MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Mike Halligan, Chairman, on February 11, 1991, at 9:00 a.m.

ROLL CALL

Members Present:

Mike Halligan, Chairman (D)
Dorothy Eck, Vice Chairman (D)
Robert Brown (R)
Delwyn Gage (R)
John Harp (R)
Francis Koehnke (D)
Gene Thayer (R)
Thomas Towe (D)
Van Valkenburg (D)
Bill Yellowtail (D)

Members Excused:

Steve Doherty (D)

Staff Present: Jeff Martin (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: There were no announcements.

EXECUTIVE ACTION ON SENATE BILL 69

Amendments, Discussion, and Votes:

Senator Eck presented two "gray" bills to the Committee. The first (Exhibit #1) amendment addresses the double negative concerns raised by the Department of Revenue that land larger than 20 acres with stated restrictions prohibiting its use for agricultural purposes may not be classified as agricultural.

The second amendment (Exhibit #2) addresses the conservation easement concerns by amending the title to read, "..prohibiting its use for agricultural purposes or that are exclusively for conservation purposes".

Jeff Martin said if the amendments per Exhibit #1 are adopted, there is no need for the second set (Exhibit #2). The conservation easement remains in place as per the amendment as proposed following page 3 of the bill (Exhibit #1).

Senator Eck moved to adopt the amendments as per Exhibit #1.

Dave Woodgerd, DOR, responding to a question from Senator Towe, said the bill as amended contains language which eliminates the double negative, protects the Nature Conservancy land from the being classified non-agricultural land, and generally cleans up the language. He said if the land is not subdivided for the purpose of using it for commercial or residential land, then it would remain agricultural land.

Senator Towe asked what restriction are being referred to in "stated restrictions". He said there are covenants running with the land and city zoning restrictions.

Mr. Woodgerd replied DOR intends for the language to cover both types of restriction...any written restrictions which prevent the land from being used for agriculture. He said he would prefer the word "includes" being inserted in place of the word "means" in the proposed amendment following page three of Exhibit #1. Parcel of land under 20 acres would not be eliminated under provisions of that language.

Senator Eck amended her motion to strike the word "means" and insert "includes". This would allow the conservation easement to stand.

Senator Van Valkenburg moved to insert "effectively" following "restrictions" in the amendment following page 3. He said this would prevent someone from trying to creatively write covenants to allow residential land to be classified as agricultural for purposes of avoiding residential taxes. If they are not clearly saying they can't be used for agricultural purposes, but the effect of it is to do the same, the "effectively" would eliminate the chance for another "scam" to develop.

Mr. Woodgerd agreed it would be a good amendment.

Senator Van Valkenburg moved the amendment in the language following page 3 and also in the title (see amendments # 2 and 5 on the attached standing committee report (Exhibit #7)).

The motion carried unanimously.

Senator Eck moved to amend the second reading copy of SB 69 as per the proposed amendments in Exhibit #1 (see amendments #1 - #5 on the attached standing committee report (Exhibit #7)).

Recommendation and Vote:

Senator Eck moved Senate Bill 69 Do Pass As Amended. The motion CARRIED unanimously with Senator Doherty excused.

EXECUTIVE ACTION ON SENATE BILL 111

Amendments, Discussion, and Votes:

Committee researcher, Jeff Martin, presented a "gray bill" (Exhibit #3) showing the proposed amendments to Committee. He explained the amendment on page 3, line 15, eliminates the possibility of dealing with hazardous waste as per 75-10-203, MCA. The amount of the credit is being revised in sub (2), Section 2, page 4, line 3, from 5% to 25%. This amendment also limits the year to the tax year in which the credit may be taken. Following that amendment, page 6, lines 13 - 18 are stricken. Subsection (5) limits the tax credit to the tax year that the principal property was purchased. There is no carry forward of the tax credit.

Senator Towe asked what happens on the subsequent sale. He asked if the new owner gets the credit because used property is available.

Mr. Martin said there is no purpose for subsection (4) because there is no carryover credit that is available to the new buyer.

Senator Gage asked about a carry back provision.

Senator Towe said credits normally carry forward and carry back. Unless it is specified that they don't, a judge somewhere will rule they do.

Senator Eck suggested adding "only" at the beginning of line 6, page 4.

