

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Chairman Mike Halligan, on March 8, 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: None.
Executive Action: SB 235, SB 283

INFORMATIONAL TESTIMONY:

Amendments 5 and 12 of the Department of Revenue Amendments to SB 235, dated February 18, 1993, Exhibit No. 5 to the minutes of March 5, 1993, were reviewed and discussed, and the following executive action was taken. (A copy of those amendments are attached to these minutes.)

DISCUSSION ON AMENDMENT #5:

Exhibit No. 1 to these minutes is a refinement on the construction services definition in Amendment 5 deferred on March 5, 1993. This amendment would change the definitional section.

MOTIONS/VOTES ON AMENDMENT #5:

Senator Doherty moved DO PASS on this amendment. The motion CARRIED on oral vote, with Senator Gage voting "NO".

Senator Harp moved for ADOPTION of Amendment #5 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION ON AMENDMENT #12:

This amendment would delete the requirement that increases in property tax classification rate are subject to two-thirds vote of the legislature and a vote of the public.

MOTION/VOTE ON AMENDMENT #12:

Senator Eck moved for ADOPTION of Amendment #12 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote.

INFORMATIONAL TESTIMONY:

Amendments 13 through 19, of the Department of Revenue Amendments to SB 235, dated March 1, 1993, Exhibit No. 1 to the minutes of March 5, 1993, were reviewed and discussed, and the following executive action was taken. (A copy of those amendments are attached to these minutes.)

DISCUSSION ON AMENDMENT #13:

Dave Woodgerd, Chief Legal Counsel, Department of Revenue (DOR) said this amendment is a clarification that therapeutic devices which are exempt would include hearing aids, wheel chairs, and crutches.

MOTION/VOTE ON AMENDMENT #13:

Senator Stang moved for ADOPTION of Amendment #13 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION ON AMENDMENT #14:

Dave Woodgerd said this amendment will clarify that the DOR is subjecting all utilities, both regulated and non-regulated, to the sales and use tax. There is no fiscal impact.

MOTION/VOTE ON AMENDMENT #14:

Senator Towe moved for ADOPTION of Amendment #14 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION ON AMENDMENT #15:

Mr. Woodgerd said this amendment will clarify that all aspects of refuse disposal services, including services by a private provider or by a unit of government, are all subject to the sales tax. There is no fiscal impact. Exhibit No. 2 to these minutes relates to this amendment.

Senator Gage asked if sorting or recycling is included in this section. Mr. Woodgerd said it is not included in this section and may fall under the occasional sale provisions.

MOTION/VOTE ON AMENDMENT #15:

Senator Towe moved for ADOPTION of Amendment #15 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote, with Senator Stang voting "NO".

DISCUSSION ON AMENDMENT #16:

Mr. Woodgerd said this amendment exempts the tuition paid to the private educational institutions from the sales and use tax if that educational institution is recognized as exempt under the Internal Revenue Codes. This has no fiscal impact.

Senator Doherty asked if this would also include private, non-profit vo-tech schools. Mr. Woodgerd said if it is non-profit, it would be exempt; if it is for-profit, it would be taxed. This would primarily affect parochial schools and private colleges.

Senator Halligan asked how correspondence courses would be handled. Mr. Woodgerd said if they are for-profit, they are taxable.

Senator Towe asked the rationale behind taxing tuition on private for-profit schools or organizations. Mick Robinson, Director of the DOR, said the difficulty is where to draw the line in terms of what is, and what is not, an educational institution. They determined the best approach was to apply the for-profit, not-for-profit, definitions in the U. S. Tax Codes.

MOTION/VOTE ON AMENDMENT #16:

Senator Eck moved for ADOPTION of Amendment #16 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote with Senator Gage voting "NO".

DISCUSSION ON AMENDMENT #17:

Mr. Woodgerd said this amendment was requested by the motion picture industry to clarify that when they distribute a film and it is leased by the local theaters, that is considered a lease

for re-lease and is exempt. There will be a sales tax on the admission charge; the theater will collect from the movie-goer.

MOTION/VOTE ON AMENDMENT #17:

Senator Towe moved for ADOPTION of Amendment #17 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION ON AMENDMENT #18:

Mr. Woodgerd said this amendment will allow credit for worthless accounts that have been charged off for federal income tax purposes. This is a fairly standard provision in sales taxes. Director Robinson said he doesn't believe there is a fiscal impact, even though the information provided earlier showed a \$2 million figure. He thinks there will be very few businesses who will actually be reporting on the accrual basis versus the cash basis. If it is reported on the cash basis as they receive payments, the tax is paid then. If the accrual basis is used, they pay it up front; if there are bad debts, they decrease the tax payment.

MOTION/VOTE ON AMENDMENT #18:

Senator Towe moved for ADOPTION of Amendment #18 to SB 235. The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION ON AMENDMENT #19:

Mr. Woodgerd said this amendment increases the vendor allowance from \$50 to \$150 per month and \$150 to \$450 per quarter, and leaves in place the maximum of 1.5% of the sales. The vendor would pay whichever is less. There is no fiscal impact.

