



Revenue and Transportation Interim Committee

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58th Montana Legislature

SENATE MEMBERS

GREGORY BARKUS
JERRY BLACK
VICKI COCCHIARELLA
JON ELLINGSON
ROBERT STORY
KEN TOOLE

HOUSE MEMBERS

JOE BALYEAT
EILEEN CARNEY
RONALD DEVLIN
CHRISTINE KAUFMANN
KARL WAITSCHIES
BILL WILSON

COMMITTEE STAFF

LEANNE KURTZ, Research Analyst
JEFF MARTIN, Research Analyst
LEE HEIMAN, Staff Attorney

MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Room 137, State Capitol
July 9, 2004

COMMITTEE MEMBERS PRESENT

Sen. Robert Story, Chair
Rep. Eileen Carney, Vice Chair
Sen. Jerry Black
Sen. Vicki Cocchiarella
Sen. Jon Ellingson
Sen. Ken Toole
Rep. Joe Balyeat
Rep. Ronald R. Devlin
Rep. Christine Kaufmann
Rep. Karl Waitschies

COMMITTEE MEMBERS ABSENT

Sen. Gregory Barkus

STAFF PRESENT

Jeff Martin, Research Analyst
Leanne Kurtz, Research Analyst
Lee Heiman, Staff Attorney
Diane McDuffie, Secretary

VISITORS

Visitors' list (Attachment #1)

COMMITTEE ACTION

- ! Voted to request the drafting of proposed legislation from the Department of Revenue.
- ! Voted to request the drafting of proposed legislation from the Department of

Transportation.

- ! Voted to request the drafting of the following Committee bills:
 - ! revise the notice requirements in a tax deed quiet title action;
 - ! make technical corrections on fund transfers relating to certain vehicle taxes and fees;
 - ! eliminate the requirement the Committee analyze state and local tax revenue from natural gas suppliers; and
 - ! revise law related to signs on secondary roads.

(Tape 1; Side A)

CALL TO ORDER AND ROLL CALL

The meeting was called to order by **Sen. Story** at 8:00 a.m. on Friday, July 9, 2004. The secretary noted the roll (Attachment 2).

Sen. Cocchiarella moved to approve the April 30, 2004, minutes as presented. The motion carried unanimously.

Montana Corporation License Taxes

- **Overview of Montana's corporation license tax**

Brian Staley, Department of Revenue, presented a report on the Overview of Montana Corporation License Tax. (Exhibit 1) Mr. Staley explained how the corporation tax is tied to federal income tax, the starting point for Montana's corporation license tax, Montana additions and subtractions to federal taxable income to arrive at the adjusted federal taxable income.

Mr. Staley discussed corporations operating in more than one state, the UDITPA (Uniform Division of Income for Tax Purposes Act) three factors used to apportion income to Montana, "Unitary" v. "Separate" reporting, and "Water's-Edge" corporations.

- **Confidentiality of Corporate License Tax Information**

Lee Heiman, Staff Attorney, Legislative Service Division, presented an analysis of the Montana Supreme Court decision in *Great Falls Tribune v. Montana Public Service Commission*. (Exhibit 2) Mr. Heiman said the Supreme Court held that a corporation does not have a right of individual privacy; information that is a property right, such as a trade secret or some other type of confidential information, is subject to due process protections against disclosure; any grant of confidentiality must be determined on a case-by-case basis upon submission of a detailed application by the corporation and after independent review by the agency.

Mr. Heiman discussed: how the decision may apply to corporation license tax returns; the confidentiality of federal tax returns (but not tax information from other states); privacy related to pass-through entities; including revising the law related to public documents; state legislative options and possible constitutional changes.

(Tape 1; Side B)

John Alke, representing Montana Taxpayers Association, said that corporations do not have right of privacy under Article II, section 9, but a corporation's property interests, including its interest in proprietary information, can be shielded against public disclosure by other constitutional or statutory provisions. Federal law preempts state constitutional law. The Department of Revenue is obligated to follow 15-31-511, MCA, until adjudicated unconstitutional in court. Mr. Alke predicted the court will likely be forced to step back from a

broad reading of *Great Falls Tribune v. Montana Public Service Commission*, at least in income tax cases.

John Shontz, representing the Montana Newspaper Association, provided two handouts, Comments of the Montana Newspaper Association (Exhibit 3) and Montana Freedom of Information Presentation. (Exhibit 4). Mr. Shontz said the law is very clear and the public has a right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. Mr. Shontz recommended that the Committee examine the privacy of corporation tax returns next interim.

