

HOUSE BILL NO. 538

INTRODUCED BY HUENNEKENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

January 28, 1981	Introduced and referred to Committee on Judiciary.
January 31, 1981	Fiscal note requested.
February 7, 1981	Fiscal note returned.
February 17, 1981	Committee recommend bill do not pass. Report adopted.
February 18, 1981	Objection to adverse committee report. Rereferred to Committee on Judiciary.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 89; Noes, 5. Transmitted to Senate.

IN THE SENATE

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 24, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1981	Second reading, pass consideration.
March 27, 1981	Second reading, concurred in.

March 28, 1981

Third reading, concurred in
as amended. Ayes 47; Noes, 0.

IN THE HOUSE

March 28, 1981

Returned from Senate with
amendments.

April 8, 1981

Second reading, amendments
concurred in.

April 9, 1981

Third reading, amendments
concurred in. Ayes, 96;
Noes, 1. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 538

INTRODUCED BY *Hummel*

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A GENERAL 5-YEAR STATUTE OF LIMITATIONS TO ENFORCE THE TAX AND LICENSE LAWS ADMINISTERED BY THE DEPARTMENT OF REVENUE, SUBJECT TO EXCEPTIONS FOR SPECIFIC STATUTES OF LIMITATIONS PROVIDING OTHER PERIODS; AND PROVIDING FOR RETROACTIVE APPLICATION."

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

Section 1. Statute of limitations. (1) In the absence of a specific statute providing otherwise and subject to the provisions of subsection (3), an action to collect a past-due tax or license fee, including an additional assessment, penalty, or interest, must be brought within 5 years of the due date and an action to enforce any of the provisions of Title 15 must be brought within 5 years of the date a violation occurs.

(2) For purposes of this section, tax or license fee refers to a tax or license fee administered by the department under the provisions of Title 15.

(3) Whenever a return is required to be filed and the taxpayer or licensee fails to file the return, an action to

collect the tax or license fee may be brought at any time. Whenever a return is required to be filed and the taxpayer or licensee files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until determination of the fraud by the department.

Section 2. Statute of limitations. (1) In the absence of a specific statute providing otherwise and subject to the provisions of subsection (3), an action to collect a past-due tax or license fee, including an additional assessment, penalty, or interest, must be brought within 5 years of the due date and an action to enforce any of the provisions of Title 16 must be brought within 5 years of the date a violation occurs.

(2) For purposes of this section, tax or license fee refers to a tax or license fee administered by the department under the provisions of Title 16.

(3) Whenever a return is required to be filed and the taxpayer or licensee fails to file the return, an action to collect the tax or license fee may be brought at any time. Whenever a return is required to be filed and the taxpayer or licensee files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until determination of the fraud by the department.

Section 3. Statute of limitations. (1) In the absence of a specific statute providing otherwise and subject to the

1 provisions of subsection (3), an action to collect a
 2 past-due tax or license fee, including an additional
 3 assessment, penalty, or interest, must be brought within 5
 4 years of the due date and an action to enforce any of the
 5 provisions of 69-1-222 through 69-1-227 must be brought
 6 within 5 years of the date a violation occurs.

7 (2) For purposes of this section, tax or license fee
 8 refers to a tax or license fee administered by the
 9 department under the provisions of 69-1-222 through
 10 69-1-227.

11 (3) Whenever a return is required to be filed and the
 12 taxpayer or licensee fails to file the return, an action to
 13 collect the tax or license fee may be brought at any time.
 14 Whenever a return is required to be filed and the taxpayer
 15 or licensee files a fraudulent return, the 5-year period
 16 provided for in subsection (1) does not begin until
 17 determination of the fraud by the department.

18 Section 4. Codification instruction. (1) Section 1 is
 19 intended to be codified in Title 15, chapter 1, and the
 20 provisions of Title 15 apply to section 1.

21 (2) Section 2 is intended to be codified in Title 16,
 22 chapter 1, and the provisions of Title 16 apply to section
 23 2.

24 (3) Section 3 is intended to be codified in Title 69,
 25 chapter 1, part 2, and the provisions of 69-1-222 through

1 69-1-227 apply to section 3.

2 Section 5. Applicability. This act applies to tax
 3 years beginning after December 31, 1980, and to all prior
 4 tax years for which the liability for taxes has not been
 5 discharged by statute.