Senator Van Valkenburg said SB 235 will add to the administrative costs of the retailers.

Senator Harp suggested raising the amount to 2% in order to help the smaller businesses.

Senator Stang said, as a small businessman, his original cost of changing his computers will be between \$600 and \$1200, so at \$50 per month, it will take him two years to recoup the cost of reprogramming his computers, let alone the cost of the book work. He suggested the small retailers would be helped by raising the percentage and leaving the cap in place.

Senator Grosfield asked about the fiscal impact. Director Robinson said the DOR was not able to identify the sales levels of various business, so they calculated the financial impact by taking 1.5% times the total revenue of \$313 million, resulting in \$4.7 million. If this is changed to 2%, it would add approximately \$1.5 million.

Senator Eck asked about giving an additional 1% vendor allowance during the first year of the tax.

MOTION ON AMENDMENT #19:

Senator Stang moved to amend Amendment #19, as follows: on Page 38, Line 16, insert \$100; on Page 38, Line 18, insert \$300; on Page 38, Lines 15-17, strike 1.5% and insert 3%.

SUBSTITUTE MOTION/VOTE ON AMENDMENT #19:

Senator Eck moved a substitute motion to ADOPT the \$100 per month and \$300 per quarter caps, and to allow an additional 1.5% in the first 12 months, so the total would be 3% in the first 12 months, and 1.5% from then on. The motion CARRIED 7 to 4 on Roll Call Vote (#1).

Senator Stang withdrew his motion.

INFORMATIONAL TESTIMONY:

Exhibit No. 3 to these minutes, Amendments dated March 8, 1993, were presented and reviewed by Dave Woodgerd, DOR. These amendments are responses to concerns by U. S. West regarding ambiguity. The amendments wouldn't change anything in terms of the way the DOR always assumed the tax would work. Amendment "A" responds to a state of Illinois lawsuit, the Goldberg case, concerning what telecommunications are taxable. This amendment states any call that either originates or terminates in Montana, that is billed to a Montana telephone number or a Montana service address, can be taxed by Montana. Amendment "B" addresses an access charge which may be paid by U.S. West and passed on to the customer.

Senator Towe asked Dan Walker, U.S. West representative, what the telephone bill would look like if this amendment passes. Mr. Walker said it would look the same as it looks now, with a line added at the end of the bill showing the sales tax. Mr. Walker said his understanding is that this has to deal with billings between telephone companies.

MOTION/VOTE:

Senator Towe moved ADOPTION of Amendments A and B. The motion CARRIED UNANIMOUSLY on oral vote.

INFORMATIONAL TESTIMONY ON AMENDMENT BY SENATOR HALLIGAN:

An amendment, requested by Senator Halligan, dated March 4, 1993, was presented, a copy of which is attached to these minutes as Exhibit No. 4. Senator Halligan said this proposed new section would exempt the residential utility customer bill from the sales tax. The utility tax is one of the most regressive

parts of SB 235. The utility will raise their rates to cover their 4% sales tax, and they will also tax the customer utility bill. The residential customer would be paying double, if this amendment is not adopted.

MOTION ON AMENDMENT BY SENATOR HALLIGAN:

Senator Harp moved to ADOPT this amendment.

DISCUSSION:

Senator Towe said this amendment would help make the sales tax less regressive. Oftentimes the homes of the lower income families are poorly insulated and use more electricity or natural gas to heat, and these families would be spending more money on utilities than the middle, or higher, income families. Mr. Towe said utilities are perhaps the most regressive item in SB 235.

Senator Crippen said he understands this will have a \$17 million fiscal impact and wonders if it is this committee's intention to make some adjustments on the low income credit as well to offset this amount. Senator Halligan said the committee will be looking at other parts of the bill, the income tax, standard deductions, and personal exemptions, to see how high these are and be able to adjust those to look at replacing some of that revenue.

Senator Eck asked if the power company could address this issue. Jerry Peterson, Montana Power Company (MPC), said their total taxes would be \$23 million; with the amendment entered on March 5, 1993, to equal property taxes, it would decrease to \$16 million. The tax on the residential bills of their electric and gas customers would be about \$6 million. This amendment would reduce what they would otherwise pay by about \$6 million.

Senator Gage asked what happens in the instance of people who have businesses in their homes. Mr. Peterson said MPC classifies all of their customers by whether they are residential or commercial, and if they have businesses in their homes, they are generally classified as commercial.

VOTE ON AMENDMENT BY SENATOR HALLIGAN:

The motion CARRIED on oral vote.

INFORMATIONAL TESTIMONY ON AMENDMENTS DATED MARCH 4, 1993:

Amendments from the Department of Revenue, dated March 4, 1993, Exhibit No. 3 to the minutes of March 5, 1993, were reviewed and discussed, and the following executive action was taken. (A copy of those amendments are attached to these minutes.) These amendments deal with the 95 mills for elementary and high schools, the 6 mills for the university system, and the adjustments to the property tax rates.

