

SENATE BILL NO. 107

INTRODUCED BY McCALLUM

IN THE SENATE

January 12, 1981	Introduced and referred to Committee on Taxation.
February 19, 1981	Committee recommend bill do pass as amended. Report adopted.
February 20, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading, do pass.
February 23, 1981	Correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Taxation.
March 23, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 28, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 98; Noes, 0.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
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April 3, 1981

Second reading, pass consideration.

April 4, 1981

On motion, consideration be passed for the day.

April 9, 1981

Second reading, amendments concurred in.

April 11, 1981

Third reading, amendments concurred in. Ayes, 47; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 Spatz BILL NO. 107
 2 INTRODUCED BY McBallin
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO
 5 PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY
 6 OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT
 7 OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO
 8 ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED
 9 ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND
 10 15-1-404, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Alternative remedy. (1) In
 14 lieu of proceeding under 15-1-401 or 15-1-402, an aggrieved
 15 taxpayer who has paid a contested tax may, without having
 16 first paid such tax under protest, bring a declaratory
 17 judgment action in the district court which seeks a
 18 declaration that a tax levied by the state or one of its
 19 subdivisions was illegally or unlawfully imposed.

20 (2) If the district court determines that such tax was
 21 illegally or unlawfully imposed, the judgment may direct
 22 that the revenues collected under the illegal levy be either
 23 directly refunded to all taxpayers who have paid the illegal
 24 levy or used to eliminate a similar levy in the ensuing tax
 25 year.

1 (3) A taxpayer who successfully brings a proceeding
 2 under subsection (1) is entitled to attorney fees and costs.

3 Section 2. Section 15-1-401, MCA, is amended to read:
 4 "15-1-401. Payment of license fees under protest --
 5 action to recover. (1) Whenever any license fee or tax is
 6 demanded of any person for the use and benefit of the state
 7 of Montana and the same is considered unlawful by the person
 8 from whom the same is demanded, such person may proceed
 9 under [section 1] or may pay the same, or so much thereof as
 10 may be considered unlawful, under written protest,
 11 specifying the grounds of protest, to the state agency or
 12 officer responsible for collecting the license fee or tax.

13 (2) The person paying or his legal representative may
 14 bring an action in a court of competent jurisdiction against
 15 the state agency or officer responsible for collecting the
 16 license fee or tax to recover the same, without interest.
 17 Any action instituted to recover any license fee or tax paid
 18 under protest must be commenced and summons and copy of
 19 complaint served within 50 days after the date of payment
 20 thereof to the state agency or officer responsible for
 21 collecting the license fee or tax. If such action is decided
 22 adversely to the state, the state treasurer shall, upon
 23 receiving a copy of the final judgment in such action,
 24 refund such license fee or tax to the person in whose favor
 25 such judgment is rendered."

1 Section 3. Section 15-1-402, MCA, is amended to read:

2 "15-1-402. Payment of taxes under protest -- action to
3 recover. (1) In all cases of levy of taxes, licenses, or
4 other demands for public revenue which are deemed unlawful
5 by the party whose property is thus taxed or from whom such
6 tax or license is demanded or enforced, such party ~~may~~
7 ~~proceed under [section 1]~~ or may, before such tax or license
8 becomes delinquent, pay under written protest such portions
9 of such tax or license deemed unlawful to the officers
10 designated and authorized to collect the same, specifying
11 the grounds of protest. Thereupon the party so paying or his
12 legal representatives may bring an action in any court of
13 competent jurisdiction against the officers to whom said
14 license or tax was paid or against the county or
15 municipality in whose behalf the same was collected and the
16 department of revenue. Both the officers to whom the license
17 fee or tax was paid or the county or municipality in whose
18 behalf the same was collected and the department of revenue
19 must be served with summons and complaint within the time
20 prescribed. Any action instituted to recover any such
21 portions of license or tax paid under protest shall be
22 commenced and summons served within 90 days after the date
23 of payment of the same. When any such license or tax is
24 payable in installments, the first installment portion of
25 such tax or license as may be deemed unlawful may be paid

