



Revenue and Transportation Interim Committee

61st Montana Legislature

SENATE MEMBERS

KIM GILLAN--Chair
RON ERICKSON
JEFF ESSMANN
CHRISTINE KAUFMANN
JIM PETERSON
BRUCE TUTVEDT

HOUSE MEMBERS

ROY HOLLANDSWORTH--Vice Chair
DICK BARRETT
CYDNIE (CARLIE) BOLAND
BRIAN HOVEN
MIKE JOPEK
BILL NOONEY

COMMITTEE STAFF

JEFF MARTIN, Research Analyst
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

MINUTES

November 19, 2010

Room 102, Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. KIM GILLAN, Chair
REP. ROY HOLLANDSWORTH, Vice Chair

SEN. RON ERICKSON
SEN. JEFF ESSMANN
SEN. CHRISTINE KAUFMANN
SEN. JIM PETERSON
SEN. BRUCE TUTVEDT

REP. DICK BARRETT
REP. CYDNIE (CARLIE) BOLAND
REP. BRIAN HOVEN

COMMITTEE MEMBERS EXCUSED/ABSENT

REP. MIKE JOPEK
REP. BILL NOONEY

STAFF PRESENT

JEFF MARTIN, Research Analyst
LEE HEIMAN, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, Attachment #1.

COMMITTEE ACTION

- The committee adopted the minutes of the September 15 and 16, 2010, meetings as written.
- The committee adopted Legislative Fiscal Division's general and nongeneral fund assumptions and corresponding revenue estimates; preliminary \$314,881,000 ending fund balance; and the estimates that will appear in HJR 2.
- The committee objected to proposed MAR 42-2-845.

CALL TO ORDER AND ROLL CALL

- 00:00:03 SEN. GILLAN called the meeting to order at 7:31 a.m.. The committee secretary called roll. Rep. Jopek and Rep. Nooney were excused.
- 00:03:12 The minutes of the September 15, and 16, 2010 meetings were approved as written.

AGENDA

• DEPARTMENT OF REVENUE REPORTS

Biennial Report on Tax Haven Countries

- 00:04:21 **Dan Bucks, Director, Department of Revenue**, gave a report on tax haven countries (**Exhibit 1**). The Department recommends the addition of Ireland and the Netherlands to the list. The Department also recommended that the language in 15-31-322, MCA, be amended to apply not only to corporations that are incorporated in tax havens but also to companies that are treated as headquartered or managed in the tax havens.

Director Bucks distributed articles about how Google shifts income involving strategies known as the "Double Irish" and the "Dutch Sandwich" (**Exhibit 2**).

• ADMINISTRATIVE RULE REVIEW - Jaret Coles, Staff Attorney

- 00:20:32 Mr. Coles reported on administrative rules (**Exhibit 3**).

• OVERVIEW OF MONTANA OIL AND GAS RELATED TO REVENUE ESTIMATES - David Pursell, Director, Tudor, Pickering, Holt & Co., and Dave Galt, Director, Montana Petroleum Association

- 00:30:22 Dave Galt gave opening remarks and introduced David Pursell, Macro Research, who gave his presentation by phone.

- 00:31:42 David Pursell discussed oil and gas markets and the regional perspective on pricing (**Exhibit 4**).

• ADMINISTRATIVE RULE ACTIVITY - Jaret Coles

- 00:58:24 Mr. Coles continued his presentation on administrative rules.

Questions

- 01:03:08 SEN. ESSMANN asked if the purpose of MAR 42-2-856, Class Eight Personal Property Reporting, is to require reporting business equipment every other year. **Mr. Coles** said that the Department has the discretion to set the requirements for the reporting information.
- 01:03:56 SEN. ESSMANN asked about taxable property being disposed of during the two-year period and why the Department should not tax property that as an entity it no longer has. **Mr. Coles** discussed proposed rule 42-21-158 regarding that issue and 15-8-301, MCA, that also provides that a person or business entity with Class 8 property of \$20,000 or less as determined by the Department would be exempt.

- **ECONOMIC OVERVIEW RELATED TO REVENUE ESTIMATES**

- Overview of Montana labor and business trends - Barbara Wagner, Department of Labor and Industry**

- 01:06:37 Ms. Wagner gave a presentation (**Exhibit 5**) on employment and unemployment trends in Montana as compared to trends in the United States.

- Montana economic outlook - Paul Polzin, Bureau of Business and Economic Research, University of Montana**

- 01:27:05 Mr. Polzin gave a presentation on Montana's Economic Recovery: Making Sense of Mixed Signals (**Exhibit 6**).

- Agricultural outlook - Myles Watts, Department of Agricultural Economics and Economics, Montana State University**

- 01:45:42 Dr. Watts gave a presentation on the outlook of agriculture in Montana (**Exhibit 7**).

- Chamber of Commerce perspective on the state economic outlook - Jon Bennion, Government Relations Director, Montana Chamber of Commerce**

- 02:07:41 Mr. Bennion said he would provide polling data of Montana voters at a later date. Mr. Bennion also discussed the Power-based Poll, or the P-based Poll and the Big Sky Roundup.

- No public comment given**

- **QUESTIONS FROM THE COMMITTEE TO THE PANEL OF SPEAKERS**

- 02:18:42 REP. HOLLANDSWORTH asked Dr. Watts about the input costs in agriculture that have been going up. **Dr. Watts** said that the input costs, particularly when there was a runup on energy prices, did have an influence.

02:20:52 SEN. GILLAN asked for comments on the housing situation and how that affects Montana's economy.

02:25:02 SEN. PETERSON asked how Montana's tax structure will reflect consumer confidence if spending increases.

BREAK

- **INTRODUCTION TO REVENUE ESTIMATES**

Significance of revenue estimates to budget process - Amy Carlson, Legislative Fiscal Analyst, Legislative Fiscal Division, and David Ewer, Director, Office of Budget Program Planning

03:03:45 Ms. Carlson discussed the significance of revenue estimates in the budget process.

Overview of significant assumptions - Terry Johnson, Principle Fiscal Analyst

03:12:48 Mr. Johnson gave a presentation on the revenue estimates (**Exhibit 8**).

Presentation from Office of Budget and Program Planning - David Ewer, Director

04:05:21 Mr. Ewer distributed a handout on the Year to Date Revenue Collections (**Exhibit 9**). He discussed the models that are being used to forecast the state's revenue and compared November's executive revenue forecasts to what the state actually received.

BREAK FOR LUNCH

04:46:29 The meeting reconvened at 12:18 p.m.

Discussion and questions

04:46:59 There was a discussion regarding the value of obtaining data forecasts from Moody's along with using data obtained from Global Insights. The committee asked for comments from Mr. Johnson and Mr. Ewer regarding having another source of data to compare revenue estimates.

LEGISLATIVE FISCAL DIVISION'S RESPONSE - Amy Carlson, Director

05:16:38 Ms. Carlson commented on the data presented by the Legislative Fiscal Division.

Comparison of LFD and OBPP revenue estimates - Terry Johnson

05:27:14 Mr. Johnson compared the revenue estimates from the Legislative Fiscal Division and the Office of Budget Program and Planning (**Exhibit 10**).

Motion by Sen. Erickson

05:33:08 SEN. ERICKSON **moved** to adopt LFD general fund and nongeneral fund assumptions and corresponding revenue estimates.

No public comment given

05:55:12 The motion **passed** unanimously by voice vote.

Adoption of the preliminary ending general fund balance

05:55:43 Mr. Martin discussed the ending fund balance that would be incorporated into the HJR 2. He said that the preliminary ending fund balance is \$314,881,000. That figure will be used by the LFD in tracking the general fund status during the legislative session until the final balance is known.

Motion by Rep. Hollandsworth

06:03:17 REP. HOLLANDSWORTH **moved** to adopt \$314,881,000 as the preliminary ending fund balance. The motion **passed** unanimously on a voice vote.

Adoption of assumptions and corresponding revenue estimates for HJR 2

06:03:51 Mr. Johnson asked for direction regarding the Bush tax reductions.

06:05:55 REP. HOVEN asked what was projected to be the ending fund balance. Mr. Johnson said that the projection was \$284 million at the end of 2011.

Motion by Rep. Hollandsworth

06:06:50 REP. HOLLANDSWORTH **moved** to adopt the extension of the tax cuts.

06:07:06 REP. BARRETT said he is not sure a motion is needed to say that we are going to do what we are already doing, but we might want to express the view of the committee that if once Washington has made its decision that it would be appropriate for the House Tax Committee to build those adjustments in.

06:09:47 **REP. Hollandsworth withdrew his motion.**

Motion by Sen. Peterson

06:10:02 SEN. PETERSON **moved** to adopt the assumptions and corresponding revenue estimates that will appear in HJR 2 according to the LFD assumptions and appoint Rep. Hollandsworth as the sponsor. The motion **passed** unanimously.

BREAK

06:34:34 The meeting reconvened at 2:06 p.m.

- **COMMITTEE RECOMMENDATION ON PROPERTY TAX RELIEF MULTIPLE UNDER 15-30-2336, MCA**

06:35:51 Mr. Martin discussed the property tax relief mechanism under the statewide equalization property tax levies on the principle residence provided in 15-30-2336, MCA (**Exhibit 11**).

- **ECONOMIC IMPACT STATEMENTS ON ADMINISTRATIVE RULES - Jaret Coles**

06:45:12 Mr. Coles summarized the provisions of MAR 42-2-845 and MAR 42-2-846 that are subject to the economic impact statements (Exhibit 3).

- **Department of Revenue's presentation on the Economic Impact Statements of MAR 42-2-845 and MAR 42-2-846 - Dan Bucks, Director**

06:50:16 Director Bucks discussed the intentions of MAR 42-2-845.

06:52:36 **Marla Larson, Tax Policy and Research, Department of Revenue**, discussed the three factors that corporations in Montana use to apportion taxable income: property, payroll, and sales.

Review of the economic impact statements for MAR 42-2-845 and MAR 42-2-846 - Lee Heiman

06:58:31 Mr. Heiman gave a presentation on economic impact statement for proposed rules MAR 42-2-845 and MAR 42-2-846 (**Exhibit 12**).

Questions

07:00:48 SEN. TUTVEDT asked what this rule would allow the Department of Revenue to tax. **Mr. Heiman** said this is corporate income tax and this is the method for apportioning a multi-state or international corporation, and in this case, telecommunications, how we apportion their actual taxable income to the state of Montana.

07:01:41 SEN. TUTVEDT asked how this would follow other states. **Mr. Heiman** said the Department, under 15-31-312, MCA, has the authority to change how those three factors are used, how they can be accounted for, they could be modified to be equal or unequal so one counts more than another. It has been in front of the Supreme Court a number of times on states adjusting the apportionment formula and the Court has said that as long as there is a basis for it, the state can do that.

07:08:24 SEN. ESSMANN said that his concern is the timing of the delivery of the EISs. He said that the committee did not get the statement until yesterday and, regardless of the merit of the rules, the delivery hinders the opportunity for this committee to review the impact of this rule.

07:09:33 **Director Bucks** said that rescheduling the hearing was a process that the

Department was committed to when it agreed to prepare the statements. According to the statute, the requirement is that an EIS be available and filed at the time of the final adoption.

07:14:20 SEN. KAUFMANN asked if there is a comment period following the hearing. **Director Bucks** said that there is a comment period following the public hearing until December 3.

SEN. GILLAN said that there was concern raised about telecommunications and Director Bucks offered to withdraw the rules and to provide an economic impact statement so people would better understand what was going on.

- **Public Comment**

07:17:58 **Mike Green, Attorney, Montana Taxpayers Association**, speaking on behalf of all affected companies, said that the rule is objectionable because it invades the province of this Legislature. The Department of Revenue is using the "relief provision" of UDIPA, 15-31-312, MCA, as a means to reverse expressed statutory law. He asked that the committee members file an objection so that this can be either considered by the Legislature or taken up by Revenue and Transportation Interim Committee at its next meeting and given a full hearing.

07:24:18 **Motion by Sen. Tutvedt**
SEN. TUTVEDT **moved** that the committee object to proposed MAR 42-2-845 relating to telecommunication services for corporation license tax as provided in Montana Code Annotated, 2-4-305(9) and that the committee notify the Department of Revenue in writing of the objection and that the committee will address the objections at the next RTIC committee meeting or by the Legislature whichever is appropriate.

07:24:56 **Discussion**
SEN. ERICKSON said that he will vote against the motion because he has heard nothing today that suggests that the Department has done anything except to get a rule hearing next week.

07:25:33 SEN. PETERSON urged the committee members to support the motion because the alternative to just proposing this rule, doing the EIS, and scheduling a hearing within a matter of a few days, would be to propose legislation and let the public process work.

07:26:59 REP. BARRETT said that he will not vote for the motion.

07:27:39 SEN. GILLAN said that she said she would vote for the motion but wants to make it clear that she still wants the answer of whether this whole issue of what Montana is doing, whether or not it is similar to what other states have done on the issue of legislative jurisdiction.

07:32:44 **The motion passed 7-5 on a roll call vote with Sen. Essmann, Sen. Peterson, Sen. Tutvedt, Rep. Hollandsworth, Rep. Hoven, Sen. Gillan, and**

Rep. Nooney (by proxy) voting yes; Sen. Erickson, Sen. Kaufmann, Rep. Barrett, Rep. Boland, and Rep. Jopek (by proxy) voting no. (Attachment 2)

07:33:00 **Mr. Heiman** said that the committee vote delays the adoption of the rule until the next meeting of this committee or before the expiration of the 6-month period during which the adoption notice must be published. The notice was originally published September 6, and six months later would be March 6. It is possible that without any other action the rule could be adopted on March 6, and if that is the case, the committee should determine whether it is sufficient or not.

Motion by Sen. Erickson

07:34:12 SEN. ERICKSON **moved** that the committee agree that the Economic Impact Statement is sufficient.

Discussion

07:34:25 SEN. ESSMANN said that he will oppose the motion because of the timeliness of the receiving the impact statement.

07:34:50 SEN. GILLAN asked Mr. Heiman how important would it be if the committee took a vote today on the sufficiency of the EIS. **Mr. Heiman** said that there is nothing that he is aware of happening if the committee didn't take a vote on this. If the committee determines that the statement is insufficient and requests that corrections or amendments be made, then a vote on this is not appropriate.

07:38:16 **SEN. ERICKSON withdrew his motion.**

Presentation on MAR 42-2-846 - Jaret Coles

07:40:12 Mr. Coles discussed the amended rules to provide a definition for goodwill and intangible personal property and clarifies reporting requirements in the procedures for disputing intangible personal property deductions that are applied automatically by department rule.

Questions

07:43:41 SEN. GILLAN asked for clarification on the Department's definition and the federal definition of goodwill. **Mr. Coles** said that the federal definition includes net earnings over and above fair return on net tangible assets. The term under the Department rules is more of a booked goodwill or booked in accounting principles versus the broader concept of goodwill.

07:45:29 SEN. GILLAN asked if the Department would comment on Mr. Coles' presentation. **Director Bucks** said that the Montana Legislature did not define goodwill in the property tax statutes. In the context of valuing centrally assessed property, it is important to have clear, consistent, and accountable rules for defining exemptions. Because goodwill is an item that is exempt, and if it is ill-defined, all value will be assigned to goodwill. The proposal is designed to tie it to generally accepted accounting principles or other principles.

07:49:13 SEN. PETERSON asked if Director Bucks has read the letter from PacifiCorp

dated November 18, and would he comment on it.

SEN. GILLAN said there were two PacifiCorp letter. She said that she does not want to go through the letter that discusses the EIS until there is a presentation on the EIS.

ECONOMIC IMPACT STATEMENT ON MAR 82-2-846 - Department of Revenue

- 07:50:54 Director Bucks gave an brief overview of the EIS for MAR 82-2-846.
- 07:55:17 **Dan Dodds, Economist, Tax Policy Research, Department of Revenue,** discussed the purpose of the EIS on proposed rules in Notice 42-2-846 dealing with centrally assessed property **(Exhibit 13)**.
- 08:04:31 Lee Heiman, Staff Attorney, said that he reviewed the EIS according to 2-4-405, MCA, requiring that each of those items be addressed. He said that the EIS did address those items.

- **Public Comment**

- 08:05:48 **Mike Green, Crowley & Flack,** said that according to 2-4-305(7), MCA, if an amendment or supplemental notice of a proposed or final rulemaking is published concerning the same rule, the 6-month time period is calculated from the latest notice. Mr. Green referred to the letter from PacifiCorp and urged the committee to object and take the issue up at its next meeting.
- 08:15:24 SEN. PETERSON asked Director Bucks to respond to the letter from PacifiCorp. **Director Bucks** said that they have reported over several interims to this committee the status of litigation over centrally assessed property. He said that he has copies of the reports that provides an inventory of the litigation that has occurred.
- Motion by Sen. Tutvedt**
- 08:32:50 SEN. TUTVEDT **moved** that the committee object to proposed rule Notice 42-2-846 relating to centrally assessed property as provided in 2-4-305(9), MCA, and that the committee notify the Department of Revenue in writing of its objection and that the committee will address the objections at the next Revenue and Transportation Interim Committee meeting.
- 08:33:49 **The motion failed on a tie roll call vote: Sen. Erickson, Sen. Kaufmann, Rep. Barrett, Rep. Boland, and Sen. Gillan voting no; Sen. Essmann, Sen. Peterson, Sen. Tutvedt, Rep. Hollandsworth, and Rep. Hoven voting yes. (Attachment 3)**

- **SPONSORS FOR LC 0225 AND LC 0226, AND LC 0236**

08:37:00 SEN. ERICKSON will sponsor LC 0225 (reduce withholding tax rate for lottery winnings), REP. HOVEN will sponsor LC 0226 (repeal Capital Company Act), and REP. HOLLANDSWORTH will sponsor LC 0236 (clarify entitlement share payments).

No public comment given

- **SCHEDULING OF HB 658 SALES ASSESSMENT RATIO STUDY**

08:38:09 Mr. Martin said that the Department of Revenue is required to present a report on the sales assessment ratio study as required under 15-7-111, MCA.

08:39:05 **Alan Peura, Deputy Director, Department of Revenue**, said that Mr. Gloudemans expects to have the report done by early to mid-December. The Department can deliver the written report upon its completion and will be pleased to present it as a part of the Department's standard taxation committee training.

08:40:02 SEN. GILLAN said that the committee will not schedule it at this time.

- **OTHER BUSINESS**

08:40:13 SEN. GILLAN thanked everyone for participating in the committee and thanked the staff for their excellent work. SEN. ESSMANN thanked Sen. Gillan for her service as an excellent chair.

- **ADJOURNMENT**

08:42:22 With no further business before the committee, Sen. Gillan adjourned the meeting at 4:13 p.m.

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