MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **VICE CHAIRPERSON MARIAN HANSON**, on April 3, 1995, at 8:00 A.M.

ROLL CALL

Members Present:
Rep. Chase Hibbard, Chairman (R)
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)
Rep. Peggy Arnott (R)
Rep. John C. Bohlinger (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Rick Jore (R)
Rep. Judy Murdock (R)
Rep. Thomas E. Nelson (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. John "Sam" Rose (R)
Rep. William M. "Bill" Ryan (D)
Rep. Roger Somerville (R)
Rep. Robert R. Story, Jr. (R)
Rep. Emily Swanson (D)
Rep. Jack Wells (R)
Rep. Kenneth Wennemar (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Council
Donna Grace, Committee Secretary

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

Committee Business Summary:
Hearing: SB 414
SB 257
SB 260
SB 419

Executive Action: None.

{Tape: 1; Side: A.}

HEARING ON SB 414

Opening Statement by Sponsor:

SENATOR BOB BROWN, Senate District 40, Whitefish, said SB 414 would provide a tax credit for contributions made to the general endowment funds of community foundations. He said Montana currently ranks near the bottom of the fifty states with respect to per capita charitable contributions in respect to the number of foundations in the state. He explained that community foundations are tax exempt under state and federal law and are formed to attract endowment funds for community betterment. He commented that governments should not be expected to meet all the needs of the state's communities because of limited financial resources and communities are in a better position to determine their needs. Tax credits provide a financial incentive for contributions to foundations. The bill would provide an incentive to private donors to help their own communities. He briefly reviewed the provisions contained in the bill. EXHIBIT 1.

Proponents' Testimony:

GOVERNOR MARC RACICOT expressed his thanks to Sen. Brown for his efforts in support of SB 414. He stated that Montanans have historically been generous. However, in charitable giving, they have focused on immediate needs rather than taking a look at the long view. In 1994 Montana was home to 102 foundations including small, family funds and scholarship funds, representing less than .03 of 1% of all U.S. foundations. There are seven foundations in Montana with assets of $2 million or more which ranks the state 48th in the nation. Those seven foundations have combined assets of $41 million. Montana received $2.6 million in gifts from charitable foundations last year, 47th in the nation, and Montana foundations distributed $1.9 million in grants which placed the state in the 49th position. **GOVERNOR RACICOT** observed that SB 414 could provide the tools for the next generation to address the kinds of things that appear in headlines. Many communities have been through difficult experiences as the economy has been retooling itself and there have been significant shifts away from a total extraction economy to a more diversified economy during the last several years. Had the state had the foresight the year he was born to place into operation a community foundation, and had there been incentives to contribute, there would have been funds available from the interest and income for people in his community to carry on a number of activities that were pivotal during this time. An effort was begun in 1948, but was never brought to fruition and, as a consequence, the people have had to struggle. Trillions of dollars will be passed on to the next generation in the next fifteen years and how those assets are passed on will be vitally important to the State of Montana. Something has to be done about saving for the future as government is downsized, preparing for the opportunity to move toward different alternatives that allow communities to rely on themselves. This particular tax credit is modeled after the Michigan experience which has been very successful. He asked the Committee to consider the bill carefully and support it strongly. It will allow the State of Montana to move into the future with an endowed giving program. Most states have developed this resource long ago and they have been receiving major corporate foundation grants. The tax credit is an easy way to enable Montanans to help fill the void in the endowed philanthropy fold in Montana and start a new tradition of sending assets rather than debt into the future.

Russell G. Mawby, Chairman of the Board and Chief Executive Officer, W. K. Kellogg Foundation, testified in support of SB 414. A copy of his testimony, together with his personal curriculum vitae, is attached. EXHIBIT 2.

Kathryn Agard, Vice President for Program, Council of Michigan Foundations, said she represented one of largest and oldest regional associations in the country. She said the State of Michigan passed the tax credit in 1988 similar to the one in SB 414. They believe the credit has been extremely effective in increasing charitable giving, promoting the development of an infrastructure of local philanthropies in the state, and it has encouraged and assisted other non-profit organizations to establish endowments. She said the tax credit has had no negative impacts on any fund-raising projects. She explained how the system was organized in Michigan.

Questions From Committee Members and Responses:

VICE CHAIRPERSON HANSON advised that the two individuals from Michigan would have to leave the hearing early in order to get to the airport in time to fly back to Michigan. She asked if Committee Members had questions.

REP. SWANSON asked if the structure of the tax credit in Michigan was similar to that proposed in SB 414, with a 50% credit and limited donations. **Dr. Mawby** said it was a limited endowment because they didn't want to divert funds from the annual fund raising of other non-profit organizations.

{Tape: 1; Side: B.}

REP. SWANSON asked why the credit was given to a community foundation endowment and not to other non-profit endowments. **Ms. Agard** said the community foundation was established for the general purposes of the community and when they considered including all non-profit endowments, they considered that a lot of the money was in very small pots and they could end of up with thousands of small endowments. **Dr. Mawby** pointed out that the program is donor-driven and there is the flexibility of specifying how the endowment will be used. In many community foundations there are funds established by all agencies of the local United Way. The reason to come together rather than having many endowment funds in a community is that a better job of management can be accomplished.

REP. SWANSON asked if there had been any desire on the part of the State of Michigan to have a hand in the accountability of the management of the community foundations. **Dr. Mawby** said the foundations are non-profit organizations and have all the fiscal responsibilities of public reporting and auditing, a broad representative of leadership from within the community, and they must file reports through all the appropriate agencies. The state also monitors each individual income tax return on which a tax credit is claimed.

REP. NELSON asked if other charitable foundations would be in direct competition with the community foundations. **Ms. Agard** said one of the things they recommend is that the other foundations open an account in the community foundation. It helps to strengthen the community foundation and the other organizations get the advantage of the tax credit. **REP. NELSON** said what happens in that circumstance is that the ability to direct the investment is lost. **Dr. Mawby** said the two can operate in a complimentary way. They have found that a number of local funds have shifted their resources into the community foundation to obtain the fiscal management and they don't have to keep up with all the details of changing state and federal regulations. He sees them as being complimentary rather than competitive.

REP. ORR asked if the motivation for founding a foundation was purely philanthropic, or if it was because of government incentives. **Dr. Mawby** said the Kellogg Foundation was established in 1930 and the community foundation structure was not an instrument at that time. The tax incentives at that point were very modest so it would not have been a great motivation.

REP. ARNOTT asked what had taken place in Michigan in the past seven years since the tax incentive was invoked. **Ms. Agard** said the number of foundations had gone from 36 to 47 and total assets rose from $200 million to over $500 million.

<u>Proponents' Testimony</u>:

Sue Talbott, Montana Community Foundation Board Member, said from her experience working as a volunteer, she could recognize the importance of community foundations. The Foundation serves the community and enhances the quality of community life through the support of a broad range of services -- health, education, economic development, social welfare, arts and culture, and conservation and the environment. She asked for support of SB 414.

Pam Merrill spoke in support of SB 414 because it was good tax policy. *(Note: Ms. Merrill did not sign the visitor's register and, because of noise in the hearing room, it was impossible to determine the organization she represented.)*

Stanley A. Nicholson, Montana Fiscal Forums, outlined three reasons why Montana should support the establishment and growth of community foundations. EXHIBIT 3.

Rose Ann Penwell, Bozeman, said she represented the rural area of Montana and supported SB 414.

John Heizer, M.D., Billings, Greater Yellowstone Regional Representative for the Montana Community Foundation, testified in support of the bill. The written text of his comments is attached. EXHIBIT 4.

{Tape: 2; Side: A.}

Tom Harrison, Montana Society of CPA's, spoke in support of the bill.

John Delano, Montana Community Foundation, said he had been associated with the Montana Community Foundation since its inception and the bill presents a wonderful opportunity for Montanans.

Jacqueline Lenmark, Past President, St. Peter's Community Hospital Foundation, supported the passage of SB 414 because it would be an important tool in keeping charitable contributions in Montana. From her experience, she did not believe the bill would impact negatively on other fund-raising activities. She encouraged the Committee to support the bill.

Clark Pyfer, CPA, Member of Community Foundation Board of Directors, said he was speaking on behalf of the Helena United Way in support of SB 414. He said small foundations would be appreciative of the professional auditing services a community foundation could provide.

Cathy Campbell said she would support the bill primarily because of the opportunity it gives to small rural groups.

Steve Browning, President, Montana Community Foundation, said he had been asked by Rep. Grinde and Rep. Peck to testify in support of the bill. He also presented a letter in support of the bill from Vern Peterson, Fergus County Commissioner and Central Montana Foundation Board Member. EXHIBIT 5. He pointed out that all the people who work for community foundations in Montana are volunteers.

__Opponents' Testimony__:

Paul Stahl, Chairman, Montana Cultural Advocacy, said he was not against permanent endowments but he did not believe that unless there is a tax incentive the programs won't work. He said he had been involved with charitable organizations for a long time and they all have their own permanent endowments, set aside because "it is the right thing to do." He said they supported the bill in the Senate with amendments. EXHIBIT 6. He endorses the concept of providing financial incentives through tax credits for all not-for-profit organizations, not just community foundations. He agreed with everything that had been said in support of community foundations but SB 414 will affect the ability of other foundations to raise money. The incentive works in other states because there are large corporations that donate money. Passage of SB 414 without the amendments would give legislative endorsement to one cultural group over another without any justification for doing so.

Kevin Justis, United Way of Billings, echoed Mr. Stahl's comments. He said the key point he wanted to make is that Montana is not Michigan. It was his understanding that Michigan does not have a tax deduction for charitable contributions and Montana does. He said the lack of a deduction was the reason for implementing the tax credit. He suggested that the tax credit should be the same as the tax deduction which is available to all non-profit foundations. The proposed legislation favors a particular group when there should be a level playing field for all non-profit foundations.

