

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON TAXATION**

**Call to Order:** By Chairman Mike Halligan, on February 16, 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. Fred Van Valkenburg (D)  
Sen. Bill Yellowtail (D)

**Members Excused:** Sen. Tom Towe (D)

**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: HB 250, HB 297, HB 298, HB 312, SB 359  
Executive Action: HB 250, HB 297, HB 298, HB 312

**HEARING ON HB 297**

**Opening Statement by Sponsor:**

Representative Bea McCarthy, House District 66, presented HB 297 at the request of the Department of Revenue. HB 297 will remove the capital gains exclusion from trust and estate taxable income, which will make Montana's statutes consistent with the Federal laws.

**Informational Testimony:**

Bob Turner, Bureau Chief of the Income Tax and Miscellaneous Tax Division, Department of Revenue, said when the Montana Trust and Estate Law was enacted in 1983, it was modeled after Federal laws. In 1986, the Federal Tax Reform Act eliminated the 60% capital gains exclusion, which in turn eliminated the exclusion for Montanans, since Montana is tied to the Federal adjusted gross income. However, the exclusion at the state trust level was not eliminated since Montana has specific language in the law to allow this deduction. HB 297 ends the inconsistency between the state and the federal law by eliminating the 60% capital gain exclusion from Montana law for Estate trusts.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Gage asked Mr. Turner if the word "calculating" should be substituted for "allowed" on line 20, page 3. Mr. Turner said he had no objections if the Committee wanted this change.

**Closing by Sponsor:**

Representative McCarthy offered no further remarks on closing.

**EXECUTIVE ACTION ON HB 297****MOTION/VOTE:**

Senator Yellowtail moved HB 297 BE CONCURRED IN (381040SC.Sma). The motion CARRIED UNANIMOUSLY on oral vote. Senator Gage will carry the bill on the Senate floor.

**HEARING ON HB 298****Opening Statement by Sponsor:**

Representative Jody Bird, House District 52, presented HB 298 at the request of the Department of Revenue. HB 298 will increase the appeal time on a decision of the State Tax Appeal Board on Individual Income Tax from 30 days to 60 days.

**Informational Testimony:**

Bob Turner, Bureau Chief of the Income Tax and Miscellaneous Tax Division, Department of Revenue, said the income tax appeal law is the only law which allows only 30 days to appeal, rather than the 60 days allowed in all other appeals.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Van Valkenburg questioned Mr. Turner on why consistency is important. Mr. Turner said there have been some occasions where taxpayers and their representatives did not know their appeal time was only 30 days rather than 60 days. Dave Woodgerd, Chief Legal Counsel, Department of Revenue, said it was an oversight that this appeal time change was not included with the other appeal time changes in a bill passed during the previous legislative session. Being consistent with other 60-day appeals will help the Department of Revenue as well as the taxpayers.

In response to questions by Senator Gage for clarification of language in HB 298, it was explained by Dave Woodgerd that other reviews must be consistent with the Montana Administrative Procedure Act except for changes specified in this statute. Senator Halligan explained that there are other time limitations for filing of briefs, filing of actions, etc., as well as some procedural administrative deadlines in the tax statutes that are different than the APA, so if the time limitations are not covered in the tax statutes, the APA guidelines will govern.

**Closing by Sponsor:**

Representative Bird offered no further remarks on closing.

**EXECUTIVE ACTION ON HB 298**

**MOTION/VOTE:**

Senator Eck moved HB 298 BE CONCURRED IN (381041SC.Sma). The motion CARRIED UNANIMOUSLY on oral vote. Senator Eck will carry the bill on the Senate floor.

**HEARING ON HB 312****Opening Statement by Sponsor:**

Representative Mike Foster, House District 32, presented HB 312, which clarifies that the Beneficial Use Tax applies to the industrial, trade and business use of tax-exempt property. Currently, the law taxes the gainful use of tax-exempt property. The word "gainful" is ambiguous, and can be interpreted to allow taxation of some beneficial uses of tax-exempt property which the Legislature might not want to tax, such as students who live in dormitories, or government employees who are required to live in government housing. This bill will not change the current method of taxing the beneficial use of tax-exempt property, and it will not change the current taxation of the beneficial use of the Bonneville Power Administration Power Lines or other major uses of tax-exempt property.

**Informational Testimony:**

Dave Woodgerd, Department of Revenue, said that during a close review of the statutes, the Department found that the current law on beneficial use taxes is more broad than they were interpreting it. Under HB 312, the only beneficial uses to be taxed would be industrial, trade, or other business purposes.

