

## **MINUTES**

### **MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON TAXATION**

**Call to Order:** By **CHAIRMAN GERRY DEVLIN**, on March 16, 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: HB 561, HB 565, HB 570, SB 419  
Executive Action: HB 570, HB 418

#### **HEARING ON HB 565**

**Opening Statement by Sponsor:**

**REP. ALVIN ELLIS, JR., SD 23, Red Lodge**, declared HB 565 which allows cattle (livestock) that are taxed on the ad valorem basis to be taxed on an average inventory basis. He stated this bill was originally put into a form which dealt with all cattle, however, there was a problem with the Department of Livestock on that issue. He acknowledged as a result, this bill only affects ad valorem cattle in it's present state. **REP. ELLIS** explained his cattle winter in Yellowstone County and all the kids and their parents who work for the ranch go to school in Carbon County. He stated Carbon County doesn't get any of the tax revenue from the cattle. He attested this bill would allow him

to report the cattle in both counties. He acknowledged he has trouble with the fiscal note and requested the committee to ask a representative from the DOR to explain the fiscal note.

**Proponents' Testimony:**

**Cork Mortensen, Executive Secretary, Board of Livestock**, declared support for HB 565 in it's present form.

**Chris Mehus, Montana Stockgrowers Association**, spoke in support of this legislation. He stated it gives the producers the option to be taxed on an average inventory basis.

**Opponents' Testimony:**

None

**Informational Testimony:**

None

**Questions From Committee Members and Responses:**

**SEN. LORENTS GROSFIELD** asked **Mick Robinson** why the law got changed in the last few years. **Mr. Robinson** stated he isn't sure if the change took place for administrative purposes or exactly why. **SEN. GROSFIELD** stated it used to be the owner had the option on an annual basis. **Mr. Robinson** said the DOR may need to review the issue in terms of the next legislative session. **SEN. GROSFIELD** asked **Mr. Robinson** about the fiscal note having a slight decrease in both local government and property tax revenue and questioned why there would be a decrease. **Mr. Robinson** responded taxpayers can elect one way or another and for the most part they would elect for the lower taxation. **SEN. GROSFIELD** asked **Mr. Robinson** why it will cost \$21,000.00. **Mr. Robinson** responded the personal property tax is part of a computerized system and to change the system there are costs.

**Closing by Sponsor:**

**REP. ELLIS** commented the amount of revenue loss that will concur is going to be very small. He stated he wants his taxes to go where the school he supports is located.

**HEARING ON HB 570**

**Opening Statement by Sponsor:**

**REP. WILLIAM R. WISEMAN, HD 41, Great Falls**, commented there are all kinds of mutual funds. He stated one of the problems in Montana is the tax situation. **REP. WISEMAN** said this bill is for small investors in the State of Montana. He explained larger states have mutual funds that are organized for the small investors with a portfolio of tax free bonds from that state. He

submitted an illustration prepared by **Bruce A. MacKenzie, D.A. Davidson & Co. EXHIBIT 1.**

**Proponents' Testimony:**

**Tom Harrison, Montana Society of Certified Public Accountants,** announced this bill encourages growth in Montana.

**Opponents' Testimony:**

None

**Informational Testimony:**

None

**Questions From Committee Members and Responses:**

**SEN. MACK COLE** asked **REP. WISEMAN** why this is just for the small investor. **REP. WISEMAN** stated generally speaking people who have large sums of money in municipal bonds will invest direct.

**SEN. MIKE FOSTER** asked **REP. WISEMAN** about the technical note in reference to the two interpretations in this bill. **REP. WISEMAN** commented this applies only to Montana and the other commonwealths referring to Page 1, Lines 16 and 17.

**Closing by Sponsor:**

**REP. WISEMAN** said there is no implication on the State of Montana. He commented the state isn't losing any taxes because there aren't any mutual funds in the state. He emphasized this is not for his firm, it is for D.A. Davidson & Co.

**EXECUTIVE ACTION ON HB 570**

**Motion/Vote:** **SEN. DELWYN GAGE** MOVED HB 570 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY.

**EXECUTIVE ACTION ON HB 418**

**Motion:** **SEN. GROSFIELD** MOVED THE AMENDMENTS.

**Discussion:** **Mr. Martin** explained the amendments **SEN. GROSFIELD** proposed.

**Vote:** MOTION CARRIED UNANIMOUSLY.

**Motion/Vote:** **SEN. GAGE** MOVED HB 418 BE CONCURRED IN AS AMENDED. MOTION CARRIED UNANIMOUSLY.

HEARING ON HB 561

Opening Statement by Sponsor:

REP. DON LARSON, HD 58, Seeley Lake, declared HB 561 increases the motorcycle safety training fee from \$2.50 to \$5.00 at the request of the motorcycle community. He stated the money is used for the administration of the motorcycle safety program and is administered by the Office of Public Instruction.