Director Mick Robinson said the DOR is still working on the county-by-county spread sheet information requested by the Committee on March 5th. He said the Administration is attempting to reimburse the negative impact to local governments. The DOR does not have the county-by-county figures, but they do have the total dollars involved, which is between \$45 and \$47 million.

Senator Towe believes the Administration is making a backward step in these amendments by taking out the homestead credit and the renter's credit and replacing with property tax throughout the system. The 101 mills will affect everyone, including industry and business, and the wealthy and poor taxpayers. Comparatively speaking, the low income people lose in these new amendments. Senator Towe said when these spread sheets are completed, he believes it will show an approximate loss to the counties of \$1 million, and an approximate gain to cities and towns of \$2 million. He thinks these amendments will result in a loss of support for the bill.

Senator Harp said the affect of these amendments is less than \$1 million. As far as the state-wide mill levy decrease, it is less than \$600,000. When looking at a bill that generates over \$300 million, he thinks a good effort was made to see that local governments and cities are taken care of, even with these amendments. By changing to a 95-mill system for schools, the administration is trying to fit in an equalization question and take some of the burden of property taxes and replace those dollars with sales tax dollars.

Senator Van Valkenburg commented he believes this committee cannot intelligently understand what the impact of adopting these amendments will be until we get a school finance proposal from the House and until we begin to see the budget picture come together. The elimination of the 95 state-wide property tax mills that provide the basis of the funding of our education in this state is a radical change from existing tax policy, and it is difficult to know how that will affect the funding of our educational system in the long-term future in our state.

Senator Harp said SB 235 recognizes that Montana will need additional revenue in the future.

Senator Yellowtail said SB 235 will not resolve the school funding disparity present in this state that is currently in litigation.

Senator Doherty said he has studied the amendments and offered his comments on them, and said that getting rid of 101 state-wide property tax mills that have been used to fund education is a major move that makes him very nervous.

Senator Eck said it took a long time to get the 95 mills on for the educational funding and it makes her very uncomfortable taking them off. She doesn't think the 6-mill university levy

means a lot because the appropriations committee can pull out general funds, but symbolically, she thinks it is important for them to be there, and it is important to the public to be able to vote on this 6-mill levy. She would like to incorporate some ideas from SB 283 and would rather have the funding go for the permissive levy rather than the 95 mills. This would give some progressivity.

Senator Towe asked if, by giving \$41.7 million tax relief to Class 8 properties, and removing the \$37 million on the homestead exemption, we are making SB 235 more regressive. Senator Brown responded these amendments would make the bill somewhat less progressive with these amendments, but there is concern on the part of the educational committee that we weren't dealing with their school equalization problem. If we addressed that as it was addressed in SB 283, and just used the permissive mills, we wouldn't have been able to provide property tax relief on a state-wide basis.

Senator Doherty and Senator Towe asked Senator Brown about Class 8 property. Senator Brown said this is an effort to try to deal with the long-standing problem, and it is better than our present system.

MOTION ON AMENDMENTS DATED MARCH 4, 1993:

Senator Harp moved for ADOPTION of the amendments dated March 4, 1993.

DISCUSSION:

In answer to questions by Senator Towe, Senator Harp said the Governor and Senate and House Republicans support these amendments.

Senator Towe said he thinks these amendments harm the bill. County-by-county distribution figures are not available, and the way these bills will be fitted into the equalization bills is very critical to this tax reform package and he feels all of this could be better outlined in the House.

Senator Eck suggested taking the 4% sales tax, looking at some of the proposals in SB 283, and seeing if the committee can work out some agreement on the property tax, then send it to the House. In the meantime, if one of the school equalization bills passes, or looks like it is going to pass, then we could look at this approach again and amend it back into the bill. At this time she thinks it would be irresponsible for the Senate to send something to the House based on some bills we haven't seen yet.

SUBSTITUTE MOTION ON AMENDMENTS DATED MARCH 4, 1993:

Senator Eck moved that we segregate and adopt all but "B", the property tax sections, of this Amendment.

DISCUSSION ON SUBSTITUTE MOTION:

Senator Harp said these amendments are a package and he would hope that this committee would not segregate them.

Senator Crippen said he recognizes there is going to be opposition to SB 235. He said whatever this committee does is fine with him, he wants to get the bill on the Senate floor, debate it, and send it to the House. He then hopes the House will look at it in a responsible manner and if they want to add amendments to it, do so and we will get it back. At that time, maybe we can work on the bill and put the bill out to the general public in a fashion that we all can accept in some form or another.


Senator Towe withdrew his objections. Senator Eck withdrew her Substitute Motion.

VOTE ON AMENDMENTS DATED MARCH 4, 1993:


The motion failed 7 to 4 on Roll Call Vote (#2).

ADJOURNMENT

Adjournment: The meeting adjourned at 9:55 a.m.



