

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By CHAIRMAN GERRY DEVLIN, on February 10, 1995,
at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Delwyn Gage (R)
Sen. Lorents Grosfield (R)
Sen. John G. Harp (R)
Sen. Dorothy Eck (D)
Sen. Barry "Spook" Stang (D)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Council
Renée Podell, Committee Secretary

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

Committee Business Summary:

Hearing: None
Executive Action: SB 273, SB 161

EXECUTIVE ACTION ON SB 273

Motion/Vote: SEN. DELWYN GAGE MOVED TO RECONSIDER ACTION ON SB
273. MOTION CARRIED 8-1 WITH SEN. DOROTHY ECK VOTING IN
OPPOSITION.

Motion/Vote: SEN. GAGE MOVED THE AMENDMENT PREPARED BY JEFF
MARTIN (SB027301.AJM).

Discussion: SEN. ECK asked if the amendment had been reviewed by
Mae Ann Robinson of the State Bond Council. SEN. GAGE stated
Anna Miller from the Department of Natural Resources and
Conservation reviewed it. Ms. Miller commented the amendment was
reviewed and approved by Ms. Robinson.

Vote: MOTION ON THE AMENDMENT CARRIED UNANIMOUSLY.

Discussion: Procedures for getting the bill on the Senate floor was discussed. SEN. MIKE FOSTER suggested the Rules Committee address the procedure of a tabled bill. SEN. JOHN HARP commented the Rules Committee will meet at noon on Monday. CHAIRMAN GERRY DEVLIN requested action on the bill be held until the procedure process is defined in regard to a Constitutional question.

EXECUTIVE ACTION ON PROPOSED TAX BENEFIT COMMITTEE BILL

Discussion: SEN. GAGE commented on the lack of a statutory tax benefit rule in regard to the testimony received from James T. Harrison, Jr., Harrison, Loendorf & Poston, P.C. EXHIBIT 1.

SEN. ECK discussed a letter from Gayle A. Hokanson, Galusha, Higgins & Galusha. EXHIBIT 2.

Motion/Vote: SEN. ECK MOVED THE TAXATION COMMITTEE ASK FOR A COMMITTEE BILL TO ADDRESS THE ISSUE. CHAIRMAN DEVLIN affirmed a committee bill takes 3/4 vote. MOTION CARRIED UNANIMOUSLY.


EXECUTIVE ACTION ON SB 161

Discussion: SEN. BARRY "SPOOK" STANG presented his amendments for SB 161 and commented he will request a revised fiscal note. He presented the following changes in Section 1, Page 1, Line 19-22: 1) Strike \$60.00, insert \$30.00; 2) Strike \$45.00, insert \$25.00 3) Strike \$30.00, insert \$15.00; and 4) Strike \$20.00, insert \$10.00.

Motion/Vote: SEN. STANG MOVED THE AMENDMENTS. MOTION CARRIED UNANIMOUSLY. CHAIRMAN DEVLIN stated he will contact the Budget Office for a revised fiscal note on SB 161.

ADJOURNMENT

Adjournment: 8:39 a.m.


GERRY DEVLIN, Chairman


RENEE J. PODELL, Secretary

GD/rp

**MONTANA SENATE
1995 LEGISLATURE
TAXATION COMMITTEE**

ROLL CALL

DATE February 10, 1995

[illegible]

SEN:1995
wp.rollcall.man
CS-09

HARRISON, LOENDORF & POSTON, P.C.
2225 Eleventh Avenue, Suite 21
Helena, MT 59601

James T. Harrison, Jr.
Jerome T. Loendorf
John P. Poston
James C. Cumming
Gregory W. Duncan

SENATE TAXATION

DATE February 19, 1995
CREDIT NO. 1
BILL NO. Proposed Committee Bi

(406) 442-6350

FAX: (406) 443-7427

January 31, 1995

Honorable Gerry Devlin
Chairman, Taxation Committee
Montana Senate
Capitol Station
Helena, MT 59620

Honorable Mike Foster
Vice-Chairman, Taxation Committee
Montana Senate
Capitol Station
Helena, MT 59620

Re: Tax Benefit Rule

Dear Gerry and Mike:

Members of the Tax Committee of the Montana Society of CPAs have brought forth a concern which they would like to have considered for possible drafting as a committee bill.