Proponents' Testimony:

Dal Smilie, Chairman, Montana Motorcycle Safety Advisory Committee, submitted written testimony. EXHIBIT 2.

Jill Z. Smith-McGuire, American Bikers Aiming Toward Education (ABATE), presented written testimony. EXHIBIT 3.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. FRED VAN VALKENBURG commented there are 1100 members in the organization and approximately 20,000 registered motorcycles. He asked Ms. McGuire how representative the organization is of all the motorcycle riders. Ms. McGuire stated she knows several people who own four or five motorcycles and registers each one every year. She commented the organization is representative of the motorcycle community because there are no opponents.

SEN. DOROTHY ECK questioned Mr. Smilie in regard to Montana not having a helmet law and the loss of federal funding. Mr. Smilie commented the funds that were lost are penalty funds.

Closing by Sponsor:

REP. LARSON stated there are only 14 or 15 deaths attributed to motorcycle injuries each year which means the program is working. He commented if one life is saved we've done our job.

HEARING ON SB 419

Opening Statement by Sponsor:

SEN. GAGE, SD 43, Cut Bank, reported this is the committee bill he requested with regard to taxation of Native American people in the State of Montana. He stated SB 419 indicates revenues earned by an enrolled member of any federally recognized American Indian

Tribe who resides on a reservation in Montana doesn't have to pay income tax on the earnings earned on that reservation.

**Proponents' Testimony:**

**Clara Spotted Elk, Vice President, Northern Cheyenne Tribe, Lame Deer,** submitted written testimony. EXHIBIT 4.

**Steve Chestnut, Attorney, Northern Cheyenne Tribe,** spoke in support of this legislation.

*{Tape: 1; Side: B; Comments: Tape Turned to Side B.}*

**REP. GEORGE HEAVY RUNNER, HD 85,** commented this legislation sends a positive message. He urged support for SB 419.

**REP. JAMES MCCANN, HD 92,** said his people can't afford the taxes. He stated this legislation will go a long ways in establishing good will among the tribes.

**Tracy Charles King, Vice Chairman, Fort Belknap Community Council,** read a resolution passed by the community council. EXHIBIT 5.

**Carole McCrea, Confederated Salish and Kootenai Tribes, speaking on behalf of Michael T. Pablo, Chairman,** submitted written testimony. EXHIBIT 6.

**Don Kittson, Attorney, Blackfeet Tribe,** commented although this bill isn't perfect in an absolute functional sense it is a step in the right direction. He declared support for SB 419.

**Steve Archambault** presented a letter from **Charles E. Archambault** in support of this bill. EXHIBIT 7.

168 letters were received in support of SB 419. EXHIBIT 8.

**Opponents' Testimony:**

None

**Informational Testimony:**

None

**Questions From Committee Members and Responses:**

**SEN. COLE** asked **Mr. Kittson** if the tax would be a detriment for a young person. **Mr. Kittson** stated the tax would be a detriment because a young person would see it as a limitation on their opportunities. He said professional people working on the reservation are the ones who opposed the DOR's regulations.

SEN. GROSFIELD questioned Mr. Woodgerd in regard to Part 3 dealing with confidentiality of returns. Mr. Woodgerd stated Part 3 was taken from the Oregon statutes.

SEN. FOSTER asked Clara Spotted Elk how prevalent a situation it is where members of a reservation live on another reservation. Ms. Spotted Elk responded on her reservation it will probably involve about 150 people. She estimated about 5%.

SEN. FOSTER asked SEN. GAGE if an Indian enrolled in a Wyoming tribe moves to Montana onto a reservation, under his proposed amendments, what would the impact of this bill be on the individual. SEN. GAGE stated this bill would not impact that individual, he would have to pay taxes in Montana.

SEN. FOSTER asked SEN. GAGE if the bill needs to be amended to say people can't file jointly. SEN. GAGE said there are several scenarios which need to be reviewed.

SEN. VAN VALKENBURG asked Ms. Spotted Elk if she feels any obligation to pay income taxes to the State of Montana. Ms. Spotted Elk said, "No, we don't".

SEN. ECK stated she is concerned about residency. SEN. ECK asked Ms. Spotted Elk if Indians living and working on a reservation declare their residency in any way other than voting. Ms. Spotted Elk said as far as the tribe is concerned they don't declare residency.

{Tape: 2; Side: A; Comments: Tape Turned.}

Closing by Sponsor:

SEN. GAGE acknowledged the crucial fact has always been status of an Indian and not status as the tribal member. He stated another issue the legislature will be facing is currently there is double taxation going on in the State of Montana. He presented the example in his own Senate District where the Blackfeet Tribe are taxing oil and gas, as is the State of Montana. He said it isn't good for the Blackfeet Tribe or the operators on the reservation. SEN. GAGE urged support for this legislation.

ADJOURNMENT

Adjournment: 10:15 a.m.

