

SENATE BILL 240

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Taxation.
January 25, 1979	Fiscal note requested.
February 1, 1979	Fiscal note returned.
March 1, 1979	Statement of Intent adopted. Committee recommend bill, do pass, as amended (minority).
March 3, 1979	Printed and placed on members' desks.
March 5, 1979	Second reading, indefinitely postponed.
March 6, 1979	On motion, Senate reconsider its action taken on second reading previous Legislative Day. Motion failed.

1 *Scott* BILL NO. *240*
 2 INTRODUCED BY *Watt Rasmussen* *Rasmussen* *McHenry*
 3 *De Valkenberg* *Palmer Hager* *Bob Brown*

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A
 5 REPLACEMENT TAX FOR THE PROPERTY TAX NOW LEVIED ON HABITABLE
 6 PROPERTY AND PROVIDING A METHOD FOR ADMINISTERING THE TAX;
 7 AMENDING SECTION 15-30-121; AND PROVIDING AN EFFECTIVE
 8 DATE."

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

11 NEW SECTION. Section 1. Intent. (1) It is the purpose
 12 of the legislature to base the taxation of housing and the
 13 support of local government on people's ability to pay.
 14 Since all people use housing, all who are able to do so will
 15 pay taxes to support local government.

16 (2) The legislature hereby provides a new method of
 17 assessing and collecting most taxes now levied on housing.
 18 The replacement tax is based on the total adjusted gross
 19 income of all residents within each taxing jurisdiction.
 20 Like property taxes, the replacement tax will vary from
 21 place to place and year to year. However, unlike property
 22 taxes, the replacement tax will never force old, poor, and
 23 sick people to sell their homes because of high tax bills;
 24 nor will those who improve their homes be penalized by
 25 higher taxes.

1 NEW SECTION. Section 2. Definitions. For purposes of
 2 [sections 2 through 18], the following definitions apply:

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- 4 15-30-111.
- 5 (2) "Department" means the department of revenue.
- 6 (3) "Employee" means employee as defined in 15-30-201.
- 7 (4) "Employer" means employer as defined in 15-30-201.
- 8 (5) "Governmental unit" means school districts,
- 9 incorporated cities and towns, counties, and the state.
- 10 (6) (a) "Habitable property" means:
- 11 (i) all buildings, including condominiums, apartments,
- 12 and rest homes, and mobile homes, intended for permanent
- 13 human habitation; and
- 14 (ii) buildings, such as garages or storage sheds,
- 15 normally associated with residences.
- 16 (b) "Habitable property" does not include:
- 17 (i) mobile homes, motor homes, trailers, campers, or
- 18 other personal property held as stock-in-trade by a
- 19 distributor or dealer or used for recreational purposes;
- 20 (ii) land; or
- 21 (iii) hotels, motels, or other property occupied
- 22 principally by nonresidents, tourists, or other transients.
- 23 (7) "Net rent" means payments made to an owner of
- 24 housing for use of the property, but not including
- 25 additional payment for utilities or services.

1 (8) "Resident" means resident as defined in 15-30-101.

2 (9) (a) "Special taxing district" means any district
3 established pursuant to state law that is:

4 (i) established by a unit of local government to
5 provide a specific service or capital improvement; or

6 (ii) established by an order of district court or a
7 department of state government with the authority to
8 establish a budget and levy mills to provide a specific
9 service or capital improvement.

10 (b) School districts are not special taxing districts.

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19 (3) establish and maintain a list of all habitable
20 property in the state;

21 (4) continue to assess and keep records of the value
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23 (5) determine questions of residency and other issues
24 arising from the administration of the replacement tax;

25 (6) revise state income tax forms or prepare

1 additional forms as necessary to secure information
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3 (7) audit replacement tax returns as necessary;

4 (8) keep taxpayers' replacement tax records
5 confidential, under the procedures established in 15-30-301;

6 (9) provide forms and instructions to local officials
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8 (10) perform other duties as specifically provided in
9 [this act]; and

10 (11) publish any rules necessary for administering the
11 replacement tax.

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13 variable rates. (1) In addition to the taxes imposed in
14 sections 15-30-103 and 15-30-104, a replacement tax is
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16 taxpayers of the state.

