

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on January 13, 1997, at 8:00 a.m., in Room 415.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Mike Foster, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Wm. E. "Bill" Glaser (R)
Sen. Mike Sprague (R)
Sen. Barry "Spook" Stang (D)

Members Excused: Sen. Fred R. Van Valkenburg (D)

Members Absent: None

Staff Present: Jeff Martin, Legislative Services Division
Sharon Cummings, Acting Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 127, 1/7/97
Executive Action: None

HEARING ON SB 127

Sponsor: MACK COLE, SD 4, HYSHAM

Proponents: Sharon Ferguson, Department of Revenue
Brad Griffin, Montana Hardware & Implement Association

Opponents: None

Opening Statement by Sponsor:

SEN. MACK COLE, SD 4, HYSHAM. This bill is requested by the Revenue Oversight Committee. This is a housekeeping bill changing the language so that we are now using the official guide for tractor and farm equipment. We have also eliminated the

category, loan value, which is now being called average wholesale value. There is one small amendment #sb012701.ajm. (EXHIBIT #1)

Proponents' Testimony:

Sharon Ferguson, Property Assessment Division, Department of Revenue (DOR) hands in a prepared statement for SB 127 (EXHIBIT #2) and photocopies from the old and new guidebook (EXHIBIT #3).

Brad Griffin, Montana Hardware & Implement Association states we represent virtually every implement dealer in the State. We rely on the Guide 2000 for all our deals. We wholeheartedly support all the changes being proposed.

Opponents' Testimony: None

{Tape: 1; Side: A; Approx. Time Count: 5:05; Comments: None.}

Questions From Committee Members and Responses:

SEN. SPOOK STANG notices there is no fiscal note with this. Even if there is no fiscal impact, we should have a fiscal note stating this.

SEN. COLE states there is no fiscal impact with this proposal.

SEN. STANG would like a statement from the budget office to make sure the budget office agrees there is no fiscal impact.

SEN. COLE states we'll request that information from the budget office.

CHAIRMAN GERRY DEVLIN asks if there is any difference in these two books. Is the wholesale, in the new book, the same as loan value?

Ms. Ferguson states yes, this occurred in 1995 for tax year 1996. We are buying the publication, which has been redesigned, from the same company. We amended our administrative rule with the letter I received from the publisher as the basis for the change in rule. We said that the loan value is best represented in the new publication by the wholesale value. There is some differences in the publication itself but we have not changed publications. Mr. Griffin may be able to enlighten you on the changes and reasons.

Mr. Griffin explains this book is published by the North American Equipment Dealers Association, which is the national affiliate for the Montana Implement Dealers. It was called the Farm and Tractor Equipment Guide and is now called the Guide 2000, Northwest Region Equipment Guide, in anticipation of the millennium. There is no difference, it is the same book with a new cover and name. Dealers, bankers and the DOR were not

getting very accurate valuation data because collection from the field was not being done on a timely basis. Now all the dealers in the state report every sale, actually 50%, to the North American Equipment Dealers. Within a week they tabulate these values and publish the book. The information is being done on a much more timely basis. Bankers appreciate having real values rather than values on deals that were done six months ago. This book comes out quarterly.

CHAIRMAN DEVLIN states he's looking at the old book, why does a model 7120 have a different value depending on the region you are in?

Mr. Griffin replies there is a different demand for the machine in different regions.

SEN. BOB DE PRATU states it is the same with cars. He asks if the first book of the year is used so everyone's tax remains the same all year long.

Ms. Ferguson states yes, we purchase one guidebook that is used for a tax year and distribute it statewide.

SEN. STANG asks **Mr. Griffin** or **Ms. Ferguson** to show where the model 7110 in the older publication correlates to the average wholesale in the new publication.

Ms. Ferguson explains she simply took a copy of the layout of the old guide and new guide. Since they are not for the same year and the same time, I cannot compare. I can tell you that the old guidebook listed the models of older equipment and a loan value for that equipment. The new guidebook lists equipment value for the past 20 years. Consequently, older equipment saw a decrease in value because of the procedures put into place. It is my understanding, from working with the book, that the newer equipment stayed about the same. You may see a little fluctuation because this guide represents the actual wholesale/retail value of the machine better. I can't compare the two because the two weren't published simultaneously. That is why I included the letter from the publisher.

