

SB 45 INTRODUCED BY WILLIAMS, B.
 SUBJECT THE GROSS PROCEEDS OF GEMSTONE MINES TO
 TAXATION

1/06 INTRODUCED
1/06 FISCAL NOTE REQUESTED
1/06 REFERRED TO TAXATION
1/12 FISCAL NOTE RECEIVED
1/13 HEARING
2/05 ADVERSE COMMITTEE REPORT ADOPTED 42 8

1 SENATE BILL NO. 45
 2 INTRODUCED BY WILLIAMS
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBJECT THE GROSS
 5 PROCEEDS OF GEMSTONE MINES TO TAXATION; SETTING THE TAXABLE
 6 PERCENTAGE RATE APPLICABLE TO GEMSTONE MINES AT 45 PERCENT
 7 OF GROSS PROCEEDS; AMENDING SECTIONS 15-6-131, 15-6-132,
 8 15-6-208, 15-23-101, 15-23-103, 15-23-104, 15-23-106,
 9 15-23-115, AND 15-23-502, MCA; AND PROVIDING AN IMMEDIATE
 10 EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

13 Section 1. Section 15-6-131, MCA, is amended to read:

14 "15-6-131. Class one property -- description --
 15 taxable percentage. (1) Class one property includes the
 16 annual net proceeds of all mines and mining claims except
 17 ~~coal-and-metal-mines~~ those mines included in class two.

18 (2) Class one property is taxed at 100% of its annual
 19 net proceeds after deducting the expenses specified and
 20 allowed by 15-23-503."

21 Section 2. Section 15-6-132, MCA, is amended to read:

22 "15-6-132. Class two property -- description --
 23 taxable percentage. (1) Class two property includes:

- 24 (a) the annual gross proceeds of metal mines;
 25 (b) the annual gross proceeds of underground coal

1 mines; and

2 (c) the annual gross proceeds of coal mines using the
 3 strip-mining method; and

4 (d) the annual gross proceeds of gemstone mines.

5 (2) Class two property is taxed as follows:

6 (a) Property described in subsection (1)(a) is taxed
 7 at 3% of its annual gross proceeds, as defined in 15-23-801.

8 (b) Property described in subsection (1)(b) is taxed
 9 at 33 1/3% of its annual gross proceeds.

10 (c) Property described in subsection (1)(c) is taxed
 11 at 45% of its annual gross proceeds.

12 (d) Property described in subsection (1)(d) is taxed
 13 at 45% of its annual gross proceeds."

14 NEW SECTION. Section 3. Definitions. As used in
 15 [sections 3 through 9], unless otherwise indicated, the
 16 following definitions apply:

17 (1) "Agreement not at arm's length" means an agreement
 18 between parties in which the sales price does not represent
 19 market value.

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

21 (3) "Gemstone", as used in Title 15, means a mineral
 22 or petrified material that, when cut and polished, can be
 23 used in jewelry.

24 (4) "Gross proceeds" or "gross yield" means the
 25 revenue realized from the extraction of gemstones,

1 determined by multiplying the quantity produced by the
2 merchantable value.

3 (5) "Market value" means the exchange value of a
4 property in a competitive market.

5 (6) "Merchantable value" means the average market
6 value of all gemstones produced or extracted in a county
7 over a 12-month period.

8 NEW SECTION. Section 4. Gemstone mines -- ad valorem
9 taxation -- reports and sampling. (1) Each person mining or
10 extracting gemstones from any mine or mining property
11 located within this state must, on or before March 31 each
12 year, file with the department a statement of the gross
13 yield from each mine or mining property owned or worked by
14 such person in the preceding calendar year and the value
15 thereof. The statement must be in the form prescribed by the
16 department and must contain the following:

17 (a) the name, address, and telephone number of the
18 owner, lessee, or operator of the mine or mining property;

19 (b) the mine's location, by county and legal
20 description;

21 (c) the number of carats extracted from the mine or
22 mining property during the period covered by the statement;

23 (d) the name and location of each purchaser to whom
24 such gemstones or deposits have been shipped or sold during
25 the period covered by the statement;

1 (e) the gross value of product in dollars and cents;
2 and

3 (f) any other information requested by the department.

4 (2) This section applies regardless of the location of
5 any purchaser to whom the gemstones or other mineral
6 products or deposits are shipped.