1 under written protest and suit commenced and summons served
2 to recover the same within the time herein prescribed, and
3 if any subsequent installment of such license or tax shall
4 become due or payable before the final determination of the
5 suit commenced to recover the first installment portion paid
6 under protest, then such subsequent installment portion
7 deemed unlawful may also be paid under written protest and
8 no suit or action need be commenced to recover the same, but
9 the determination of the suit or action commenced to recover
10 the first installment portion paid under protest shall
11 determine the right of the party paying such subsequent
12 installment to have the same or any part thereof refunded to
13 him. All such portions of licenses and taxes when so paid
14 under protest shall be deposited by the treasurer of the
15 county or municipality to the credit of a special fund to be
16 designated as protest fund and shall be invested in
17 interest-bearing deposits in local banks or savings and loan
18 associations and retained in such protest fund until the
19 final determination of any suit or action to recover the
20 same. Nothing contained herein prohibits the investment of
21 the moneys of this fund in the state unified investment
22 program. The provision creating the special protest fund
23 does not apply to any payments made under protest directly
24 to the state.

25 (2) If no action is commenced within the time herein

1 specified or if such action be commenced and finally
 2 determined in favor of the county or municipality or
 3 treasurer thereof, the amount of such protested portions of
 4 the license or tax shall be taken from such protest fund and
 5 deposited to the credit of the fund or funds to which the
 6 same property belongs, but if such action is finally
 7 determined adversely to such county or municipality or the
 8 treasurer thereof, then the treasurer shall, upon receiving
 9 a certified copy of the final judgment in said action,
 10 refund to the person in whose favor such judgment is
 11 rendered the amount of such protested portions of the
 12 license or tax, with costs of suit and interest at the rate
 13 currently paid on short-term interest-bearing time deposits
 14 in banks in the county or 5% a year, whichever is greater,
 15 from the date of payment under protest. If such action was
 16 commenced for the purpose of recovering the first
 17 installment portions of any such license or tax and any
 18 subsequent installment thereof has been paid under protest
 19 as herein provided, then the county treasurer shall, at the
 20 time of refunding the amount of such first installment
 21 required by such judgment, also refund such portion of any
 22 subsequent installment as the person holding such judgment
 23 is entitled to recover, together with interest thereon at
 24 the rate of 6% a year from the date of payment under
 25 protest."

1 Section 4. Section 15-1-404, MCA, is amended to read:
 2 *15-1-404. Other remedies superseded. The remedy
 3 ~~remedies~~ hereby provided shall supersede the remedy of
 4 injunction and all other remedies which might be invoked to
 5 prevent the collection of taxes or licenses alleged to be
 6 irregularly levied or demanded, except in unusual cases
 7 where the ~~remedy~~ ~~remedies~~ hereby provided ~~is~~ ~~are~~ deemed by
 8 the court to be inadequate."

9 Section 5. Codification instruction. Section 1 is
 10 intended to be codified as an integral part of Title 15,
 11 chapter 1, part 4, and the provisions of Title 15, chapter
 12 1, part 4, apply to section 1.

13 Section 6. Effective date. This act is effective on
 14 July 1, 1981.

-End-

Approved by Committee
on Taxation

SENATE BILL NO. 107
INTRODUCED BY McCALLUM

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND 15-1-404, MCA."

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

~~NEW SECTION. Section 15-1-401. Alternative remedy. (1) In lieu of proceeding under 15-1-401 or 15-1-402, an aggrieved taxpayer who has paid a contested tax may, without having first paid such tax under protest, bring a declaratory judgment action in the district court which seeks a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed.~~

~~(2) If the district court determines that such tax was illegally or unlawfully imposed, the judgment may direct that the revenues collected under the illegal levy be either directly refunded to all taxpayers who have paid the illegal levy or used to eliminate a similar levy in the ensuing tax year.~~

~~(3) A taxpayer who successfully brings a proceeding under subsection (1) is entitled to attorney fees and costs.~~

