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From: Bill Simkins [mailto:bill@simkins-hallin.com]

Sent: Friday, March 18, 2005 10:32 AM

To: mailto:mwhitt@montax.org

Subject: RE: LC973 - SB513 -Assure the accurate determination and collection of Montana taxes

Mary,

Thanks for the update on this tax bill. As we discussed yesterday, I briefly read through the draft of this bill and have the following comments about it.

1. The first thing that struck me about this bill was its tremendous breadth and complexity! As a former tax lawyer who worked for several large companies in Seattle, including Washington Mutual, I have had a lot of experience reading complex tax legislation. However, this proposed bill is certainly one of the most sweeping and complex proposed tax legislation that I have ever encountered. Thus, my first recommendation would be not to try to enact such a far-reaching bill until all parties have had ample opportunity to review the provisions to try to find out what the implications of the enactment of this bill would be. Since this bill was introduced late in the session, it seems very unfair to the business community and the taxpayer community at-large to have to debate this bill when they have not had sufficient time to ascertain what it means.

2. Because of the bill's complexity mentioned above, I think that the bill should at the very least be submitted to a study committee that would be charged with reviewing this legislation and writing a report about what it means and perhaps offer amendments to simplify and clarify many of the provisions in the bill. Again, I think this bill needs a lot of further study before it should be debated by the legislature. When I read the bill, I was taken aback by the sheer number of very vague terms and provisions. My overall impression after reading the bill was that I could not understand what perceived problems the bill provisions were trying to address. In my view, this bill needs to be re-drafted to identify what the perceived tax collection problems are and how this bill would address them. What the bill has now is some vague references to "tax shelters" and the like without a discussion of what those perceived problems really are.

3. The bill provisions also are very dangerous in my opinion because it grants far-reaching powers to the regulatory agency, the Department of Revenue, without much in the way of objective standards. That is, it gives the Department unprecedented powers to determine in its own judgment what it believe constitutes an abusive transaction. In effect, the Department become the prosecutor, judge and jury without adequate oversight. Another thing that struck me was the draconian nature of the proposed penalties. For instance, the Department would be allowed to impose \$10,000 penalties based on its own determination that it thinks something may be wrong. This power is very troublesome to me especially as indicated before, there are almost no objective standards in which to review whether the Department is exercising its authority in a reasonable manner.

4. I also think it is very important for the bills' proponents to be able to identify specific problems and transactions that they want to curb. In my opinion, it is very inappropriate to assert that there are serious problems that the Department needs to address, but then not be able to articulate what those specific problems are. Again, this points up the need to have a study committee look at the what the problems may be out there. As a former corporate tax attorney, I surely would want to know what the "abusive transactions " are before we set up a radical enforcement system to try to stop them.

5. Another factor to consider is which agency is best equipped to audit these companies who are alleged to be engaged in abusive transactions. The IRS in my view has much better

resources to audit those companies who may be engaged in these complex tax evasive transactions. The IRS has much more money and the trained staff to do this work than what the State of Montana alone ever would be able to do.

6. Finally, I would like to know a lot more about where the Department revenue estimates are coming from. Again, from my experience in the field of taxation, the revenue estimates of \$20 million seems extremely optimistic. Where do these estimates come from and how realistic are they?

Thanks again for the opportunity to comment on this proposed legislation. Please let me know if you have any questions.

Bill Simkins
Simkins Hallin