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EXHIBIT 6
DATE 3.31.05
HB 799

TALKING POINTS

HB799
Revise taxes by providing backup withholding for exchange of real property

IRC Section 1031 and the Montana counterpart are not "abusive tax shelters" or "loopholes."

- IRC Section 1031 has been part of the Internal Revenue Code since 1921 as part of a series of non-recognition provisions like Sections 1033, 1034, 1035 etc.
- Applies to property held for investment purposes or productive use in a trade or business, which is deemed "like-kind" property.
- Designed to encourage continuity of investment by taxpayers to help maintain robust economy.
- Impetus to reinvest in property will be adversely affected by proposed legislation because of burdensome alternatives to payment of tax.

IRC Section 1031 and the Montana counterpart are provisions for non-recognition of gain and not tax avoidance.

- Capital gain tax is simply deferred as long as equity and debt is reinvested.
- Basis is carried over into replacement property.
- There is ample provision in law for taxpayers who misuse Section 1031.

Property Exchanges continue to benefit the Montana economy even on exchanges into out-of-state property.

- Montana taxpayers receive income from or benefit from appreciation in value of out-of-state properties and those benefits flow back into Montana.
- Many Montana taxpayers continue to reside in Montana even though they acquire exchange replacement property elsewhere.

A substantial number of out-of-state investors will be discouraged by proposed legislation.

- Elimination of future non-recognition treatment for Montana property transactions will result in reinvestment in more taxpayer-friendly states.
- Resulting adverse affect on Montana realtors, banks, title companies, contractors and related industries and service providers.
- Neighboring Rocky Mountain states such as Wyoming, Idaho, the Dakotas etc will benefit instead.

The vast majority of states do not penalize, or make more difficult, exchanges into out-of-state properties.

- Georgia is the only state with similar anti-out-of-state exchange taxation. Those provisions are in the process of being repealed in HB 488, Sections 9 and 15 at the request of Georgia Dept. of Revenue. They have not been enforcing the provisions. There was also a lot of confusion for people exchanging into Georgia property and how gain was to be properly apportioned. The repealer is expected to pass within the next 10 days
- Other similar legislation recently introduced in Arizona as HB 2060 was recently amended in their Ways and Means Committee to eliminate the provisions which created a withholding requirement for non-residents selling property in Arizona.

Substantial number of Montana property exchanges are small transactions by modest taxpayers.

- Section 1031 is not utilized just by "fat cat" taxpayers.
- The bulk of exchanges done by qualified intermediary companies in Montana is in the $50,000 to $500,000 range.
- Substantial number of exchanges is by individuals and couples of modest means who are attempting to maximize their investment into replacement property.

The legislation is a new tax imposed on property owners in Montana who exchange out of Montana into property in another state.

- This is counter to the Governor's campaign pledge to impose no new taxes.

The alternative lien is a problem for the Taxpayer.

- The lien on replacement property in another state will make it very difficult, if not impossible, for a taxpayer to obtain loans for construction and other purposes unless the State of Montana is willing to timely subordinate the lien.
- The lien creates an extra step the taxpayer must take to obtain timely releases of the lien in the event the replacement property is sold and tax is triggered.
- There is also no assurance of timely release of the lien in the event taxpayer later exchanges into subsequent properties.
- There is no system in place for allocation of the taxable gain and payment of tax due as between Montana and the other affected states.
- The lien system continues in place even though most taxpayers exchanging out of Montana will never terminate the exchange and trigger a tax.

The tax lien system is administratively ineffective.

- The amount of tax collected is outweighed by the cost of administering the system.
- The "first priority security interest" provided for in Section 2 will actually be second after the lien for property taxes of the replacement property state.
- A system involving filing an affidavit or reporting form much like Federal Form 8824 and agreement by the taxpayer to continue to report activity on subsequent replacement properties and triggering events for tax is much more cost effective. Taxpayer would also agree to continue to be under the jurisdiction of the State of Montana for collection and prosecution purposes.