**Proponents' Testimony:**

None.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Gage and Senator Eck questioned why no tax is imposed on buildings owned by public entities located upon public airports and private entities leasing public buildings. Dave Woodgerd said no one in the property tax division could recall why this language is in the bill; however, it does prevent the DOR from applying beneficial use taxes to airlines or rental car companies who have their offices in airport terminals. If the language is taken out of HB 312, the Department could apply the beneficial use tax. Mr. Woodgerd said that private businesses are not paying a beneficial use tax; however, they are being taxed, through their leases and personal property taxes.

Mr. Woodgerd said the continuing language about the public lands applies to leases of bare lands, i.e. state leases, etc. The tax is not applied to public lands because the lessees do not have exclusive possession of the lands.

Senator Stang asked if passage of HB 312 would be allowing the Bonneville Power Administration to challenge us in court. Dave Woodgerd said the Department looked at this and the answer is no, the state's legal position would not be jeopardized in the power line case.

**Closing by Sponsor:**

Senator Foster offered no further remarks on closing.

**HEARING ON HB 250**

**Opening Statement by Sponsor:**

Representative Bob Ream, House District 54, presented HB 250 at the request of the Department of Revenue (DOR). House Bill 250 will provide for an intermediate negotiation with the DOR on property tax classification disputes, prior to going to the Tax Appeal Board. This provides an opportunity for a taxpayer to try to work out differences with the DOR before they go to their County Tax Appeal Board and take up the time of that Board.

**Informational Testimony:**

Dave Woodgerd, Department of Revenue, said the purpose of HB 250 will allow for review by the DOR of property tax questions before an appeal to the Tax Appeal Board. This will save time for the DOR and the taxpayer. An instance would be where a home is appraised as a 3-bedroom house, when it actually has two bedrooms. The taxpayer can come to the DOR, through their county assessor, the DOR will adjust the value down and save an appeal. Mr. Woodgerd said a great many issues can be resolved before going to the County Tax Appeal Board.

**Proponents' Testimony:**

John McNaught, Chairman of the State Tax Appeal Board, said this procedure would take care of some appeals that start out at the county level, so he is in favor of HB 250.

**Opponents' Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Stang questioned Dave Woodgerd if HB 250 would take out the appeal at the local level. Mr. Woodgerd said taxpayers are encouraged to talk to the DOR prior to, or during, the time they have an appeal before the county board. This is currently done informally; HB 250 will formalize the process with the local appraiser. A taxpayer first has an opportunity to go to their local appraiser, then to the County Tax Appeal Board.

Without results locally, they will then go to the State Tax Appeal Board.

In response to questions by Senator Eck, Dave Woodgerd said there have been some problems in the past and HB 250 would clarify the appeal process.

Senator Gage asked Dave Woodgerd if the word "knowingly" could be placed before "neglects" on line 20, page 1 of HB 250, so someone would not be penalized for a legitimate error in filling out the DOR questionnaire forms. Mr. Woodgerd said he had no problems with that. John McNaught, Chairman of the State Tax Appeal Board, said the DOR sends out forms each year for personal property changes and corrections. If a person makes a mistake or neglects to include some personal property that was previously listed, the DOR will contact the taxpayer and they will have a chance to correct this without being penalized.

Senator Gage asked Dave Woodgerd about the 20% penalty assessment. Mr. Woodgerd said this is 20% of the appraised or assessed value. Normally, the Department imposes a 10% penalty in the first year, and if the same problem still exists the next year, an additional 10% is imposed, up to the 20%. HB 250 has an appeal procedure to the Department of Revenue, and to the County and State Tax Appeal Board, in which the penalty can be waived.

**Closing by Sponsor:**

Representative Ream offered no further remarks on closing.

**HEARING ON SB 359**

**Opening Statement by Sponsor:**

Senator Dennis Nathe, representing Senate District 10, presented SB 359 which is an act imposing a 1/2 cent tax on every gallon of gasoline in order to provide money for grants and loans to railroads that the Rail Planning Division determines are essential for maintenance in order to keep the pressure off the highways, and grants and loans for intermodal transportation facilities such as port authorities or trans-shipping points that would need grants or loans to put, or keep, them in operation. All of this is in the interest of reducing wear and tear on the highways. When a branch railroad line is abandoned, the wheat has to be transported over the highways to the main railroad line. This heavy trucking tears up highways very fast, especially during spring thaw weather. Every unit train on the main line has 104 cars which carries 343,000 bushels of wheat. The average semi-truck carries between 800 and 1200 bushels of wheat. Senator Nathe said it is in the best interests of the state's highway system to keep the railroads transporting the produce by rail, instead of trucking it on the highways.