__Questions From Committee Members and Responses__:

REP. ELLIOTT said a tax credit is a powerful tool. He asked if there were limits on charitable deductions. **Mr. Robinson, DOR,** said the deduction is limited by federal law. The tax credit could provide a larger benefit. He said the proponents recognized this and that was the reason there are limits in the bill. **REP. ELLIOTT** asked if Montana allows charitable deductions for corporations and, if so, how much. **Mr. Robinson** replied that there is an allowable deduction but he did not know the amount.

REP. REAM asked if tax credits were given to non-profit foundations other than community foundations. **Ms. Agard** said that there are two types of foundations in Michigan and only the community foundations are eligible for the tax credit. **REP. REAM** asked if there is a tax credit for endowments to universities and private colleges. **Ms. Agard** said there was and the legislation pre-dated the community foundation legislation. She said the credit for university foundations is identical to the community foundation.

REP. WELLS asked how many community foundations there were in Montana. **Mr. Browning** said there are two and any community can establish a foundation if they wish. **REP. WELLS** asked if various communities participate in the Montana Community Foundation. **Mr. Browning** explained that the Foundation has a statewide board, and the state is divided into nine regions, each of which has volunteers who work with the program. The funds are being established within regions and individual counties or communities within the region can establish their own funds. **REP. WELLS** asked if it was true that all the people who work with the foundations are volunteers. **Mr. Browning** said the Montana Community Foundation has three paid staff members and the rest are volunteers.

REP. BOHLINGER referred to the competition in raising funds for charitable purposes and the fact that other groups would feel disadvantaged if SB 414 was enacted.

{Tape: 2; Side: B.}

Ms. Agard stated that two studies done in Michigan indicated that there were no negative impacts on fund raising of other foundations. What they are seeing from the incentive is an expansion in the number of contributions. She said it was important to remember that a community foundation was a funder of other foundations.

CHAIRMAN HIBBARD said a tax credit was a powerful tool, and if one foundation gets a tax credit and the others don't, there would be an incentive to invest in the one that does have the credit. He asked what would happen to a foundation's autonomy if they were to become associated with the community foundation. **Mr. Browning** said that was a complicated question but, in short, the foundations would keep its autonomy unless it chose to give it away. They get the benefit of the credit because they will tell their donors to give their endowment to the community foundation and earmark it for an individual foundation. Therefore, the donor would get the benefit of the credit, and the association gets to keep the earnings on the money. He noted that the larger endowments in the state have not opposed the bill because they can see how they can be structured to their advantage. He mentioned that Helena United Way, Carroll College and the University Foundations have endowments in the Montana Community Foundation. State-wide there are about 200 endowments with community foundations for various agency funds.

REP. REAM said there is a statute that provides a 10% tax credit for contributions to college or university foundations in Montana. He asked if that applied to both individual and corporate income tax. **Mr. Robinson** said it applied to individuals only. **REP. REAM** said that in 1993 only $83,000 in credits was claimed. **Mr. Robinson** clarified that the difference between the university credit and the one proposed in the bill is that the individual is also allowed an itemized deduction for the contribution. Under SB 414, the donor would have to choose one or the other.

REP. ORR said the Governor had mentioned that the reason for forming a foundation was because of the extraction industry and "boom and bust" cycles in the economy in the state and the foundations would provide some stability. He said an attempt was made to do that in the 40's in the community of Libby. He said he didn't think there was an effort to begin a foundation. He asked what the Governor was referring to. **Mr. Browning** said he thought the Governor was referring to the efforts of the people of Libby trying to come together and work out their problems as a community and, while they had some significant successes such as the Greater Libby Association, at that time people did not talk about the importance of endowments to continue to support the community in the future.

<u>Closing by Sponsor</u>:

CHAIRMAN HIBBARD announced that Sen. Brown had left the hearing because of other commitments and, therefore, he would be unable to make a closing statement.

<u>HEARING ON SB 257</u>

<u>Opening Statement by Sponsor</u>

SEN. DELWYN GAGE, Senate District 43, Cut Bank, advised that the bill deals with rail car taxes and is probably one of the more important bills to be heard during the current session. The bill is not a rail car company tax, because the cars are owned by companies other than railroads. Montana has a situation in which the Department of Revenue (DOR) has a conflict with the rail car owners who have paid between $9 and $10 million in protested tax.

<u>Proponents' Testimony</u>:

John Alke, Helena Attorney, representing Detroit Edison Company, said Detroit Edison is the single largest purchaser of Montana coal and has a fleet of rail cars it uses to transport the coal from Montana mines to a loading point in the midwest. The bill is very important to Detroit Edison because either the passage or the defeat will send a very powerful message of the equity and the reasonableness of how the state determines tax policy. **Mr. Alke** provided a short history of the gross receipts tax on rail cars. A finding was made by a federal magistrate that the state had violated the Four R Act, which prohibits a state from levying discriminatory taxes on railroad property when compared to other industrial and commercial property. Before the court could strike the tax, the Legislature, at the request of the DOR, passed HB 24 during the 1992 special session. At no time during the consideration of that bill did the DOR ever suggest that the bill would invoke a massive tax increase. It was presented to the Legislature as a method of "fixing the tax that was before the federal court." The Department indicated that the bill was revenue neutral and presented a fiscal note that the new methodology would raise the same amount of tax revenue as the old methodology. Director Robinson testified that he was "pleasantly surprised" by the fact that the new methodology generated three times as much money as the old methodology. Rail car companies received a tax increase between 300 and 400%. In the case of Detroit Edison, the tax liability went from $54,000 to $420,000 and they are now a part of a consortium of nine railcar companies challenging the current tax in the federal courts as a violation of the Four R Act. **Mr. Alke** advised that no rail car money is included in the current state budget although it is generating approximately $3 million a year in revenue. The taxes are being sequestered because of the challenge. He explained that the 1992 statute requires that rail cars would be allocated to Montana on a mile-to-mile basis which says that if a third of the car's miles are in Montana, a third of the value would be allocated to the state. This would make sense when valuing a railroad but it is not the case with railcars because they travel at different speeds and are used for different things. Other states tax on the basis of "equivalent car methodology" which reflects the speed of the car and allocates value based on the speed. The DOR knew immediately that the statutory mile-to-mile formula would generate too much revenue so they enacted, by rule, a formula that said 50% would be determined by mile-to-mile, and 50% would be determined by equivalent car count. **Mr. Alke** said SB 257 would cut the effective tax rate in half by eliminating the mile-to-mile feature of the current formula and statutorily states that four rail car speeds are to be used in the equivalent car count formula. He said the rail car companies had determined that this would be a fair way to apportion the total tax liability among the various rail car companies. He commented that he firmly believes the State of Montana should not determine tax policy by accidentally implementing 400% tax increases and, if it was going to consider such a tax increase, would openly debate the pros and cons of such a tax policy. That has never occurred. The issue is fairness and reasonableness. He noted that in the past three years, Detroit Edison has paid $1.34 million in taxes in the ten states in which western coal is transported, and $1.09 million was to the State of Montana. He distributed a document comparing the current Montana railcar tax with the projected tax under the proposed legislation. EXHIBIT 7.

{Tape: 3; Side: A.}

Mr. Alke also provided a comparison of taxes paid by rail car companies with that paid in Wyoming. EXHIBIT 8. He encouraged the Committee's favorable support of SB 257.

Jim Mockler, Executive Director, Montana Coal Council, said he was speaking in behalf of the consortium of rail car companies that filed suit as a result of the rail car tax. He referred to a copy of the fiscal note on HB 24 passed during the 1992 special session. EXHIBIT 9. He said he had asked the Director of the DOR at that time what the tax would do to Detroit Edison and his response was that it would change "a little bit one way or the other." What happened was that someone, "a third level bureaucrat," designed a tax that would penalize any rail cars that stopped in Montana to pick up Montana products, including coal and grain. He asked if it was good tax policy to raise someone's taxes, unbeknown and unannounced to them, by 800%. Last year the same companies paid an additional $53 million in taxes, royalties and fees to the State of Montana. These companies have the option of buying coal in other states and he would not blame them if they did. He stated that it was not good tax policy to penalize the producers who must ship their products to market. He said he thought it was the Legislature who decided what was good tax policy, not the Department of Revenue. Current law is not good tax policy.

__Opponents' Testimony__:

Mick Robinson, Director, DOR, said he would agree that SB 257 is a very important bill, however, he opposed the bill in the Senate Tax Committee. He said it was important for the Committee to recognize why the bill was not good tax policy. He said it was also important to know that the Legislature would be negotiating tax litigation by passing the bill. The bill has been brought to the Legislature in an attempt to resolve a lawsuit and, if the Legislature is going to be involved in the litigation issue, the Committee should know the full scenario. He said the state has a very good chance of winning the lawsuit. **Mr. Robinson** then reviewed a handout, discussing the issues in detail. EXHIBIT 10. **Mr. Robinson** then proposed an amendment to the bill which would change the allocation formula and provide a negotiating point. The amendment would change the administrative rule more in the direction the rail car companies are suggesting. EXHIBIT 11. The effect of the amendment is outlined in EXHIBIT 12. **Mr. Robinson** stated that the bill, as amended, would be a defensible position that blends speed with miles and a reduced mill levy. SB 257 is the rail car industry's initial proposal and the Legislature is being asked to step into a tax settlement issue. If the state lost the lawsuit, it would still be better off than it would be if SB 257 were passed in its original form. He said the courts would probably not approve the average speed because there is no documented evidence to support it.

{Tape: 3; Side: B.}

REP. EMILY SWANSON, House District 30, Bozeman, said she had been watching this bill since its inception in the Senate and she would emphasize that everything said by Director Robinson was true. She said she had met with the Governor to ask his position on the bill. He said he felt it was important that the Legislature not mix the litigation issue with tax policy. The Legislature should focus on long-term, good tax policy, and for that reason she opposed the bill.