7 (3) Any sampling, testing, or weighing made to comply
8 with this section must be completed within this state and
9 prior to any mixture of the gemstones to be sampled, tested,
10 or weighed with gemstones from any other mine or mining
11 property.

12 NEW SECTION. Section 5. Valuation -- gross proceeds.
13 On or before July 1 each year, the department shall
14 determine the merchantable value of all gemstone production
15 from the previous calendar year. The department shall
16 transmit to its agent in each county where gemstones are
17 produced the merchantable values as have been determined by
18 the department for placement on the assessment roll after
19 subtracting the first \$40,000 of merchantable value, which
20 is exempt from property taxation.

21 NEW SECTION. Section 6. Taxation of merchantable
22 value. The department's agent shall prepare from the
23 reported valuation a tax roll, which must be transmitted to
24 the county treasurer on or before September 15 each year.
25 The county treasurer shall give full notice thereof to each

1 gemstone producer and collect the taxes due at the times
 2 provided for in 15-16-102, and any delinquencies in the
 3 payment of taxes are subject to the interest and penalties
 4 provided for in 15-16-102.

5 NEW SECTION. Section 7. Imputed value -- procedure
 6 for gemstones. If there is no sale or the sale is by an
 7 agreement not at arm's length or no statement is filed, the
 8 department shall impute the merchantable value of the
 9 gemstone. When imputing value, the department shall consider
 10 all appropriate market information available. When the
 11 imputed value is contested in any proceedings, the burden of
 12 proof is with the contesting party.

13 NEW SECTION. Section 8. Lien of tax. The tax or
 14 penalty on gross proceeds is a lien upon the mine from which
 15 the gemstones are extracted and is a prior lien upon all
 16 owned or leased personal property and improvements used in
 17 extracting the gemstones. The tax must be collected in the
 18 manner provided in chapters 16 through 18 of this title.

19 NEW SECTION. Section 9. Assessment procedures. The
 20 gross proceeds of gemstone mines must be assessed under the
 21 provisions of 15-23-101 through 15-23-107.

22 Section 10. Section 15-23-101, MCA, is amended to
 23 read:

24 "15-23-101. Properties centrally assessed. The
 25 department of revenue shall centrally assess each year:

1 (1) the franchise, roadway, roadbeds, rails, rolling
 2 stock, and all other operating property of railroads
 3 operating in more than one county in the state or more than
 4 one state;

5 (2) property owned by a corporation or other person
 6 operating a single and continuous property operated in more
 7 than one county or more than one state, including telegraph,
 8 telephone, microwave, electric power or transmission lines;
 9 natural gas or oil pipelines; canals, ditches, flumes, or
 10 like properties and including, if congress passes
 11 legislation that allows the state to tax property owned by
 12 an agency created by congress to transmit or distribute
 13 electrical energy, property constructed, owned, or operated
 14 by a public agency created by the congress to transmit or
 15 distribute electric energy produced at privately owned
 16 generating facilities (not including rural electric
 17 cooperatives);

18 (3) all property of scheduled airlines;

19 (4) the net proceeds of mines and of oil and gas
 20 wells;

21 (5) the gross proceeds of coal mines and gemstone
 22 mines; and

23 (6) property described in subsections (1) and (2)
 24 which is subject to the provisions of Title 15, chapter 24,
 25 part 12."

1 Section 11. Section 15-23-103, MCA, is amended to
2 read:

3 "15-23-103. Due date of reports and returns --
4 extensions. (1) Except as provided in subsection (2) and
5 15-23-602, each report or return described in 15-23-301,
6 15-23-402, 15-23-502, or 15-23-701, or [section 4] shall be
7 delivered to the department on or before March 31 each year.

8 (2) Each report or return for a natural gas or oil
9 pipeline described in 15-23-301 must be delivered to the
10 department on or before April 15 each year.

11 (3) Each report described in 15-23-201 shall be
12 delivered to the department before April 15 each year.

13 (4) The department may for good cause extend the time
14 for filing a return or report for not more than 30 days."

15 Section 12. Section 15-23-104, MCA, is amended to
16 read:

17 "15-23-104. Failure to file -- estimate by department
18 -- penalty. (1) If any person fails to file a report or
19 return within the time established in 15-23-103 or by such
20 later date as the department may approve, the department
21 shall estimate the value of the property to have been
22 reported on the basis of the best available information. In
23 estimating the value of the net proceeds of mines, the
24 department shall proceed under 15-23-506, and in estimating
25 the value of the gross proceeds of coal mines, the

1 department shall proceed under 15-35-107, and in estimating
2 the value of gross proceeds of gemstone mines, the
3 department shall proceed under [section 7]. In estimating
4 the value of all other property subject to assessment under
5 parts 2 through 4 of this chapter, the department shall
6 proceed under 15-1-303. In estimating value under this
7 section, the department may subpoena a person or his agent
8 as specified in 15-1-302. An assessment pursuant to parts 5
9 through 8 of this chapter based on estimated value or
10 imputed value is subject to review under 15-8-601.

11 (2) Each month or part of a month a report is
12 delinquent, the department shall impose and collect a \$25
13 penalty, the total not to exceed \$200, and shall deposit
14 such penalty to the credit of the general fund. The
15 department will also inform its agents in the counties of
16 the delinquency, and the agents shall assess a penalty of 1%
17 of the tax due for each month or part of a month the report
18 is delinquent."

19 Section 13. Section 15-23-106, MCA, is amended to
20 read:

21 "15-23-106. Transmission to the counties. (1) On or
22 before July 1, the department shall transmit to its agent in
23 each county a statement listing:

24 (a) the assessed value of railroad property, as
25 determined under 15-23-202, apportioned to the county,

1 including the length or other description of such property;

2 (b) the assessed value of utility property, as
3 determined under 15-23-303, apportioned to the county,
4 including the length or other description of such property;

5 (c) the assessed value of property of airline
6 companies, as determined under 15-23-403, apportioned to the
7 county; 90% of the value of the property of airline
8 companies apportioned to any county by reason of a state
9 airport being located in the county shall be stated
10 separately from the remaining assessed value of the property
11 of airline companies apportioned to the county;

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

16 (e) the assessed value of the gross proceeds from coal
17 mines, as described in 15-23-701; and

18 (f) the assessed value of the gross proceeds from
19 gemstone mines, as described in [section 4].

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

23 Section 14. Section 15-23-115, MCA, is amended to
24 read:

25 "15-23-115. Interest. If the department determines

1 that a taxpayer has incorrectly reported a value under
2 15-23-502, 15-23-602, 15-23-701, or 15-23-802, or [section
3 4], the department shall inform its agents at the county
4 level of such determination, and if any additional tax is
5 due, there must be added thereto until paid in full interest
6 at the rate of 1% a month or fraction thereof from the date
7 the original tax was due and payable. In no instance will a
8 taxpayer subject to imposition of interest pursuant to this
9 section be also subject to the penalty and interest
10 provisions contained in 15-16-102."

11 Section 15. Section 15-23-502, MCA, is amended to
12 read:

13 "15-23-502. Net proceeds tax -- statement of yield.
14 Every person engaged in mining, extracting, or producing
15 from any quartz vein or lode, placer claim, dump or
16 tailings, or other place or source whatever ~~precious-stones~~
17 ~~or-gems~~, vermiculite, bentonite, or other valuable mineral,
18 (except coal, and metals, and gemstones), must on or before
19 March 31 each year make out a statement of the gross yield
20 and value of the above-named metals or minerals from each
21 mine owned or worked by such person during the year
22 preceding January 1 of the year in which such statement is
23 made. Such statement shall be in the form prescribed by the
24 department of revenue and must be verified by the oath of
25 the person completing the statement or the manager,

1 superintendent, agent, president, or vice-president, if a
 2 corporation, association, or partnership, and must be
 3 delivered to the department on or before March 31. Such
 4 statement shall show the following:

5 (1) the name and address of the owner or lessee or
 6 operator of the mine, together with the names and addresses
 7 of any and all persons owning or claiming any royalty
 8 interest in the mineral product of such mine or the proceeds
 9 derived from the sale thereof, and the amount or amounts
 10 paid or yielded as royalty to each of such persons during
 11 the period covered by the statement;

12 (2) the description and location of the mine;

13 (3) the number of tons of ore or other mineral
 14 products or deposits extracted, produced, and treated or
 15 sold from the mine during the period covered by the
 16 statement;

17 (4) the amount and character of such ores, mineral
 18 products, or deposits and the yield of such ores, mineral
 19 products, or deposits from such mine in constituents of
 20 commercial value; that is, commercially valuable
 21 constituents of the ores, mineral products, or deposits,
 22 measured by standard units of measurement, yielded to such
 23 person so engaged in mining and to each royalty holder, if
 24 any, during the period covered by the statement;

25 (5) the gross yield or value in dollars and cents;

1 (6) cost of extracting from the mine;

2 (7) cost of transporting to place of reduction or
 3 sale;

4 (8) cost of reduction or sale;

5 (9) cost of marketing the product and conversion of
 6 same into money;

7 (10) cost of construction, repairs, and betterments of
 8 mines and cost of repairs and replacements of reduction
 9 works;

10 (11) the assessed valuation of reduction works for the
 11 calendar year for which such return is made;

12 (12) cost of fire insurance, workers' compensation
 13 insurance, boiler and machinery insurance, and public
 14 liability insurance paid for the mine, reduction works, or
 15 beneficiation process;

16 (13) cost of welfare and retirement fund payments
 17 provided for in wage contracts;

18 (14) cost of testing extracted minerals for the purpose
 19 of satisfying federal or state health and safety laws or
 20 regulations, the cost of plant security in Montana, the cost
 21 of assaying and sampling the extracted minerals, and the
 22 costs incurred in Montana for engineering and geological
 23 services for existing mining operations but not including
 24 any such services beyond the stage of reduction and
 25 beneficiation of the minerals; and

1 (15) cost of mine reclamation."

2 Section 16. Section 15-6-208, MCA, is amended to read:

3 "15-6-208. Mineral exemptions. (1) One-half of the
4 contract sales price of coal sold by a coal producer who
5 extracts less than 50,000 tons of coal in a calendar year is
6 exempt from taxation.

7 (2) Metal mines producing less than 20,000 tons of ore
8 in a taxable year shall be exempt from property taxation on
9 one-half of the merchantable value.

10 (3) The first \$40,000 of merchantable value of
11 gemstones produced annually from any gemstone mine is exempt
12 from taxation."

13 NEW SECTION. Section 17. Codification instruction.
14 Sections 3 through 9 are intended to be codified as an
15 integral part of Title 15, chapter 23, and the provisions of
16 Title 15, chapter 23, apply to sections 3 through 9.

17 NEW SECTION. Section 18. Extension of authority. Any
18 existing authority of the department of revenue to make
19 rules on the subject of the provisions of this act is
20 extended to the provisions of this act.

21 NEW SECTION. Section 19. Effective date --
22 applicability. This act is effective on passage and approval
23 and applies to taxable years beginning after December 31,
24 1986.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB045, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act to subject the gross proceeds of gemstone mines to taxation; setting the taxable percentage rate applicable to gemstone mines at 45 percent of gross proceeds; amending sections 15-6-131, 15-6-132, 15-6-208, 15-23-101, 15-23-103, 15-23-104, 15-23-106, 15-23-115, and 15-23-502, MCA; and providing an immediate effective date and an applicability date."

ASSUMPTIONS:

1. The university mill levy is 6 mills; the school foundation mill levy is 45 mills; the average mill levy in the county affected by this proposal is 280 mills.
2. There is currently no taxable production of gemstone in the state.
3. For the last audited year of production (1983 production, taxable 1984) the gross value from gemstone production was \$492,056; total tax collected on this amount under the current law was \$0.
4. The intent of Section 5 of Senate Bill 45 is to exempt the first \$40,000 of gross value from taxation.
5. Under this proposal, the gross proceeds of gemstone mines would be taxed at 45%.

FISCAL IMPACT:

Gemstone production in this state has ceased. Without gemstone production, this proposal would have no fiscal impact.

During the last audited year of gemstone production (1983 production, taxable 1984) the gross value was \$492,056. The tax on net proceeds was \$0.

Under the proposed law, gemstone gross value of \$492,056 would produce annually approximately \$46,584 in county and local revenue; \$9,154 in school foundation revenue; and \$1,221 in university system revenue.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

N/A

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

Section 5, line 19 and Section 16, line 10 exempt \$40,000 of "merchantable value" from taxation. "Merchantable value" should probably be changed to "gross proceeds" or "gross value". "Merchantable value" does not make sense in the context of Sections 5 and 16.

David L. Hunter DATE 1/12/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Bob Williams DATE 1-12-87
BOB WILLIAMS, PRIMARY SPONSOR

Fiscal Note for SB045, as introduced.

SB45