17 (2) The rate of tax may vary from year to year and in
18 each governmental unit. The tax rate in any governmental
19 unit in a taxable year is 10% of the total mill levy imposed
20 in that governmental unit that year. The total mill levy is
21 the sum of all the levies imposed on property within a
22 governmental unit.

23 (3) The tax rate for each governmental unit shall be
24 applied to the adjusted gross income of each taxpayer
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1 NEW SECTION. Section 5. Habitable property exempt
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18 (2) These payments shall be deducted from the
19 taxpayer's total replacement tax liability as shown on his
20 replacement tax statement for that calendar year.

21 (3) Any taxpayer not subject to withholding who fails
22 to make the semiannual payment required in this section is
23 subject to a penalty of 10% of the semiannual payment due.

24 (4) A person who becomes or ceases to be a resident of
25 the state, as defined in [section 2], must pay replacement

1 taxes on the income he earned while a resident. He must make
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3 NEW SECTION. Section 9. Filing of return and
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9 adjusted gross income, as reported on his income tax return.

10 (2) As soon as possible after making this calculation,
11 the department shall mail a statement to the taxpayer
12 showing:

13 (a) his total replacement tax liability for the
14 previous year;

15 (b) any withholdings or advance partial payments
16 credited to him;

17 (c) how these figures were determined; and

18 (d) any balance due.

19 (3) If the amount withheld exceeds the taxpayer's
20 total replacement tax liability by more than \$1, the
21 department shall refund the excess to the taxpayer.

22 (4) If the taxpayer's total liability exceeds his
23 withholdings or advance partial payment by more than \$1, the
24 taxpayer shall pay the tax due by the fifth day of the month
25 after the statement was received.

1 (5) Refunds may be made or statements of additional
2 tax liability may be mailed when subsequent audits or
3 amended returns alter a taxpayer's replacement tax
4 liability.

5 NEW SECTION. Section 10. Penalty and interest. (1)
6 All replacement taxes not paid when due are delinquent, and
7 interest of 2/3 of 1% per month shall be collected on the
8 unpaid balance. In addition, a penalty of 5% of the
9 delinquent tax shall be collected.

10 (2) All interest and penalties collected by the
11 department shall be placed in the state general fund.

12 NEW SECTION. Section 11. Collection of delinquent
13 taxes. The department may use the procedure provided in
14 15-30-311 for the collection of delinquent replacement
15 taxes.

16 NEW SECTION. Section 12. Application for revision --
17 appeal. (1) An application for revision of replacement tax
18 liability may be filed with the department by a taxpayer
19 within 5 years after the original due date of the return.

20 (2) If the taxpayer is not satisfied with the action
21 taken by the department on his application for revision or
22 on questions of residency the department has resolved, he
23 may appeal to the state tax appeal board, which shall have
24 authority to grant the claim or a portion of the claim.

25 NEW SECTION. Section 13. Department to estimate total

1 adjusted gross income in each governmental unit. (1) On the
2 second Monday of July, 1980, and every following year, the
3 department shall furnish to all officials who calculate and
4 establish mill levies an official estimate of the total
5 adjusted gross income of the residents living in each
6 governmental unit.

7 (2) In formulating these estimates, the department
8 shall consider the adjusted gross income of the previous
9 year. It may consider additional information as it considers
10 necessary.

11 NEW SECTION. Section 14. Department to review
12 estimates and revise tax rates. (1) After receiving annual
13 income tax returns, the department shall compare the
14 estimates of total adjusted gross income sent to the local
15 officials with the total adjusted gross income actually
16 reported on the returns.

17 (2) If the estimate significantly differs from the
18 actual returns from any governmental unit, the department
19 shall make an adjustment in the tax rate for that unit to
20 more nearly produce the budgeted revenues.

21 NEW SECTION. Section 15. Determining mill levies. (1)
22 To determine mill levies, local officials shall divide the
23 revenue to be raised by the property tax and replacement tax
24 in each governmental unit that year by the sum of the
25 taxable value of all property in that unit, excluding

1 habitable property, plus 10% of the estimated total adjusted
2 gross income of all taxpayers residing in that unit. The
3 resulting figure is the mill levy for that governmental
4 unit.

5 (2) To determine a state levy, the department shall
6 divide the revenue to be raised by the property tax and
7 replacement tax that year by the sum of the taxable value of
8 all property in the state, excluding habitable property,
9 plus 10% of the estimated total adjusted gross income of all
10 taxpayers residing in the state. The resulting figure is the
11 mill levy for that state fund.