NEW SECTION. SECTION 1. ALTERNATIVE REMEDY. (1) AN AGGRIEVED TAXPAYER MAY, IN LIEU OF PROCEEDING UNDER 15-1-401 OR 15-1-402, BRING A DECLARATORY JUDGMENT ACTION IN THE DISTRICT COURT SEEKING A DECLARATION THAT A TAX LEVIED BY THE STATE OR ONE OF ITS SUBDIVISIONS WAS ILLEGALLY OR UNLAWFULLY IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE ENTITY IMPOSING THE TAX.

(2) THE ACTION MUST BE BROUGHT WITHIN 90 DAYS OF THE IMPOSITION OF THE TAX. THE COURT SHALL CONSOLIDATE ALL ACTIONS BROUGHT UNDER SUBSECTION (1) WHICH CHALLENGE THE SAME TAX LEVY. THE DECISION OF THE COURT SHALL APPLY TO ALL SIMILARLY SITUATED TAXPAYERS EXCEPT THOSE TAXPAYERS WHO ARE EXCLUDED UNDER [SECTION 7].

NEW SECTION. SECTION 2. PROCEDURE. (1) EXCEPT AS PROVIDED IN SUBSECTION (2), AN ACTION PURSUANT TO [SECTION 1] IS SUBJECT TO THE PROVISIONS OF TITLE 27, CHAPTER 8.

(2) IN LIEU OF THE REQUIREMENT OF 27-8-301, A PARTY BRINGING AN ACTION UNDER [SECTION 1] MAY ELECT TO USE:

(A) THE PROCEDURES AVAILABLE UNDER THE MONTANA RULES OF CIVIL PROCEDURE FOR BRINGING A CLASS ACTION, TITLE 25, CHAPTER 20, RULE 23; OR

(B) THE PROCEDURE PROVIDED FOR IN SUBSECTION (3).

(3) (A) A PARTY BRINGING AN ACTION UNDER [SECTION 1]

1 MAY ELECT TO GIVE NOTICE AS PROVIDED IN THIS SUBSECTION. A
 2 PARTY SO ELECTING MUST PUBLISH NOTICE THAT AN ACTION HAS
 3 BEEN BROUGHT. THE NOTICE MUST BE PUBLISHED AT LEAST ONCE
 4 EACH WEEK FOR 4 CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL
 5 CIRCULATION PUBLISHED IN THE COUNTY WHERE THE ACTION IS
 6 COMMENCED AND IN OTHER COUNTIES WITHIN THE JURISDICTION OF
 7 THE TAXING AUTHORITY. THE NOTICE SHALL ADVISE EACH SIMILARLY
 8 SITUATED TAXPAYER THAT:

9 (I) THE COURT WILL EXCLUDE HIM FROM THE CLASS IF HE SO
 10 REQUESTS BY A SPECIFIC DATE;

11 (II) THE JUDGMENT, WHETHER FAVORABLE OR NOT, WILL
 12 INCLUDE ALL SIMILARLY SITUATED TAXPAYERS WHO DO NOT REQUEST
 13 TO BE EXCLUDED; AND

14 (III) ANY SIMILARLY SITUATED TAXPAYER WHO DOES NOT
 15 REQUEST EXCLUSION MAY, IF HE DESIRES, ENTER AN APPEARANCE.

16 (B) AN ELECTION TO GIVE NOTICE UNDER THIS SUBSECTION
 17 DOES NOT PREVENT ANY PARTY TO THE ACTION FROM SERVING
 18 PROCESS ON OTHER INTERESTED PARTIES.

19 (4) IN A PROCEEDING UNDER [SECTION 1] ALL ISSUES SHALL
 20 BE TRIED BY THE COURT.

