

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - 2nd SPECIAL SESSION**

COMMITTEE ON PROPERTY TAX

Call to Order: By **BEN COHEN, CHAIR**, on July 10, 1992, at 1:30 p.m.

ROLL CALL

Members Present:

Rep. Ben Cohen, Vice-Chairman (D)
Rep. Ed Dolezal (D)
Rep. Russell Fagg (R)
Rep. Ed McCaffree (D)
Rep. Dave Wanzenried (D)

Members Excused:

Rep. Dan Harrington (D)
Rep. Orval Ellison (R)
Rep. David Hoffman (R)
Rep. Mark O'Keefe (D)
Rep. Ted Schye (D)
Rep. Fred Thomas (R)

Staff Present: Lee Heiman, Legislative Council
Billie Jean Hill, Committee Secretary

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

Announcements/Discussion: There was no secretary present for the hearing on HB 23. Testimony, questions, and executive action are not included in these minutes. However, for purposes of information, there are three exhibits entered for the record.
EXHIBITS 1,2,

HEARING ON HB 24

Subcommittee Discussion:

CHAIRMAN BEN COHEN said that he had called the freight line company (TTX) to asked why railroad property leases were not provided for commercial enterprises. At that time, he was assured that the railroads would provide them. He asked **Denis Adams, Director, Department of Revenue**, to outline the parameters of the problem in question. **Mr. Adams** provided written testimony. **EXHIBIT 3**

Questions From Committee Members:

CHAIRMAN BEN COHEN asked **Mr. Adams** if the money in the revenue estimate (**EXHIBIT 4**) is money that the state will receive or is it money that is not likely to be received. **Mr. Adams** said the money has already been paid into the general fund. If the state loses the rail lawsuit, it will have to refund the money. DOR has not changed the revenue estimates, and the refund could be as high as \$2 million retroactive to 1991. **David Woodgerd, Chief Legal Counsel, DOR** said HB 24 is an attempt to assure that the state does not lose a full year's worth of taxes through the tactics of TTX. **CHAIR COHEN** asked if HB 24 would add only rail cars to the railroad property that is already taxed. **Mr. Woodgerd** said that was the intent of HB 24.

Robert Lee, Counsel for TTX Company lawsuit, provided written testimony. **EXHIBIT 5**

CHAIRMAN COHEN asked **Mr. Lee** if in determining value, is **Mr. Lee** talking about assessed value or the taxable value. **Mr. Lee** said that he was talking about a fraction of the percentage applied to gross receipts. It is TTX's view that the entire concept of the statute is improper. **CHAIRMAN COHEN** said HB 24 attempts to tax railroad property not gross receipts.

Mr. Jack Etzkorn, TTX Company, addressed the retroactive portion of HB 24. He felt that it was premature to put this portion in HB 24 because the court has not yet ruled on the TTX Company case. **REPRESENTATIVE ED DOLEZAL** asked **Mr. Woodgerd** what would be the impact to the state if it did nothing until the court made a decision on the case. **Mr. Woodgerd** said the TTX Company would save itself tax dollars and the state would lose tax dollars.

Mr. Woodgerd explained the amendments as proposed by the DOR. See Exhibit 3, p.3

REPRESENTATIVE RUSSELL FAGG asked **Mr. Lee** what was the likelihood of success for the TTX company in the federal lawsuit. **Mr. Lee** said he felt that the statute would be held void because it is an improper statute to begin with. **REP. FAGG** said that the state did not want to wait until the litigation is over, and then pass a bill. This would mean that the TTX Company will not have paid taxes for one or two years. He asked **Mr. Lee** what he would recommend as a fair solution for HB 24. **Mr. Lee** said the ideal solution would be to bring in industry representatives between now and the 1993 Session and begin fashioning a classification for the taxation of railroad property that would be good for the state as well as the companies.

REP. FAGG asked **Mr. Adams** what, if anything, is preventing the state from negotiating with the TTX Company. He felt that a compromise with the railroad companies would be a better solution than hurrying a bill, which will continue to gain litigation, through the Legislature. **Mr. Adams** said the three railroad

companies (TTX, Railbox, and Railgon) do not pay corporate income taxes or property taxes. The purpose of HB 24 is to repeal the Freight Line Company Tax and have these companies pay the same property taxes and income taxes that other businesses in Montana pay. If these changes are made, the companies will not only have to readjust their property taxes, they must also file a corporate income tax return. He sees no indication from the companies that they are willing to do this as part of the settlement. **REP. FAGG** suggested a postponement of action on HB 24 for a number of days which would allow the railroad companies and DOR time to resolve their differences. **CHAIRMAN COHEN** said negotiations have been attempted, and they have failed. **Mr. Lee** said if Montana repeals the Freight Line Company Tax and enacts HB 24, the concept of negotiations will become impossible. Negotiations can not be held outside of the context of the federal case. This will mean a second case will be filed based on the new statute.

EXECUTIVE ACTION ON HB 24

Motion/Vote: **REPRESENTATIVE DAVID WANZENRIED** recommended that the proposed DOR amendments for HB 24 be adopted. See Exhibit 3, p.3 **RECOMMENDATION CARRIED UNANIMOUSLY**

Discussion:

REPRESENTATIVE ED MCCAFFREE referred to Page 6 of HB 24. He asked if local governments are credited for the rail car company profits. **Mr. Woodgerd** said that all of the money collected from the Freight Line Tax goes into the general fund.

CHAIRMAN COHEN referred to Section 9, subsection 2. He asked if the language could be changed to apply to all companies. **REP. DOLEZAL** asked if the language were changed, would it mean that everyone could renegotiate. **CHAIRMAN COHEN** said no. They would have the opportunity to discuss one specific formula under the rulemaking procedure. **Mr. Adams** said that there is no way that DOR could negotiate with each company.

CHAIRMAN COHEN asked that **Lee Heiman, Staff Attorney, Legislative Council**, explain **CHAIRMAN COHEN'S** proposed amendment for Section 9, subsection 2. **Mr. Heiman** suggested that subsection 2 read "the allocation of property to this state must be made on the basis of car miles traveled within the state to the total car miles traveled unless the Department of Revenue, by administrative rule, adopts a different formula."

Motion/Vote: **CHAIRMAN COHEN** recommended that the amendment, as proposed by **Mr. Heiman**, be introduced to the full Taxation Committee. **RECOMMENDATION CARRIED UNANIMOUSLY**

Discussion:

REP. DOLEZAL referred to Section 15. He said there was a question about the amount of money that is appropriated to implement HB 24. At a time when the Legislature is trying to cut money, he would not vote for HB 24 with the appropriations language in it. **CHAIRMAN COHEN** said if the language isn't stricken in the Taxation Committee, it will be stricken in House Appropriations.