MIKE HALLIGAN, Chair



BONNIE STARK, Secretary

MH/bjs

ROLL CALL

SENATE COMMITTEE TAXATION

DATE 3-8-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Halligan, Chair	✓		
Sen. Eck, Vice Chair	✓		
Sen. Brown	✓		
Sen. Doherty	✓		
Sen. Gage	✓		
Sen. Grosfield	✓		
Sen. Harp	✓		
Sen. Stang	✓		
Sen. Towe	✓		
Sen. Van Valkenburg	✓		
Sen. Yellowtail	✓		

FC8

Attach to each day's minutes

ROLL CALL VOTE #1

TAXATION

BILL NO.

3-8-93

8:00

P.M.

YES

NO

[illegible]

Mike Halligan

CHAIR

MOTION. Senator Eck moved a substitute motion to ADOPT the \$100 per month and \$300 per quarter caps, and to allow an additional 1.5% in the first 12 months, so the total would be 3% in the first 12 months, and 1.5% from then on. (This relates to Amendment #19, March 1, 1993, SB 235. Motion carried 7-4.

ROLL CALL VOTE #2

SENATE COMMITTEE

TAXATION

BILL NO. 235

DATE 3-8-93 TIME A.M. P.M.

NAME _____

YES

NO

[illegible]

Bonnie Stark

SECRETARY

Mike Halligan

CHAIR

MOTION: Senator Harp moved for ADOPTION of the amendments dated March 4, 1993. Motion failed 7-4.

SENATE TAXATION

EXHIBIT NO. 1

DATE 3-8-93

BILL NO. SB 235

AMENDMENTS
SB-235
INTRODUCED VERSION
March 8, 1993

The purpose of this amendment is to define construction services for purposes of the sales tax exemption.

Page 3, line 21

Insert: "(1) "Construction services" means the services performed by various trades engaged in the construction of dwellings, commercial buildings, farm buildings, and other such structures including but not limited carpentry, plumbing, heating and air conditioning, electrical work, masonry, excavating and concrete work. The term does not include such indirect services as accounting, architectural, engineering, drafting, leasing of construction equipment, and surveying services.



Missoula District

Recycled paper

SENATE TAXATION

EXHIBIT NO. 2

DATE 3-8-93

BILL NO. SP 235

MARCH 4, 1993

SEN. MIKE HALLIGAN
MONTANA STATE SENATE
HELENA, MT 59601

RE: SB 235 & SB 289

DEAR SEN. HALLIGAN

WE FEEL IT NECESSARY TO WRITE TO YOU REQUESTING THE FOLLOWING
AMENDMENTS TO THE ABOVE REFERENCED BILLS CONCERNING SALES
TAXES.

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.

EXEMPTING GOVERNMENT OWNED LANDFILLS AND TAXING PRIVATELY
OWNED LANDFILLS WOULD BE INEQUITABLE, UNFAIR AND DISCOURAGE
THE USE OF PRIVATELY OWNED FACILITIES. THE SERVICES OF
PRIVATELY OWNED DISPOSAL FACILITIES AND GOVERNMENT OWNED
FACILITIES SHOULD BE TAXED IN THE SAME MANNER. WE FEEL THAT
THIS LAW UNFAIR FOR BUSINESS IN THE STATE OF MONTANA BECAUSE
IT DISCRIMINATES AGAINST PRIVATELY OWNED LANDFILLS AND
DISPOSAL FACILITIES IN FAVOR OF GOVERNMENT OWNED FACILITIES
OF THE SAME TYPE.

THANK YOU FOR YOUR TIME AND ATTENTION IN THIS MATTER.

SINCERELY,

MAX BAUER, JR.
VICE PRESIDENT
BROWNING FERRIS INDUSTRIES OF MONTANA, INC.

AMENDMENTS
SB-235
INTRODUCED VERSION
March 8, 1993

A. The purpose of this amendment is to clarify that the sales tax will be charged on interstate telephone service for calls originating or terminating in Montana, if charged to a Montana telephone number or service address.

1. Page 8, line 3.

Insert: "(14) 'Service Address' means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems, and the like, service address shall mean the location of a taxpayer's primary use of telecommunications equipment as defined by telephone number, authorization code, or location in Montana where bills are sent."

Renumber: subsequent subsections

2. Page 17, line 13

Following: "(2)"

Insert: "(a)"

3. Page 17, line 17.

Insert: "(b) For purposes of this section telephone communications services includes the act of originating in this state or receiving in this state interstate and intrastate telecommunications by a person in this state, and billed to a Montana telephone number or Montana service address."

B. The purpose of this amendment is to provide that the requirement that the buyer of a service for resale must separately state the value of that service in the subsequent sale does not apply to the sale of telephone services from one telephone company to another telephone company.

1. Page 24, line 19.

Following: "(2)"

Insert: "(a)"

Line 22

Insert: "(b) The requirement contained in subsection (2)(a) of separately stating the value of the service purchased for resale does not apply to the sale of telephone services."