Senator Halligan said that language could be cleaned up and would be added as an amendment.

Senator Halligan said the amendment on page 4,line 20, which replaces "solely" with "primarily" will allow use of a truck or vehicle for purposes other than just recycling.

Senator Eck was concerned about defining recyclables as opposed to garbage in relation to garbage permits and who must have them.

Senator Halligan felt the definitions took care of that concern, but he said he would double check to be sure. He continued the language on page 5, line 6, clarifies the credit is for recycling, not further disposal. The new Section 4 on page 7 addresses the waste incinerator problem by limiting the credit for property purchased to produce energy from reclaimed materials.

There was some concern expressed about the strict provisions of the new Section 4. Jeff Martin said there could be a distinction made between co-generation and using waste materials for their own heating purposes.

Senator Halligan said it is his intention to amend the bill so that a new fiscal note can be ordered as soon as possible. He said he would strike the new Section 4 and the pertinent title amendments to facilitate that process.

Senator Towe moved the amendments as presented and discussed by the Committee as per Exhibit #3. The motion CARRIED unanimously.

EXECUTIVE ACTION ON SENATE BILL 115

Amendments, Discussion, and Votes:

Jeff Martin presented a "gray bill" incorporating the proposed committee amendments (Exhibit #4).

Gordon Morris, MACo, presented two sets of amendments to the Committee (Exhibits #5 and #6). Mr. Morris referred to amendment #24 (Exhibit #5) which would state that any proceeds on page 5, line 17, would be distributed according to terms of an interlocal government agreement. This would be a county wide referendum agreed on by both city and county officials in an interlocal government agreement. Amendment #29 provides that if a governing body of a county elects not to participate in a county wide referendum, the city would be able to proceed. After talking with the League of Cities and Towns, Mr. Morris prepared an alternative amendment (Exhibit #6). The difference in the two amendments is as follows: Amendment #29, Exhibit #5, would allow for a follow-up referendum for city only; Amendment #29, Exhibit #6, provides that if the referendum fails, while at the same time the municipal referendum portion of it passes, the city would then be able to proceed. These amendments would put the issue squarely in the hands of the city and county officials to work out the process. The legislature is put at arm's length in terms of distribution of proceeds. He noted amendments #1 - #23 are simply technical amendments which would provide the process for the governing bodies to meet and draw up the interlocal agreement.

Senator Towe said the committee had agreed that if this is to be a sales tax, it should be point of origin based and if it is income tax based, it should be contingent on population.

Mr. Hanson said he was willing to compromise. If the cities put a local option sales tax on the ballot and the county wants to participate, it can then be a county wide ballot. The amendment from MACo indicates if it fails, county wide, but passes in any of the cities, the tax could be implemented in those cities. Distribution, however, is a serious problem. Leaving distribution to an interlocal agreement is not the solution, he felt. The League of Cities and Towns proposal for distribution on a county wide local option sales tax would be 50% population on a county basis and 50% point of origin on the city basis.

Senator Eck asked if the 50% - 50% distribution would apply to a local option income tax.

Mr. Hansen replied an agreement had been reached that a local option income tax would be based on residence.

Senator Koehnke asked about distribution for a single purpose project such as funding a city center.

Mr. Hansen said the formula would have to be written into the law which would also allow for another method of distribution through an interlocal agreement.

Mr. Morris thanked Mr. Hansen for his cooperation said MACo could also support the 50% -50% distribution or the interlocal agreement procedure.

Senator Halligan asked Jeff Martin to draft a "gray bill that would include the Department of Revenue amendments on administration of income tax.

Senator Towe asked Jeff to draft amendments addressing interlocal agreements with a fall back provision to the 50% - 50% agreement.

Mr. Morris said amendment #29 on Exhibit #6 should replace #29 on the second page of Exhibit #5. That set of amendments would then reflect the compromise 50% - 50% position.

Senator Thayer requested language ensuring that electors were adequately informed about the 50% - 50% distribution.

EXECUTIVE ACTION ON SENATE BILL 213

Motion:

Senator Van Valkenburg moved to reconsider action on Senate Bill 213 to allow for further amendments.

The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 10:00 a.m.

SENATOR MIKE HALLIGAN, Chairman

JILL D. ROHYANS, Secretary

MH/jdr

ROLL CALL

SENATE TAXATION COMMITTEE

DATE 2/11/91

52nd LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SEN. HALLIGAN	X		
SEN. ECK	X		
SEN. BROWN	X		
SEN. DOHERTY			X
SEN. GAGE	X		
SEN. HARP	X		
SEN. KOEHNKE	X		
SEN. THAYER	X		
SEN. TOWE	X		
SEN. VAN VALKENBURG	X		
SEN. YELLOWTAIL	X		

Each day attach to minutes.

DATE 2/11/91

COMMITTEE ON Taxation

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One Support	Check One Oppose
Denis Adams	DOR			
Don Stepplow	Dist. 21 Rep.	286	X	

(Please leave prepared statement with Secretary)

(7) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect, transport, or process reclaimed material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law.

NEW SECTION. **Section 4.** Deduction for purchase of recycled material. In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to 5% of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana.

NEW SECTION. **Section 5.** Department to make rules. The department of revenue shall prescribe rules necessary to carry out the purposes of [sections 1 through 5].

NEW SECTION. **Section 6.** Effective date -- applicability -- rulemaking. (1) Except for the purposes of subsection (2), [this act] is effective December 31, 1991, and applies to tax years beginning after December 31, 1991.

(2) For the purposes of promulgating administrative

rules to implement sections [1 through 4], [this act] is effective on passage and approval.

-End-

NEW SECTION. **Section 4. Limitation of credit.** Not withstanding the provisions of [sections 2 and 3], a tax credit may not be claimed for the investment in property used to produce energy from reclaimed material. RENUMBER SUBSEQUENT SECTIONS

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EXHIBIT NO. 3
DATE 2/11/91
BILL NO. SB 111

beneficial interest in a business that collects, transports, or processes reclaimed material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimed material if it gathers reclaimable material for later sale, or processing, ~~or disposal~~ for another business that has as its primary business function the collection, transportation, or processing of reclaimed material or the manufacture of a product from reclaimed material. The collection of reclaimed material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects, transports, or processes reclaimed material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting, transporting, or processing reclaimed material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, transported, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit.

(2) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property was purchased on or after January 1, 1986, but before July 1, 1996.

(3) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

~~(4) Upon sale, exchange, or other disposition of qualifying property for which the transferor was receiving a tax credit, the tax credit available to the transferee is limited to the amount and duration of credit that could have been claimed by the original purchaser had the property not been transferred.~~ RENUMBER SUBSEQUENT SUBSECTIONS

(5) A tax credit otherwise allowable under this section that is not used by the taxpayer in ~~a particular~~ the year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

(6) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

flexible in determining the specifics of what are to be defined as reclaimed materials and recycled materials. The in-state advantages to building industry based upon reclamation and recycling may have local and interstate benefits that far outweigh the cost of a tax credit and additional deduction.

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

NEW SECTION. **Section 1.** Definitions. For the purposes of [sections 1 through 5], unless otherwise required by the context, the following definitions apply:

(1) "Reclaimed material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste as defined in 75-10-203 by a consumer, processor, or manufacturer.

(2) "Recycled material" means a substance that is produced from at least 90% reclaimed material.

NEW SECTION. **Section 2.** Amount and duration of credit -- how claimed. (1) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201, may receive a credit against taxes imposed by Title 15, chapter 30 or 31, for investments in depreciable property to collect, transport, or process reclaimed material or to manufacture a product from reclaimed material, if the taxpayer qualifies under [section 3].

(2) Subject to [section 3(2)], a taxpayer qualifying for a credit under [section 3] is entitled to claim a credit in an amount equal to ~~5%~~ 25% of the cost of the property purchased to collect, transport, or process reclaimed material or to manufacture a product from reclaimed material for the year in which the property was purchased ~~and for a period of 10 consecutive years~~. If qualifying property was purchased prior to January 1, 1990, but on or after January 1, 1986, a taxpayer is entitled to a credit for tax year 1990, ~~but the 10-year period is considered to have begun in the year in which the qualifying property was purchased~~.

NEW SECTION. **Section 3.** Credit for investment in property used to collect, transport, or process reclaimed material or to manufacture a product from reclaimed material. (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect, transport, or process reclaimed material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used ~~solely~~ primarily to collect, transport, or process reclaimed material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a

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EXHIBIT NO. 3
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BILL NO. SB 111

2/11

amended

BILL NO. 111

INTRODUCED BY Senate [illegible] Rasmussen. Lehrkuhl Delaney

A BILL FOR AN ACT ENTITLED: "AN ACT ENCOURAGING BUSINESS INVOLVEMENT IN THE RECLAMATION AND RECYCLING OF MATERIALS; PROVIDING TAX CREDITS FOR INVESTMENTS IN DEPRECIABLE PROPERTY TO COLLECT, TRANSPORT, OR PROCESS RECLAIMED MATERIAL OR TO MANUFACTURE A PRODUCT FROM RECLAIMED MATERIAL; PROVIDING A LIMITATION OF THE TAX CREDIT; PROVIDING AN ADDITIONAL 5 PERCENT TAX DEDUCTION FOR BUSINESS-RELATED USE OF RECYCLED MATERIALS; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 5] grants rulemaking authority to the department of revenue. This bill allows rulemaking to proceed prior to the effective date of the act to allow the department ample time prior to the time the bill goes into effect to hold hearings and elicit the views of taxpayers, the public, and groups interested in the reclamation and recycling of materials.

The legislature expects the department to adopt rules that will promote the reclamation of materials that would normally be discarded, by encouraging the collection, transportation, processing, and reuse of reclaimed and recycled materials by businesses.

The bill addresses four levels of business involvement in the reclamation and recycling of materials:

(1) Retail businesses are encouraged to purchase equipment to collect reclaimed material from consumers.

(2) Recyclers are encouraged to purchase equipment to collect reclaimed material from businesses and other sources, transport the material, and process it.

(3) Manufacturers are encouraged to purchase equipment to manufacture products from reclaimed material.

(4) All businesses are offered an additional business-related tax deduction to use recycled products in the course of their business.

The scope of the business activity to qualify for a tax credit should be broad. Retail grocery stores and other businesses should be encouraged to collect reclaimed material by receiving a tax credit for equipment they purchase to collect the material, even if they do not directly receive a business-related profit from the equipment or collection operation. Recyclers are encouraged to purchase collection, transportation, and processing equipment, and manufacturers are encouraged to purchase equipment to make products from reclaimed material.

The rules should be inflexible in allowing dual roles for equipment--the qualifying equipment should be used solely for the purposes of this bill. The rules should be

INTRODUCED BILL
SB 111

1 (A) PROHIBIT ITS USE FOR AGRICULTURAL PURPOSES;

2 (B) ~~DO NOT PROHIBIT ITS USE FOR COMMERCIAL OR~~

3 ~~RESIDENTIAL PURPOSES~~; AND

4 (C) ARE IN EFFECT ON JANUARY 1 OF THE YEAR OF

5 ASSESSMENT.

6 (5) The grazing on land by a horse or other animals

7 kept as a hobby and not as a part of a bona fide

8 agricultural enterprise shall not be considered a bona fide

9 agricultural operation.

10 (6) If land has been valued, assessed, and taxed as

11 agricultural land in any year, it shall continue to be so

12 valued, assessed, and taxed until the department

13 reclassifies the property. A reclassification does not mean

14 revaluation pursuant to 15-7-111.

15 (7) For the purposes of this part, growing timber is

16 not an agricultural use. (Subsection (7) terminates January

17 1, 1991--sec. 10, Ch. 681, L. 1985.)"

18 NEW SECTION. **Section 2.** Effective date -- retroactive

19 applicability. [This act] is effective on passage and

20 approval and applies retroactively, within the meaning of

21 1-2-109, to taxable years beginning after December 31, 1990.

-End-

ARE NOT EXCLUSIVELY FOR CONSERVATION PURPOSES AS DEFINED IN SECTION 170(h)(1) THROUGH 170(h)(6) OF THE INTERNAL REVENUE CODE

SENATE TAXATION
EXHIBIT NO. 2
DATE 2/11/87
BILL NO. SB 69

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 69

INTRODUCED BY ECK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT LAND BURDENED WITH STATED RESTRICTIONS PROHIBITING ITS USE FOR AGRICULTURAL PURPOSES OR THAT ~~DO~~ ARE NOT ~~PROHIBIT ITS USE~~ EXCLUSIVELY FOR ~~COMMERCIAL OR RESIDENTIAL~~ CONSERVATION PURPOSES MAY NOT BE CLASSIFIED OR VALUED AS AGRICULTURAL LAND; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a commercial or industrial use.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land ~~shall--not--be--classified---or---valued---as agricultural--if--it--is-subdivided-with-stated-restrictions prohibiting burdened--with---restrictive---covenants---that prohibit its--use-for-agricultural-purposes and-that-are-in effect-on-January-1-of-the-year-of--assessment--may--not--be classified--or--valued--as-agricultural-land-under-this-part~~ MAY NOT BE CLASSIFIED OR VALUED AS AGRICULTURAL LAND UNDER THIS PART IF THE LAND IS BURDENED WITH RESTRICTIVE COVENANTS THAT:

SECOND READING

~~(A) PROHIBIT ITS USE FOR AGRICULTURAL PURPOSES;~~

~~(B) DO NOT PROHIBIT ITS USE FOR COMMERCIAL OR RESIDENTIAL PURPOSES, AND~~

~~(C) ARE IN EFFECT ON JANUARY 1 OF THE YEAR OF ASSESSMENT.~~

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise shall not be considered a bona fide agricultural operation.

(6) If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be so valued, assessed, and taxed until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use. (Subsection (7) terminates January 1, 1991--sec. 10, Ch. 681, L. 1985.)"

NEW SECTION. **Section 2.** Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

-End-

Land MAY NOT BE CLASSIFIED OR VALUED AS AGRICULTURAL IF IT IS SUBDIVIDED LAND WITH STATED RESTRICTIONS EFFECTIVELY PROHIBITING ITS USE FOR AGRICULTURAL PURPOSES. FOR THE PURPOSES OF THIS SUBSECTION ONLY, "SUBDIVIDED LAND" ~~MEANS~~ INCLUDES PARCELS OF LAND LARGER THAN 20 ACRES THAT HAVE BEEN SUBDIVIDED FOR COMMERCIAL OR RESIDENTIAL PURPOSES.

SENATE TAXATION
EXHIBIT NO. 1
DATE 2/11/91
BILL NO. SB 69

2/11/91

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 69

INTRODUCED BY ECK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT LAND LARGER THAN 20 ACRES ~~BURDENED~~ WITH STATED RESTRICTIONS PROHIBITING ITS USE FOR AGRICULTURAL PURPOSES ~~OR THAT DO NOT PROHIBIT ITS USE FOR COMMERCIAL OR RESIDENTIAL PURPOSES~~ MAY NOT BE CLASSIFIED OR VALUED AS AGRICULTURAL LAND; AMENDING SECTION 15-7-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 15-7-202, MCA, is amended to read:

"15-7-202. Eligibility of land for valuation as agricultural. (1) Contiguous parcels of land totaling 20 acres or more under one ownership shall be eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a commercial or industrial use.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation as herein provided each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of livestock, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) shall not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land ~~shall--not--be--classified---or---valued---as agricultural--if--it--is-subdivided-with-stated-restrictions prohibiting~~ burdened--with---restrictive---covenants---that prohibit ~~its--use-for-agricultural-purposes~~ and-that-are-in effect-on-January-1-of-the-year-of--assessment--may--not--be classified--or--valued--as-agricultural-land-under-this-part ~~MAY NOT BE CLASSIFIED OR VALUED AS AGRICULTURAL LAND UNDER THIS PART IF THE LAND IS BURDENED WITH RESTRICTIVE COVENANTS THAT.~~

SECOND READING

SENATE TAXATION
EXHIBIT NO. 4
DATE 2/11/91
BILL NO. SB 115

Senate BILL NO. 115

INTRODUCED BY Bay Tech, Kolman, Gilligan, Halligan, Tower, Kimberley Brown, Blake, Alice Day, Towe, Jergeson, Nelson, Jergeson, Debra McCullough

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A LOCAL GOVERNMENT TO IMPOSE ANY TYPE OF TAX NOT PROHIBITED BY LAW IF IT IS APPROVED BY THE ELECTORATE OF THE LOCAL GOVERNMENT; PROVIDING FOR ADMINISTRATION AND DISTRIBUTION OF THE TAX; ~~AND~~ PROVIDING CIVIL AND CRIMINAL PENALTIES NECESSARY FOR ADMINISTRATION OF THE TAX." EXEMPTING LOCAL OPTION PROPERTY TAXES FROM THE PROVISIONS OF I-105; AND AMENDING SECTION 15-10-412, MCA

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of revenue is granted rulemaking authority under [sections 3 AND 6] for the administration of a local option income tax. The legislature intends that the department adopt rules that:

(1) define income subject to a local income tax;

(2) specify the conditions under which a taxpayer who resides in a jurisdiction that imposes a local income tax is liable for the tax;

~~(3) specify the conditions under which a taxpayer who is not a resident of the jurisdiction imposing a local income tax but whose principal place of business or employment is in the jurisdiction is liable for the local income tax;~~ RENUMBER SUBSEQUENT SUBSECTIONS

DOR

(5) "UTILITY SERVICES" MEANS THE SALE OF GAS, ELECTRICITY, WATER, SEWER SERVICES, TELECOMMUNICATION SERVICES, EXCEPT CABLE TELEVISION SERVICES, AND GABAGE AND SANITATION SERVICES.

(4) provide for the necessary forms and required procedures for reporting taxes; and

(5) establish procedures for the efficient administration of a local income tax, including the collection and timely remittance of the proceeds from the income tax to the jurisdiction imposing the tax.

(6) establish procedures to ensure that no taxpayer is subject to double taxation

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

NEW SECTION. **Section 1.** Definitions. As used in [sections 1 through 6], the following definitions apply:

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

(2) "Enabling authority" means a proposal approved by the electorate in accordance with 7-5-136 that enables a local government to impose a tax.

(3) "Local government" means the government of a county or a municipality.

(4) "Municipality" means an incorporated city, town, or city-county consolidated government.

NEW SECTION. **Section 2.** Authorization of local option tax. (1) Subject to the provisions of the enabling authority, a local government may impose upon its residents and upon transactions within its jurisdiction:

(a) taxes on INDIVIDUAL income;

(b) taxes on the GENERAL OR USE sale of goods or services; or except utility services

(c) TAXES ON PROPERTY ~~any other type of tax not prohibited by law~~.

INTRODUCED BILL
SB 115

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EXHIBIT NO. 4
DATE 2/14/91
BILL NO. SB 115

(2) The proposal to impose a tax authorized by this section may be initiated by a petition of the electorate, as provided in 7-5-131 through 7-5-135, or by a referendum proposed by the governing body.

(3) The proposal must state:

(a) the specific type of tax the local government proposes to impose;

(b) the proposed tax rate;

(c) proposed exclusions, deductions, and exemptions, if any;

(d) the proposed duration of the tax;

(e) the purpose for which the proceeds of the proposed tax would be used; and

(f) the estimated total annual revenue to be produced by the proposed tax.

(4) In addition to the provisions required by subsection (3), the proposal must grant the governing body authority to establish administrative procedures, rules, penalties, and other powers that are consistent with the approved enabling authority.

(5) Except as provided in [section 6], the enabling authority may not be amended or repealed by the governing body without a vote of the electorate.

NEW SECTION. **Section 3.** Local option income tax -- administration ~~-- nonresidents~~. If the tax authorized by [section 2] is a percentage of the state income tax

(6) ~~IF~~ A LOCAL OPTION PROPERTY TAX IS EXEMPT FROM THE PROVISIONS OF 15-10-412.

THE PROVISIONS OF TITLE 15, CHAPTER 30, PART 3 APPLY TO A LOCAL OPTION INCOME TAX ADMINISTERED BY THE DEPARTMENT.

liability of residents of a county or municipality ~~or of persons earning or receiving income from activity in the county or municipality,~~ the following provisions apply:

(1) A local option income tax must be administered by the department, and the department shall adopt rules for the administration of the tax.

(2) Money collected by the department must be credited to a local income tax account in the fiduciary fund of the state treasury.

(3) The department shall, except as provided in subsection (4), return the tax proceeds to the jurisdiction where they were collected after deducting:

(a) the amount of refunds;

(b) a reserve for anticipated refunds; and

(c) an amount for administering the tax, not to exceed DOR ~~1%~~ 5% of the proceeds collected in each jurisdiction.

(4) IF THERE IS PARTIAL PAYMENT OF INCOME TAX, THE PAYMENT MUST FIRST BE APPLIED TO THE STATE INCOME TAX OBLIGATION BEFORE IT IS APPLIED TO THE LOCAL INCOME TAX OBLIGATION.

~~(4) A taxpayer whose principal place of business or employment is in a jurisdiction with a local income tax but who lives outside the boundaries of that jurisdiction is liable for one-half the rate of the income tax.~~

NEW SECTION. **Section 4.** Enforcement -- penalties for nonpayment -- interlocal agreements. (1) Subject to any restrictions in the enabling authority, a governing body may enforce the provisions pertaining to the imposition and collection of the tax by establishing:

(a) criminal pen..lties, not to exceed the penalties for

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violation of an ordinance as set forth in 7-5-109; and

(b) civil penalties that are monetary amounts, either fixed or in percentages, enforceable in a justice's, city, or municipal court.

(2) A governing body may contract or enter into interlocal agreements with other local governments or state agencies for the administration of a tax authorized by [section 2]. (3) THE DEPARTMENT MAY ADMINISTER OTHER LOCAL OPTION TAXES PROVIDED THERE IS A CORRESPONDING STATE TAX DOR

NEW SECTION. **Section 5.** Distribution of tax proceeds.

(1) The proceeds of a tax authorized by [section 2] must be used for the purpose stated in the enabling authority, except that the governing body may use a portion of the proceeds for the administration of the tax.

(2) A local option tax imposed by a county must be levied countywide, and unless otherwise provided by agreement with municipalities, the county shall distribute: ~~the proceeds based on the point of origin of the tax revenue. After a pro rata deduction for its administrative expenses, the county shall distribute tax revenue collected within each municipality to the municipality and shall retain tax revenue not collected within any municipality.~~

NEW SECTION. **Section 6.** Double taxation prohibited.

(1) A local option tax may not be levied on the same person or transaction by more than one local government.

(2) If the electorate of a county approves a local

(3) THE DEPARTMENT SHALL ADOPT RULES TO PREVENT DOUBLE TAXATION UNDER LOCAL OPTION TAXES AND TO RESOLVE THE ADMINISTRATION AND ALLOCATION OF TAXES AMONG LOCAL GOVERNMENTS FOR TAXES ADMINISTERED BY THE DEPARTMENT. DOR

option tax after the electorate of a municipality in the county has approved a local option tax on the same person or transaction at the same or a higher rate, persons and transactions in the municipality are exempt from the county tax as long as the municipal tax is in effect. If the municipal tax is at a lower rate than the county tax, the governing body of the municipality shall repeal its tax without a vote of the electorate.

NEW SECTION. **Section 7.** Codification instruction.

(1) [Sections 1 through 6] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 15, chapter 1, . . .

-End-

(a) sales tax revenue based on the point of origin of the sales tax revenue;

(b) income tax revenue based on the relative population of the municipalities to the population of the county derived from the most recent population estimates provided by the U.S. bureau of census, or if estimates are not available, derived from the 1990 census.

(3) After a pro rata deduction for its administrative expenses, the county shall distribute tax revenue to each municipality as provided in subsection (2)(a)(3) and shall retain tax revenue not distributed to the municipalities.

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NEW SECTION. **Section 7. LOCAL GOVERNMENT TAX ADMINISTRATION ACCOUNT.** (1) THERE IS WITHIN THE STATE SPECIAL REVENUE FUND A LOCAL GOVERNMENT TAX ADMINISTRATION ACCOUNT.

(2) THE AMOUNTS DEDUCTED UNDER [SECTION 3(3)(C)] MUST BE DEPOSITED BY THE DEPARTMENT INTO THE LOCAL GOVERNMENT TAX ADMINISTRATION ACCOUNT.

(3) THERE MUST BE RETAINED IN THE LOCAL GOVERNMENT TAX ADMINISTRATION ACCOUNT THE AMOUNTS NECESSARY FOR THE DEPARTMENT TO ADMINISTER THE TAX.

Section 8. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels -- clarification -- extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the

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dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status;

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements; or

(i) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

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(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit;

(f) conversion of the individual property from tax-exempt to taxable status; or

(g) increases in property valuation pursuant to 15-7-111(4) through (8) in order to equalize property values annually.

(5) Property in classes four, twelve, and fourteen is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four, class twelve, or class fourteen property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and

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valuation methodology of the department of revenue in fact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters

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in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4); and

(j) elementary and high school districts.

<u>(k) local option property tax levies authorized pursuant to [section 2].</u>

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

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(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

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(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

MONTANA
ASSOCIATION OF
COUNTIES

SENATE TAXATION
EXHIBIT NO. 5
DATE 2/11/91
BILL NO. SB 115

2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

SB 115 AMENDMENTS

SENATOR BLAYLOCK, SPONSOR

Amend bill as follows:

1. Title, line 4
   Strike: "A"

2. Title, line 5
   Following: "Government"
   Insert: "S"

3. Title, line 6:
   Strike: OF THE LOCAL GOVERNMENT

4. Page 2, line 13
   Strike, "a"

5. Page 2, line 14
   Following: "local government
   Insert: "s"

6. Page 2, line 21
   Strike: "a"

7. Page 2, line 21
   Following: "government"
   Insert: "s"

8. Page 2, line 21
   Strike: "its"
   Insert: "their"

9. Page 2, line 22
   Strike: "its"
   Insert: "their"

10. Page 3, line 4
    Following: "governing"
    Strike: "body"
    Insert: "bodies"

11. Page 3, line 6
    Following: "government"
    Insert: "s"

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24. Page 5, line 17
Following: "proceeds"
Insert: "according to the terms of an interlocal government agreement"

25. Page 5, lines 17 and 18
Strike: "based on the point of origin of the tax revenue"

26. Page 5, line 18
Strike: "After"
Insert: "after"

27. Page 5, line 19
Following: "expenses"
Strike: ","
Insert: "."

28. Page 5, lines 19 through 21
Strike: "the county shall distribute tax revenue collected within each municipality to the municipality and shall retain tax revenue not collected within any municipality."

29. Page 5, line 22:

Insert: <u>(3) If the governing body of the county elects not to participate in imposing a tax authorized by referendum as set forth in [section 2] or if the county wide referendum fails the municipality or municipalities may individually proceed under provisions set forth in [section 2].</u>

<u>(i) under this provision tax proceeds collected by the department shall be returned to the municipality where they were collected after deductions as set forth in [section 3, subsection 3(a), (b), and (c)].</u>

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MONTANA
ASSOCIATION OF
COUNTIES

2711 Airport Road
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(406) 442-5209
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HB 115 AMENDMENT

SENATOR BLAYLOCK, SPONSOR

29. Page 5, line 22:

(3) If the governing body of a county elects not to participate in imposing a tax authorized by referendum as set forth in [section 2] the municipality or municipalities may individually proceed under provisions set forth in [section 2].

(i) If a county wide referendum fails while municipal voters approve the referendum, the municipality or municipalities may individually proceed with the imposition of the tax as provided for in the enabling authority as set forth in [section 2].

(ii) under this provision tax proceeds collected by the department shall be returned to the municipality where they were collected after deductions as set forth in [section 3, subsection 3(a), (b), and (c)].

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EXHIBIT NO. 7
DATE 2/11/91
BILL NO. SB 69

SENATE STANDING COMMITTEE REPORT

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February 11, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration Senate Bill No. 69 (second reading copy -- yellow), respectfully report that Senate Bill No. 69 be amended and as so amended do pass:

1. Title, line 5.
Following: "THAT"
Insert: "PARCELS OF"

2. Title, line 6.
Strike: "BURDENED"
Insert: "LARGER THAN 20 ACRES"
Following: "RESTRICTIONS"
Insert: "EFFECTIVELY"

3. Title, lines 7 and 8.
Strike: "OR" on line 7 through "PURPOSES" on line 8

4. Page 2, line 17
Strike: "Land"

5. Page 2, line 23 through page 3, line 5.
Strike: page 2, line 23 through page 3, line 5 in their entirety
Insert: "Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes."

Signed: [signature]
Mike Halligan, Chairman

[initials] 2-11-91
Amd. Coord.

[initials] 2-11-91
Sec. of Senate

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