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.

Senate BILL NO. 240

INTRODUCED BY Watt Hussauel Rasmussen Mehrens Van Valkenburg Palmer Hager Peterson Bob Brown

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

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

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

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

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

(1) "Adjusted gross income" means income as defined in 15-30-111.

(2) "Department" means the department of revenue.

(3) "Employee" means employee as defined in 15-30-201.

(4) "Employer" means employer as defined in 15-30-201.

(5) "Governmental unit" means school districts, incorporated cities and towns, counties, and the state.

(6) (a) "Habitable property" means:

(i) all buildings, including condominiums, apartments, and rest homes, and mobile homes, intended for permanent human habitation; and

(ii) buildings, such as garages or storage sheds, normally associated with residences.

(b) "Habitable property" does not include:

(i) mobile homes, motor homes, trailers, campers, or other personal property held as stock-in-trade by a distributor or dealer or used for recreational purposes;

(ii) land; or

(iii) hotels, motels, or other property occupied principally by nonresidents, tourists, or other transients.

(7) "Net rent" means payments made to an owner of housing for use of the property, but not including additional payment for utilities or services.

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

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

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

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

(b) School districts are not special taxing districts.

(10) "Wages" means wages as defined in 15-30-201.

NEW SECTION. Section 3. Duties of the department. The department shall:

(1) establish a central computer system to keep records necessary to administer the replacement tax;

(2) keep records showing the adjusted gross income of each taxpayer for each governmental unit in which the taxpayer is a resident;

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

(4) continue to assess and keep records of the value of all habitable property;

(5) determine questions of residency and other issues arising from the administration of the replacement tax;

(6) revise state income tax forms or prepare

additional forms as necessary to secure information necessary to administer the replacement tax;

(7) audit replacement tax returns as necessary;

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

(9) provide forms and instructions to local officials as necessary;

(10) perform other duties as specifically provided in [this act]; and

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

NEW SECTION. Section 4. Replacement tax imposed -- variable rates. (1) In addition to the taxes imposed in sections 15-30-103 and 15-30-104, a replacement tax is imposed on the adjusted gross income of all resident taxpayers of the state.

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

(3) The tax rate for each governmental unit shall be applied to the adjusted gross income of each taxpayer residing in the governmental unit.

<u>NEW SECTION.</u> Section 5. Habitable property exempt from taxation -- exceptions. (1) Habitable property is exempt from property taxation. However, mills imposed by special taxing districts may be levied against habitable property and the property tax due on it collected.

(2) Habitable property shall continue to be assessed and its taxable value included in the governmental unit's tax base when county officials' salaries or bonded indebtedness limits are calculated and the class of a city, town, or county is determined.

(3) If a single building is used or designed for use partially as habitable property and partially for other uses, the county appraiser shall determine the assessed value of each portion separately and exempt the habitable property from taxation as provided in subsections (1) and (2).

<u>NEW SECTION.</u> Section 6. Applicability to general obligation bonds. (1) All general obligation bonds will continue to be an obligation of all property pledged to their redemption.

(2) The replacement tax shall be considered an alternate method of assessing and collecting taxes on habitable property.

<u>NEW SECTION.</u> Section 7. Withholding. (1) Beginning January 1, 1980, each employer shall deduct and withhold

1.8% of the wages paid to each of his employees residing in Montana, in addition to and separate from any other withholdings.

(2) The employer shall indicate each employee's residence on his withholding records. The employee's residence as of his first employment of the year shall be used throughout the year, even if the employee's residence is later changed.

(3) The employer shall remit these withholdings and returns as required by the department according to the procedure contained in 15-30-204.

<u>NEW SECTION.</u> Section 8. Taxpayers not subject to withholding -- semiannual payment -- penalty. (1) On or before August 15 of each year, beginning in 1980, each resident taxpayer who is not subject to withholding under [section 7] shall pay 2% of his adjusted gross income for the first 6 months of that calendar year to the department.

(2) These payments shall be deducted from the taxpayer's total replacement tax liability as shown on his replacement tax statement for that calendar year.

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

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

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taxes on the income he earned while a resident. He must make semiannual and final returns and payments.

NEW SECTION. Section 9. Filing of return and calculation of replacement tax due. (1) After receiving a taxpayer's annual income tax return, the department shall calculate the taxpayer's total replacement tax liability for the previous year by applying the replacement tax rate for the governmental unit shown on his withholding forms to his adjusted gross income, as reported on his income tax return.

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

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

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

(c) how these figures were determined; and

(d) any balance due.

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

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

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

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

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

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

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

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

NEW SECTION. Section 13. Department to estimate total adjusted gross income in each governmental unit. (1) On the second Monday of July, 1980, and every following year, the department shall furnish to all officials who calculate and establish mill levies an official estimate of the total adjusted gross income of the residents living in each governmental unit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"15-30-121. Deductions allowed in computing net

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

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

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

(b) state income tax paid;

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

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

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

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

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

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

-end-

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. Ivany for
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: 1/31/79

CONTINUED ON PAGE 2

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FISCAL IMPACT: (Continued)

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

FUND INFORMATION:

	FY 80	FY 81
Revenue Decrease:		
General Fund (64%)		
under current law	$ -	$180.665 M
under proposed law	-	102.819 M
Estimated Impact	$ -	($ 5.846 M)
Long-Range Building (11%)		
under current law	$ -	$ 18.677 M
under proposed law	-	17.672 M
Estimated Impact	$ -	($ 1.005 M)
School Foundation (25%)		
under current law	$ -	$ 42.448 M
under proposed law	-	40.164 M
Esimated Impact	$ -	($ 2.284 M)
Expenditure Increase:		
General Fund	$ 768,872	$ 646,912

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: ______________

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.

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Committee on Taxation

MINORITY REPORT ADOPTED

SENATE BILL NO. 240

INTRODUCED BY WATT, DUSSAULT, RASMUSSEN, MEHRENS, VAN VALKENBURG, PALMER, HAGER, PETERSON, B. BROWN

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

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SECOND READING

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

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

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

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

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

-End-