Amendments to Senate Bill No. 235
First Reading Copy

Requested by Senator Halligan
For the Committee on Taxation

Prepared by Jeff Martin
March 4, 1993

SENATE TAXATION

EXHIBIT NO. 4
DATE 3-8-93
BILL NO. SB 235

1. Page 17, line 13.

Strike: "The"

Insert: "Except as otherwise provided in [sections 1 through 62],
the"

2. Page 17.

Following: line 16

Insert: "NEW SECTION. Section 10. Exemption -- residential
utility services. The sale of natural gas, water,
electricity, telephone communication services, refuse
collection, or other utility services to residential
customers is exempt from the sales tax and use tax."

Renumber: subsequent sections

AMENDMENTS

SB-235

INTRODUCED VERSION (WHITE COPY)

March 1, 1993

13. The purpose of this amendment is clarify that the sales of therapeutic devices such as hearing aids, wheel chairs, and crutches are exempt if they are prescribed or dispensed by a licensed health care provider.

Page 8, line 5.

Following: "dentures"

Insert: "hearing aids, wheel chairs, crutches,"

Following: "limbs, prescribed"

Strike: "or"

Insert: ", "

Following: "ordered,"

Insert: "or dispensed"

14. The purpose of this amendment is to clarify that all utilities both regulated and non-regulated are to subject to the sales and use tax.

Page 17, line 15.

Following: "other"

strike: "regulated"

15. The purpose of this amendment is to clarify that all aspects of refuse disposal services performed either by a private provider or a unit of government are subject to sales tax.

Page 17, line 14.

Following: "services, refuse collection"

Insert: "including the disposal of refuse"

16. The purpose of this amendment is to exempt from sales and use tax tuition paid to private educational institutions recognized as exempt under §503(c)(3), IRC.

Page 24, line 7,

Insert: "New Section. Section 28. Exemption -- private school tuition. The tuition charged to a student for attendance at a private educational institution, recognized as an exempt organization under 26 U.S.C. § 503(c)(3), is exempt from the sales and use tax.

Renumber: subsection sections

17. The purpose of this amendment is to clarify that pursuant to § 32 a lease by a theater of a motion picture for subsequent showing is considered a lease for subsequent lease and therefore is

a nontaxable transaction.

Page 26, line 5.

Following: "(2)"

Insert: "(a)"

Line 8

Insert: subsection "(b) For purposes of this section the rental of a motion picture, motion picture trailer, by a person for display on a theater premises shall be considered a lease for subsequent lease."

18. The purpose of this amendment is to allow taxpayers a credit for worthless accounts that have actually been charged off for federal income tax purposes.

Page 38, line 12

Insert: "NEW SECTION. Section 48. Credit for taxes paid on worthless accounts -- taxes paid if account collected. (1) Taxes previously paid on sales represented by accounts found to be worthless and actually deducted as a bad debt for federal income tax purposes may be credited upon a subsequent payment of the tax. (2) If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.

Renumber: subsequent sections

19. The purpose of this amendment is to increase the amount of the vendor allowance from \$50 to \$150 per month and \$150 to \$450 per quarter. These amounts more closely approach the actual expense incurred by the merchant in collecting the tax.

Page 38, line 16.

Following: "state or \$"

Strike: "50"

Insert: "150"

Page 38, line 18.

Following: "the state or \$"

Strike: "150"

Insert: "450"

SB 235

Property Tax Related Amendments

Proposed by Department of Revenue

Prepared by Bruce McGinnis and Dave Woodgerd

Introduced Version

March 4, 1993

A. The Department is drafting amendments which will repeal the county equalization levies of 33 mills for elementary (20-9-331), and 22 mills for high school (20-9-333), the state equalization levy of 40 mills (20-9-360) and the 6 mill levy for the university system (20-25-423). Non-levy revenue currently going to the county equalization account will be split among the county taxing jurisdictions based on relative mills.

B. The purpose of this amendment is to change the tax rate for classes 3,5,7,8,9, and 11 to 4.0%

1. Page 189, line 7.

Insert: "NEW SECTION. Section 170. Coordination instruction.

(1) If Senate Bill No. 168 [LC] is passed and approved and if it includes a section that amends 15-6-133 then [section 115 of this act], amending 15-6-133, is void.

(2) If Senate Bill No. 168 [LC] is passed and approved and if it includes a section the repeals 15-6-144 then [section 117 of this act], amending 15-6-144, is void.

Renumber: subsequent sections

2. Page 109, line 4

Insert: "Section 117. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property -- description -- taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means facilities, machinery, or equipment used to reduce or control water or

atmospheric pollution or contamination by removing, reducing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. The department of health and environmental sciences shall determine if such utilization is being made.

(b) The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or the state tax appeal board. However, the appraised value of the equipment as determined by the department of revenue may be appealed to the county tax appeal board and the state tax appeal board.

