

Technical Comments of the Montana Society of CPAs

SB 220

- 1) The definitions in Section 2 should follow federal law. Many of the definitions refer to the federal code but then deviate from or expand the definition beyond the Internal Revenue Code
- 2) The definition of a tax shelter is very broad and includes perfectly legal activities.
- 3) The definition of "noneconomic substance transactions" is vague and may include perfectly legal activities.
- 4) There is a penalty of false swearing; if in error, how does the taxpayer correct.
- 5) There is no provision for an estimate. Taxpayers need to calculate their taxable gains at the time of filing the tax returns. Passive activity losses and numerous other information may be needed to complete the calculation. This is an expensive burden to place on the taxpayer.
- 6) Section 3 includes substantial penalties for not disclosing required information and additional penalties for any understatement of tax. Penalties for disclosure are assessed as of the due date of the return. Concern—are there unintended consequences for regular taxpayers who may make a "mistake"?
- 7) Section 3 grants expansive rule making authority to the Department of Revenue.
- 8) Section 3 is applied retroactively to February 28, 2000 which includes tax years for which the statute of limitations has expired.
- 9) Section 3 allows the director to waive penalties for a reportable transaction that is not a listed transaction, but Section 2 defines listed transaction to include reportable transactions.
- 10) Section 4—Material advisors—may require the disclosure of a taxpayer's tax planning strategy and techniques by advisors.
- 11) Section 4 and its excessive penalties may be applied to advisors who have no idea their advice is subject to the disclosure provisions.
- 12) Section 5(b)(i) appears to include a tax opinion as being within the definition of a tax shelter.
- 13) Section 6 requires the tax payer to come to the Helena district court rather than relying on the established venue rules that generally require an action to be filed in the county of the defendant.
- 14) Section 7 grants the DOR Director expansive discretion and rule making authority with limited legislative direction.
- 15) Section 8 brings in a new filing requirement for the "state spreadsheet". As with the other provisions, the spreadsheet requires a record of filings in each state where the taxpayer has business. The MTC has delayed implementation of this requirement for two years since there is no uniform format. The AICPA, among other groups argued that the information is of questionable value, there is an onerous compliance burden, and there is no uniformity among state law and judicial interpretation. Why are we in a rush to adopt early?
- 16) If the state spreadsheet is not required by other states, the Montana market is not large enough for the software manufacturers to create one just for Montana.
- 17) Section 9: (4)(a) "Any income" being business income conflicts with item Section 9 item 8; if the definition gross income encompasses all income, then you cannot have "more business income."
- 18) Section 10 requires the filing of information to be complied at what cost to taxpayers?

- 19) Section 11: Why not simply require a taxpayer to file a copy of each state income tax return as allowed in (3)(b) rather than compiling all of the information in subsections (1) and (2).
- 20) Section 14 extends the statute of limitations beyond that otherwise applied by law.
- 21) Section 20 raises equal protection concerns by applying only to nonresidents.
- 22) Sec. 20 (2), withholding on real estate sales, will be difficult to administer:
 - What is a "transferor's certified calculated gain"? What is the definition? Who will determine it? What if a major material misstatement is made? What about a contract for deed where title does not pass until fully paid? Is the gain the entire gain in the year of sale? There may not be enough funds to pay the closing costs and the withholding tax from the down payment which may impact the ability to sell some property.
- 23) Sec. 21 (3) (f) exempts a LLC, corporation or pass through entity organized under Montana law. This appears to be a large loophole that can be used to avoid the withholding tax. The only effective way to administer this is to assess all sellers of real estate over \$100,000. Buyers and title companies would then not be required to enforce the provision of questioning the seller if it was used as personal residence.
- 24) New Section 21—Is it cost effective to impose this additional recording keeping etc. on all sales and Department of Revenue?
- 25) Section 25—Class 8 property—Agree that the exclusion be increased.
- 26) The retroactive application to transactions entered into after Feb of 2000 is of concern. The statute has in fact run on the returns filed for the calendar year 2000. Many, if not most, of the transactions reported by Montana taxpayers will be small limited partnership interests. These were subject to reporting on the Federal return. To ask those taxpayers to report all them again to the state for 7 years is an administrative burden. Many self prepared returns would not realize the need to comply, and the penalties are enormous relative to the tax reductions. The new provisions appear to require disclosure on 2006 returns, many of which would be filed before enactment.

Testimony by Dan Muskevich, President, Montana Society of CPAs

Good morning. Madam Chair, members of the committee, my name is Dan Muskevich and I am president of the Montana Society of Certified Public Accountants. The accounting profession is 100% in support of tax fairness and helping our clients comply with Montana tax code. Because of that we strongly oppose Senate Bill 220.

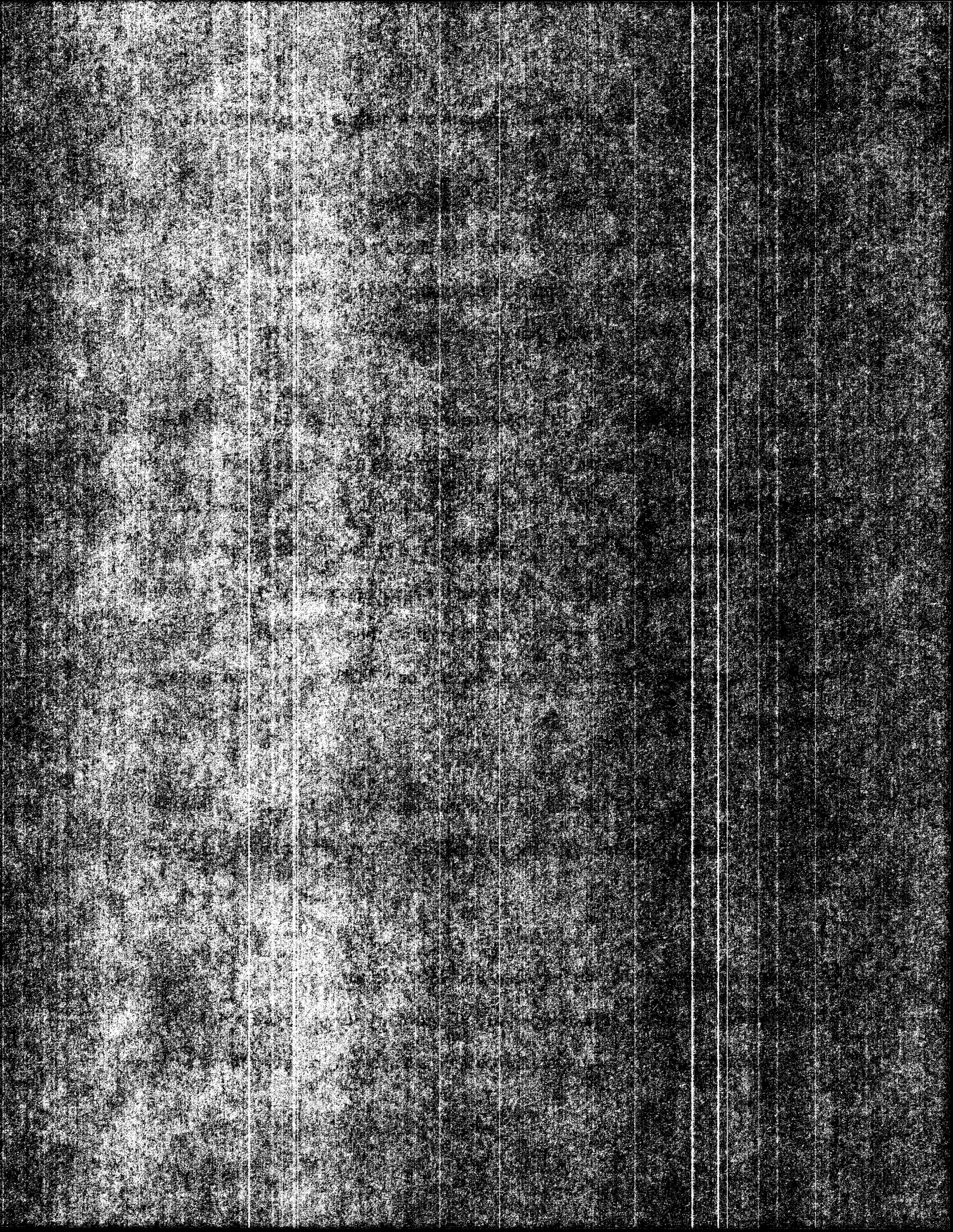
We support the intent of this bill: tax cheaters should be stopped. But at what cost to the Montana taxpayer? This bill isn't anti-tax cheater, it's anti-fairness and that means all of us in this room. The proposals made in SB 220 may be aimed at bad or smart tax cheats but they hurt honest, hard-working Montanans in the process. When we opposed similar legislation in the 2005 session the media accused CPAs of protecting tax cheaters. That wasn't the case then and it isn't the case now. We are fighting to protect the Montanans that this legislation would cripple. This bill would be retroactive seven years!

The Montana Society of CPAs supports tax simplification. This bill adds massive complexity to our tax code. Many of the regulations it seeks to impose are duplications of federal law.

As a professional association our legislative policy states we will:

1. **Perform an active role in legislation impacting our profession directly.**

This bill impacts the accounting profession significantly, or rather those who use



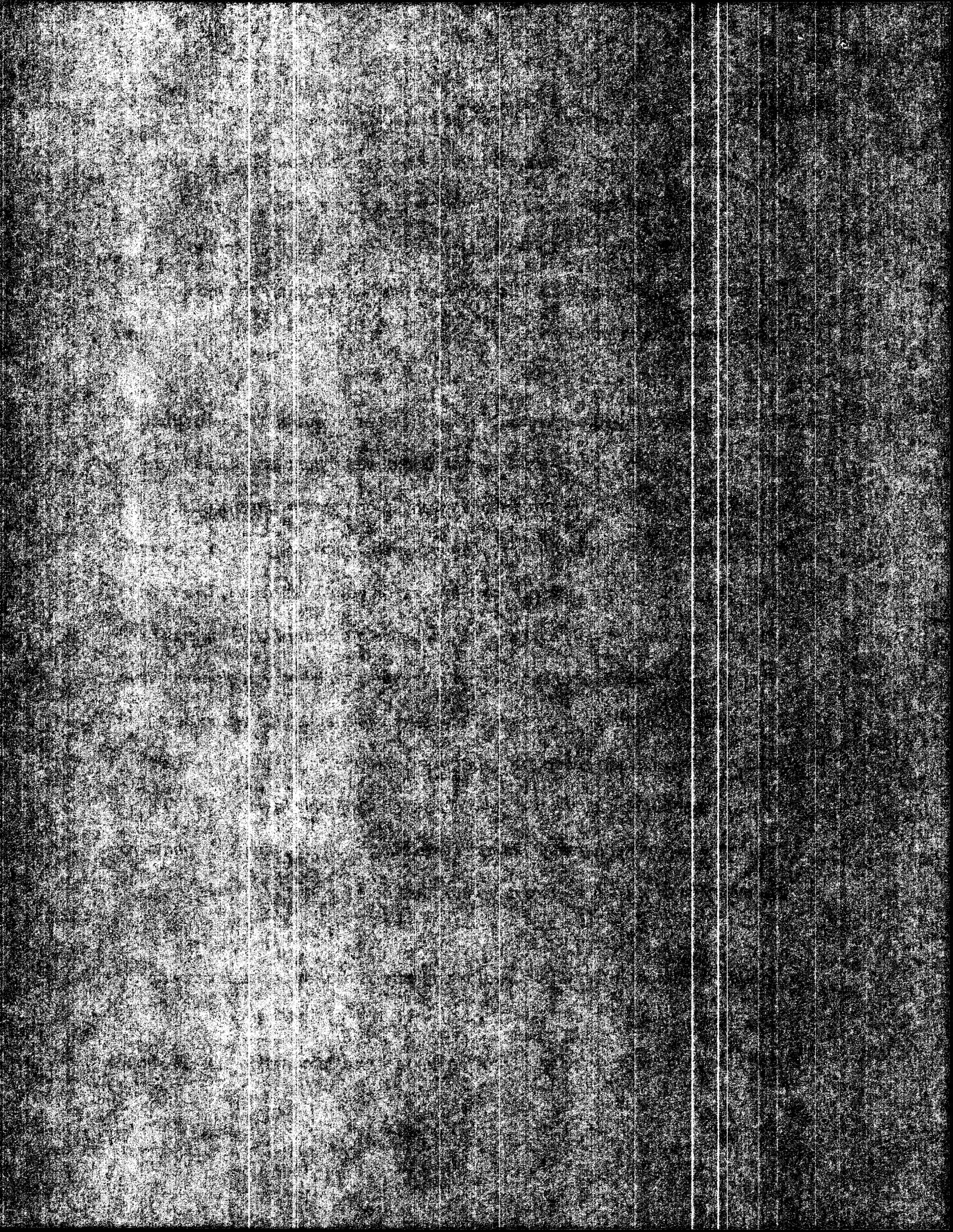
our services. The complexity this legislation would impose would require an army of accounting professionals to help businesses and individuals comply with the tax code. Small businesses and individual taxpayers are the very people who cannot afford teams of CPAs and will be the ones most likely to find themselves out of compliance. The victims in this legislation are the mom and pop businesses and individuals.

2. Provide leadership in the areas of tax policy and economic development.

With all due respect to the Department of Revenue and the responsibilities they are charged with, we CPAs are the ones working on the front lines of business, farming, ranching, manufacturing and investing each and every day. Yes, we do taxes for people but our main purpose, the reason people come to CPAs, is to look at the entire financial picture. That's what we are doing with Senate Bill 200. When you hear the intent of this bill it sounds great, but when you dig down, line by line into the language you see how dangerous this legislation would be if passed. We believe in giving the Department of Revenue the tools it needs to collect taxes, but as in any job, it needs to be the right tools to do the job properly, efficiently and safely. If Montana is truly "open for business", then why are we trying to make it so hard to do business here?

3. Provide technical information and/or analysis and/or support or oppose other legislation.

That's why we are here today, to provide the technical information that will allow



how detrimental Senate Bill 280 would be to average Montana companies.

With this as our legislative focus, we cannot in good conscience support SB 280.

