

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on February 3, 1995,
at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Marian W. Hanson, Vice Chairman (Majority) (R)
Rep. Robert R. "Bob" Ream, Vice Chairman (Minority) (D)
Rep. Peggy Arnott (R)
Rep. John C. Bohlinger (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Rick Jore (R)
Rep. Judy Murdock (R)
Rep. Thomas E. Nelson (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. John "Sam" Rose (R)
Rep. William M. "Bill" Ryan (D)
Rep. Roger Somerville (R)
Rep. Robert R. Story, Jr. (R)
Rep. Emily Swanson (D)
Rep. Jack Wells (R)
Rep. Kenneth Wennemar (D)

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Donna Grace, Committee Secretary

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

Committee Business Summary:

Hearing: SB 56
SB 139
HB 343

Executive Action: HB 287 - Do pass as amended

{Tape: 1; Side: A.}

HEARING ON SB 56

Opening Statement by Sponsor:

SEN. BRUCE CRIPPEN, Senate District 10, Billings, opened the hearing by stating that SB 56 was brought before the Revenue Oversight Committee by the Department of Revenue. The intent of the bill was to bring the state income tax filing requirements into conformity with the federal requirements. However, the bill was amended in the Senate and would simply reduce the estimated tax payment from 95% to 90% of the current year's tax liability.

Proponents' Testimony:

Mick Robinson, Director, DOR, said the bill had been introduced at the request of the Department of Revenue, but everything the Department had requested was amended out of the bill in the Senate. Therefore, he suggested that the bill be amended to reintroduce the concerns raised by the Department. **Mr. Robinson** explained that Montana statutes provide for an automatic six-month extension which is different from the federal government's four-month extension. The federal government allows an additional extension for 60 days beyond August 15 if there is a valid reason for requesting the extension. **Mr. Robinson** said the intent of the bill was to simplify the law to avoid confusion. In addition it would assist the Department in terms of workload.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. WELLS asked if the amendments would give the Department what they had originally requested. **Mr. Robinson** said they would.

REP. REAM asked if it was correct that the federal government allowed two extensions, the first through August 15, and the second through October 15. **Mr. Robinson** said that was correct. The first extension is automatic and the taxpayer must provide a reason to obtain the second extension.

CHAIRMAN HIBBARD asked what would be accomplished by changing the 95% to 90%. **Mr. Robinson** said it puts the percentage of tax that must be paid at the time the extension is requested at 90% and it is also conforms to the amount required at the federal level. It would not have any affect on revenue.

REP. REAM asked if the bill would have any future if it were amended as suggested and returned to the Senate. **SEN. CRIPPEN** said the Senate had killed the bill on the floor, based on an objection to the bill by Sen. Stang; however, he had been able to

revive it with the amendments. His opinion was that if the objections could be worked out with Sen. Stang, the bill would probably get through the Senate.

Closing by Sponsor:

SEN. CRIPPEN, in closing, said the Department had good reasons for bringing this bill before the Legislature. He thanked the Committee for the good hearing.

HEARING ON SB 139

Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 42, Flathead Valley, said SB 139 had originated from discussions with the DOR and would clarify the statues on the workers' compensation old fund liability tax. The bill also provides an exemption for partners of a publicly traded limited partnership and provides definitions for "ongoing activities" and "publicly traded limited partnership". It also clarifies that interstate employers and employees are subject to the tax only for income earned in Montana. He said it became clear after the passage of HB 504 on the 90th day of the last session that there would be problems in the bill that would have to be corrected.

Proponents' Testimony:

Bob Turner, Business Tax Division, DOR, explained that SB 139 is a "house cleaning" bill except for one small exception. The exception is the exemption for partners of a publicly traded limited partnership and would have a \$400,000 negative fiscal impact. The passage of SB 33, which eliminates the \$25 minimum, would negate the fiscal impact of this bill.

{Tape: 1; Side: B.}

Dennis Burr, Montana Taxpayers Association, spoke in support of the bill because it would correct the problems with shareholders in a limited partnership.

David Owen, Montana Chamber of Commerce, said the bill will accomplish some necessary changes in the statutes and the Chamber supports it fully.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. ROSE asked if "on-going activities" would include such things as income from hobbies. Mr. Turner said income from a

hobby would be reported on Schedule C and would not be considered an "on-going activity." He used jury duty as an example of an activity that would not be on-going. As a follow-up question, **REP. ROSE** asked how this would affect a child who raises a 4-H animal and sells it. **Mr. Turner** said the profit would be subject to the tax; however, SB 33 removes the \$25 minimum. **CHAIRMAN HIBBARD** asked how this would apply to someone who writes an occasional article for a newspaper for which they received pay. **Mr. Turner** said that would be an on-going activity, to be filed on a Schedule C, and it would be subject to the old fund liability tax.

Closing by Sponsor:

REP. HARP said he had closed.

HEARING ON HB 343

Opening Statement by Sponsor:

REP. DON HOLLAND, House District 7, Forsyth, said the bill would amend Section 15-35-102 to provide an exemption from coal severance taxes for coal produced from a coal enhancement facility. He passed out copies of amendments to the bill which would "tighten up" some of the definitions. EXHIBIT 1. He also noted that he had not signed the fiscal note because it was inaccurate. The DOR will also recommended amendments. **REP. HOLLAND** said the bill is important for Montana's future economic development. It promotes a value-added Montana enterprise, maximizes economic benefits for Montana resources, promotes technological development and protects and promotes basic industry development, both domestically and internationally. Coal enhancement is a process of altering the characteristics of coal by increasing the BTU value by at least 25% or reduces the sulphur content by at least 25%, or both. The economic impact of this legislation protects and promotes basic industrial employment because these processes are more labor intensive than surface coal mining processes and represents a basic manufacturing industry, providing high quality premium jobs with economic multiplier benefits. The bill asks for a severance tax exemption for up to two million tons of coal.

Proponents' Testimony:

Ken Williams, Entech, spoke in favor of the proposed amendments.

Jim Kelly, Vice president, Western Syncoal, spoke in favor of the bill. He said that if the Committee believed what his company was doing was in the best interests of the state, it would approve the bill. He said the company would be the sole beneficiary of this legislation but they are not looking for a handout. They are looking for a helping hand so they can continue with their demonstration project. They are currently

the world leaders in the field, using Montana resources, Montana people and Montana technology. EXHIBIT 2.

Bill Penn, Sales Representative, Horizon Coal Services, said he had been around the coal industry in Montana for 25 years and, because of the Advanced Coal Conversion Process, he is now involved with the marketing of Syncoal. It is a highly respected, unique product in the marketplace. This legislation will help the organization answer the needs of its customers. With environmental demands as they are, they have developed a product which will be in high demand by the year 2000, and, with some help, they can get it into the marketplace. This coal will respond to the needs of Montana and the nation and will eventually be known worldwide.

Marty Spurlock, Lead Operator at the Advance Coal Conversion Plan, Colstrip, spoke in support of HB 343. He impressed upon the Committee the fact that this technology is very important to the future of Montana. If HB 343 is passed, the project will have the advantage of staying in business and providing jobs for the 28 employees of the plant.

Patrick Menahan, Western Syncoal, spoke in support of the bill.

REP. MARIAN HANSON, House District 1, voiced her strong support for this bill. She said that coal is the life blood of Montana and she was proud of what the industry has done in her part of the state.

{Tape: 2; Side: A.}

Wes Sessions, Western Energy, expressed his support of the bill. He said the product is unique and important to the environment because it is clean and more efficient.

Jim Mockler, Executive Officer, Montana Coal Council, said the important thing to remember about this legislation is that it applies to new production. Kennecot Energy, Spring Creek, has plans on the drawing board for a very large coal drying facility and this bill would provide an incentive for them to continue with the project. He advised that a problem with western coal is that 30% of what is loaded on trains is water and a large part of the cost of coal is freight. Raising the BTU of the coal makes it more marketable, lowers shipping costs and makes it more competitive in the midwest market. He urged the Committee to look at this as new production and new jobs and not as a loss of revenue.

David Owen, Montana Chamber of Commerce, said it was rare to have an opportunity to do something for the future. He urged the Committee to give positive consideration to this bill.

Don Hoffman, DOR, said he would recommend an amendment that would insure that the activities for which the company will receive

this an exemption would occur in Montana. The bill is not clear and the Department will prepare the amendment prior to executive action on the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. WELLS said he was aware of a bill in the process which would require cleaner burning coal in Billings. He asked if Syncoal would meet those requirements. **REP. HOLLAND** said that if that bill were to pass, Syncoal is the only product manufactured today that would meet the standards. Without objection, **Mr. Kelly** explained that Syncoal can give a 40% direct reduction of sulphur. They have been able to prove this in extensive tests and the plant would be able to generate more megawatts of power. However, under the bill proposed by Rep. Bohlinger, Syncoal would not be an option without further scrubbing because the level of reduction would be beyond what they are able to provide.

REP. ROSE asked what the increased cost to the consumer would be. **Mr. Mockler** said the coal would be sold in the market in direct competition cost-wise. The BTUs or delivered cost of electricity would be in direct competition to untreated coal.

REP. HANSON asked what the total production capacity of the plant would be. **Mr. Penn** said they project that in 1995 they will produce approximately 280,000 tons.

REP. NELSON said he found this very exciting but he would like to hear the reason for the request. **Mr. Mockler** said the process is expensive and the exemption would help get the coal to market at a competitive price. **Mr. Kelly** said that after they reach two million tons, the product should be viable in the marketplace. Up to that point they would still be at the demonstration level.

REP. WENNEMAR asked if they would reach two million tons per year by the time the bill sunsets in ten years. **Mr. Kelly** said it was feasible but would require expansion of the facility.

REP. SWANSON asked why there was no agreement with the fiscal note. **Mr. Kelly** said the fiscal note was not accurate because it assumed production of two million tons immediately. The reduction in severance tax would be more than offset by the economics of the jobs and the coal taxes which would not be exempted. **REP. SWANSON** asked if the company would be willing to consider negotiation of other options, such as paying only a portion of the severance tax. **Mr. Kelly** commented that "they would take whatever they could get." He said that if they were to get nothing, it would not slow the project down because they are determined to make the project a success; however, they could use a helping hand.

REP. STORY referred to testimony indicating there were a lot of challenges in the marketplace and he asked for an explanation. **Mr. Penn** said the main challenge is the handling of their product. Because of its high BTU and low moisture, it is vulnerable to combustion and must be shipped in grain cars instead of regular open coal cars. For the same reasons, it must be stored in a closed bin.

{Tape: 2; Side: B.}

REP. RANEY asked what happened to the sulphur that was removed from the coal. **Mr. Kelly** said it was in the form of iron pyrite and it is permitted to be disposed of back into the mine pit it came from. **REP. RANEY** then asked whether they would be competitive in the existing coal market if they received the severance tax exemption. **Mr. Kelly** said they are not in regular coal production and they will never have a cost advantage over regular coal. They are at a disadvantage because they cannot successfully compete with the feedstock. They are going after the added-value market, the bituminous coals that don't exist in Montana. **REP. RANEY** asked if they would be satisfied with a five-year exemption period. **Mr. Kelly** said he had no objections.

REP. STORY asked how long it would take another company, such as Kennecott, to get a plant up and running. **Mr. Kelly** said it would take approximately 22 months, based on his experience. **REP. STORY** asked if he understood correctly that the severance tax exemption would be on the tonnage of feed stock. **Mr. Kelly** said that was correct.

REP. SWANSON requested an explanation of the amendments. **Ken Williams** said one of the concerns with the bill as drafted was the definition of coal enhancement because it could be construed that if the coal was burned in a facility with a scrubber to remove sulphur, it would be considered an enhancement. Therefore, the definition was changed to a processing facility that produces a solid, liquid or gaseous fuel from coal as its primary product and thermally or chemically alters the characteristics of coal.

CHAIRMAN HIBBARD asked for an explanation of the inaccuracies in the fiscal note. **REP. HOLLAND** said that, following the addition of the amendments, a new fiscal note was requested but had not yet been received. It will be distributed to the Committee when available. **Mr. Williams** said that before the budget office can do the new fiscal note, the amendments will have to be put on the bill.

REP. HANSON asked if **Mr. Williams** could estimate the amount of fiscal impact. **Mr. Williams** replied that it would be in the neighborhood of \$400,000. When the fiscal note was prepared, the budget office assumed that two million tons would automatically qualify. During this biennium the facility will not be in

operation in time to receive this consideration so only the feedstock going to the existing plant would qualify. **Mr. Hoffman** said the DOR has analyzed the amendments and they believe they do take care of the technical questions that had been raised.

REP. WENNEMAR said he assumed that they could expect to see the full impact in the 1997-98 biennium. **Mr. Kelly** said that would be the earliest. He pointed out that this would be on new production which will also be paying gross proceeds tax and RIT tax and therefore, even with the severance tax exemption, it will result in a net gain for Montana.

Closing by Sponsor:

REP. HOLLAND said it had been a very informative hearing and he appreciated the questions. He said it was important to look at value-added Montana products, the revenues they will return to the state, the jobs they will provide, and the step it takes toward solving environmental problems. EXHIBIT 3.

EXECUTIVE ACTION ON HB 287

Motion:

REP. REAM MOVED THAT HB 287 DO PASS.

Discussion:

REP. REAM said this was a good bill although there had been some concern expressed at the time of the hearing. He handed out a document which provided information relative to the DOR's procedure in filing a warrant for distraint. EXHIBIT 4. In response to concerns expressed by Mr. Pyfer, who represented the credit unions at the hearing, the DOR has prepared amendments which address those concerns. EXHIBIT 5.

{Tape: 3; Side: A.}

Mr. Woodgerd reviewed the DOR's procedure, the amendments, and provided an example of how the process works. EXHIBIT 6. He said Mr. Pyfer had told him that, with these amendments, the bill was acceptable. As amended, the bill provides that the DOR would be the first in line, after the lender, to recover proceeds from the sale of property. The bill also clarifies that the State of Montana is a "judgment lien creditor" which qualifies the state to recover before the federal government.

Neil Peterson, Bureau Chief, Income Tax Division, furnished the accounts receivable information requested during the hearing by Rep. Fuchs and Rep. Elliott. EXHIBIT 7.

REP. ORR said he was "distracted over distraint" during the hearing and he appreciated the information provided by the DOR

which does clarify many points. He was, however, confused over the statement on the example that says the state is now a judgment lien creditor and then says the state is not a judgment lien creditor. **Mr. Woodgerd** explained that the example was not written clearly and the second reference should have said the IRS was not a judgment lien creditor.

REP. ARNOTT said she could understand why the DOR was requesting this legislation but she had some concern that it was making the process of purchasing property more complex. **Mr. Woodgerd** said the amendments took care of the added complexity and the bill will not require any more paperwork.

REP. REAM asked if the legislation would increase the total amount of collections. **Mr. Woodgerd** said it was hard to predict but he assumed it would because it will give them the opportunity to recover prior to the IRS. \$1.6 million was collected in 1994 and they expect it will be significantly more, possibly double that amount.

Motion/Vote:

REP. REAM MOVED THAT THE AMENDMENTS TO HB 287 BE ADOPTED. The motion passed, 19 - 1.

Motion/Vote:

REP. REAM MOVED THAT HB 287 AS AMENDED DO PASS. The motion passed 18 - 1.

ADJOURNMENT

Adjournment: 10:45 a.m.



CHASE HIBBARD, Chairman



DONNA GRACE, Secretary

CH/dg

HOUSE OF REPRESENTATIVES

Taxation

ROLL CALL

DATE 2/3/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Chase Hibbard, Chairman	✓		
Rep. Marian Hanson, Vice Chairman, Majority	✓		
Rep. Bob Ream, Vice Chairman, Minority	✓		
Rep. Peggy Arnott	✓		
Rep. John Bohlinger	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Rick Jore	✓		
Rep. Judy Rice Murdock	✓		
Rep. Tom Nelson	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Sam Rose	✓		
Rep. Bill Ryan	✓		
Rep. Roger Somerville	✓		
Rep. Robert Story	✓		
Rep. Emily Swanson	✓		✓
Rep. Jack Wells	✓		
Rep. Ken Wennemar	✓		



Danner
432

HOUSE STANDING COMMITTEE REPORT

February 3, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Taxation report that **House Bill 287** (first reading copy -- white) do pass as amended.

Signed: 
Chase Hibbard, Chair

And, that such amendments read:

1. Title, line 5.

Following: "PROVIDING"

Insert: "THAT THE DEPARTMENT OF REVENUE IS A JUDGMENT LIEN CREDITOR; PROVIDING"

2. Title, lines 6 through 9.

Strike: "PROVIDING" on line 6 through "PAID;" on line 9

Insert: "PROVIDING THAT THE LIEN ON REAL OR PERSONAL PROPERTY CREATED BY A WARRANT FOR DISTRRAINT IS NOT VALID AGAINST PURCHASERS, CERTAIN HOLDERS OF SECURITY INTERESTS, JUDGMENT LIEN CREDITORS, AND OTHER LIENHOLDERS WHOSE INTEREST IS RECORDED PRIOR TO THE FILING OF THE WARRANT FOR DISTRRAINT;"

3. Page 1, line 22.

Following: "lien,"

Insert: " the department is a judgment lien creditor,"

4. Page 1, line 28 through page 2, line 6.

Following: "(4)" on page 1, line 28

Strike: the remainder of subsection (4) and subsection (5) in its entirety

Insert: "The tax lien provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors, and those lienholders identified in Title 71, chapter 3, parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint."

Committee Vote:

Yes 18, No 1.

291524SC.Hbk

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-3-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

287 Bill No. Amendment

Representative Samuel Fuchs voting NO
(aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-3-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

287 Bill No. _____

Representative Samuel Fuchs voting NO (aye or no)

2-3-95

Chase,

I will be late this morning. I am making a presentation before Appropriations on behalf of the National Symphony Orchestra.

John Nohlinger

Amendments to House Bill No. 343
First Reading Copy

Requested by Representative Holland
February 3, 1995

1. Page 2, line 9.
Following: "a"
Strike: "process or"
Insert: "processing"

2. Page 2, line 9.
Following: "that"
Insert: "produces a solid, liquid or gaseous fuel from coal as its primary product and thermally or chemically"

3. Page 2, line 11.
Following: "value"
Insert: "per pound"

4. Page 3.
Following: line 4
Insert: "(11) \"Feedstock\" means raw coal processed by a coal enhancement facility."
Re-number: subsequent subsections

5. Page 4, line 26.
Following: "a"
Strike: "process or"
Insert: "processing"

6. Page 4, line 26.
Following: "that"
Insert: "produces a solid, liquid or gaseous fuel from coal as its primary product and thermally or chemically"

7. Page 4, line 28.
Following: "value"
Insert: "per pound"

8. Page 5.
Following: line 18
Insert: "(10) \"Feedstock\" means raw coal processed by a coal enhancement facility."
Re-number: subsequent subsections

9. Page 7, line 11.
Following: "(5)"
Strike: "A"
Insert: "In addition to the exemption described in subsection

(4), a"

10. Page 7, line 12.
Following: "produces"
Insert: "as feedstock"

11. Page 7, line 12.
Following: "for"
Strike: "a"

12. Page 7, line 12.
Following: "enhancement"
Strike: "facility"
Insert: "facilities"

13. Page 7, line 13.
Following: "produced"
Insert: "as feedstock"

14. Page 7, line 13.
Following: "for"
Strike: "a"

15. Page 7, line 13.
Following: "enhancement"
Strike: "facility"
Insert: "facilities"

16. Page 7, line 14.
Following: "produced"
Insert: "as feedstock"

17. Page 7, line 14.
Following: "for"
Strike: "the facility"
Insert: "these facilities"

18. Page 8, line 15.
Following: "(5)"
Strike: "A"
Insert: "In addition to the exemption described in subsection
(4), a"

19. Page 8, line 16.
Following: "produces"
Insert: "as feedstock"

20. Page 8, line 16.
Following: "for"
Strike: "a"

21. Page 8, line 16.

Following: "enhancement"
Strike: "facility"
Insert: "facilities"

22. Page 8, line 17.
Following: "produced"
Insert: "as feedstock"

23. Page 8, line 17.
Following: "for"
Strike: "a"

24. Page 8, line 17.
Following: "enhancement"
Strike: "facility"
Insert: "facilities"

25. Page 8, line 18.
Following: "produced"
Insert: "as feedstock"

26. Page 8, line 18.
Following: "for"
Strike: "the facility"
Insert: "these facilities"

EXHIBIT 2
DATE 2/3/95
HB 343

THE ORIGINAL OF THIS DOCUMENT
IS STORED AT THE HISTORICAL
SOCIETY AT 225 NORTH ROBERTS
STREET, HELENA, MT 59620-1201.
THE PHONE NUMBER IS 444-2694.

SynCoal®

"THE CLEAN BURNING ALTERNATIVE"

ROSEBUD SYNCOAL PARTNERSHIP

Advanced Coal Conversion Process
Colstrip, Montana

4A

The Billings Gazette

■ GAZETTE OPINION

SynCoal holds promise

Dried coal burns hotter and cleaner and ships cheaper

MONTANA HAS long had a third-world economy. People come into this state, relieve us of our natural resources and leave the mess for us to clean up.

Montana needs value-added businesses that take our raw products and process them into more marketable products. That's no secret. The public and private sector have been saying that for years.

But now we have evidence of a value-added cycle in one of the least likely industries, coal mining.

Montana companies have, of course, added value to the state's coal for years, converting it to electricity for sale elsewhere. But the coal itself, a relatively low Btu low-sulfur coal, has been exported much as the state's other natural resources are.

SynCoal — coal dehydrated in a \$69 million clean coal demonstration plant near Colstrip — may change that. As the coal is heated, the water content is reduced from 25 percent to less than 5 percent. The coal's Btu count increases from 8,600 to 11,700. That makes it more competitive with higher Btu coal mined in the Midwest.

Also, during the process, some of the iron pyrites in the coal filter out. That reduces sulfur content from .7 percent to less than .6 percent. Put another way, SO₂ emissions are cut from 1.6 pounds per 1 million Btu to less than 1 pound.

Montana and Wyoming coal is already relatively low in sulfur content. SynCoal will make Western coal more attractive still to Midwestern electrical generating plants.

Two other considerations come into play during the process.

As the coal's Btu level increases, the amount of coal needed to fuel a generating plant decreases. So SO₂ emissions are further cut.

And finally, raw coal, a natural aquifer, currently contains 25 percent water. A 100-car coal train, then, hauls roughly 75 cars of coal and 25 cars of water to Midwest plants.

Water content in SynCoal is reduced to less than 5 percent. Less than five cars in a 100-car train are dead weight.

SynCoal is not yet commercially feasible. The Colstrip project is simply a demonstration plant, but the demonstration is impressive. If SynCoal becomes feasible in the future, western coal will burn cleaner and hotter and shipping costs will be cut considerably.

That's the kind of thinking that can rid this state of its third-world image.

EXHIBIT 3
DATE 2/3/95
HB 343

TAX LIABILITY DUE



NOTICE OF ASSESSMENT MAILED
(Taxpayer has 30 days to pay tax or appeal)



COLLECTOR MAKES ATTEMPT AT INITIAL CONTACT
(Initial contact made to ensure taxpayer received assessment and to ask if the taxpayer has questions)



NO RESPONSE, NO PAYMENT, NO APPEAL FILED



FINAL NOTICE AND DEMAND MAILED
(Mailed 60 days after Notice of Assessment)
(Taxpayer has 30 days to pay tax due)
(Taxpayer notified a warrant for distraint will be filed if the tax is not paid)



COLLECTOR MAKES ANOTHER ATTEMPT AT CONTACT
COLLECTOR ALSO SENDS LETTER TO TAXPAYER



NO RESPONSE FROM TAXPAYER



WARRANT FOR DISTRAINT FILED
(Taxpayer mailed a copy of the warrant and a letter)

EXHIBIT 4
DATE 2/3/95
HB 287

EXAMPLES

Taxpayer :	Tax due 4/15/93
Lender:	Files mortgage on 5/1/93 3
Montana Department of Revenue:	Warrant for Distrain filed 8/1/94
Internal Revenue Service:	Files lien 1/1/94 - assessment on 6/1/93

Taxpayer decides to sell house - there is not enough value to satisfy all of the creditors - who can collect or in other words; who has priority?

CURRENT LAW

The Lender has first priority because it has the earliest filed lien.

The IRS has second priority because it's lien, although filed later than Montana's, relates back to the assessment date which is before the date that Montana filed it's lien.

Montana has last priority and may not get any of the proceeds of the sale

PROPOSED LAW W/O AMENDMENTS

The Lender has first priority because it filed first but must file affidavit from taxpayer to protect it's priority.

Montana has second priority because it's lien will have a priority of the date that the tax was due which is before the IRS assessment date.

The IRS has last priority since it's assessment date is after Montana's tax is due.

PROPOSED LAW WITH AMENDMENTS

The Lender has first priority because it filed first and does not have to protect itself from Montana's priority by filing an affidavit.

Montana has second priority ahead of the IRS for two reasons: (1) Montana is now a judgement lien creditor and is therefore protected from the assessment date priority by federal law, and; (2) Montana has a priority back to the date filed against the IRS because they are not a purchaser, security interest holder, mechanics lien holder or judgement lien creditor.

The IRS has last priority for the above reasons.

The advantage of the amendments is that it will protect most creditors and still give Montana an opportunity to have a priority which is ahead of the federal government, depending on when the liens are filed.

AMENDMENTS TO HOUSE BILL 287
INTRODUCED BILL

PREPARED BY THE DEPARTMENT OF REVENUE
FEBRUARY 1, 1995

EXPLANATION

Amendments 1, and 2, and 3 conform the title to amendments 4, 5, 6, and 7. Amendment 3 clarifies that the Department is a judgment lien creditor. Amendment 4 identifies those lienholders and secured parties who are not effected by the Department's priority date as set forth in subsection (3). Subsection (3) is not valid against those parties whose interest is recorded prior to the filing of the warrant for distraint. Amendments 6 and 7 strike that portion of the bill that is now covered by amendment 4.

1. Title, lines 6 through 9
Following: "DUE;"
Strike: remainder of lines 6 through 9 in their entirety
2. Title, line 5
Following: "AN ACT PROVIDING"
Insert: "THAT THE DEPARTMENT IS A JUDGMENT LIEN CREDITOR"
3. Title, line 6
Following: "DUE"
Insert: "PROVIDING THAT THE LIEN ON REAL OR PERSONAL PROPERTY CREATED BY A WARRANT FOR DISTRAINT IS NOT VALID AGAINST PURCHASERS, CERTAIN HOLDERS OF SECURITY INTERESTS, JUDGMENT LIEN CREDITORS AND OTHER LIENHOLDERS WHOSE INTEREST IS RECORDED PRIOR TO THE FILING OF THE WARRANT FOR DISTRAINT"
4. Page 1, line 22
Following: "lien"
Insert: "the department is a judgment lien creditor"
5. Page 1, line 27
Following: "distraint"
Insert: "(4) The tax lien provided for in (3) is not valid against purchasers, holders of security interests, judgment lien creditors and those lienholders identified in Title 71, Chapter 3, Parts 3 through 15, whose interest is recorded prior to the filing of the warrant for distraint.

Renumber: subsequent sections

6. Page 1, lines 28 through 30
Strike: Lines 28 through 30 in their entirety
7. Page 2, lines 1 through 6
Strike: lines 1 through 6 in their entirety

Testimony In Support of HB 287
Introduced Copy

Department of Revenue
January 27, 1995

This bill conforms the priority date for tax liens created by a Department of Revenue warrant for distraint to those liens filed for withholding taxes and unemployment insurance contributions. It will allow the Department to collect a larger share of the taxes assessed and reduce the tax burden on the vast majority of Montanans who pay their fair share.

When the Department can not collect taxes owed the state, it issues a warrant for distraint which is a lien upon any property owned by the debtor. The problem is that the debtor is usually in trouble with the IRS in addition to the state. The priority date of a lien or warrant for distraint determines the order in which the creditors receive payment. The earlier the priority date, the more likely that the creditor will receive any money.

Presently a Department warrant for distraint priority date is the date the warrant is filed. This bill will conform all liens for all taxes collected by the Montana Department of Revenue. The priority date for all liens will be the date the tax is due.

The Department of Revenue currently files between 3,500 and 4,000 warrants for distraint a year. The Department often finds itself in competition with the Internal Revenue Service in order to collect taxes owed to the State of Montana. If this bill passes, the Department will be in a better position to collect state taxes when the IRS is trying to collect federal taxes.

Liens created by the Internal Revenue Service are effective upon assessment. The Service must file their lien in the same manner as the state but their priority date is the date of assessment. All that is required to establish the priority date is that the Service issue an assessment. Once the information regarding the assessment is put into the IRS computer, the Service's position is secured.

The State of Montana therefore is at a great disadvantage when competing with the Internal Revenue Service. Oftentimes there is a span of time between the time the tax liability occurred and the warrant for distraint is filed. This is because the Department must satisfy certain legal requirements, such as notice prior to issuing a warrant for distraint. This process takes time.

The language in HB 287 is identical to that found in §15-30-208, MCA which applies to withholding taxes. It is also similar, to the statute relating to the certificates of lien for unemployment insurance contributions, §39-51-1304, MCA. Included in HB 287, §39-51-1304 and §15-30-208, MCA is a provision protecting innocent parties' liens and interest in the real or personal property. This language was originally adopted after an agreement was reached with certain creditors and the land title companies. A creditor can protect their interests by asking the debtor to sign an affidavit that the taxes have been paid. If the creditor files a lien before the Department's warrant and has such a document, they would have first priority.

Passage of this bill will put the State of Montana in a better position in its tax collection efforts. The state will collect a larger percentage of the taxes assessed. The Department currently has an accounts receivable of around \$32 million. This bill will help reduce this large collection problem. It is unfair to the taxpaying citizens of Montana who must foot the bill for those few who do not pay their fair share.

State of Montana

Marc Racicot, Governor



Department of Revenue

Mick Robinson, Director

P.O. Box 202701

Helena, Montana 59620-2701

January 31, 1995

Representative Chase Hibbard, Chairman
House Taxation Committee
Montana State Capitol
Helena, MT 59620

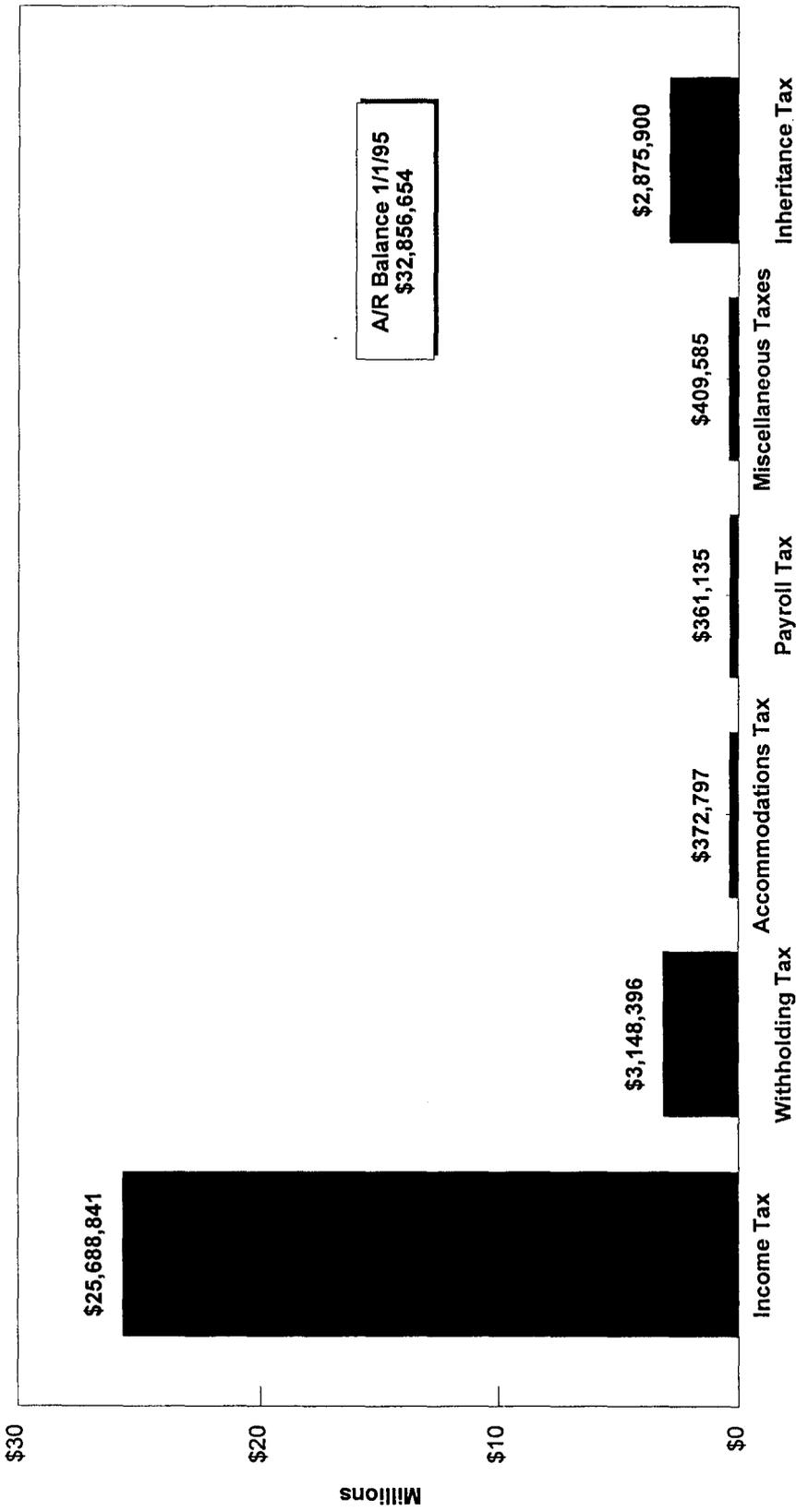
Dear Representative Hibbard:

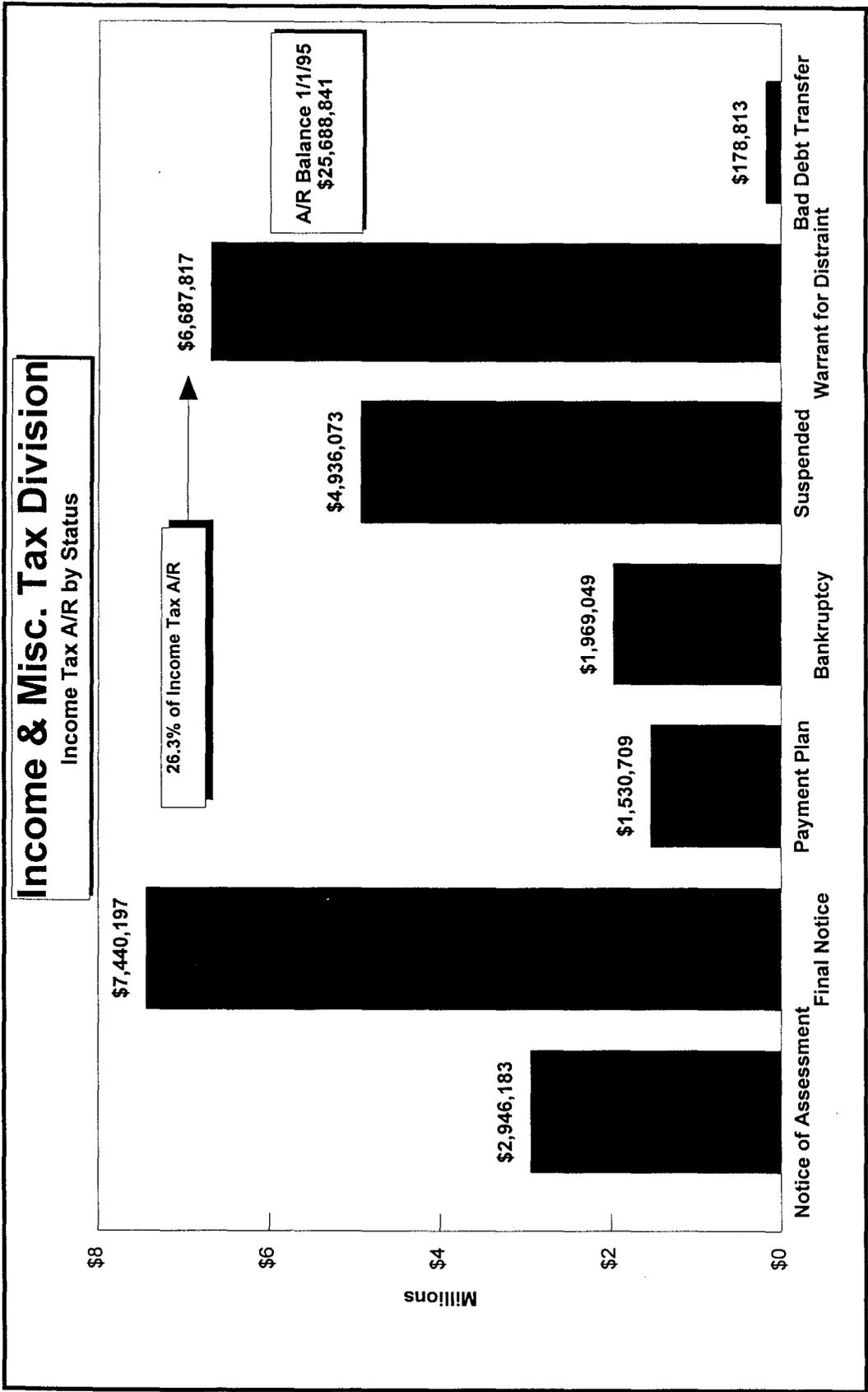
During last Friday's hearing on HB287, Representative Elliot and Representative Fuchs requested information concerning our accounts receivable. Specifically, they requested the percentage of accounts receivable collections from accounts in a "warrant for distraint" status and the percentage of our inventory in a "warrant for distraint" status. The following information provides Representatives Elliot and Fuchs the information they requested as well, additional information for the committee as a whole concerning our accounts receivable system.

- * Approximately 95% of the Department's accounts receivable balance resides in the Income & Miscellaneous Tax Division.
- * As of January 1, 1995, the Income & Miscellaneous Tax Division's accounts receivable balance totaled \$32,856,654.
- * Accounts receivable consist of income tax, withholding tax, payroll tax, accommodations tax, inheritance tax, and miscellaneous taxes.
- * Withholding tax and payroll tax receivables currently have a lien priority date of the due date of the tax and are not affected by HB287.
- * Inheritance tax receivables rarely become delinquent as the tax is due 18 months after the date of death and the estate cannot be closed until the tax is paid.
- * Of the remaining tax types, income tax receivables constitute by far the largest component of the accounts receivable balance.
- * Systematic transfers are made of accounts over 730 days old to the State Auditor's Bad Debt section.

Income & Misc. Tax Division

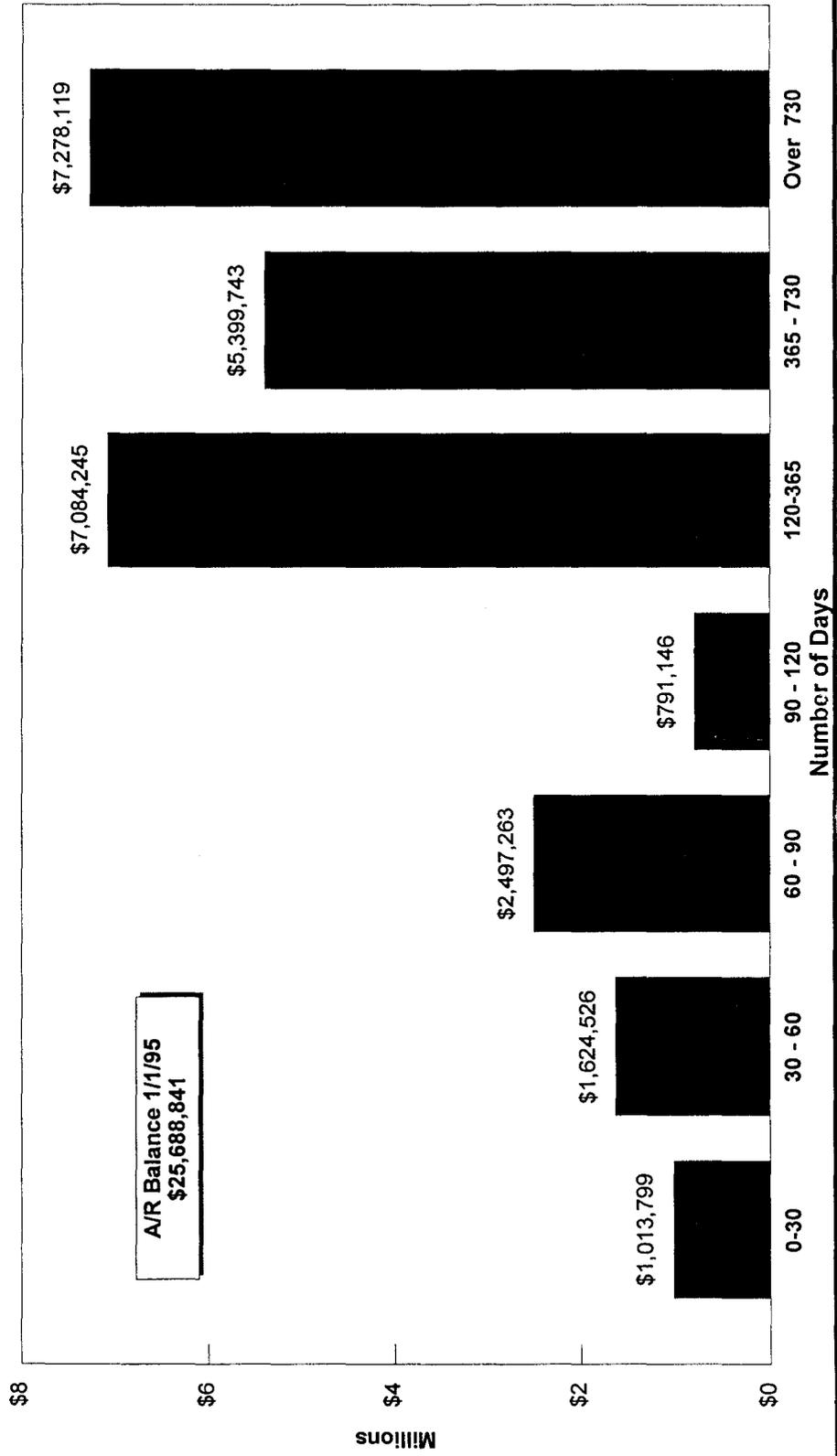
Accounts Receivable by Tax Type





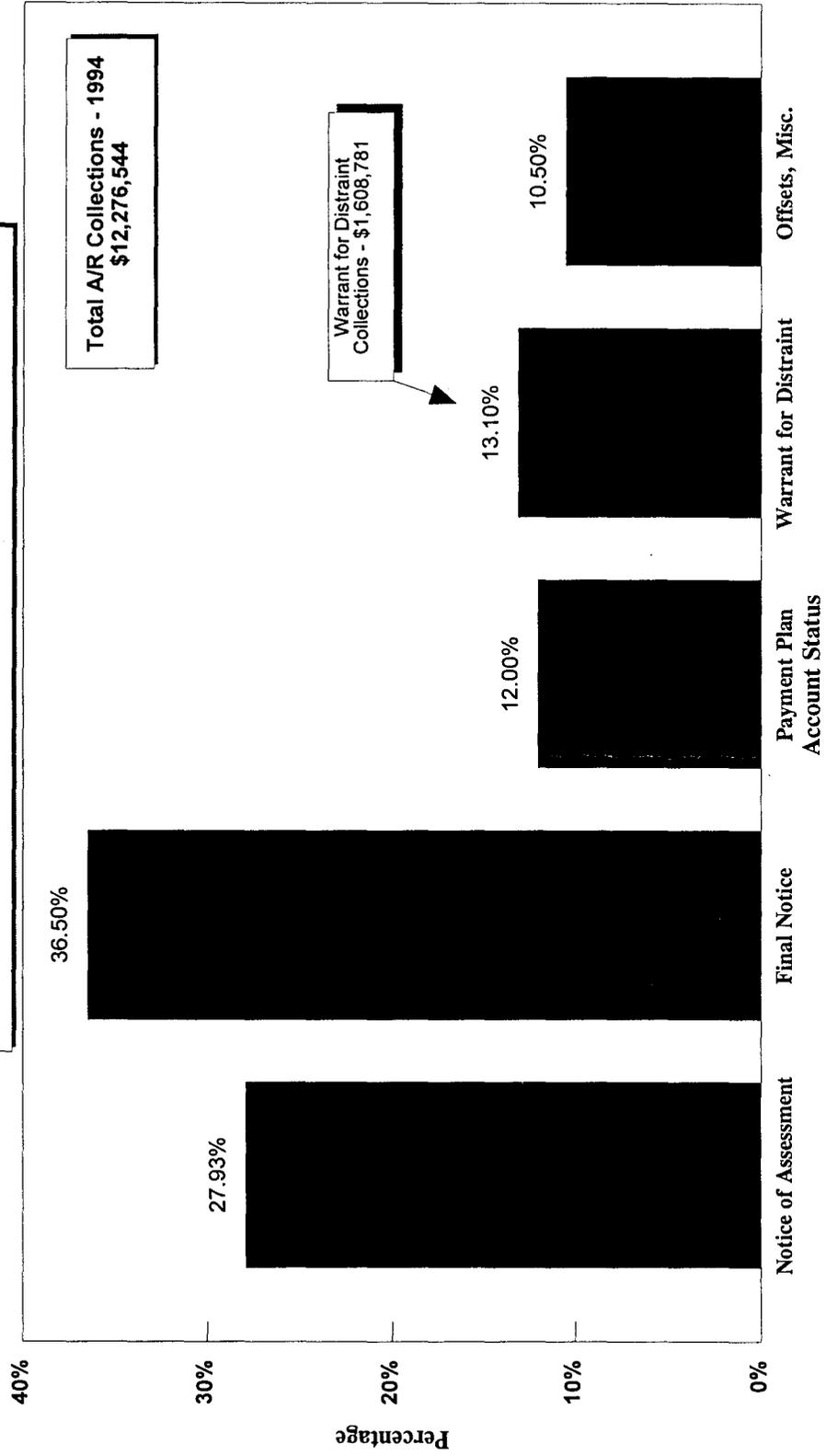
Income & Misc. Tax Division

Aging of Income Tax A/R



Income & Misc. Tax Division

Accounts Receivable Collections by Account Status



HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Deviation COMMITTEE BILL NO. HB 343
 DATE 2/3/95 SPONSOR(S) Rep Holland

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Sim Mockler	MT. Coal Council	343		✓
William Penn	Horizon Coal Service	343		✓
Wes Sessions	Western Energy	343		✓
Ray Sheldon	Western SynCoal	343		✓
Ken Williams	Entech	343		✓
Jim Kelly	Western SynCoal	343		✓
Robert Macken	Western SynCoal	343		✓
Martin Spurlock	Western Energy	0343		✓
David Owen	mt chamber			✓
Don Holland	HD 7			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.