

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Vice Chair Dorothy Eck, on March 23, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

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: Sen. Mike Halligan (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 196, HB 382, HB 519, HB 593
Executive Action: SB 427, SB 429, HB 283

HEARING ON HB 382

Opening Statement by Sponsor:

Rep. Mike Foster, House District 32, presented HB 382, which is a bill to establish the value of limestone for Net Proceeds Taxes and RITT. Rep. Foster said this bill comes as the result of a unique situation in Broadwater County. Continental Lime (the company) has a plant near Townsend. The company recently discovered that for the last 10 years or so, they have been vastly over-paying their taxes, thus providing a windfall for the state's economy. The Department of Revenue (DOR) agrees that by using an acceptable alternate method of calculation, the company

could legally submit its next tax filing showing zero tax dollars due. In an effort to show its intent, and continue acting as a good corporate citizen and neighbor in Broadwater County, the company is supporting HB 382 in order to establish the value of limestone at 34 cents per ton for the production of quicklime, for Net Proceeds Property Tax purposes and for Resource Indemnity Trust Tax (RITT) purposes. Continental Lime employs 56 people and has a gross annual salary of nearly \$2 million. Rep. Foster said what HB 382 boils down to is whether or not this Legislature wants some tax dollars from this Company.

Proponents' Testimony:

Rep. Foster submitted a letter from the Superintendent of Townsend Schools, Exhibit No. 1 to these minutes, which expresses support of HB 382 by the Board of Trustees.

Dennis Burr, representing the Montana Taxpayers Association, appeared in support of HB 382. Mr. Burr said limestone is used for two purposes in Montana: cement and quicklime. This plant produces quicklime. Mr. Burr said several months ago, Brent Palmer, an employee of Continental Lime, contacted him with some questions about the company's net proceeds; they were having trouble getting a good bottom line in Montana and they thought net proceeds might be one of their problems. Mr. Burr looked at the company's net proceeds and compared them with the net proceeds of other limestone producers. Exhibit No. 2 to these minutes is a copy of those comparisons. Under the DOR rules, there are three methods of filing a Net Proceeds Return. Exhibit No. 3 to these minutes is a copy of the DOR's rules. The proportionate profits method of taxing is what Continental Lime has used since 1981, and which produces a very high value. The other limestone producers in the state, the cement plants, are using known sales in establishing their tax. Continental Lime had an engineering firm study sales prices from other producers around the country, which resulted in using a value of \$3.50/Ton. However, at that level, their allowable deductions will wipe out the Net Proceeds and there will be no revenue for Broadwater County. HB 382 does the same thing for quicklime as is done for talc and vermiculite, which is to set the value, in this case, at 34-cents a Ton, which will result in some tax, around \$30,000, for Broadwater County. Mr. Burr said the fiscal note indicates a cost cut to the University Levy and Foundation Program, and it has a \$336,000 impact to Broadwater County. The fiscal note is based on using the method of filing they have used in the past, one they will not be using anymore, so if HB 382 passes, there will be tax returns to all of the funds involved. Mr. Burr thinks HB 382 is a good bill for the State and for the local governments; it will stabilize the return when this rock is mined in the state, and it insures there will be returns every year that rock is mined. He said the present system doesn't insure that.

Bill Dodge, Vice President of Continental Lime, spoke in support of HB 382, and said they view this bill as being a fair bill that will give the State value. Mr. Dodge said they were directed by the DOR to use the proportionate profits method in establishing their tax in an effort to avoid litigation other cement plants have been involved in by using the market survey method of taxing. However, in recent years it has become grossly overstated, and the regulation required they pay tax on the mine-mouth value. This calculation doubles and triples the estimated mine-mouth value. Continental Lime accepts the Tax Appeal Board findings that predicting a zero value is not acceptable and that some value has to be used. The value of \$3.10/Ton is in the range of 10% of the value of the stone, which will give the city and the county an assured tax base.

Brent Palmer, an employee of Continental Lime, spoke in favor of HB 382, and presented Exhibit No. 4 to these minutes. Mr. Palmer said they compared what Continental Lime was paying as a Net Proceeds Tax with what other plants were paying, and discovered other plants were paying 17 cents on each Ton of stone. They went back and determined which companies did not pay any Net Proceeds Tax and that increased the rate per Ton to 34 cents, which is the rate they determined to be a fair rate of return. In applying the 34 cents/Ton to last year's Net Proceeds Tax Return, a value was put upon the stone of \$4.79/Ton. Mr. Palmer said he cannot find any publication showing other mines producing anywhere near that value for stone. The Rock Products Magazine puts a value on crushed stone at \$2.82/Ton. Continental Lime feels the \$4.79/Ton price is a very fair rate for the Net Proceeds Tax and they urge support of HB 382.

Jim Hahn, Broadwater County Commissioner, spoke in support of HB 382. Mr. Hahn said that Continental Lime has been a very good taxpayer in the past years, and the Commissioners have a good working relationship with them. Commissioner Hahn asks that HB 382 be passed.

Bill Duede, representing the work force of Continental Lime, spoke in support of HB 382. Mr. Duede said with the economic and environmental changes in the world, a company has to look at any areas in which to cut costs in order to remain competitive in the marketplace. The passage of HB 382 will help Continental Lime achieve this goal. This company plays an important part in Broadwater County communities, employs approximately 60 people year-round, and the business affects other people throughout Montana who rely on this business to survive. Mr. Duede strongly urges passage of HB 382.

Bill Kearns, representing the Broadwater County Development Corporation and the Townsend Area Chamber of Commerce, asked for the Committee's support of HB 382. Continental Lime supports the community and was a good citizen in helping keep the Townsend hospital open. Mr. Kearns said this industry is good for their community and all of Montana by providing employment and taxes.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Dennis Burr how they arrived at the 34-cent figure. Mr. Burr explained that on Page 1, Line 18, of HB 382, it refers to limestone extracted for quicklime purposes; on Page 2, Lines 16 through 24 state it is increased each year by the personal consumption expenditures (PCE). They checked and found that quicklime has been rising slower than the PCE for the last 10 years or so. There is one other place it will affect. Continental Lime's biggest contract was with Basin Electric of Wyoming. They have now built their own plant across the Montana border in Wyoming, and will be moving rock from Carbon County, Montana, to that plant in Wyoming. The Senator asked if the 34 cents is just on the gross. Mr. Burr said 34 cents is what the actual mill levy is applied to.

Senator Towe asked what PCE means. Jeff Martin, Legislative Council Staff, said this means that the gross value of the product will go up as inflation goes up. Mr. Burr said it is the normal breadbasket of consumer purchases that inflation is measured by. Mr. Martin said this formula is used in the provisions for vermiculite and talc, and tends to be a more reliable measure of adjustment for inflation.

Senator Towe asked Mr. Burr what is being done on Page 19, Lines 3 through 9. Mr. Burr said this is the RITT. By lowering the value for net proceeds purposes, the value would normally be lowered for RITT. They didn't want to do that, so the rate needed to be increased from 2.005% to 10%, so they will be paying essentially the same for the RITT under that rate as they were before. This is based on the 34 cent figure.

Senator Gage asked Mr. Burr what the personal property and real property values are of Continental Lime. Mr. Burr said it was around \$25 million.

Senator Van Valkenburg asked Rep. Foster if the reduction in revenue to the Foundation Program and the University 6-mill levy has been taken into account in House Resolution 2. Rep. Foster said he does not believe so, that the Resolution was passed before HB 382 had its hearing. He does not know how it is worked in, but knows that it does appear in the printouts.

Senator Towe asked if HB 382 were to pass, would Continental Lime be contemplating asking for a refund and suing for past taxes paid. Bill Dodge said, "No". The Senator asked if there

could be a commitment to that effect. Mr. Dodge said he believes the company is blocked from doing that by current legislation because they elected to take the proportionate profits method to compute value. It is classed as property tax and, as such, they had an appeal period and did not appeal within that time.

Senator Towe asked if the proportionate profits method must be used to determine the natural resources tax. Mr. Burr replied that the argument would be whether that method yields mine-mouth value.