SEN. STANG asks if there is a fiscal impact to the counties. If the values are going to be different, how much different are they? I would like a comparison so we can tell before a decision is made on this.

Ms. Ferguson states the DOR used this publication for the value of farm machinery in 1996. I can show you the value of farm machinery from 1995 to 1996, county by county. I am not aware that there was a real difference in the value.

SEN. MIKE SPRAGUE asks if farm machinery is different from an automobile in the sense that farm machinery tends to go up in value where cars tend to go down. Does farm machinery go up in

value because of supply and demand as well?

Ms. Ferguson states she gets the same complaint from car owners. The values are impacted by supply, demand and use. What we find is that older equipment maintains its value, for example the Ford 8N was last made in 1952. It sold for \$1,400 new and is still worth that today. Inflation, supply and demand are built into these values. What I am testifying to is that we did not see a negative impact to the taxpayers when we used this guidebook last year.

CHAIRMAN DEVLIN states, in looking at the two publications, the prices seem to be higher in the old publication.

Ms. Ferguson states she can get those figures. I will look at the market value of farm machinery between the two years and see if there was an impact. We didn't have any feel on the value of farm machinery in 1996.

SEN. DE PRATU asks how the value of the equipment is being determined after the 21st year. Is there a flat fee for all types of equipment or does it vary by equipment based on original?

Ms. Ferguson states we have procedures in place which are outlined in our administrative rules process. If the tractor is no longer listed with a wholesale value in the current publication, we determine the original factory price of that farm machinery. We apply a depreciation percent of 20%. We would take 20% of the \$1,400 original price on the Ford 8N, since it is no longer listed in the current guidebook with a loan or wholesale value.

SEN. STANG requests a fiscal note and the effect on the counties.

Closing by Sponsor:

SEN. COLE closes on SB 127.

{Tape: 1; Side: A; Approx. Time Count: 8:20; Comments: None.}

PRESENTATION ON ALBRIGHT SUPREME COURT CASE

Mr. David Woodgerd, Chief Counsel, Department of Revenue. The Albright case was filed in 1993. It challenges the 1993 Class 4 property reappraisal on a statewide basis. The complaint was twenty pages long and full of vague allegations of unconstitutionality. We filed a motion to dismiss and a motion for a more definite statement in an attempt to find out the specific problems. That motion was pending for 2 years in the District Court. Finally, at the end of 1995, the attorney began focusing on what his problems were. He filed 15 separate motions for summary judgement and outlined the 15 reasons why he thought the reappraisal was unconstitutional. While he was in the

process of doing this, we got a new district judge and the District Court certified this case as a class action lawsuit. This means everyone did not have to be named as a plaintiff in the lawsuit, anybody who was in that particular situation was automatically part of the lawsuit unless they decided to opt out. The court held that the attorney for the class action taxpayers could file a blanket protest on behalf of all these taxpayers.

At that point, because of the impact that particular ruling had on local government finances, we went to the Montana Supreme Court. They agreed to look at the issue of payment of taxes under protest and ruled that the attorney for the taxpayers had not properly protested those taxes. They laid out the procedure that was necessary for the attorney to effectively protest those taxes. The Montana Supreme Court also indicated this was an important case with sensitive issues that need to be resolved quickly and asked us to do our best to try to resolve those issues.

We went back to the District Court and responded to the 15 issues. We argued the case in early November 1996. The District Court issued a decision in early December 1996. The case is now on appeal to the Montana Supreme Court. Oral argument is scheduled for February 18, 1997 at 2:00 p.m. We are anticipating the Montana Supreme Court will issue an expedited decision in the case. The District Court ruled 8 of the 15 issues in favor of the State. It didn't address 4 of the 15 issues and ruled in favor of the taxpayers on 2 issues.