__Questions From Committee Members and Responses__:

REP. ELLIOTT asked why more of the rail car companies were not represented at the hearing. **Mr. Alke** replied that, because of the lateness in the session, he had agreed to testify in behalf of all of them. He said they could not have provided the exhibit he had passed out without the cooperation of all the companies.

REP. FUCHS asked if the amendments to the bill had been offered in the Senate. **Mr. Robinson** said they had not. He had opposed the bill in the Senate and was surprised when the bill was passed out of the Senate. He said the amendments had been proposed verbally to Mr. Alke. He said he had forgotten to mention that the amendments provide for a sunset in two years and would force the DOR and the rail car companies to study the issue and bring forth in two years evidence to determine the proper mileage formula. **REP. FUCHS** asked if it was accurate that the tax had increased by up to 1600% in some instances. **Mr. Robinson** said Detroit Edison has a preferential tax agreement with the DOR that goes back to the 1980's. Their tax increased from $54,000 to $360,000. Tax on the largest rail car company went down from $760,000 under the previous gross receipts tax to $588,000 under the new formula.

REP. RANEY asked how the mileage numbers were determined. **Mr. Alke** said there was a consortium of four midwest law firms that was representing the rail car companies, together with in-house counsel. They have a good understanding of the speed of the cars relative to each other and they, as a group, worked out the mileage. He said the accusation of the DOR is that the numbers are arbitrary. He said it was clear that the cars travel at different speeds yet the DOR wants to assign 500 miles to all of them. He said he did not see how they could say the numbers are arbitrary when the DOR's solution is that everyone travels at the same speed which, obviously, is wrong. **REP. RANEY** asked if it was cheaper to pay tax on 500 miles a day or on 175 miles a day. **Mr. Alke** replied that the faster the speed, the smaller the allocation to the State of Montana would be. He explained that the definitions used in the bill are technical terms used in the railroad industry that everyone understands. **REP. RANEY** said the Committee was being asked to agree to something that they know almost nothing about. He said he thought the miles per day were inaccurate and he had no idea what the classes of cars were. **Mr. Alke** said that Detroit Edison is obviously in a difficult situation on this bill. He said the Director of the DOR testified that if the information on the tax had been given to the 1992 Legislature, it would not have passed. In spite of that testimony and the Department's own admission that it was wrong, the DOR is fighting to keep the tax. In any other situation he would have agreed that the rational thing to do would have been to give the discretion to the Department to establish the speed but, what has been learned is that the statutes do not say "this is how you are going to do it" and therefore the results would not be fair. He said he could not understand how the Department could say "the bill would not have passed if this information was available" and now they say "let's keep it, we like it." **REP. RANEY** replied that, in like manner, they were being asked to pass a bill that they had no facts on. **Mr. Alke** said the Committee does have a detailed breakdown of each of the nine litigants by car and provided a precise calculation of what the tax would be under SB 257. He said the bill was an effort to help the Legislature out of the situation it's in.

REP. ORR said he understood that a settlement had been offered in the suit between Detroit Edison and the DOR. He asked what the terms were and asked why they were not accepted. **Mr. Robinson** said the terms of the settlement offer were basically the proposal contained in SB 257 to become effective January 1, 1995. He said he would agree to a two-thirds settlement for preceding years but not with the bill the way it is. He said there is no justified evidence for supporting the fees included in the bill. He said that was why he was proposing "taking another step toward the rail car companies" by going 2/3 speed, 1/3 miles for two years, then sunset the tax. He said the rail car companies have not presented good data from which to make a determination. He said the 500 miles in the administrative rule was suggested by the rail car companies.

REP. HARPER said the Committee could see clearly what was going on with this bill. He said the discussion had touched on the moral issue of the DOR not providing information. He said he would wonder about the "rightness" of a corporation introducing a bill to write tax law for the state as well as settle litigation in its own favor. He asked Mr. Robinson for an explanation of what was going on in the litigation and whether the state's bargaining position had been weakened by the introduction of the bill. **Mr. Robinson** said the decision would rest with the Legislature. The bill has preempted any rightful negotiation between the DOR and the rail car companies. There is no reason for them to talk with the DOR as long as the bill is alive. The issue regarding the valuation computation is a new issue that came up after a case was settled in Oregon. An offer was made that was not accepted by the rail car companies because they want 100% speed and the bill takes the negotiating position of the rail car companies and puts it into law so it does take away any chance of negotiation with the DOR and brings it to the Legislature. He said it was necessary for the Legislature to have all the facts before making a decision.

REP. STORY said that one of the things that raised the tax was that a lot of miles were not being reported under the old system. He asked why that had happened. **Mr. Alke** replied that he did not understand that because it was not the case with Detroit Edison. Burlington Northern is the hauler for Detroit Edison and all the mileage was reported by Burlington Northern and he could not speak for the other companies.

{Tape: 4; Side: A.}

Closing by Sponsor:

SEN GAGE said it was interesting to hear the DOR say, on one side, that personal property taxes in Montana are too high and then come in and support a bill that triples personal property tax on a segment of industry. He compared the bill to the reevaluation of agricultural property and said unknowns are always involved in tax policy. He said the formula to determine the value of irrigated land had been too high and it was adjusted to make it tax neutral. This bill has little to do with tax policy. It does have to do with being competitive with neighboring states and trying to hold the line on the taxes on the people of Montana who are doing business in Montana as well as other places. He quoted from a letter he had received from Detroit Edison expressing regret that they could not go any further in negotiations with the DOR and explaining their decision to purchase 600,000 tons of coal in 1995 from the State of Wyoming. **SEN. GAGE** said that 600,000 tons would have produced a tax of $1.2 million for the State of Montana. He said good tax policy does not include raising taxes by 1600%. He said it didn't make much difference how the tax is arrived at as long as the revenue is the amount that is expected. He noted that he had come to realize during his time in the Legislature that tax policy had nothing to do with equity or fairness. He said he had discussed the issue with the Governor and he had indicated that he was desirous of getting the case settled and this bill could be a part of getting it settled.

HEARING ON SB 260

Opening Statement by Sponsor:

SEN. BOB PIPINICH, Senate District 29, Missoula, brought before the Committee the "Gambling Trust Fund," a bill that would establish a trust fund to help problem gamblers in the State of Montana.

Proponents' Testimony:

Ellen Engstedt, Don't Gamble With the Future, spoke strongly in support of SB 260. She said it was the only bill in the current legislative session that addresses the problem of pathological gamblers which is an issue that needs attention. The text of her testimony is attached. EXHIBIT 13.

David Hemion, Montana Association of Churches, said that historically the Association of Churches has opposed gambling in the state; however, since it has been sanctioned by the Legislature, they have consistently urged the body to study the harmful effects gambling presents to society. They support the bill as a way of beginning that process.

Norma Jean Boles, Manager of Standards and Quality Assurance, Department of Corrections, said the Department applauds the efforts of SB 260 to mitigate the consequences of gambling in Montana. She informed the Committee that the Department had contracted for two studies related to the affects of gambling, the first being an incidence study and the second addressed the status of treatment. The study determined that 3.6% of Montanans are problem or pathological gamblers. The treatment study included all licensed and certified professionals and of the 60% responding, all indicated that they had treated problem gamblers. Given the research, the Department has agreed that they should be the agency to assume responsibility for promulgating the program delineated in the bill. She asked for the Committee's support.

Dennis Casey, Executive Officer, Gambling Industry Association, said the Association supports SB 260. He said the bill dovetails with a study to be performed by the Gambling Advisory Council on the problem, the treatment of the problem and funding. It will begin the process of funding for treatment. He encouraged the Committee to support the bill.

Janet Jessup, Department of Justice, said the Department supports SB 260. She read a portion of the public policy statement which states that it is Montana's policy to promote programs necessary to provide assistance to those who are adversely affected by legalized gambling. She said that, to date, the statutory responsibility has not been met. The Department remains neutral on the funding source but they do believe the bill would go a long way toward meeting the statutory intent.

Sharon Hoff, Montana Catholic Conference, said they are concerned about the social impact of gambling on communities. As gaming increases they see a higher incidence of problems with compulsive gamblers. They are pleased to support the bill.

Larry Akey, Montana Coin Machine Operators Association, said they had supported similar legislation in 1991 and 1993 because they recognize that for a small portion of the players the type of entertainment they offer becomes more than entertainment. They originally opposed SB 260 because it did not contain a treatment program and simply set money aside for a future program. The Senate amended the bill to include a program that will assist the small portion of the player base that has experienced problems with pathological gambling. He encouraged the Committee to concur in the amended Senate bill.

Gloria Hermanson, Montana Psychological Association, testified in support of the bill. She said pathological gambling has become a problem in the state and the bill will go a long way toward setting up a treatment plan.

Charmaine Murphy, Director, Montana Lottery, informed the Committee that the Lottery supports SB 260. The only reservation the Lottery has on the bill is that the funding program should reflect the activity that takes place within the industry. She said that in fiscal year 1994 for every dollar that was wagered on the lottery, $12 was wagered on video gaming. In SB 260 the funding ratio is one to three. The lottery makes up less than 10% of total gaming, yet they would be making up 25% of the funding in SB 260. Other than on this issue, they support the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

In response to a question from **REP. SWANSON**, the sponsor explained the fiscal note. He said the amendments in the Senate identified the funding source and defined "pathological gambler."

CHAIRMAN HIBBARD asked what the total impact would be. **SEN. PIPINICH** said it would be $200,000 general fund and $200,000 local government funds per year, for a total of $400,000.

{Tape: 4; Side: B.}

Closing by Sponsor:

SEN. PIPINICH said he had closed.