(Tape 2; Side A)

IRIS Update

Don Hoffman, Acting Director, DOR, said the IRIS project is ahead of schedule and under budget. Mr. Hoffman discussed moving forward with phase II with funding saved in the current project.

Committee Review of Department of Revenue legislative proposals

Don Hoffman, Acting Director, DOR, provided a handout on the 2005 Proposed Legislation. (Exhibit 5) Mr. Hoffman discussed three items of proposed legislation:

- request authorization to make final payments to Fast Enterprises, the vendor of IRIS computer system, and to the Board of Investments;
- eliminate confusion as to when a taxpayer may appeal centrally assessed property taxes, and clarify that taxes must be paid under protest; and
- clarify the distribution of oil and gas production tax as intended in HB 748 in the 2003 legislative session.

Randy Wilke, DOR, presented three items of proposed legislation:

- resolve two conflicting statutes regarding the eligibility of land for valuation as "agricultural";
- harmonize the law governing valuation of condominiums for taxation purposes; and
- amend 15-15-103, MCA, to allow a taxpayer or the department to go directly to the state Tax Appeal Board if the county tax appeal board fails to timely hear a property tax appeal.

Shona McHugh, DOR, discussed three items of proposed legislation:

- amend statutes to specify the proper measure of tax benefit recovery when donated property that gave rise to an endowment tax credit is later recovered by the donor;
- provide tax filing and/or tax payment relief, similar to federal law, for active military personnel while on active duty; and
- make changes to certain provisions in Title 15, Chapter 30, MCA, necessitated by the transfer of the unemployment insurance tax from the DOR to the Department of Labor and Industry.

Lee Baerlocker, DOR, discussed two items of proposed legislation:

- if a court case is decided against the state, revise the residency requirement for a retail on-premise liquor license; and
- allow taxpayers to use a credit card to make tax payments for all the tax types collected by the department.

Larry Finch, DOR, presented three items of proposed legislation:

- revise the procedures for distributing Taylor Grazing Act revenues;
- eliminate the requirement to report to the Committee on intangible property and pass-through entities; and
- clarify the wage and salary data series to be used in the calculation of the class 8 property tax exemption "trigger".

MOTION: Senator Cocchiarella moved to request the drafting of all legislation proposed by the Department of Revenue. **VOTE:** Motion carried unanimously.

- **Proposals for Committee requests for legislation**

Lee Heiman, LSD, discussed two requests for proposed legislation LC6011 (Exhibit 6) and LC6010. (Exhibit 7) Mr. Heiman said LC6011 would revise the notice requirements in a tax deed quiet title action, and LC6010 would make technical corrections to the law on fund transfers relating to certain vehicle taxes and fees.

(Tape 3; Side A)

MOTION: Senator Cocchiarella moved to request the drafting of LC6010 and LC6011 as Committee bills. **VOTE:** Motion carried unanimously.

Jeff Martin, LSD, discussed a request for proposed legislation LC5000. (Exhibit 8). Mr. Martin said that the bill would eliminate the requirement that the Revenue and Transportation Committee analyze the amount of state and local tax revenue from previously regulated natural gas suppliers.

MOTION: Representative Devlin moved to request the drafting of LC5000 as a Committee bill. **VOTE:** Motion carried unanimously.

Sen. Black requested a review of the definition of one ownership related to agricultural land. (The Department of Revenue will discuss this at the September meeting.)

Personal Property Tax Update

Jeff Martin, LSD, handed out a spreadsheet prepared by the DOR that was presented to the Tax Reform Committee. (Exhibit 8) The spreadsheet shows by property class type what the change in total liability would be if the class eight trigger were met and also changes in total property taxes collected.

Randy Wilke, DOR, will work with Committee staff to present trends for different types of business equipment at the next meeting.

Committee Review of Vehicle Leasing Preference Guidelines Under HB 602

John Blacker, Montana Department of Transportation, discussed the memo from the Office of Budget and Program Planning (OBPP) regarding leasing preference guidelines required by HB 602 from the 2003 session. (Exhibit 9) Mr. Blacker said that HB 602 requires the OBPP and Motor Pool to develop leasing preference guidelines. The guidelines are intended to encourage appropriate, cost-effective use of light vehicles by state agencies. The leasing preference guidelines (Exhibit 10) are being used in executive program planning submissions for the 2007 biennium.

No action is needed on this issue.

Instruction to Staff

Agenda items for the September meeting will include:

- analysis of corporation income taxes
- formal approval of Committee bill draft requests
- review of trends in class eight property
- information on one ownership for agricultural land
- update on whether class eight property tax trigger may be met this year

State General Fund Revenue Update

Terry Johnson, Principal Analyst, LFD provided a report on the General Fund Revenue Update Fiscal 2004. (Exhibit 11) The report consists of the following sections: 1) fiscal 2004 general fund revenue outlook including a discussion of selected general fund revenue sources; 2) significant economic trends that illustrate why some revenue collections have changed from the HJR 2 estimates; and 3) a summary of revenues collected so far this fiscal year.

Mr. Johnson said that based on information recorded through the end of May 2004, total general fund receipts for fiscal 2004 were \$1,067.7 million. This compares to \$962.6 million collected during the same period in fiscal 2003. Based on data through the end of May 2004, total general fund revenues may exceed HJR 2 revenue estimates by \$40.2 million. The tax sources with significant changes from the HJR 2 estimates are individual income taxes, oil and gas production taxes, video gambling taxes, and inheritance taxes. A full report on the financial status of the general fund account for fiscal 2004 will be released in October.

(Tape 3; Side B)

Activities of Western Transportation Institute (WTI)

Steve Albert, Director, WTI, handed out a folder of information. (Exhibit 12) Mr. Albert said that the mission of WTI at Montana State University-Bozeman is to "advance rural transportation through research and education." WTI was founded in 1994 by the Montana Department of Transportation and the California Department of Transportation, in cooperation with Montana State University-Bozeman. WTI's research focuses on rural applications of advanced technology, transportation system-wildlife interactions, weather and winter mobility, highway infrastructure design and maintenance, public transportation, and mobility. WTI conducts research and demonstration projects in more than 30 states. Located in the College of Engineering, WTI has an annual budget exceeding \$6.0 million and a 72 person multidisciplinary staff of students, professionals and associated faculty.

(Tape 4; Side A)

Safety Report Update

Jim Currie, Deputy Director, Montana Department of Transportation, provided an updated list of traffic fatalities for April and May 2004. (Exhibit 13) According to the report, alcohol was a factor in 4 of the 11 fatalities.

Committee Review of Department of Transportation (MDT) Legislative Proposals

Jim Currie, Deputy Director, MDT, discussed MDT's proposed legislation for the 2005 session. (Exhibit 14)

- prohibit possession of an open alcoholic beverage container in a motor vehicle;
- establish a uniform statute of limitations for motor fuels assessments by MDT;
- simplify the record keeping responsibilities of contractors to insure consistency and provide guidance;
- transfer fleet registration duties to the Department of Justice from MDT;
- allow permanent registration of IRP registered trailers or semitrailers;
- change the makeup of the design-build advisory board by reducing the membership of the construction representatives and the consulting engineer representatives from two to one;
- clarify when and what costs are allowable to a landowner in a contested condemnation case; and
- eliminate the requirement that MDT establish a system to collect and redistribute local option gas taxes for off-road uses to those communities that adopt the tax.

MOTION: Rep. Devlin moved to request the drafting of all legislation proposed by the Montana Department of Transportation. **VOTE:** Motion carried unanimously.

(Tape 4; Side B)

Jim Currie, Deputy Director, MDT, discussed the outdoor advertising laws on secondary roads. **MOTION:** The motion was made to draft legislation as a committee bill to grandfather in leaving signs in rights of way. **VOTE:** Motion passed unanimously.

Dick Turner, Chief, Multimodal Planning Bureau, MDT handed out a briefing on Phase I of Montana Branch Line Study. (Exhibit 15)

Ken Withers, Vice President, RL Banks & Associates, handed out the Montana Branch Line Study Plentywood-Scobey and Glendive Circle submitted by R.L. Banks & Associates, Inc. (Exhibit 16)

(Tape 5; Side A)

Reports from Tax Study Committees

- **Tax Exemption Committee - Rep Balyeat**

- **Property Reappraisal Study Committee - Rep. Devlin**

- **Tax Reform Study Committee - Jeff Martin**

Other Business

The next meeting is September 9. There being no further business, the meeting adjourned at 4:10 p.m.

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