Issue #1

Issue #1 involves late assessments in Gallatin County. It is clear that about half of the assessments were sent out late by the elected assessor in Gallatin County, most in the city of Bozeman. Statute section 15-8-201 says the DOR or its agent must, between January 1 and the second Monday in July in each year, ascertain names of all inhabitants and assess all property subject to taxation in each county. The second Monday in July 1992 was July 12. It appears those assessments were sent out after July 12, 1992 in Gallatin County. There is a companion statute in the same general area of the code, section 15-8-308 that states no assessment, or act relating to the assessment or collection of taxes, is illegal because the same was not completed within the time required by law. Although the one section says we are supposed to do it by the second Monday in July, the other section says no assessment is illegal because it was not completed within the time required by law. The District Court said that statute didn't apply because of a case called Butte Country Club which is an old case out of Silver Bow County involving a taxpayer who received a late assessment and the court said that assessment was invalid. The facts in the Butte case are completely different from the facts in this case. We are presenting the argument to the Montana Supreme Court that the District Court ignored section 15-8-308 which says a late

assessment is not illegal, we are optimistic that the Montana Supreme Court will agree.

The problem this has created is that half the assessments are illegal in Gallatin County, we assume that means they are to be based on the 1986 values whereas all of the other assessments in Gallatin County and statewide are based on the 1993 value, this creates an equalization problem. In addition, when the court decided the Butte Country Club case, there was an issue of whether or not, because of the late assessment, there was an ability to appeal that assessment. The legislature changed the law several years ago, so now it is clear that a person has 30 days after receiving an assessment to file an appeal. There is no cut off of an appeal because there was a late assessment.

{Tape: 1; Side: A; Approx. Time Count: 8:30; Comments: None.}

Questions from the Committee Members and Responses:

SEN. SPRAGUE asks if there is any legal statute that says one section of law takes precedence over the other. What is the penalty for not having your taxes filed by the second Monday in July?

Mr. Woodgerd states the District Court ruled that the assessment was illegal. It's not absolutely clear what that means. The DOR interpretation is that we would have to go back to the previous assessment of 1986.

CHAIRMAN DEVLIN asks if 1986 is the last assessment you could really rely on.

Mr. Woodgerd responds that you can't rely on that one either, because it is so old. There is a concept in law that says the specific statute prevails over the general. In the Butte Country Club case they used that statute to say that 15-8-308, the second statute, was more general and didn't apply.

CHAIRMAN DEVLIN asks what "expedite the decision" means, how soon?

Mr. Woodgerd replies the Montana Supreme Court set a quick briefing schedule and oral argument. I'm expecting a decision before the legislative session ends.

SEN. COLE asks if **Mr. Woodgerd** would like to speculate what the worst case scenario with the courts would be.

Mr. Woodgerd states the second issue may cause this to become more clear. Anything said now would be speculation, we don't have good direction on what the results will be if they determine this is a problem. One of the things we're asking the court to do is give us some direction.

CHAIRMAN DEVLIN asks why the DOR has not asked the legislature in past sessions for clarification on the two statutes that are evidently in conflict.

Mr. Woodgerd responds that the first statute says we will do our assessments by July 12, the second statute says if you don't do it by July 12 it isn't illegal. The DOR probably didn't ask for clarification because our view is that those assessments should go out by July 12.

SEN. BILL GLASER wonders why the DOR is asking the court for advice on the policy of the state and not the legislature.

Mr. Woodgerd responds I don't think we've done that. What we have told anyone that has asked is that until the Montana Supreme Court visits the constitutional issue for us, there isn't much we can or should do. It is important for us to wait and find out what the Montana Supreme Court is going to say. That is not something that the legislature can solve because it is a constitutional issue. Once we have figured out the ruling on the constitutional issue, then we need to look very carefully at what the legislature can do to help resolve this.

CHAIRMAN DEVLIN states copies are being made of the District Court decision. (EXHIBIT #4)

SEN. MIKE FOSTER apologizes for coming in late. I assume we are talking about the Gallatin County situation where the tax assessment went out after the statutory date. The DOR is saying that is okay and taxpayers are saying that is not okay. I find it interesting because the DOR works on deadlines, if a taxpayer doesn't meet that deadline, we're talking penalties and interest. But if the DOR doesn't meet a deadline, we're talking hey, be flexible here, work with us. I find it offensive that the rules do not apply both ways. It seems to me this is a matter the legislature can take care of but we are in court, so be it.