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 4% 3% of its market value. "

Section 118. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property -- description -- taxable

percentage. (1) Class seven property includes:

(a) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;

(b) all property owned by cooperative rural electrical and cooperative rural telephone associations that serve less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town;

(c) electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.

(3) Class seven property is taxed at 4% ~~8%~~ of its market value."

Renumber: subsequent sections

3. Page 110, line 19.
Following: "is taxed at"
Strike: "3.86%"
Insert: "4%"

4. Page 110, line 21
Insert: "Section 118. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property -- description -- taxable percentage. (1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 4% ~~12%~~ of market value."

Renumber: subsequent sections.

Sections 89 through 113 amending the classification of counties or their bonding and levying capacities need to be amended to reflect the changes made to the property tax base.

D. The purpose of this amendment is to increase the rate of the electrical energy producer's tax and the telephone company license tax.

1. Page 175, line 15

Insert: " Section 150. Section 15-51-101, MCA, is amended to read:

"15-51-101. Rate of tax -- electrical energy producers. In addition to the license tax now provided by law, each person or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through waterpower or by any other means, for barter, sale, or exchange (and hereinafter referred to as the "producer") shall on or before the 30th day after each calendar quarter, quarterly periods ending March 31, June 30, September 30, and December 31, render a statement to the department of revenue showing the gross amount, except for actual and necessary plant use, required to produce the energy of electricity and electrical energy produced, manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a license tax thereon in the sum of \$.002775 ~~-.0002~~ per kilowatt hour on all such electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required in the manner and within the time hereinafter provided."

2. Section 151. Section 15-53-101, MCA, is amended to read:

"15-53-101. Definitions -- rate of license tax on telephone companies. (1) As used in this section:

(a) "carrier access service" means the service a local exchange company, as defined in 53-19-302, provides to an interexchange carrier for the origination or termination of telecommunications; and

(b) "telephone business" means the access and transport, for hire, of two-way communications from point of access to point of termination, both of which are within Montana.

(2) A license tax of 10.27 % ~~1.8%~~ is imposed upon the gross revenue in excess of \$250 each quarter received by a person in Montana from telephone business in Montana. As used in this section, "gross revenue" does not include:

(a) carrier access service revenue;

(b) revenue from the sale of telephone services to another

telephone service provider who uses the services to provide telephone service to the ultimate retail consumer who originates or terminates the transmission;

(c) revenue from the sale, lease, repair, installation, or maintenance of equipment or from the provision of nontransmission-related services or activities; or

(d) customer access line charges assessed under federal communications commission orders or rules.

(3) A bill or statement may itemize the tax imposed by subsection (2).

(4) The tax imposed by subsection (2) is due in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 in each year."

Renumber: subsequent sections

E. The purpose of this amendment is to delete the personal property reimbursement adopted in 1989 in § 15-1-111, MCA, and amend the section to provide a formula for reimbursing taxing jurisdictions for the rate reduction for utility property contained in class 9.

Pages 100 through 103

Strike: Subsections 5 through 9 of Section 114.

Insert: "(5) Prior to December 31, 1993, for each county the department shall determine the following information for each taxing jurisdiction that was in existence in tax year 1993:

(a) the number of mills levied in each taxing jurisdiction for tax year 1993;

(b) the total taxable valuation for tax year 1993 of all property described in 15-6-141.

(6)(a)(i) Based on the information determined in section 5, the department shall calculate the revenue loss for each taxing jurisdiction due to the change in the tax rate provided for in [section _____ (reduction of rate for utility property in class nine, 15-6-141)].

(ii) For purposes of this section revenue loss for each taxing jurisdiction is:

(A) the taxable value of all property described in 15-6-141 computed at the statutory tax rate in effect for tax year 1993 less the taxable value of such property computed at the tax rate provided for in [section _____ (reduction of rate for utility property in class nine, 15-6-141)];

(B) multiplied by the number of mills levied in the taxing jurisdiction for tax year 1993.

(b) The total revenue loss within each county is the sum of the revenue loss computed for each taxing jurisdiction in the county.

(7)(a) The amount of reimbursement due from the state to each county for tax years 1994, 1995, and 1996 is the total revenue loss calculated under subsections 5 and 6. The county treasurer shall

distribute the total revenue loss to each taxing jurisdiction as calculated by the department.

(c) The total reimbursement for each county for tax year 1997 and for each tax year thereafter is determined by using the formula $R = A \times (B/C)$, where:

(A) "R" is the amount of reimbursement to be received by the county during the current tax year;

(B) "A" is the total amount of revenue collected by [Section ____ through Section ____ (sales and use tax)] for the preceding tax year.

(C) "B" is the total taxable value of all property described in 15-6-141 within the county during the tax year immediately preceding the current tax year;

(D) "C" is the total taxable value of all property described in 15-6-145 in the state during the tax year immediately preceding the current tax year.