  
GERRY DEVLIN, Chairman

  
RENEE J. PODELL, Secretary

GD/rp

**MONTANA SENATE  
1995 LEGISLATURE  
TAXATION COMMITTEE**

ROLL CALL

DATE March 16, 1995

[illegible]

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CS-09

SENATE STANDING COMMITTEE REPORT


Page 1 of 1  
March 16, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 570 (third reading copy -- blue), respectfully report that HB 570 be concurred in.

Signed:

  
Senator Gerry Devlin, Chair

  
Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 16, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 418 (third reading copy -- blue), respectfully report that HB 418 be amended as follows and as so amended be concurred in.

Signed: Sen. Devlin  
Senator Gerry Devlin, Chair

That such amendments read:

1. Title, line 5.

Strike: "AN"

2. Title, line 6.

Strike: the first "DATE"

Insert: "DATES"

3. Page 2, line 3.

Following: "INSTRUCTION."

Insert: "(1)"

4. Page 2, line 5.

Strike: "(1)"

Insert: "(a)"

5. Page 2, line 6.

Strike: "ADDING 0.1 TO"

Insert: "subtracting 0.2% from"

6. Page 2, line 7.

Strike: "0.1%" through "ALL"

Insert: "0.2% decrease must be made regardless of"

7. Page 2.

Following: line 8

Insert: "(b) The section imposing tax rates on natural gas and oil production, [section 4] of Senate Bill No. 412, is amended by adding the following subsection:

"(6) The tax rates imposed under subsections (2) and (4) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131.""

8. Page 2, line 9.

Strike: "(2)"

Insert: "(c)"

PV Amd. Coord.  
80 Sec. of Senate

Sen. Page  
Senator Carrying Bill

611120SC.SPV

9. Page 2, lines 13 and 14.

Strike: the second "THAT" on line 13 through "(1)" on line 14

Insert: "the rate adopted by the board pursuant to 82-11-131"

10. Page 2, line 16.

Following: line 15

Insert: "(d) The repealer section, [section 49] of Senate Bill No 412, which repeals 82-11-131, is amended to strike that section in [section 49]. The title provision of Senate Bill No. 412 relating to repealing sections is amended to strike 82-11-131.

(2) If Senate Bill No. 412 is passed and approved, then 82-11-131(3) is amended to read as follows:

"(3) The department of revenue shall collect the privilege and license tax assessment in the same manner as the oil and natural gas severance tax is production taxes are collected under Title 15, chapter 36 [sections 1 through 20 of Senate Bill No. 412]."

11. Page 2, line 17.

Strike: "date"

Insert: "dates"

Following: "applicability."

Insert: "(1)"

Strike: "[This act]"

Insert: "Except as provided in subsection (2), [this act]"

12. Page 2.

Following: line 18

Insert: "(2) [Section 2(2)], which amends 82-11-131(3), is effective January 1, 1996."

-END-

Statement of Bruce A. MacKenzie  
Representing D.A. Davidson & Co  
Supporting House Bill 570

SENATE TAXATION

DATE March 16, 1995

EXHIBIT NO. 1

BILL NO. HB 570

ILLUSTRATION

Mutual Fund (Other than Montana Bonds)

Total Portfolio	\$100,000,000	
Investment Income (5%)		\$5,000,000
Less Administrative Fees (1%)		- 50,000
Less Dividends Paid (98%)		- 4,850,000
Total Income Subject to State Tax		<u>\$ 50,000</u>
Corporate License Tax (6.75% First 500,000)	\$	3,375
Investment Income Available to Distribute	\$	4,850,000
Rate of Return to Investor		<u>4.85%</u>

Mutual Fund (Exclusively Montana Bonds)

Total Portfolio	\$100,000,000	
Investment Income (5%)		\$5,000,000
Less Administrative Fees (1%)		- 50,000
Total Income Subject to State Tax		<u>\$ 4,950,000</u>
Corporate License Tax (6.75% First \$500,000)	\$	33,750
(7.25% of Excess)		<u>322,625</u>
Total Montana Taxes Paid	\$	<u>356,325</u>
Investment Income Available to Distribute	\$	4,593,675
Rate of Return to Investor		<u>4.59%</u>

March 16, 1995

TESTIMONY IN SUPPORT OF HB 561

by: Dal Smilie, Chairman

Montana Motorcycle Safety Advisory Committee

2  
HB 561

The motorcycle community (ABATE and the American Motorcyclist Association) came to the legislature in 1989 and volunteered \$5.00 per motorcycle registration for the funding of a motorcycle safety education program. OPI relied on faulty figures from Justice's DMV and reduced the funding to \$2.50 per registration.

This program does not use general funds or any funds not collected from users.

Initial shortfalls were met by grants from federal sources (Section 402 A) from Justice's Highway Traffic Safety Division. After two years the administrator of that program refused further grants for the program even though motorcycle safety is one of five priority uses for the funds under federal law.