12 (3) This method of calculating mill levies supersedes
13 existing methods of calculating mill levies, except for
14 special taxing districts.

15 NEW SECTION. Section 16. Landlord to notify tenant of
16 property taxes no longer collected. In January, 1980, each
17 owner of residential rental property shall send to each of
18 his tenants the following notice: "We are no longer required
19 to pay regular property taxes on the rental unit you occupy.
20 Because of this, we (are) (are not) considering a reduction
21 in your rent." The owner must indicate his intention
22 regarding the rent on each notice.

23 NEW SECTION. Section 17. Credit for rent. (1) There
24 is allowed as a credit against the taxes imposed by
25 15-30-103 and 15-30-104:

1 (a) 5% of the first \$150 of net rent per month paid in
2 1980 on a residential dwelling for the taxable year
3 beginning after December 31, 1979, and ending December 31,
4 1980;

5 (b) 2 1/2% of the first \$150 of net rent per month
6 paid in 1981 on a residential dwelling for the taxable year
7 beginning after December 31, 1980, and ending December 31,
8 1981.

9 (2) Credits in excess of tax liability may be refunded
10 to the taxpayer, provided funds are appropriated for the
11 purpose.

12 ~~NEW SECTION.~~ Section 18. Disbursement of funds to
13 counties. (1) Replacement taxes collected by the department
14 shall be deposited in the earmarked revenue account to the
15 credit of the replacement tax account, which account is
16 hereby created.

17 (2) In May and November of each year, the department
18 shall send to each county treasurer the replacement tax
19 collected from taxpayers in that county. The department
20 shall also send each county treasurer official notice
21 showing the amount of tax to be credited to each
22 governmental unit.

23 Section 19. Section 15-30-121, MCA, is amended to
24 read:

25 *15-30-121. Deductions allowed in computing net

1 income. In computing net income, there are allowed as
2 deductions:

3 (1) the items referred to in sections 161 and 211 of
4 the Internal Revenue Code of 1954, or as sections 161 and
5 211 shall be labeled or amended, subject to the following
6 exceptions which are not deductible:

7 (a) items provided for in 15-30-123;

8 (b) state income tax paid;

9 ~~(2) replacement tax imposed by [section 5] paid;~~

10 ~~(2)(3) federal income tax paid within the taxable~~
11 ~~year;~~

12 ~~(3)(4) child and dependent care expenses determined in~~
13 ~~accordance with the provisions of section 214 of the~~
14 ~~Internal Revenue Code of 1954 that were in effect for the~~
15 ~~taxable year that began January 1, 1974;~~

16 ~~(4)(5) that portion of an energy-related investment~~
17 ~~allowed as a deduction under 15-32-103."~~

18 Section 20. Severability. If a part of this act is
19 invalid, all valid parts that are severable from the invalid
20 part remain in effect. If a part of this act is invalid in
21 one or more of its applications, the part remains in effect
22 in all valid applications that are severable from the
23 invalid applications.

24 Section 21. Effective date. This act is effective for
25 taxable years beginning after December 31, 1979.

STATE OF MONTANA

REQUEST NO. 114-79

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 240 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 bill provides for a replacement tax for the property tax now levied on habitable property and provides a method for administering the tax; and provides an effective date.

ASSUMPTIONS

- 1) The Department of Revenue estimate of income tax collections is taken as a basis for measuring the impact of the proposal: FY80 \$154.268 M; FY81 \$169.790 M
- 2) Data processing costs: Design and development \$121,960, annual production cost: \$546,912. (Source Dept. of Revenue Feasibility Study Feb 1978 - Available for examination upon request.)

Personal Services	FY80	\$556,472	Operating Expenses	FY80	\$112,400
	FY81	\$451,912		FY81	\$ 95,000
- 3) Preparation and maintenance of a separate listing of all habitable property
 FY80: \$100,000 FY81: \$100,000 (Personnel costs)
- 4) The average rent paid for habitable property is greater than \$150 per month.
- 5) There are approximately 250,000 households and approximately 40.6 percent of households rent and would be eligible for the tax credit.
- 6) The total income tax deduction taken for replacement tax paid will be approximately equal to the total deduction taken for property tax paid on personal residences and will be subject to approximately the same average effective tax rate.