(8) Reimbursements calculated under subsections 5 through 7 for tax year 1994 and subsequent tax years shall be remitted to the county treasurer as follows:

(a) on or before November 30, 1994, and on or before each November 30 thereafter, the department shall remit 50% of the amount of the revenue reimbursable to the county; and

(b) on or before May 31, 1995, and on or before each May 31 thereafter, the department shall remit 50% of the amount of the revenue reimbursable to the county.

(9) For tax years 1991 and after, the county treasurer of each county shall distribute the reimbursement to each taxing jurisdiction in the relative proportions determined under the calculations provided by the department for tax year 1996.

(10) For the purposes of this section, "taxing jurisdiction" means the state of Montana, local governments including counties and incorporated cities and towns, school districts, tax increment financing districts, and miscellaneous taxing jurisdictions levying mills against property being reimbursed under this section.

(11) The creation and dissolution of taxing jurisdictions after tax year 1993 is treated as follows:

(a) Taxing jurisdictions that existed in tax year 1993 that no longer exist in subsequent tax years, and are not combined with another taxing jurisdiction are no longer entitled to reimbursement. The reimbursement for the taxing jurisdiction which no longer exists must be apportioned to the remaining taxing jurisdictions in the proportions that would have existed in tax year 1993 had the jurisdiction not been in existence in that year.

(b) Taxing jurisdictions that are combined into a single taxing jurisdiction are entitled to reimbursement based on the combined proportion of those jurisdictions in tax year 1993.

(c) Taxing jurisdictions created as a result of splitting an existing jurisdictions are entitled to a share of the original reimbursement based on the relative proportion of class 8 property within each of the newly created jurisdictions in within the tax year that the new jurisdictions are created.

(d) Taxing jurisdictions that did not exist in tax year 1993

are not entitled to reimbursement unless created as defined in subsection 11(c)."

Renumber: subsequent subsections.

F. The purpose of this amendment is to delete the income tax credit for homeowners'.

1. Pages 56 through 60
Strike: Sections 71 through 78 in their entirety.
Renumber: subsequent sections.

G. The purpose of this amendment is to delete the \$10,000 reduction in the market value of commercial improvements, in class 4 and to increase the tax rate for class 4 from 3.86% to 4.0%.

1. Page 107, line 3.
Following: "at"
Strike: "3.86"
Insert: "4.0"
Line 5.
Following: "taxed at"
Strike: "3.86"
Insert: "4.0"
2. Pages 108, line 23.
Strike: Subsection (4) in its entirety.

H. The purpose of this amendment is to reduce the current exclusion for retirement income from \$15,000 to \$7,500.

1. Page 157, line 16.
Following: "the first"
Strike: "\$15,000"
Insert: "\$7,500"
2. Page 180, line 18
Page 181, line 10
Page 182, line 4 and line 15
Page 183, line 7 and line 24
Page 184, line 14
Page 185, line 2 and line 15
Page 186, line 2, line 12, and line 24
Strike: "15,000"
Insert: "7,500"

I. The purpose of this amendment is to modify the renters' credit by adding an income test.

1. Page 52, line 17.
Insert: "(3) 'Gross household income' means all income received by all individuals of a household while they are members

of the household.

Renumber: subsequent subsections

2. Page 53, line 6.

Insert: "(6) "Household income" means \$0 or the amount obtained by subtracting the greater of \$4,000 or 50% of total retirement benefits from gross household income, whichever is greater.

(7) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

(a) the gross amount of any pension or annuity (including Railroad Retirement Act benefits and veterans' disability benefits);

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; and

(h) all payments received under federal social security except social security income paid directly to a nursing home.

Renumber: subsequent subsections.

3. Page 54, line 24

Following: "of [sections 63 through 70] is"

Strike: "the amount of gross rent paid during the claim period or \$200, whichever is less"

Insert: "computed as follows: (a) In the case of a claimant who rents the homestead for which a claim is made, the credit is the amount of rent paid during the claim period less the deduction specified in subsection (2).

(b) In the case of a claimant who owned and rented the homestead during the claim period, the credit is the amount of rent paid during the claim period less the deduction specified in subsection (2) prorated by dividing the amount of time the homestead was rented by the claimant by the number of months in the period for which a claim is made and then multiplying the quotient by the amount of credit allowed to the claimant.

(2) Gross rent paid is reduced according to the following schedule:

Household income Amount of reduction

\$ 0-999	\$0
1,000-1,999	\$0
2,000-2,999	the product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income
5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income

7,000-7,999 the product of .035 times the household income
8,000-8,999 the product of .039 times the household income
9,000-9,999 the product of .042 times the household income
10,000-10,999 the product of .045 times the household income
11,000-11,999 the product of .048 times the household income
12,000 & over the product of .050 times the household income

4. Page 55, line 2

Strike: Subsection (2) in its entirety

Insert: "(3) In no case may the credit granted exceed \$200."