Motion/Vote: **REP. DOLEZAL** recommended that the appropriations language be stricken from HB 24. **RECOMMENDATION CARRIED UNANIMOUSLY**

Motion/Vote: **REP. FAGG** recommended that HB 24 Do Pass As Amended. **RECOMMENDATION CARRIED UNANIMOUSLY**

HEARING ON HB 15

CHAIRMAN COHEN said HB 15 changes the method of determining the reimbursement for loss of personal property tax revenue to local governments and schools by using the current taxable value of personal property that was in the county in 1989.

He gave the example of a property in a county that had a market value of \$100,000. Under the Canola bill (HB 20, 1989 Regular Session), the tax break for this property was reduced from 13 percent to 9 percent. The taxable value for that same property was \$9,000 instead of \$13,000 which is a \$4,000 loss to the tax base of that county. The state would make up the loss. If the \$100,000 piece of equipment is shipped elsewhere, the \$4,000 of taxable value is still being used to apply the local mill to determine the amount of reimbursement. The Legislature, at that time, believed that by reducing property taxes, it would encourage businesses to come to Montana.

CHAIRMAN COHEN said that with the condition the state is in at present, it should not continue to pay the reimbursement to local governments for property that no longer has the same value or no longer existed. HB 15 suggests that rather than using the taxable values of 1989, it uses current taxable values. He referred the Subcommittee to the amendments prepared by **Mr. Heiman**. **EXHIBIT 6** The amendments were designed to slowly depreciate out the block grants on the local government tax roles.

REP. DOLEZAL asked if the depreciation schedule was taken from the current levels. **Ken Morrison, Administrator, Property Assessment Division, DOR**, said the same base is used which is the difference in the taxable value from mills passed. Statutes read that the current mill levies are applied to the base to determine

the reimbursement. Levies have been growing, so reimbursements have been growing.

REP. FAGG said in 1989, all of the counties had X-amount of personal property. Because it has depreciated since that time, it will wither down to nothing. He asked if it wasn't true that even if the 1989 Legislature did nothing, the property tax base would still be based on an X-amount of personal property times 11 percent. **CHAIRMAN COHEN** said the reason for dropping the personal property tax was that the state was taxing too high and it was discouraging economic development in the state. HB 15 says to the local governments that now that they have experienced a growth in its property tax base as a result of the reformed property tax system, they should no longer need these reimbursements. **REP. FAGG** said there has been no significant increase in the personal property tax base. Because there was an error made by the 1989 Legislature, the counties will pay for it. **REP. FAGG** did not feel that this was right. **REP. COHEN** said that the counties and the local governments will have to take a share of the burden.

Alec Hansen, Executive Director, Montana League of Cities and Towns, said the state shouldn't reimburse local governments for equipment that no longer exists. At the same time, the action that was taken by the 1989 Legislature was to reduce the tax rates with the understanding that local governments would be reimbursed for the affects of that action. HB 15 will not solve the problem because local governments must still be reimbursed on a depreciating level for equipment that no longer exists. It will take 10 years to solve the problem, and the cities and counties will get killed because they have no way of making up the money lost.

Chuck Stearns, Finance Director, Missoula, provided testimony from the Free Conference Committee on HB 20 in the 1989 Regular Session which established the 9 percent tax rate. **EXHIBIT 7** He said that the Legislature gave the clear intent that it is the state's responsibility to replace the revenue to the local governments for the economic development that occurs as a result of the reduction. **Mr. Hansen** said in the 100 pages of testimony from the Free Conference Committee on HB 20, there is no reference whatsoever about depreciation.

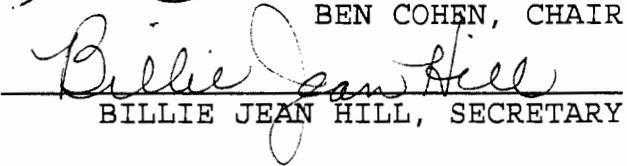
NO ACTION WAS TAKEN ON HB 15.

ADJOURNMENT

Adjournment: 3:00 P.M.



BEN COHEN, CHAIR



BILLIE JEAN HILL, SECRETARY

BC/bjh

legislature was to replace these funds if (b) were taken out, the language which was inserted earlier.

Mr. Heiman indicated that, if this goes to 9%, 9%, he thinks what they will have is a bill which is just a 9%, that it would be 9% from now on. He noted that, if they did that, he thinks that (b) anticipates a continuing different appropriation to take care of the lowering, so it does not necessarily have to have subsection (b) for a specific appropriation, that they may want to just change subsection 7 on page 4, which provides for the statutory appropriation for this year, and get rid of the dates in there, which would make the statutory appropriation continue, so they would have a simple 9% at the bottom of the property tax bill with a statutory appropriation to fund it, because the dollar amounts are not going to change. He indicated that would be the way he would see the amendment actually working.

Representative Schye asked Mr. Heiman if that takes care of the railroad problem and the airline problem they were talking about. Mr. Heiman responded yes, and indicated that the airline and railroad problem was put in on page 3, the middle of subsection 1, which references 15-6-145 and 15-6-147, and that the language and the phrase above that reflect the change.

Representative Daily indicated that nobody has been beat up in this process worse than he has, that, when he started out, all he cared about was canola, and he ended up carrying the Governor's property tax relief bill, adding that, rest assured, he did not vote for it. He pointed out that, when they are in these conference committees and come to some kind of agreement, or at least some kind of agreement possibility, when they leave here, somebody tells them something else, and somebody else tells them something else and, as everyone knows, they do not know what the numbers are, that there is not anyone in this room who can tell him what 9% does, or what 8.5% does. He indicated that he asked the Fiscal Analyst's office, and they could not tell him, that no one can do it, they can not do it. He added that it is too bad they can not, but they can not, and that is the reality of it.

Representative Daily stated that he thinks, if they go 9%, 9%, they can get it, and he will guarantee that he will sign it, that he does not care what anybody says, he is signing it, and that is the way she goes. He added that Representative Schye has said the same thing, so that is where they are with them, that he is not going to vote for Senator Thayer's motion, that he knows Senator Lynch is going to make a substitute motion

HOUSE OF REPRESENTATIVES
PROPERTY TAX SUBCOMMITTEE

ROLL CALL

DATE July 10, 1992

NAME	PRESENT	ABSENT	EXCUSED
REP. BEN COHEN, VICE-CHAIR	✓		
REP. ED DOLEZAL	✓		
REP. ORVAL ELLISON		✓	
REP. RUSSELL FAGG	✓	✓	
REP. DAVID HOFFMAN		✓	
REP. ED MCCAFFREE	✓		
REP. MARK O'KEEFE		✓	
REP. TED SCHYE		✓	
REP. FRED THOMAS		✓	
REP. DAVE WANZENRIED	✓	✓	
REP. DAN HARRINGTON, CHAIRMAN		✓	

MEMORANDUM

EXHIBIT 1

DATE 7-10-92

HE 23

*Special Session 2
Property Tax Subcommittee*

TO: Dave Woodgerd

FROM: Larry Allen

DATE: July 9, 1992

SUBJECT: Constitutionality of House Bill 23 - July, 1992 Special Session

Introduction

This bill imposes a 25 percent surtax on the property tax of nonresidents. Under the bill, Montana residents are not subject to the surtax. The question that arises is whether or not this proposed legislation violates the federal constitution in affording different treatment to resident taxpayers than nonresident taxpayers.

Two related, but separate lines of analysis must be pursued to answer this question. First, the bill creates two classes of taxpayers, Montana residents not subject to the surtax and nonresidents who are subject to the surtax. Because the bill provides for different treatment between the two classes of taxpayers, the bill must pass an Equal Protection analysis to be deemed constitutional. Second, because the bill affords different treatment to residents than nonresidents, the bill must also pass an analysis under the Privileges and Immunities Clause of the United States Constitution.

Equal Protection of the Law

The Montana Supreme Court has ruled that affording different tax treatment among classes of taxpayers is constitutional if the taxpayer classification satisfies the rational basis test GBN, 249 Mont. at 266, 815 P.2d at 597. The rational basis test is satisfied if (1) the tax classification is reasonable, not arbitrary, and (2) the law applies equally to all who fall within the same classification. Montana Stockgrowers Ass'n v. Department of Revenue, 238 Mont. 113, 117-118, 777 P.2d 285, 288-89 (1989). See also Lehnhausen v. Lakeshore Auto Parts Co., 410 U.S. 356 (1973); Eisenstadt v. Baird, 405 U.S. 438, 447 (1972).

The second prong of the rational basis test is satisfied. House Bill 23 applies the 25 percent surtax equally to all nonresidents taxpayers. However, an analysis under the first prong of the rational basis test shows that the tax does not satisfy equal protection requirements. The distinction between residents and nonresidents must be reasonable, or as often stated by the courts, must serve a legitimate purpose of government. cf Exxon Corp. v. Eagerton, 462 U.S. 176, 195-196 (1983).

The mere fact that legislation seeks to raise revenue is not in and of itself, a sufficient reason to distinguish between classes of taxpayers. There must be substantial, justifiable distinctions which really makes one class of taxpayers different

from another. Montana Stockgrowers, supra (citing Peter Kiewit Sons' Co. v. State Board of Equalization, 161 Mont. 140, 147, 505 P.2d 102, 106-07 (1973)). See also State ex rel. Schultz-Lindsay v. Board of Equalization, 145 Mont. 380, 403 P.2d 635 (1965).

In this bill the obvious difference between the classes is that one class consists of Montana resident taxpayers and the other class consists of nonresident taxpayers. As discussed below, if this is the only distinction the classification would violate the Privileges and Immunities Clause of the federal constitution.

It is a well-settled principle of law that states may impose a state tax on nonresidents. Olson v. Department of Revenue, 223 Mont. 464, 726 P.2d 1162 (1986), citing Shaffer v. Carter, 252 U.S. 37 (1920). The rationale for imposing property taxes on nonresidents is that they enjoy benefits provided by the state. Some of the benefits nonresidents property owners enjoy is police protection of their property, fire protection of their property, and road or street service to their property. However, unless there exists a reasonable basis for increasing a nonresident's payment for these services, as opposed to a resident's (tax) payment, such an increase fails under the Equal Protection Clause of the United States.

Because it is not apparent that nonresident property owners enjoy greater benefits than resident property owners, or that nonresident property owners are currently paying a lesser proportionate share for the benefits they receive than resident property owners, the proposed surtax violates the federal constitution.

The Privileges and Immunities of Citizenship Clause

Article IV, § 2, of the United States Constitution provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." The Fourteenth Amendment further provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." These clauses, commonly referred to as the Privileges and Immunities Clauses, act to limit the power of states to tax nonresidents in a manner different than residents of the taxing state.

Not every instance of different tax treatment between residents and nonresidents will be deemed discriminatory. In determining the discriminatory effect of a state tax law on a nonresident, the state's entire taxing system must be taken into account. Travellers' Ins. Co. v. Connecticut, 185 U.S. 364 (1901). If the state's tax system as a whole is reasonable and fairly distributes the tax burden, a distinction between residents and nonresidents will not violate the constitutional privileges and immunities of citizenship. Id. See also Clark v. Lee, 406 N.E. 2d 646 (Ind. 1980).

As with the equal protection analysis the ultimate test for the constitutionality of the distinction between residents and nonresidents concerning taxation is reasonableness. In the landmark case discussing the constitutionality of taxing nonresidents differently from residents, the United States Supreme Court

expressly recognized that under the Privileges and Immunities Clause, as with the Equal Protection Clause, there must exist a sufficient distinction between nonresidents and residents that justifies a different tax treatment by the taxing authority. Shaffer, 252 U.S. 37, 56-57 (1920). Although Shaffer involves income tax, the Privileges and Immunities analysis is equally applicable to property taxation.

Thus for the same reasons stated above in the equal protection analysis, the proposed surtax violates the Privileges and Immunities Clause of the United States Constitution. A reasonable basis to tax nonresidents in a different manner than residents for a legitimate state purpose must be asserted before such a tax could be deemed constitutional.

THE COMMERCE CLAUSE

Because the bill proposes to tax nonresident businesses as well as natural persons, a final consideration of the proposed surtax is what effect such a tax would have on interstate commerce. This is consistent with the United States Supreme Court's holding that a state may only impose a tax when the tax "is applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to services provided by the State." Commonwealth Edison Company v. Montana, 453 U.S. 609 (1981), citing Complete Auto Transit, 430 U.S. at 297.

The first prong of the Complete Auto Transit test is apparently satisfied. Businesses with property ownership in Montana could be said to have a substantial relationship with the state. As seen above, unless an argument can be made that the surtax is needed to more equitably apportion the cost of state services provided to nonresidents, the tax cannot be deemed fairly related to services provided by the State.

More fundamentally, this tax does discriminate against interstate commerce. A tax which discriminates in favor of local businesses unduly burdens interstate commerce. McKesson v. Division of Alcoholic Beverage & Tobacco, 110 S.Ct. 2238 (1990). The surtax in this bill imposes the surtax on nonresident business, but not Montana businesses, giving Montana businesses an advantage.

Conclusion

It is clear that Montana can not tax nonresident persons or businesses 25% higher than residents without a justification. A rational justification does not appear to exist. Also, the tax would clearly favor in-state businesses over out-of-state businesses. It is clearly a violation of the interstate commerce clause to give a competitive disadvantage to Montana businesses through the tax structure.

Amendments to House Bill No. 23
First Reading Copy

Requested by Rep. Daily
For the Committee on Taxation

Prepared by John MacMaster
July 9, 1992

EXHIBIT 2
DATE 7-10-92
HB 23 - Special Session
Proposed to Subcommittee

1. Title, line 5.

Following: "NONRESIDENTS"

Insert: "OWNING LAND ON WHICH THERE IS AN IMPROVEMENT USED AS
LIVING QUARTERS"

2. Page 1, line 12.

Following: "state"

Insert: "on which there is an improvement used as living
quarters, including a trailer or mobile home, and"

HOUSE BILL 24

EXHIBIT 3

DATE 7-10-92

HB 24 *Special Session*

Department of Revenue Explanation
July 9, 1992

Purpose

The purpose of this bill is to repeal the Freight Line Company Tax and have the companies pay the same property taxes and income taxes that other businesses in Montana pay. Freight line companies are businesses, other than railroads, which furnish cars for hauling freight over railways.

Reason

The reason the bill is necessary is that three large freight line companies, TTX (formerly Trailer Train), Railbox, and Railgon filed suit in federal court this year alleging that the tax is discriminatory.

Federal law - namely the Railroad Reorganization and Regulatory Reform Act of 1976, more commonly known as the **4R Act** - prohibits discriminatory taxation of any type of railroad transportation property. The companies claim that the current tax is discriminatory simply because freight line companies are the only companies which pay the tax. This argument has been successful in other states.

It is unknown whether the companies argument will be successful in Montana. A decision is pending before federal district court in Billings. If the companies' argument is successful, the state will lose more than one million dollars in general fund revenue for tax year 1991.

If Montana is successful on this issue, it still must justify the tax as nondiscriminatory based on the property taxes other businesses pay. The freight line company tax can not exceed a nondiscriminatory property tax. Therefore, a property tax assessment will still need to be made. Since an assessment still needs to be made, we may as well change to a property tax.

Description

The Freight Line Company License Tax is a 5.5% tax on the gross earnings of freight line companies who provide cars for the transportation of freight across railroad lines within Montana. The tax is in lieu of all other taxes including a property tax and is generally withheld by the railroads and remitted to the state. Deposits of \$1.2 million to the general fund were made in FY 1992.

The annual tax is remitted on or before March 1 of each year by **20 companies, involving 170 taxpayers**. A receipt acknowledging payment is sent to each taxpayer.

The costs associated with the processing of payments and issuing receipts are minimal, less than \$500 per year. No other costs are associated with collecting this tax.

Proposal

Montana's taxation method would be similar to the method used by most other states. The department's property assessment division would value the entire fleet of the company, nationwide, and then allocate a portion of that value to Montana. The allocation would be based on the ratio of miles traveled in Montana to miles traveled everywhere.

To determine the taxes owed, the Montana value would be multiplied times the tax rate for railroad and airline property - class twelve property. The rate for class twelve property is a weighted average of the tax rate for commercial and industrial property - 7.53 percent for 1992. The taxable value times the average mill in the state used for motor vehicle fleets (15-23-103) is the actual tax.

The money collected would be deposited to the general fund the same as the freight line license tax is now. In order to prevent any possible loss in general fund revenue, the bill is made retroactive to the 1991 tax year. The companies receive a credit for any taxes paid under the freight line tax.

This program will have an initial cost of approximately \$70,000 in personnel and operating expenses. The ongoing costs will be approximately \$60,000. The department will be required to implement the necessary administrative rules and complete assessments for the 1991, 1992 and 1993 tax years in a very short time frame. The freight line license tax was never fully funded to ensure compliance. It is important for the property tax application to be enforced from its inception.

Future Problems

The railroads and the car line companies have been successful in requiring states to reduce their property taxes based on exemptions for personal property. In a recent Oregon case ACF Industries, a company succeeded in being entirely exempt from all property taxes because of exemptions granted by the state. Oregon is asking the U. S. Supreme Court to review the Ninth Circuit decision.

Amendments to House Bill 24
Introduced Copy

EXHIBIT 3
DATE 7-10-92
HB 24 - Special Session
2

Prepared by Department of Revenue
(7/9/92)

1. Page 11, line 5.
Following: "otherwise"
Strike: "taxed"
Insert: "assessed for property taxation"
2. Page 11, line 21.
Following: line 20
Strike: "used outside of the state"
3. Page 13, lines 14 and 15.
Following: "15-16-102"
Strike: "that pertain to time for payment, penalty, and interest for delinquent taxes"
4. Page 13, line 17.
Following: "delinquent"
Insert: "and subject to penalty and interest under that section"
5. Page 14, line 13.
Following: "October"
Strike: "30"
Insert: "31"
6. Page 14, lines 18 and 19.
Following: "payable"
Strike: "as provided in [section 10]"
Insert: "within 30 days after the tax notice is postmarked"
7. Page 15, lines 9 and 10.
Following: "payable"
Strike: "under the provisions of [section 10]"
Insert: "within 30 days after the tax notice is postmarked"

x 23

Office of Legislative Fiscal Analyst Revenue Estimate Comparisons

Figures in Millions

State Equalization Account	Actual FY 1990	Actual FY 1991	HJR 24 FY 1992		HJR 1 FY 1993		HJR 24 FY 1993		HJR 1 FY 1993		HJR 24 FY 1993		HJR 1 FY 1993		HJR 24 FY 1993		Change FY 1993	LFA Recomm. FY 1993	ROC FY 1993	Change FY 1993	LFA Recomm. FY 1993	ROC FY 1993	Change FY 1993	LFA Recomm. FY 1993	ROC FY 1993		
			Estimated	Exec. Recomm.	Estimated	Exec. Recomm.	Estimated	Exec. Recomm.	Estimated	Exec. Recomm.	Estimated	Exec. Recomm.	Estimated	Exec. Recomm.	Estimated	Exec. Recomm.											
State Revenue	92,787	115,934	94,358	90,349	86,110	88,253	83,801	101,705	95,974	97,385	95,960	191,216	192,054	182,084	183,638	179,761	(12,293)	183,638	179,761	(12,293)	183,638	179,761	(12,293)	183,638	179,761	(12,293)	
Individual Income Tax	18,845	17,841	15,285	15,193	16,684	16,237	15,535	17,376	19,081	18,368	18,368	30,348	32,569	35,765	34,605	33,903	1,354	34,605	33,903	1,354	34,605	33,903	1,354	34,605	33,903	1,354	
Corporation License Tax	2,579	5,752	4,399	4,508	4,951	4,951	4,951	4,344	4,771	4,771	4,771	8,779	8,852	9,722	9,722	9,722	0,000	9,722	9,722	0,000	9,722	9,722	0,000	9,722	9,722	0,000	
Coal Severance Tax	34,707	35,866	38,110	39,473	39,397	39,473	39,473	42,003	41,933	42,003	42,003	77,450	81,476	81,330	81,476	81,476	0,000	81,476	81,476	0,000	81,476	81,476	0,000	81,476	81,476	0,000	
Interest & Income	20,241	21,928	25,527	25,005	21,150	21,150	21,150	24,395	20,634	20,634	20,634	50,443	49,400	41,784	41,784	41,784	(7,616)	41,784	41,784	(7,616)	41,784	41,784	(7,616)	41,784	41,784	(7,616)	
US Oil & Gas Royalties	0,713	0,177	0,070	0,054	0,000	0,100	0,100	0,055	2,244	2,244	2,244	0,142	0,109	2,244	2,244	2,244	0,000	2,244	2,244	0,000	2,244	2,244	0,000	2,244	2,244	0,000	
Local Impact Interest	0,000	0,141	0,375	0,290	0,084	0,000	0,000	0,000	0,000	0,000	0,000	0,375	0,290	0,084	0,000	0,000	(0,290)	0,000	0,000	(0,290)	0,000	0,000	(0,290)	0,000	0,000	(0,290)	
SEA Interest Earnings	0,000	7,037	7,773	7,606	6,946	6,946	6,946	8,018	7,116	7,116	7,116	15,791	15,404	14,057	14,067	14,067	(1,337)	14,067	14,067	(1,337)	14,067	14,067	(1,337)	14,067	14,067	(1,337)	
Coal Trust Interest Income	0,000	4,200	5,901	5,025	5,500	5,500	5,500	6,381	5,525	5,525	5,525	12,282	10,073	11,025	11,025	11,025	0,000	11,025	11,025	0,000	11,025	11,025	0,000	11,025	11,025	0,000	
Lottery Revenue	0,000	58,993	64,074	63,003	63,003	61,632	61,632	64,161	64,161	64,161	62,765	129,306	127,164	127,164	124,397	124,397	(2,767)	124,397	124,397	(2,767)	124,397	124,397	(2,767)	124,397	124,397	(2,767)	
Statewide Levy	0,142	0,000	8,356	14,937	14,937	14,937	14,937	8,838	8,838	8,838	8,838	17,080	23,775	23,775	23,775	23,775	0,000	23,775	23,775	0,000	23,775	23,775	0,000	23,775	23,775	0,000	
Other Revenue	84,805	84,872	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	9,000	0,000	9,000	9,000	0,000	9,000	9,000	0,000	9,000	9,000	0,000	
County Levy/Surplus	254,819	350,742	264,230	265,443	258,757	257,179	254,025	275,723	270,277	267,512	266,087	533,212	541,168	529,034	524,691	520,112	(21,054)	524,691	520,112	(21,054)	524,691	520,112	(21,054)	524,691	520,112	(21,054)	
Total State	1,884,550	1,564,317	1,598,727	1,572,956	1,572,956	1,572,956	1,572,956	1,601,896	1,601,896	1,601,896	1,601,896	1,738,044	1,749,036	1,706,458	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	
Statewide Taxable Valuation	0,000	0,000	87,985	86,513	86,513	86,513	86,513	88,104	88,104	88,104	88,104	177,562	174,617	174,617	174,617	174,617	0,000	174,617	174,617	0,000	174,617	174,617	0,000	174,617	174,617	0,000	
County Revenue	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000
55 Mills	(3,741)	(3,905)	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000
Elementary Transportation	4,173	6,269	1,116	6,718	6,718	6,718	6,718	1,119	0,000	1,119	1,119	1,455	7,837	7,837	7,837	7,837	0,000	7,837	7,837	0,000	7,837	7,837	0,000	7,837	7,837	0,000	
Cash Reappropriated	1,627	1,523	1,276	1,744	1,744	1,744	1,744	1,409	1,409	1,409	1,409	2,580	3,153	3,153	3,153	3,153	0,000	3,153	3,153	0,000	3,153	3,153	0,000	3,153	3,153	0,000	
Forest Funds	0,117	0,118	0,113	0,119	0,119	0,119	0,119	0,114	0,114	0,114	0,114	0,225	0,233	0,233	0,233	0,233	0,000	0,233	0,233	0,000	0,233	0,233	0,000	0,233	0,233	0,000	
Taylor Grazing	5,480	12,826	19,882	17,439	23,282	17,439	17,439	18,374	18,374	18,374	18,374	39,819	35,813	41,900	35,813	35,813	0,000	35,813	35,813	0,000	35,813	35,813	0,000	35,813	35,813	0,000	
Miscellaneous	(0,892)	(1,011)	(0,810)	(0,993)	(0,993)	(0,993)	(0,993)	(0,820)	(0,820)	(0,820)	(0,820)	(1,630)	(1,892)	(1,892)	(1,892)	(1,892)	0,000	(1,892)	(1,892)	0,000	(1,892)	(1,892)	0,000	(1,892)	(1,892)	0,000	
High School Tuition	6,774	15,619	109,542	111,540	110,665	111,540	111,540	108,221	107,346	108,221	108,221	220,011	219,761	218,011	219,761	219,761	0,000	219,761	219,761	0,000	219,761	219,761	0,000	219,761	219,761	0,000	
Total County	16,961	1,410	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000
District Revenue	1,410	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000
Permissive Levy	1,410	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000
Light Vehicle Replacement	18,370	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000
Total District	279,964	366,362	373,772	376,983	369,422	368,719	365,565	379,451	383,944	377,623	374,308	753,223	730,927	747,045	744,452	739,873	(5,881)	744,452	739,873	(5,881)	744,452	739,873	(5,881)	744,452	739,873	(5,881)	
Total State Equalization Account	727,926	786,618	861,420	850,813	826,351	831,642	820,577	876,624	898,223	876,572	871,572	1,738,044	1,749,036	1,706,458	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	
Grand Total GF & SEA	1,884,550	1,564,317	1,598,727	1,572,956	1,572,956	1,572,956	1,601,896	1,601,896	1,601,896	1,601,896	1,601,896	1,738,044	1,749,036	1,706,458	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	1,708,214	1,692,149	(56,887)	

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TESTIMONY OF TTX COMPANY
BEFORE THE TAXATION COMMITTEE OF
THE MONTANA HOUSE OF REPRESENTATIVES

ON H.B. 24

JULY 10, 1992, 9:30 A.M.

TTX COMPANY (TTX) is a "freight line company" as defined within the meaning of Section 15-55-101(2), MCA.

Chapter 55 of Title 15, Section 15-55-101, et seq., MCA, requires freight line companies to pay annually a sum in the nature of a tax in the amount of 5.5% of the total gross earnings received by reason of the use or operation of railroad cars in Montana. Section 15-55-101(2) defines a freight line company to be any corporation, other than a railroad, engaged in the business of furnishing or leasing cars for the transportation of freight.

TTX furnishes rail cars to interstate rail carriers for the purpose of providing rail transportation.

Under TTX's car contracts with railroad carriers, the basic terms of which were approved by the Interstate Commerce Commission, all state taxes are paid by the companies as expenses of operation, and such expenses are passed on to TTX's customers, who are operating railroads, by means of the user charges which are determined taking into account all expenses including expenses for state taxes.

The liabilities for TTX under the present tax statutes in

Chapter 55 of Title 15 would be \$761,000 for 1991. Other rail car companies pay lesser amounts ranging to the very insignificant.

The taxation of rail car property in Montana is subject to the provision of Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 54 (Feb. 5, 1976), now codified at 49 U.S.C. Section 11503. The Act is sometimes referred to by the Courts as the "4-R Act."

Section 306 statés (in part):

It is unlawful for a State, a political subdivision of a State, or a governmental entity or person acting on behalf of such State or subdivision to commit any of the following prohibited acts:

- (a) The assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a property tax levied by any taxing district, of transportation property at a value which bears a higher ratio to the true market value of such transportation property than the ratio which the assessed value of all other commercial and industrial property in the same assessment jurisdiction bears to the true market value of all such other commercial and industrial property.
- (b) The levy or collection of any tax on an assessment which is unlawful under subdivision (a).
- (c) The levy or collection of any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.
- (d) The imposition of any other tax which results in discriminatory treatment of a common carrier by railroad subject to this part.

Section 306 was enacted as part of a comprehensive

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Congressional plan to revitalize the nation's railroads and to strengthen the United States transportation system. After more than 15 years of investigation, various Congressional committees and study groups concluded that state tax discrimination against railroad property was pervasive and constituted an undue burden upon interstate commerce; that state laws which guaranteed equal tax treatment for railroad property had not been observed; and that state administrative and judicial remedies had not afforded railroad property taxpayers an efficient and effective means of obtaining relief from discriminatory state taxation. Based upon the recommendations of its committees, Congress established a clear federal policy against discriminatory state taxation of railroad property.

Montana has for many years been involved in recurrent litigation in federal courts because of its various taxation schemes for railroad property. It has been expensive for the State of Montana and the taxpayers. It has resulted in tax receipts considerably lower than anticipated, simply because federal courts have been firm in the enforcement of the Congressional remedies. Past legislatures have taxed railroad property with the expectation of significant gains in tax receipts, only to have those expectations disappointed years later after litigation in federal court was ultimately concluded in favor of the taxpayer.

On March 31, 1992, TTX and other rail car companies filed a

civil action in United States District Court, District of Montana, challenging Chapter 55 of Title 15 which imposes a "gross earnings" tax upon rail car property. That case is Civil Action No. CV-92-28-BLG and is currently awaiting a decision by the Court on a motion by TTX to have the current statute declared to be in violation of Section 306 of the federal 4-R Act.

House Bill 24 is a reaction by the Department of Revenue in anticipation of another adverse ruling by a federal court that a Montana tax statute discriminates against railroad property because that property is not treated in the same manner as other commercial and industrial property in the state.

As its first reaction, the Department of Revenue proposes to cure the defects of the present statute simply by including rail car with other centrally assessed railroad and airline property.

TTX has several concerns with regard to the proposed amendment language and new language in House Bill 24 because the bill as written fails to take into consideration certain significant factors which will again lead to subsequent litigation in the federal courts under the 4-R Act, to the detriment of both the State of Montana and the taxpayers.

Montana statutes taxing railroad property have generated extensive litigation in federal courts because of the preemptive declaration by Congress that all railroad property shall be taxed in a manner consistent and equal to the taxation of other industrial and commercial property. The following areas in House

Bill 24 are some of those that are likely to cause the legislation, as proposed, to be in conflict with the 4-R Act.

1. Retroactivity. Presently rail car company property is taxed under Chapter 55 of Title 55, Section 15-55-101, et seq., MCA. That statute is now under challenge in a pending action in federal court. No ruling has been entered by the court in that case. Consequently, Chapter 55 of Title 15 is currently in effect and applicable. The purport of House Bill 24 is to make the taxation of rail car property retroactive to capture taxation under a new scheme and classification different from an existing Montana law. Whatever might be the motives or intentions of the Department of Revenue, such retroactivity would appear to be illegal under the Montana Constitution and general legal prohibitions against retroactive taxation based on transactions already completed in a prior year.

2. Inconsistent valuation methodology. An examination of Section 15-23-201, MCA, at Section 6 of House Bill 24, shows that centrally assessed railroad and airline property is valued on a number of different and complementary valuation methodologies, for instance, cost method, the stock and debt method, and the income or earning method. On the other hand, new Section 8 of House Bill 24, which applies exclusively to rail car property, limits the assessment methodology for such property only to the cost method. That differentiation in valuation methodology, occurring even within the same classification, could lead to a

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substantial over-valuation of rail car property and a possible violation of federal law.

3. Mileage allocations. New Section 9 of House Bill 24 contemplates the allocation of the taxpayer system property to the State of Montana on the basis of car miles traveled within the state to total system car miles traveled, unless the department determines that a different formula should be applied. The legislation, if enacted, should include a proper and fair method for allocation rather than leaving the determination to the Department of Revenue only in the alternative. System mileage formulas do not take into account unique characteristics of a state such as Montana. The mileage allocation formula assumes that all states have similar operations to the system average of operation as to speed of cars, termination and origination activities, storage of cars, and repair and/or bad order of cars. Montana's operations are not typical of other states with respect to such things as the average speed of cars traveling through the state, the great distances within the state, the origination and termination of traffic within the state, the storage of cars within the state, and that nature of Montana as primarily a bridge state for railroad traffic passing through it. This atypical nature of Montana causes a substantial distortion of valuation in the magnitude of four hundred (400%) percent. A distortion of this magnitude would in itself cause a violation of the 4-R Act.

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4. Exempt property adjustment. New Section 9, at Subpart (3), recognizes that rail car property is classified differently from other commercial and industrial property in the State of Montana, and it attempts to address that differentiation through the application of an "R" percentage rate. This is at least a recognition of the variations in classification under Montana's taxation scheme for various types of commercial and industrial property. What is not addressed in House Bill 24 is any adjustment for the wide spectrum of exempt property under Montana law. Under Montana law much commercial and industrial property is not taxed at all, for example, commercial and industrial inventories. Nothing in House Bill 24 addresses the equalization adjustment necessary to account for the fair taxation of rail car property relative to exempt personal property.

CONCLUSION

It is clear that House Bill 24 is a premature reaction by the Department of Revenue to pending litigation challenging the current gross earnings tax that is presently applied to rail car property under Section 15-55-101, et seq., MCA. That federal litigation is still pending. The case was only submitted to the U.S. District Court for determination on June 26, 1992. No decision has been announced. No guidance is available at this

time from the Court's opinion with respect to fair and proper taxation of rail cars under the 4-R Act.

H.B. 24, if it speaks to anything, speaks to the Department's recognition that the current taxation of rail cars based upon gross earnings is inadequate and suspect under the 4-R Act. However, to propose a hastily drafted and ill-considered alternative, which itself would raise more problems than it solves, is not the answer.

House Bill 24 is premature. It is flawed, both technically and conceptually. It places the State of Montana at jeopardy because in attempting to solve a \$700,000 tax problem it risks rendering all of Classification 12, applicable to centrally assessed railroads and airlines, in violation of federal law.

The better legislative approach is to wait for the determination of the federal court in the pending case and then, during a session with time to do so, fashion a correction, if necessary, which is addressed exclusively to rail car property and which resolves factors exclusively applicable to rail car property.

Amendments to House Bill No. 15
First Reading Copy

DATE 7-10-92
HB 15 Special Session 2

Requested by Rep. Cohen
For the Committee on Taxation

Prepared by Lee Heiman
July 9, 1992

1. Title, lines 6 through 8.
Strike: "USING" on line 6 through "1989" on line 8
Insert: "DEPRECIATING THE VALUE OF THE REIMBURSEMENT BY 10 PERCENT EACH YEAR"
2. Page 2, lines 7 and 8.
Strike: "current" on line 7
Insert: "county's"
Strike: "of personal property that was taxed in the county in 1989" on lines 7 and 8
Strike: "on" on line 8
3. Page 2, line 23 through page 3, line 1.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections
4. Page 3, line 12.
Strike: "1990"
Insert: "1992"
5. Page 3, line 15.
Strike: "(4)"
Insert: "(3)"
6. Page 3, line 16.
Strike: "1990"
Insert: "1992"
7. Page 3, line 17.
Following: "November 30"
Insert: "for the next 9 years"
8. Page 3, line 19.
Following: "county"
Insert: "reduced by equal percentages until no reimbursement is made in the 10th year"
9. Page 3, line 20.
Strike: "1991"
Insert: "1992"
10. Page 3, line 21.
Following: "May 31"
Insert: "for the next 9 years"

11. Page 3, line 22.

Following: "county"

Insert: "reduced by equal percentages until no reimbursement is
made in the 10th year"

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Senator Thayer noted that, then, Senator Gage came up with this additional compromise which says they will fund it, now, and he is saying that it does not seem to make any difference where they go and how many concessions they try to make, that there is always going to be something wrong with it. Senator Thayer stated that, frankly, he thinks there is an effort being made to kill the bill, and he thinks this is fair, it is reasonable, that it is exactly what they were willing to buy this morning, and he would hope they would buy it again this afternoon.

Senator Lynch indicated that he would vote for the motion, but wants to point out a couple of things which have not been brought out. He noted that Senator Thayer is a dear friend of his, and then indicated that this started out as the canola bill and, all of a sudden, they are in SB22 and everything so, if they talk about fairness, he does not think it was ever fair tossing them all together. He then indicated that they should get the best they can get, and he thinks that will not be the road map, but that they should see how the votes go.

Representative Schye indicated that everybody knows he has not supported any of it, and he will not support this motion, either. He then stated that 9%, 9%, with no road map, he will vote for, adding that he is not saying he will vote for it on the floor of the House, but he will vote for it in committee. He added that this amendment is hard for a lot of people to swallow, that it is going down a long ways. He indicated that, as Representative Daily said, it is between \$30 and \$36 million, whosever figures they believe on what it is, and he thinks that is a substantial tax break for businesses, that he thinks it is a pretty good sign they are working, that they are not trying to dig their hole super deep, like the 4% was, all the way down to the \$87 million, but this is a start. He noted that, when they talk signals and so on, this is a start, and he does not think they can go in there with false hope, either, and say they are going to go down the next time to 7%, 6%, 5%, and so on, when the money is not there. He further indicated that he thinks 9%, 9% is a good compromise.

Senator Lynch asked Senator Thayer if, in his amendments, he has the local government protection. Senator Thayer responded that was supposed to be taken care of. Mr. Alec Hanson, Montana League of Cities and Towns, indicated that this contains all of the same local government protections. Senator Lynch asked if that is enough protection, that he just wants to make sure. Mr. Hanson responded that they were talking about if it would be stronger and more clear that the

legislature was to replace these funds if (b) were taken out, the language which was inserted earlier.

Mr. Heiman indicated that, if this goes to 9%, 9%, he thinks what they will have is a bill which is just a 9%, that it would be 9% from now on. He noted that, if they did that, he thinks that (b) anticipates a continuing different appropriation to take care of the lowering, so it does not necessarily have to have subsection (b) for a specific appropriation, that they may want to just change subsection 7 on page 4, which provides for the statutory appropriation for this year, and get rid of the dates in there, which would make the statutory appropriation continue, so they would have a simple 9% at the bottom of the property tax bill with a statutory appropriation to fund it, because the dollar amounts are not going to change. He indicated that would be the way he would see the amendment actually working.

Representative Schye asked Mr. Heiman if that takes care of the railroad problem and the airline problem they were talking about. Mr. Heiman responded yes, and indicated that the airline and railroad problem was put in on page 3, the middle of subsection 1, which references 15-6-145 and 15-6-147, and that the language and the phrase above that reflect the change.

Representative Daily indicated that nobody has been beat up in this process worse than he has, that, when he started out, all he cared about was canola, and he ended up carrying the Governor's property tax relief bill, adding that, rest assured, he did not vote for it. He pointed out that, when they are in these conference committees and come to some kind of agreement, or at least some kind of agreement possibility, when they leave here, somebody tells them something else, and somebody else tells them something else and, as everyone knows, they do not know what the numbers are, that there is not anyone in this room who can tell him what 9% does, or what 8.5% does. He indicated that he asked the Fiscal Analyst's office, and they could not tell him, that no one can do it, they can not do it. He added that it is too bad they can not, but they can not, and that is the reality of it.

Representative Daily stated that he thinks, if they go 9%, 9%, they can get it, and he will guarantee that he will sign it, that he does not care what anybody says, he is signing it, and that is the way she goes. He added that Representative Schye has said the same thing, so that is where they are with them, that he is not going to vote for Senator Thayer's motion, that he knows Senator Lynch is going to make a substitute motion

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it all the way through the process but we've got to do personal property."

Representative Rehberg indicated that he stands ready to answer any questions on this, noting that the only thing he would add is that this bill keeps canola in and gives personal property tax relief, not at rates they wanted, that they wanted 4% or they wanted 6%, that it starts it at 9% and it starts it at 8% but, if future legislatures see that it is not working, not doing what they believe is going to happen, which is economic recovery because of lower personal property taxes, all the legislature has to do is write a bill and stop it, that they can cut this off at the knees any time they want to.

Senator Lynch indicated that he believes Representative Cohen has a bill in which is trying to do some of these same ends, and asked Representative Cohen if he has a comment to make on what they are doing now. Representative Cohen responded that he does not know where they are going to get the money to go down to 9%, or lower than that, that the money is not there for school funding and he does not see how it will be there for property tax relief. He added that he thinks there are some problems with HB50 with the re-distribution scheme, that he hopes they will take a careful look at it because there are some questions about funding, and he thinks it might be more sensible to consider having a study, adding that he hopes they are addressing tax increment districts in there. Senator Thayer responded yes, they are.

Representative Cohen asked what are they doing about new industrial property. Representative Rehberg responded that, in all of the amendments presented to him, all of the concerns either the counties or the cities said to him, he has addressed. He added that, if there is something else out there which the counties or cities have not presented to him, he can not speak to that, but he has worked with these guys as much as he can to do everything they wanted so, if there is some additional problem, then maybe Representative Cohen should point that out, not only to him, but to them. Representative Cohen indicated that some of the amendments concern new industrials, but they are presently at 3% and, when they lose their new industrial classification, they will go up to 9% or 8%. He added that, the way the amendments read, the amendments they were talking about earlier, it sounds like the state is going to be liable for making up the difference to the local community between 11% and 8%, when, in fact, they are actually going from 3% to 8%, and he wonders if that is

the intent of this committee, or the intent of state government.

Representative Rehberg responded that he would say it is the responsibility of state government because they have, all along, said to the counties and cities that it is our responsibility to replace the revenue, that the economic development which occurs as a result of this reduction, they will make up that difference, that it is the state's responsibility. He added that, if they see it is creating a black hole they did not anticipate, then cut it off, stop it. Representative Cohen indicated that he does not want to take a position on this issue, one way or the other, that he is just pointing out these are issues the committee might want to address and give a little thought.

Senator Lynch stated that he is prepared to vote on Senator Thayer's motion, and then asked if Senator Thayer has made a motion. Senator Thayer responded that probably they should be made one at a time.

Motion: Senator Thayer offered a motion that the amendments contained in this document be adopted.

Representative Schye asked what is the cost, noting that somebody mentioned the cost of going from whatever it is to 9% and then to 8%. Representative Rehberg responded that the numbers the Legislative Auditor's office ran for him are: In 1990, the cost at 9% is \$14,465,382; in tax year 1991 at 8% it is \$20,306,795; in 1992 at 7% it is \$26,148,209; in 1993 at 6% it is \$31,989,622; in 1994 at 5%, \$37,800,000; in 1995 at 4% it is \$43,600,000. He added that the 4%, \$43 million, is what is anticipated would be brought in originally by the coal severance, the video poker, when the Governor's original bill came in, that this is the number. He then indicated that the bill is written fiscal year, but this is written tax year, so the first year is \$14 million plus half of 1991 so, for fiscal year 1990, it is \$24 million.

Senator Lynch asked if they need a severability clause, if this is constitutional. Senator Thayer responded that they do not need it.

Representative Schye indicated that he understands they are going down the steps, 9%, 8%, 7%, 6%, and so on, and he understands that the next legislature can look it, but asked why not just go down the first couple of steps this year, and then go the other way, instead of the legislature having to make a bill. He asked why do it this way instead of just

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break

does not know why they are back here because he thought that all of them had agreed to something which he, personally, would liked to have seen go back to each body for them to either accept or reject and, had it been rejected in the House, then it would be appropriate to come back here but, in lieu of that, they are saying they want to re-think what they did. He noted that he guesses that has been done before.

Vote: Motion that the committee reconsider their action regarding HB20 passed unanimously.

Motion: Senator Lynch offered a motion to rescind all of the amendments to HB20 previously adopted by the committee.

Vote: Motion to rescind all of the amendments to HB20 previously adopted by the committee passed un-animously.

Chairman Gage indicated that his understanding of what has been proposed is that they put 9% and 8% into statute, with a provision in statute that, unless a bill is approved by the Legislature and signed by the Governor to replace the lost revenue which further decreases would cause, there would be no further decreases but, when those revenues were available, those rates could go down to 7%, 6%, 5% and 4%. He further indicated he assumes that, if all of that revenue became available in one year, it should go right from 8% to 4% or, if only enough revenue was available to go to 7%, it could go to 7%.

Motion: Senator Lynch offered a motion that the rate go to 9% and 9%.

Senator Lynch indicated that he is being a realist, that the 8% is not in there because they say the hole is too big. He pointed out that he knows that is offensive to Senator Thayer, and maybe to Chairman Gage, but at least they are going down to 9%, and the next legislature will have to address beyond that.

Revised Motion: Senator Lynch revised his motion to provide that the rate go to 9% and 9%, and also providing an ap-propriation to school districts and local govern-ments to reimburse money lost in personal property tax reductions.

the railroad's contention was that net and gross proceeds should not be a part of that. He added that his understanding of that settlement, which happened after he left property tax for income tax, was that the \$12 million was BN's number, taking into account that they would not include net and gross proceeds in the tax base. Mr. Groepper pointed out that, if they take that \$12 million figure at an 8% rate, BN's tax drops down to \$8.46 million, if they assume that \$12 million figure and, if they go to 4%, it drops to \$5.55 million. He then reported that, for Montana Rail Link, which was not part of that deal, this year their tax load looks like about \$3.5 million and that, at the 8% rate it drops to \$2.6 million, adding that, at the 4% rate, it drops to \$1.7 million. He then reported that, on a cumulative basis, if they went to 4%, it is \$6.5 million and then another \$1.7 million for Montana Rail Link. He added that, at 8%, it is about \$3.5 million for BN and roughly \$1 million for Montana Rail Link.

Mr. Groepper indicated that two railroads are not in there, that Union Pacific runs through three counties, Butte-Silver Bow, Madison and Beaverhead, and there is not a whole lot of taxable value there. He added that Sioux Lines runs in the northeast corner of the state through Plentywood and Daniels County, but those are numbers they did not have time to calculate. He indicated that he also understands the airlines are at 12% until the next reappraisal, and then they can assume this rate as well so, out of 1994, they would have to make a reduction for the airlines, noting that they did not calculate that either, that all they had time to do was run the two big ones.

Senator Lynch indicated that he wants to make sure, regarding his motion, that local governments do not take a cut. He asked Mr. Alec Hanson of the Montana League of Cities and Towns if the amendment providing an appropriation to school districts and local governments to reimburse money lost in personal property tax reductions is enough. He explained that he just wants to make sure that school districts and local governments are covered, that they are not ripping them off.

Mr. Hanson responded that their concern from the beginning, going back to the regular session and in the special session, in the original hearing on SB22, was that full fair reimbursement be guaranteed, that it is absolutely essential, noting that he does not have to go into detail, that the committee members know that the cities can not afford to subsidize a property tax reduction program. He stated that what they need to have in this bill is an assurance that, if the property taxes are going to be reduced, the state will take the