{Tape: 1; Side: A; Approx. Time Count: 8:35; Comments: None.}

Issue #2

Mr. Woodgerd explains issue #2 is different from issue #1 because it will throw out the entire appraisal. Issue #1 only affects Gallatin County. By statute the DOR is required to do its best to determine the market value of all property statewide. Three approaches to value must be used by appraisers, they are: 1) cost approach; 2) sales comparison approach; and 3) income approach. The 1986 reappraisal and appraisals prior to that used the cost approach for improvements and market approach for land. With the cost approach the improvement is valued based upon replacement cost new less depreciation. In the sales comparison approach, also called the market approach, we try to find comparable properties that have sold. The income approach applies to commercial property because it is based on the income

that property generates. The value of a piece of commercial property can be determined based upon how much income that commercial property brings in.

{Tape: 1; Side: B; Approx. Time Count: 8:45; Comments: None.}

In 1993, with the use of computers, we were able to use the CAMAS system to implement the sales comparison approach on residential properties. Our belief was, if we had enough information, this was the superior method for determining market value so we tried to use it as much as we could. When we didn't have sufficient information in sales of comparable property then we had to use the cost approach as that was the only approach available. On the commercial side, the sales comparison approach normally doesn't work because commercial properties tend to be unique and not comparable. We then look at the cost approach and, in some cases, the income approach. If we have the information, the income approach is the best approach for commercial property. When we had to, especially in residential areas, use the cost approach we tried to temper it with market information by using the economic condition factor. This is the general background for the CAMAS system.

Statute 15-7-112 states that the same method of appraisal and assessment must be used in each county of the state. The DOR has always interpreted the method as being all of the three approaches because those approaches all arrive at an estimate of market value. We see this as different approaches reaching essentially the same method, our Computer Assisted Mass Appraisal System. The District Court defined method as the same thing as approach and told us the DOR can't use different ones. The District Court went on to say they agreed with us, that the sales comparison/market approach is the best way to find the true market value of the property but, since you don't have the information to use comparable sales on every single piece of property in the State, you need to use the cost method. We still have to use the market method on land as this is the only way to value it. The district court also went on to say that, not only did it violate the statute, but it violated the constitutional requirement that properties be equalized. We think the judge is wrong, we have a case in Montana Supreme Court that was decided a few years ago, the Devoe Case, in which the court specifically told us we can't just use the cost approach, but have to consider market conditions and factors. Last week we received a decision from the District Court in Yellowstone County in which one of our 1986 appraisals were thrown out because we only used cost, they say we have to consider market conditions. We have District Courts telling us two different things. We think the Supreme Court, based on the Devoe case, will tell us we have to use the sales comparison approach and not only the cost approach.

The District Court also said that just because you found market value doesn't mean you've equalized values. The DOR feels that is clearly wrong, if we've found close to market value with our

methodology then we have equalized.

We filed our appeal and brief, the taxpayers filed a brief on Friday, the DOR is working on a reply brief which is due next Tuesday. We will orally argue the case on February 18, 1997 in the Montana Supreme Court. I'm optimistic that we have a good chance of having the District Court decision reversed.

{Tape: 1; Side: B; Approx. Time Count: 8:55; Comments: None.}

Questions from the Committee Members and Responses:

SEN. SPRAGUE asks if regional market values would be more applicable and is the constitutional question keeping you from equalization if you try to regionalize.

Mr. Woodgerd responds we do regionalize and go into neighborhoods. When we do the sales comparison approach we would never compare an improvement on Whitefish Lake with one in Wibaux. The definition of comparable sales is that it has to be in comparable neighborhoods. Our market values are based upon what is happening economically in that area.

SEN. SPRAGUE asks if the computer is doing a modeling concept. Does the computer know enough to model regionally or city wide or block wide?

Mr. Woodgerd states we use modeling or regionalization to make sure our costs are accurate for the place where the improvement or replacement is being constructed. When using sales comparison we construct areas we believe are the same economically but don't break them down into neighborhoods. We may have six different areas that we think are economically similar in Yellowstone County.

SEN. COLE asks if two systems will almost always have to be used to be equitable.

Mr. Woodgerd responds yes, we think we still have to use two different methods simply because we don't have the information to use the method we think does the best job.

SEN. COLE asks what effects this could have on other appraisal uses, such as sales and non-tax issues. You may not be able to use two or three systems on other cases.