Renumber: subsequent subsections

J. The purpose of the amendment is to delete the security cash reserve account.

1. Title, lines 12 and 13.

Following: "USE TAX REVENUE;"

Strike: "PROVIDING FOR A SECURITY CASH RESERVE ACCOUNT AND ITS USE;"

Line 24

Following: "16-2-301,"

Strike: "17-7-102, 17-7-140,"

2. Page 51, lines 14 through 17.

Strike: Beginning on line 14, strike "distributed as follows:

(i) 25.9% to the security cash reserve account established in [section 79]; and (ii) 74.1% that must be further"

3. Pages 60 through 61.

Strike: Sections 79 and 80 in their entirety.

Renumber: subsequent sections

4. Pages 65 through 73

Strike: Sections 86 and 87 in their entirety.

Renumber: subsequent sections

AMENDMENTS

DEPARTMENT OF REVENUE

February 18, 1993

Prepared by Bruce McGinnis and Dave Woodgerd

1. The purpose of this amendment is to exempt intrastate transportation services from sales and use tax.

Page 8

Line 7

Insert: "(15) "Transportation services" means the transportation of persons or property by air, ground, or water from a point within this state to a another point within this state or a point without this state, along with any reasonably necessary associated services."

Renumber: Subsequent subsections

Page 24,

Line 7

Insert: "NEW SECTION. Section 28. Exemption -- transportation services. The sale or use of transportation services is exempt from the sales and use tax."

Renumber: Subsequent sections

Page 27.

Line 11

Strike: Section 35 in its entirety

Renumber: Subsequent sections

2. This amendment specifically provides that a purchaser of property or services remains liable for the sales tax if for any reason the sales tax was not paid or collected on a transaction subject to tax. This section already applied to the use tax. The amendment makes it applicable to the sales tax.

Page 11, line 15.

Following: "of"

Insert: "sales and"

Line 15.

Following: "in this state who"

Insert: "buys or"

Following: "property"

Insert: "or services"

Line 16

Following: "payment of the"

Insert: "sales or"

Following: "tax if"

Strike: "the"

Insert: "a"
Line 17
Following: "payable on the"
Insert: "sale's price or"
Following: "property"
Insert: "or services"
Line 19
Following: "has paid the"
Insert: "sales or"

3. The purpose of this amendment is twofold. First it removes the exemption for minerals used or integrated into jewelry. As a practical matter, these minerals should be exempt as a sale for resale. The jewelry itself will be taxable.

This section also clarifies that exempt sales of minerals are sales by the producer and does not include minerals which will be used to produce energy unless they are converted for resale. In other words, the intent is to make sales of coal and natural gas taxable when they are sold to the final consumer of the energy they produce. This is consistent with the fact that utilities are taxable.

Page 21, line 22 through 23.

Following "minerals" on line 22

Strike: " -- exception for jewelry" on line 23

Line 23

Following: "(1)"

Strike "The"

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

Following: "sale or use"

Insert: "by the miner, or the producer of the mineral or by a broker acting upon behalf of the miner or producer"

Line 23.

Following: "mineral"

Strike: ", "

Page 22, line 1

Strike: Subsection (2) in its entirety.

Insert: "(2) Minerals used for the purpose of producing energy or conversion into energy are subject to the sales and use tax unless converted for subsequent resale as a form of energy."

4. The purpose of this amendment is to clarify that only irrigation water used for the production of agricultural products produced in quantities sufficient for commercial purposes is exempt from sales tax.

Page 23, line 13.

Following: "herbicides; or"

Insert: "irrigation"

Page 23, line 14.

EXHIBIT 5
DATE 3-5-93
T SB-235

ion"

agricultural products in

to exempt from sales and use
construction of residential

3. Exemption -- Construction
construction services for the
dealing of residential and
sales and use tax."

to clarify that electricity
forces shall be considered a

all energy or electricity used
on used in the reduction or
re a component part of the

sale of property to a person
the ultimate consumer is a

line 10
are and appliances, and the

s
state"

amendment is conform the collection of
corporations to the collection of
ed by corporations.

rough 25.
(a) in its entirety.

amendment is to remove the term "gross
concerning fraternal organizations.
since the tax is imposed on sales and

ts"

, the"
ipts"

rom dues"

amendment is to delete the amendment to §
essed products of livestock. These
nder subsection (1)(a) which exempts
storage and owned by the producer.

n its entirety.
tions.

amendment is to clarify that new and used
urpose of being placed in a fleet of
purposes are exempt from tax. This
ontaxable transaction for property
lease or rental contained in § 31.

e commerce,"
ered as part of a fleet as defined in

e commerce,"

Insert: "vehicles registered as part of a fleet as defined in 61-3-318(2),"

Page 143, line 8.

Following: "interstate commerce,"

Insert: "and vehicles registered as part of a fleet as defined in 61-3-318(2)"

12. The purpose of this amendment is to delete the requirement that increases in property tax classification rate are subject to two-thirds vote of the legislature and a vote of the public. It is not the intent of this bill to limit the tax rate for property taxes.

Page 188,

Line 13

Strike: Section 166 in its entirety

Renumber: subsequent sections

Page 189 and 190

Line (25)

Strike: Subsection (6) in its entirety