Senator Eck asked Mick Robinson, Director of the DOR, to respond to this issue. Mr. Robinson said he reviewed the methods of taxing the limestone industries, and noted some problems with calculating. The DOR is using a proportionate profits method and tries to be consistent with that. That particular method takes the end sales price, then calculates back to the mine-mouth value of the product. There are a lot of factors going into the further manufacturing or production of the product until the sales price is arrived at, in order to then arrive at some objective basis for starting the calculation. It is a difficult process and it puts the DOR in a difficult position in trying to calculate the formula. Because there are no sales of limestone within Montana, there isn't a good basis for making a computation of value. From the standpoint of efficiency, Mr. Robinson thinks these are some of the products better approached from a gross proceeds type of tax than a net proceeds tax because of the difficulty in determining value. From an administrative standpoint, in dealing with such a small amount of tax value state-wide, it would be easier and much more cost-effective for the DOR to approach it from a gross proceeds tax rather than a net proceeds tax.

Senator Towe asked about the 34-cent value. Don Hoffman, DOR, explained he looked at the calculations done by Continental Lime. They used the returns filed by other companies in the country that have filed on limestone, and, based on the way those returns were filed, it is an accurate number. Mr. Robinson added that the other companies in the marketplace project what they think the mine-mouth market value is. Continental Lime looks at the other companies' indications of value, including information from sales surveys, and factors all of these items in, in order to arrive at the 34 cents. Mr. Robinson thinks, based on the lack of solid data regarding sale of limestone, the 34 cents is as realistic a value as can be calculated, and doesn't think he can come up with a more objective value to give the community.

Closing by Sponsor:

Rep. Foster said this is not a good year to come in with a bill to reduce revenues. However, by taking this approach to the net proceeds tax for Continental Lime, the State will get a fair amount of tax revenue.

HEARING ON HB 519Opening Statement by Sponsor:

Rep. Beverly Barnhart, House District #80, presented HB 519, which is a bill designed to correct a few mistakes made on the recycling bill passed by the 1991 Legislature. When people tried to use their tax deduction, the designation for paper was so unclear that the only thing they could claim was certain kinds of toilet paper. The rules need to be defined as to what recycled materials qualify for a tax deduction. Rep. Barnhart presented amendments to HB 519, as Exhibit No. 5 to these minutes.

Proponents' Testimony:

Rick Meis, owner of Treecycle Paper, a small business dealing only in recycled paper products, spoke in support of HB 519 with the amendments that Rep. Barnhart proposes. Mr. Meis presented his written testimony as Exhibit No. 6 to these minutes.

Ann-Marie Gritzuk, an employee of the Department of Natural Resources & Conservation (DNRC), spoke in favor of HB 519. The new Business Development Team within the Energy Division of the DNRC was created about one year ago to assist economic development opportunities in the State and capitalize on opportunities in energy in the environment. Ms. Gritzuk recommends adding a Section (e) to Page 7 of HB 519, stating that a person or business creating waste can use their waste and receive a 25% tax credit in order to help the original intention of the law passed in 1991. In the work of the Business Development Team there are two ways in particular Ms. Gritzuk said may be used to benefit getting out of disposal areas. One is to use fly ash, a by-product of coal combustion. Fly ash is being used in concrete products, in gypsum board, and in the manufacturing of light-weight aggregate. If HB 519 is passed into law, it would allow Ms. Gritzuk to look at Montana Power Company (MPC) as a big contributor towards utilizing fly ash. Another example is the use of sawdust or other wood waste, in wood pellets and other by-products. The DNRC is trying to get away from allowing credit to be given for the use of wastes that are traditionally used, i.e., in the production of paper. Ms. Gritzuk said these changes will increase the effectiveness of the intent of the law, which is to minimize the disposal of waste while creating economic activity.

Mark Daspit, representing the Montana Audubon Council, presented his written testimony in support of HB 519, a copy of which is attached to these minutes as Exhibit No. 7.

David Owen, employed by and representing the Montana Chamber of Commerce, spoke in support of HB 519. The goal for this legislative body seems to be to walk a fine line between providing some encouragement for recycling in a time when the

revenue picture is tough. The question on this bill would be if there is enough incentive in it. The Chamber continually encourages businesses in their recycling efforts. They supported this concept two years ago and are in support of it now.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Ms. Gritzuk about the tax credit section of HB 519 she referred to. Ms. Gritzuk responded that Section (d) on Page 7 prohibits businesses that create waste to get the credit. HB 519 is a credit for those businesses who use recycled material in their business, and 25% of the cost of the equipment purchased to recycle material can be taken as a tax credit.

Senator Towe asked Ms. Gritzuk about the December 31, 1995, termination date of this bill. Ms. Gritzuk said the entire law, including the credit, is gone at that time.

Senator Towe asked Mr. Meis if there are very many people taking a tax credit, as opposed to a deduction. Mr. Meis said he only knows of one business in Bozeman that would qualify for a credit for purchase of equipment. As far as the deductions state-wide, even though there are a handful of who could, he would guess there are no businesses taking the deduction since it would only amount to pennies for 1992 because of the way the law reads. The Senator asked if it would make a difference if the law is changed, and the deduction is 10%. Mr. Meis said a firm in a high tax bracket, using \$1,000 worth of products, would only get a credit of \$10 under the current law. If it were changed to 10%, that amount would double. A law firm using \$1,000 worth of paper, for instance, would get a \$20 tax deduction. Businesses would have to figure if this is worth their time to pursue the tax credit or deduction.

Senator Towe asked why the intent of the Legislature is listed in Section 2 (1) instead of being in the Statement of Intent. Mr. Meis said it was put into the body of the bill in order to clarify the intent, rather than having it listed in the Statement of Intent that may not make it into the rules.

Closing by Sponsor:

Rep. Barnhart replied to Senator Towe's last question that they hoped there would be a list similar to the list on wood stoves, as to what could be taken as a deduction on the tax returns. She urged support of HB 519.

HEARING ON HB 196Opening Statement by Sponsor:

Rep. Jerry Driscoll, House District #92, presented HB 196, which is a property tax reimbursement the State sends to local governing bodies. When the tax rate was lowered from 12% to 9% in 1989, the State reimbursed the counties based on the value of the personal property in the county on that day, and the mills kept going up. HB 196 will roll back the mills to the 1991 levy and will cap the amount of reimbursement paid to these eligible taxing jurisdictions for tax years 1993 and thereafter. Since this is a tax on personal property, the property would be depreciating, which the law does not allow, and it also allowed the mills to go up. The first year the State reimbursed the counties, it cost \$18.336 million. The current projection for 1994 is \$19.746, without HB 196. Each taxing jurisdiction will get the same amount forever until the law is changed; there is no escalating clause in it.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Van Valkenburg said the fiscal note indicates there is a negative impact to the General Fund of \$1.4 million in FY '94, and \$1.8 million in FY '95. Rep. Driscoll said this should not show as a negative impact, but as a positive impact since there will be less money spent from the General Fund.

Senator Van Valkenburg said there would be a requirement to put another \$613,000 into the School Equalization, University Levy, and Assumed Welfare accounts, which would be taken from the gross of \$1.4 per year. Rep. Driscoll said this is correct.

Closing by Sponsor:

Rep. Driscoll said this is another bill presented in an effort to balance the budget. The taxing jurisdictions have been raising their mills, costing the General Fund more money. If that property would have stayed in those counties, they would have been getting less than this amount because there would have been depreciation. Rep. Driscoll calls HB 196 a fair bill and asked for Committee support.

HEARING ON HB 593Opening Statement by Sponsor:

Rep. Ted Schye, House District #18, presented HB 593, which is a bill to establish a seasonal beer and wine license for the Yellowstone Airport. HB 593 is drafted at the request of the Aeronautics Division, Department of Transportation (DOT). A similar bill has been presented to the Legislature in the past; however, that was not for a seasonal license.

Proponents' Testimony:

Mike Ferguson, Administrator of the Aeronautics Division, DOT, spoke in support of HB 593. He said a seasonal beer and wine license would enhance the operation of the airport at Yellowstone. The airport is self-sustaining; the commercial sections of the airport are leased out to private operators and vendors. They have had trouble getting and keeping cafe operators over the years, and the current operator feels it would enhance his business to be able to sell beer and wine along with the meals. There is both a smokejumper base, as well as a fire retardant bomber operation, at this airport, and the people who work there head to town rather than eat at the airport.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe asked Mr. Ferguson if the provision in the bill saying the DOT shall lease the license means that the DOT would own the license and would lease it to whomever is leasing the restaurant. Mr. Ferguson said this is correct; it would be a part of the lease during the time the restaurant is open, June 1st to October 1st.

Senator Towe asked what the DOT would charge the lessee for this beer/wine license. Mr. Ferguson said under the current contract, the DOT gets 10% of the lessee's gross. There wouldn't be anything extra above the 10% amount.