The Motorcycle Industry Council's 1994 Statistical Annual estimated that there were 19,151 street motorcycles in Montana in 1993. The proposed \$2.50 increase should raise about \$47,500 per year starting with 1996. The amount necessary to return the program to return to its FY 93 level is \$127,000 (\$116,000 plus 10% inflation). The additional \$20,000 will be used for geographical program expansion, the purchase of training bikes and the provision of instructor training. Much will still be done with volunteers and loaned equipment. There is no fat in this increase.

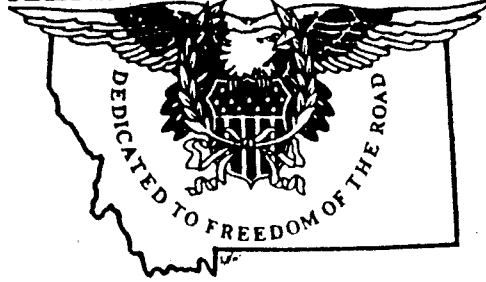
The safety program has expanded to thirteen training sites. Training is conducted by private sponsors and private citizens who have been certified by the Motorcycle Safety Foundation. Reimbursement has remained at the same level for three years.

The safety program should expand to potential sites in Dillon, Miles City, Polson, Libby, Glendive and Glasgow. It cannot serve residents in those areas with its current budget.

Justice's DMV currently waives the driving test for the motorcycle endorsement if a rider has passed this safety course. That is a saving to the state similar to that proposed by HB 248 for other categories of highway users. More sites funded by users will save general fund money.

The failure to allow motorcyclists to keep this program healthy would result in the loss of life. Motorcyclists want to be responsible, they want to pay their way. Please pass this user supported bill.

# ABATE OF MONTANA



SENATE TAXATION

DATE March 16, 1995

EXHIBIT NO. 3

BILL NO. HB 561

## • AMERICAN BIKERS AIMING TOWARD EDUCATION •

Dear Senator *Devlin*,

HB-561 is about to move over to the Senate, and I would like to take a minute of your time to familiarize you with it.

In 1989 we came before the Legislature and asked Lawmakers to allow us to establish a Motorcycle Safety Program in Montana, funded by a fee assessed onto the registration of every motorcycle. This program is called the Montana Motorcycle Safety and Education Program (MMSEP). The program has nearly quadrupled the number of students taught that first year, and has twice been recognized nationally by The Motorcycle Safety Foundation for its outstanding performance since its inception.

The original language of that bill in 1989 called for the assessed fee to be \$ 5.00 onto each registration, and was amended down to \$ 2.50 in committee because The Department of Motor Vehicles estimated there to be 40,000 registered motorcycles in the State. This amount was overestimated by twice the amount, as there are only 20,000 registered motorcycles in Montana. Consequently, MMSEP was underfunded from the start. We have struggled along and, after repeated failed attempts to secure additional funding in the form of 402 (safety) funds from the Department of Justice, have decided that it is time once again to do for ourselves. We are not asking for General Fund money, we are only asking you to allow us to increase the user fee on ourselves, so that the MMSEP will continue and grow.

HB-561 is NOT a tax increase, it is a user fee, and a RESPONSIBLE piece of Legislation.

It is our belief that the answer to fewer motorcycle fatalities in Montana is the combination of education, training, and public awareness. If only one life is saved each year, then we each got our \$ 2.50 back a million times over.

If you have any questions regarding this bill, please do not hesitate to contact me at any time.

Please vote Do-Pass on House Bill 561.

Thank You,

*Jill Z. Smith-McGuire*

Jill Z. Smith-McGuire  
A.B.A.T.E. Lobbyist

**LET THOSE WHO RIDE DECIDE**



• AMERICAN BIKERS AIMING TOWARD EDUCATION •

TO: SENATE TAXATION COMMITTEE

FROM: JILL Z. SMITH-McGUIRE  
A.B.A.T.E. OF MONTANA LOBBYIST

DATE: 3/16/95

RE: HB-561

Mr Chairman, members of the Committee, Good Morning. For the Record my name is Jill Z. Smith-McGuire. I am a volunteer Lobbyist for ABATE of Montana. ABATE is American Bikers Aiming Toward Education, and what we are is a Non-profit Organization Dedicated to the Promotion of Motorcycle Safety. We currently have approximately 1100 members statewide. I speak for those members today.

In 1989 we came before the Legislature and asked Lawmakers to allow us to establish a Motorcycle Safety Program in Montana, funded by a fee assessed onto the registration of every motorcycle. This program is called the Montana Motorcycle Safety and Education Program (MMSEP). The program has nearly quadrupled the number of students taught that first year, and has twice been recognized nationally by The Motorcycle Safety Foundation for its outstanding performance since its inception.

