

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on January 5, 1995, at
1:00 p.m.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Council
Mary Florence Erving, Committee Secretary

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

Committee Business Summary:

Hearing: SB 33
Executive Action: SB 16

HEARING ON SB 33

Opening Statement by Sponsor:

CHAIRMAN KEATING, Senate District 5, stated SB 33 pertains to the Workers Compensation Old Fund liability revenues, and is legislation to repeal the \$25 minimum tax. **CHAIRMAN KEATING** distributed a document pertaining to adjusted gross profits. After 1993 tax preparation time, **CHAIRMAN KEATING** reported hearing complaints from constituents after they filed their income tax Schedule C and were "hit" with the \$25 minimum tax. One constituent reported that ordinarily they would have paid 43¢ tax on their \$426 income, but because of the Schedule C, and under law, had to pay \$25. **CHAIRMAN KEATING'S** constituents considered the tax exorbitant and many Montanans echoed similar unfair impact concerns.

CHAIRMAN KEATING explained SB 33 repeals the \$25 minimum tax, However, the tax rate which has since doubled from .1% to .2% is still in place. Taxpayers with other ventures, listed on Schedule C, will still be subject to the .2% on profit realized. Taxpayers will only pay tax on profits from whatever venture makes money. If profits are not realized, no taxes are levied.

CHAIRMAN KEATING reported State Fund staff pointed out language that is in error and is confusing. As the bill currently reads, the State Fund will have to make some payments for injuries, and funds are not available. Consequently, a technical amendment is offered (**EXHIBIT 1**).

CHAIRMAN KEATING explained the handout. The left column concerns the Montana Adjusted Gross Tax bracket. Increments are divided into \$1,000 to \$1,999 levels. The next column to the left displays the number of returns impacted by the \$25 minimum.

CHAIRMAN KEATING pointed out the number of \$25 minimum payments paid and made note of the "0" adjusted gross returns, numbering about 3,000 returns and including dividends. If a taxpayer owns a stock dividend, \$25 minimum tax is due. The tax is mostly impacting low income bracket people. The total \$25 minimums equal over \$2M. SB 33 does not eliminate \$2M by repealing the \$25 tax. Tax will be paid on the income reported. Everyone will pay .2 % of their income. The minimum recovery will be somewhat less than \$2M.

The fiscal impact will be less money generated in the Old Tax Liability Fund. **CHAIRMAN KEATING** stated the \$25 minimum is an unfair tax rate and impacts people declaring small amounts of income honestly. **CHAIRMAN KEATING** expressed concern over 1994 data since it is human nature not to declare small amounts and to risk not being accountable. The state may not see as high a number of payments because people will not report their income under such circumstances. **CHAIRMAN KEATING** qualified the preceding statement by saying it is a supposition on his part.

Proponents' Testimony:

Dennis Burr, Helena, representing the Montana Taxpayer's Association, stated the minimum \$25 tax is a blatant, regressive tax. Anyone with a income less than \$12,000 is paying a higher rate than people whose income is above \$12,000. **Mr. Burr** explained that if a person has an income of \$6,250, the tax is exactly double the rate of someone making over \$120,000. Another problem deals with publicly traded partnerships, such as Plum Creek, according to **Mr. Burr**. Any Montanan owning shares in Plum Creek is subject to tax and to the \$25 minimum. So, if a Montanan owns 15 shares of Plum Creek stock, which pays at 8½%, no profit is realized. The tax accounts for more than any profits realized from the profit. Consequently, the association encourages people not to own shares in Montana companies. An investor can buy mutual funds and pay the same amount and owe no taxes. To get to the .2 % rate of return according to what Plum Creek pays, the

stock holder has to own over 7,000 shares. Only then will the stockholder pay the same rate of .2 %. Any number of shares below that, the tax will be higher than someone investing in something else, paying the same rate of return. **Mr. Burr** urged passage of SB 33.