-End-

STATE OF MONTANA

REQUEST NO. 266-81

FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, 19 81, there is hereby submitted a Fiscal Note for House Bill 538 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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 proposal would create a general five year statute of limitations on actions to enforce tax debts created under Title 15 and for enforcement of provisions of Title 16. The general five year statute would be superceded in any case where a specific statute applies. In cases where fraud is involved, the general statute would not begin to run until the fraud is discovered.

IMPACT

It is impossible to determine the fiscal impact of this proposal. In many cases, the complexity of tax law together with the large number of returns and the relatively small staff involved make it extremely difficult for the Department to bring action within two years of the due date of the tax.

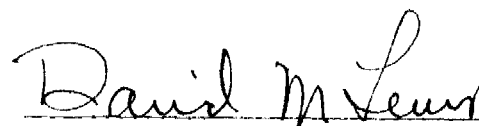
The Corporation Tax Division of the Department of Revenue relied upon statutory authority which allowed it to go back an indefinite number of years to assess tax against corporations which were discovered doing business in Montana but not filing corporation license tax returns. A District Court decision in mid-1980 held that the statute upon which the Division relied, had actually been impliedly repealed by action of the 1963 Legislature and that the general two year statute of limitations controlled.

The practical effect of this decision was to bring the Division's nexus program to a halt. Identifying corporations which have done business in the state over the course of many years and not filed returns is a difficult task. Without the authority to go back through the years to collect tax due, the rationale for expending time to develop a case is lost. It is in cases where the unpaid liability extends over a period of several years, that a considerable amount of revenue will be lost to the state. Three and one half million dollars have been recovered during the five years the nexus program has been in existence.

NOTE

This proposal has potential application to tax liabilities which have not been discharged by statute but which arose in tax years beginning prior to January 1, 1981.

PREPARED BY THE DEPARTMENT OF REVENUE



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-6-81

Approved by Committee
on Judiciary

1 HOUSE BILL NO. 538
 2 INTRODUCED BY MUENNEKENS
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A
 6 ~~GENERAL 5-YEAR STATUTE OF LIMITATIONS TO ENFORCE THE TAX AND~~
 7 ~~LICENSE LAWS ADMINISTERED BY THE DEPARTMENT OF REVENUE,~~
 8 ~~SUBJECT TO EXCEPTIONS FOR SPECIFIC STATUTES OF LIMITATIONS~~
 9 ~~PROVIDING OTHER PERIODS~~ PROVIDE A 5-YEAR STATUTE OF
 10 LIMITATIONS TO ENFORCE THE PROVISIONS OF TITLE 15, CHAPTER
 11 31, MCA, RELATING TO THE CORPORATE LICENSE TAX, AND TO
 12 COLLECT UNPAID TAXES UNDER THAT CHAPTER, WITH EXCEPTIONS FOR
 13 FRAUD AND FAILURE TO FILE; AND PROVIDING FOR RETROACTIVE
 14 APPLICATION."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 Refer to Introduced Bill

18 (Strike everything after the enacting clause and insert:)
 19 Section 1. Statute of limitations. (1) Except as
 20 provided in subsection (2), an action to collect a past-due
 21 tax imposed pursuant to this chapter or to enforce a
 22 provision of this chapter must be brought within 5 years of
 23 the due date of the tax or the date of a violation.

24 (2) Whenever a return is required to be filed and the
 25 taxpayer fails to file the return, an action to collect the

1 tax may be brought at anytime. Whenever a return is
 2 required to be filed and the taxpayer files a fraudulent
 3 return, the 5-year period provided for in subsection (1)
 4 does not begin until determination of the fraud by the
 5 department.

6 Section 2. Codification. Section 1 is intended to be
 7 codified as an integral part of Title 15, chapter 31, and
 8 the provisions of Title 15, chapter 31, apply to section 1.

9 Section 3. Applicability. This act applies to tax
 10 years beginning after December 31, 1980, and to all prior
 11 tax years for which the liability for taxes has not been
 12 discharged by statute.

