

BUSINESS REPORT

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

SENATE TAXATION COMMITTEE

Date: Tuesday, March 17, 2009
Place: Capitol

Time: 8:00 am
Room: 405

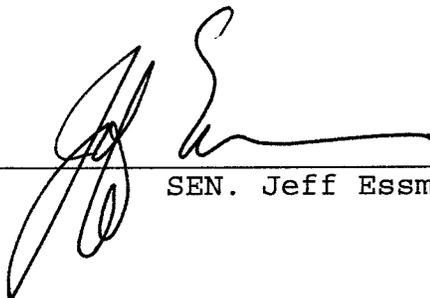
BILLS and RESOLUTIONS HEARD:

SB 491 ~ SB 495 ~ SB 499

EXECUTIVE ACTION TAKEN:

HB 21 ~ DO CONCUR
SB 260 ~ DO PASS AS AMENDED
SB 467 ~ DO PASS AS AMENDED
SB 418 ~ DO PASS AS AMENDED
SB 495 ~ DO PASS

COMMENTS:



SEN. Jeff Essmann, Chairman

MONTANA STATE SENATE
ROLL CALL
TAXATION COMMITTEE

DATE: March 17, 2009

NAME	PRESENT	ABSENT/ EXCUSED
Chairman Jeff Essmann	✓	
Vice Chair Taylor Brown	✓	
Senator Jerry Black	✓	
Senator Gary Branae	✓	
Senator Ron Erickson	✓	
Senator Kelly Gebhardt	✓	
Senator Kim Gillan	✓	
Senator Bradley Maxon Hamlett	✓	
Senator Christine Kaufmann	✓	
Senator Robert Story, Jr.	✓	
Senator Bruce Tutvedt	✓	



SENATE STANDING COMMITTEE REPORT

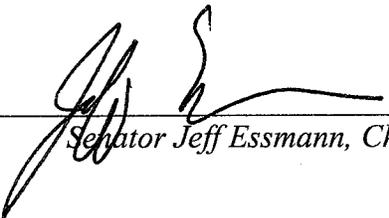
March 17, 2009

Page 1 of 7

Mr. President:

We, your committee on **Taxation** recommend that **Senate Bill 260** (first reading copy -- white) **do pass as amended.**

Signed: _____


Senator Jeff Essmann, Chair

And, that such amendments read:

1. Title, line 5.

Following: "PARTNERSHIPS;"

Insert: "DEFINING THE RECAPTURE OF MONTANA SOURCE DEPRECIATION AND DEPLETION IN REGARD TO THE SALE BY A NONRESIDENT OF AN INTEREST IN A PUBLICLY TRADED PARTNERSHIP DOING BUSINESS IN MONTANA;"

2. Title, line 9.

Following: "SECTIONS"

Insert: "15-30-101,"

Following: "15-30-1102"

Insert: ", "

3. Page 1, line 13.

Insert: "**Section 1.** Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122,

Committee Vote:

Yes 9, No 2

Fiscal Note Required

SB0260001SC.sdr

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but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:

(a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or

(b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code (26 U.S.C. 1361(b)(3)).

(6) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

(7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.

(9) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code (26 U.S.C. 85) as amended.

(11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.

(12) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or

mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

(14) "Knowingly" is as defined in 45-2-101.

(15) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

(17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

(a) a resident taxpayer on a lottery ticket; or

(b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(18) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the

net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) social security benefits received or accrued while a resident of the state;

(xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; ~~and~~

(xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks; ~~and~~

(xvii) in the case of a nonresident who sells the nonresident's interest in a publicly traded partnership doing business in Montana, the gain described in section 751 of the Internal Revenue Code, 26 U.S.C. 751, multiplied by the Montana apportionment factor. If the net gain or loss resulting from the use of the apportionment factor as provided in this subsection

(18) (a) (xvii) does not fairly and equitably represent the nonresident taxpayer's business activity interest, then the nonresident taxpayer may petition for, or the department may require with respect to any and all of the partnership interest, the employment of another method to effectuate an equitable allocation or apportionment of the nonresident's income. This subsection (18) (a) (xvii) is intended to preserve the rights and privileges of a nonresident taxpayer and align those rights with taxpayers who are afforded the same rights under 15-1-601 and 15-31-312.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

(19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(20) "Nonresident" means a natural person who is not a resident.