Mr. Woodgerd knows that other appraisal people have expressed real concerns about this case and how it might effect their ability to use the three approaches to do appraisals.

CHAIRMAN DEVLIN asks if the DOR is just using the two systems.

Mr. Woodgerd responds yes, two on residential properties.

SEN. DOROTHY ECK states it is her understanding the District Court is wrong on the equalization issue. I can't imagine they won't rule that comparable costs equal market value. We probably ought to go back and amend the language to say method instead of methods. Could we come up with a comparable value that would address those areas where there aren't good sales figures? Could you look at a desirable area because of the natural resources, recreation, etc. in one county and compare it with similar areas in other counties? I know you do this within cities, would it be possible to come up with a market approach that could be applied to all residential appraisals?

Mr. Woodgerd replies it would be possible to come up with a system but how accurate would it be? The DOR has to rely on the advice of appraisal experts in determining whether it is an acceptable way and if it will be accurate enough. It is something we can and should take a look at. Regarding your first statement on method(s), I think it has already been suggested to change the statute to add an "s". At this point, because we have a constitutional issue, making that change isn't going to solve the problem. We should wait to see what the Montana Supreme Court says, perhaps there are some other things we want to do once we look at the opinion.

SEN. ECK states it would provide serious problems with equalization from east to west if the court says we must go back and use cost for all residential. It seems to me that's where the real constitutional issue would be.

Mr. Woodgerd states **SEN. ECK** has raised an issue that is big in DOR minds. One of the things that mitigates this somewhat is that land is still going to have to be valued based on a market system because you can't use cost on land. To some extent, land takes into account the difference between east and west but it doesn't account for everything.

CHAIRMAN DEVLIN asks if the DOR has ever gone into a area where they had a representative sale and also applied the cost minus depreciation approach.

Mr. Woodgerd states part of our system is to compare the sales comparison value with the cost approach. Based on that we apply an economic condition factor to cost. If we find, in an area, that the cost approach is consistently lower/higher than the market approach we'll apply a percentage factor to increase/decrease the cost approach to try to equalize with the market approach.

CHAIRMAN DEVLIN asks who determines the factor that is applied east and west and what level is it.

Mr. Woodgerd states it is determined mathematically based upon a mathematical difference. No one determines it with their own judgement.

CHAIRMAN DEVLIN asks if square footage cost is used for a start, isn't that comparable sale?

Mr. Woodgerd responds we determine what it would cost to replace that property new and then we depreciate it.

CHAIRMAN DEVLIN asks if that cost varies throughout the state.

Mr. Woodgerd states the cost will vary throughout the state based upon prices for labor, cost of lumber, concrete, etc.

SEN. GLASER asks **Mr. Woodgerd** to describe the demographics of the area in Great Falls that this judicial tax protest came from.

Mr. Woodgerd states the attorney is from Great Falls and there are 500 original plaintiffs, most from Great Falls. Some are from Flathead, Gallatin and Yellowstone Counties. I cannot identify any particular neighborhood that this comes out of.

SEN. SPRAGUE states that when this issue came up he went to his assessor and various county officials to get a sense of what was wrong. Mobile homes are an accident about ready to happen in the appraisal cycle. Is land taken into consideration as well? As I understand it mobile homes are taxed as personal property if the taxpayer doesn't own the land. If they own the land, mobile homes are taxed as real property. How does the DOR assess that situation where it could be personal property and also real property?

Mr. Woodgerd states this issue is not in Albright. The DOR is concerned that we are being fair and equitable in taxing mobile homes. There is a dichotomy in the sense that if the mobile home is moveable it should be taxed as personal property, like a vehicle. If the mobile home is put on a lot and is more or less permanent then it is taxed like a normal house.

CHAIRMAN DEVLIN asks if the DOR has asked for legislation for mobile homes.

Mr. Woodgerd responds no.

SEN. SPRAGUE states his understanding is that the dilemma is in a mobile home's taxable rate. One suggestion is that it be simplified by giving it the 3.86% like we do others.

SEN. STANG asks if **Mary Whittinghill**, DOR, could enlighten us on mobile homes.

