Poston, P.C.
Attorneys at Law

SENATE TAXATION
EXHIBIT NO. 25
DATE 2-2-93
BILL NO. SB 235

JAMES T. HARRISON, JR.
JEROME T. LOENDORF
JOHN P. POSTON
JAMES C. CUMMING
GREGORY W. DUNCAN*

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FAX NO. (406) 443-7427
* MEMBER OF WASHINGTON BAR

February 3, 1993

Honorable Mike Halligan
Chairman, Senate Taxation Committee
Capitol Station
Helena, MT 59620

RE: SB 235

Dear Chairman Halligan:

On behalf of the Montana Society of Certified Public Accountants, there are certain observations we'd like to make known to your committee, but regrettably the time constraints for the hearing on the above bill did not allow that to happen.

The Society is certainly sympathetic to the financial crisis Montana finds itself facing, and accordingly, is receptive to the need for this bill. Nevertheless, and even though, coming from a supportive position, these areas are of concern:

1. The retirement income exemption seems unreasonably high. It appears this would result in retirees filing jointly not paying any income tax on retirement income until the amount reached \$54,000. Current law requires taxes to be paid on retirement income in excess of \$16,800. The proposed law results in a tax threshold increase of 321%. If a greater threshold for retirees was desired, it would appear increased exemptions would be a better method.

2. It appears business interest earned would be taxed (income), but that business interest paid would not be deductible. We have concern particularly in the case of a wrap-around contract, such as the purchase of a large ranch or business, with substantial financing at a financial institution. Things don't always go as planned for such an investment, and the buyer may well find himself selling that investment in a short time. In such a case, he is paying a lot of interest for the purchase, and he is receiving a lot of interest on the sale. Yet, in substance, his financial circumstances may well be a wash. In such a case, it would seem only fair that the interest expended should be an offset against the interest earned, rather than creating a situation where that individual must pay income tax on this substantial amount of interest income and doesn't get an offset for the substantial amount of interest paid.

February 2, 1993

Page 2

3. Although we don't profess to be expert sales tax bill drafters, but it at least seems there are too many items exempted out of the bill.

4. The payroll tax liability provisions seem too heavy handed. Liability for the person actually submitting is one thing--but director or shareholder liability or bonds, or the like, are neither fair nor practical.

5. The refundable credits resulting in no income tax for a substantial number of people, combined with the elimination of most retired people (see No. 1 above) is contrary to our overall philosophy that everyone should be taxed and everyone should support government. We're concerned as you leave that philosophy, you build into the citizenry a large segment of people who do not recognize that government costs money, and who therefore can continuously demand more and more services irresponsible to cost.

There is a concern that as you expand these groups who are basically exempt from taxation (including the poor, the retired, the young, etc.), that you are building in the mechanism for runaway government and costs. This is not to say that the Society is not sympathetic with the plight of the poor, the retired, or any other group. However, the feeling is that government is the responsibility of all the people, and all the people should recognize that it is a costly commodity. Only if all the people pay something for government services, will that recognition reflect in their actions and demands.

We hope to be able to participate in your work sessions on this bill, and perhaps we'll have a further opportunity to discuss these observations.

Very truly yours,



JAMES T. HARRISON, JR.

cl

cc: All Senate Taxation Committee Members
Honorable Bruce Crippen
Mr. Mick Robinson, Director
Department of Revenue
Mr. Jeff Morrison
Department of Revenue
Mr. Mike Lavin, Chief of Staff
Governor's Office
Mr. John Mercer, Speaker of the House
Mr. Bob Gilbert
Chairman, House Taxation Committee

SENATE TAXATION

EXHIBIT NO. 26

DATE 2-2-93

BILL NO. SB 235

H. J. LUXAN (1918-1984)
WALTER S. MURFITT
MICHAEL J. MULRONEY
GARY L. DAVIS
DALE E. REAGOR
PATRICK E. MELBY
MICHAEL J. RIELEY
MICHAEL S. BECKER
TOM K. HOPGOOD
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LUXAN & MURFITT

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TELECOPIER (406) 442-7361

February 2, 1993

Hon. Mike Halligan
Chair, Senate Taxation Committee
Capitol Station
Helena, MT 59620

Re: SB 235

Dear Senator Halligan:

I am writing on behalf of the Montana Association of Realtors (MAR) in connection with SB 235, Senator Crippen's Sales Tax Bill. The Association is composed of approximately twenty-five hundred real estate professionals and as you know, is vitally interested in the State's tax structure.

The position of the Association is set forth in its Legislative Position Statement, approved September 17, 1992, by the Association's Board of Directors, a copy of which is enclosed. In pertinent part, the Position Statement provides:

The existing tax structure of the State of Montana inhibits rather than encourages the economic development of the state. Disproportionately high property tax, unitary tax, severance taxes, etc. serve to discourage new businesses from locating in Montana and existing businesses from expanding. The Montana Association of Realtors supports an equitable, balanced tax structure for the State of Montana and a general reduction in spending to balance state spending on services with revenues.

MAR favors a sales tax on consumable goods as one means of replacing revenues lost through property tax reform and not as an additional tax. It is time for Montana to shift its tax emphasis from taxation of production to taxation of consumable goods. We support a balanced tax system for the State of Montana. MAR would support exclusions to help combat the "regressivity" of a sales tax.

A sales tax on services is another tax on production rather than consumption and results in pyramiding or multiple taxation and adversely

Hon. Mike Halligan
February 2, 1993
Page 3

vehemently opposed the tax that it was repealed six months after it was enacted.

In 1990, Massachusetts enacted a 5% tax on professional services that was repealed two days after it went into effect in March 1991. The tax faced vigorous opposition from service providers and professional organizations.

Please note that I am providing members of the committee with copies of this letter. I hope that you and any other committee member who might have any questions about this situation would feel free to contact me either in person, by telephone, or mail.

Sincerely,

TOM K. HOPGOOD

Tom K. Hopgood, Esq.
for LUXAN & MURFITT

TKH/gv

Enc.

cc: Sen. Bruce Crippen
Members, Senate Taxation Committee
Ms. Sharon Cleary
Mr. Steve Mandeville

MONTANA ASSOCIATION OF REALTORS®
LEGISLATIVE POSITION STATEMENT
APPROVED SEPTEMBER 17, 1992

The Montana Association of REALTORS® represents the nearly 2,500 real estate brokers and salespersons who are members of the association. The Legislative Committee, the MAR staff and the association examine the multitude of issues which are of vital concern to the industry and to property owners and recommend a position to the MAR Board of Directors. This Position Statement is the official position of the Montana Association of REALTORS® as approved by the Board of Directors.

TAXATION

The existing tax structure of the State of Montana inhibits rather than encourages the economic development of the state. Disproportionately high property tax, unitary tax, severance taxes, etc. serve to discourage new businesses from locating in Montana and existing businesses from expanding. The Montana Association of REALTORS® supports an equitable, balanced tax structure for the State of Montana and a general reduction in spending to balance state spending on services with revenues.

PROPERTY TAX

The Montana Association of REALTORS® supports a reduction in all classes of property tax. Montana is at a competitive disadvantage with surrounding states in attracting new business to the state. Part of this disadvantage is directly attributable to the fact that Montana's personal and real property tax is significantly higher than competing states. Real Estate taxes should be used primarily to pay for government services which serve real estate.

SALES TAX ON CONSUMABLE GOODS

MAR favors a sales tax on consumable goods as one means of replacing revenues lost through property tax reform and not as an additional tax. It is time for Montana to shift its tax emphasis from taxation of production to taxation of consumable goods. We support a balanced tax system for the State of Montana. MAR would support exclusions to help combat the "regressivity" of a sales tax.

REALTY TRANSFER TAX

The Montana Association of REALTORS® strongly opposes the imposition of a Realty Transfer Tax. This tax puts a major burden on the buyers and sellers at the time of settlement and places an unreasonable burden on real property ownership and economic development. First-time homebuyers are especially impacted since the tax would increase the amount of cash needed at closing, the most difficult hurdle for the first-time buyer. Imposition of a transfer tax would adversely affect housing affordability for all Montanans. Whether the revenue is directed to the state's general fund or is earmarked for specific programs, Real property already bears a disproportionately higher share of the tax burden. It should not be asked to shoulder even more since the ability to purchase real property contributes directly to the economy of the state.

SALES TAX ON SERVICES

A sales tax on services is another tax on production rather than consumption and results in pyramiding or multiple taxation and adversely affects those on fixed and low incomes. It is, in reality, an income tax which Montana already has in place. A tax on services increases the administration and compliance costs for taxpayers and the State of Montana. The effect of a tax on services is especially devastating to economic development. It discourages the small support businesses vital to attracting industry to the state and increases the cost of rental housing, single-family housing as well as plant construction for new and expanding industries. MAR strongly opposes a sales tax on services.

LOCAL OPTION TAXES

MAR supports local option taxing authority on the condition that these taxes are approved by the voters, have definite sunset provisions, and are designated for a specific purpose.