21 NEW SECTION. SECTION 3. REMEDY. IF THE DISTRICT
 22 COURT DETERMINES THAT THE TAX WAS ILLEGALLY OR UNLAWFULLY
 23 IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE ENTITY
 24 IMPOSING THE TAX, THE JUDGMENT MAY DIRECT:

25 (1) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX

1 BE DIRECTLY REFUNDED TO THE TAXPAYERS WHO HAVE PAID THE
 2 ILLEGAL TAX AND WHO HAVE NOT BEEN EXCLUDED FROM THE ACTION;
 3 (2) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX
 4 BE USED TO REDUCE A SIMILAR LEVY IN THE ENSUING TAX YEAR; OR
 5 (3) SUCH OTHER REMEDY AS THE COURT CONSIDERS
 6 APPROPRIATE.

7 NEW SECTION. SECTION 4. TAX TO BE PAID. THE TAXES
 8 THAT ARE BEING CHALLENGED UNDER [SECTION 1] MUST BE PAID
 9 WHEN DUE AS A CONDITION OF CONTINUING THE ACTION.

10 Section 5. Section 15-1-401, MCA, is amended to read:

11 "15-1-401. Payment of license fees under protest --
 12 action to recover. (1) Whenever any license fee or tax is
 13 demanded of any person for the use and benefit of the state
 14 of Montana and the same is considered unlawful by the person
 15 from whom the same is demanded, such person may proceed
 16 under [section 1] or may pay the same, or so much thereof as
 17 may be considered unlawful, under written protest,
 18 specifying the grounds of protest, to the state agency or
 19 officer responsible for collecting the license fee or tax.

20 (2) The person paying or his legal representative may
 21 bring an action in a court of competent jurisdiction against
 22 the state agency or officer responsible for collecting the
 23 license fee or tax to recover the same, without interest.
 24 Any action instituted to recover any license fee or tax paid
 25 under protest must be commenced and summons and copy of

1 complaint served within 60 days after the date of payment
 2 thereof to the state agency or officer responsible for
 3 collecting the license fee or tax. If such action is decided
 4 adversely to the state, the state treasurer shall, upon
 5 receiving a copy of the final judgment in such action,
 6 refund such license fee or tax to the person in whose favor
 7 such judgment is rendered."

8 Section 6. Section 15-1-402, MCA, is amended to read:
 9 "15-1-402. Payment of taxes under protest -- action to
 10 recover. (1) In all cases of levy of taxes, licenses, or
 11 other demands for public revenue which are deemed unlawful
 12 by the party whose property is thus taxed or from whom such
 13 tax or license is demanded or enforced, such party may
 14 proceed under [section 1] or may, before such tax or license
 15 becomes delinquent, pay under written protest such portions
 16 of such tax or license deemed unlawful to the officers
 17 designated and authorized to collect the same, specifying
 18 the grounds of protest. Thereupon the party so paying or his
 19 legal representatives may bring an action in any court of
 20 competent jurisdiction against the officers to whom said
 21 license or tax was paid or against the county or
 22 municipality in whose behalf the same was collected and the
 23 department of revenue. Both the officers to whom the license
 24 fee or tax was paid or the county or municipality in whose
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1 must be served with summons and complaint within the time
 2 prescribed. Any action instituted to recover any such
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 5 of payment of the same. When any such license or tax is
 6 payable in installments, the first installment portion of
 7 such tax or license as may be deemed unlawful may be paid
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 9 to recover the same within the time herein prescribed, and
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 24 interest-bearing deposits in local banks or savings and loan
 25 associations and retained in such protest fund until the

1 final determination of any suit or action to recover the
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 3 the moneys of this fund in the state unified investment
 4 program. The provision creating the special protest fund
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 22 from the date of payment under protest. If such action was
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 6 the rate of 6% a year from the date of payment under
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8 Section 7. Section 15-1-404, MCA, is amended to read:
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 10 remedies hereby provided shall supersede the remedy of
 11 injunction and all other remedies which might be invoked to
 12 prevent the collection of taxes or licenses alleged to be
 13 irregularly levied or demanded, except in unusual cases
 14 where the remedy remedies hereby provided ~~is~~ are deemed by
 15 the court to be inadequate."

16 Section 8. Codification instruction. Section SECTIONS
 17 1 ~~is~~ THROUGH 4 ARE intended to be codified as an integral
 18 part of Title 15, chapter 1, part 4, and the provisions of
 19 Title 15, chapter 1, part 4, apply to section SECTIONS 1
 20 THROUGH 4.

21 Section 9. Effective date. This act is effective on
 22 July 1, 1981.

-End-

1 SENATE BILL NO. 107

2 INTRODUCED BY McCALLUM

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO
5 PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY
6 OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT
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10 (2) THE ACTION MUST BE BROUGHT WITHIN 90 DAYS OF THE
11 IMPOSITION OF THE TAX. THE COURT SHALL CONSOLIDATE ALL
12 ACTIONS BROUGHT UNDER SUBSECTION (1) WHICH CHALLENGE THE
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1 final determination of any suit or action to recover the
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 3 the moneys of this fund in the state unified investment
 4 program. The provision creating the special protest fund
 5 does not apply to any payments made under protest directly
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 8 specified or if such action be commenced and finally
 9 determined in favor of the county or municipality or
 10 treasurer thereof, the amount of such protested portions of
 11 the license or tax shall be taken from such protest fund and
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 13 same property belongs, but if such action is finally
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 15 treasurer thereof, then the treasurer shall, upon receiving
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 19 license or tax, with costs of suit and interest at the rate
 20 currently paid on short-term interest-bearing time deposits
 21 in banks in the county or 5% a year, whichever is greater,
 22 from the date of payment under protest. If such action was
 23 commenced for the purpose of recovering the first
 24 installment portions of any such license or tax and any
 25 subsequent installment thereof has been paid under protest

1 as herein provided, then the county treasurer shall, at the
 2 time of refunding the amount of such first installment
 3 required by such judgment, also refund such portion of any
 4 subsequent installment as the person holding such judgment
 5 is entitled to recover, together with interest thereon at
 6 the rate of 6% a year from the date of payment under
 7 protest."

8 Section 7. Section 15-1-404, MCA, is amended to read:
 9 "15-1-404. Other remedies superseded. The remedy
 10 remedies hereby provided shall supersede the remedy of
 11 injunction and all other remedies which might be invoked to
 12 prevent the collection of taxes or licenses alleged to be
 13 irregularly levied or demanded, except in unusual cases
 14 where the remedy remedies hereby provided is are deemed by
 15 the court to be inadequate."

16 Section 8. Codification instruction. Section SECTIONS
 17 1 to THROUGH 4 ARE intended to be codified as an integral
 18 part of Title 15, chapter 1, part 4, and the provisions of
 19 Title 15, chapter 1, part 4, apply to section SECTIONS 1
 20 THROUGH 4.

21 Section 9. Effective date. This act is effective on
 22 July 1, 1981.

-End-

1 SENATE BILL NO. 107
2 INTRODUCED BY McCALLUM

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW TAXPAYERS TO
5 PURSUE DECLARATORY JUDGMENT PROCEEDINGS TO TEST THE VALIDITY
6 OF TAX LEVIES; PROVIDING AN EXCEPTION FROM THE REQUIREMENT
7 OF PAYMENT OF TAXES UNDER PROTEST; PROVIDING FOR RELIEF TO
8 ALL AFFECTED TAXPAYERS IF THE CHALLENGED LEVY IS DECLARED
9 ILLEGAL; AND AMENDING SECTIONS 15-1-401, 15-1-402, AND
10 15-1-404, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 ~~NEW SECTION. Section 15-1-401, Alternative remedy, (1) in~~
14 ~~lieu of proceeding under 15-1-401 or 15-1-402, an aggrieved~~
15 ~~taxpayer who has paid a contested tax may, without having~~
16 ~~first paid such tax under protest, bring a declaratory~~
17 ~~judgment action in the district court which seeks a~~
18 ~~declaration that a tax levied by the state or one of its~~
19 ~~subdivisions was illegally or unlawfully imposed.~~

20 ~~(2) If the district court determines that such tax was~~
21 ~~illegally or unlawfully imposed, the judgment may direct~~
22 ~~that the revenues collected under the illegal levy be either~~
23 ~~directly refunded to all taxpayers who have paid the illegal~~
24 ~~levy or used to eliminate a similar levy in the ensuing tax~~
25 ~~years.~~

1 ~~(3) A taxpayer who successfully brings a proceeding~~
2 ~~under subsection (1) is entitled to attorney fees and costs.~~

3 NEW SECTION. SECTION 1. ALTERNATIVE REMEDY. (1) AN
4 AGGRIEVED TAXPAYER MAY, IN LIEU OF PROCEEDING UNDER 15-1-401
5 OR 15-1-402, BRING A DECLARATORY JUDGMENT ACTION IN THE
6 DISTRICT COURT SEEKING A DECLARATION THAT A TAX LEVIED BY
7 THE STATE OR ONE OF ITS SUBDIVISIONS WAS ILLEGALLY OR
8 UNLAWFULLY IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE
9 ENTITY IMPOSING THE TAX.

10 (2) THE ACTION MUST BE BROUGHT WITHIN 90 DAYS OF THE
11 IMPOSITION OF THE TAX. THE COURT SHALL CONSOLIDATE ALL
12 ACTIONS BROUGHT UNDER SUBSECTION (1) WHICH CHALLENGE THE
13 SAME TAX LEVY. THE DECISION OF THE COURT SHALL APPLY TO ALL
14 SIMILARLY SITUATED TAXPAYERS EXCEPT THOSE TAXPAYERS WHO ARE
15 EXCLUDED UNDER [SECTION 2].

16 NEW SECTION. SECTION 2. PROCEDURE. (1) EXCEPT AS
17 PROVIDED IN SUBSECTION (2), AN ACTION PURSUANT TO [SECTION
18 1] IS SUBJECT TO THE PROVISIONS OF TITLE 27, CHAPTER 8.

19 (2) IN LIEU OF THE REQUIREMENT OF 27-8-301, A PARTY
20 BRINGING AN ACTION UNDER [SECTION 1] MAY ELECT TO USE:

21 (A) THE PROCEDURES AVAILABLE UNDER THE MONTANA RULES
22 OF CIVIL PROCEDURE FOR BRINGING A CLASS ACTION, TITLE 25,
23 CHAPTER 20, RULE 23; OR

24 (B) THE PROCEDURE PROVIDED FOR IN SUBSECTION (3).

25 (3) (A) A PARTY BRINGING AN ACTION UNDER [SECTION 1]

1 MAY ELECT TO GIVE NOTICE AS PROVIDED IN THIS SUBSECTION. A
 2 PARTY SO ELECTING MUST PUBLISH NOTICE THAT AN ACTION HAS
 3 BEEN BROUGHT. THE NOTICE MUST BE PUBLISHED AT LEAST ONCE
 4 EACH WEEK FOR 4 CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL
 5 CIRCULATION PUBLISHED IN THE COUNTY WHERE THE ACTION IS
 6 COMMENCED AND IN OTHER COUNTIES WITHIN THE JURISDICTION OF
 7 THE TAXING AUTHORITY. THE NOTICE SHALL ADVISE EACH SIMILARLY
 8 SITUATED TAXPAYER THAT:

9 (I) THE COURT WILL EXCLUDE HIM FROM THE CLASS IF HE SO
 10 REQUESTS BY A SPECIFIC DATE;

11 (II) THE JUDGMENT, WHETHER FAVORABLE OR NOT, WILL
 12 INCLUDE ALL SIMILARLY SITUATED TAXPAYERS WHO DO NOT REQUEST
 13 TO BE EXCLUDED; AND

14 (III) ANY SIMILARLY SITUATED TAXPAYER WHO DOES NOT
 15 REQUEST EXCLUSION MAY, IF HE DESIRES, ENTER AN APPEARANCE.

16 (B) THE COURT SHALL EXCLUDE A TAXPAYER FROM AN ACTION
 17 BROUGHT PURSUANT TO [SECTION 1] IF THE PERSON BRINGING THE
 18 ACTION PUBLISHES NOTICE AS PROVIDED IN SUBSECTION (3) OF
 19 THIS SECTION AND THE TAXPAYER REQUESTS TO BE EXCLUDED BY THE
 20 DATE SPECIFIED IN THE NOTICE.

21 ~~(B)(C)~~ AN ELECTION TO GIVE NOTICE UNDER THIS
 22 SUBSECTION SUBSECTION (3) OF THIS SECTION DOES NOT PREVENT
 23 ANY PARTY TO THE ACTION FROM SERVING PROCESS ON OTHER
 24 INTERESTED PARTIES.

25 (4) IN A PROCEEDING UNDER [SECTION 1] ALL ISSUES SHALL

1 BE TRIED BY THE COURT.

2 NEW SECTION. SECTION 3. REMEDY. IF THE DISTRICT
 3 COURT DETERMINES THAT THE TAX WAS ILLEGALLY OR UNLAWFULLY
 4 IMPOSED OR EXCEEDED THE TAXING AUTHORITY OF THE ENTITY
 5 IMPOSING THE TAX, THE JUDGMENT MAY DIRECT:

6 (1) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX
 7 BE DIRECTLY REFUNDED TO THE TAXPAYERS WHO HAVE PAID THE
 8 ILLEGAL TAX AND WHO HAVE NOT BEEN EXCLUDED FROM THE ACTION;

9 (2) THAT THE REVENUE COLLECTED UNDER THE ILLEGAL TAX
 10 BE USED TO REDUCE A SIMILAR LEVY IN THE ENSUING TAX YEAR; OR

11 (3) SUCH OTHER REMEDY AS THE COURT CONSIDERS
 12 APPROPRIATE.

13 NEW SECTION. SECTION 4. TAX TO BE PAID. THE TAXES
 14 THAT ARE BEING CHALLENGED UNDER [SECTION 1] MUST BE PAID
 15 WHEN DUE AS A CONDITION OF CONTINUING THE ACTION.

16 Section 5. Section 15-1-401, MCA, is amended to read:

17 "15-1-401. Payment of license fees under protest --
 18 action to recover. (1) Whenever any license fee or tax is
 19 demanded of any person for the use and benefit of the state
 20 of Montana and the same is considered unlawful by the person
 21 from whom the same is demanded, such person may proceed
 22 under [section 1] or may pay the same, or so much thereof as
 23 may be considered unlawful, under written protest,
 24 specifying the grounds of protest, to the state agency or
 25 officer responsible for collecting the license fee or tax.

1 (2) The person paying or his legal representative may
 2 bring an action in a court of competent jurisdiction against
 3 the state agency or officer responsible for collecting the
 4 license fee or tax to recover the same, without interest.
 5 Any action instituted to recover any license fee or tax paid
 6 under protest must be commenced and summons and copy of
 7 complaint served within 60 days after the date of payment
 8 thereof to the state agency or officer responsible for
 9 collecting the license fee or tax. If such action is decided
 10 adversely to the state, the state treasurer shall, upon
 11 receiving a copy of the final judgment in such action,
 12 refund such license fee or tax to the person in whose favor
 13 such judgment is rendered."

14 Section 6. Section 15-1-402, MCA, is amended to read:
 15 "15-1-402. Payment of taxes under protest -- action to
 16 recover. (1) In all cases of levy of taxes, licenses, or
 17 other demands for public revenue which are deemed unlawful
 18 by the party whose property is thus taxed or from whom such
 19 tax or license is demanded or enforced, such party may
 20 proceed under [section 1] or may, before such tax or license
 21 becomes delinquent, pay under written protest such portions
 22 of such tax or license deemed unlawful to the officers
 23 designated and authorized to collect the same, specifying
 24 the grounds of protest. Thereupon the party so paying or his
 25 legal representatives may bring an action in any court of

1 competent jurisdiction against the officers to whom said
 2 license or tax was paid or against the county or
 3 municipality in whose behalf the same was collected and the
 4 department of revenue. Both the officers to whom the license
 5 fee or tax was paid or the county or municipality in whose
 6 behalf the same was collected and the department of revenue
 7 must be served with summons and complaint within the time
 8 prescribed. Any action instituted to recover any such
 9 portions of license or tax paid under protest shall be
 10 commenced and summons served within 90 days after the date
 11 of payment of the same. When any such license or tax is
 12 payable in installments, the first installment portion of
 13 such tax or license as may be deemed unlawful may be paid
 14 under written protest and suit commenced and summons served
 15 to recover the same within the time herein prescribed, and
 16 if any subsequent installment of such license or tax shall
 17 become due or payable before the final determination of the
 18 suit commenced to recover the first installment portion paid
 19 under protest, then such subsequent installment portion
 20 deemed unlawful may also be paid under written protest and
 21 no suit or action need be commenced to recover the same, but
 22 the determination of the suit or action commenced to recover
 23 the first installment portion paid under protest shall
 24 determine the right of the party paying such subsequent
 25 installment to have the same or any part thereof refunded to

1 him. All such portions of licenses and taxes when so paid
 2 under protest shall be deposited by the treasurer of the
 3 county or municipality to the credit of a special fund to be
 4 designated as protest fund and shall be invested in
 5 interest-bearing deposits in local banks or savings and loan
 6 associations and retained in such protest fund until the
 7 final determination of any suit or action to recover the
 8 same. Nothing contained herein prohibits the investment of
 9 the moneys of this fund in the state unified investment
 10 program. The provision creating the special protest fund
 11 does not apply to any payments made under protest directly
 12 to the state.

13 (2) If no action is commenced within the time herein
 14 specified or if such action be commenced and finally
 15 determined in favor of the county or municipality or
 16 treasurer thereof, the amount of such protested portions of
 17 the license or tax shall be taken from such protest fund and
 18 deposited to the credit of the fund or funds to which the
 19 same property belongs, but if such action is finally
 20 determined adversely to such county or municipality or the
 21 treasurer thereof, then the treasurer shall, upon receiving
 22 a certified copy of the final judgment in said action,
 23 refund to the person in whose favor such judgment is
 24 rendered the amount of such protested portions of the
 25 license or tax, with costs of suit and interest at the rate

1 currently paid on short-term interest-bearing time deposits
 2 in banks in the county or 5% a year, whichever is greater,
 3 from the date of payment under protest. If such action was
 4 commenced for the purpose of recovering the first
 5 installment portions of any such license or tax and any
 6 subsequent installment thereof has been paid under protest
 7 as herein provided, then the county treasurer shall, at the
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 9 required by such judgment, also refund such portion of any
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 19 irregularly levied or demanded, except in unusual cases
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22 Section 8. Codification instruction. Section SECTIONS
 23 1 IS THROUGH 4 ARE intended to be codified as an integral
 24 part of Title 15, chapter 1, part 4, and the provisions of
 25 Title 15, chapter 1, part 4, apply to section SECTIONS 1

SB 0107/03

1 THROUGH 4.

2 Section 9. Effective date. This act is effective on

3 July 1, 1981.

-End-

MARCH 21, 1981

HOUSE TAXATION COMMITTEE AMENDMENTS TO SENATE BILL NO. 107

Third Reading be amended as follows:

1. Page 2, line 15.

Following: "SECTION"

Strike: "7"

Insert: "2"

2. Page 3.

Following: line 15

Insert: "(b) The court shall exclude a taxpayer from an action brought pursuant to (section 1) if the person bringing the action publishes notice as provided in subsection (3) of this section and the taxpayer requests to be excluded by the date specified in the notice."

Reletter: subsequent subsection

3. Page 3, line 16.

Following: "UNDER"

Strike: "THIS SUBSECTION"

Insert: "subsection (3) of this section"