Ms. Whittinghill states mobile homes are taxed at the same rate, 3.86%. There could be a potential problem when moving a mobile home. Since it is considered personal, a mobile home moving declaration is required before moving and the taxes have to be paid up front. When a mobile home is considered personal property, the mill levy is based on the prior year. If a mobile

home is moved prior to Albright or what the legislature decides to do for 1997, these property owners will be paying taxes based on the 1997 value and the old mill levy. Subsequently, if the legislature decides to lower mill levies this year the taxpayer mentioned above will not get that benefit. To alleviate the problem we have worked with the Treasurer to keep a list of all these taxpayers. There are not that many moving, but it could be a problem. We have, as part of HB 50 in 1993, requested an advisory group to study vehicles and mobile homes. We will eventually be bringing forward legislation at Revenue Oversight on the mobile home issue.

SEN. SPRAGUE states we have a problem in Yellowstone County, specifically in Billings Heights. Elderly people have sold their homes and moved into a mobile home; they own the mobile home and are buying the property. It is my understanding that a person qualifies for real property tax if they own the property and the mobile home. If they don't own the property, they qualify for personal property tax. Can you help clarify this for me?

Ms. Whittinghill explains they are taxed at the same rate. Sometimes the value of the land can support a lean of personal to real. The tax rate, 3.86%, is the same for personal and real property. She offers to visit with the DOR office in Yellowstone County and address this situation further for **SEN. SPRAGUE**.

SEN. SPRAGUE states he knows there is a concern and is trying to understand it so he can explain if not, why not. There weren't suggestions out of Yellowstone County relative to consistency, I'd like to visit with you and perhaps you could call Max Lemmington in Yellowstone County.

SEN. COLE states there is no difference except when the bills are sent, is that correct?

Ms. Whittinghill states that is correct.

{Tape: 1; Side: B; Approx. Time Count: 9:39; Comments: None.}

SEN. COLE had a hypothetical question earlier in the hearing, what could come out of this case, would you please follow up on that?

Mr. Woodgerd responds it is not clear what the effect of this issue is on the second issue. The DOR's perspectives is that we would have to find a way to reappraise all the property improvements in the state based upon a cost method, if the District Court decision is upheld. The taxpayer for the other side says this decision throws out the entire reappraisal and we need to go back to the 1986 values, therefore everyone gets a tax refund. The DOR feels a cost appraisal needs to be done on all the property that had a sales comparison appraisal. The majority of people would have a lower value, however there are a significant number of people who would have a higher value,

especially in eastern Montana. There would be some refunds to be granted taxpayers, but how would these refunds be paid for? The taxpayers will have to pay for these refunds, either through increased taxes or lower services. Right now it is all speculation on how this would be paid.

SEN. DEVLIN asks why the 1986 appraisal is any more valid than what we have been doing?

Mr. Woodgerd replies that is a good question. It is not the DOR who is saying to go back to 1986, it is the taxpayer's attorney.

SEN. COLE asks if the DOR was using cost appraisal in 1986. Isn't this before we went into the two systems.

Mr. Woodgerd states there are two reasons: 1) it is the last reappraisal that hasn't been challenged; and 2) it was before we started using the sales ratio assessment.

{Tape: 1; Side: B; Approx. Time Count: 9:45; Comments: None.}

PRESENTATION ON SAMPSON CASE

Mr. Woodgerd explains the Sampson case. This is a case the DOR won in the District Court and is on appeal by the taxpayers to the Montana Supreme Court. The issue involved the sales assessment ratio studies the legislature approved at the end of the 1986 reappraisal. The legislature felt economic conditions had changed and adjustments had to be made to those assessed values. Two legislatures passed the separate sales assessment ratio study bills. Those were subsequently declared unconstitutional by the Montana Supreme Court.

One case, the Roit Case, involved Cascade County. The Montana Supreme Court said all the people in Cascade County who got the ratio adjustment are entitled to a refund. The DOR refunded money to taxpayers in Cascade County.

The Sampson case comes from an attorney in Great Falls who thinks the Roit Case should be expanded statewide. The DOR says the legislature has set out specific requirements that have to be met to get a property tax refund, since these taxpayers did nothing for 5 years they are unable to meet the requirements. The District Court in Lewis & Clark County agreed with the DOR stating the case was too late and they can't get a refund. The potential refunds would be over \$40 million.

