

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on February 12, 1997,
at 8:00 A.M., in Room 413/415.

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)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Jeff Martin, Legislative Services Division
Renée Podell, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: None
Executive Action: SB 194, SB 272

EXECUTIVE ACTION ON SB 194

Discussion:

CHAIRMAN DEVLIN commented that they needed to revisit personal
property attached to a foreign vehicle.

SEN. FRED VAN VALKENBURG stated that he did not know they were
not taxing personal property attached to a vehicle and he wanted
further explanation of that. That gives out-of-state people a
huge advantage over state residents who are doing work that
involves the use of a vehicle. We may want to change that. We
might strike subsection (d) on page 4 of the gray bill, if we
want to make that property subject to taxation.

CHAIRMAN DEVLIN stated that right now if you owned a truck and had a piece of equipment on it, if you were from Montana, you would be paying taxes on that piece of equipment.

SEN. BARRY STANG clarified that if you are in Montana and have a welder on the back of your truck, you pay taxes on the welder. If you are from out-of-state and you had a welder on the truck you paid taxes on the welder. This bill wants to exempt the out-of-state people.

SEN. BOB DE PRATU stated that the sticker is in the wrong location. The sticker should be in the left rear window or in the window of the topper on a pickup.

SEN. MIKE SPRAGUE was concerned about the confusion involved in treating people differently.

SEN. DOROTHY ECK questioned how this tax is determined now?

SEN. MIKE FOSTER explained that the section they were looking at striking states that the owner of the foreign licensed motor vehicle shall make application to a county treasurer for registration upon an application form. He questioned whether section 61-3-701 is where the exemption is found regarding the movie industry and found out it is not. He agrees that subsection (d) should be stricken.

Motion: SEN. STANG MOVED SB 194 BE AMENDED.

Discussion:

SEN. MACK COLE asked if this meant we would be taxing a motor vehicle on a quarterly basis?

Jeff Martin explained that this clarifies that it will be on a calendar year basis.

SEN. STANG questioned whether the personal property would be on a quarterly, or a partial year basis, too. The same as a vehicle.

Mr. Martin explained that would be taxed as other personal property.

Vote: THE MOTION ON THE PROPOSED AMENDMENT CARRIED UNANIMOUSLY.

Motion: SEN. FOSTER MOVED SB 194 DO PASS AS AMENDED.

Discussion:

SEN. STANG expressed that the current way is working just fine. If they catch these people, they require them to buy a license plate for whatever portion of the year they are here. The department said it isn't a problem. We are giving the break to

the people who don't live here and come here and take jobs away from people who live in our state.

SEN. DE PRATU saw this as a public relations situation. If there is a new Montana plate on a vehicle, you know it has been taken care of. If the law enforcement personnel do not see a Montana plate, they know there is a reason. He is not in favor of the bill.

Vote: THE MOTION CARRIED ON ROLL CALL VOTE.

Motion: SEN. STANG MOVED TO RECONSIDER THEIR ACTION ON SB 194.

Vote: THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. STANG MOVED TO TABLE SB 194. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 272

Discussion:

SEN. SPRAGUE commented that regarding inheritance tax, when going lineal, if the stepmother has been brought into it you start going lateral with decedents who are 18 years old. You make a distinction between prior to 18 and after 18. Why does the age of 18 put them out of the loop? The argument was that at 18 you don't care as much for your stepmother as you would before. There was no bonding. You were an adult and did not bond.

SEN. DE PRATU wanted to be careful not to make it automatic that a stepchild is in line to inherit. There are times you do not want the estate to go to the other partner's child automatically.

SEN. VAN VALKENBURG commented that is exactly what is being proposed. Any stepchild would be considered a lineal decedent, not subject to taxation in terms of the inheritance, regardless of age. You can become a stepchild at age 70.

SEN. SPRAGUE stated this was just plugging in a new decedent. If the temporary decedent died before the decedent, they did not lose their place in line.

SEN. COLE stated he was not comfortable with the bill. There are other ways of taking care of this through wills.

SEN. STANG clarified that this is simply talking about taxing the inheritance.