HEARING ON 419

Opening Statement by Sponsor:

SEN. DELWYN GAGE, Senate District 43, Cut Bank, said the bill was the result of a situation brought to the Committee's attention by the Department of Revenue. He said that members of a Montana tribe, living and earning revenue on a reservation other than the one they are a member of, were being taxed by the State of Montana. This is contrary to a Supreme Court ruling. He said a determination should be made by the Legislature rather than by the Department of Revenue by rule.

Proponents' Testimony:

REP. JUDY MURDOCK, House District 6, Lodge Grass, testified in support of the bill on behalf of the four tribes living on the Crow Reservation. She presented copies of letters of support from tribal members. EXHIBIT 14.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

{Comments: Noise in the hearing room made transcription difficult.}

REP. SOMERVILLE asked if an individual living on the Blackfeet Reservation, coming to Kalispell to work on construction, would be taxed on his income. **SEN. GAGE** said the income would have to be earned on a reservation to be tax free. **Jeff Miller, DOR,** explained that the DOR requires an accounting on returns filed by Native Americans identifying what earnings are off the reservation. They can claim an exemption for the amount earned on a reservation where they reside.

REP. ELLIOTT asked if that required an additional line on the income tax form. **Mr. Miller** said they require Native Americans to attach an Indian Certification Form to their return which provides tribal enrollment information. **Mr. Miller** clarified that, under the present statutes, income earned on another reservation would be taxable. Under SB 414 the income would not be taxed.

CHAIRMAN HIBBARD asked if income earned off-reservation would be affected by the bill. **Mr. Miller** replied that it would not. Montana tax law would still require that off-reservation income must be reported and taxed. He said there are many scenarios and it can become complicated at times when, for instance, an enrolled member is married to a non-enrolled member and they file a joint return.

CHAIRMAN HIBBARD asked for an explanation of the current policy. **Dave Woodgerd, DOR Counsel,** said the background for the current policy and the request for a change are based on both state and federal court decisions. In 1978 the Montana Supreme Court said that all Indians on a reservation were tax exempt. Since then there have been three U.S. Supreme Court decisions which said that in order to be exempt, the income must have been earned on the reservation where the individual was enrolled. The exemption is political, not racial, and is involved with how sovereign nations and the state deal with one another. **CHAIRMAN HIBBARD** asked why, if a Supreme Court ruling provides the basis for the current policy, a change is being requested. **Mr. Woodgerd** said the Legislature can exempt those members without facing any sort of legal challenge.

REP. REAM asked if "reside" was defined in the bill. **Mr. Woodgerd** said that was a good question and they addressed it in terms of the location of the principle abode. **REP. REAM** noted that the bill does not specify Montana reservations. **Mr. Woodgerd** agreed and said it could become an issue.

Closing by Sponsor:

SEN. GAGE called to the Committee's attention that the Legislature tends to pass legislation in a vacuum and he cautioned that the Indian Tribes continually say they do not look at the specifics of what the State of Montana is doing. Yet, he said they are working on water compacts, gaming compacts, negotiations on sharing alcohol revenues, agreements in regard to sharing revenue from gasoline taxes and a host of other things. He said they do look at what the State of Montana is doing in the area of Indian affairs in general and all the issues impact each other. He said he had tried to encourage both the tribes and the State of Montana to start negotiations on all facets of sharing tax revenues so that the situation of playing one against the other does not arise. This bill would not affect just income taxes. **SEN. GAGE** said the bill was a good one and would give encouragement to the Indian Nations as far as negotiation in other areas is concerned.

ADJOURNMENT

Adjournment: 12:00 Noon.

Chase Hibbard

CHASE HIBBARD, Chairman

Donna Grace

DONNA GRACE, Secretary

CH/dg

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL DATE April 3, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman			
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		

S.B. 414: Tax Credit Bill

EXHIBIT 1
DATE 4/3/95
SB 414

What is S.B. 414, and how will the tax credit work?

Senate Bill 414 will allow individuals, partnerships, limited liability companies, estates, or business corporations a credit against taxes in an amount of 50% of the aggregate amount of charitable contributions made to any permanent endowment fund of a community foundation located in Montana. The maximum tax credit an individual may claim is $500; the maximum for an estate or business corporation is $10,000 per year. However, because of the generous 50% credit, contributions taken as a tax credit will not also qualify as itemized deductions from Montana income tax, and the credit may not exceed the taxpayer's income tax liability. (Note: a tax deduction is subtracted from a taxpayer's income before the tax is computed; a tax credit is subtracted directly from the taxes owed.)

Example of the out-of-pocket cost for an individual contribution of $100 under the proposed tax credit:

$100	**amount of contribution**
- 50	50% tax credit (not to exceed $500)
- 15	federal tax deduction (15% bracket)
$35	**out-of-pocket cost of contribution**

Where did this proposal come from?

In his State of the State address, Governor Racicot indicated that he would be encouraging an active role for the State in promoting endowed philanthropy to help provide a more secure future for communities across Montana. Toward that end, he appointed a representative Task Force on Endowed Philanthropy to examine options and present recommendations. This tax credit bill is its first recommendation to the State.

Why does Montana need a tax credit?

The Task Force designed this tax credit proposal as an initial response to the void in endowed philanthropy in Montana. Although Montanans are generous in many ways, among the fifty states, Montana ranks at or near the bottom with regard to per capita charitable giving, number of foundations, size of foundations, and value of foundation gifts granted and received. Montanans should be concerned about the implications for the future. With few Montana-based major corporations or foundations, Montana must turn to individuals and government to help provide philanthropic resources for the future of our state. Meanwhile, government at all levels continues to shift responsibility back to local communities without providing tools to help communities assume control.

How will a tax credit help?

Montana is vast, and its widely-scattered communities have differing needs and opportunities. This tax credit will encourage Montana communities to start (or expand) permanent endowments that can help them achieve the financial security to devise and implement their own best strategies and solutions. The tax credit will provide an incentive to donors to help demonstrate that endowments will work. The Department of Revenue anticipates the credit will generate $400,000 - $800,000 per year in contributions. This tax credit could mean at least two million dollars in new money coming in to permanent endowments in Montana over the next five years. Experience shows that, once in place, community endowments have a proven track record of successfully attracting additional contributions.

Has any other state tried this?

S.B. 414 is modelled on a similar tax credit in effect in Michigan since 1988. The Montana bill was drafted following discussions among Governor Racicot, his Task Force on Endowed Philanthropy, Dr. Russell Mawby, Chairman and CEO of the W.K. Kellogg Foundation and chief architect of the concept, and representatives of the Council of Michigan Foundations, who helped craft the Michigan bill.

EXHIBIT 2
DATE 4/3/95
SB 414

TESTIMONY OF RUSSELL G. MAWBY
CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER
W.K. KELLOGG FOUNDATION
HOUSE TAXATION COMMITTEE
STATE OF MONTANA

APRIL 3, 1995

Good morning. My name is Russ Mawby, and I am chairman of the Board and chief executive officer of the W.K. Kellogg Foundation, located in Battle Creek, Michigan.

I am privileged to be here today and truly appreciate this opportunity to visit with you about a very important matter.

As you may know, the Kellogg Foundation, one of the world's largest private foundations, has long been committed to supporting the development of systems to encourage philanthropy and volunteerism nationally — and at the community level. This interest has led to our support for developing and strengthening community foundations in the state of Michigan.

EXHIBIT ~~2~~ 3
DATE 4/3/95
~~HB~~ SB 414

Montana Fiscal Forums

Reasons for Supporting SB 414

I will outline three reasons why Montana should support the establishment and growth of community foundations, all of which are grounded in my professional experience since my return to Seeley Lake in 1990. I direct the Montana Fiscal Forums which is a project supported by a $208,000 grant from the Northwest Area Foundation in Saint Paul Minnesota. Fiscal Forums in 11 Montana towns provide members with objective revenue and spending data and "safe places" for community leaders to discuss and better understand their fiscal reality and some possible solutions to current fiscal issues.

1. Community Foundations Make It Easier for National Foundations to Make Grants to Montana Organizations Experimental projects such as the Montana Fiscal Forums need an institutional home. The Montana Community Foundation has provided that home for our project and four other projects funded by the Northwest Area Foundation and the Ford Foundation. With a neutral base provided by the Montana Community Foundation, our project has been well received in 11 Montana communities. We draw upon the best economic and fiscal research of state and local governments, the Uof M and MSU and the county extension network to support our work. That neutrality and objectivity in the intensively competitive Montana environment helps attract grants from national foundations that would not be available without community foundations.

2. Private Giving for Public Projects Can Energize Montana Communities In our work with the Lewistown Fiscal Forum we discovered and then documented the critical effect of private giving to expand, enhance, or fund community projects. Marlene Nesary, Editor of the Montana Business Quarterly, and I told the story, "Lewistown: a community profile", in the Summer, 1994 issue of the Quarterly. We found that the citizens of Lewistown and Fergus County are raising something like $1 million per year for targeted community betterment projects and their Central Montana Community Foundation. That amounts to $1 for each $12 of operating spending of the schools, town and county government. Taxes are necessary to support our schools and local governmental services, and Lewistown has demonstrated the power of private philanthropy in corralling public spirit and dollars in support of public projects.

3. Un-incorporated Towns Can Use Community Foundations as Fund Gathering and Organizing Mechanisms to Support Community Vitality My town, Seeley Lake, depends upon Missoula County, two school districts and four special taxing districts for its government. There are approximately 2,500 residents in School District 34 which roughly defines Seeley Lake. As far as I can tell citizens of Seeley Lake are not interested in creating more government, but they may rally around a private community foundation. A community foundation would provide an alternative to yet another government, perpetual bake sales, or unending appeals to local businesses for dollars to support community-determined projects.

I urge you to support SB 414, which would provide tax credits to encourage the formation and growth of community foundations.