{Tape: 2; Side: A; Approx. Time Count: 9:50; Comments: None.}

Questions from the Committee Members and Responses:

SEN SPRAGUE asks when the Sampson case will be decided.

Mr. Woodgerd responds it will be at least 6 months before a

decision is made.

CHAIRMAN DEVLIN has a question on a completely different subject. When do we have to pay the Crow for their severance and is that amount \$270 million?

Mr. Woodgerd states no one knows the exact amount but \$270 million is close. The Attorney General's office is handling the litigation on that case. We have asked for reconsideration on bond, which means we've asked the Federal Court of Appeals to consider this case. Assuming we get a decision stating they will not reconsider it, the State of Montana will petition the U.S. Supreme Court to consider the case. That process will take most of a year, then it would have to go back to determine the exact amount and get a judgement that we have to pay, we would then have to go back to the District Court in Montana. This will be in the future unless we consent to speeding it up.

CHAIRMAN DEVLIN asks if the interest keeps accumulating?

SEN. SPRAGUE asks if the issue isn't really the interest, as it is getting out of hand.

Mr. Woodgerd states one of the issues to be determined is how much interest we have to pay, if any. The tax itself is slightly less than \$50 million. The rest of the \$270 million is interest.

SEN. COLE asks if the figures regarding the Shell Case have been taken out. This is really only going back to interest on the \$50-\$60 million.

Mr. Woodgerd replies that is correct, however, there is still the ability to appeal.

SEN. COLE asks what the differences are between this and the \$24 million escrow case.

Mr. Woodgerd responds I am not an expert on this case as I am not responsible for litigating it. As I understand the difference is that we've lost the first case. Now the question is about the money we have received from Westmoreland. Normally under State law, Westmoreland would be entitled to the refund, not the Crow Tribe. We've already settled with Westmoreland, we paid them \$50,000 and they agreed to drop any claim for this.

SEN. ECK asks if Westmoreland paid any of that to the tribe.

Mr. Woodgerd replies no, that is money Westmoreland collected from the tribe and paid the State. Essentially, our argument is that there isn't any legal requirement that the Crow Tribe should get this money as opposed to anybody else. It is money the State has collected, if anyone has a claim to this money it is Westmoreland as they are the taxpayer that paid it. Westmoreland has given up their claim, therefore the State should be able to

keep this money.

SEN. GLASER asks what happens if we should lose the Sampson case. Won't each taxing jurisdiction have to return the money?

Mr. Woodgerd states he thinks they will, but no one knows how much.

SEN. GLASER states I-105 states if you get sued and you lose then there is no cap.

Mr. Woodgerd responds that is true, there is a provision that allows millage for judgements.

SEN. GLASER states the losers under the reappraisal are the same ones who will lose heaviest in the lawsuit. There are some areas where this will be an insignificant amount of money, like eastern Montana. Legislators in the east need to help our neighbors in the west. Local taxpayers, not protected by 105 or the school caps, will have their taxes go up radically.

SEN. STANG states the Revenue Oversight Committee asked, at one time, if the Crow Tribe was willing to negotiate and they responded yes. We have never received a figure from the Department of Justice (DOJ) or the DOR on these negotiations. Do we have any indication of what that is?

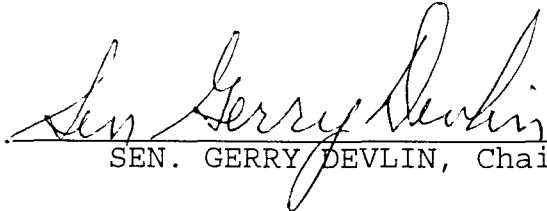
Mr. Woodgerd responds he was involved before the latest round of decisions. At that time they wanted \$100 million. Now that they have won the price would probably be steep.

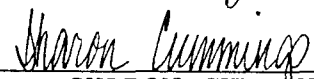
SEN. GLASER asks who is making the decisions, the Governor?

Mr. Woodgerd states he isn't sure what decision you mean. A delegation of people from the DOR and DOJ met with the Crow Tribe and talked about the settlement range. That information was sent to the Attorney General and Governor, it was decided not to go with that.

ADJOURNMENT

Adjournment: 10:01 a.m.


SEN. GERRY DEVLIN, Chairman


SHARON CUMMINGS, Secretary

GD/SC