(21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

(25) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

(26) "Purposely" is as defined in 45-2-101.

(27) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

(30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(31) "Tax year" means the taxpayer's taxable year for federal income tax purposes.

(32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."

Renumber: subsequent sections

4. Page 5, line 18 through line 19.

Strike: "beneficial" on line 18 through "ownership" on line 19

Insert: "person or entity that has an"

Strike: "with"

Insert: "in the partnership that results in"

Following: "\$500"

Insert: "or that has sold its interest in the partnership during the tax year"

5. Page 5, line 20.

Following: "30."

Insert: "A publicly traded partnership shall provide the department with the information in an electronic form that is capable of being sorted and exported. Compliance with this subsection does not relieve a person or entity from its obligation to pay Montana income taxes."

- END -



SENATE STANDING COMMITTEE REPORT

March 17, 2009

Page 1 of 1

Mr. President:

We, your committee on **Taxation** recommend that **Senate Bill 495** (first reading copy -- white) **do pass.**

Signed: _____

Senator Jeff Essmann, Chair

- END -

Committee Vote:

Yes 11, No 0

Fiscal Note Required

SB0495001SC.sdr

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SENATE STANDING COMMITTEE REPORT

March 17, 2009

Page 1 of 1

Mr. President:

We, your committee on **Taxation** recommend that **House Bill 21** (third reading copy -- blue) **be concurred in.**

Signed: _____

A handwritten signature in black ink, appearing to read "Jeff Essmann", written over a horizontal line.

Senator Jeff Essmann, Chair

To be carried by Senator Christine Kaufmann

- END -

Committee Vote:

Yes 6, No 5

Fiscal Note Required

HB0021001SC01445.sdr

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SENATE STANDING COMMITTEE REPORT

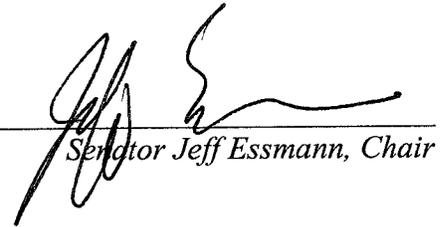
March 17, 2009

Page 1 of 1

Mr. President:

We, your committee on **Taxation** recommend that **Senate Bill 418** (first reading copy -- white) **do pass as amended.**

Signed: _____


Senator Jeff Essmann, Chair

And, that such amendments read:

1. Page 9, line 12.

Insert: "NEW SECTION. **Section 9. Coordination instruction.** If House Bill No. 261 is not passed and approved, then [section 3 of this act], amending 15-30-136, is void."

Renumber: subsequent sections

2. Page 9, line 15.

Strike: "10(2)"

Insert: "11(2)"

- END -

Committee Vote:

Yes 11, No 0

Fiscal Note Required

SB0418001SC.sdr

DR



SENATE STANDING COMMITTEE REPORT

March 17, 2009

Page 1 of 1

Mr. President:

We, your committee on **Taxation** recommend that **Senate Bill 467** (first reading copy -- white) **do pass as amended.**

Signed: _____

Senator Jeff Essmann, Chair

And, that such amendments read:

1. Title, line 4.

Strike: "LIEN"

Insert: "DEED"

2. Title, line 5.

Strike: "COMMITMENT"

Insert: "GUARANTEE"

3. Title, line 6.

Strike: "COMMITMENT"

Insert: "GUARANTEE"

4. Page 2, line 18.

Strike: "commitment"

Insert: "guarantee, approved by the insurance commissioner and issued by a licensed title insurance producer,"

5. Page 2, line 20.

Strike: "commitment"

Insert: "guarantee"

- END -

Committee Vote:

Yes 11, No 0

Fiscal Note Required

SB0467001SC.sdr

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BUSINESS REPORT

MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION

SENATE TAXATION COMMITTEE

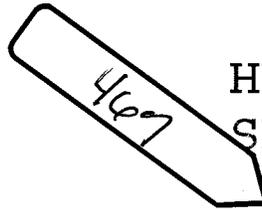
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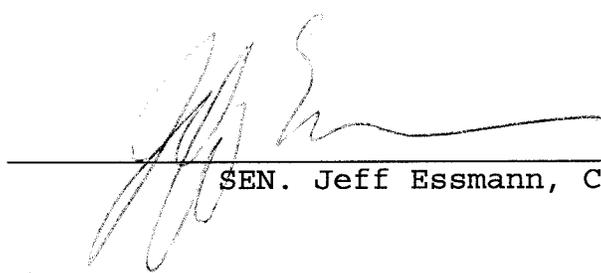
BILLS and RESOLUTIONS HEARD:

SB 491 ~ SB 495 ~ SB 499

EXECUTIVE ACTION TAKEN:

 HB 21 ~ DO CONCUR
SB 260 ~ DO PASS AS AMENDED
SB 495 ~ DO PASS AS AMENDED
SB 418 ~ DO PASS AS AMENDED
SB 495 ~ DO PASS

COMMENTS:



SEN. Jeff Essmann, Chairman

ROLL CALL VOTE
TAXATION COMMITTEE
MONTANA STATE SENATE

Date: 3.17.09

Bill No.: HB21

Motion: de amended

NAME <i>(11 Members)</i>	AYE	NO	Proxy
Vice Chair, Taylor Brown	✓		
Senator Ron Erickson	✓		
Senator Bradley Maxon Hamlett		✓	
Senator Kelly Gebhardt		✓	
Senator Bruce Tutvedt		✓	
Senator Christine Kaufmann	✓		
Senator Kim Gillan		✓	
Senator Jerry Black	✓		
Senator Robert Story, Jr.		✓	
Senator Gary Branae		✓	
Chairman Jeff Essmann		✓	

VOTE: 4-7 fails

ROLL CALL VOTE
TAXATION COMMITTEE
MONTANA STATE SENATE

Date: 3.17.09
Bill No.: HB 21

Motion: do concur

NAME <i>(11 Members)</i>	AYE	NO	Proxy
Vice Chair, Taylor Brown		✓	
Senator Ron Erickson	✓		
Senator Bradley Maxon Hamlett	✓		
Senator Kelly Gebhardt		✓	
Senator Bruce Tutvedt		✓	
Senator Christine Kaufmann	✓		
Senator Kim Gillan	✓		
Senator Jerry Black		✓	
Senator Robert Story, Jr.	✓	.	
Senator Gary Branae	✓		
Chairman Jeff Essmann		✓	

VOTE: 6-5

ROLL CALL VOTE
TAXATION COMMITTEE
MONTANA STATE SENATE

Date: 3.17.09

Bill No.: SB 418

Motion: be amended

NAME <i>(11 Members)</i>	AYE	NO	Proxy
Vice Chair, Taylor Brown	✓		
Senator Ron Erickson		✓	
Senator Bradley Maxon Hamlett		✓	
Senator Kelly Gebhardt	✓		
Senator Bruce Tutvedt	✓		
Senator Christine Kaufmann		✓	
Senator Kim Gillan		✓	
Senator Jerry Black	✓		
Senator Robert Story, Jr.	✓		
Senator Gary Branae		✓	
Chairman Jeff Essmann	✓		

VOTE: 6-5

VISITORS REGISTER

MONTANA SENATE TAXATION COMMITTEE

Date: March 17, 2009 Bill No: **SB 499**

Sponsor(s): **Sen. Jeff Essmann**

(Reduce coal severance tax rates for new production for green facilities)

Please print ~ Please print ~ Please print

NAME	REPRESENTING	<i>Support</i>	<i>Oppose</i>	<i>Informt'l</i>
Verner Bertelson	Montana for the Coal Lands		✓	
Archib Nunn	✓ ✓		✓	
Ray Peck	✓ ✓		✓	
Leo BERRY	ANP	✓		
Tom O'Hair	RTEA	✓		
Steve Wade	Carbon County Holdings LLC Carpenter Creek	✓		

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you prefer to submit written testimony.

VISITORS REGISTER

MONTANA SENATE TAXATION COMMITTEE

Date: March 17, 2009 Bill No: **SB 491**

Sponsor(s): **Sen. Dave Lewis**

(Revise status of subdivision property tax for health insurance premiums)

Please print ~ Please print ~ Please print

NAME	REPRESENTING	<i>Support</i>	<i>Oppose</i>	<i>Informt'l</i>
Mike McKinley	Brewerhead Co (MAAO)	X		
May W. Jettig	Montana Soybean Assoc	X		
HAROLD Blattie	MAAO	X		
Alec Hansen	MUCT	X		

Please leave prepared testimony with Committee Secretary. Witness Statement forms are available if you prefer to submit written testimony.

