

1 *Senate* BILL NO. 150
 2 INTRODUCED BY *Stacy Hager Rasmussen Brown*
 3 *Stacy Hager Rasmussen Brown*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 PAYMENT OF INTEREST AND ATTORNEYS' FEES FOR RECOVERY OF
 6 TAXES PAID UNDER PROTEST; AND AMENDING SECTION 84-4502,
 7 R.C.M. 1947."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 84-4502, R.C.M. 1947, is amended to
 11 read as follows:

12 "84-4502. Payment of taxes under protest -- action to
 13 recover. (1) In all cases of levy of taxes, licenses or
 14 other demands for public revenue which are deemed unlawful
 15 by the party whose property is thus taxed, or from whom such
 16 tax or license is demanded or enforced, such party may
 17 before such tax or license becomes delinquent pay under
 18 written protest such tax or license, or any part thereof,
 19 deemed unlawful, to the officers designated and authorized
 20 to collect the same, specifying the grounds of protest; and
 21 thereupon the party so paying, or his legal representatives,
 22 may bring an action in any court of competent jurisdiction
 23 against the officers to whom said license or tax was paid,
 24 or against the county or municipality in whose behalf the
 25 same was collected, and the state department of revenue,

1 which shall be served with summons and copy of the
 2 complaint, to recover such tax or license, or any portion
 3 thereof, paid under protest; provided, that any action
 4 instituted to recover any license or tax paid under protest
 5 shall be commenced and summons served within sixty (60) days
 6 after the date of payment of the same; provided further,
 7 that when any such license or tax is payable in installments
 8 the first installment, or so much thereof as may be deemed
 9 unlawful, may be so paid under written protest and suit
 10 commenced and summons served to recover the same within the
 11 time herein prescribed, and if any subsequent installment of
 12 such license or tax shall become due or payable before the
 13 final determination of the suit commenced to recover the
 14 first installment, or portion thereof, so paid under
 15 protest, then such subsequent installment, or portion
 16 thereof deemed unlawful, may also be paid under written
 17 protest, and no suit or action need be commenced to recover
 18 the same, but the determination of the suit or action
 19 commenced to recover the first installment, or portion
 20 thereof, paid under protest, shall determine the right of
 21 the party paying such subsequent installment to have the
 22 same, or any part thereof refunded to him. All such licenses
 23 and taxes, when so paid under protest, shall be deposited by
 24 the treasurer of the county or municipality to the credit of
 25 a special fund to be designated as protest fund, and no part

1 thereof shall be paid over to any officer, or placed in any
 2 other fund or used for any purpose whatever, but the whole
 3 thereof shall be retained in such protest fund until the
 4 final determination of any suit or action to recover the
 5 same.

6 (2) If no action is commenced within the time herein
 7 specified, or if such action be commenced and finally
 8 determined in favor of the county or municipality, or
 9 treasurer thereof, the amount of such license or tax shall
 10 be taken from such protest fund and deposited to the credit
 11 of the fund or funds to which the same property belongs, but
 12 if such action is finally determined adversely to such
 13 county or municipality, or the treasurer thereof, then the
 14 treasurer shall, upon receiving a certified copy of the
 15 final judgment in said action, refund the amount of such
 16 license or tax, with costs of suit ~~without--interest,~~
 17 attorneys' fees, and interest at the rate of 6% a year from
 18 the date of payment under protest, to the person in whose
 19 favor such judgment is rendered; provided, that if such
 20 action was commenced for the purpose of recovering the first
 21 installment, or any portion thereof, of any such license or
 22 tax, and any subsequent installment thereof, has been paid
 23 under protest, as herein provided, then the county treasurer
 24 shall, at the time of refunding the amount of such first
 25 installment required by such judgment also refund such

1 portion of any subsequent installment as the person holding
 2 such judgment is entitled to recover, ~~without-interest,~~
 3 together with interest thereon at the rate of 6% a year from
 4 the date of payment under protest."

-End-

STATE OF MONTANA

REQUEST NO. 111-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 20, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 150 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION

This bill provides for the payment of interest and attorneys' fees for recovery of taxes paid under protest.

ASSUMPTIONS

There will be no effect on state or local revenues. It is impossible to estimate what level of state expenditures might be required since neither the number of cases where taxes are paid under protest nor the magnitude of attorney's fees involved can be anticipated.