CHAIRMAN DEVLIN questioned how federal law handled this?

SEN. DE PRATU stated there was a federal inheritance tax after \$600,000.

SEN. STANG understood that they pay state tax first and then do not pay the federal tax. The premise is to have it paid to Montana.

SEN. GLASER asked how one could say that an oldest daughter is going to be looked at differently than your second oldest daughter. When he got married, his oldest daughter was 18. The next daughter was 17. The relationship between himself and his daughter will be confirmed in his will. His daughter would be treated differently because she has a natural father that is still alive. He can't ask her to abandon her father so he can adopt her. We should put this bill in the order we would like it, if it does sneak out of here.

Motion: **SEN. GLASER MOVED TO AMEND SB 272.**

SEN. GLASER would strike the new language on page 1, lines 20-21 and after decedent, put a period. Let them establish this in the will.

SEN. VAN VALKENBURG explained that in 72-2-613 stepchild means a child of the surviving deceased or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor. What is different there is the child of a former spouse. In a marriage which is a second marriage for your spouse, and that spouse had a child of her first marriage, if the couple in the second marriage get divorced and the husband moves on to a third marriage, he still has a stepchild from his second wife's first marriage. This would be lineal according to the change we are proposing to make.

SEN. STANG interjected that if she died before he died, it would be lateral, unless he had adopted her.

SEN. VAN VALKENBURG explained that this stated surviving, deceased or former spouse. It doesn't matter if she died.

SEN. FOSTER felt the question would be mute if the person didn't leave the stepchild of the second wife any money.

SEN. VAN VALKENBURG explained that if he did leave the child a million dollars, should the State of Montana forego the taxes on that?

SEN. SPRAGUE stated that basically, when you became 18, you moved over to the lateral position.

SEN. DE PRATU disagreed. If you were a stepchild at 18 or younger, you maintained that relationship.

SEN. SPRAGUE stated the woman testifying stated that her sister qualified but she did not.

SEN. VAN VALKENBURG clarified that was because she was more than 18 before her father remarried.

SEN. ECK explained they could be lineal to the mother if she took the trouble to adopt them, even though they are 40 years old.

SEN. GLASER expressed concern with a living trust in which he would give his wife use of the money until he passes away. When he passes away the money is divided amongst his six children. Under this he would only have five children.

SEN. VAN VALKENBURG stated he could identify his sixth child in the living trust.

CHAIRMAN DEVLIN asked **Mr. Martin** to check into how this is handled on the federal level. He was very concerned about how far this would open the door.

SEN. VAN VALKENBURG clarified that they do have the power to write special legislation that applies to only one specific case. The Constitution says that they are prohibited from doing that unless and when there is an exception stating that general legislation would not apply to the situation. They could say that the Snotgrass family is exempt from paying this tax. It would not be opened up to the entire world. This would set a precedent that would say that they will start looking at individual cases in the Legislature and that is something we do not want to do.

SEN. GLASER WITHDREW HIS MOTION.

SEN. ECK stated she had a request from Majel Russell wanting a committee bill which would clarify that tribal government property is tax exempt. She could not believe that it isn't.

CHAIRMAN DEVLIN explained that they have visited with several committee members. He understood they were not being taxed now. The Attorney General has said that the local governments could tax this if they desire.

Majel Russell, Legal Counsel for the Crow Tribe, presented written testimony in support of a tax exemption for tribal government owned fee lands. The Crow Tribe has been working to promote legislation to include tribal governments in the exempt categories for property taxes. That would be MCA 15-6-201, which lists all the exempt categories. Across the state it has been hit and miss on what Tribal governments have been taxed. Yellowstone, Big Horn, Missoula, and Flathead Counties have not taxed the Crow. The only reservation that has been taxed is Fort Peck. Some counties have interpreted Tribal governments to fit within the local government definition. They are looking for consistency and ask that they be included in the exempt category.

In early January, the Attorney General's Office had sent a letter to Bighorn County stating that they could go ahead and tax the Crow Tribe if they chose to do so. They are talking about government owned lands. These are lands owned by the Tribal government, the same as the county or city government.