The problem which they would like to correct is this: If an out of state resident owns income producing property in Montana, such as a four-plex, then that individual is required to file a Montana State tax return. In a number of cases there will be some unusual circumstances which result in a significant amount of income coming to that individual in his own state (with no connection to Montana whatsoever), but for which there never was any tax benefit to him in either his home state or in Montana. An example of this is an erroneous estimate of taxes due which results in the taxpayer paying substantially more in estimates than really owed in a particular tax year. The following year this results in a significant refund or payment back to the individual from either the IRS or his state department of taxation or both. Montana Department of Revenue's view of that is that he then owes income tax to the state of Montana for this income which he gets in the following year. Obviously, it's unfair in that Montana has had nothing to do with it, and in fact the individual himself received no benefit whatsoever for it. He only "moved" the income from one year to the next by the process of overpayment and refund.

FOR YOUR INFORMATION

January 31, 1995

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The IRS has a specific rule relative to these types of transactions and results and it is called a "Tax Benefit Rule." It merely states that if the taxpayer has received no real benefit, then there is no tax. We have one documented case where a taxpayer had to pay \$8,000.00 for a transaction which really had no benefit to him whatsoever. Obviously the circumstances and the laws that now stand are unjust, and the CPA Society would like to be heard as to their reasoning as to why it should be corrected.

Thank you for your consideration of this request.

Very truly yours,

HARRISON, LOENDORF & POSTON, P.C.

James T. Harrison, Jr.

amo

bcc: Jane Campbell
Dave Johnson

GALUSHA HIGGINS & GALUSHA

BOZEMAN, MONTANA

SENATE TAXATION

DATE *February 10, 1995*

EXHIBIT NO. *2*

Proposal Committee Bill
CERTIFIED PUBLIC ACCOUNTANTS

BOX 340 • 222 EAST MAIN
BOZEMAN, MONTANA 59711-0340
TELEPHONE 406/586-2386
FAX 406/586-5486

January 20, 1995

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.

Dorothy Eck
10 W. Garfield
Bozeman, MT 59715

RE: Montana Code

Dear Dorothy:

About a month ago I told you about clients of mine who received a State adjustment for a California income tax refund. I told you that it didn't seem fair that Montana had the right to tax the refund since the tax was never deducted on the Montana return. This is known as the "tax benefit rule". Thank you for asking me to send you a copy of the appeal.

The State of Montana sent me a copy of the code, which does state that only Montana income tax refunds are exempt. The State also sent a copy of a hearing which is similar to my clients' situation. Copies of both are enclosed.

In my clients' situation, the State of California withheld approximately \$20,000 from the sales proceeds of a business in California. When they filed their California return, they had almost a \$10,000 refund. If the State of California had not withheld the money, or had withheld only \$10,000, there would not have been a refund in the first place.

I believe that when tax laws are created, you legislators intend to be fair and equitable. This particular provision is neither. My clients had no say in how much the State of California was going to withhold. The State of Montana is now saying it has the right to tax the refund just because....just because that is the way the code was written, without any further logic or justification. This certainly is neither fair nor equitable. It is just "luck of the draw" type of thinking.

Dorothy Eck
January 20, 1995
Page two

Dorothy, I do appreciate your looking at this for me. If I can provide you with any more details, please let me know.

Sincerely,

GALUSHA, HIGGINS & GALUSHA
Certified Public Accountants

By Gayle Hokanson
Gayle A. Hokanson, Partner

GAH:kss