Jim Tutwiler, Helena, Montana Chamber of Commerce and Billings Chamber of Commerce, stated support of SB 33. The Chamber contacted literally hundreds of Montana business people. Many questioned the \$25 minimum tax. **Mr. Tutwiler** stated many accounting firms, Chamber of Commerce members, and CPAs reported clients with 4 or more K-1 forms. People who declared gains or losses on limited partnerships, ended up paying \$25 penalties on each investment. **Mr. Tutwiler** urged passage of SB 33.

Riley Johnson, National Federation of Independent Business, NFIB, stated the organization is directly affected by current legislation and stands in support of SB 33. From January to April 15, tax filing season, the ratio of people complaining was 20 to 1. **Mr. Johnson** stated the bill is based on loss, not profit, and the multiple pay problem is serious. Many small businesses will have an "S" corporation on the side, and in addition, will have another "S" corporation controlling the office and equipment. Each corporation has to pay \$25 for the office and equipment. It is a regressive tax. Many small Montana employers paying the \$25 minimum tax have never been part of the Workers Compensation System. They object, and they think it is unfair, since they did not create the problem. The NFIB polled federation members, and from the responses, calculated 92% of the membership do not support the tax. **Mr. Johnson** closed, declaring support of SB 33.

Tom Harrison, Montana Society of Certified Public Accountants, stated SB 33 is a simple equity argument and a fairness issue. **Mr. Harrison** offered support of the legislation.

Jerry Driscoll, representing self, stated support of SB 33, but pointed out a problem for the Montanan wanting to "buy locally." The taxpayer who is a member of a limited liability company and trades on the New York Stock Exchange (NYSE) and NASBEC does not pay the \$25 minimum tax amount. The confidentiality of being a member is secure because the profit earnings is similar to dividends or income disbursement; consequently, the taxpayer does not have to pay the \$25 minimum tax. When the taxpayer is a partner in a Montana Corporation, then the \$25 is required. Technically, the taxpayer should pay if he/she owns a partnership or is a member of the limited liability company out of the New York Stock Exchange. This situation is evidently becoming more popular. For this reason it is completely unfair to tax Montana citizen who invests in Montana Corporations and not those who invest in out-of-state corporations. The NYSE situation is not considered a "corporation", but under law, the taxpayer is classified as a partner in a partnership, or the taxpayer is a

limited liability member and does not pay, providing the purchase was made through the New York Stock Exchange. **Mr. Driscoll** stated if the committee is not inclined to pass the bill, at least eliminate the partners and the limited liability.

Don Allen, representing himself as small business owner, Montana Wood Products Association, and the Coalition of Workers Compensation Improvement, stated support of SB 33. In terms of the 1993 legislative session's efforts to ensure everyone shares the pay-off of the identified state debt, every effort was made to include as many Montanans as possible. The support concept is correct, but the Department of Revenue's interpretation, as it applied under the limited partnership situation, accurately described by **Mr. Burr**, greatly impacts certain Montanans. **Mr. Allen** stated he does not believe the State intended to create negative impact. **Mr. Allen** said the tax, as it applies to small businesses, is regressive and unfair. **Mr. Allen** urged the committee to keep the tax on the rate only.

Questions From Committee Members and Responses:

SENATOR WILSON questioned the proposed \$2M loss. **CHAIRMAN KEATING** replied it is impossible for the Department of Revenue to determine the exact reduction amount at this time. Data reports the \$25 Minimum payments received totaled over \$2M. Even though the taxpayers will not pay individual \$25 minimum tax assessment, the taxpayer will be assessed taxes, such as the 43¢ tax estimate referred to earlier in testimony. **CHAIRMAN KEATING** stated if the minimum is eliminated, the state can lose up to \$2M. The reason why the \$25 minimum taxes were filed was because income was positive, and positive income will still be subject to taxes, but it wouldn't equal \$25.

