SENATE TAXATION
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BILL NO. HB 703

Testimony of Alec Vincent, General Director of Taxes for BNSF Railway Company
Opposing HB 703
Before the Montana Senate Taxation Committee
April 12, 2005

Good morning Mr. Chairman and members of the Committee. My name is Alec Vincent. I am the General Director of Taxes for BNSF Railway Company. I am here today to testify in opposition to HB 703.

The purpose of HB 703 appears to be to punish BNSF for using a disputed rate structure to provide freight transportation service in Montana by imposing a confiscatory property tax scheme on the railroad industry. The proposed tax is confiscatory because it would result in a 1000% increase in BNSF's property tax liability over the next five years based upon the fiscal note information.

As I will explain, BNSF opposes this measure because it manifests extremely poor tax policy in that it violates the principles that similarly situated taxpayers should be taxed similarly, that tax laws should be simple to understand and comply with, and creates disincentives for economic development and job growth. Also, as I will detail shortly, this proposed tax is a blatant violation of federal law and is preempted by specific provisions of a federal law.

Poor Tax Policy

This bill violates the following fundamental principles of good tax policy:

Equity and Fairness – Similarly situated taxpayers should be taxed similarly. The proposed confiscatory tax scheme is imposed only upon a small number of property owners within the total group of business property owners. No other business property owners are assessed property taxes based upon the relative price they might legally charge for goods or services. In fact, the proposed tax would double-weight the influence of BNSF's rate structure because the existing valuation statute already reflects the rate structure in the value determined for tax purposes. As you already know, BNSF's system value is determined in large part based upon the income it earns on railroad operations and then that value is allocated to the State of Montana based upon several factors, including gross Montana revenues. Therefore, the current taxable value of BNSF's property reflects BNSF's rate structure in both the income used to determine system value and the Montana gross revenues used to allocate value to the State.

Neutrality – The effect of a tax law on taxpayer decisions as to how to carry out a particular transaction should be minimized. Like any other business taxpayer, decisions made in regard to the location of facility and employment development, enhancement or retrenchment will invariably be impacted by any type of punitive tax scheme.

Simplicity – A tax law should be simple to understand and comply with in a cost-efficient manner. As explained by Mr. Keim, the proposed bill gives no guidance as to what

information is required and how such information will be used to calculate the Ag. rate included in the tax computation.

Economic Growth and Efficiency – The tax system should not impede or reduce the productive capacity of the economy. The proposed bill would significantly increase the cost to provide freight transportation service and reduce the funds available to invest in new and existing railroad infrastructure and operations, which can only serve as a drain on the freight rail transportation system integral to the Montana economy.

Appropriate Government Revenues – A state's taxing structure should fairly spread the taxation burden across all segments of the economy and reflect some relation to the costs of governmental services enjoyed by the taxpayer. In Montana, the railroad industry pays the second highest level of property taxes. BNSF alone is the third highest assessed property owner. The proposed confiscatory tax would further exaggerate this imbalance.

Violates Federal Law

HB 703, if enacted, will violate the Railroad Revitalization and Regulatory Reform Act of 1976, otherwise known as the 4R Act, and be preempted by federal law. Jurisdiction over railroad freight rates is held by the Surface Transportation Board.

In Section 306 of the 4R Act, Congress expressly prohibited the discriminatory taxation of railroads. Nearly 30 years of subsequent case law have further defined discrimination to include differential assessment practices between railroad and other commercial/industrial property and the assessment of railroad property at a value that has a higher ratio to market value than the ratio of assessed value to market value for other commercial/industrial property. As you may recall, some of that case law was developed in favor of the railroad industry during years of expensive, time consuming and disruptive litigation here in Montana.

In addition to challenging the legality of this proposal under the 4R Act, we believe HB 703 is an attempt to regulate rail rates in violation of 49 U.S.C. Section 10501(b), which provides that the Surface Transportation Board has exclusive jurisdiction over transportation by rail carriers and the remedies provided in this part with respect to rates, classifications, rules, practices, routes, services, and facilities of such carriers. A remedy to challenge disputed freight rates is available under current federal law. State tax policy should not be used to circumvent this process.

Our intention is not to disrupt the predictability and stability enjoyed by the local taxing jurisdictions, which has been realized as a result of the existing statutory property tax scheme for railroads. However, given the unlawful and confiscatory nature of HB 703, we would have little choice but to file suit if this bill were to be enacted.

I respectfully request that you vote in opposition to this bill.