DATE 2-2-93SENATE COMMITTEE ON TaxationBILLS BEING HEARD TODAY: SB 235

Name	Representing	Bill No.	Check One Support Oppose
Lorna Frank	MT. Farm Bureau	SB235	X
Steve Manderville	MT Assoc Realtors	SB235	X
Ulick Hammond	MT Assoc Realtors	SB235	X
Riley Johnson	NFIB	235	X
Don Walker	US WEST	S235	X ^{with amendment}
Russ Ritter	Wash Corp	S235	X
Donna Small	MT Demo Party	S235	X
Dorothy Stevens	obj	S235	
Tina Ryan	"	235	X
Jim Utterback	"	235	X
Stuart Doggett	MT Importers MT Manufacturing Assoc	235	^{complaints} X
Juni Scott	MT. Tax Reform Coalition	S235	X ^{with amendment}
John Lynch	Senat Dist #35	235	X
John Shad	Mont 12th D	238	X
Charles Brooks	MT Repub 17000	235	X
Robert Small	4 SEASONS & THOMPSON	235	Y
Joe Tropi	Asst. Secy to Rep		neither
VISITOR REGISTER			

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Representing

Bill
No.Check One
Support Oppose

Thompson Dental	235	✓
4 Seasons Sub-Are Beach	235	✓
MT Chamber	235	✓
MT LEAGUE OF CITIES	235	✓ with Amendment
MT. Local Product Assoc	235	✓
MT. Broadcasters Plan	235	✓
Pegasus Gold	235	X AMEND
MT STATE AFL-CIO	235	X
Individual	235	X
MDA	235	✓
MLIC	235	✓
MT Society of CPAs	SB 235	✓ if amended
Citizen	SB 235	?
WCSM - SFT	SB 235	X
MT. Building Ind. Ass	SB 235	X

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RED STATEMENT WITH COMMITTEE SECRETARY

Bill
No.Check One
Support Oppose

yes	SB 325	✓
	SB 325	✓
5/11	SB 325	✓
	SB 235	✓
Boat	SB 325	✓
	SB 325	X
	SB 325	✓
	SB 235	✓
	SB 235	X
	SB 235	✓
	SB 235	X
	SB 235	✓
	SB 235	X
	SB 235	✓
	SB 235	X
	SB 235	✓
	235	✓
	235	✓
	235	✓

MMITTEE SECRETARY

DATE 2-2-93SENATE COMMITTEE ON TaxationBILLS BEING HEARD TODAY: SB 235 Crossover

Name	Representing	Bill No.	Check One Support Oppose
Mike Trevor	DOA/ISD		
Dave Lewis	OBPP	SB 235 -	
Howard Kramer		SB 235 -	✓
Marvin Barker	self	235	✓
Alex Barker	"	"	✓
Mike Tidwell			✓
Alvin A. Ellis Jr.	H.D. 84	SB 235	✓
Karen Lages		SB 235	✓
Judi Browning		SB 235	✓
Ken Seikes			✓
Scott Sergeant		SB 235	✓
Jim Rward	DOR	SB 235 -	
Malvin Alves	U.F.C.W	SB 235	✓
Carl Schweitzer	Mont Con- Assoc	SB 235	✓
George Paul	Farmers Union		✓
Bruce MacKenzie	Seniors Industrial Assoc	SB 235	✓

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DATE 2-2-93SENATE COMMITTEE ON TaxationBILLS BEING HEARD TODAY: SB 235 Crupper

Name	Representing	Bill No.	Check One Support Oppose
Mike Trevor	DOA/ISD		
Dave Lewis	OBPP	SB 235 -	
Verne Graneij		SB 235 -	✓
Marvin Barber	self	235	✓
Helen Barber	"	"	✓
Mike Tidwell	"		✓
Alvin A. Ellis Jr.	H.O. 84	SB 235	✓
Karen Tagg		SB 235	✓
Judy Browning		SB 235	✓
Ken Heikes			✓
Scott Sargent		SB 235	✓
Jim Rware	DOR	SB 235	-
Alvin Alves	U.F.C.W	SB 235	✓
Carl Schweitzer	Mont Co. Assoc	SB 235	✓
George Paul	Farmers Union		✓
Bruce MacKenzie	Securities Industry Assoc	SB 235	✓

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DATE 2-2-93SENATE COMMITTEE ON TaxationBILLS BEING HEARD TODAY: S.B. 235 (Rupper)

Name	Representing	Bill No.	Check One Support Oppose
Gloria Semanson	"Don't Gamble with the Future"	235	
Patricia Abelin	Bozeman Area Chamber of Comm.	235	✓
Emily Swanson	Rep. HD 79	235	
Peter Carparelli	Billings School District 2	235	
Glenn Casen	Self	235	✓
Dixie Hertel	Self	235	
Anneill Keller	Self	235	
Janette Howell	Self	235	
Mike Wynn	DOR	235	✓
Bill Kahr	DOR	235	
John L. Henn	DOR	235	

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