Stanley A. Nicholson

EXHIBIT ~~3~~ 4
DATE 4/3/95
~~HB~~ SB 414

TESTIMONY OF JOHN HEIZER, M.D., BILLINGS, IN SUPPORT OF SENATE BILL 414, PROVIDING A TAX CREDIT FOR CONTRIBUTIONS MADE TO GENERAL ENDOWMENT FUNDS OF COMMUNITY FOUNDATIONS, BEFORE THE HOUSE TAXATION COMMITTEE, MONDAY, APRIL 3, 1995.

I am John Heizer, a retired cardiovascular surgeon from Billings, and I serve as a Greater Yellowstone Regional Representative for the Montana Community Foundation. I am involved with the community foundation and support Senate Bill 414 because of my interest in Montana's future.

For me, Montana has been a great place to live, to practice medicine and to raise a family. I would like to see our state remain the "last best place" and retain the special qualities which have made Montana the "last best place." I believe the best way to do so is for the people of Montana to have a permanent savings account.

Community foundations provide the opportunity and the ideal means for this savings account through permanent endowment. The tax credit will be a positive incentive to increase the number and amount of contributions for this purpose. It will also help in efforts to educate Montanans about the value of permanent endowment.

In my view, anyone's long-term survival plan should include having money in the bank to provide the financial resources to meet needs which may now be unknown and unpredictable. This is necessary first of all for survival, and, once those needs are met, it is important to have the resources for other vital issues, such as helping small business thrive and preserving our environment.

Most of all, I believe the incentive provided by the tax credit, will help continue and strengthen the charitable attitudes I have observed in those who hold leadership positions in the Montana Community Foundation.

It is critical that we invest and save to provide for our future. However, it is more usual for government to borrow against the future, rather than save for it. I hope that you will ensure the means for government to support a sound plan for investing in the future by supporting Senate Bill 414.

Thank you very much.

FERGUS COUNTY

STATE OF MONTANA

Lewistown, Montana 59457

EXHIBIT #5
DATE 4/3/95
~~HB~~ SB 414

To: Mr. Chairman and Members of the Committee
Presenter: Vern Petersen

I, as most of you wear many hats, but two of mine I will mention are that I am a County Commissioner from Fergus County and I am a board member of the Central Montana Foundation.

Our Foundation is about 12 years old and we have topped a million dollars in assets, none of which are matching grants. They all come from the Community in many forms such as estates contributions etc. These funds are dedicated to a variety of causes as well. Some examples are college scholarships, swimming pool slide, library, Historic preservation, Central Montana Medical Center, Sophomore basketball, Community Athletic Facility, Central Montana Fair, Ambulance and many more.

What this points out to me as an Elected County Official and I will in turn point out to you is that there are alternative ways of funding things other than taxes.

I think we can expand on what we have, to fund, Fire Districts, Councils on Aging, Local addiction programs and many others like these examples.

I believe in this day and age of cut taxes but continue services we must look at many alternatives of funding. This is a good one and Senate Bill #414 will only enhance it.

I ask you to please give SB #414 a do pass as is without amendments.

Thank you,

Vern Petersen

EXHIBIT 6
DATE 4/3/95
SB 414

MONTANA CULTURAL ADVOCACY AMENDMENTS TO SB NO. 414

1. page 1, lines 16-18
   delete: lines 16-18

2. page 1, line 30 and page 2, lines 1-2
   delete: page 1, line 30 and page 2, lines 1-2

3. page 2, line 13
   after: "fund"
   delete: "of a community foundation"

4. page 3, line 2
   after: "endowment"
   delete: "of a community foundation"

5. page 3, lines 6-7
   after: "fund"
   delete: "of a community foundation"

Without the amendments the MCA must oppose SB No. 414. MCA strongly endorses the concept of providing financial incentives through tax credits for all not-for-profit organizations, not just community foundations. Why would a business corporation give to the general endowment of a community theater or museum when a tax credit is available only when giving to the Montana Community Foundation? Other cultural groups want to control their own resources rather than having to "pass the donation through" a community foundation. Passage of SB 414 without these amendments would give legislative endorsement to one cultural group over another without any justification for doing so. Tax policy should discriminate only when there is a rational and justifiable reason.

K. Paul Stahl
Chair, Montana Cultural Advocacy

EXHIBIT 7
DATE 4/3/95
HB SB 257

IMPACT ANALYSIS OF PROPOSED MONTANA RAILCAR TAX [illegible]

RAILCAR COMPANY	CURRENT 1994 MONTANA RAILCAR TAX	PROJECTED 1994 MONTANA RAILCAR TAX BASED ON PROPOSED LEGISLATION
ACF	$114,843	$42,167
DETROIT EDISON	$320,302	$209,480
GATX	$190,429	$70,438
GE RAILCAR	$126,018	$53,652
RAILCAR ASSOC.	$165,773	$71,619
RAILGON	$3,072	$1,291
RAILBOX	$63,822	$36,215
TTX	$917,807	$463,286
UNION TANK	$202,064	$83,968
TOTAL	$2,104,130	$1,032,117

Filename = 94montana3.xls

ESTIMATED 1994 MONTANA RAILCAR TAX FOR MAJOR COMPANIES BASED ON PROPOSED LEGISLATION

COMPANY	ACF	ACF	DETROIT EDISON	GATX	GATX	GE RAILCAR	GR RAILCAR	RAILCAR ASSOC.	RAILCAR ASSOC.	RAILGON	RAILBOX	TTX	UNION TANK	UNION TANK	ALL COMPANIES
CAR CLASS	@40% OTHER	@60% L-O	@100% G GONDOLA	@91% OTHER	@09% L-O	@33% OTHER	@67% L-O	@15% OTHER	@85% L-O	@100% OTHER	@100% OTHER	@100% F-FLAT	@91% OTHER	@09% L-O	
MARKET VALUE OF CAR FLEET YEAR ENDING DEC. 31, 1993	311,205,122	466,807,682	95,731,815	909,965,014	89,995,541	193,352,941	392,575,215	54,780,015	310,420,197	24,894,771	204,523,498	2,205,039,768	922,283,796	91,214,881	
TOTAL NO. OF CARS IN FLEET	16,389	24,583	3,375	50,001	4,945	10,523	21,366	3,957	22,425	1,188	13,094	87,174	42,741	4,178	
AVERAGE MARKET VALUE PER CAR (#1 / #2)	18,989	18,989	28,365	18,198	18,198	18,375	18,374	13,844	13,841	20,955	15,620	25,295	21,814	21,814	
CAR MILES IN MONTANA	2,770,669	4,156,003	56,668,923	9259367	915,767	3,084,651	6,262,387	2,664,400	15,098,167	157,578	5,930,354	133,849,002	9,199,711	909,863	
MILES PER CAR PER DAY IN MONTANA	175	250	525	175	250	175	250	175	250	175	175	500	175	250	
MONTANA EQUIVALENT CARS (#4 / #5 / 365)	43.38	45.55	295.73	144.96	10.04	48.29	68.63	41.71	165.46	2.47	92.84	733.42	144.03	9.97	
MONTANA ALLOCATION PERCENT OF FLEET VALUE (#6 / #2)	0.0026	0.0019	0.0876	0.0029	0.0020	0.0046	0.0032	0.0105	0.0074						
MONTANA ALLOCATED MARKET VALUE (#7 x #1)	823,660	864,856	8,388,326	2,637,971	182,630	887,356	1,261,077	577,461	2,290,431	51,696	1,450,181	18,551,615	3,144,667	217,706	
TAX RATE	7.15	7.15	7.15	7.15	7.15	7.15	7.15	7.15	7.15	7.15	7.15	7.15	7.15	7.15	
MILLAGE RATE	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	0.34927	
1994 TAX DUE (#8 x #9 x #10 / 100)	$20,569.10	$21,597.82	$209,480.03	$65,877.59	$4,560.79	$22,159.77	$31,492.63	$14,420.89	$57,198.51	$1,290.97	$36,215.13	$463,285.86	$78,518.14	$5,436.73	$1,032,117.03

[illegible]

EXHIBIT 8
DATE 4/3/95
~~HB~~ SB 257

	1993 State of Montana		1993 State of Wyoming	
Deco Tons	9,158,269	avg rate	3,731,166	avg rate
Deco Fuel Cost	$ 107,213,000	$ 11.71	$16,534,810	$ 4.43
Deco Taxes	$ 37,626,189	0.35	$ 5,504,035	0.33
Total expenditure from Deco	$ 144,839,189		$22,038,845	
Third Party Tons				
Third Party Fuel Cost				
Third Party Taxes		0.35		0.33
Third Party expenditures				
Total expenditures from Deco and Third Party to Montana	$ 144,839,189		$22,038,845	

	1994 State of Montana		1994 State of Wyoming	
Deco Tons	10,109,354	avg rate	4,089,450	avg rate
Deco Fuel Cost	$ 113,907,460	$ 11.27	$18,913,316	$ 4.62
Deco Taxes	$ 43,492,886	0.38	$ 6,444,902	0.34
Total expenditure from Deco	$ 157,400,346		$25,358,218	
Third Party Tons	2,235,076		1,209,732	
Third Party Fuel Cost	$ 25,183,788	$ 11.27	$ 5,595,011	$ 4.63
Third Party Taxes	$ 9,620,207	0.38	$ 1,907,899	0.34
Third Party expenditures	$ 34,803,995		$ 7,502,909	
Total expenditures from Deco and Third Party to Montana	$ 192,204,341		$32,861,127	

DETROIT EDISON RAILCAR TAX
WESTERN STATES PAYMENTS

	Montana	Wyoming	Nebraska	Colorado	Indiana	North Dakota	Minnesota	Wisconsin	Iowa	Illinois	Total
1992	$415,676	$27,593	$19,672	$0	$40,415	$0	$0	$0	$0	$0	$503,356
1993	$357,028	$29,764	$22,946	$86	$41,435	$0	$0	$0	$0	$0	$451,259
1994	$320,302	$32,329	$33,954	$0	Not Available	$0	$0	$0	$0	$0	$386,585
Total Tax	$1,093,006	$89,686	$76,572	$86	$81,850	$0	$0	$0	$0	$0	$1,341,200
Total Miles	188,779,154	55,711,009	102,909,686	120,870	14,736,322						
Average Tax Per Mile	.58 Cents	.16 Cents	.07 Cents	.07 Cents	.56 Cents	0 Cents	0 Cents	0 Cents	0 Cents	0 Cents	[illegible]

Prepared By J. Szidik 1/5/95

EXHIBIT 9
DATE 4/3/95
~~HB~~ SB 257

scal Note Request <u>HB0024, as introduced</u>
rm BD-15 page 2
ontinued)

<u>venues:</u>

eliminary figures regarding the appraisal of the largest railroad car company indicate a property tax liability for tax ar 1991 of approximately $760,000. Given that there are at least 169 other railroad car companies the department believes e 1991 property tax on all companies will at least match the 1.2 million dollars collected from the repealed freight line r company tax.

nce this proposal repeals 15-55-105, MCA, railroad car companies could also be subject to corporation license tax in dition to property taxes. Information is not available to make a estimate of this possible income.