SENATOR BENEDICT queried **Dan Gangler, Budget Office**, if the tax will trigger the payroll tax. **Mr. Gangler** replied the Office of the Budget has not seen the fiscal note. When the fiscal note is released, the department will determine the long range impact. **Gangler** stated he expects some revenue deterioration. The impact will extend the period of time the debt is outstanding.

SENATOR BARTLETT noted the original legislative intent was a \$25 minimum corporation tax. There is also a \$25 minimum on the self employed, such as newspaper carriers. **SENATOR BARTLETT** asked if the proposed tax statute repeals the self-employed, those people who are not sole proprietors or receiving income from a subchapter.

Jeff Miller, Department of Revenue, explained last year's collection was approximately \$43M. At the request of the **VICE-CHAIRMAN, SENATOR AKLESTAD**, **Mr. Miller** explained the OFLT tax, which is an acronym for the Old Fund Liability Tax. The employer and employee section is a portion of tax collected from employer withholdings. As the taxpayer/businessperson remits income tax withholding, he/she remits in behalf of themselves and their

employees, their portion of the OFLT. In the \$43M composite collection for FF 94, approximately \$29M was paid for the employers portion, which was .5% times wage base. Approximately \$11M was paid by employees. Of the \$43M, approximately \$3.2 million was paid by the self employed, \$2M was from the minimum tax. Everyone paying tax as self employed report their income on Schedule C. **SENATOR BARTLETT** asked for a language guarantee so that self employed individuals will no longer be subject to the \$25 minimum.

Mr. Miller stated only positive income will be subject to the OFLT. Negative or zero income will not be taxed. The \$24 tax will be eliminated. The only people paying the \$25 will be those in the \$12,500 net, ordinary income bracket due to their various enterprises.

SENATOR VAN VALKENBURG stated some of self employed people are really self/sole proprietors, such as newspaper carriers and people working from their home. This is the area of repeal. (See Line 7, SB 33.)

SENATOR BENEDICT asked **Mr. Miller** if the newspaper carrier declares on Schedule C, will they pay .2% of their income, rather than the \$25 minimum.

Mr. Miller addressed the newspaper situation. Baby sitters and newspaper boys/girls, to the extent they have gross income greater than the filing threshold, will be taxed. If they were below \$1750 in 1993, there is no minimum fee. Taxpayers will pay on net positive income.

Mr. Miller stated under present law, the OFLT minimum applies whether there is positive income or not. If there is a net loss, the 1993 taxpayer will still pay. The tax was levied in the middle of the year, and although the employers and employees began paying immediately, the notion of how to reach self employed people for profits before and after July created a dilemma. The solution was to cut the rate in half. In effect for 1993, everyone earning less than \$25,000 net profit paid the \$25 minimum. After a year of operation, the department is currently looking at a rate of .2%, So .02 time net profit of \$12,500 would be the break even point.

SENATOR AKLESTAD queried **Mr. Miller** about liability relevant to modest salaried employee. Present income tax statute states if the taxpayer owes less than \$1, the tax is not remitted.

Mr. Miller stated SB 33 will do away with all minimum concepts. If a taxpayer files an individual income tax document, the taxpayer simply remits the paperwork, but not the payment.

SENATOR AKLESTAD stated individual taxpayers making less than \$100, will still have to fill out the required documentation. The department, in turn has the responsibility of administrating

cost. An individual, it appears, will have to jump through all hoops for \$100 profit. **SENATOR AKLESTAD** added that the bill hints to the harassment of low income taxpayers, while the department is still liable for assessments in a cost efficient manner. **Mr. Miller** stated the positive outcome is that the amount in question will be added to other income tax amounts collected at the same time.

SENATOR BENEDICT questioned **CHAIRMAN KEATING** concerning whether or not the taxpayer who earned less than \$1750 files a return? **Mr. Miller** stated if the potential taxpayer's gross income is less than \$1750, the taxpayer does not meet the income tax filing threshold; consequently, the return is not filed.

Closing by Sponsor:

SENATOR KEATING explained the 43¢ remittance amount that he referred to in the opening statements was part of a husband and wife joint filing effort. The couple owed income tax, and the additional income, generated by a W2 form, was the amount recorded under Schedule C. The taxpayers being assessed are those reporting additional income along with ordinary incomes. **SENATOR KEATING** stated if less than \$1 is owed on the ordinary filing on all sources, nothing is remitted.

SENATOR KEATING explained the purpose of the repeal is an equity issue. People paying the minimum tax, pay an exorbitant rate; therefore, **SENATOR KEATING** closed the hearing on SB 33 and asked for repeal support of SB 33.

Eddy McClure, Legislative Council, reported a fiscal note has been ordered and will be available for Executive Session Action.

CHAIRMAN KEATING addressed the proxy issue, which was discussed at the January 3rd organization meeting. He retracted the proxy instructions, and told the committee members they are not allowed proxy votes, nor are they allowed to leave votes in writing. Therefore, if a committee member is absent for Executive Session, the committee will hold the vote open for two days, unless there is a real rush to get the bill to the floor. The Senate rules prevent proxy on bills in standing committees.

SENATOR EMERSON asked if the vote can be phoned in. **CHAIRMAN KEATING** noted the committee member must submit the vote to the committee secretary in person.


EXECUTIVE ACTION ON SB 16

Motion/Vote:

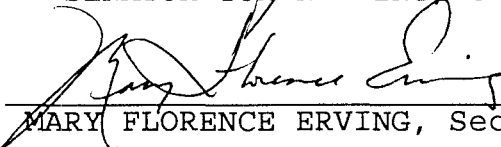
SENATOR BURNETT MOVED SB 16 DO PASS. THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: The meeting adjourned at 1:47 P.M.



SENATOR TOM KEATING, Chairman



MARY FLORENCE ERVING, Secretary

TK/mfe

MONTANA SENATE
 1995 LEGISLATURE
 LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE January 5, 1995

NAME	PRESENT	ABSENT	EXCUSED
LARRY BAER	★		
SUE BARTLETT	★		
STEVE BENEDICT	★		
JIM BURNETT	★		
CASEY EMERSON	★		
FRED VAN VALKENBURG	★		
BILL WILSON	★		
GARY AKLESTAD, VICE CHAIRMAN	★		
TOM KEATING, CHAIRMAN	★		

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 6, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill 16 (first reading copy -- white), respectfully report that Senate Bill 16 do pass.

Signed: *Thomas F. Keating*
Senator Thomas F. Keating, Chair

SA Amd. Coord.
SA Sec. of Senate

51123SC.SpV

Amendments to Senate Bill No. 33
First Reading Copy

Requested by Senator Keating
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
January 5, 1995

1. Page 1, line 15.
Following: "1990,"
Strike: "and that are"

2. Page 1, line 16.
Following: "source,"
Strike: "."
Following: "~~by borrowing~~"
Strike: "The state shall borrow"
Insert: ", by borrowing"

DATE January 5, 1995
 SENATE COMMITTEE ON Labor & Employment Relations
 BILLS BEING HEARD TODAY: SB 33

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing Address Telephone #	Bill No.	Support	Oppose
JIM TWILER	MT CHAMBER PO 1730 HELENA 447-7405	SB33	✓	
RILEY JOHNSON	NFIB 491 SO. PARK AVE. 443-3797	SB33	✓	
DENNIS BURR	MT TAXPAYERS ASSOC	SB33	✓	
JOHN DELANO	SOFT DRINK ASSN	"	✓	
MARK C BARKY	ST. FUND	"	✓	
Nancy Butler	St. Fund	SB33		
Nancy Allen	CWCSI	SB33	✓	
Don Allen	CWCSI	SB33	✓	
Aaron Williams	MT. SOCIETY OF CPA'S	SB33	✓	
Russell B Hill	MT Trial Lawyers			
Jerry Driscoll	Self	SB33	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY