



Revenue and Transportation Interim Committee

62nd Montana Legislature

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TO: Revenue and Transportation Interim Committee

FROM: Megan Moore, Legislative Research Analyst

RE: Proposed Bill Draft Requests to Clarify, Simplify, or Repeal Certain Tax Provisions

DATE: July 9, 2012

The 2011-2012 Revenue and Transportation Interim Committee (RTIC) work plan indicates that Committee staff may identify sections of law to be reviewed by the Committee for legislative action. The purpose of this memo is to discuss certain provisions of law that could be clarified, simplified, or eliminated by legislation. The Committee may want to consider requesting bill drafts to deal with the following:

- correct the distribution to Missoula tax increment financing district (15-1-121, MCA);
- change "corporation income tax" to "corporation license tax" (15-6-138, MCA);
- remove obsolete references to the local government severance tax (15-16-603, 15-36-315, 20-9-507, 20-10-144, and 20-10-146, MCA); and
- repeal Title 15, chapter 24, part 24, dealing with class eight property tax reductions for value-added manufacturing.

Correct the Distribution to Missoula Tax Increment Financing District (15-1-121, MCA)

Section 15-1-121(8)(b) lists entitlement share payments for tax increment financing (TIF) districts. The 2011 Legislature enacted two bills amending these payments: House Bill No. 495 (HB 495) and Senate Bill No. 372 (SB 372). SB 372, among other things, eliminated the entitlement share payments to expired TIFs. The payment to Missoula TIFs 1-1B and 1-1C amounted to a combined \$1,100,507. SB 372 removed the expired TIF 1-1B, leaving a payment of \$250,279 for TIF 1-1C.

HB 495 reduced the entitlement share payments to all TIFs by 10% and removed the references to expired TIFs, including Missoula TIF 1-1B. The entitlement share payment in HB 495 for Missoula TIF 1-1C is listed as \$225,251, which includes a 10% reduction of the \$250,279 payment specified in SB 372.

Both HB 495 and SB 372 became law with different entitlement share payment amounts and with no coordination instructions addressing the different payment amounts. The amount selected by the Code Commissioner to appear in the Montana Code Annotated was the higher amount of \$250,279.

The Committee may wish to request a committee bill to change the entitlement share payment to Missoula TIF 1-1C to \$225,251 to reflect the intent of HB 495 to reduce the payments by 10%.

Change "Corporation Income Tax" to "Corporation License Tax" (15-6-138, MCA)

Senate Bill No. 372 (Ch. 411, L. 2011) amended section 15-6-138 by establishing a two-tier rate system for business equipment taxes. Subsection (4)(a) contains a provision that lowers the tax rate if the revenue collected from certain sources exceeds the amount collected in the previous fiscal year by more than 4%. The revenue sources listed are the individual income tax and the corporation income tax. Subsection (4)(b) contains directions about how to certify tax collections to determine whether the 4% threshold is met and mentions the "corporation income tax" in that context.

The references to "corporation income tax" in subsections (4)(a) and (4)(b) appear to be erroneous and should read "corporation license tax" instead. The corporation license tax is established in Title 15, chapter 31, part 1, and is a "license fee for the privilege of carrying on business in this state."¹ Corporation license tax collections in 2010 were nearly \$88 million. The corporation income tax, on the other hand, is established in Title 15, chapter 31, part 4. This tax is levied on corporations that receive Montana source income but do not engage in business in the state. For example, a C. corporation may own a share in a partnership organized as an LLC operating in Montana. The C. corporation must pay the corporation income tax on the income from the LLC (if the LLC does not pay the tax for its owners). Corporation license tax collections are therefore much higher than corporation income taxes and likely the license tax is intended to be referenced in sections 15-6-138(4)(a) and 15-6-138(4)(b).

The consideration of whether the individual income tax and corporation income tax collections exceed the previous fiscal year's collection by more than 4% begins with fiscal year 2013. The Department of Revenue has indicated its intent to assume that the Legislature intended to refer to the corporation license tax and not the corporation income tax.²

The Revenue and Transportation Interim Committee may wish to request a bill draft to correct the references to the "corporation income tax" in sections 15-6-138(4)(a) and 15-6-138(4)(b).

¹Section 15-31-101(3).

²E-mail from Dan Bucks, Director of Department of Revenue, to Susan Fox, Director of Legislative Services Division, Oct. 13, 2011.

Remove Obsolete References to the Local Government Severance Tax (15-16-603, 15-36-315, 20-9-507, 20-10-144, and 20-10-146, MCA)

The 1995 Legislature simplified taxes paid on the production of oil and natural gas by replacing a number of taxes with the oil and natural gas production tax. One of the taxes consolidated into the oil and natural gas production tax was the local government severance tax.³ References to the local government severance tax still exist in the code sections listed above.

The Revenue and Transportation Interim Committee should consider whether to remove the obsolete references to the local government severance tax in 15-6-603(1)(d), 15-36-315(3), 20-9-507(1), 20-10-144(3)(g), and 20-10-146(2)(b)(iii).

Repeal Title 15, Chapter 24, Part 24 Dealing With Class Eight Property Tax Reductions for Value-Added Manufacturing

According to section 15-24-2401, the purpose of Title 15, chapter 24, part 24, is to provide for a decrease in taxable value "for a 7-year period for qualifying personal property of expanding industries that process Montana raw materials or use Montana semifinished products in manufacturing." Section 15-24-2403(7)(a) identifies the decrease in the taxable rate for class eight property as "a percentage difference between a possible low rate of 3% and a high rate of the existing class eight property tax rate." The highest tax rate for class eight property provided for in section 15-6-138(3)(b) is 3%. Since the low rate identified in section 15-24-2403(7)(a) is the same as the rate established in section 15-6-138(3)(b), Title 15, chapter 24, part 24, has no effect.

The Committee may want to request draft legislation to remove the section of law addressing property tax reductions for value-added manufacturing. Such a draft would entail repealing sections 15-24-2401 through 15-24-2405.

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³Department of Revenue, "Biennial Report of the Montana Department of Revenue," July 1996 to June 30, 1998, p. 18.