<u>CHNICAL NOTES:</u>

is proposal is unclear as to when property taxes for tax year 1991 would be due so assumption number 5 is made assuming at wording would be changed to incorporate the 30 days after notification.

EXHIBIT 10
DATE 4/3/95
HB SB 257

SB 257 - RAIL CAR PROPERTY TAX

The rail car property tax is determined by a formula to obtain the value of the entire company and then allocate part of that value to the state. The allocation of value to the state is the issue in SB 257. The Department of Revenue used a combination of "miles to miles" and "speed". The industry would like to use "speed" only.

"Miles to miles" is a measurement based on the ratio of the number of miles traveled by the railroad car company's cars in Montana divided by the number of miles traveled by the railroad car company's cars throughout the United States.

"Speed or Equivalent Car Factor" is a measurement based on the number of cars in the company's fleet assuming an estimated speed of so many miles per day. Montana uses 500 miles per day.

The information presented here shows components of the discussion which need to be clear in order to understand the implications of SB 257. Information presented is:

1. A discussion of rail car taxable miles
2. A comparison of the revenue generated using all the taxable miles
3. A comparison of the average tax per mile
    a. All companies excluding Detroit Edison
    b. Detroit Edison
4. A Comparison of the major parties in the Lawsuit for
    a. Taxed to actual miles
    b. Gross receipts tax on taxed miles versus actual miles
    c. Gross receipts tax on actual miles versus the property tax
    d. Tax per mile for gross receipts tax versus property tax
5. A comparison of the rail car company actual miles per day travel to miles per day used in the property tax and proposed in SB 257
6. A discussion of "bridge" and "terminal" state for rail car purposes
7. Graphs showing the originating and terminating activity for B.N.
8. A discussion of allocation methods used by other states

RAIL CAR TAXABLE MILES

Both gross receipts tax and rail car property tax law say the tax is based on the proportion of mileage within the state to the entire mileage of the company. The property tax law is more lenient as it allows a different method if the Department of Revenue adopted a different formula by administrative rule.

Gross Receipts Tax: 15-55-101(3), MCA. "The terms 'gross earnings' or 'total gross earnings' shall be construed to mean all earnings on business beginning and ending within this state and a proportion, based upon the proportion of mileage within the state to the entire mileage over which such business is done, of all earnings on interstate business passing through, into, or out of this state."

Property Tax: 15-23-213(2), MCA. "The allocation of property to this state must be made on the basis of the car miles traveled within the state to the total car miles traveled unless the department by administrative rule adopts a different formula."

The railroads reported to the department the mileage traveled in Montana in two separate reports, the "A" report and the "B" or zero miles report. "Gross receipts" taxes were withheld for the loaded mileage activity listed on the "A" report only. No "gross receipts" taxes were withheld for the mileage activity listed on the "B" report, or the unloaded mileage activity on the "A" report.

The difference between the "A" report and the "B" report was that on the "A" report the haulage contract was written between the railroad and the shipper. The railroad procured the particular car for the shipper. The railroad knew of the car rental contract terms and therefore, could calculate a gross earnings payable to the car owner.

On the "B" report the car rental contract was written between the car owner and the shipper. The shipper then contracted with the railroad to pull the car. The railroad did not know the contract terms of the car rental, therefore the railroad could not calculate a gross earnings payable to the car owner.

Table 1 shows the total rail car miles compared to the taxed rail car miles under the gross receipts tax. Forty percent of the actual miles were not taxed.

Table 1
Comparison of Taxed to Total Rail Car Miles under Gross Receipts

Total Rail Car Miles - 1991	353,553,034	100%
Gross Receipts Taxed Miles	213,255,500	60%
Untaxed Miles	140,297,534	40%

Comparison of Gross Receipts Taxes to Property Taxes

(Excluding Detroit Edison)

	1991 Gross Receipts Tax	1991 Property Tax	Difference Amount	Difference Percent
All Companies	$1,217,671	$2,428,008	$1,210,337	99%
Miles Taxed	150,237,583	290,535,117 *	140,297,534 **	93%
Average Rate Per Mile	$ 0.0081	$ 0.0084	$ 0.00025	3%

* *'The terms "gross earnings" or "total gross earnings" shall be construed to mean all earnings on business beginning and ending within this state and a proportion, based upon the proportion of mileage within the state to the entire mileage over which such business is done, of all earnings on interstate business passing through, into, or out of this state.' 15-55-101(3), MCA*

** *'The allocation of property to this state must be made on the basis of the car miles traveled within the state to the total car miles traveled unless the department by administrative rule adopts a different formula.' 15-23-213(2), MCA*

New Rail-Car Companies Identified in 1991

Companies	Number of Companies	Percent Of Total	Property Tax Miles	Percent Of Total	Property Tax	Percent Of Total
Paying Gross Receipts	129	61%	268,152,783	92%	$2,230,848	92%
New Companies Taxed	82	39%	22,382,334	8%	$197,160	8%
TOTAL	211	100%	290,535,117	100%	$2,428,008	100%

Comparison of Average Tax Per Mile of All Companies

Category	Gross Receipts Revenue		Taxed Miles		Avg Tax Per Mile Gross Receipts
All Other Rail Car	$1,217,671	÷	150,237,583	=	$0.0081
Detroit Edison	$54,467	÷	63,017,917	=	$0.0009

Average Tax for All Other Rail Car Miles Rate Applied to Detroit Edison

	Detroit Edison Mileage		Avg Tax Per Mile Gross Receipts		Gross Receipts at Avg Rate/Mile
Actual Tax Paid	63,017,917	X	$0.0009	=	$54,467
Avg Rail Rate/Mile	63,017,917	X	$0.0081	=	$510,758
Property Tax	63,017,917	X	$0.0050	=	$316,948

Major Railroad Car Companies -- Parties in the ACF v. Montana Case in Federal District Court

(Excluding Detroit Edison)

	1991 Gross Receipts Tax Miles			1991 Gross Receipts Tax		
	Taxed	*Actual*	*% Change*	*Reported Miles*	*Actual Miles*	*% Change*
TTX:	126,503,618	126,503,618	0%	$760,628	$760,628	0%
GATX:	2,147,083	8,142,582	279%	$44,025	$166,960	279%
ACF:	1,986,422	7,995,275	302%	$46,916	$188,835	302%
GE Railcar:	1,342,457	6,719,963	401%	$30,325	$151,798	401%
Itel Rail:	2,321,746	39,049,163	1582%	$19,801	$333,031	1582%
Union Tank:	2,792,028	7,326,790	162%	$71,679	$188,099	162%
Railbox:	3,468,663	3,553,813	2%	$41,610	$42,631	2%
Railgon:	177,357	180,241	2%	$4,615	$4,690	2%
TOTAL	140,739,374	199,471,445	42%	$1,019,599	$1,836,672	80%

	1991 Gross Receipts Tax and Property Tax - All Miles			Tax per Mile		
	Gross Receipts Tax	*Property Tax*	*% Change*	*Gross Receipts*	*Property*	*% Change*
TTX:	$760,628	$588,872	-23%	$0.006	$0.005	-23%
GATX:	$166,960	$114,705	-31%	$0.021	$0.014	-31%
ACF:	$188,835	$128,277	-32%	$0.024	$0.016	-32%
GE Railcar:	$151,798	$82,593	-46%	$0.023	$0.012	-46%
Itel Rail:	$333,031	$343,289	3%	$0.009	$0.009	3%
Union Tank:	$188,099	$167,072	-11%	$0.026	$0.023	-11%
Railbox:	$42,631	$45,804	7%	$0.012	$0.013	7%
Railgon:	$4,690	$4,564	-3%	$0.026	$0.025	-3%
TOTAL	$1,836,672	$1,475,176	-20%	$0.009	$0.007	-20%

SB257 Railroad Carline Comparison

Miles Per Day

			Comparison to Current			Comparison to SB 257		
Company	Total Annual System Miles	System Car Count	Average Miles Traveled Per Day System	Montana Miles Per Day* ***Current***	Percent Change	Average Miles Traveled Per Day System	Montana Miles Per Day* ***SB 257***	Percent Change
TTX	5,370,827,033	87,174	167	252	51%	167	500	199%
GATX	714,702,861	54,949	37	67	81%	37	175	373%
ACF	635,746,343	40,972	43	78	81%	43	175	307%
Union Tank	684,292,282	46,419	39	75	92%	39	175	349%
Railbox	263,460,929	13,094	55	99	80%	55	175	218%
Railgon	17,207,852	1,188	39	72	85%	39	525	1246%
Detroit Edison	322,067,811	3,375	247	353	43%	247	525	113%
TOTAL	8,008,305,111	247,171						

* For allocation purposes, the higher the miles per day, the lower the allocation to the state.