FISCAL IMPACT

Effect on Revenue: No effect

Effect on Expenditures: Impossible to estimate

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES

A city or county would be required to pay attorney's fees and interest in any action for recovery of taxes paid under protest which is decided against it.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. Drury
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1-24-77

Approved by Committee
on Taxation

1 SENATE BILL NO. 150
2 INTRODUCED BY DUNKLE, MURRAY, ROSKIE,
3 DOVER, STORY, HAGER, RASMUSSEN, BROWN
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
6 PAYMENT OF INTEREST ~~AND--ATTORNEYS--~~FEEES FOR RECOVERY OF
7 TAXES PAID UNDER PROTEST; AND AMENDING SECTION 84-4502,
8 R.C.M. 1947."
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 84-4502, R.C.M. 1947, is amended to
12 read as follows:
13 "84-4502. Payment of taxes under protest -- action to
14 recover. (1) In all cases of levy of taxes, licenses or
15 other demands for public revenue which are deemed unlawful
16 by the party whose property is thus taxed, or from whom such
17 tax or license is demanded or enforced, such party may
18 before such tax or license becomes delinquent pay under
19 written protest such tax or license, or any part thereof,
20 deemed unlawful, to the officers designated and authorized
21 to collect the same, specifying the grounds of protest; and
22 thereupon the party so paying, or his legal representatives,
23 may bring an action in any court of competent jurisdiction
24 against the officers to whom said license or tax was paid,
25 or against the county or municipality in whose behalf the

1 same was collected, and the state department of revenue,
2 which shall be served with summons and copy of the
3 complaint, to recover such tax or license, or any portion
4 thereof, paid under protest; provided, that any action
5 instituted to recover any license or tax paid under protest
6 shall be commenced and summons served within sixty (60) days
7 after the date of payment of the same; provided further,
8 that when any such license or tax is payable in installments
9 the first installment, or so much thereof as may be deemed
10 unlawful, may be so paid under written protest and suit
11 commenced and summons served to recover the same within the
12 time herein prescribed, and if any subsequent installment of
13 such license or tax shall become due or payable before the
14 final determination of the suit commenced to recover the
15 first installment, or portion thereof, so paid under
16 protest, then such subsequent installment, or portion
17 thereof deemed unlawful, may also be paid under written
18 protest, and no suit or action need be commenced to recover
19 the same, but the determination of the suit or action
20 commenced to recover the first installment, or portion
21 thereof, paid under protest, shall determine the right of
22 the party paying such subsequent installment to have the
23 same, or any part thereof refunded to him. All such licenses
24 and taxes, when so paid under protest, shall be deposited by
25 the treasurer of the county or municipality to the credit of

1 a special fund to be designated as protest fund, and ~~no part~~
 2 thereof shall be paid over to any officers or placed in any
 3 other fund or used for any purpose whatever, but ~~the whole~~
 4 thereof shall be INVESTED IN INTEREST-BEARING DEPOSITS IN
 5 LOCAL BANKS OR SAVINGS AND LOAN ASSOCIATIONS AND retained in
 6 such protest fund until the final determination of any suit
 7 or action to recover the same. NOTHING CONTAINED HEREIN
 8 PROHIBITS THE INVESTMENT OF THE MONEYS IN THIS FUND IN THE
 9 STATE UNIFIED INVESTMENT PROGRAM.

10 (2) If no action is commenced within the time herein
 11 specified, or if such action be commenced and finally
 12 determined in favor of the county or municipality, or
 13 treasurer thereof, the amount of such license or tax shall
 14 be taken from such protest fund and deposited to the credit
 15 of the fund or funds to which the same property belongs, but
 16 if such action is finally determined adversely to such
 17 county or municipality, or the treasurer thereof, then the
 18 treasurer shall, upon receiving a certified copy of the
 19 final judgment in said action, refund the amount of such
 20 license or tax, with costs of suit ~~without interest,~~
 21 ~~attorneys' fees, and interest at the rate of 6% a year~~
 22 CURRENTLY PAID ON SHORT-TERM INTEREST-BEARING TIME DEPOSITS
 23 IN BANKS IN THE COUNTY, OR 5% A YEAR, WHICHEVER IS GREATER,
 24 from the date of payment under protest, to the person in
 25 whose favor such judgment is rendered; provided, that if

1 such action was commenced for the purpose of recovering the
 2 first installment, or any portion thereof, of any such
 3 license or tax, and any subsequent installment thereof, has
 4 been paid under protest, as herein provided, then the county
 5 treasurer shall, at the time of refunding the amount of such
 6 first installment required by such judgment also refund such
 7 portion of any subsequent installment as the person holding
 8 such judgment is entitled to recover, ~~without interest,~~
 9 together with interest thereon at the rate of 6% a year from
 10 the date of payment under protest."

11 SECTION 2. APPLICATION. THIS ACT APPLIES TO ANY SUIT
 12 FILED AFTER JULY 1, 1977.

-End-

THIRD READING

MISSING

SENATE BILL NO. 150

INTRODUCED BY DUNKLE, MURRAY, ROSKIE,
DOVER, STORY, HAGER, RASMUSSEN, BROWN

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deemed unlawful, to the officers designated and authorized
to collect the same, specifying the grounds of protest; and
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against the officers to whom said license or tax was paid,
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same was collected, and the state department of revenue,
which shall be served with summons and copy of the
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