

HOUSE BILL 758

IN THE HOUSE

February 12, 1979

Introduced and referred to
Committee on Taxation.

March 24, 1979

Committee recommend bill, as
amended, do not pass.

March 26, 1979

Report adopted.

House BILL NO. *758*

INTRODUCED BY *Frank J. Brown* *Don Hoffmann*
Walt Stager *Armenack*

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT A CORPORATION WITH 25 SHAREHOLDERS OR MORE FROM RECOVERING INTEREST ON THE AMOUNT OF TAX PAID UNDER PROTEST THAT EXCEEDS \$10,000; AMENDING SECTION 15-1-402, MCA."

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

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest -- action to recover. (1) In all cases of levy of taxes, licenses, or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed or from whom such tax or license is demanded or enforced, such party may, before such tax or license becomes delinquent, pay under written protest such portions of such tax or license deemed unlawful to the officers designated and authorized to collect the same, specifying the grounds of protest. Thereupon the party so paying or his legal representatives may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid or against the county or municipality in whose behalf the same was collected and the department of revenue, which shall be served with summons and copy of the complaint, to recover

such portions of such tax or license paid under protest. Any action instituted to recover any such portions of license or tax paid under protest shall be commenced and summons served within 60 days after the date of payment of the same. When any such license or tax is payable in installments, the first installment portion of such tax or license as may be deemed unlawful may be paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment portion paid under protest, then such subsequent installment portion deemed unlawful may also be paid under written protest and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment portion paid under protest shall determine the right of the party paying such subsequent installment to have the same or any part thereof refunded to him. All such portions of licenses and taxes when so paid under protest shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund and shall be invested in interest-bearing deposits in local banks or savings and loan associations and retained in such protest fund until the final determination of any suit

1 or action to recover the same. Nothing contained herein
 2 prohibits the investment of the moneys of this fund in the
 3 state unified investment program.

4 (2) ~~If Except as provided in subsection (3),~~ if no
 5 action is commenced within the time herein specified or if
 6 such action be commenced and finally determined in favor of
 7 the county or municipality or treasurer thereof, the amount
 8 of such protested portions of the license or tax shall be
 9 taken from such protest fund and deposited to the credit of
 10 the fund or funds to which the same property belongs, but if
 11 such action is finally determined adversely to such county
 12 or municipality or the treasurer thereof, then the treasurer
 13 shall, upon receiving a certified copy of the final judgment
 14 in said action, refund to the person in whose favor such
 15 judgment is rendered the amount of such protested portions
 16 of the license or tax, with costs of suit and interest at
 17 the rate currently paid on short-term interest-bearing time
 18 deposits in banks in the county or 5% a year, whichever is
 19 greater, from the date of payment under protest. ~~If Except~~
 20 ~~as provided in subsection (3),~~ if such action was commenced
 21 for the purpose of recovering the first installment portions
 22 of any such license or tax and any subsequent installment
 23 thereof has been paid under protest as herein provided, then
 24 the county treasurer shall, at the time of refunding the
 25 amount of such first installment required by such judgment,

1 also refund such portion of any subsequent installment as
 2 the person holding such judgment is entitled to recover,
 3 together with interest thereon at the rate of 6% a year from
 4 the date of payment under protest.

5 ~~(3) If a corporation with 25 shareholders or more~~
 6 ~~brings an action under this section, the corporation may not~~
 7 ~~recover interest on the amount of the refund in excess of~~
 8 ~~\$10,000, if any."~~

-End-

STATE OF MONTANA

REQUEST NO. 370-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 15, 19 79, there is hereby submitted a Fiscal Note for House Bill 758 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

This proposed bill prohibits a corporation with 25 shareholders or more from recovering interest on the amount of tax paid under protest that exceeds \$10,000.

ASSUMPTIONS

The fiscal impact of this legislation cannot be accurately determined, but it should be minimal. There might be a slight increase in revenues to the level of government that administers the tax that was under protest, but it would be impossible to differentiate between state and local revenues.

FISCAL IMPACT

The fiscal impact cannot be determined.

EFFECT ON LOCAL GOVERNMENT

No estimate can be made.

(Prepared by the Department of Revenue)

Richard L. Stenzel
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 4/21/79