BRIDGE AND TERMINAL STATES

Montana is typically referred to as a "bridge" state as opposed to a "terminal" state.

"Bridge" means that rail traffic consists mostly of freight that enters the state on rail cars and crosses and exits the state without being unloaded.

"Terminal" means that rail traffic consists mostly of freight that is either loaded onto rail cars within the state and shipped out of state on the railroad, or is shipped into the state on the railroad and unloaded within the state.

"Originated" means a commodity loaded on railroad cars at some point within Montana and shipped to a destination outside of Montana.

"Terminated" means a commodity loaded on railroad cars at some point outside of Montana and received at a destination within Montana.

NOTE: A commodity loaded on railroad cars at some point within Montana and received at a destination within Montana without ever leaving Montana will <u>not</u> be included in any of the railroads' federally reported traffic statistics. The same is true for traffic both originating and terminating within any other state.

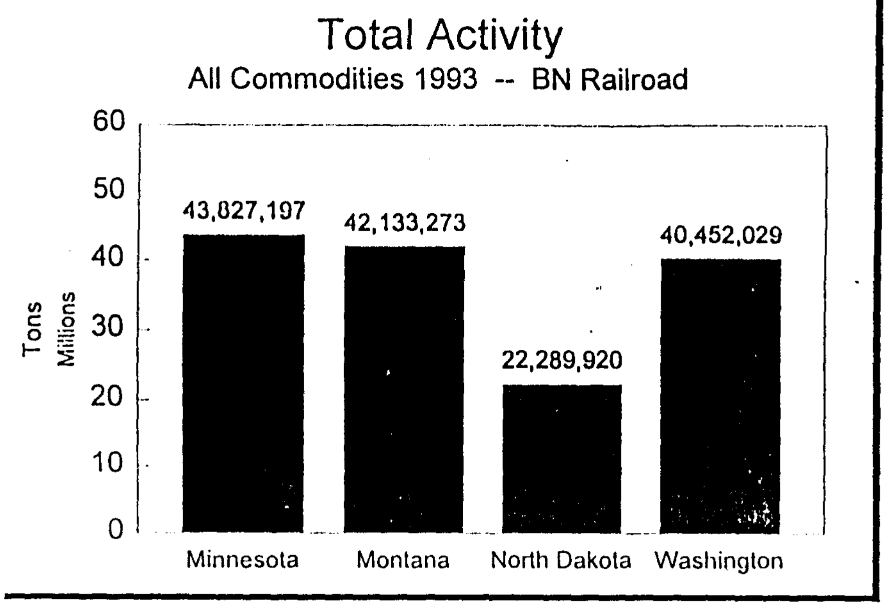
While geographically a wide state, Montana does not support any major sea ports and is relatively low in population. Information sources including BN's federally reported rail traffic statistics indicate that rail cars do engage in a considerable amount of activity in Montana which would be more "terminal" than "bridge" in nature, including layover, switching, loading, unloading, and repair activities.

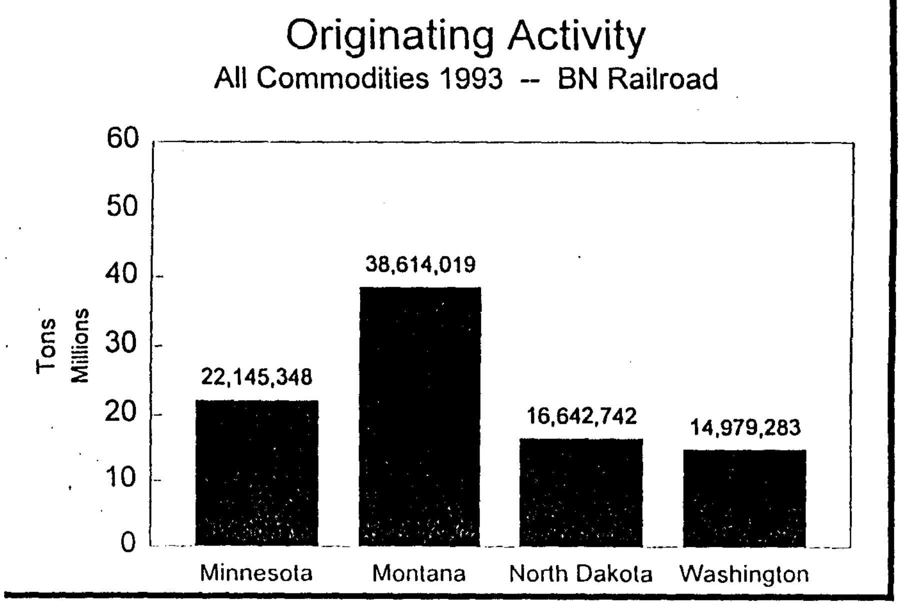
Montana and North Dakota are what are typically referred to as "bridge" states as opposed to "terminal" states.

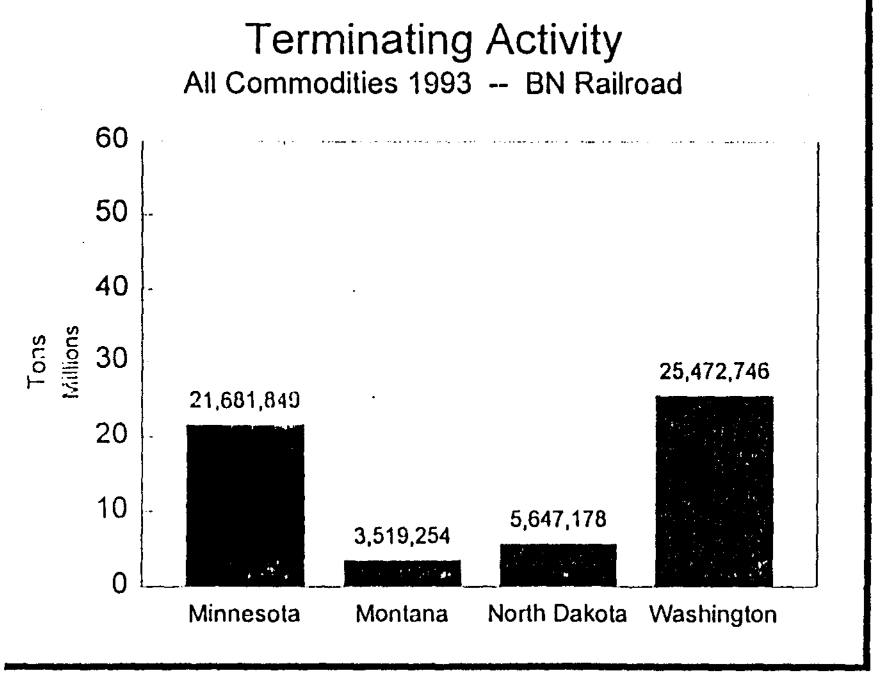
Minnesota and Washington are what are typically referred to as "terminal" states as opposed to "bridge" states.

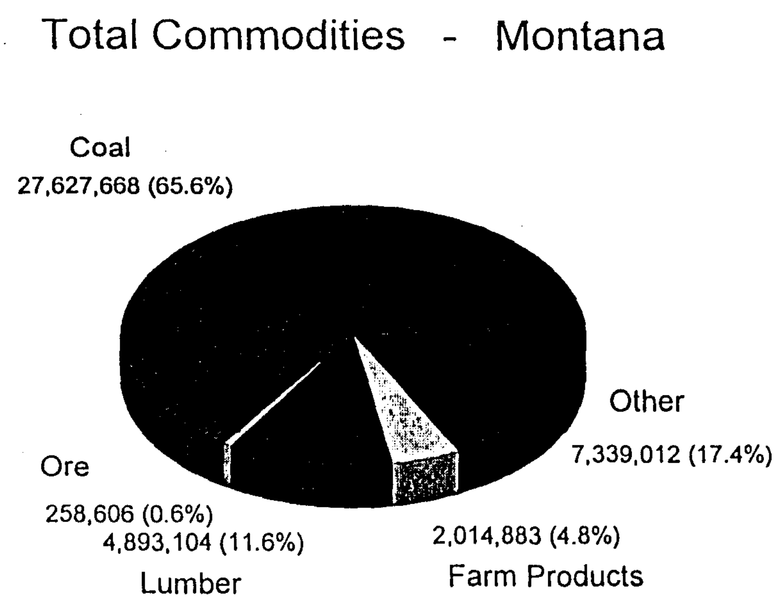
Table 1
BN Terminal Activity (Tons)

Terminal Activity (Tons)	BN Total System (Tons)	Minn Total (Tons)	Montana Total (Tons)	N Dakota Total (Tons)	Wash Total (Tons)
Originated	269,598,662	22,145,348	38,614,019	16,642,742	14,979,283
Terminated	181,413,330	21,681,849	3,519,254	5,647,178	25,472,746
TOTALS	451,011,992	43,827,197	42,133,273	22,289,920	40,452,029









q: CARLINE3.WK4 pad/ori,mdor

ALLOCATION

1993 Nationwide Survey of Current Methods

A survey conducted by the Montana Department of Revenue during 1993 indicates that 26 (54%) of the 48 contiguous states centrally assess railroad car companies for the property tax using the unit value methodology. The remaining 22 states either locally assess the railroad car companies, have a gross receipts tax in lieu of property tax, or exempt all personal property from property taxation.

The survey results indicate that the procedure used for allocation of unit value in the 26 states that do centrally assess railroad car companies is as follows:

Table 1
Central Assessment of Railroad Car Companies

Allocation Method	Number of States	Percent of State
Miles-to-miles (100%)	13	50.0%
Equivalent car (100%)	6	23.1%
Combination - miles/equiv car	4	15.4%
Combination - miles/gross earnings	1	3.8%
Standing/running car count	1	3.8%
Car days	1	3.8%

Conclusions from this survey:

1. 13 (50%) of the centrally-assessing states use miles-to-miles as the sole factor for allocation. This is the method described by the Montana legislature in the legislation which changed railroad car company taxation from the gross receipts tax to the property tax.