**Proponents' Testimony:**

Viggo Andersen, President of Montana Citizens Freight Rate Association, spoke in favor of SB 359. Mr. Andersen presented a written testimony which is attached to these minutes as Exhibit No. 1. Mr. Andersen said an example of intermodal movement would be a shipment moving first by truck and then by rail, and he said most bulk commodities produced in Montana are moved in this manner. Mr. Andersen said passage of SB 359 will save the state a great deal of money in long-term highway impacts.

Mary Nielsen, representing Women Involved in Farm Economics, and Association for Branch Line Equality, is a member of the Advisory Board to the Montana Department of Transportation. Ms. Nielsen presented written testimony which is attached to these minutes as Exhibit No. 2. Ms. Nielsen said the main purpose of SB 359 is to keep bulk shipments on the rails and off the highways.

Gordon Kampen, a County Commissioner of Sheridan County, spoke in support of SB 359. Mr. Kampen said Sheridan County has two main methods of produce transportation; one is approximately 1600 miles of roads, of which approximately 175 are paved. Their second method of transportation is the Burlington Northern Railroad branch lines. Mr. Kampen said their county road system cannot sustain the extra traffic impacted on it if they lose more branch line rails. SB 359's provision for the intermodal transportation facility would provide Sheridan County the method to secure a short-line operator in the event there is further abandonment of branch rail lines. Any bill that benefits Sheridan County's ability to ship by rail also benefits their highway system.

**Opponents' Testimony:**

Carl Schweitzer, representing the Montana Contractor's Association (MCA), spoke in opposition to SB 359. Mr. Schweitzer agrees the loss of rail service can cause serious economic repercussions to a local community. However, the MCA feels it is not appropriate to use citizens' highway dollars to repair or subsidize rail lines. Mr. Schweitzer believes Montana citizens are not willing to divert highway dollars to non-highway uses, and believes providing non-railroad dollars for branch-line maintenance and operation will give incentives to the railroad to abandon their branch lines. Mr. Schweitzer urged the Committee to keep highway dollars for highways and reject SB 359.

Steve Turkiewicz, Executive Vice President of the Montana Auto Dealers Association (MADA), also represented the Montana Highway Users Federation (MHUF) at this hearing. Mr. Turkiewicz agreed with Mr. Schweitzer that there are plenty of needs for Montana highways, and highway funds should not be diverted to railroad branch lines. For these reasons, Mr. Turkiewicz opposes SB 359.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Gage questioned the language on page 10, line 15, which says monies deposited "may" be used, instead of "shall" be used. Senator Nathe agreed the language could be changed to "shall". Mr. Andersen said Intermodal Planning will define where the most need is and the money will only be used as they determine.

Senator Gage suggested caps may need to be put on the costs, after deducting necessary costs for administrative purposes.

Senator Gage asked if a diesel tax on railroads was considered. Senator Nathe said he never looked at that option, and was looking only at the direct impact to the highway if a railway line is abandoned.

Senator Stang asked Senator Nathe why highway diesel fuels were not included in SB 359, since the semi-trailers are causing such an impact on the highways. Senator Nathe said it was mostly a decision in trying to eliminate the opposition to this bill.

Senator Stang said part of the missions and goals of the Department of Transportation is to shore up the rail division so they get more representation in the DOT.

Senator Eck asked if it is true that there is no Federal money available under the new highway Intermodal Surface Transportation Efficiency Act (ISTEA) or any other programs for purchasing or upgrading railroads. Patricia Sandon, Administrator of the Rail and Transit Division, Department of Transportation, said that currently in the ISTEA bill, there is no funding for rail freight transportation; the only money available is for rail passenger service. There is a nationally-competitive discretionary program available for freight lines; however, the amount of traffic moving on those lines is usually more than what Montana has operating on its branch lines, so Montana is not eligible for that program.

Senator Eck asked if Montana has adequate restrictions on heavy trucks traveling the highways anytime, and especially during the spring break-up time. Senator Nathe responded that he doesn't know what the laws are, but North Dakota must have tougher laws than Montana since semi-truck traffic is diverted through the northeast corner of Montana during the spring thaw period. Senator Nathe doesn't know if it is a matter of not enforcing Montana laws, or if Montana doesn't have tough enough laws regarding pounds per square inch of tires on the highway.