The original language of that bill in 1989 called for the assessed fee to be \$ 5.00 onto each registration, and was amended down to \$ 2.50 in committee because The Department of Motor Vehicles estimated there to be 40,000 registered motorcycles in the State. This amount was overestimated by twice the amount, as there are only 20,000 registered motorcycles in Montana. Consequently, MMSEP was underfunded from the start. We have struggled along and, after repeated failed attempts to secure additional funding in the form of 402 (safety) funds from the Department of Justice, have decided that it is time once again to do for ourselves. We are not asking for General Fund money, we are only asking you to allow us to increase the user fee on ourselves, so that the MMSEP will continue and grow.

**LET THOSE WHO RIDE DECIDE**

It is our belief that the answer to fewer motorcycle fatalities in Montana is the combination of education, training, and public awareness. If only one life is saved each year, then we each got our \$ 2.50 back a million times over.

Please vote Do-Pass on House Bill 561.

Thank You.

SENATE TAXATION

DATE March 16, 1995

EXHIBIT NO. 4

BILL NO. SB 419

TESTIMONY OF

CLARA SPOTTED ELK, VICE PRESIDENT  
NORTHERN CHEYENNE TRIBE  
LAME DEER, MONTANA

BEFORE THE

SENATE TAXATION COMMITTEE  
MONTANA STATE LEGISLATURE

RE: SENATE BILL 419

MARCH 14, 1995



Chairman Devlin and members of the Committee, thank you for the opportunity to present the views of the Northern Cheyenne Tribe on S.B. 419, a bill which would clarify that enrolled tribal members who live and earn income within the boundaries of a Montana Indian reservation are exempt from State income taxes.

S.B. 419 enjoys the full support of all the Indian Tribes in Montana. I have also included numerous support letters from some individuals who have been affected by the State's administrative action.

We very much appreciate the efforts of Senator Gage and the committee members for the courtesy of introducing this legislation as a committee bill. Although it is rather late in the session, we are very hopeful that this bill can be passed out of committee and transmitted from the Senate to the House.

We believe that there are several compelling reasons for the Montana State Legislature to enact this legislation. Following is a brief summary:

1. Tribal/State Relations: The State Legislature must recognize a government to government relationship with Indian Tribes. Governor Racicot demonstrated real leadership when he issued a Proclamation in which he committed to a good faith working relationship with the Tribes as a means of conflict resolution in which he recognizes the inherent sovereignty and differences between Tribes. It is essential for the State Legislature to do the same. For too long, the relationships between the Indian Tribes and the State have been characterized by conflict and

confrontation. We urge a more progressive approach based upon good will and good faith and S.B. 419 provides you with an opportunity for this type of working relationship.

In particular, we feel that the State erred in employing Administrative rule-making on a issue as substantive as taxation of Indians within reservations boundaries. The formulation of tax policy is a matter which must be handled by the respective legislatures of the Tribes and the State - it is not a matter for bureaucratic rule making. To that end, we appreciate the opportunity to express our unequivocal opposition to this proposed taxation and to present our arguments in favor of the bill which we believe are legally, socially and ethically sound.

The legislation before you is based on an Oregon statute enacted by that Legislature by working cooperatively with the Indian Tribes. I might add that the Oregon provision recognizes a much broader immunity than that in the committee bill. We urge that Montana also recognize the inherent and primary authority of Tribal Governments to tax Indian people who reside and work within the boundaries of their reservations. If there is to be any taxation of Indians on reservations, Tribal Governments are the entities that will establish this tax policy.

2. Legal Issues: Attached to our testimony is a legal opinion prepared by Steve Chestnut, our tribal lawyer which details the legal issues associated with this decision. Mr. Chestnut can address the legal issues in detail. While the Department of Revenue has relied upon some related federal tax cases as a

rationale for their rule making, the Department has chosen to ignore specific Montana Law on this matter -- in 1978 the Montana Supreme Court specifically ruled that Indians who are enrolled and live and work on a reservation are exempt from State taxation. It's remarkable to the Tribes that the Department of Revenue has taken action which flatly contradicts the supreme law of the State, when in fact this law should bind state administrators.

In our meetings with the Department of Revenue, attorneys for both sides agreed that the legal issues advanced by the State on this issue are debatable. If the Tribes decide to litigate this matter, the lawyers concede that it will be a "horserace". In addition, the litigation process would be expensive and time consuming to all parties, could very well drag on for years and would certainly damage what good will exists between the Tribal governments and the State.

The Tribes are loathe to pursue litigation for these reasons, but we cannot let this assault upon our sovereignty go unchallenged. We suggest that this dispute would be better resolved through legislation. We are also encouraged that Governor Racicot is neutral on the proposed bill.

3. Revenue Implications: In our meetings with the Department of Revenue, we have been unable to determine a precise forecast of the amount of revenue this type of taxation will generate. According to our rough estimates of the numbers of nonmember Indians residing on reservations and the average tax paid in Montana, we calculate the revenue may be in the neighborhood of

\$250,000. Is this amount of revenue, which is very small in comparison to the overall tax revenues generated by the state, worth the aggravation? We think not.