2. 18 (almost 70%) of the centrally-assessing states either use miles-to-miles as the sole factor for allocation, or as one factor in a two-factor formula for allocation. This two-factor method is the method currently used by Montana.

3. Only 7 (27%) of the centrally-assessing states use car count, either direct car counts or indirect methods (such as the equivalent car count) as the sole factor for allocation. This is the method proposed by the railroad car companies.

1994 Nationwide Survey of Future Methods

During 1994 the Department, representing the Western States Association of Tax Administrators (WSATA), conducted a survey of the 35 states that are now centrally assessing the railroad car companies, or might be in the future.

The survey question: Would your state be willing to adopt miles-to-miles as the uniform private carline allocation methodology?

(Allocation Percent = miles traveled in state divided by miles traveled throughout USA.)

Twenty-five of the twenty-six states responded, with the following results:

Table 2
States Willing to Adopt Miles-to-Miles

Response	Number of States	Percent
YES	20	80%
NO	1	4%
N/A	4	16%

Conclusions from this survey:

These results indicate that an overwhelming majority of states feel that the use of miles-to-miles as the sole allocation factor would be a fair method for allocation of value, if it were used by most of the states.

EXHIBIT 11
DATE 4/3/95
~~HB~~ SB 257

Amendments to Senate Bill 257
Third Reading Copy

Prepared by Department of Revenue
4/ 3/95 7:07am

REASON FOR AMENDMENT: This amendment makes a change on the allocation formula. The allocation of property is weighted on the basis of 1/3 for miles traveled and 2/3 for equivalent car count. The equivalent car count is based upon 500 miles per day for all types of cars. The amendment also changes the rate of taxation to be the average mills applied to other railroad transportation property. The third amendment terminates the act on December 31, 1997.

---

1. Title, lines 4 and 5.
Following: "TAX BY"
Strike: "DEFINING CLASSES OF RAIL CARS AND MILEAGE ATTRIBUTABLE TO CLASSES OF RAIL CARS"
Insert: "ALLOCATING VALUE BASED UPON MILES AND EQUIVALENT CAR COUNT; USING THE AVERAGE MILL LEVY APPLIED TO RAILROAD PROPERTY"

2. Title, line 6.
Following: "DATE"
Strike: "AND"
Insert: ","

3. Title, line 7.
Following: "DATE"
Insert: ", AND A TERMINATION DATE"

4. Page 1, lines 14.
Following: "average"
Strike: "statewide rate of taxation on commercial and industrial"
Insert: "mill levy applied to all railroad transportation"

5. Page 1, line 15.
Following: "property"
Insert: "specified in 15-6-145, except for railroad car company property"

6. Page 1, lines 16 through 23.
Following: line 15
Strike: subsections (2) and (3) in their entirety
Renumber: subsequent subsections

7. Page 2, line 15.
Following: line 14
Insert: "(5) the total car miles traveled, loaded and unloaded,

within and outside of the state during the calendar year proceeding the date of filing;"
Renumber: subsequent subsections

8. Page 2, lines 26.
Following: "must be"
Strike: "made on the"

9. Page 2, line 28.
Following: " ~~formula~~"
Strike: <u>average number of cars necessary to make the Montana miles</u>
Insert: "calculated by taking one-third of the ratio of car miles traveled within the state to the total car miles traveled, plus two-thirds of the ratio of equivalent car count to the total number of cars"

10. Page 2, lines 28 and 29.
Following: "The"
Strike: "<u>average number of cars necessary to make the Montana miles</u>"

Insert: "equivalent car count"

11. Page 2, line 29.
Following: "<u>the company's</u>"
Strike: "<u>class of car's or cars'</u>"

12. Page 2, line 30.
Following: "<u>mileage</u>"
Insert: "for all its cars"
Following: "<u>product of</u>"
Strike: "<u>the miles per day per class of car</u>"
Insert: "500 miles per day"

13. Page 3, line 9.
Following: line 8
Insert: "<u>NEW SECTION.</u> **Section 5. {standard} Termination.** [This act] terminates December 31, 1997."

EXHIBIT 12
DATE 4/13/95
~~HB~~ SB 257

SB 257
EFFECT OF DOR AMENDMENT

Current Speed 50% - Miles 50% Average C&I Mill Levy - 349.27	$3,134,427
SB257 Varying Speeds at 100% Average C&I Mill Levy - 349.27	$1,400,000
SB257 - Amended Speed 67% - Miles 33% Average RR Mill Levy - 315.13	$2,081,626

EXHIBIT 13
DATE 4/3/95
~~HB~~ SB 260

HOUSE TAXATION - SENATE BILL 260

Mr. Chairman and Members of the Committee:

For the record, my name is Ellen Engstedt and I represent Don't Gamble With The Future. We are a statewide organization opposed to the expansion of gambling and in favor of stronger regulation of the gambling currently legal in Montana. Our membership is comprised mostly of small business folks and their families.

We strongly support SB 260. This is the only bill in this legislative session that addresses the problem of pathological gamblers and it is an issue that needs attention.

SB 260 establishes a trust fund into which monies would flow coming from those gambling activities already in place and from those entities reaping the benefits of the large amount of tax revenue received from this tax source. This is NOT a new source of money -- it is a reallocation of the funds already paid and received. EACH gambling activity contributes to the trust fund because EACH gambling activity contributes to the problem of compulsive gambling.

Section 4 details how a treatment program will be developed by the Department of Corrections working with the Gaming Advisory Council. The Council has appointed a subcommittee with representatives from the gambling industry, government, mental health specialists, and the public, including Don't Gamble With The Future. We have been waiting to have our first meeting until SB 260 is passed by the Legislature.

Section 1, Legislative Policy, states there are detrimental effects caused by - now amended to read - pathological gambling. Those of us in Don't Gamble With The Future prefer the introduced language because we feel gambling in general causes detrimental effects and increased social costs to the population of our state. Gambling is rapidly becoming the third addiction in equal standing with alcohol and drugs.

As is the case with any addictive behavior, studies on compulsive gambling are being conducted. Gambling has exploded nationwide over the past ten years and the results of some of the studies are now surfacing and those results are alarming. Teenagers and the elderly are particularly vulnerable to the addiction of gambling. The elderly because they have time on their hands and teens because of the excitement and risk involved. One million teenagers are pathological gamblers in the United States and the numbers are growing.

If the policy of the State of Montana is to encourage gambling, as is done through the Montana Lottery as well as other forms, and take the revenue obtained from this source, the least the State can do for its citizens is to help provide treatment for those growing numbers who are becoming addicted to gambling.

I urge your support of SB 260.

THE ORIGINAL OF THIS DOCUMENT IS STORED AT THE HISTORICAL SOCIETY AT 225 NORTH ROBERTS STREET, HELENA, MT 59620-1201. THE PHONE NUMBER IS 444-2694.

EXHIBIT 14
DATE 4/3/95
SB 419

Representative Judy Murdock
Montana House of Representatives
Helena, Mt.

Honorable Representative Murdock,

Recently, the Montana Senate passed SB No. 419 and sent it to the House. As a important member of the House Taxation Committee and our representative from this area, we request your support on House passage of this legislation. Also, we request your help in getting the other members of the House to pass this bill.

For your information, we've enclosed letters from the effort in the Senate on getting this bill passed. Please note that both Crow Tribal members and members from other Tribes living within our district supported this effort.

Thank you in advance for any help and support on this legislation. We look forward to seeing you back in the area after the session.

Chester J. Eagleman, Ft. Peck Sioux Tribal member
[illegible] E. [illegible], Blackfeet Tribal Member
Kenneth W. Davis, Turtle Mountain Chippewa Member
[illegible], Shoshone Tribal Member

Residents of Crow Agency

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. SB 414

DATE 4/3/95 SPONSOR(S) Sen. Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Catherine S. Campbell		SB 414		X
Steve Browning Kevin Justis	Montana Community Foundation	SB414 SB414		X
Deborah Schlesinger	Cultural Advocacy	SB 414		X
Clark Pyfer	Mont Comm Fnd	SB 414		X
Josh Turner	Gov's Task Force on Endowed Philanthropy	SB 414		X
Sidney Armstrong	MT Comm. Foundation	SB414		X
John Delano	MCF	414		X
Jacqueline Lenmark	self	SB 414		✓
Gloria Hermanson	MT Cultural Advocacy	"		AMD
Kathryn A. Agard	Council of Michigan Foundations			X
Susan Talbot - Missoula	MT Comm. Fndn	SB 414		X
Russ Mawby	W.K. Kellogg Fdn	SB 414		X
Jim McHale	"	"		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Rose Ann Pennwell SB 414 X

414 X

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. SB 257

DATE 4/3/95 SPONSOR(S) Sen Gage

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Mick Robinson	DOR	SB 257	✓	
John Alke	Detroit Edison			✓
Jim Mockler	Mt. Coal Council & Rail Car Coalition			✓
HALEY BEAUDRY	EMERALD ENGINEERS			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. SB 260

DATE 4/3/95 SPONSOR(S) Sen. Pipinich

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
LARRY AKEY	MT COIN MACHINE OPERATORS VLT/ AWI	260		✓
David Hemion	MT Assoc. of Churches			✓
ELLEN ENGSTEDT	Don't Gamble w/ The Fut.			✓
NORMA JEAN BOLES	DCHS			✓
Janet Jessup	Dept. of Justice			✓
GLORIA HERMANSON	MT Psychological Assoc			✓
SHARON HOFF	MT CATH CONF	SB 260		✓
Charmaine Murphy	Montana Lottery	260		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Taxation COMMITTEE BILL NO. SB 419

DATE 2/3/95 SPONSOR(S) Sen. Gage

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Paul Stahl	Montana Cultural Assn	SB 414	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.