Senator Gage asked if this would also provide seasonal gaming. Mr. Ferguson said he thought one had to have an all-beverage license in order to have a gaming license. Senator Eck said this is not correct. Senator Gage asked if he would like to see gaming on the premises, to which Mr. Ferguson replied he would like that because it would increase the revenue at that airport.

Closing by Sponsor:

Rep. Schye said the gaming issue was brought up in the House, and they didn't know if enough money could be made with the machines over the summer season to justify the effort. He asked Committee support of HB 593.

EXECUTIVE ACTION ON SB 427DISCUSSION:

Senator Eck said this is the committee bill from this Committee on SIDs and RSIDs because the last two Attorney Generals were not able to give an opinion on the issues. The Conference Committee in a previous legislative session did not leave minutes of their meetings, and no one could remember what the intent of the law was.

Senator Gage said he visited with Gordon Morris from the Montana Association of Counties (MACO), who said the revolving funds are county-wide if it is county, and municipal-wide if it is municipal. His concerns have been answered in this respect.

Senator Van Valkenburg said that if a tax that had been levied in 1986 is no longer being levied, the mills that had been levied could be transferred to a different purpose and still stay within the I-105 parameters.

MOTION/VOTE:

Senator Gage moved SB 427 DO PASS. The motion CARRIED UNANIMOUSLY on oral vote. (651041SC.San)

EXECUTIVE ACTION ON SB 429DISCUSSION:

Senator Gage distributed an amendment to SB 429, which is Exhibit No. 8 to these minutes.

Jeff Martin, Legislative Council Staff, explained this amendment means that the Oil and Gas Conservation Board can only use the funds for oil and gas reclamation projects and not for any personnel costs or general operating expenses of the Board. The second part says the unobligated fund balance becomes a part of the \$600,000 for the next biennium. Mr. Martin said these grants are funded by RITT.

Senator Towe asked if this bill is the one that would insist that priority be given to requests not to exceed \$600,000 that would be used for plugging oil and gas wells, and this bill obviates the need for the other bill introduced by Senator Gage. Senator Gage said this is correct.

MOTION/VOTE:

Senator Gage moved for adoption of the amendments on Exhibit No. 8 (sb042901.ajm). The motion CARRIED UNANIMOUSLY on oral vote.

MOTION/VOTE:

Senator Gage moved SB 429 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY on oral vote. (651042SC.San)

EXECUTIVE ACTION ON HB 283**DISCUSSION:**

Senator Stang presented Exhibit 9, which are amendments to HB 283, and Exhibit No. 10, which is updated information on cigarette quotas on Reservations. Senator Stang said the amendments relate to the objections to this bill by the Salish-Kootenai Tribes, and are drafted to address the concerns of both the Tribes and the DOR.

Jeff Miller, Administrator of the Income and Miscellaneous Tax Division, DOR, explained the amendments. Mr. Miller said the DOR has had considerable dialogue with James Weber, Tribal Attorney for the Confederated Salish and Kootenai Tribes on the Flathead Reservation. Mr. Weber proposed a series of amendments that addressed his concerns relative to the operation of HB 283 as introduced. Through those discussions, the DOR has agreed to make changes in the bill as indicated in the amendments. The first amendment is in effect creating a situation of insuring an adequate supply of tax-free cigarettes onto the Reservation, and will do that by changing the formula for calculating the quota amounts to be using a factor of 150% of the National per capita consumption. Currently the National per capita consumption is 97 packs per individual. By going to 150%, it will be 145 packs of cigarettes per individual consumption. In this manner, the DOR is attempting to insure there will be an adequate supply of tax-free cigarettes available on the Reservations. If anything, this is an attempt to err on the side of over-supply. Exhibit No. 10 will illustrate the impact of the per capita distribution.

Senator Harp asked Mr. Miller what is responsible for the large drop in cigarette purchases on the Flathead Reservation between 1991 and 1992. Mr. Miller said the major enforcement action transpiring on that Reservation resulted in this drop in sales.

Senator Eck asked how this would conflict with HB 92. Mr. Miller said the DOR does not see any conflict between the two bills. HB 92 relates to establishing the parameters of how the negotiated agreements would work and encouraging those kinds of negotiated agreements. HB 283 is a very specific mechanical

process of establishing a supply of cigarettes on the various Reservations, and the DOR does not see it as a conflict.

Mr. Miller explained that Amendments 2, 3 and 4 are responsive to the Tribe's concerns that the negotiators at the table ought to have as much latitude as they possibly could have. These amendments will eliminate the requirement that the Tribe's tax system be identical to the state's. It opens the door to the negotiators to say that if the Tribe wants to put in place a lower tax or something like that, and if the DOR can work out a negotiated agreement to cooperatively administer it, so be it. These amendments would eliminate what the Tribe saw as impediments to that kind of situation.

Mr. Miller said Amendment 5 inserts language specifically to address this same concern of the Tribe for some flexibility.

Explaining Amendments 6 and 7, Mr. Miller said the Tribes were asking for standing in the instance of a confiscation or seizure. If there are proceeds from the seizure of unstamped cigarettes, they wanted to have standing in that situation so they could share in it, especially where they assisted the DOR in the enforcement, as was the case in the November enforcement activity on the Flathead Reservation; the Tribal Police were involved in that enforcement activity. The DOR can speak to this only so far as it goes to the State. The DOR has pointed out to the Tribe that in the event there is an issue between the Federal government and the Tribe as to standing, that is between the Tribe and the Federal government. Amendments 6 and 7 are responsive to the Tribe's concerns.

Exhibit No. 8 is important, according to Mr. Miller, because the Salish-Kootenai gave every indication they expected, given a little more time, that they would be able to reach a negotiated agreement. The DOR is interested in reaching negotiated agreements with all of the Tribes as that is the most preferable method in addressing this issue. In the spirit of accommodation, the Tribes were asking for an extension in negotiations to August 15, 1993, with the effective date of this Act, and the DOR said they would be happy to go to October 1, 1993, which is approximately six months from when the Legislature will complete its business, but is a 3-month extension from what was originally written into the bill.

MOTION/VOTE:

Senator Harp moved adoption of the amendments to HB 283.

DISCUSSION:

Senator Towe asked about the quota being extended to 150%, if this is a maximum quota, and said he assumes there is no cooperative agreement with the Salish and Kootenai Tribes yet. Mr. Miller said this is correct. In the absence of a negotiated

agreement, HB 283 will come into play to establish the supply of cigarettes to be distributed on the Reservation. Responding to Senator Towe's questions on the method of handling this, Mr. Miller said the DOR has been closely monitoring the sales from the wholesalers to all businesses in the state, but in particular to smoke shops on Reservations, because they are the only ones in the State authorized to purchase tax-free. With every order, there are documents coming to the Department to indicate the sales, and if the DOR does not have a negotiated agreement, the DOR will be able to look to past history consumption patterns geographically throughout the Reservations. Absent negotiations, if there is an extra supply and the various smoke shops consume 10% of whatever was the consumption pattern, the DOR will assume they can make some reasonable attempt to distribute that quota amount among those smoke shops, based on their past consumption patterns. There will be a reduction in the total supply available, and the DOR will try to distribute proportionately among the smoke shops. The DOR will have a 5-year history in terms of the purchase patterns, and the DOR has implemented negotiated quotas using those kinds of information as a basis.

Mr. Miller said where the DOR has implemented quotas among the four negotiated agreements in place, the past-consumption patterns are something both the DOR and the Tribe looked to in trying to allocate the quotas.

Senator Towe asked about the inter-local agreements, and why this is in HB 283 and not in HB 92. Mr. Miller said a similar bill to this one was rejected last session, and he had not made any attempt to reconcile this bill with HB 92. He thinks HB 283 is compatible with HB 92, but it is specific to the issue of cigarettes.

Senator Towe suggested adding a coordinating instruction to Section 3 of HB 283 that if HB 92 is passed and signed by the Governor, Section 3 will be deleted from HB 283. Senator Towe said one of the reasons he has problems with this bill is that it refers to an adoption of an ordinance, and he knows from personal experience that that can be a problem.

Mr. Miller responded that Section 3 and, in particular, the amended language inserted into the bill, was put there at the request of the Fort Peck Tribe and their counsel who said the negotiated agreement structure presently in place is working but if an attempt is made to modify it, they wanted specific direction and clarification that this law would not in any way impact existing quotas in negotiated agreements thereafter. Mr. Miller thinks Section 3 is important and is not incompatible with HB 92. The DOR, as well as the Tribes who already have negotiated agreements in place, are comfortable with HB 283 with Section 3 as it is written. Mr. Miller would like to see Section 3 stay in the bill.