One of the important factors you must keep in mind is that there are extreme levels of unemployment and poverty on the Montana reservations ranging from 50% - 80%. As a result, many of the people who are fortunate enough to have a job support extended families. While the average income in Montana is about \$18,000, on reservations it is less. There are very few people on reservations who earn \$40,000 or more. Thus, every extra dollar taken from the paycheck of an Indian on a reservation has a real impact, far more significant than it would be to more affluent classes. This is one of the reasons that Indian Tribal governments have been reluctant to impose individual income taxes.

Another concern to the affected people is that within the reservation, it is the tribal government rather than the State which provides much of the services. In the future if the Tribes elect to impose a tax, this class of reservation citizens would be subject to double taxation, truly a perverse result.

4. Administrative Implications: We understand that the Department of Revenue is really wrestling with the challenge of how to collect this tax. Additional manpower and resources will be necessary and considerable effort expended to determine who is exempt and who is not. In an effort to identify who would have to pay the tax, the Department is planning to require that all Indians on reservations file state tax returns and prove they are enrolled

where they reside and work. This is an outrageous and unnecessary burden on the Indian population of the state, particularly as only about 5% may actually be nonmembers of the reservation where they reside. The State will also likely face challenges in collecting such taxes. We feel that any disputes over this issue would be addressed in tribal court as we exercise jurisdiction over civil matters on the reservation.

My main point is that the income to be made from this type of taxation is just not worth it.

#### SUMMARY

In conclusion, we urge that the Senate Taxation Committee follow the dictates of common sense and good will and pass this legislation which is in keeping with existing Montana law which will exempt all federally recognized Indians from State taxation.

Thank you for your consideration.

# Fort Belnap Community Council



SENATE TAXATION

EXHIBIT NO. 5

BILL NO. 3B 419

March 16, 1995

WHEREAS, the Fort Belnap Indian Community Council is the governing body of the Gros Ventre and Assiniboiné Tribes of the Fort Belnap Indian Community, Fort Belnap Indian Reservation, Montana, by the authority of the Constitution and By-Laws of the Fort Belnap Tribes approved on the 13th day of December, 1935, and

WHEREAS, under the Constitution and By-Laws of the Fort Belnap Indian Community, the Community Council is charged with the duty of protecting the health, security and general welfare of the Fort Belnap Indian Community, and

WHEREAS, the Fort Belnap Community Council is responsible for protecting the interests of the Fort Belnap Indian Community, and

WHEREAS, the Fort Belnap Community Council is aware that the State of Montana is seeking to tax Indians from other reservations who live and work within the boundaries of the Fort Belnap Indian Reservation, and

WHEREAS, the Fort Belnap Community Council provides most of the governmental services on-reservation, and most non-member Indians reside and/or work here do so because of the existence of the Tribal Government of the Gros Ventre and Assiniboiné people, and

WHEREAS, the Fort Belnap Community Council views it as a breach of the sovereignty of the Gros Ventre and Assiniboiné Tribes for the State of Montana to attempt the imposition of taxes against Indians living on this reservation, and


WHEREAS, there is a long, significant history of members of other Tribes living among the Gros Ventre and Assiniboiné Tribes, both before and subsequent to written history, and such circumstance was specifically recognized at the time of creation of the Fort Belnap Indian Reservation,

NOW, THEREFORE BE IT RESOLVED, that the Fort Belnap Community Council does hereby state its strong objection to any attempt by the State of Montana to tax Indians living and working on the Fort Belnap Indian Reservation, and does hereby call upon the State of Montana to cease all such attempts, in recognition of the sovereignty of the Gros Ventre and Assiniboiné Tribes,

BE IT FINALLY RESOLVED, that the Council Officers are hereby delegated the authority and responsibility to sign all documents necessary to effect this action.

ATTEST:

  
HARLAN MOUNT, President

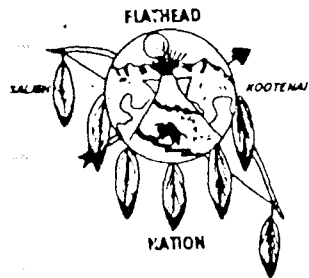
  
JANICE HAWLEY, Secretary/Treasurer

### CERTIFICATION

I, the undersigned, as Secretary of the Fort Belknap Community Council of the Fort Belknap Indian Reservation, Montana, do hereby certify that the Fort Belknap Community Council is composed of 6 members of whom 5 members, constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 6 day of February, 1995; and that the foregoing Resolution of the Fort Belknap Community Council was duly adopted and approved by the affirmative vote of 4 for; -0- opposed; -0- not voting, 1 temporary absent; -0- absent; 1 excused absence; and that the said Resolution has not been rescinded in any way.

DATE: 3-9-95

  
JANICE HAWLEY, Secretary/Treasurer



THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD INDIAN RESERVATION

P.O. Box 278  
Pablo, Montana 59855  
(406) 675-2700  
FAX (406) 675-2806

DATE March 16, 1995  
EXHIBIT NO. 6  
BILL NO. SB 419



Joseph E. Dupuis - Executive Secretary  
Vern L. Clairmont - Executive Treasurer  
Michele Hewankorn - Sergeant-at-Arms

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Donald "Donny" Dupuis  
Mary Lefthand

TESTIMONY OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD INDIAN RESERVATION

IN SUPPORT OF  
SENATE BILL 419  
A BILL TO EXEMPT TAXATION INCOME EARNED BY  
ENROLLED MEMBER OF ANY INDIAN TRIBE

BEFORE THE SENATE TAXATION COMMITTEE  
THE HONORABLE GERRY DEVLIN, CHAIRMAN

MARCH 16, 1995



## TESTIMONY

The Confederated Salish and Kootenai Tribes would like to provide the following testimony on Senate Bill 419 for your consideration.

The Montana State Department of Revenue has adopted by administrative rule authority to impose state income tax on an Indian who is an enrolled member of a tribe other than the tribe governing the reservation on which he or she lives and works. The adoption of these rule changes in 1993 to Administrative Rules of Montana 42.15.121(1)(a) and 42.15.121(1)(b) and (2) have caused this issue to come before you with Senate Bill 419 being the proposed solution.

The Confederated Salish and Kootenai Tribes commented extensively on the Department of Revenue's rules and quite clearly pointed out that this action by the State of Montana went directly against well established State and Federal law. 1978 the Montana Supreme Court in LaRoque v. State of Montana, 178 Mont. 315, addressed the issue of taxing individual Indian income derived from Reservation sources on a reservation other than their own. The Montana Supreme Court in addressing this question said:

Since both appellants are Indians residing on the reservation, and since each of their incomes were derived wholly from reservation sources,

their activity is "totally within the sphere which the relevant treaty and statutes leave for the Federal Government and for the Indians themselves." . . . Therefore, we hold the State was without authority to impose its tax on these Indian residents of an Indian Reservation.

In reaching this decision the Montana Court relied on McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973), in which the United States Supreme Court held, in a unanimous opinion, that a state income tax was unlawful when applied to a "reservation Indian" whose income was derived from "reservation sources." 411 U.S. at 165. The Court did not distinguish between tribal members residing on their own tribe's reservation and members of other tribes residing on a reservation other than that of their own tribes.

Our Tribal Government has always considered the State's move to tax Indians living and working on an Indian Reservation as being contrary to existing law.

Furthermore, while the state may argue they provide services to the reservations, on the Flathead Reservation it is the Confederated Salish and Kootenai Tribes, alone or in conjunction with the United States acting as trustee, that provide an extremely broad range of services to members of other tribes who reside on the Flathead Reservation -- services which, in many cases, offset services that would otherwise have to be provided by the state and its local governments. Those


services include education (including a tribal high school, a tribal college, Head Start, impact aid, bilingual education aid, and Johnson-O'Malley Act aid to local schools); health services (including a broad range of counseling programs, alcohol and drug abuse programs, Indian Child Welfare Act programs, child protective services, mental health services, day care, and general assistance); housing (including weatherization, housing improvement, mutual self-help, and low income rental programs); and criminal matters, and both adults and juveniles; employment programs (including Job Corps, other job training programs, and preference in both tribal and federal employment); fire protection; road construction and maintenance; a dam safety program; and a wide range of environmental protection programs.

Again, it is the States' taxation of income of Indians living and working on an Indian Reservation that prompts the introduction of S.B. 419.

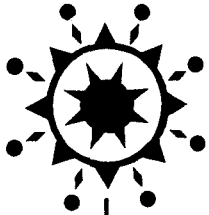
Obviously, we believe that the passage of this bill is merely a codification of the existing case law. But it should force the Department of Revenue to comply with the appropriate law in their administrative rules. As to the Bill itself, we are supportive of Section 1, Subsection (1) exempting income from taxation. We are not supportive of Subsection (2)'s filing requirements.

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SB 419

Thank you for allowing us to comment on this proposed legislation.

A handwritten signature in cursive script, appearing to read "Michael T. Pablo".

Michael T. Pablo  
Chairman



# ARCHAMBAULT & COMPANY

Box M, Browning, Montana 59417 [406] 338-7545

March 15, 1995

SENATE TAXATION

DATE March 16, 1995

EXHIBIT NO. 7

BILL NO. SB 419

Senate Taxation Committee Members

RE: Senate Bill 419

Honorable Senators:

The Indian Reservations in the State of Montana are struggling with high unemployment and a general lack of a Private Business Sector. Passage of this Bill and enactment into law will help the situation in several ways.

In the first instance, passage of the Bill will have the immediate effect of allowing more money to stay in the community - secondly, the money that stays in the Community will help support local businesses. In the long term, passage of the Bill will have the effect of encouraging Indian businesses to locate on Montana Federally recognized reservations and that will impact the private sector and employment of local residents. The economic implications of the Bill is a top priority to me because I own a Business and operate the business on the Blackfeet Indian Reservation, while being enrolled at Fort Belknap.

There may be legal and/or jurisdictional issues of which I am not aware. Whatever they are, they will eventually be dealt with thru the courts if necessary. I do know that we never paid state taxes until now.

The Bill's economic impact to the Montana Reservations will be favorable and will help us to improve our situation and we do need to enhance opportunities for Indians in any way we can.

Respectfully submitted,

Charles E. Archambault, P.E.  
Archambault and Company



ARCHITECTS & ENGINEERS

MAR-17-95 FRI 10:33

FORT PECK TRIBES

FAX NO. 4067685478

COVER SHEET  
FROM THE  
FORT PECK TRIBES

SENATE TAXATION

DATE March 16, 1995

EXHIBIT NO. 8

BILL NO. SB 419

DAKOTA (SIOUX) AND NAKODA (ASSINIBOINE)

P.O. BOX 1027  
OFFICE (406) 768-5155

POPLAR, MONTANA 59255  
FAX (406) 762-5478

DATE: 3/17/95

TO: Kathy Fleury

TO FAX NO. 406-444-1350

DEPT. FAXING: Chairman

COMMENTS: Please submit to Committee  
on our behalf

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the Historical Society at 225 North Roberts  
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number is 444-2694.

Amendments to House Bill No. 418  
Third Reading Copy

Requested by Senator Devlin  
For the Committee on Taxation

Prepared by Jeff Martin  
March 15, 1995

1. Title, line 5.

Strike: "AN"

2. Title, line 6.

Strike: the first "DATE"

Insert: "DATES"

3. Page 2, line 3.

Following: "INSTRUCTION."

Insert: "(1)"

4. Page 2, line 5.

Strike: "(1)"

Insert: "(a)"

5. Page 2, line 6.

Strike: "ADDING 0.1 TO"

Insert: "subtracting 0.2% from"

6. Page 2, line 7.

Strike: "0.1%" through "ALL"

Insert: "0.2% decrease must be made regardless of"

7. Page 2.

Following: line 8

Insert: "(b) The section imposing tax rates on natural gas and oil production, [section 4] of Senate Bill No. 412, is amended by adding the following subsection:

"(6) The tax rates imposed under subsections (2) and (4) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131.""

8. Page 2, line 9.

Strike: "(2)"

Insert: "(c)"

9. Page 2, lines 13 and 14.

Strike: the second "THAT" on line 13 through "(1)" on line 14

Insert: "the rate adopted by the board pursuant to 82-11-131"

10. Page 2, line 16.

Following: line 15

Insert: "(d) The repealer section, [section 49] of Senate Bill No 412, which repeals 82-11-131, is amended to strike that section in [section 49]. The title provision of Senate Bill

No. 412 relating to repealing sections is amended to strike 82-11-131.

(2) If Senate Bill No. 412 is passed and approved, then 82-11-131(3) is amended to read as follows:

"(3) The department of revenue shall collect the privilege and license tax assessment in the same manner as the oil and natural gas severance tax is production taxes are collected under Title 15, chapter 36 [sections 1 through 20 of Senate Bill No. 412]."

11. Page 2, line 17.

Strike: "date"

Insert: "dates"

Following: "applicability."

Insert: "(1)"

Strike: "[This act]"

Insert: "Except as provided in subsection (2), [this act]"

12. Page 2.

Following: line 18

Insert: "(2) [Section 2(2)], which amends 82-11-131(3), is effective January 1, 1996."



DATE

March 16, 1995

SENATE COMMITTEE ON

Taxation

BILLS BEING HEARD TODAY:

HB 561 Rep. Larson  
 HB 565 Rep. Ellis HB 570 Rep. Wiseman  
 SB 419 Senator Hage

&lt; ■ &gt;

PLEASE PRINT

&lt; ■ &gt;

Check One

Name	Representing	Bill No.	Support	Oppose
DAL Smith	MMSAR AMA	HB 561	✓	
Cork Montenson	Brd. of Livestock	HB 565		
Chris Mehurs	MSG4	HB 565	✓	
Clara Swatted Elh	Northern Cheyenne Tribe	SB 419		
TOM Harrison	MT. Soc of CPAs	HB 570	✓	
Jill Smith - McQuire	ABATE OF MT	HB 561	✓	
Carole McCrea	CS4K Tribes	SB 419	✓	
Tracy Charles King	Ft. Belknap Tribal Council	SB 419	-	
Don Kitzson	Blackfoot Tribe	SB 419		
Steve Chestnut	Northern Cheyenne Tribe	SB 419		
Steve Archambault	Archambault & Co	SB 419	✓	

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY