

HOUSE BILL NO. 42  
INTRODUCED BY MANUEL  
BY REQUEST OF THE CODE COMMISSIONER

IN THE HOUSE

January 7, 1985	Introduced and referred to Committee on Taxation.
January 9, 1985	Committee recommend bill do pass. Report adopted.
January 10, 1985	Bill printed and placed on members' desks.
January 11, 1985	Second reading, do pass.  Considered correctly engrossed.
January 14, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 15, 1985	Introduced and referred to Committee on Taxation.
January 29, 1985	Committee recommend bill be concurrent in. Report adopted.
January 30, 1985	Second reading, concurred in.
February 1, 1985	Third reading, concurred in. Ayes, 48; Noes, 1.  Returned to House.

IN THE HOUSE

February 4, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1985 Legislature  
Code Commissioner Bill - Summary

House Bill No. 42

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS 15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106, 15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106, 15-57-102, 16-1-205, AND 16-6-106, MCA.

Section 1. 15-1-101. In subsection (1)(k)(ii) there is a reference to all mines, minerals, and quarries in and above the land subject to the provisions of 15-23-108. Section 15-23-108 is a definitional section, and the clear intent of the statute was to refer to the metal mines gross proceeds tax, which is included in Title 15, chapter 3, part 8. The amendment to this section substitutes Title 15, chapter 3, part 8, for the definitional section of 15-23-801.

Section 2. 15-6-101. When 15-6-101 was originally amended, it included the property tax classification system contained in 15-6-131 through 15-6-141. To avoid amending this section every time an additional class is added to the property tax classification system, the reference to those sections was changed to this part.

Section 3. 15-6-140. In subsection (1)(g) there is reference to "all other property included in the preceding 9 classes". Since that reference was included, additional classes, namely class eleven and class twelve, were added to the classification system. This amendment, which substitutes any other class in this part for the preceding 9 classes, is an attempt to more clearly express the intent of the Legislature that class ten include all property not included in any other class in the part.

Section 4. 15-7-103. In subsection (5) of this section there is a reference in brackets to 15-6-112, which was repealed in 1979; and the property previously contained in that section is now included in 15-6-134.

Section 5. 15-8-201. In subsection (1)(e) there is a reference to 61-1-104(2). There is no subsection (2) in 61-1-104, and therefore subsection (2) is deleted from the section.

Section 6. 15-23-106. In subsection (1)(b) there is a reference to the assessed value as determined under 15-23-302. That section has been repealed. The Department of Revenue now determines the assessed value of utility property under the authority of 15-23-303, and that reference is substituted for 15-23-302.

Section 7. 15-24-911. Part 24 is concerned with the assessment of livestock, and "livestock" is used consistently throughout the part with the exception of a reference to "cattle" in subsection (1)(b). That reference is changed to "livestock".

Section 8. 15-24-1001. The beginning of subsection (1) contains a number of amendments which merely make the section more readable.

Section 9. 15-31-123. This section involves the investment tax credit available to certain small businesses. Prior to 1983, a small business which qualified for the investment tax credit also could elect to be treated and taxed as an individual under Title 15, chapter 31, part 2. The definition of a small business corporation contained in part 2 was changed by the 1983 Legislature and as part of that change 15-31-207 was repealed. The Department of Revenue has continued to treat trusts that were previously described in 15-31-207 as qualifying small businesses. The substance of the prior section 15-31-207 is therefore incorporated as subsection (8) of 15-31-123, to conform to the treatment currently being given to that section by the department of revenue.

Section 10. 15-31-301. Language is inserted at the end of subsection (2) for purposes of clarity.

Section 11. 15-55-106. Subsection (3) of this section refers to "freightline company tax fund", which does not exist. All money collected under this chapter is deposited in the general fund (15-55-110). The references to the freightline company tax fund created by this chapter are therefore deleted.

Section 12. 15-57-102. Subsection (2) of this section refers to Title 80, chapter 4, part 2, which was repealed during a general revision of the laws dealing with grain merchandising. The correct reference now is merely to Title 80, chapter 4.

Section 13. 16-1-205. There is a reference in this section to the initiative process provided under Title 7, chapter 5, part 22. At one time the initiative process was contained in Title 7, chapter 5, part 22, but that was repealed, and the new initiative approval procedures were contained in 7-5-131 through 7-5-137. Therefore, the reference in this section is changed.

Section 14. 16-6-106. In 1983 the Legislature eliminated the official seal, which is referred to in subsection (5) of this section. Since there is no longer a requirement for the official seal, subsection (5) is no longer needed and is therefore deleted.

1                   HOUSE     BILL NO. 42

2    INTRODUCED BY             MANUEL          

3                   BY REQUEST OF THE CODE COMMISSIONER

4

5    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

6    LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS

7    15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106,

8    15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106,

9    15-57-102, 16-1-205, AND 16-6-106, MCA."

10

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

12       Section 1. Section 15-1-101, MCA, is amended to read:

13       "15-1-101. Definitions. (1) When terms mentioned in

14       this section are used in connection with taxation, they are

15       defined in the following manner:

16       (a) The term "agricultural" refers to the raising of

17       livestock, swine, poultry, field crops, fruit, and other

18       animal and vegetable matter for food or fiber.

19       (b) The term "assessed value" means the value of

20       property as defined in 15-8-111.

21       (c) The term "average wholesale value" means the value

22       to a dealer prior to reconditioning and profit margin shown

23       in national appraisal guides and manuals or the valuation

24       schedules of the department of revenue.

25       (d) The term "credit" means solvent debts, secured or

1    unsecured, owing to a person.

2           (e) The term "improvements" includes all buildings,

3    structures, fixtures, fences, and improvements situated

4    upon, erected upon, or affixed to land. When the department

5    of revenue or its agent determines that the permanency of

6    location of a mobile home or housetrailer has been

7    established, the mobile home or housetrailer is presumed to

8    be an improvement to real property. A mobile home or

9    housetrailer may be determined to be permanently located

10   only when it is attached to a foundation which cannot

11   feasibly be relocated and only when the wheels are removed.

12       (f) The term "leasehold improvements" means

13    improvements to mobile homes and mobile homes located on

14    land owned by another person. This property is assessed

15    under the appropriate classification and the taxes are due

16    and payable in two payments as provided in 15-24-202.

17    Delinquent taxes on such leasehold improvements are a lien

18    only on such leasehold improvements.

19       (g) The term "mobile home" means forms of housing

20    known as "trailers", "housetrailer", or "trailer coaches"

21    exceeding 8 feet in width or 45 feet in length, designed to

22    be moved from one place to another by an independent power

23    connected to them, or any "trailer", "housetrailer", or

24    "trailer coach" up to 8 feet in width or 45 feet in length

25    used as a principal residence.



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1 (h) The term "personal property" includes everything  
2 that is the subject of ownership but that is not included  
3 within the meaning of the terms "real estate" and  
4 "improvements".

5 (i) The term "poultry" includes all chickens, turkeys,  
6 geese, ducks, and other birds raised in domestication to  
7 produce food or feathers.

8 (j) The term "property" includes moneys, credits,  
9 bonds, stocks, franchises, and all other matters and things,  
10 real, personal, and mixed, capable of private ownership.  
11 This definition must not be construed to authorize the  
12 taxation of the stocks of any company or corporation when  
13 the property of such company or corporation represented by  
14 the stocks is within the state and has been taxed.

15 (k) The term "real estate" includes:

16 (i) the possession of, claim to, ownership of, or  
17 right to the possession of land;

18 (ii) all mines, minerals, and quarries in and under the  
19 land subject to the provisions of 15-23-501 and ~~15-23-801~~  
20 Title 15, chapter 23, part 8; all timber belonging to  
21 individuals or corporations growing or being on the lands of  
22 the United States; and all rights and privileges  
23 appertaining thereto.

24 (l) The term "taxable value" means the percentage of  
25 market or assessed value as provided for in 15-6-131 through

1 15-6-140.

2 (2) The phrase "municipal corporation" or  
3 "municipality" or "taxing unit" shall be deemed to include a  
4 county, city, incorporated town, township, school district,  
5 irrigation district, drainage district, or any person,  
6 persons, or organized body authorized by law to establish  
7 tax levies for the purpose of raising public revenue.

8 (3) The term "state board" or "board" when used  
9 without other qualification shall mean the state tax appeal  
10 board."

11 Section 2. Section 15-6-101, MCA, is amended to read:  
12 "15-6-101. Property subject to taxation --  
13 classification. (1) All property in this state is subject to  
14 taxation, except as provided otherwise.

15 (2) For the purpose of taxation, the taxable property  
16 in the state shall be classified in accordance with ~~15-6-131~~  
17 ~~through-15-6-141~~ this part."

18 Section 3. Section 15-6-140, MCA, is amended to read:  
19 "15-6-140. Class ten property -- description --  
20 taxable percentage. (1) Class ten property includes:

21 (a) radio and television broadcasting and transmitting  
22 equipment;

23 (b) cable television systems;

24 (c) coal and ore haulers;

25 (d) trucks having a rated capacity of more than 1 1/2

1 tons, including those prorated under 15-24-102;

2 (e) all trailers exceeding 18,000 pounds maximum gross  
3 loaded weight, including those prorated under 15-24-102 and  
4 except those subject to a fee in lieu of property tax;

5 (f) theater projectors and sound equipment; and

6 (g) all other property not included in ~~the preceding~~  
7 ~~nine--classes~~ any other class in this part except that  
8 property subject to a fee in lieu of a property tax.

9 (2) Class ten property is taxed at 16% of its market  
10 value."

11 Section 4. Section 15-7-103, MCA, is amended to read:

12 "15-7-103. Classification and appraisal -- general and  
13 uniform methods. (1) It is the duty of the department of  
14 revenue to implement the provisions of 15-7-101 through  
15 15-7-103 by providing:

16 (a) for a general and uniform method of classifying  
17 lands in the state for the purpose of securing an equitable  
18 and uniform basis of assessment of said lands for taxation  
19 purposes;

20 (b) for a general and uniform method of appraising  
21 city and town lots;

22 (c) for a general and uniform method of appraising  
23 rural and urban improvements;

24 (d) for a general and uniform method of appraising  
25 timberlands.

1 (2) All lands shall be classified according to their  
2 use or uses and graded within each class according to soil  
3 and productive capacity. In such classification work, use  
4 shall be made of soil surveys and maps and all other  
5 pertinent available information.

6 (3) All lands must be classified by parcels or  
7 subdivisions not exceeding 1 section each, by the section,  
8 fractional sections, or lots of all tracts of land that have  
9 been sectionized by the United States government, or by  
10 metes and bounds, whichever yields a true description of the  
11 land.

12 (4) All agricultural lands must be classified and  
13 appraised as agricultural lands without regard to the best  
14 and highest value use of adjacent or neighboring lands.

15 (5) In any periodic revaluation of taxable property  
16 completed under the provisions of 15-7-111 after January 1,  
17 1979, all property classified in ~~15-6-112~~ 15-6-134 must be  
18 appraised on its market value in the same year. The  
19 department must publish a rule specifying the year used in  
20 the appraisal."

21 Section 5. Section 15-8-201, MCA, is amended to read:

22 "15-8-201. General assessment day. (1) The department  
23 of revenue or its agent must, between January 1 and the  
24 second Monday of July in each year, ascertain the names of  
25 all taxable inhabitants and assess all property subject to

1 taxation in each county. The department or its agent must  
 2 assess property to the person by whom it was owned or  
 3 claimed or in whose possession or control it was at midnight  
 4 of January 1 next preceding. It must also ascertain and  
 5 assess all mobile homes arriving in the county after  
 6 midnight of January 1 next preceding. No mistake in the name  
 7 of the owner or supposed owner of real property, however,  
 8 renders the assessment invalid.

9 (2) The procedure provided by this section may not  
 10 apply to:

11 (a) motor vehicles that are required by 15-8-202 to be  
 12 assessed on January 1 or upon their anniversary registration  
 13 date;

14 (b) automobiles and trucks having a rated capacity of  
 15 three-quarters of a ton or less;

16 (c) motor homes and travel trailers subject to a fee  
 17 in lieu of property tax;

18 (d) livestock;

19 (e) property defined in 61-1-104(2) as "special mobile  
 20 equipment" that is subject to assessment for personal  
 21 property taxes on the date that application is made for a  
 22 special mobile equipment plate; and

23 (f) mobile homes held by a distributor or dealer of  
 24 mobile homes as a part of his stock in trade.

25 (3) Credits must be assessed as provided in

1 15-1-101(1)(c)."

2 Section 6. Section 15-23-106, MCA, is amended to read:  
 3 "15-23-106. Transmission to the counties. (1) On or  
 4 before July 1, the department shall transmit to its agent in  
 5 each county a statement listing:

6 (a) the assessed value of railroad property, as  
 7 determined under 15-23-202, apportioned to the county,  
 8 including the length or other description of such property;

9 (b) the assessed value of utility property, as  
 10 determined under ~~15-23-302~~ 15-23-303, apportioned to the  
 11 county, including the length or other description of such  
 12 property;

13 (c) the assessed value of property of airline  
 14 companies, as determined under 15-23-403, apportioned to the  
 15 county; 90% of the value of the property of airline  
 16 companies apportioned to any county by reason of a state  
 17 airport being located in the county shall be stated  
 18 separately from the remaining assessed value of the property  
 19 of airline companies apportioned to the county;

20 (d) the assessed value of the net proceeds and  
 21 royalties from mines and oil and gas wells in the county, as  
 22 determined under 15-23-503, 15-23-505, 15-23-603, and  
 23 15-23-605; and

24 (e) the assessed value of the gross proceeds from coal  
 25 mines, as described in 15-23-701.



1 (2) The agent of the department shall enter the  
2 assessed values so transmitted in the assessment book in a  
3 manner prescribed by the department."

4 Section 7. Section 15-24-911, MCA, is amended to read:

5 "15-24-911. Livestock assessment. (1) The department  
6 of revenue or its agent must assess all livestock on the  
7 average inventory basis as provided in 15-24-908 through  
8 15-24-910 unless:

9 (a) the owner elects to have his livestock assessed on  
10 March 1 of each year as provided in (4); and

11 (b) the assessor of the county in which the cattle-are  
12 livestock is located on assessment date accepts this  
13 election.

14 (2) The owner shall file his election with the county  
15 assessor on the statement required in 15-24-903.

16 (3) The county assessor shall accept the owner's  
17 election unless he determines that the election is made to  
18 evade property taxation. The livestock owner may appeal the  
19 assessor's decision to the county tax appeal board and the  
20 state tax appeal board under the procedures established in  
21 Title 15, chapter 15, part 1, and chapter 2, part 3.

22 (4) If an owner chooses the method of assessment  
23 provided in (1)(a), the department of revenue or its agent  
24 must assess the owner's livestock in each county as of March  
25 1 of each year. This livestock shall be assessed to the

1 person by whom owned or claimed or in whose possession or  
2 control it was at midnight of March 1 in each year."

3 Section 8. Section 15-24-1001, MCA, is amended to  
4 read:

5 "15-24-1001. Custom combiner's tax -- collection --  
6 distribution -- not transferable. (1) In lieu of the taxes  
7 required by 15-24-301, and in lieu of motor vehicle license  
8 fees, and gross vehicle weight fees, and overweight and  
9 overweight permits, provided for in Title 61, a nonresident  
10 engaged in the business of custom combining who brings  
11 equipment into the state shall pay a fee of \$40 per unit. A  
12 unit shall include:

13 (a) one truck suitable for hauling grain;

14 (b) one header trailer or one combine trailer; and

15 (c) pickup trucks and all other equipment, except  
16 combines, used by a nonresident and brought into the state  
17 as part of his business of custom combining.

18 (2) In lieu of gross vehicle weight fees and overweight  
19 and overweight permits, Montana residents engaged in the  
20 business of custom combining may pay the annual farm gross  
21 vehicle weight fees and a fee of \$20 per unit. A unit  
22 includes:

23 (a) one truck suitable for hauling grain;

24 (b) one header trailer or one combine trailer; and

25 (c) pickup trucks used by the resident in his business

1 of custom combining.

2 (3) The fee required by this section must be collected  
3 by the department of highways. Upon payment of the fee, the  
4 department of highways must provide an identifying device to  
5 be displayed on each truck, header trailer, or combine  
6 trailer and other equipment used by the nonresident or  
7 resident in his business of custom combining in the state,  
8 which device is valid for the calendar year in which the fee  
9 is collected.

10 (4) All fees collected under this section must be  
11 distributed not later than January 31 immediately following  
12 the period of license as follows: 62 1/2% to the county  
13 general fund in the county in which the permittee declares  
14 the greatest amount of time will be spent to operate,  
15 37 1/2% to the state special revenue fund for the department  
16 of highways.

17 (5) The identifying devices and fee paid for each unit  
18 are not transferable from one vehicle to another or  
19 transferable on the sale or change of ownership.

20 (6) Any owner or operator of any equipment included in  
21 the unit definition in subsection (1) or (2) of this section  
22 who violates any provision of this section is guilty of a  
23 misdemeanor and punishable by a fine of not more than \$300  
24 or by a sentence of not more than 60 days in the county  
25 jail, or both."

1 Section 9. Section 15-31-123, MCA, is amended to read:

2 "15-31-123. Investment credit. (1) The purpose of this  
3 section is to allow small businesses to take an investment  
4 credit as provided for in subsection (3) and to stimulate  
5 capital investment by the small business sector.

6 (2) For the purposes of this section, "small business"  
7 means a business that does not have:

8 (a) more than 10 shareholders;

9 (b) a person who is not an individual (other than an  
10 estate or other than a trust described in ~~15-31-207~~  
11 subsection (8)) as a shareholder;

12 (c) a nonresident alien as a shareholder; and

13 (d) more than one class of stock.

14 (3) There is allowed as a credit against the taxes  
15 imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage  
16 of the credit allowed with respect to certain depreciable  
17 property under section 38 of the Internal Revenue Code of  
18 1954, as amended, or as section 38 may be renumbered or  
19 amended. However, rehabilitation costs as set forth under  
20 section 46(a)(2)(F) of the Internal Revenue Code of 1954, or  
21 as section 46(a)(2)(F) may be renumbered or amended, are not  
22 to be included in the computation of the investment credit.  
23 The credit is allowed for the purchase and installation of  
24 certain qualified property defined by section 38 of the  
25 Internal Revenue Code of 1954, as amended, if the property

1 meets all of the following qualifications:

- 2 (a) it was placed in service in Montana; and
- 3 (b) it was used for the production of Montana income.
- 4 (4) The amount of the credit allowed for the taxable
- 5 year is 5% of the amount of credit determined under section
- 6 46(a)(2) of the Internal Revenue Code of 1954, as amended,
- 7 or as section 46(a)(2) may be renumbered or amended.
- 8 (5) Notwithstanding the provisions of subsection (4),
- 9 the investment credit allowed for the taxable year may not
- 10 exceed \$500.
- 11 (6) If property for which an investment credit is
- 12 claimed is used both inside and outside this state, only a
- 13 portion of the credit is allowed. The credit must be
- 14 apportioned according to a fraction the numerator of which
- 15 is the number of days during the taxable year the property
- 16 was located in Montana and the denominator of which is the
- 17 number of days during the taxable year the taxpayer owned
- 18 the property. The investment credit may be applied only to
- 19 the tax liability of the taxpayer who purchases and places
- 20 in service the property for which an investment credit is
- 21 claimed.
- 22 (7) The investment credit allowed by this section is
- 23 subject to recapture as provided for in section 47 of the
- 24 Internal Revenue Code of 1954, as amended, or as section 47
- 25 may be renumbered or amended.

1 (8) (a) For purposes of subsection (2)(b), any of the

2 following trusts may be a shareholder without disqualifying

3 the business for the investment credit:

4 (i) a trust all of which is treated as owned by the

5 grantor under sections 671 through 678 of the Internal

6 Revenue Code;

7 (ii) a trust created primarily to exercise the voting

8 power of stock transferred to it;

9 (iii) any trust with respect to stock transferred to it

10 pursuant to the terms of a will, but only for the 60-day

11 period beginning on the day on which such stock is

12 transferred to it.

13 (b) In the case of a trust described in subsection

14 (8)(a)(ii), each beneficiary of the trust shall be treated

15 as a shareholder."

16 Section 10. Section 15-31-303, MCA, is amended to

17 read:

18 "15-31-303. When taxable in another state. For the

19 purposes of allocation and apportionment of income, a

20 corporation is taxable in another state if:

21 (1) by reason of the corporation's business activities

22 carried on in that state it is subjected to a net income

23 tax, a franchise tax measured by net income, a franchise tax

24 for the privilege of doing business, or a corporate stock

25 tax; or

1 (2) that state has jurisdiction to subject the  
2 taxpayer to a net income tax, regardless of whether, in  
3 fact, the state does or does not subject the taxpayer to a  
4 net income tax."

5 Section 11. Section 15-55-106, MCA, is amended to  
6 read:

7 "15-55-106. Appeals and refunds. (1) Any such freight  
8 line company or railroad company, on or before June 1 of the  
9 year in which the tax herein imposed has been paid, may file  
10 written complaint with the state tax appeal board concerning  
11 the correctness of the rate used or the correctness of the  
12 amount of the tax imposed or any other matter affecting the  
13 complainant under the provisions of this chapter.

14 (2) Upon filing such complaint, the state tax appeal  
15 board shall set the same for hearing and shall give written  
16 notice thereof to the complainant at least 10 days before  
17 the date set for hearing thereon. Upon the hearing of any  
18 such complaint, the state tax appeal board shall take  
19 testimony to determine whether the amount of the tax, as  
20 computed and determined by the department of revenue, is  
21 greater than the general ad valorem tax for all purposes  
22 would be on the cars of such freight line company subject to  
23 taxation in Montana if assessed and taxed on an ad valorem  
24 basis. In such cases the state tax appeal board shall have  
25 the power and it shall be its duty to lower or raise the

1 rates herein specified to conform to the facts disclosed at  
2 such hearing and to make the amount of the tax due  
3 equivalent to such ad valorem tax. If the state tax appeal  
4 board shall then determine that the amount of the tax  
5 imposed and collected was excessive, the claimant shall be  
6 entitled to a refund to the extent of such excess.

7 (3) Within 6 months after such determination, the  
8 claimant may present to the department a sworn claim for  
9 such refund, setting forth the amount thereof. The state  
10 auditor shall draw his warrant upon the state treasurer for  
11 the amount of such claim, and the same shall be paid ~~out--of~~  
12 ~~the-freight-line-company-tax-fund-created-by-this-chapter~~ in  
13 the same manner as other claims against the state are paid.

14 (4) In order to determine the amount of tax such  
15 freight line company would pay, the department may value all  
16 cars of any such company as a unit and allocate to Montana  
17 that proportion of the total value which the Montana car  
18 mileage bears to the total car mileage of the cars of any  
19 such freight line company during the 12-month period ending  
20 December 31 of the preceding year and may then apply to such  
21 value the average total rate of all general property taxes  
22 levied for the preceding year by the taxing authorities of  
23 the state, counties, school districts, municipalities, and  
24 other taxing subdivisions for state, county, school and  
25 municipal, and other purposes."

1 Section 12. Section 15-57-102, MCA, is amended to  
2 read:

3 "15-57-102. License to operate store -- exception for  
4 grain merchandisers. (1) It shall be unlawful for any person  
5 to open, establish, operate, or maintain any store or stores  
6 in this state without first having obtained a license to do  
7 so from the department of revenue as hereinafter provided.

8 (2) A person establishing or operating any store in  
9 this state engaged solely in the business of grain  
10 merchandising and who is licensed under Title 80, chapter 4,  
11 ~~part--27~~ is exempt from the provisions of this chapter as to  
12 such store."

13 Section 13. Section 16-1-205, MCA, is amended to read:

14 "16-1-205. Local option. The electors of a county may,  
15 by approving an initiative as provided under ~~Title--77~~  
16 ~~chapter--57--part--22~~ 7-5-131 through 7-5-137, prohibit the  
17 sale and consumption of liquor or of all alcoholic beverages  
18 within the county. If such initiative is presented to the  
19 board of county commissioners, the board may not approve it  
20 but shall submit the proposal to the people under Title 7,  
21 chapter 5, part 1."

22 Section 14. Section 16-6-106, MCA, is amended to read:

23 "16-6-106. When force may be used in seizure of  
24 alcoholic beverages -- forfeiture -- hearing. (1) Where  
25 alcoholic beverage is found by any investigator or peace

1 officer on any premises or in any place in such quantities  
2 as to satisfy the investigator or peace officer that such  
3 alcoholic beverage is being had or kept contrary to any of  
4 the provisions of this code, it shall be lawful for the  
5 investigator or peace officer to forthwith seize and remove,  
6 by force if necessary, any alcoholic beverage found and the  
7 packages in which the alcoholic beverage was had or kept and  
8 immediately turn said alcoholic beverage over to the  
9 department.

10 (2) The department shall commence an action in the  
11 district court of the county in which the alcoholic beverage  
12 is found and seized against said alcoholic beverage and the  
13 person or persons actually or apparently in possession or  
14 control thereof if any such person be present at the time of  
15 the seizure. The alcoholic beverage shall be named as one  
16 of the defendants to said action.

17 (3) The complaint shall show the date and place of  
18 seizure, the name of the person or persons actually or  
19 apparently in possession or control thereof if any such  
20 person be present at the time of the seizure, the reasons  
21 the department claims the right to the possession of the  
22 alcoholic beverage and shall demand that all persons who  
23 claim any right to the possession of the alcoholic beverage  
24 shall show the nature of their claim or claims and that the  
25 court declare the alcoholic beverage contraband and that the

1 court order the alcoholic beverage be forfeited to the state  
2 of Montana.

3 (4) A summons shall be issued, served, or published as  
4 in other civil actions provided by Title 25, except that the  
5 summons shall be published in the county where the alcoholic  
6 beverage was seized if a newspaper is published in said  
7 county.

8 ~~(5) In all actions brought under this code proof of~~  
9 ~~the absence of the official seal of the department upon the~~  
10 ~~bottle, jug, package, container, or containers of an~~  
11 ~~alcoholic beverage on which a seal is required shall be~~  
12 ~~prima facie evidence that the alcoholic beverage is~~  
13 ~~contraband liquor and prima facie evidence of unlawful~~  
14 ~~possession thereof in the defendants and each of them and in~~  
15 ~~all other persons excepting the department. The court shall~~  
16 ~~order all such alcoholic beverage contraband and forfeited~~  
17 ~~to the state of Montana."~~

-End-

1985 Legislature  
Code Commissioner Bill - Summary

House Bill No. 42

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS 15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106, 15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106, 15-57-102, 16-1-205, AND 16-6-106, MCA.

Section 1. 15-1-101. In subsection (1)(k)(ii) there is a reference to all mines, minerals, and quarries in and above the land subject to the provisions of 15-23-108. Section 15-23-108 is a definitional section, and the clear intent of the statute was to refer to the metal mines gross proceeds tax, which is included in Title 15, chapter 3, part 8. The amendment to this section substitutes Title 15, chapter 3, part 8, for the definitional section of 15-23-801.

Section 2. 15-6-101. When 15-6-101 was originally amended, it included the property tax classification system contained in 15-6-131 through 15-6-141. To avoid amending this section every time an additional class is added to the property tax classification system, the reference to those sections was changed to this part.

Section 3. 15-6-140. In subsection (1)(g) there is reference to "all other property included in the preceding 9 classes". Since that reference was included, additional classes, namely class eleven and class twelve, were added to the classification system. This amendment, which substitutes any other class in this part for the preceding 9 classes, is an attempt to more clearly express the intent of the Legislature that class ten include all property not included in any other class in the part.

Section 4. 15-7-103. In subsection (5) of this section there is a reference in brackets to 15-6-112, which was repealed in 1979; and the property previously contained in that section is now included in 15-6-134.

Section 5. 15-8-201. In subsection (1)(e) there is a reference to 61-1-104(2). There is no subsection (2) in 61-1-104, and therefore subsection (2) is deleted from the section.

Section 6. 15-23-106. In subsection (1)(b) there is a reference to the assessed value as determined under 15-23-302. That section has been repealed. The Department of Revenue now determines the assessed value of utility property under the authority of 15-23-303, and that reference is substituted for 15-23-302.

Section 7. 15-24-911. Part 24 is concerned with the assessment of livestock, and "livestock" is used consistently throughout the part with the exception of a reference to "cattle" in subsection (1)(b). That reference is changed to "livestock".

Section 8. 15-24-1001. The beginning of subsection (1) contains a number of amendments which merely make the section more readable.

Section 9. 15-31-123. This section involves the investment tax credit available to certain small businesses. Prior to 1983, a small business which qualified for the investment tax credit also could elect to be treated and taxed as an individual under Title 15, chapter 31, part 2. The definition of a small business corporation contained in part 2 was changed by the 1983 Legislature and as part of that change 15-31-207 was repealed. The Department of Revenue has continued to treat trusts that were previously described in 15-31-207 as qualifying small businesses. The substance of the prior section 15-31-207 is therefore incorporated as subsection (8) of 15-31-123, to conform to the treatment currently being given to that section by the department of revenue.

Section 10. 15-31-301. Language is inserted at the end of subsection (2) for purposes of clarity.

Section 11. 15-55-106. Subsection (3) of this section refers to "freightline company tax fund", which does not exist. All money collected under this chapter is deposited in the general fund (15-55-110). The references to the freightline company tax fund created by this chapter are therefore deleted.

Section 12. 15-57-102. Subsection (2) of this section refers to Title 80, chapter 4, part 2, which was repealed during a general revision of the laws dealing with grain merchandising. The correct reference now is merely to Title 80, chapter 4.

Section 13. 16-1-205. There is a reference in this section to the initiative process provided under Title 7, chapter 5, part 22. At one time the initiative process was contained in Title 7, chapter 5, part 22, but that was repealed, and the new initiative approval procedures were contained in 7-5-131 through 7-5-137. Therefore, the reference in this section is changed.

Section 14. 16-6-106. In 1983 the Legislature eliminated the official seal, which is referred to in subsection (5) of this section. Since there is no longer a requirement for the official seal, subsection (5) is no longer needed and is therefore deleted.



APPROVED BY COMMITTEE  
ON TAXATION

1                   HOUSE       BILL NO. 42  
2   INTRODUCED BY    MANUEL  
3                   BY REQUEST OF THE CODE COMMISSIONER  
4

5   A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
6   LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS  
7   15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106,  
8   15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106,  
9   15-57-102, 16-1-205, AND 16-6-106, MCA."

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

12       Section 1. Section 15-1-101, MCA, is amended to read:  
13       "15-1-101. Definitions. (1) When terms mentioned in  
14       this section are used in connection with taxation, they are  
15       defined in the following manner:

16       (a) The term "agricultural" refers to the raising of  
17       livestock, swine, poultry, field crops, fruit, and other  
18       animal and vegetable matter for food or fiber.

19       (b) The term "assessed value" means the value of  
20       property as defined in 15-8-111.

21       (c) The term "average wholesale value" means the value  
22       to a dealer prior to reconditioning and profit margin shown  
23       in national appraisal guides and manuals or the valuation  
24       schedules of the department of revenue.

25       (d) The term "credit" means solvent debts, secured or

1   unsecured, owing to a person.

2       (e) The term "improvements" includes all buildings,  
3       structures, fixtures, fences, and improvements situated  
4       upon, erected upon, or affixed to land. When the department  
5       of revenue or its agent determines that the permanency of  
6       location of a mobile home or housetrailer has been  
7       established, the mobile home or housetrailer is presumed to  
8       be an improvement to real property. A mobile home or  
9       housetrailer may be determined to be permanently located  
10       only when it is attached to a foundation which cannot  
11       feasibly be relocated and only when the wheels are removed.

12       (f) The term "leasehold improvements" means  
13       improvements to mobile homes and mobile homes located on  
14       land owned by another person. This property is assessed  
15       under the appropriate classification and the taxes are due  
16       and payable in two payments as provided in 15-24-202.  
17       Delinquent taxes on such leasehold improvements are a lien  
18       only on such leasehold improvements.

19       (g) The term "mobile home" means forms of housing  
20       known as "trailers", "housetrailer", or "trailer coaches"  
21       exceeding 8 feet in width or 45 feet in length, designed to  
22       be moved from one place to another by an independent power  
23       connected to them, or any "trailer", "housetrailer", or  
24       "trailer coach" up to 8 feet in width or 45 feet in length  
25       used as a principal residence.

1 (h) The term "personal property" includes everything  
2 that is the subject of ownership but that is not included  
3 within the meaning of the terms "real estate" and  
4 "improvements".

5 (i) The term "poultry" includes all chickens, turkeys,  
6 geese, ducks, and other birds raised in domestication to  
7 produce food or feathers.

8 (j) The term "property" includes moneys, credits,  
9 bonds, stocks, franchises, and all other matters and things,  
10 real, personal, and mixed, capable of private ownership.  
11 This definition must not be construed to authorize the  
12 taxation of the stocks of any company or corporation when  
13 the property of such company or corporation represented by  
14 the stocks is within the state and has been taxed.

15 (k) The term "real estate" includes:

16 (i) the possession of, claim to, ownership of, or  
17 right to the possession of land;

18 (ii) all mines, minerals, and quarries in and under the  
19 land subject to the provisions of 15-23-501 and ~~15-23-801~~  
20 Title 15, chapter 23, part 8; all timber belonging to  
21 individuals or corporations growing or being on the lands of  
22 the United States; and all rights and privileges  
23 appertaining thereto.

24 (l) The term "taxable value" means the percentage of  
25 market or assessed value as provided for in 15-6-131 through

1 15-6-140.

2 (2) The phrase "municipal corporation" or  
3 "municipality" or "taxing unit" shall be deemed to include a  
4 county, city, incorporated town, township, school district,  
5 irrigation district, drainage district, or any person,  
6 persons, or organized body authorized by law to establish  
7 tax levies for the purpose of raising public revenue.

8 (3) The term "state board" or "board" when used  
9 without other qualification shall mean the state tax appeal  
10 board."

11 Section 2. Section 15-6-101, MCA, is amended to read:  
12 "15-6-101. Property subject to taxation --  
13 classification. (1) All property in this state is subject to  
14 taxation, except as provided otherwise.

15 (2) For the purpose of taxation, the taxable property  
16 in the state shall be classified in accordance with ~~15-6-131~~  
17 ~~through-15-6-141~~ this part."

18 Section 3. Section 15-6-140, MCA, is amended to read:  
19 "15-6-140. Class ten property -- description --  
20 taxable percentage. (1) Class ten property includes:

21 (a) radio and television broadcasting and transmitting  
22 equipment;

23 (b) cable television systems;

24 (c) coal and ore haulers;

25 (d) trucks having a rated capacity of more than 1 1/2

1 tons, including those prorated under 15-24-102;

2 (e) all trailers exceeding 18,000 pounds maximum gross

3 loaded weight, including those prorated under 15-24-102 and

4 except those subject to a fee in lieu of property tax;

5 (f) theater projectors and sound equipment; and

6 (g) all other property not included in ~~the preceding~~

7 ~~nine classes~~ any other class in this part except that

8 property subject to a fee in lieu of a property tax.

9 (2) Class ten property is taxed at 16% of its market

10 value."

11 Section 4. Section 15-7-103, MCA, is amended to read:

12 "15-7-103. Classification and appraisal -- general and

13 uniform methods. (1) It is the duty of the department of

14 revenue to implement the provisions of 15-7-101 through

15 15-7-103 by providing:

16 (a) for a general and uniform method of classifying

17 lands in the state for the purpose of securing an equitable

18 and uniform basis of assessment of said lands for taxation

19 purposes;

20 (b) for a general and uniform method of appraising

21 city and town lots;

22 (c) for a general and uniform method of appraising

23 rural and urban improvements;

24 (d) for a general and uniform method of appraising

25 timberlands.

1 (2) All lands shall be classified according to their

2 use or uses and graded within each class according to soil

3 and productive capacity. In such classification work, use

4 shall be made of soil surveys and maps and all other

5 pertinent available information.

6 (3) All lands must be classified by parcels or

7 subdivisions not exceeding 1 section each, by the sections,

8 fractional sections, or lots of all tracts of land that have

9 been sectionized by the United States government, or by

10 metes and bounds, whichever yields a true description of the

11 land.

12 (4) All agricultural lands must be classified and

13 appraised as agricultural lands without regard to the best

14 and highest value use of adjacent or neighboring lands.

15 (5) In any periodic revaluation of taxable property

16 completed under the provisions of 15-7-111 after January 1,

17 1979, all property classified in ~~{15-6-112}~~ 15-6-134 must be

18 appraised on its market value in the same year. The

19 department must publish a rule specifying the year used in

20 the appraisal."

21 Section 5. Section 15-8-201, MCA, is amended to read:

22 "15-8-201. General assessment day. (1) The department

23 of revenue or its agent must, between January 1 and the

24 second Monday of July in each year, ascertain the names of

25 all taxable inhabitants and assess all property subject to

1 taxation in each county. The department or its agent must  
 2 assess property to the person by whom it was owned or  
 3 claimed or in whose possession or control it was at midnight  
 4 of January 1 next preceding. It must also ascertain and  
 5 assess all mobile homes arriving in the county after  
 6 midnight of January 1 next preceding. No mistake in the name  
 7 of the owner or supposed owner of real property, however,  
 8 renders the assessment invalid.

9 (2) The procedure provided by this section may not  
 10 apply to:

11 (a) motor vehicles that are required by 15-8-202 to be  
 12 assessed on January 1 or upon their anniversary registration  
 13 date;

14 (b) automobiles and trucks having a rated capacity of  
 15 three-quarters of a ton or less;

16 (c) motor homes and travel trailers subject to a fee  
 17 in lieu of property tax;

18 (d) livestock;

19 (e) property defined in 61-1-104~~2~~ as "special mobile  
 20 equipment" that is subject to assessment for personal  
 21 property taxes on the date that application is made for a  
 22 special mobile equipment plate; and

23 (f) mobile homes held by a distributor or dealer of  
 24 mobile homes as a part of his stock in trade.

25 (3) Credits must be assessed as provided in

1 15-1-101(1)(c)."

2 Section 6. Section 15-23-106, MCA, is amended to read:

3 "15-23-106. Transmission to the counties. (1) On or  
 4 before July 1, the department shall transmit to its agent in  
 5 each county a statement listing:

6 (a) the assessed value of railroad property, as  
 7 determined under 15-23-202, apportioned to the county,  
 8 including the length or other description of such property;

9 (b) the assessed value of utility property, as  
 10 determined under ~~15-23-302~~ 15-23-303, apportioned to the  
 11 county, including the length or other description of such  
 12 property;

13 (c) the assessed value of property of airline  
 14 companies, as determined under 15-23-403, apportioned to the  
 15 county; 90% of the value of the property of airline  
 16 companies apportioned to any county by reason of a state  
 17 airport being located in the county shall be stated  
 18 separately from the remaining assessed value of the property  
 19 of airline companies apportioned to the county;

20 (d) the assessed value of the net proceeds and  
 21 royalties from mines and oil and gas wells in the county, as  
 22 determined under 15-23-503, 15-23-505, 15-23-603, and  
 23 15-23-605; and

24 (e) the assessed value of the gross proceeds from coal  
 25 mines, as described in 15-23-701.

1 (2) The agent of the department shall enter the  
2 assessed values so transmitted in the assessment book in a  
3 manner prescribed by the department."

4 Section 7. Section 15-24-911, MCA, is amended to read:

5 "15-24-911. Livestock assessment. (1) The department  
6 of revenue or its agent must assess all livestock on the  
7 average inventory basis as provided in 15-24-908 through  
8 15-24-910 unless:

9 (a) the owner elects to have his livestock assessed on  
10 March 1 of each year as provided in (4); and

11 (b) the assessor of the county in which the ~~cattle-are~~  
12 livestock is located on assessment date accepts this  
13 election.

14 (2) The owner shall file his election with the county  
15 assessor on the statement required in 15-24-903.

16 (3) The county assessor shall accept the owner's  
17 election unless he determines that the election is made to  
18 evade property taxation. The livestock owner may appeal the  
19 assessor's decision to the county tax appeal board and the  
20 state tax appeal board under the procedures established in  
21 Title 15, chapter 15, part 1, and chapter 2, part 3.

22 (4) If an owner chooses the method of assessment  
23 provided in (1)(a), the department of revenue or its agent  
24 must assess the owner's livestock in each county as of March  
25 1 of each year. This livestock shall be assessed to the

1 person by whom owned or claimed or in whose possession or  
2 control it was at midnight of March 1 in each year."

3 Section 8. Section 15-24-1001, MCA, is amended to  
4 read:

5 "15-24-1001. Custom combiner's tax -- collection --  
6 distribution -- not transferable. (1) In lieu of the taxes  
7 required by 15-24-301, and in lieu of motor vehicle license  
8 fees, and gross vehicle weight fees, and overwidth and  
9 overheight permits, provided for in Title 61, a nonresident  
10 engaged in the business of custom combining who brings  
11 equipment into the state shall pay a fee of \$40 per unit. A  
12 unit shall include:

13 (a) one truck suitable for hauling grain;  
14 (b) one header trailer or one combine trailer; and  
15 (c) pickup trucks and all other equipment, except  
16 combines, used by a nonresident and brought into the state  
17 as part of his business of custom combining.

18 (2) In lieu of gross vehicle weight fees and overwidth  
19 and overheight permits, Montana residents engaged in the  
20 business of custom combining may pay the annual farm gross  
21 vehicle weight fees and a fee of \$20 per unit. A unit  
22 includes:

23 (a) one truck suitable for hauling grain;  
24 (b) one header trailer or one combine trailer; and  
25 (c) pickup trucks used by the resident in his business

1 of custom combining.

2 (3) The fee required by this section must be collected  
3 by the department of highways. Upon payment of the fee, the  
4 department of highways must provide an identifying device to  
5 be displayed on each truck, header trailer, or combine  
6 trailer and other equipment used by the nonresident or  
7 resident in his business of custom combining in the state,  
8 which device is valid for the calendar year in which the fee  
9 is collected.

10 (4) All fees collected under this section must be  
11 distributed not later than January 31 immediately following  
12 the period of license as follows: 62 1/2% to the county  
13 general fund in the county in which the permittee declares  
14 the greatest amount of time will be spent to operate,  
15 37 1/2% to the state special revenue fund for the department  
16 of highways.

17 (5) The identifying devices and fee paid for each unit  
18 are not transferable from one vehicle to another or  
19 transferable on the sale or change of ownership.

20 (6) Any owner or operator of any equipment included in  
21 the unit definition in subsection (1) or (2) of this section  
22 who violates any provision of this section is guilty of a  
23 misdemeanor and punishable by a fine of not more than \$300  
24 or by a sentence of not more than 60 days in the county  
25 jail, or both."

1 Section 9. Section 15-31-123, MCA, is amended to read:  
2 "15-31-123. Investment credit. (1) The purpose of this  
3 section is to allow small businesses to take an investment  
4 credit as provided for in subsection (3) and to stimulate  
5 capital investment by the small business sector.

6 (2) For the purposes of this section, "small business"  
7 means a business that does not have:

- 8 (a) more than 10 shareholders;  
9 (b) a person who is not an individual (other than an  
10 estate or other than a trust described in ~~15-31-207~~  
11 subsection (8)) as a shareholder;  
12 (c) a nonresident alien as a shareholder; and  
13 (d) more than one class of stock.

14 (3) There is allowed as a credit against the taxes  
15 imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage  
16 of the credit allowed with respect to certain depreciable  
17 property under section 38 of the Internal Revenue Code of  
18 1954, as amended, or as section 38 may be renumbered or  
19 amended. However, rehabilitation costs as set forth under  
20 section 46(a)(2)(F) of the Internal Revenue Code of 1954, or  
21 as section 46(a)(2)(F) may be renumbered or amended, are not  
22 to be included in the computation of the investment credit.  
23 The credit is allowed for the purchase and installation of  
24 certain qualified property defined by section 38 of the  
25 Internal Revenue Code of 1954, as amended, if the property

1 meets all of the following qualifications:

2 (a) it was placed in service in Montana; and

3 (b) it was used for the production of Montana income.

4 (4) The amount of the credit allowed for the taxable  
5 year is 5% of the amount of credit determined under section  
6 46(a)(2) of the Internal Revenue Code of 1954, as amended,  
7 or as section 46(a)(2) may be renumbered or amended.

8 (5) Notwithstanding the provisions of subsection (4),  
9 the investment credit allowed for the taxable year may not  
10 exceed \$500.

11 (6) If property for which an investment credit is  
12 claimed is used both inside and outside this state, only a  
13 portion of the credit is allowed. The credit must be  
14 apportioned according to a fraction the numerator of which  
15 is the number of days during the taxable year the property  
16 was located in Montana and the denominator of which is the  
17 number of days during the taxable year the taxpayer owned  
18 the property. The investment credit may be applied only to  
19 the tax liability of the taxpayer who purchases and places  
20 in service the property for which an investment credit is  
21 claimed.

22 (7) The investment credit allowed by this section is  
23 subject to recapture as provided for in section 47 of the  
24 Internal Revenue Code of 1954, as amended, or as section 47  
25 may be renumbered or amended.

1 (8) (a) For purposes of subsection (2)(b), any of the  
2 following trusts may be a shareholder without disqualifying  
3 the business for the investment credit:

4 (i) a trust all of which is treated as owned by the  
5 grantor under sections 671 through 678 of the Internal  
6 Revenue Code;

7 (ii) a trust created primarily to exercise the voting  
8 power of stock transferred to it;

9 (iii) any trust with respect to stock transferred to it  
10 pursuant to the terms of a will, but only for the 60-day  
11 period beginning on the day on which such stock is  
12 transferred to it.

13 (b) In the case of a trust described in subsection  
14 (8)(a)(ii), each beneficiary of the trust shall be treated  
15 as a shareholder."

16 Section 10. Section 15-31-303, MCA, is amended to  
17 read:

18 "15-31-303. When taxable in another state. For the  
19 purposes of allocation and apportionment of income, a  
20 corporation is taxable in another state if:

21 (1) by reason of the corporation's business activities  
22 carried on in that state it is subjected to a net income  
23 tax, a franchise tax measured by net income, a franchise tax  
24 for the privilege of doing business, or a corporate stock  
25 tax; or

1 (2) that state has jurisdiction to subject the  
 2 taxpayer to a net income tax, regardless of whether, in  
 3 fact, the state does or does not subject the taxpayer to a  
 4 net income tax."

5 Section 11. Section 15-55-106, MCA, is amended to  
 6 read:

7 "15-55-106. Appeals and refunds. (1) Any such freight  
 8 line company or railroad company, on or before June 1 of the  
 9 year in which the tax herein imposed has been paid, may file  
 10 written complaint with the state tax appeal board concerning  
 11 the correctness of the rate used or the correctness of the  
 12 amount of the tax imposed or any other matter affecting the  
 13 complainant under the provisions of this chapter.

14 (2) Upon filing such complaint, the state tax appeal  
 15 board shall set the same for hearing and shall give written  
 16 notice thereof to the complainant at least 10 days before  
 17 the date set for hearing thereon. Upon the hearing of any  
 18 such complaint, the state tax appeal board shall take  
 19 testimony to determine whether the amount of the tax, as  
 20 computed and determined by the department of revenue, is  
 21 greater than the general ad valorem tax for all purposes  
 22 would be on the cars of such freight line company subject to  
 23 taxation in Montana if assessed and taxed on an ad valorem  
 24 basis. In such cases the state tax appeal board shall have  
 25 the power and it shall be its duty to lower or raise the

1 rates herein specified to conform to the facts disclosed at  
 2 such hearing and to make the amount of the tax due  
 3 equivalent to such ad valorem tax. If the state tax appeal  
 4 board shall then determine that the amount of the tax  
 5 imposed and collected was excessive, the claimant shall be  
 6 entitled to a refund to the extent of such excess.

7 (3) Within 6 months after such determination, the  
 8 claimant may present to the department a sworn claim for  
 9 such refund, setting forth the amount thereof. The state  
 10 auditor shall draw his warrant upon the state treasurer for  
 11 the amount of such claim, and the same shall be paid out--of  
 12 ~~the freight line company tax fund created by this chapter~~ in  
 13 the same manner as other claims against the state are paid.

14 (4) In order to determine the amount of tax such  
 15 freight line company would pay, the department may value all  
 16 cars of any such company as a unit and allocate to Montana  
 17 that proportion of the total value which the Montana car  
 18 mileage bears to the total car mileage of the cars of any  
 19 such freight line company during the 12-month period ending  
 20 December 31 of the preceding year and may then apply to such  
 21 value the average total rate of all general property taxes  
 22 levied for the preceding year by the taxing authorities of  
 23 the state, counties, school districts, municipalities, and  
 24 other taxing subdivisions for state, county, school and  
 25 municipal, and other purposes."



1 Section 12. Section 15-57-102, MCA, is amended to  
2 read:

3 "15-57-102. License to operate store -- exception for  
4 grain merchandisers. (1) It shall be unlawful for any person  
5 to open, establish, operate, or maintain any store or stores  
6 in this state without first having obtained a license to do  
7 so from the department of revenue as hereinafter provided.

8 (2) A person establishing or operating any store in  
9 this state engaged solely in the business of grain  
10 merchandising and who is licensed under Title 80, chapter 4,  
11 ~~part--2,~~ is exempt from the provisions of this chapter as to  
12 such store."

13 Section 13. Section 16-1-205, MCA, is amended to read:

14 "16-1-205. Local option. The electors of a county may,  
15 by approving an initiative as provided under ~~Title--7~~  
16 ~~chapter--5,--part--22~~ 7-5-131 through 7-5-137, prohibit the  
17 sale and consumption of liquor or of all alcoholic beverages  
18 within the county. If such initiative is presented to the  
19 board of county commissioners, the board may not approve it  
20 but shall submit the proposal to the people under Title 7,  
21 chapter 5, part 1."

22 Section 14. Section 16-6-106, MCA, is amended to read:

23 "16-6-106. When force may be used in seizure of  
24 alcoholic beverages -- forfeiture -- hearing. (1) Where  
25 alcoholic beverage is found by any investigator or peace

1 officer on any premises or in any place in such quantities  
2 as to satisfy the investigator or peace officer that such  
3 alcoholic beverage is being had or kept contrary to any of  
4 the provisions of this code, it shall be lawful for the  
5 investigator or peace officer to forthwith seize and remove,  
6 by force if necessary, any alcoholic beverage found and the  
7 packages in which the alcoholic beverage was had or kept and  
8 immediately turn said alcoholic beverage over to the  
9 department.

10 (2) The department shall commence an action in the  
11 district court of the county in which the alcoholic beverage  
12 is found and seized against said alcoholic beverage and the  
13 person or persons actually or apparently in possession or  
14 control thereof if any such person be present at the time of  
15 the seizure. The alcoholic beverage shall be named as one  
16 of the defendants to said action.

17 (3) The complaint shall show the date and place of  
18 seizure, the name of the person or persons actually or  
19 apparently in possession or control thereof if any such  
20 person be present at the time of the seizure, the reasons  
21 the department claims the right to the possession of the  
22 alcoholic beverage and shall demand that all persons who  
23 claim any right to the possession of the alcoholic beverage  
24 shall show the nature of their claim or claims and that the  
25 court declare the alcoholic beverage contraband and that the

1 court order the alcoholic beverage be forfeited to the state  
2 of Montana.

3 (4) A summons shall be issued, served, or published as  
4 in other civil actions provided by Title 25, except that the  
5 summons shall be published in the county where the alcoholic  
6 beverage was seized if a newspaper is published in said  
7 county.

8 ~~(5) In all actions brought under this code, proof of~~  
9 ~~the absence of the official seal of the department upon the~~  
10 ~~bottle, jug, package, container, or containers of an~~  
11 ~~alcoholic beverage on which a seal is required shall be~~  
12 ~~prima facie evidence that the alcoholic beverage is~~  
13 ~~contraband liquor and prima facie evidence of unlawful~~  
14 ~~possession thereof in the defendants and each of them and in~~  
15 ~~all other persons excepting the department. The court shall~~  
16 ~~order all such alcoholic beverage contraband and forfeited~~  
17 ~~to the state of Montana."~~

-End-

1985 Legislature  
Code Commissioner Bill - Summary

House Bill No. 42

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS 15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106, 15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106, 15-57-102, 16-1-205, AND 16-6-106, MCA.

Section 1. 15-1-101. In subsection (1)(k)(ii) there is a reference to all mines, minerals, and quarries in and above the land subject to the provisions of 15-23-108. Section 15-23-108 is a definitional section, and the clear intent of the statute was to refer to the metal mines gross proceeds tax, which is included in Title 15, chapter 3, part 8. The amendment to this section substitutes Title 15, chapter 3, part 8, for the definitional section of 15-23-801.

Section 2. 15-6-101. When 15-6-101 was originally amended, it included the property tax classification system contained in 15-6-131 through 15-6-141. To avoid amending this section every time an additional class is added to the property tax classification system, the reference to those sections was changed to this part.

Section 3. 15-6-140. In subsection (1)(g) there is reference to "all other property included in the preceding 9 classes". Since that reference was included, additional classes, namely class eleven and class twelve, were added to the classification system. This amendment, which substitutes any other class in this part for the preceding 9 classes, is an attempt to more clearly express the intent of the Legislature that class ten include all property not included in any other class in the part.

Section 4. 15-7-103. In subsection (5) of this section there is a reference in brackets to 15-6-112, which was repealed in 1979; and the property previously contained in that section is now included in 15-6-134.

Section 5. 15-8-201. In subsection (1)(e) there is a reference to 61-1-104(2). There is no subsection (2) in 61-1-104, and therefore subsection (2) is deleted from the section.

Section 6. 15-23-106. In subsection (1)(b) there is a reference to the assessed value as determined under 15-23-302. That section has been repealed. The Department of Revenue now determines the assessed value of utility property under the authority of 15-23-303, and that reference is substituted for 15-23-302.

**THIRD READING**

Section 7. 15-24-911. Part 24 is concerned with the assessment of livestock, and "livestock" is used consistently throughout the part with the exception of a reference to "cattle" in subsection (1)(b). That reference is changed to "livestock".

Section 8. 15-24-1001. The beginning of subsection (1) contains a number of amendments which merely make the section more readable.

Section 9. 15-31-123. This section involves the investment tax credit available to certain small businesses. Prior to 1983, a small business which qualified for the investment tax credit also could elect to be treated and taxed as an individual under Title 15, chapter 31, part 2. The definition of a small business corporation contained in part 2 was changed by the 1983 Legislature and as part of that change 15-31-207 was repealed. The Department of Revenue has continued to treat trusts that were previously described in 15-31-207 as qualifying small businesses. The substance of the prior section 15-31-207 is therefore incorporated as subsection (8) of 15-31-123, to conform to the treatment currently being given to that section by the department of revenue.

Section 10. 15-31-301. Language is inserted at the end of subsection (2) for purposes of clarity.

Section 11. 15-55-106. Subsection (3) of this section refers to "freightline company tax fund", which does not exist. All money collected under this chapter is deposited in the general fund (15-55-110). The references to the freightline company tax fund created by this chapter are therefore deleted.

Section 12. 15-57-102. Subsection (2) of this section refers to Title 80, chapter 4, part 2, which was repealed during a general revision of the laws dealing with grain merchandising. The correct reference now is merely to Title 80, chapter 4.

Section 13. 16-1-205. There is a reference in this section to the initiative process provided under Title 7, chapter 5, part 22. At one time the initiative process was contained in Title 7, chapter 5, part 22, but that was repealed, and the new initiative approval procedures were contained in 7-5-131 through 7-5-137. Therefore, the reference in this section is changed.

Section 14. 16-6-106. In 1983 the Legislature eliminated the official seal, which is referred to in subsection (5) of this section. Since there is no longer a requirement for the official seal, subsection (5) is no longer needed and is therefore deleted.



1 (h) The term "personal property" includes everything  
2 that is the subject of ownership but that is not included  
3 within the meaning of the terms "real estate" and  
4 "improvements".

5 (i) The term "poultry" includes all chickens, turkeys,  
6 geese, ducks, and other birds raised in domestication to  
7 produce food or feathers.

8 (j) The term "property" includes moneys, credits,  
9 bonds, stocks, franchises, and all other matters and things,  
10 real, personal, and mixed, capable of private ownership.  
11 This definition must not be construed to authorize the  
12 taxation of the stocks of any company or corporation when  
13 the property of such company or corporation represented by  
14 the stocks is within the state and has been taxed.

15 (k) The term "real estate" includes:

16 (i) the possession of, claim to, ownership of, or  
17 right to the possession of land;

18 (ii) all mines, minerals, and quarries in and under the  
19 land subject to the provisions of 15-23-501 and ~~15-23-801~~  
20 Title 15, chapter 23, part 8; all timber belonging to  
21 individuals or corporations growing or being on the lands of  
22 the United States; and all rights and privileges  
23 appertaining thereto.

24 (l) The term "taxable value" means the percentage of  
25 market or assessed value as provided for in 15-6-131 through

1 15-6-140.

2 (2) The phrase "municipal corporation" or  
3 "municipality" or "taxing unit" shall be deemed to include a  
4 county, city, incorporated town, township, school district,  
5 irrigation district, drainage district, or any person,  
6 persons, or organized body authorized by law to establish  
7 tax levies for the purpose of raising public revenue.

8 (3) The term "state board" or "board" when used  
9 without other qualification shall mean the state tax appeal  
10 board."

11 Section 2. Section 15-6-101, MCA, is amended to read:

12 "15-6-101. Property subject to taxation --  
13 classification. (1) All property in this state is subject to  
14 taxation, except as provided otherwise.

15 (2) For the purpose of taxation, the taxable property  
16 in the state shall be classified in accordance with ~~15-6-131~~  
17 ~~through-15-6-141~~ this part."

18 Section 3. Section 15-6-140, MCA, is amended to read:

19 "15-6-140. Class ten property -- description --  
20 taxable percentage. (1) Class ten property includes:

21 (a) radio and television broadcasting and transmitting  
22 equipment;

23 (b) cable television systems;

24 (c) coal and ore haulers;

25 (d) trucks having a rated capacity of more than 1 1/2

1 tons, including those prorated under 15-24-102;

2 (e) all trailers exceeding 18,000 pounds maximum gross  
3 loaded weight, including those prorated under 15-24-102 and  
4 except those subject to a fee in lieu of property tax;

5 (f) theater projectors and sound equipment; and

6 (g) all other property not included in the--preceding  
7 nine--classes any other class in this part except that  
8 property subject to a fee in lieu of a property tax.

9 (2) Class ten property is taxed at 16% of its market  
10 value."

11 Section 4. Section 15-7-103, MCA, is amended to read:

12 "15-7-103. Classification and appraisal -- general and  
13 uniform methods. (1) It is the duty of the department of  
14 revenue to implement the provisions of 15-7-101 through  
15 15-7-103 by providing:

16 (a) for a general and uniform method of classifying  
17 lands in the state for the purpose of securing an equitable  
18 and uniform basis of assessment of said lands for taxation  
19 purposes;

20 (b) for a general and uniform method of appraising  
21 city and town lots;

22 (c) for a general and uniform method of appraising  
23 rural and urban improvements;

24 (d) for a general and uniform method of appraising  
25 timberlands.

1 (2) All lands shall be classified according to their  
2 use or uses and graded within each class according to soil  
3 and productive capacity. In such classification work, use  
4 shall be made of soil surveys and maps and all other  
5 pertinent available information.

6 (3) All lands must be classified by parcels or  
7 subdivisions not exceeding 1 section each, by the sections,  
8 fractional sections, or lots of all tracts of land that have  
9 been sectionized by the United States government, or by  
10 metes and bounds, whichever yields a true description of the  
11 land.

12 (4) All agricultural lands must be classified and  
13 appraised as agricultural lands without regard to the best  
14 and highest value use of adjacent or neighboring lands.

15 (5) In any periodic revaluation of taxable property  
16 completed under the provisions of 15-7-111 after January 1,  
17 1979, all property classified in ~~{15-6-112}~~ 15-6-134 must be  
18 appraised on its market value in the same year. The  
19 department must publish a rule specifying the year used in  
20 the appraisal."

21 Section 5. Section 15-8-201, MCA, is amended to read:

22 "15-8-201. General assessment day. (1) The department  
23 of revenue or its agent must, between January 1 and the  
24 second Monday of July in each year, ascertain the names of  
25 all taxable inhabitants and assess all property subject to

1 taxation in each county. The department or its agent must  
 2 assess property to the person by whom it was owned or  
 3 claimed or in whose possession or control it was at midnight  
 4 of January 1 next preceding. It must also ascertain and  
 5 assess all mobile homes arriving in the county after  
 6 midnight of January 1 next preceding. No mistake in the name  
 7 of the owner or supposed owner of real property, however,  
 8 renders the assessment invalid.

9 (2) The procedure provided by this section may not  
 10 apply to:

11 (a) motor vehicles that are required by 15-8-202 to be  
 12 assessed on January 1 or upon their anniversary registration  
 13 date;

14 (b) automobiles and trucks having a rated capacity of  
 15 three-quarters of a ton or less;

16 (c) motor homes and travel trailers subject to a fee  
 17 in lieu of property tax;

18 (d) livestock;

19 (e) property defined in 61-1-104{2} as "special mobile  
 20 equipment" that is subject to assessment for personal  
 21 property taxes on the date that application is made for a  
 22 special mobile equipment plate; and

23 (f) mobile homes held by a distributor or dealer of  
 24 mobile homes as a part of his stock in trade.

25 (3) Credits must be assessed as provided in

1 15-1-101(1)(c)."

2 Section 6. Section 15-23-106, MCA, is amended to read:

3 "15-23-106. Transmission to the counties. (1) On or  
 4 before July 1, the department shall transmit to its agent in  
 5 each county a statement listing:

6 (a) the assessed value of railroad property, as  
 7 determined under 15-23-202, apportioned to the county,  
 8 including the length or other description of such property;

9 (b) the assessed value of utility property, as  
 10 determined under ~~15-23-302~~ 15-23-303, apportioned to the  
 11 county, including the length or other description of such  
 12 property;

13 (c) the assessed value of property of airline  
 14 companies, as determined under 15-23-403, apportioned to the  
 15 county; 90% of the value of the property of airline  
 16 companies apportioned to any county by reason of a state  
 17 airport being located in the county shall be stated  
 18 separately from the remaining assessed value of the property  
 19 of airline companies apportioned to the county;

20 (d) the assessed value of the net proceeds and  
 21 royalties from mines and oil and gas wells in the county, as  
 22 determined under 15-23-503, 15-23-505, 15-23-603, and  
 23 15-23-605; and

24 (e) the assessed value of the gross proceeds from coal  
 25 mines, as described in 15-23-701.



1 (2) The agent of the department shall enter the  
2 assessed values so transmitted in the assessment book in a  
3 manner prescribed by the department."

4 Section 7. Section 15-24-911, MCA, is amended to read:

5 "15-24-911. Livestock assessment. (1) The department  
6 of revenue or its agent must assess all livestock on the  
7 average inventory basis as provided in 15-24-908 through  
8 15-24-910 unless:

9 (a) the owner elects to have his livestock assessed on  
10 March 1 of each year as provided in (4); and

11 (b) the assessor of the county in which the ~~cattle~~  
12 livestock is located on assessment date accepts this  
13 election.

14 (2) The owner shall file his election with the county  
15 assessor on the statement required in 15-24-903.

16 (3) The county assessor shall accept the owner's  
17 election unless he determines that the election is made to  
18 evade property taxation. The livestock owner may appeal the  
19 assessor's decision to the county tax appeal board and the  
20 state tax appeal board under the procedures established in  
21 Title 15, chapter 15, part 1, and chapter 2, part 3.

22 (4) If an owner chooses the method of assessment  
23 provided in (1)(a), the department of revenue or its agent  
24 must assess the owner's livestock in each county as of March  
25 1 of each year. This livestock shall be assessed to the

1 person by whom owned or claimed or in whose possession or  
2 control it was at midnight of March 1 in each year."

3 Section 8. Section 15-24-1001, MCA, is amended to  
4 read:

5 "15-24-1001. Custom combiner's tax -- collection --  
6 distribution -- not transferable. (1) In lieu of the taxes  
7 required by 15-24-301, and in lieu of motor vehicle license  
8 fees, and gross vehicle weight fees, and overwidth and  
9 overheight permits, provided for in Title 61, a nonresident  
10 engaged in the business of custom combining who brings  
11 equipment into the state shall pay a fee of \$40 per unit. A  
12 unit shall include:

13 (a) one truck suitable for hauling grain;

14 (b) one header trailer or one combine trailer; and

15 (c) pickup trucks and all other equipment, except  
16 combines, used by a nonresident and brought into the state  
17 as part of his business of custom combining.

18 (2) In lieu of gross vehicle weight fees and overwidth  
19 and overheight permits, Montana residents engaged in the  
20 business of custom combining may pay the annual farm gross  
21 vehicle weight fees and a fee of \$20 per unit. A unit  
22 includes:

23 (a) one truck suitable for hauling grain;

24 (b) one header trailer or one combine trailer; and

25 (c) pickup trucks used by the resident in his business

1 of custom combining.

2 (3) The fee required by this section must be collected  
3 by the department of highways. Upon payment of the fee, the  
4 department of highways must provide an identifying device to  
5 be displayed on each truck, header trailer, or combine  
6 trailer and other equipment used by the nonresident or  
7 resident in his business of custom combining in the state,  
8 which device is valid for the calendar year in which the fee  
9 is collected.

10 (4) All fees collected under this section must be  
11 distributed not later than January 31 immediately following  
12 the period of license as follows: 62 1/2% to the county  
13 general fund in the county in which the permittee declares  
14 the greatest amount of time will be spent to operate,  
15 37 1/2% to the state special revenue fund for the department  
16 of highways.

17 (5) The identifying devices and fee paid for each unit  
18 are not transferable from one vehicle to another or  
19 transferable on the sale or change of ownership.

20 (6) Any owner or operator of any equipment included in  
21 the unit definition in subsection (1) or (2) of this section  
22 who violates any provision of this section is guilty of a  
23 misdemeanor and punishable by a fine of not more than \$300  
24 or by a sentence of not more than 60 days in the county  
25 jail, or both."

1 Section 9. Section 15-31-123, MCA, is amended to read:

2 "15-31-123. Investment credit. (1) The purpose of this  
3 section is to allow small businesses to take an investment  
4 credit as provided for in subsection (3) and to stimulate  
5 capital investment by the small business sector.

6 (2) For the purposes of this section, "small business"  
7 means a business that does not have:

8 (a) more than 10 shareholders;  
9 (b) a person who is not an individual (other than an  
10 estate or other than a trust described in ~~15-31-207~~  
11 subsection (8)) as a shareholder;

12 (c) a nonresident alien as a shareholder; and

13 (d) more than one class of stock.

14 (3) There is allowed as a credit against the taxes  
15 imposed by 15-31-101, 15-31-121, and 15-31-122 a percentage  
16 of the credit allowed with respect to certain depreciable  
17 property under section 38 of the Internal Revenue Code of  
18 1954, as amended, or as section 38 may be renumbered or  
19 amended. However, rehabilitation costs as set forth under  
20 section 46(a)(2)(F) of the Internal Revenue Code of 1954, or  
21 as section 46(a)(2)(F) may be renumbered or amended, are not  
22 to be included in the computation of the investment credit.  
23 The credit is allowed for the purchase and installation of  
24 certain qualified property defined by section 38 of the  
25 Internal Revenue Code of 1954, as amended, if the property

1 meets all of the following qualifications:

- 2 (a) it was placed in service in Montana; and
- 3 (b) it was used for the production of Montana income.
- 4 (4) The amount of the credit allowed for the taxable
- 5 year is 5% of the amount of credit determined under section
- 6 46(a)(2) of the Internal Revenue Code of 1954, as amended,
- 7 or as section 46(a)(2) may be renumbered or amended.
- 8 (5) Notwithstanding the provisions of subsection (4),
- 9 the investment credit allowed for the taxable year may not
- 10 exceed \$500.
- 11 (6) If property for which an investment credit is
- 12 claimed is used both inside and outside this state, only a
- 13 portion of the credit is allowed. The credit must be
- 14 apportioned according to a fraction the numerator of which
- 15 is the number of days during the taxable year the property
- 16 was located in Montana and the denominator of which is the
- 17 number of days during the taxable year the taxpayer owned
- 18 the property. The investment credit may be applied only to
- 19 the tax liability of the taxpayer who purchases and places
- 20 in service the property for which an investment credit is
- 21 claimed.
- 22 (7) The investment credit allowed by this section is
- 23 subject to recapture as provided for in section 47 of the
- 24 Internal Revenue Code of 1954, as amended, or as section 47
- 25 may be renumbered or amended.

1 (8) (a) For purposes of subsection (2)(b), any of the

2 following trusts may be a shareholder without disqualifying

3 the business for the investment credit:

4 (i) a trust all of which is treated as owned by the

5 grantor under sections 671 through 678 of the Internal

6 Revenue Code;

7 (ii) a trust created primarily to exercise the voting

8 power of stock transferred to it;

9 (iii) any trust with respect to stock transferred to it

10 pursuant to the terms of a will, but only for the 60-day

11 period beginning on the day on which such stock is

12 transferred to it.

13 (b) In the case of a trust described in subsection

14 (8)(a)(ii), each beneficiary of the trust shall be treated

15 as a shareholder."

16 Section 10. Section 15-31-303, MCA, is amended to

17 read:

18 "15-31-303. When taxable in another state. For the

19 purposes of allocation and apportionment of income, a

20 corporation is taxable in another state if:

21 (1) by reason of the corporation's business activities

22 carried on in that state it is subjected to a net income

23 tax, a franchise tax measured by net income, a franchise tax

24 for the privilege of doing business, or a corporate stock

25 tax; or

1 (2) that state has jurisdiction to subject the  
2 taxpayer to a net income tax, regardless of whether, in  
3 fact, the state does or does not subject the taxpayer to a  
4 net income tax."

5 Section 11. Section 15-55-106, MCA, is amended to  
6 read:

7 "15-55-106. Appeals and refunds. (1) Any such freight  
8 line company or railroad company, on or before June 1 of the  
9 year in which the tax herein imposed has been paid, may file  
10 written complaint with the state tax appeal board concerning  
11 the correctness of the rate used or the correctness of the  
12 amount of the tax imposed or any other matter affecting the  
13 complainant under the provisions of this chapter.

14 (2) Upon filing such complaint, the state tax appeal  
15 board shall set the same for hearing and shall give written  
16 notice thereof to the complainant at least 10 days before  
17 the date set for hearing thereon. Upon the hearing of any  
18 such complaint, the state tax appeal board shall take  
19 testimony to determine whether the amount of the tax, as  
20 computed and determined by the department of revenue, is  
21 greater than the general ad valorem tax for all purposes  
22 would be on the cars of such freight line company subject to  
23 taxation in Montana if assessed and taxed on an ad valorem  
24 basis. In such cases the state tax appeal board shall have  
25 the power and it shall be its duty to lower or raise the

1 rates herein specified to conform to the facts disclosed at  
2 such hearing and to make the amount of the tax due  
3 equivalent to such ad valorem tax. If the state tax appeal  
4 board shall then determine that the amount of the tax  
5 imposed and collected was excessive, the claimant shall be  
6 entitled to a refund to the extent of such excess.

7 (3) Within 6 months after such determination, the  
8 claimant may present to the department a sworn claim for  
9 such refund, setting forth the amount thereof. The state  
10 auditor shall draw his warrant upon the state treasurer for  
11 the amount of such claim, and the same shall be paid out--of  
12 ~~the freight line company tax fund created by this chapter~~ in  
13 the same manner as other claims against the state are paid.

14 (4) In order to determine the amount of tax such  
15 freight line company would pay, the department may value all  
16 cars of any such company as a unit and allocate to Montana  
17 that proportion of the total value which the Montana car  
18 mileage bears to the total car mileage of the cars of any  
19 such freight line company during the 12-month period ending  
20 December 31 of the preceding year and may then apply to such  
21 value the average total rate of all general property taxes  
22 levied for the preceding year by the taxing authorities of  
23 the state, counties, school districts, municipalities, and  
24 other taxing subdivisions for state, county, school and  
25 municipal, and other purposes."

1 Section 12. Section 15-57-102, MCA, is amended to  
2 read:

3 "15-57-102. License to operate store -- exception for  
4 grain merchandisers. (1) It shall be unlawful for any person  
5 to open, establish, operate, or maintain any store or stores  
6 in this state without first having obtained a license to do  
7 so from the department of revenue as hereinafter provided.

8 (2) A person establishing or operating any store in  
9 this state engaged solely in the business of grain  
10 merchandising and who is licensed under Title 80, chapter 4,  
11 ~~part--27~~ is exempt from the provisions of this chapter as to  
12 such store."

13 Section 13. Section 16-1-205, MCA, is amended to read:

14 "16-1-205. Local option. The electors of a county may,  
15 by approving an initiative as provided under ~~Title--77~~  
16 ~~chapter--57--part--22~~ 7-5-131 through 7-5-137, prohibit the  
17 sale and consumption of liquor or of all alcoholic beverages  
18 within the county. If such initiative is presented to the  
19 board of county commissioners, the board may not approve it  
20 but shall submit the proposal to the people under Title 7,  
21 chapter 5, part 1."

22 Section 14. Section 16-6-106, MCA, is amended to read:

23 "16-6-106. When force may be used in seizure of  
24 alcoholic beverages -- forfeiture -- hearing. (1) Where  
25 alcoholic beverage is found by any investigator or peace

1 officer on any premises or in any place in such quantities  
2 as to satisfy the investigator or peace officer that such  
3 alcoholic beverage is being had or kept contrary to any of  
4 the provisions of this code, it shall be lawful for the  
5 investigator or peace officer to forthwith seize and remove,  
6 by force if necessary, any alcoholic beverage found and the  
7 packages in which the alcoholic beverage was had or kept and  
8 immediately turn said alcoholic beverage over to the  
9 department.

10 (2) The department shall commence an action in the  
11 district court of the county in which the alcoholic beverage  
12 is found and seized against said alcoholic beverage and the  
13 person or persons actually or apparently in possession or  
14 control thereof if any such person be present at the time of  
15 the seizure. The alcoholic beverage shall be named as one  
16 of the defendants to said action.

17 (3) The complaint shall show the date and place of  
18 seizure, the name of the person or persons actually or  
19 apparently in possession or control thereof if any such  
20 person be present at the time of the seizure, the reasons  
21 the department claims the right to the possession of the  
22 alcoholic beverage and shall demand that all persons who  
23 claim any right to the possession of the alcoholic beverage  
24 shall show the nature of their claim or claims and that the  
25 court declare the alcoholic beverage contraband and that the

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1 court order the alcoholic beverage be forfeited to the state  
2 of Montana.

3 (4) A summons shall be issued, served, or published as  
4 in other civil actions provided by Title 25, except that the  
5 summons shall be published in the county where the alcoholic  
6 beverage was seized if a newspaper is published in said  
7 county.

8 ~~{5}--In--all--actions--brought--under--this--code,--proof--of~~  
9 ~~the--absence--of--the--official--seal--of--the--department--upon--the~~  
10 ~~bottles,--jug,--package,--container,--or--containers--of--an~~  
11 ~~alcoholic--beverage--on--which--a--seal--is--required--shall--be~~  
12 ~~prima--facie--evidence--that--the--alcoholic--beverage--is~~  
13 ~~contraband--liquor--and--prima--facie--evidence--of--unlawful~~  
14 ~~possession--thereof--in--the--defendants--and--each--of--them--and--in~~  
15 ~~all--other--persons--excepting--the--department. The court shall~~  
16 ~~order--all--such--alcoholic--beverage--contraband--and--forfeited~~  
17 ~~to--the--state--of--Montana."~~

-End-

1                   HOUSE BILL NO. 42  
 2                   INTRODUCED BY MANUEL  
 3                   BY REQUEST OF THE CODE COMMISSIONER  
 4

5    A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6    LAWS RELATING TO TAXATION AND ALCOHOL; AMENDING SECTIONS  
 7    15-1-101, 15-6-101, 15-6-140, 15-7-103, 15-8-201, 15-23-106,  
 8    15-24-911, 15-24-1001, 15-31-123, 15-31-303, 15-55-106,  
 9    15-57-102, 16-1-205, AND 16-6-106, MCA."

10  
 11   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12       Section 1. Section 15-1-101, MCA, is amended to read:  
 13       "15-1-101. Definitions. (1) When terms mentioned in  
 14    this section are used in connection with taxation, they are  
 15    defined in the following manner:  
 16       (a) The term "agricultural" refers to the raising of  
 17    livestock, swine, poultry, field crops, fruit, and other  
 18    animal and vegetable matter for food or fiber.  
 19       (b) The term "assessed value" means the value of  
 20    property as defined in 15-8-111.  
 21       (c) The term "average wholesale value" means the value  
 22    to a dealer prior to reconditioning and profit margin shown  
 23    in national appraisal guides and manuals or the valuation  
 24    schedules of the department of revenue.  
 25       (d) The term "credit" means solvent debts, secured or

THERE ARE NO CHANGES IN HB 42  
 AND WILL NOT BE RE-RUN. PLEASE  
 REFER TO WHITE, YELLOW OR BLUE  
 COPY FOR COMPLETE TEXT.

REFERENCE BILL  
 HB 42