SUBSTITUTE MOTION:

Senator Yellowtail moved a substitute motion that HB 283 BE TABLED.

DISCUSSION:

Senator Yellowtail said he wants to table this bill because HB 92 and the existing State/Tribal Cooperative Agreements Act provide adequate parameters for negotiations to take place in an orderly and normal fashion between the State and the Salish and Kootenai Confederated Tribes, and the other Tribes who have not yet completed negotiated agreements with the State. A cooperative agreement is about to be consummated between the State and the Confederated Tribe and this Committee should let that process continue. He thinks if Amendment No. 1 is adopted, the 150% figure automatically changes the scene with the other four negotiated agreements in place, and those Tribes should be able to come back and demand that their quotas be upped. Senator Yellowtail feels HB 283 is unnecessary.

Senator Stang spoke against the motion, saying the process isn't working. This bill has been before this Legislature for the past six years. The State has had six years to negotiate an agreement with these Tribes. The State has now given the Tribes another three months in good faith. Senator Stang does not want to give any more time. He fears that if HB 283 is killed, they have an unlimited time to not negotiate, and cigarettes may continue to be illegally sold on the Reservation; he feels it is time to move the process on. It is becoming a real emotional issue with people who sell cigarettes off the Reservation. Senator Stang said the DOR didn't want to put the 150% into the bill; this is a compromise the DOR made because they wanted all enrolled tribal members included, no matter where they lived in the country. Rather than err on the side of shorting the Tribes for those people who may come back to the Reservation to buy cigarettes, the DOR said they would go with 150%. If the other Tribes want to come in and re-negotiate their agreements, they can do so. However, if they are happy with the quotas they have, they may not want to re-negotiate. Those agreements were negotiated at more than what they sold in 1991 and 1992. He thinks HB 283 needs to pass in order to get the negotiation process moving forward.

Senator Gage said it is his opinion that the House will not accept the amendments to HB 283. HB 92 was passed on the premise that the taxes that are assessed by the Tribe will be in the same amount as the taxes assessed by the State of Montana. These amendments will make the taxes collected by the Tribe different from those taxes collected by the State for cigarettes sold on and off the Reservation, and he sees it as a problem.

Senator Harp spoke against the motion to table. He has carried this bill in the past and has heard these same arguments

to give a little more time for negotiations. He understands the frustrations of those people involved in the negotiations. He believes the DOR has gone too far in increasing the quota to 150% and said the tax evasion allowed to occur with this quota is hurting the other taxpayers in the State.

Senator Towe asked if the refund system works. Mr. Miller said it is a workable system which is patterned after what is in place and working in Washington today. The DOR has implemented quotas on two of the four Reservations, and is still negotiating the distribution mechanism on the other two. The requirement is the wholesaler contacts the DOR for pre-approval of the shipment. The DOR keeps track on a diminishing quota. Under HB 283, all cigarettes are stamped so the DOR will now be able to distinguish that they are legal Montana cigarettes. The wholesaler will invoice them to the Reservations tax free and get the rebate refund from the DOR. If they are not pre-approved, there will be no refund. The DOR has had excellent cooperation with the wholesalers, and the process is working well.

VOTE:

The motion to TABLE HB 283 FAILED 6-4 on Roll Call Vote (#1).

DISCUSSION:

Senator Gage asked to segregate the motion to adopt the amendments, and vote separately on Amendment No. 5. Acting Chair Eck ruled that the amendments can be segregated.

MOTION:

Senator Gage moved to segregate and not adopt Amendments Numbered 2, 3, 4, and 5.

DISCUSSION:

Senator Stang said the reason Amendments 2, 3, 4, and 5 were presented is that the Tribes worry about having to impose an identical tax, and the Confederated Salish and Kootenai Tribes are in a unique position that they can't impose a tax on their people without a vote of the Tribe. By forcing them to collect a tax at the same rate as the State imposes, it violates their own Tribal Constitution. These amendments will give them the leeway to go back to their Tribal members and impose the tax at the rate they see fit, and the amendments will be helpful to the Tribe in their negotiations with the State. Senator Stang speaks against the motion on that basis, and in favor of Amendments 2, 3, 4, and 5.

Senator Towe spoke against the motion, and in favor of Amendments 2, 3, 4, and 5.

SUBSTITUTE MOTION:

Senator Stang moved a substitute motion to ADOPT AMENDMENTS No. 2, 3, 4, and 5 on Exhibit No. 9.

DISCUSSION:

Senator Gage pointed out language on Page 4, beginning on Line 11, of HB 283, saying, "The consumer is not required to pay both the state tax and the tribal tax, but shall pay only one tax to the state in an amount equal to the tax paid on cigarettes...." He asked how this would be applied, and if the Tribe would assess a tax different than the State sets and say the consumer would only have to pay the amount assessed by the State. Dave Woodgerd, DOR Legal Counsel, said they looked at that language and they interpret it to only talk about the tax to the State and not the tax to the Tribe. No consumer is required to pay both the State tax and the Tribal tax. In terms of consistency, Mr. Woodgerd said lines 13 and 14 could be stricken from the language. The DOR felt it is okay the way it is now, so that both the State and the Tribe could impose their own tax.

VOTE:

The motion to adopt Amendments 2, 3, 4, and 5 CARRIED on oral vote with Senators Gage and Doherty voting "NO".

MOTION/VOTE:

Senator Stang moved for adoption of Amendments 6, 7, and 8. The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION:

Senator Van Valkenburg asked Mr. Miller how important the 150% figure is to the ability to negotiate an agreement with the Confederated Tribe. He is more inclined to say that usage of non-taxable cigarettes should be allowed at 110%. He thinks putting it at 150% makes an inequitable situation for the other four Tribes who have already negotiated agreements. Mr. Miller responded that the four negotiated agreements provide for an attempt to re-negotiate in the event those Tribes would like to change their agreements. With regard to the agreement with the Confederated Salish and Kootenai Tribes, they asked that the DOR calculate the quota by the total enrollment, notwithstanding where those people might live. What the DOR has come to is an accommodation to meet them half way. The residential enrollment on the Flathead Reservation is approximately 3600; their total enrollment is 6700. They wanted an equivalent of a 100% increase, and the DOR said they would make some reasonable accommodation and they agreed to a 150% increase. That figure was a compromise and is one intending to make sure that their membership is not in a situation of having to pay cigarette taxes because of actions of a smoke shop charging the wrong person.

That Tribe is very adamant that it is an issue not of privilege but of right and the DOR is sensitive to that issue. They are trying to accommodate the Tribes by erring on the side of over-supply, that could potentially avoid disputes and litigation.

VOTE:

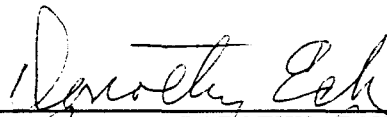
The original motion to adopt the Amendments (No. 1 being the only remaining motion not voted on) CARRIED 7-3 on Roll Call Vote (#2).

MOTION/VOTE:


Senator Stang moved HB 283 BE CONCURRED IN AS AMENDED. The motion CARRIED on oral vote with Senators Gage, Yellowtail and Doherty voting "NO". (651604SC.San) Senator Stang will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:05 a.m.



DOROTHY ECK, Chair



BONNIE STARK, Secretary

DE/bjs

ROLL CALL

SENATE COMMITTEE

TAXATION

DATE 3-23-93

[illegible]

FC8

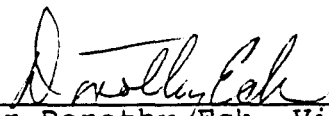
Attach to each day's minutes


SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 427 (first reading copy -- white), respectfully report that Senate Bill No. 427 do pass.

Signed: 
Senator Dorothy Eck, Vice Chair


Amd. Coord.
NY Sec. of Senate

651041SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 429 (first reading copy -- white), respectfully report that Senate Bill No. 429 be amended as follows and as so amended do pass.

Signed: 
Senator Dorothy Eck, Vice Chair

That such amendments read:

1. Page 2, line 16.


Following: "conservation."

Insert: "The board of oil and gas conservation shall use a grant that received priority under this subsection (a) only for oil and gas reclamation projects. A grant may not be used for personnel costs or general operating expenses of the board of oil and gas conservation.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the \$600,000 limitation for the next biennium."

Renumber: subsequent subsection

-END-


Amd. Coord.
TV Sec. of Senate

651042SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 283 (first reading copy -- white), respectfully report that House Bill No. 283 be amended as follows and as so amended be concurred in.

Signed: 
Senator Dorothy Eck, Vice-Chair

That such amendments read:

1. Title, line 13.
Strike: "IDENTICAL"
Insert: "SIMILAR"

2. Title, line 17.
Following: "CIGARETTES;"
Insert: "PROVIDING FOR A DISTRIBUTION OF PROCEEDS FROM A SALE OF
PROPERTY SEIZED;"

3. Page 3, line 4.
Following: "means"
Insert: "150% of"

4. Page 3, line 22 through page 4, line 3.
Strike: ":" on page 3, line 22 through "(b)" on page 4, line 3


5. Page 4, line 11.
Following: "tribe."
Insert: "However, the tax rate determined by a tribal government
on a negotiated quota amount need not equal the tax rate
imposed by the state."

6. Page 6, line 23.
Following: "state,"
Insert: "tribal,"

7. Page 7, line 1.
Following: "proceeds"
Insert: ", less an amount that is based on the value of the
property seized on an Indian reservation and that is
allocated to a tribe pursuant to a state-tribal cooperative
agreement,"

8. Page 17, line 15.
Strike: "June"
Insert: "September"

-END-


Amd. Coord.
Sec. of Senate

Stang
Senator Carrying Bill

651604SC.San

#1

TAXATION

2B 283

3-23-93

f: de

A.M.

P.M.

YES

NO

Bonnie Stark
SECRETARY

SECRETARY

Dorothy Eck, Vice Chair
CHAIR

CHAIR

MOTION:

Tabled.

Motion Failed 6-4

TOWNSEND
SCHOOLS

P.O. Box N
Townsend, MT 59644
(406) 266-3455

HIGH SCHOOL DISTRICT NO. 1

Broadwater High School
(406) 266-3455

ELEMENTARY DISTRICT NO. 7

Cecelia Hazelton Elementary
(406) 266-3942

SENATE TAXATION

EXHIBIT NO. 1

DATE 3-23-93

BILL NO. AB 382

February 10, 1993

Representative Mike Foster
PO Box 126
Townsend, MT 59644

Dear Mike,

I am writing on behalf of the members of the Board of Trustees of Townsend School, Elementary District #7 and High School District #1. At their regular February board meeting held last night, February 9, 1993, the trustees voted unanimously to offer their official support of HB 382 currently being considered.

Although it reduces the tax support level now being paid by Continental Lime, it is in the long term best interests of the district and the county to keep the plant a viable part of our community. The board believes that this bill will contribute greatly to the long term health of the plant. As well, Continental Lime has been a good "neighbor" to our school and the county in a wide variety of ways.

If the district can provide you with any additional information or assistance in this matter, please give me a call.

Cordially yours,

Al Mc Milin

Al Mc Milin
Superintendent

LIMESTONE

COMPANY	TONS	GROSS VALUE	GROSS VALUE PER TON	DEDUCTIONS	NET PROCEEDS	NET PROCEEDS PER TON
1992 TAX YEAR						
CONTINENTAL LIMESTONE	507,329	\$5,151,953	\$10.15	\$2,082,899	\$3,069,054	\$6.05
HOLNAM INC.	445,071	1,295,157	2.91	1,028,677	266,480	.61
ASARCO	28,610	267,181	9.33	242,892	24,289	.84
ASH GROVE	421,183	1,474,141	3.50	1,599,942	0	0
1991 TAX YEAR						
CONTINENTAL LIMESTONE	302,851	\$3,091,262	\$10.21	\$1,317,514	\$1,773,748	\$5.86
HOLNAM INC.	487,576	1,331,082	2.73	1,427,803	0	0
ASARCO	35,212	296,932	8.43	269,938	26,994	.77
ASH GROVE	390,956	1,251,059	3.20	1,191,896	59,163	.15
1990 TAX YEAR						
CONTINENTAL LIMESTONE	300,563	\$3,035,494	\$10.10	\$1,292,532	\$1,742,962	\$5.80
MONTANA LIMESTONE CO.	204,368	854,429	4.18	764,136	90,293	.44
IDEAL BASIC IND.	508,950	865,215	1.70	1,515,512	0	0
ASARCO	30,633	258,217	8.42	234,743	23,474	.76
ASH GROVE	412,805	1,193,006	2.88	1,179,708	13,298	.03
1989 TAX YEAR						
CONTINENTAL LIMESTONE	317,439	\$2,764,522	\$8.70	\$1,263,354	\$1,501,168	\$4.73
IDEAL BASIC IND.	507,109	1,195,410	2.36	637,638	557,772	1.10
ASARCO	32,793	267,310	8.15	243,009	24,301	.74
ASHGROVE	404,868	1,125,533	2.77	1,381,355	0	0
1988 TAX YEAR						
CONTINENTAL LIMESTONE	130,213	\$5,596,758	\$42.98	\$4,491,323	\$1,105,435	\$8.49
IDEAL BASIC IND.	393,882	429,371	1.09	616,344	0	0
ASARCO	36,657	298,965	8.15	217,786	27,179	.74
ASHGROVE	320,842	882,315	2.75	1,295,045	0	0

SENATE TAXATION

EXHIBIT NO. 2

DATE 3-23-93

NATURAL RESOURCE TAXES

42.25.1105

IMP, Secs. 15-23-102 and 15-23-503 MCA; NEW, Eff. 4/5/74; AMD and TRANS, from ARM 42.22.1103, 1986 MAR p. 2072, Eff. 12/27/86.)

42.25.1104 MINING VERSUS NON-MINING PROCESSES (1) The gross value of minerals subject to tax will be determined at the point where mining processes end and manufacturing or non-mining processes begin. In general, mining includes overburden removal, blasting, loading, transportation between mining processes, sorting, reduction and drying. Processes which will be considered non-mining are fine grinding, burning or calcining, blending with other materials, and treatment effecting a chemical change and packaging.

(a) The points at which mining processes end for specific minerals are listed below.

<u>Mineral</u>	<u>Valuation Point</u>
Bentonite	after crushing and drying
Gypsum	after crushing
Limestone	after crushing
Talc	after crushing and sorting
Vermiculite	after screening

(b) No deductions will be allowed for processing costs incurred beyond the valuation point. "After crushing" refers to after all crushing but before grinding. (History: Sec. 15-23-108 MCA; IMP, Secs. 15-23-502 and 15-23-503 MCA; NEW, 1988 MAR p. 1983, Eff. 9/9/88.)

42.25.1105 - COMPUTATION OF GROSS VALUE (1) Gross value for purposes of the mines net proceeds will be determined at the point where mining processes end and manufacturing or non-mining processes begin as discussed in ARM 42.25.1104.

(2) Gross value at the point of valuation will be determined using one of the following methods which are listed in the order they are to be considered.

(a) The producer's actual sales prices for mineral products sold at the point of valuation will be considered the best evidence of value provided the sales are arm's-length and represent approximately 30% of total mineral production. Sales of less than 30% of total production may be acceptable indicators of value if the sales price per unit is corroborated with other representative market data for minerals of like kind

and grade. Documentation for this method must be provided by the producer to the department on request.

(b) If the producer does not have the sales information discussed in (a), a market survey of other producers' sales of like kind and grade mineral products may be done. If this method is used, the producer must obtain market data for 3 or more other producers. This data must represent the results of competitive transactions in markets with a substantial number of unrelated buyers and sellers. The producer must document that all values used are for minerals of comparable quality sold in quantities approximating the producers level of production. It may also be necessary to consider the geographic area served by the markets used for comparison. All information obtained by the producer to support this method must be provided to the department on request.

(c) If the information required by (a) and (b) is not available, the proportionate profits method may be used to compute a value in the absence of adequate market data. The general formula for this computation is stated below.

$$\text{Taxable value/unit} = \frac{\text{Direct costs through valuation point}}{\text{Total direct costs}} \times \text{Sales price/unit}$$

(i) Direct costs through the valuation point will include overburden removal, drilling, blasting, loading, hauling, crushing, sorting, drying, mine reclamation, production taxes and royalties and any other direct costs incurred through the valuation point.

(ii) Total direct costs will include, in addition to those noted above, all direct costs applied to the mineral products up to the point of production of the first marketable product or group of products which have not been manufactured or fabricated. These costs will typically include grinding, burning or calcining, blending with other materials and treatment effecting a chemical change.

(iii) The sales price per unit will be the weighted average price of the first marketable product or group of substantially similar products sold in significant quantities by the producer.

(iv) Only direct costs may be used in computing the cost ratio for the formula. No costs that benefit the operation as a whole or are not directly related to a specific phase of the mining or processing of the mineral product will be included in the ratio.

(d) The department may use an alternative valuation method if warranted by an unusual situation. (History: Sec. 15-23-108 MCA; IMP, Sec. 5-23-502 and 15-23-503 MCA; NEW, 1988 MAR p. 2507, Eff. 11/24/88.)

SENATE TAXATION

EXHIBIT NO. 4

DATE 3-23-93

BILL NO. HB 382

**CONTINENTAL LIME INC.
H.B. 382 - NET PROCEEDS TAX ON LIMESTONE
USED TO MAKE QUICKLIME**

- The Net Proceeds Tax has been a problem to interpret and administer for decades.
- Almost all payors of the tax are now covered under special Bills or modifications.
- Using the Market Survey method of valuation for limestone has not met with approval from Department of Revenue. (Other limestone users are in various states of litigation).
- Using the Proportionate Profits method grossly overstates the value of limestone at the crusher. This is not in conformance with the Act, and results in an unfair, high tax burden.
- The Market Survey method results in a zero taxable value for Continental.
- We propose to pay based on a fixed net proceed of \$.34 per ton, which is the average paid by other producers in the last five years, excluding the years they paid nothing. The average including all years is half this.
- We believe this is a fair value, and will give the state and county a stable, predictable tax base, set by our limestone consumption.

CONTINENTAL LIME INC.
H.B. 382 - NET PROCEEDS TAX ON LIMESTONE
USED TO MAKE QUICKLIME

Financial Effect of Bill

Under the present "Net Proceeds" tax regulations, the gross value can be determined in one of three methods which is shown below, in preference order.

- (A) Producer's actual sales price for mineral products sold at the point of valuation, providing there is 30% of the mineral product being sold.
- (B) A market survey of other producer's sales of like kind and grade mineral product.
- (C) The proportional profits method in order to compute a value. The general formula for this computation is as follows:

$$\text{Taxable Value/Unit} = \frac{\text{Direct Costs Through Valuation Point}}{\text{Total Direct Costs}} \times \text{Sales price/unit}$$

This is the method that we were told to use by the DOR, and have done so in previous years.

Based on this formula, we valued our stone at \$10.15 for our operating year 1991, while the average for other limestone producers was \$3.39/ton.

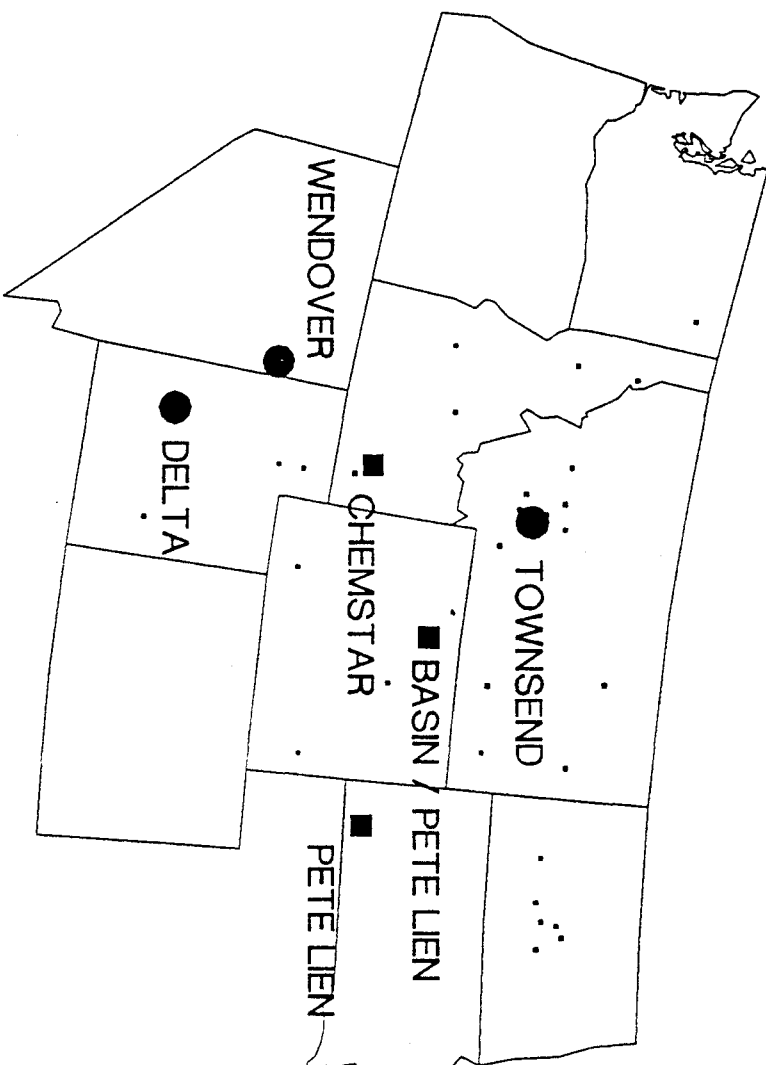
With the filing of our December 31, 1992 Net Proceeds Tax return we have changed to method "B" above (Market Survey) to value our limestone. The value that we used is \$3.75/ton which was determined as a fair market value by an independent market survey. By using this value under the proportionate profits method, we had a Net Proceeds loss of \$369,000, which will result in a **NO TAX** situation. If, however, H.B. 382 passes and we refile our return based on the proposed net value of \$.34/ton, our Net Proceeds will be \$179,332.

If we are unsuccessful with this Bill, and we continue to file using Method (B), there is every reason to believe we will be in continued litigation as are some of the other limestone producers. As a consequence, the only ones to come out ahead are the attorneys.



CONTINENTAL LIME INC.

EXHIBIT 4
 DATE 3-23-93
 FILE HB-382



CONTINENTAL PLANTS
 TOWNSEND, MT.
 DELTA, UT.
 WENDOVER, NV.
 COMPETITOR PLANTS
 CHEMSTAR
 BASIN
 PETE LIEN

- CIL LIME PLANT
- COMPETITOR PLANT
- CUSTOMERS

CONTINENTAL LIME INC.

INDIAN CREEK PLANT - TOWNSEND, MONTANA

NUMBER OF EMPLOYEES WORKING: 56

GROSS ANNUAL PAYROLL: \$1,943,000

STATE INCOME TAXES PAID: \$ 112,000

STATE PROPERTY TAXES PAID: \$ 913,000

GOODS & SERVICES/LOCAL: \$2,068,000

4

3-23-93

4B-382

CONTINENTAL LIME INC.
NET PROCEEDS TAX COMPARISONS 1988 - 1992
LIMESTONE PRODUCERS

LIMESTONE

COMPANY	TONS	GROSS VALUE	GROSS VALUE PER TON	DEDUCTIONS	NET PROCEEDS	NET PROCEEDS PER TON
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ASHGROVE	320,842	882,315	2.75	1,295,045	0	0

Amendments to House Bill No. 519
Third Reading Copy

Requested by Rep. Barnhart

Prepared by Lee Heiman
March 12, 1993

1. Title, line 9.

Following: "TAXPAYER;"

Insert: "INCREASING THE DEDUCTION ALLOWED FOR PURCHASE OF
RECYCLED MATERIAL TO 10 PERCENT FROM 5 PERCENT;"

Strike: "AND"

Insert: ", "

Following: "15-32-603,"

Insert: "AND 15-32-610,"

2. Page 8.

Following: line 8

Insert: "Section 4. Section 15-32-610, MCA, is amended to read:

"15-32-610. (Temporary) Deduction for purchase of recycled material. In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 5% 10% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. (Terminates December 31, 1995--sec. 9, Ch. 712, L. 1991.)"

Renumber: subsequent sections



TREECYCLE

RECYCLED PAPER

the other half of recycling

BOX 5086

BOZEMAN, MT 59717

(406) 586-5287

SENATE TAXATION

EXHIBIT NO. 6

DATE 3-23-93

BILL NO. HB 519

Testimony of Rick Meis on H.B. 519

"An Act to clarify the definition of recycled material eligible for a deduction ..."

March 23, 1993

Chairman Halligan, members of the Committee,

My name is Rick Meis, and I am from Bozeman. I have a small business called Treecycle, which sells recycled paper products. That should explain why I am here. I support HB 519 with certain amendments; certain conditions.

In 1991, when SB 111 passed, I was asked to comment on the rules proposed by the Department of Revenue to implement the reclamation and recycling credit. As someone with considerable knowledge on recycled products, I sent a letter to Revenue and said as proposed the rules were ineffective. HB 519 corrects part of that. The part I know well.

However, a few weeks ago I learned that a 5% tax deduction to a business that uses recycled products is so minuscule that it is not worth the effort. For example, a business that uses \$1000 worth of recycled products in a year would get a deduction of \$50 which may only reduce the total tax liability by \$10 at the most. Probably less. Who is going to bother? The average business would be looking at pennies. That's no incentive. I believe we should create an incentive.

As a businessman, I urge you to either increase the deduction to at least 15%, or better 20%, or make this a 5% credit, which would make it an effective incentive. It goes hand in hand to support the use of post-consumer recycled products if we are going to give credits to collect that post-consumer material. Remember, a lot of collected recyclables have been landfilled due to lack of demand. A good incentive would help to create that demand.

If you feel inclined not to amend this bill, then as a Montana taxpayer I urge you to strike the deduction for use of recycled products. In tight financial times, it would be a waste of tax money and Department of Revenue time to draw up worthless rules.

Now, why you should pass an amended version of this bill.

The motto of Treecycle is "the other half of recycling." I think this is important. Recycling is a loop, and if it is going to be successful, then there must be a demand for the products made with the material which you and I take to the collection centers.

Recycling is to take our recyclables to the recycling center AND to buy and use products made with those post-consumer materials. The ability to have our paper and plastic readily accepted at a recycling center hinges on the subsequent demand for products made with those materials. This bill will help create a demand for the endless amounts of paper collected in all those big, blue bins all around the capitol building.

I know recycled paper, but much of the same holds true for plastics also, and these are two of the biggest items choking our landfills. We must make every attempt to support the collection of post-consumer materials. These make up over 85% of the post-mill recoverable paper wastes, and paper can be as much as 40% of the material going into landfills; plastics can be 7%.

My comments today are directed at paper but can be applied to other items as well.

The piece of legislation passed two years ago and the subsequent rules fall short of being effective for the purchase of recycled products. I want to address Rule 42.15.416. As it is written, for fine papers (printing and writing) the 90% reclaimed material definition is unlikely to be readily achievable even by those wishing to do so. A lack of knowledge (and a small mistake) allows only small fraction of good recycled products available. According to the rules, recycled equals 90% reclaimed equals post-consumer. This is the place where good definitions and the distinction between types of recovered materials is necessary. HB 519 provides that.

Only a tiny handful of papers for printing and writing, some speciality items like these tablets, and one brand of toilet paper qualify. Yes, I have some customers who could take deductions for 1992, if it were worth their effort.

I know this was not the intent. I hope this committee will help to correct this.

The intent of Rep. Barnhart's bill addresses post-consumer content as an ultimate goal of this legislation. The US EPA guidelines, for instance, after listing the minimum content specifications go on to **note the intent is the maximum post-consumer content practicable**. It is usually overlooked as the goal however, and if we state it more up front, it may help the private sector to be more aggressive in its pursuit of this.

Rep. Barnhart's bill will fix the problem in the rules as I mentioned above. It will allow businesses that put the effort forward to use good recycled products to take this token deduction.

General rulemaking authority is delegated to the Department of Revenue. They do not know all the details necessary and need to seek advise on the implementation of this. Last time they made a mistake and did not probably know it. I think directing the Department to specifically seek advise through consultation with experts in the fields will alleviate the problem, and this bill directs that to happen.

A major goal of reduction is accomplished by use of post-consumer material -- the stuff you and I take to the recycling centers; the stuff in all those big bins throughout this building.

I think it is very much a commendable move that these innovative types of deductions and credits are being developed. I encourage you to amend HB 519 to include a significant enough deduction or credit for use of recycled materials that it creates an incentive to use the paper in those blue bins.

(Ever wondered where all that paper goes?)

Thank you for your time.

Sincerely,


Rick Meis

thank you.

Supplemental information to help understand the necessity for H.B. 519.

prepared by Rick Meis as an addendum to testimony on H.B. 519

Why a bill like this? Why recycled? What does it accomplish? Just what is it the Department of Revenue is supposed to do to meet this?

Treecycle approaches recycled paper from the angle of resource conservation, not simply trying to sell someone the recycled logo. I have done quite a bit of research into recycled paper and the the issues of solid waste and pollution which recycled paper can address.

The goals of solid waste reduction can readily include the ability to reduce pollution, and good recycled paper (and other) products can accomplish both reduction of materials going to a landfill and reduce pollution from the production of the recycled papers. The goal of solid waste reduction and land conservation (longer life landfills) and the related reduction of both pollution at landfills and in the production of the recycled product are benefits to the public and our environment.

An effectively implemented tax credit like this can also weed out those items called recycled, even 100% recycled, that really are no change from how things have always been done. 100% recycled toilet paper, for example, should not qualify unless it contains an absolute minimum of 20% post-consumer material. By the time the rules are drafted, this will probably be more like 40%. Many companies have been making what some call recycled t.p. for a long time, but without the inclusion of a minimum of post-consumer material, it is really no change from what has always been done, and thus does nothing and should not be rewarded.

On the other side of the coin, just because there are some toilet papers out there that say they are 100% recycled and may be interpreted to compete with t.p.'s of new material on an even basis, the really progressive tissues that are of a high post-consumer content (and generally more expensive) should not be discounted as they really do create a demand for post-consumer recycled material.

There are about 12 or so paper companies that have extremely environmentally sound papers out - not just recycled-wise but also chemical-wise; about 6 or so that have shifted in a major way to this goal, not just putting out an image leader. But there are quite a few papers that meet the minimum possibilities I delineate below.

I think it is very important to have it applicable for tax year 1993. With the state collecting and recycling papers, and the encouragement the private sector is getting, I think we need to encourage it as rapidly as possible.

Please do not be too discouraged that I make it sound intensely more complicated than you may think it should be, but I will try to explain myself as I go. Information on, the quality of, and the understanding of recycled paper is changing rapidly. It is important to keep up and not promote the wrong kind of actions as the EPA guidelines inadvertently did.

It is also very important that we all understand the definitions associated with the word "recycle" and derivations thereof. There is not a good, hard and fast definition even for this key word. I go back to the root bases for the word and the definition becomes: to have a complete set of events or phenomena occur in the same sequence; to use over again or put back into series again.

Conservatree Paper Company has prepared a "Recycled Paper Agenda for the '90s." This is probably the most innovative proposal of its type in the nation. Much as I would like to, I do not advocate wholesale adoption of this program all at once in Montana, although it is certainly a good goal.

When a paper is labeled as a certain percentage of recycled content, it may be by weight or by fiber

(as you are probably used to). Paper can be up to 30% or more water, fillers, and chemicals. The easiest comparison for understanding this is that the average recycled paper you may be used to is labeled 50% recycled. This may be by fiber content. Measured by weight it would actually be only about 40% recycled. And vice versa, some 50% recycled, by fiber, papers may actually be closer to 60% by weight.

I do not consider mill waste as a recycled material. Again, many of the recycled papers you may be familiar with may be most, if not all, mill waste. The reason I do not accept this source as recycled is that mill wastes have always, 100%, been reused by the industry -- none has ever gone to a landfill. If the idea of recycling is to promote waste that currently is hauled away and buried as a recoverable or reclaimable resource, then it is defeating the purpose to allow something that is already used to be labeled as such.

This is where good definitions for post-mill, de-inked, and post-consumer become important. It would be defeating any intent of recycling to allow mill waste recycled papers to qualify for this deduction. We must make every attempt to support the collection of post-consumer materials. These make up over 85% of the post-mill recoverable paper wastes, and paper can be as much as 40% of the material going into landfills.

Much the same is true for plastics.

As these kinds of things change rapidly, it would be good to have the flexibility of phasing in stricter requirements in a few years, as well as offer an incentive for use of the best -- the highest post-consumer content.

I would suggest a two-tiered system would be more fair and promote use of de-inked and post-consumer materials.

For the 5% deduction:

recycled printing and writing paper should contain, by fiber:

- a) 50% recycled including 10% post-consumer material,
- b) 50% post-mill and/or de-inked materials

recycled newsprint should contain, by fiber:

- a) 40% post-consumer material

recycled paper bags should contain, by fiber:

- a) 40% post-consumer material, or
- b) be made from un-repulped, recovered paper

recycled corrugated and fiberboard boxes should contain, by fiber:

- a) 60% recycled content including 40% post-consumer material

recycled tissue products should contain by fiber:

- a) 100% post-mill recycled materials including
 - 40% post-consumer for paper towels,
 - 30% post consumer for paper napkins,
 - 20% post-consumer for toilet tissue,
 - 20% post-consumer for facial tissue.

It should not include papers labeled recycled that are not certified in some way to contain the materials as delineated above. This could be done by the Department of Revenue in the simplest of fashions. Also note that I have listed my contents by fiber. H.B. 519 allows for either presentation of recycled content, as long as it is consistent.

It would be good to set up the system to give a higher (10%) deduction for recycled paper containing:

recycled printing and writing paper should contain, by fiber:

- a) 100% post-mill recycled incl/ 20% post-consumer material,

recycled newsprint should contain, by fiber:

- a) 90% post-consumer material

recycled tissue products should contain by fiber:

- a) 90% post-consumer materials

These numbers are all readily achievable now in Montana. However, the numbers listed in the 5% list are very lax, and should become stricter as the market improves for what is available.

I want to emphasize that the qualifying papers should be certified in some fashion. Many businesses selling recycled paper really don't understand what it is they are selling or why. I run into this all the time. Some of the papers being sold as recycled in the state are simply papers made of mill waste. Although this currently meets the EPA guidelines, it is expected that the updated guidelines will not contain this category as it fails to meet the intent of the guidelines. In several states and Canada, this kind of paper cannot be labeled, called, or sold as recycled. It would certainly not be innovative to continue to support this problem.

An important point to remember is that the quality of recycled paper is as varied as paper itself. An often heard argument against recycled paper is that it doesn't have the quality. That would be like saying cars are noisy and uncomfortable. A few cars, maybe. A few recycled papers, maybe. There is a recycled paper that meets every need.

In fact, most recycled papers are of such a quality that the average person would be hard pressed to tell recycled from non-recycled. The most variable thing in recycled paper is the environmental quality. Some barely reduce air and water degradation. Some are as benign as it is possible to make paper. At Treecycle, we feel it is important to know that, and make every effort to offer the most environmentally benign papers that meet the quality needs of the consumer. One recycled copy paper is not necessarily the same as the next; the same with rag bond, printing paper, etc.

I have working papers on the myths and realities of recycled paper and pollution from paper production which I can send you if you are interested. Thank you for your time and interest in the matter. Do not hesitate to get hold of me if you have any questions or concerns.



Montana Audubon Council

State Office: P.O. Box 595 • Helena, MT 59624 • (406) 443-3949

SENATE TAXATION

EXHIBIT NO. 17

DATE 3-23-93

BILL NO. HB 519

3/23/93

Chapters:

Bitterroot Audubon
Bitterroot Valley

Flathead Audubon
Flathead Valley

Five Valleys Audubon
Missoula

Last Chance Audubon
Helena

Pintlar Audubon
Southwest Montana

Rosebud Audubon
Miles City

Sacajawea Audubon
Bozeman

Upper Missouri
Breaks Audubon
Great Falls

Yellowstone Valley
Audubon
Billings

Chairman Halligan, members of the Committee. My name is Mark Daspit and I represent the Montana Audubon Legislative Fund. I am here today to support House Bill 519.

In 1970, Montana produced 460 thousand tons of household garbage. By 1989, that number increased 13%. By that time, recycling had already been started and approximately 11% of our nations solid waste was being recycled.

While much is already being done, we feel that there is more that could be implemented to help the recycling effort. If tax credits are offered, there is more incentive to implement recycling programs. I believe that people will be more willing to recycle if these tax credits were offered.

Audubon supports House Bill 519 and we urge you to pass this bill.

Thank You,

Mark E. Daspit



Recycled Paper

Amendments to Senate Bill No. 429
First Reading Copy

Requested by Senator Gage
For the Committee on Taxation

Prepared by Jeff Martin
Department of Natural Resources

SENATE TAXATION

EXHIBIT NO. 8

DATE 3-23-93

BILL NO. SB 421

Representative

March 22, 1993

1. Page 2, line 16.

Following: "conservation."

Insert: "The board of oil and gas conservation shall use a grant that received priority under this subsection (a) only for oil and gas reclamation projects. A grant may not be used for personnel costs or general operating expenses of the board of oil and gas conservation.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the \$600,000 limitation for the next biennium."

Renumber: subsequent subsection

Amendments to House Bill 283
Third Reading Copy

SENATE TAXATION

EXHIBIT NO. 9

DATE 3-23-93

BILL NO. H B 283

Executive Session

Prepared by Department of Revenue in response
to Concerns of the Salish-Kootenai
3/22/93

1. Page 3, line 4.
Following: "means"
Insert: "150% of"
2. Page 3, lines 23 through 25.
Strike: lines 23 through 25 in their entirety.
3. Page 4, line 1 through 2.
Strike: lines 1 through 2 in their entirety.
4. Page 4, line 3.
Strike: "(b)"
5. Page 4, line 11.
Following: "tribe."
Insert: "However, the tax rate determined by a tribal government on a negotiated quota amount need not equal the tax rate set by the state."
6. Page 6, line 23.
Following: "state,"
Insert: "tribal,"
7. Page 7, line 1.
Following: "proceeds"
Insert: "less an amount allocated to a tribe pursuant to a state-tribal cooperative agreement for cigarettes seized on an Indian reservation,"
8. Page 17, line 15.
Following: "after"
Strike: "June 30"
Insert: "October 1"

Reason for Amendment: The amendments address concerns raised by the Salish-Kootenai tribes. The first amendment increases the statutory quota of untaxed cigarettes available for purchase on an Indian reservation.

The next four amendments clarifies that tribal governments would not be required to impose an identical tax rate on cigarettes as the tax rate set by the Montana legislature. A tribe imposing a lesser tax rate could still enter into a cooperative agreement to share revenue.

The sixth and seventh amendments allocate to a tribe, a portion of the proceeds when property seized on a reservation is sold at a public auction. However, in many instances the federal government may claim the entire proceeds and neither the state nor a tribe would be entitled to any portion of the proceeds.

The eighth amendment changes the applicability date of this act from June 30, 1993 to October 1, 1993. The later applicability date would allow tribes and the state more time to prepare for the implementation of this act.

SENTE TAXATION

EXHIBIT NO. 10

DATE

3-23-93

BILL NO.

413 283 Exec Sess.

Reservation	1991 (Packs) Purchases	1992 (Packs) Purchases	1993 (Packs) Negotiated Quota	Maximum Allocation / Amended HB 283	Resident Enrollment
Rocky Boy	174,700	163,600	185,000	270,000	1,858
Crow	349,830	324,500	534,700	926,000	6,367
N Cheyenne	210,000	205,800	343,000	602,000	4,138
Ft Peck	1,118,900	1,327,200	600,000	773,000	5,312
Blackfeet	2,547,400	4,156,000	-----	1,078,000	7,406
Flathead	22,210,500	6,962,600	-----	527,000	3,625
Ft Belknap	230,300	244,700	-----	342,000	2,352
	26,900,000	13,400,000		4,518,000	31,058

Total Taxed Sales 1991

67,160,718 Packs

As a % of 1991 Sales = a 83% Reduction

Total Taxed Sales 1992

67,540,109 Packs

As a % of 1992 Sales = a 66% Reduction

DATE 3-23-93

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: HB 196, 382, 519, 593

Name	Representing	Bill No.	Check One	
			Support	Oppose
Bill Kerns	BCRC	382	✓	
Jim Hoch	Bridgman Co	382	✓	
Bill Duesch	" "	382	✓	
Eden Thornway	" "	382	✓	
Gordon Morris	MACO	196		
Steve Brown	Continental Line	382	✓	
Mark Layton	Mont. Audubon Legislative Fund	HR 519	✓	
Don Shakin	Continental Line Inc.	382	✓	
Dick Juntunen	Resource Management Ass	382	✓	
Mike Ferguson	DOT Aeronautics Div	593	✓	
Annmaire Gritzuk	DNRC	519	✓	
Bill Dodge	Continental Line	382	✓	
Brent Palmer	" "	382	✓	
Wendy Turner	MontAX	382	✓	
David Owen	MT Chamber	519	✓	
Rich Moir	Treecycle Paper	519	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY