SENATE TAXATION
EXHIBIT NO. 6
DATE 2-4-05
BILL NO. NA

Montana Department of Revenue

Dan Bucks
Director

Brian Schweitzer
Governor

Federal Legislation Undermining State Business Taxes
H.R. 3220 in the 108th Congress
(New version expected in 109th Congress)
February 1, 2005

Major business interests have been seeking federal legislation that would directly damage state corporate income and other business taxes. (The legislation in the last Congress was H.R. 3220.) A significant chance exists that such legislation could move forward in the new Congress. The legislation would:

1. Legalize corporate tax shelters on a large scale,
2. Discriminate against small Montana businesses by shifting the burden of state income taxes away from large multistate and multinational businesses to smaller local businesses,
3. Establish disincentives for investing in Montana, and
4. Preempt state laws and legislative authority to determine state tax policy.

The department is in the process of reviewing estimates of the fiscal impact of the legislation. On a preliminary basis, the corporate income tax impact would appear to $3 to $6 million in the first year and rising rapidly to $25 to $35 million annually in the fifth year as corporations adopt the expanded tax sheltering methods legalized under the legislation.

The bill is being advanced by business interests, in part, as a trade-off for legislation authorizing states to apply their sales taxes the sale of products over the Internet. For Montana and other states without a general sales tax, the legislation is all loss and no gain.

The legislation would restrict the ability of states to tax companies that conduct certain kinds of business activities in each state. The bill would allow companies without a physical presence to sell into a state or use intangible assets within a state without paying state income taxes—even though state law requires them to do so. More importantly for Montana it would allow companies to station employees or own property in the state on a temporary or permanent basis without incurring Montana corporate income taxes. Under the legislation even major manufacturing and materials processing plants could exempt themselves from Montana's corporate taxes through complex restructuring authorized under the legislation.