Senator Halligan asked Pat Sandon how the Department envisions this program working so abandonment of railroad branch lines would be not encouraged and the public would not be paying for rehab as a result of abandoned lines. Ms. Sandon said she doesn't feel SB 359 would encourage Burlington Northern to abandon their lines; that if they are making a profit, they are going to keep the branch lines, and that unprofitable branch lines will be abandoned, or BN may look for alternative operators for those lines. She sees the funds established by SB 359 as a tool to find short-line operators for these branch lines.

Ms. Sandon said that the Division could administer this program without any additional administrative costs.

Senator Gage asked Senator Nathe if it would be any help to extend SB 359 to include "or to provide loans or grants to certain railroads or port authorities", after "alleys", in line 15, page 2. Senator Nathe said this would be acceptable, but funds would probably not be available since the county roads are in need now and the funds would probably be used there.

**Closing by Sponsor:**

Senator Nathe said SB 359 is an attempt to find a solution to maintain some rails so the highways are not impacted so severely. There are 500 miles of branch rail lines left in the State of Montana, and if they are abandoned, there would be more impacts on the highways, and the citizens of Montana are going to pay for that impact one way or another. He sees SB 359 as a preventative measure for the highways.

**EXECUTIVE ACTION ON HB 312**

**MOTION/VOTE:**

Senator Stang moved HB 312 BE CONCURRED IN (381043SC.Sma). The motion CARRIED UNANIMOUSLY on oral vote. Senator Stang will carry the bill on the Senate floor.

**EXECUTIVE ACTION ON HB 250**

**MOTION/VOTE:**

Senator Yellowtail moved HB 250 BE CONCURRED IN (381039SC.Sma). The motion CARRIED UNANIMOUSLY on oral vote. Senator Halligan will carry the bill on the Senate floor.

**ADJOURNMENT**

**Adjournment:** The meeting adjourned at 9:25 a.m.



MIKE HALLIGAN, Chair



BONNIE STARK, Secretary

MH/bjs

## ROLL CALL

SENATE COMMITTEE TAXATION

DATE 2-16-93

[illegible]

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Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 297 (first reading copy -- blue), respectfully report that House Bill No. 297 be concurred in.

Signed:   
Senator Mike Halligan, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 298 (first reading copy -- blue), respectfully report that House Bill No. 298 be concurred in.


Signed:   
Senator Mike Halligan, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 312 (first reading copy -- blue), respectfully report that House Bill No. 312 be concurred in.

Signed: 

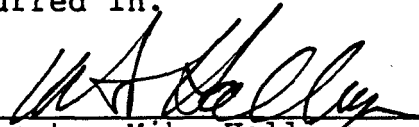
Senator Mike Halligan, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
February 16, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 250 (first reading copy -- blue), respectfully report that House Bill No. 250 be concurred in.

Signed: 

Senator Mike Halligan, Chair

## SENATE TAXATION

EXHIBIT NO. 1DATE 2-16-93BILL NO. SB 359

Testimony of Montana Citizens Freight Rate Association on SB359  
presented by Viggo Andersen, President.

Senate Bill 359 is a very modest bill but it addresses an important segment of Montana's transportation structure. The bulk commodities that Montana produces and sells out of state make up a very large part of our economy. These commodities are shipped both by truck and by rail but by far the largest tonnage goes by rail. In the case of the grain and lumber we ship, it generally moves first by truck and then by rail. This is intermodal movement.

*an example of*

Both federal law and common sense mandate intermodal planning and the last legislature created the Montana Department of Transportation to do exactly that among other things. Those of us who supported the concept of a state DOT believe that the taxpayers should get the best possible value out of every dollar that state spends on transportation. The framework for intermodal planning is largely in place, at least in theory, but there is currently no funding to implement this planning so at this time all we really have is a larger highway department.

After the mass railroad abandonments of the last 15 years we have about 500 miles of rail branch lines left in the state and it appears that most of this trackage is needed. However some of the remaining branches have seen little maintenance for some time. Burlington Northern has stated that it can not make money on some of its light density branch lines because of labor work rules. On these lines we have the choice of assisting a short line operator to take them over so that they may continue to run or allowing them to 'run to failure'. The question then is whether it is cheaper to keep the line in operation or to pay for the additional highway costs resulting from the loss of the line. That is a question that intermodal planning should be able to answer.

SB359 will not raise a great deal of money but if that money is wisely used it can save the state a good deal more in long term highway impacts and the legislature is urged to adapt SB359.



My name is Mary Nielsen, and I live in Plentywood, Montana. I speak in support of this bill on behalf of Women Involved in Farm Economics and Association for Branch Line Equality.

I served for 15 years a State Chair of Transportation for WIFE, and have been Executive Director of ABLE since its inception in 1982.

We understand that this is not a popular concept.