FISCAL IMPACT

	FY80	FY81
Income Tax Collections		
under current law	\$154.268 M	\$169.790 M
under proposed law	154.268 M	160.655 M
Estimated Impact	\$ 0	(\$ 9.135 M)

Expenditures

Personal Services		
under current law	\$ 0	\$ 0
under proposed law	656,472	551,912
Estimated Increase	\$656,472	\$551,912

Operating Expenses		
under current law	\$ 0	\$ 0
under proposed law	112,400	95,000
Estimated Increase	\$112,400	\$ 95,000

Richard L. Tracy

 BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/31/79

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FISCAL IMPACT: (Continued)

Expenditures	FY 80	FY 81
Total Expenditures		
under current law	\$ 0	\$ 0
under proposed law	768,872	646,912
Estimated Increase	<u>\$768,872</u>	<u>\$646,912</u>
Net Effect		
Estimated Decrease	<u>(\$768,872)</u>	<u>(\$9.782 M)</u>

FUND INFORMATION:

Revenue Decrease:

General Fund (64%)		
under current law	\$ -	\$180.665 M
under proposed law	-	102.819 M
Estimated Impact	<u>\$ -</u>	<u>(\$ 5.846 M)</u>
Long-Range Building (11%)		
under current law	\$ -	\$ 18.677 M
under proposed law	-	17.672 M
Estimated Impact	<u>\$ -</u>	<u>(\$ 1.005 M)</u>
School Foundation (25%)		
under current law	\$ -	\$ 42.448 M
under proposed law	-	40.164 M
Estimated Impact	<u>\$ -</u>	<u>(\$ 2.284 M)</u>

Expenditure Increase:

General Fund	<u>\$ 768,872</u>	<u>\$ 646,912</u>
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EFFECT ON LOCAL GOVERNMENTS:

Presumably local revenue (total) will not be affected. There would inevitably be significant shifting of taxes to other components of the tax base in some cases although data is not available which would make it possible to point out the precise taxing jurisdictions where this would occur. In addition, since adjusted gross income is not as stable a base as real property values, it is probable that in certain localized instances, there would be fairly significant shifts from year to year.

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LONG-RANGE EFFECTS

The credit for renters will reduce FY82 income tax collections by approximately \$4,567,500.

TECHNICAL NOTE

Section 12 allows revisions in a taxpayer's liability for up to five years after the tax is due. If a refund must be made, what fund should the money come from? — county which received the money? or the state?

PREPARED BY DEPARTMENT OF REVENUE

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: _____

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STATEMENT OF INTENT RE: SB 240

In granting the Department of Revenue the authority to make rules to administer the replacement tax, the Senate Committee on Taxation expects the Department to adopt rules governing the procedure for withholding replacement taxes, determining residency of taxpayers, disbursing replacement tax funds to taxing jurisdictions, revising replacement tax rates, and administering the tax credit for rent.

SB 240

Committee on Taxation

MINORITY REPORT ADOPTED

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3 VAN VALKENBURG, PALMER, HAGER, PETERSON, B. BROWN

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5 amended returns alter a taxpayer's replacement tax
6 liability.

7 NEW SECTION. Section 10. Penalty and interest. (1)
8 All replacement taxes not paid when due are delinquent, and
9 interest of 2/3 of 1% per month shall be collected on the
10 unpaid balance. In addition, a penalty of 5% of the
11 delinquent tax shall be collected.

12 (2) All interest and penalties collected by the
13 department shall be placed in the state general fund.

14 NEW SECTION. Section 11. Collection of delinquent
15 taxes. The department may use the procedure provided in
16 15-30-311 for the collection of delinquent replacement
17 taxes.

18 NEW SECTION. Section 12. Application for revision --
19 appeal. (1) An application for revision of replacement tax
20 liability may be filed with the department by a taxpayer
21 within 5 years after the original due date of the return.

22 (2) If the taxpayer is not satisfied with the action
23 taken by the department on his application for revision or
24 on questions of residency the department has resolved, he
25 may appeal to the state tax appeal board, which shall have

1 authority to grant the claim or a portion of the claim.

2 **NEW_SECTION.** Section 13. Department to estimate total
3 adjusted gross income in each governmental unit. (1) On the
4 second Monday of July, 1980, and every following year, the
5 department shall furnish to all officials who calculate and
6 establish mill levies an official estimate of the total
7 adjusted gross income of the residents living in each
8 governmental unit.

9 (2) In formulating these estimates, the department
10 shall consider the adjusted gross income of the previous
11 year. It may consider additional information as it considers
12 necessary.

13 **NEW_SECTION.** Section 14. Department to review
14 estimates and revise tax rates. (1) After receiving annual
15 income tax returns, the department shall compare the
16 estimates of total adjusted gross income sent to the local
17 officials with the total adjusted gross income actually
18 reported on the returns.

19 (2) If the estimate significantly differs from the
20 actual returns from any governmental unit, the department
21 shall make an adjustment in the tax rate for that unit to
22 more nearly produce the budgeted revenues.

23 **NEW_SECTION.** Section 15. Determining mill levies. (1)
24 To determine mill levies, local officials shall divide the
25 revenue to be raised by the property tax and replacement tax

1 in each governmental unit that year by the sum of the
2 taxable value of all property in that unit, excluding
3 habitable property, plus 10% of the estimated total adjusted
4 gross income of all taxpayers residing in that unit. The
5 resulting figure is the mill levy for that governmental
6 unit.

7 (2) To determine a state levy, the department shall
8 divide the revenue to be raised by the property tax and
9 replacement tax that year by the sum of the taxable value of
10 all property in the state, excluding habitable property,
11 plus 10% of the estimated total adjusted gross income of all
12 taxpayers residing in the state. The resulting figure is the
13 mill levy for that state fund.

14 (3) This method of calculating mill levies supersedes
15 existing methods of calculating mill levies, except for
16 special taxing districts.

17 **NEW_SECTION.** Section 16. Landlord to notify tenant of
18 property taxes no longer collected. In January, 1980, each
19 owner of residential rental property shall send to each of
20 his tenants the following notice: "We are no longer required
21 to pay regular property taxes on the rental unit you occupy.
22 Because of this, we (are) (are not) considering a reduction
23 in your rent." The owner must indicate his intention
24 regarding the rent on each notice.

25 **NEW_SECTION.** Section 17. Credit for rent. (1) There

1 is allowed as a credit against the taxes imposed by
2 15-30-103 and 15-30-104:

3 (a) 5% of the first \$150 of net rent per month paid in
4 1980 on a residential dwelling for the taxable year
5 beginning after December 31, 1979, and ending December 31,
6 1980;

7 (b) 2 1/2% of the first \$150 of net rent per month
8 paid in 1981 on a residential dwelling for the taxable year
9 beginning after December 31, 1980, and ending December 31,
10 1981.

11 (2) Credits in excess of tax liability may be refunded
12 to the taxpayer, provided funds are appropriated for the
13 purpose.

14 NEW SECTION. Section 18. Disbursement of funds to
15 counties. (1) Replacement taxes collected by the department
16 shall be deposited in the earmarked revenue account to the
17 credit of the replacement tax account, which account is
18 hereby created.

19 (2) In May and November of each year, the department
20 shall send to each county treasurer the replacement tax
21 collected from taxpayers in that county. The department
22 shall also send each county treasurer official notice
23 showing the amount of tax to be credited to each
24 governmental unit.

25 Section 19. Section 15-30-121, MCA, is amended to

1 read:

2 "15-30-121. Deductions allowed in computing net
3 income. In computing net income, there are allowed as
4 deductions:

5 (1) the items referred to in sections 161 and 211 of
6 the Internal Revenue Code of 1954, or as sections 161 and
7 211 shall be labeled or amended, subject to the following
8 exceptions which are not deductible:

9 (a) items provided for in 15-30-123; .

10 (b) state income tax paid;

11 ~~(2) replacement tax imposed by [section 5 4] paid;~~

12 ~~(3) federal income tax paid within the taxable~~
13 ~~year;~~

14 ~~(3)(4) child and dependent care expenses determined in~~
15 ~~accordance with the provisions of section 214 of the~~
16 ~~Internal Revenue Code of 1954 that were in effect for the~~
17 ~~taxable year that began January 1, 1974;~~

18 ~~(4)(5) that portion of an energy-related investment~~
19 ~~allowed as a deduction under 15-32-103."~~

20 Section 20. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

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1 Section 21. Effective date. This act is effective for
2 taxable years beginning after December 31, 1979.

-End-