-End-

1 HOUSE BILL NO. 538

2 INTRODUCED BY MUEHNEKENS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR--A
6 ~~GENERAL 5-YEAR STATUTE OF LIMITATIONS TO ENFORCE THE TAX AND~~
7 ~~LICENSE LAWS ADMINISTERED BY THE DEPARTMENT OF REVENUE~~
8 ~~SUBJECT TO EXCEPTIONS FOR SPECIFIC STATUTES OF LIMITATIONS~~
9 ~~PROVIDING OTHER PERIODS PROVIDE A 5-YEAR STATUTE OF~~
10 LIMITATIONS TO ENFORCE THE PROVISIONS OF TITLE 15, CHAPTER
11 31, MCA, RELATING TO THE CORPORATE LICENSE TAX, AND TO
12 COLLECT UNPAID TAXES UNDER THAT CHAPTER, WITH EXCEPTIONS FOR
13 FRAUD AND FAILURE TO FILE; AND PROVIDING FOR RETROACTIVE
14 APPLICATION."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Refer to Introduced Bill

18 (Strike everything after the enacting clause and insert:)

19 Section 1. Statute of limitations. (1) Except as
20 provided in subsection (2), an action to collect a past-due
21 tax imposed pursuant to this chapter or to enforce a
22 provision of this chapter must be brought within 5 years of
23 the due date of the tax or the date of a violation.

24 (2) Whenever a return is required to be filed and the
25 taxpayer fails to file the return, an action to collect the

1 tax may be brought at anytime. Whenever a return is
2 required to be filed and the taxpayer files a fraudulent
3 return, the 5-year period provided for in subsection (1)
4 does not begin until determination of the fraud by the
5 department.

6 Section 2. Codification. Section 1 is intended to be
7 codified as an integral part of Title 15, chapter 31, and
8 the provisions of Title 15, chapter 31, apply to section 1.

9 Section 3. Applicability. This act applies to tax
10 years beginning after December 31, 1980, and to all prior
11 tax years for which the liability for taxes has not been
12 discharged by statute.

-End-

HOUSE BILL NO. 538

INTRODUCED BY HUENNEKENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR--A
 GENERAL-5-YEAR-STATUTE-OF-LIMITATIONS-TO-ENFORCE-THE-TAX-AND
 LICENSE--LAWS--ADMINISTERED--BY--THE--DEPARTMENT-OF-REVENUE,
 SUBJECT-TO-EXCEPTIONS-FOR-SPECIFIC-STATUTES--OF--LIMITATIONS
 PROVIDING--OTHER--PERIODS PROVIDE A 5-YEAR STATUTE OF
LIMITATIONS TO ENFORCE THE PROVISIONS OF TITLE 15, CHAPTER
31, MCA, RELATING TO THE CORPORATE LICENSE TAX, AND TO
COLLECT UNPAID TAXES UNDER THAT CHAPTER, WITH EXCEPTIONS FOR
FRAUD AND FAILURE TO FILE; AND PROVIDING FOR RETROACTIVE
 APPLICATION."

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

Refer to Introduced Bill

(Strike everything after the enacting clause and insert:)

Section 1. Statute of limitations. (1) Except as
 provided in subsection (2), an action to collect a past-due
 tax imposed pursuant to this chapter or to enforce a
 provision of this chapter must be brought within 5 years of
 the due date of the tax or the date of ~~a violation~~ FILING
THE RETURN, WHICHEVER IS LATER.

(2) Whenever a return is required to be filed and the

taxpayer fails to file the return, an action to collect the
 tax may be brought at any time. Whenever a return is
 required to be filed and the taxpayer files a fraudulent
 return, the 5-year period provided for in subsection (1)
 does not begin until determination DISCOVERY of the fraud by
 the department.

Section 2. Codification. Section 1 is intended to be
 codified as an integral part of Title 15, chapter 31, and
 the provisions of Title 15, chapter 31, apply to section 1.

Section 3. Applicability. This act applies to tax
 years beginning after December 31, 1980, and to all prior
 tax years for which the liability for taxes has not been
 discharged by statute.

-End-

March 24, 1981

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 538 be amended as follows:

1. Title, line 5.

Following: "TO"

Strike: "PROVIDE"

2. Page 1, line 23.

Following: "or the date of"

Strike "a violation"

Insert: "filing the return, whichever is later"

3. Page 2, line 4

Following: "until"

Strike: "determination"

Insert: "discovery"