But, if inside information from those in the railroad business is to be believed, this State is among those whose branch lines are endangered. There are over 500 miles of them in the State. This means greatly increased traffic over roads not designed for such traffic, especially on roads close to the border with the influx of Canadian traffic.

In 1983, the Congress of the U.S. heard the statement, "Competition brings low rates, improved service, maximum efficiency and adequacy of equipment-- the absence of adequate competition always leads to the oppression of the public." Senator Mark Andrews of North Dakota made the statement because his state was in danger of losing about 350 miles of branch lines. About 93% of Montana's rail traffic was handled by the Burlington Northern at that time, and I see no reason to believe that that percentage has changed since then.

I didn't know how to find out-- we are in need of more expertise in the Rail Division, which has been decimated in the past four years. In other words, there is no-one there who can stick up for shippers who do not want to haul to the main line, who want to keep their small communities intact, who know that it is better to keep heavy traffic on the rails. For those who are interested in such facts - and we all should be, a 400 HP truck can haul a 25 ton payload using one gallon of diesel every 4-5 miles. A train can move an 1867 ton payload using about 3.1 gallon per mile! That comes out at 100-125 ton miles per gallon for trucks versus 604 ton miles per gallon on the rails. PLUS the damage to our roads.

The whole reason for this Bill is to make it possible to keep bulk shipments on the rails and off of the roads. Whether it would be to facilitate a study into an intermodal facility, or to assist a Rail Authority with problems of upkeep in emergency situation.

SENATE TAXATION

EXHIBIT NO. 2

DATE 2-16-93

BILL NO. SB 359

The original version of the ISTEA law ( Intermodal Surface Transportation Efficiency Act) of 1992 had within it some funding for this sort of situation- to assist with rail problems. Unfortunately, in its final version that portion was omitted, although funding is available for walkways and bicycle paths etc. etc.

Under the law, the railroads can adjust their rates to remain competitive in areas where there is competition. In our State, they adjust them to bring the traffic to the main line. We have little competition to move our bulk shipments, and we certainly want them off of the highways as much as possible, given the problems of funding to repair those roads.

I know that there are other proposals to raise the gasoline taxes, but none are directed at using that money to keep the heavy traffic from destroying our roads.

North Dakota also has been experiencing a great deal of heavy traffic coming down to their railroads. Somehow, the rail cars are always available for that traffic-- in our State, the Burlington Northern knows that our grain is not going to move until they move it, so it remains on the farm until rail cars are freed up. But North Dakota has a law which prevents heavy traffic from breaking up their highways during the spring thaw. Montana doesn't, because it is an unpopular law.

And yet, if we get an early thaw while those millions of bushels are coming down ( obviously the Canadians are making money, or they wouldn't haul it so far,) we are going to see damage that could in no way have been anticipated by the Highway Department.

I sincerely hope that this committee will recommend this Bill to the entire legislature... that  $\frac{1}{2}\text{¢}$  now could save millions later.

This is a last ditch effort to save our roads by helping to keep traffic on the rails.

And in case you think I don't care about the additional costs to travellers, I drive 1000 miles round trip to Helena, and attend many meetings throughout the year in places like Great Falls and Billings. I care deeply about our roads, and the impact on our farmers pocketbook as they drive additional mileage to market their grain.

DATE 2-16-93

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 250, HB 297,  
HB 298, HB 312, SB 359

| Name | Representing | Bill No. | Check One |        |
|------|--------------|----------|-----------|--------|
|      |              |          | Support   | Oppose |

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|------------------|--|--------|-------------------------------------|-------------------------------------|
| Bob TURNER       | DEPT. OF REVENUE                             | HB 297 | <input checked="" type="checkbox"/> |                                     |
| Viggo Andersen   | MONT. Citizen's Freight Rate                 | HB 298 | <input checked="" type="checkbox"/> |                                     |
| Mary Nielsen     | PUBLIC & WIFE                                | SB 359 | <input checked="" type="checkbox"/> |                                     |
| Gordon Kampen    | Sheridan Co.                                 | SB 359 | <input checked="" type="checkbox"/> |                                     |
| Helen Taffs      | MT Soc of CPAS                               |        |                                     |                                     |
| Steve TURKIEWICZ | MT Highway Users Fed<br>MT AUTO Dealers Assn | SB 359 |                                     | <input checked="" type="checkbox"/> |
| Russ Rottel      | Wash Contractor                              | 359    |                                     | <input checked="" type="checkbox"/> |
| Carl Schweitzer  | Mont Cont Assoc                              | 359    |                                     | <input checked="" type="checkbox"/> |
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# VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY