Issues in Montana's Taxation of Multi-State Corporations

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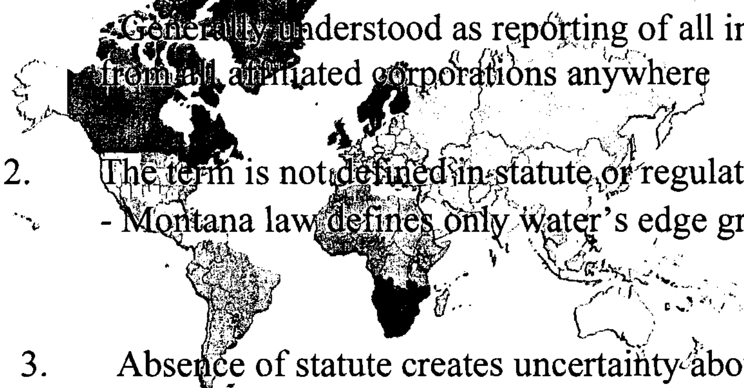
Revenue & Transportation Committee Meeting
February 16 & 17, 2006

Exhibit #19

Current Issues

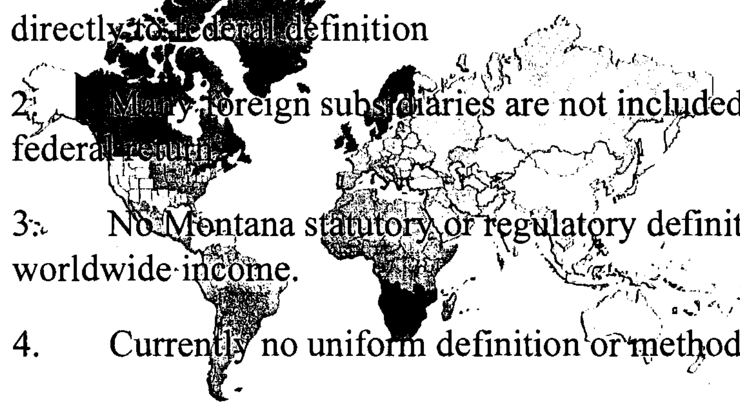
- Need for Worldwide Combined Reporting Statute
- Need for Definition of Worldwide income
- Refinement Apportionable vs. Allocable Income
- Inadequacies of 3 Factor Formula
- National Trend Away From Uniformity
- Confidentiality of Tax Information

Worldwide Combined Reporting



1. Montana requires worldwide combined reporting.
   - Generally understood as reporting of all income from all affiliated corporations anywhere
2. The term is not defined in statute or regulation
   - Montana law defines only water's edge group
3. Absence of statute creates uncertainty about authority to require compliance.

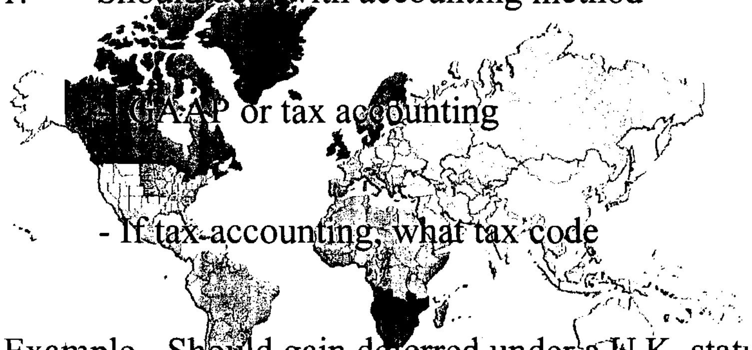
Worldwide Combined Income



1. Montana's definition of Gross Income refers directly to federal definition
2. Many foreign subsidiaries are not included on federal return
3. No Montana statutory or regulatory definition of worldwide income.
4. Currently no uniform definition or methodology
5. Montana should adopt a comprehensive definition of worldwide income

Worldwide Combined Income

1. Should deal with accounting method



- GAAP or tax accounting

- If tax accounting, what tax code

Example- Should gain deferred under a U.K. statute similar to IRC § 1031 be allowed deferral on an affiliate's Montana combined return?

Apportionable vs. Allocable Income

Montana has adopted UDITPA Business/Nonbusiness Definitions

Business Income is apportionable under formulary apportionment

Nonbusiness income is allocated to specific states

Current disagreement among states about the scope of the definitions

Apportionable vs. Allocable Income

Current disagreement among states about the scope of the definitions

Does Business Income definition consist of one or two tests:

Under §15-31-302, MCA- "Business income" means:

income arising from transactions and activity in the regular course of the taxpayer's trade or business

and includes

income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations

Apportionable vs. Allocable Income

Transactional test is the first clause:

income arising from transactions and activity in the regular course of the taxpayer's trade or business

Generally accepted to apply only to normal operational transactions:

Sales of Goods

Provision of Primary Services

Apportionable vs. Allocable Income

Current disagreement focuses on second clause.

Known as the Functional Test:

> income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations

This test applies to unusual transactions.

Apportionable vs. Allocable Income

Nonbusiness Income issues arise about how to treat non-operating income

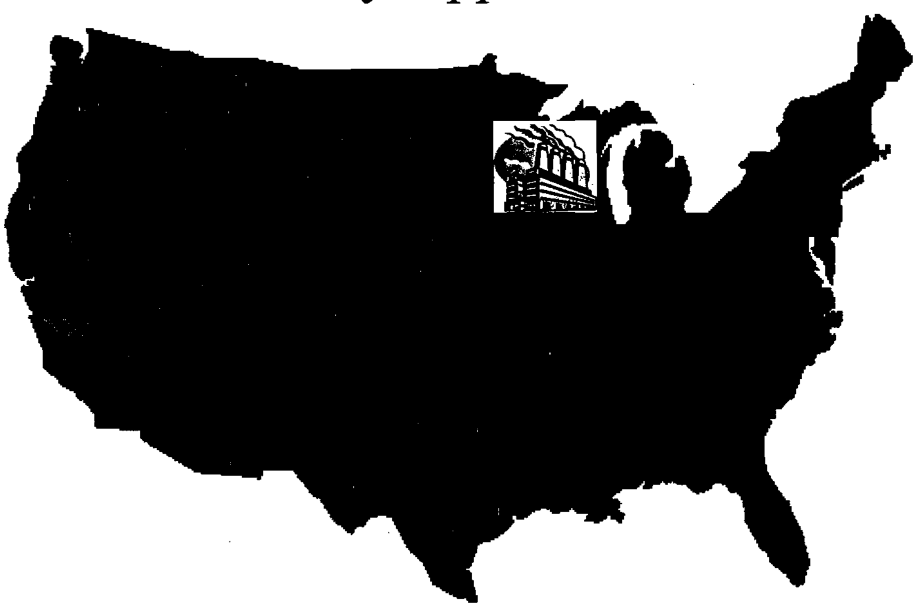
Gains from:

- Sale of Equipment and other assets
- Sale of Divisions or Subsidiaries

Example: If Qwest sells a local Montana exchange, should the gains from that sale be apportionable to all states where Qwest files a return, or allocable to Montana?

Issue: What is the source of the value, and did other states contribute anything to the value for which they should collect a tax?

Formulary Apportionment



Problems in Formulary Apportionment

Three Factors do not necessarily reflect economic realties.

Income apportioned by average of 3 factors:

Sales	Payroll	Property

Based on the assumption that all three factors contribute equally to income.

Problem: There is no economic basis for this assertion.

Problems in Formulary Apportionment

Every industry and even specific businesses earn income differently.

Cable vs. Satellite Television

Three factor formula can put cable at a disadvantage

Cable has substantial physical property

Significant portions are idle

Physical plant is necessary to generate income, but not directly related to amount of income

Example: Upgrade to cables would substantially increase book value, but have no impact on revenue.

Problems in Formulary Apportionment

Property Factor in particular can cause over apportionment of income for certain industries.

e.g.- Broadcast Television Companies

Installation of digital equipment

- federally mandated
- no increase to income
- costs not proportional to income potential

Example: An upgrade to a station serving L.A. costs nearly the same as an upgrade to a Billings, Montana station, but serves a dramatically different number of customers, with different income issues.

Problem: The increase in the Montana property factor is out of proportion to the income impact of the upgrade.

Problems in Formulary Apportionment

Confidentiality of Tax Information

Current lawsuits seeks access to corporation tax information for top 500 corporations by sales.

- Significant Risk of unintended consequences
  - Open records of all corporations
  - Potential for takings lawsuits by corporations
- Would put Montana alone in making the requested information public.
- Impact on Department's ability to audit, and retain copies of corporate records.