Montana has made a real effort to treat Tribes with the government to government relationship. Several reservations in the state went through the General Allotment Act. This took all the reservation lands and allotted them to the individual Indians. When the Indians were not able to make an agricultural effort work, they were forced to sell and that is the process by which we have allotted fee land ownership on Indian reservations. She presented **EXHIBIT 1**.

Questions From Committee Members and Responses:

CHAIRMAN DEVLIN, referencing the lands that they are repurchasing, asked if they had first option to buy back the lands?

Ms. Russell stated they did have a preference to repurchase the lands that are on the reservation if they have the money.

CHAIRMAN DEVLIN asked if the lands were being taxed before they purchase them?

Ms. Russell explained that if they are owned by a non-Indian, the people who have owned them have paid the tax.

SEN. COLE asked if buildings would also be exempt?

Ms. Russell stated that if they bought a building which is currently on fee land it would be exempt. Most of the buildings the Tribe uses for governmental operations are on trust property. They purchased a number of tax deeds at sheriff's sale in towns that have families living on them and the families were unable to pay their taxes. The Tribe purchased the tax deeds, this would also apply to those until they can get them into trust status.

CHAIRMAN DEVLIN asked how long they have been doing this?

Ms. Russell explained their efforts have been to purchase from Tribal members. It has only been within the last five to six years that they have actively tried to seek purchasing some of the lands on reservations. None of their significant pieces have made their way into trust. Washington told them they need to have a comprehensive land use plan, an overall economic development plan, etc.

SEN. SPRAGUE stated that the Tribes on fee lands have first right of refusal. On a ranch there would be buildings which were being acquired. They would then come off the tax roll. What would be the scenario with the lands that were fee lands that would go

back into Tribal ownership? Would they become Tribal government lands never to be sold to Tribal members?

Ms. Russell stated their 10-15 year plan is that those lands would return into Tribal government ownership and they have only purchased lands to save some of the family homes. They have looked at the lands which they have purchased for an economical development effort. They would not buy fee lands outside the exterior boundaries of the reservation because the possibility of putting those lands into trust would be very slim.

SEN. ECK asked if all they were seeking in the committee bill was to include Tribal lands in the one section?

Ms. Russell explained that all they are seeking would be to also list tribal governments. To make this safe and consistent they would like to say "federally recognized tribal governments".

CHAIRMAN DEVLIN, referring to Fort Peck where they are taxing now, asked if those were fee lands?

Ms. Russell stated they were fee lands.

Dennis Adams stated that this has been a very confusing issue for many years. The Department of Revenue couldn't agree and that is why the state has not been taxing property owned by tribal governments. They were just getting into fee land owned by tribal members. It varies from county to county.

CHAIRMAN DEVLIN asked if they would pay those taxes in protest?

Mr. Adams stated they are probably paid in protest because the state has no way of enforcing collection against the Tribe as a sovereign government. The reason for this bill is to prevent litigation which is expensive for both parties.

CHAIRMAN DEVLIN asked for clarification regarding the Attorney General's ruling?

Ms. Russell stated that he didn't issue an opinion, he wrote a letter to the Bighorn County Commissioners. It said that the county could tax the Tribe. They want to work this out on an amicable basis. They do not want this to end up in litigation. Glacier County is in the same situation with the Black Feet. They have not taxed the Black Feet.

Anytime that the tribal governments exercise their authority as a sovereign nation to tax it has caused great public outcry in the state. The two major taxes that the Tribes have been assessing are the resort and utility taxes. There have been bomb threats in the tribal office. They have had bomb threats in the casino and yet that is an inherent sovereign power that tribal governments do possess. They hope to come to an agreement amicably.

CHAIRMAN DEVLIN asked if they did not tax them, then would they not tax other entities on the reservations, like the railroads.

Ms. Russell explained that the railroads are not being taxed. They have already paid taxes.

SEN. SPRAGUE questioned whether their concern was the tax fee acres? There may be a distinction between taxable versus nontaxable purchases. Acreage in itself could be exempted. If you were purchasing assets which were currently being taxed, that may not fall into the same category as tax fee acreage. Is that what the counties are doing?

Ms. Russell answered that they have not made a distinction between undeveloped ground and land with improvements. They are taxed in the same manner. They are working to purchase some of the major ranches which have basically monopolized agricultural efforts on the reservation. They would buy those for agricultural purposes for the benefit of the Tribe. Philosophically it has always been difficult for the Crow people to have the checkerboard reservation.

CHAIRMAN DEVLIN asked how many acres they were talking about statewide?

Ms. Russell did not know on a statewide basis. On the Crow reservation they are talking about 25,000 fee acres.

SEN. VAN VALKENBURG asked how much fee land is out there that the Tribe might potentially purchase in the future?

Ms. Russell stated their reservation is 2.1 million acres. This would be a potential 500,000 acres.

Clara Nomee stated she appreciates the committee listening to this. She is a chairperson who does not want to hurt another government. She wants to negotiate. She has talked to Governor Racicot. She explained that the government made an error. They never straightened that out. It has been very difficult for her to deal with the State of Montana. She believes in government to government relationships. She loves the State of Montana.

Ms. Russell stated that when they looked for people to help them with this legislation there was opposition because of the severance tax case. The severance tax case was filed 19 years ago, after a long and drawn out negotiation with the State of Montana. They even proposed a split tax with the state. The state totally disregarded the tribal government sovereign authority to have a severance tax. They feel very badly that there is such an anti-Crow sentiment over a court decision.

SEN. SPRAGUE questioned if we assumed that fee tax was eliminated and the Tribe is trying to regain it's original reservation boundaries. Is that what is going on?

Ms. Russell stated she did not know how realistic that was and what kind of money was needed, philosophically they would like to own all the lands which were originally theirs.

SEN. SPRAGUE questioned whether that would result in the tribal government becoming too big and owning everything?

Ms. Russell felt they would get into a program where tribal members themselves could purchase tracts of land but they would try to keep it within tribal membership so they could maintain the trust status.

SEN. STANG asked what the potential impact would be on Bighorn County if the Tribes purchased all the land they want to purchase.

Mr. Adams answered the piece of property they purchased this last year would have been close to \$20,000 in tax to Bighorn County. The ranch they bought, the whole parcel was 50,000 acres but only 22,000 acres was fee land. This would impact about a dollar an acre. Over a period of time the Tribe would end up with most of this land anyway. All the ranches have a cloud on their title on the reservation.

Ms. Russell explained that the Section Two Provision was designed to prevent non-Indians from owning large numbers of Indian acres. The Bureau of Indian Affairs didn't police that real carefully and there are many violations of Section Two.

SEN. SPRAGUE saw this as panic legislation.

Ms. Russell stated that they had written to Mack Cole in December and did not learn until January 28 that he hadn't prepared a bill for them.

SEN. COLE explained that when this was first brought to him they were going to see if there were other Tribes interested. It has been only recently that he found out there were other Tribes interested. There are large acreages at Black Feet and Fort Peck.

SEN. ECK felt that the Department of Revenue and the Department of Justice will negotiate with everyone else for taxes but their position has always been that the only way to get this settled right is to go to court. She thinks it would be useful to have a document which outlined where we have been with the Tribes.

{Tape: 2; Side: a; Approx. Time Count:}

Ms. Russell expressed that Big Horn County has always had plenty of a tax base due to the mines in the area.

CHAIRMAN DEVLIN explained it would take a 3/4 vote of the committee for a committee bill.

Ms. Menomi stated there are only two or three treaty tribes and the Crow Tribe is one of them.

CHAIRMAN DEVLIN commented that years ago our schools stopped teaching Montana geography and Montana history and that is a huge loss.

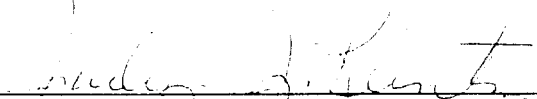
ADJOURNMENT

Adjournment: The meeting adjourned at 9:56 a.m.


SEN. GERRY DEVLIN, Chairman


RENEE PODELL, Secretary

GD/RP


Transcribed by Judy J. Keintz