Sponsor rebuttal fiscal note. SB 371
Sen. Neumann

Fiscal note rebuttal for SB 371: A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING TAX INCENTIVES FOR THE SALE OF MONTANAPRODUCED GOODS; PROVIDING A SUBTRACTION FROM INDIVIDUAL INCOME AND CORPORATE INCOME TAXES FOR THE INCOME FROM MONTANA-PRODUCED GOODS; PROVIDING A DEFINITION AMENDING SECTIONS 15-30-2120 AND 15-31-113, MCA; AND PROVIDING AN APPLICABILITY DATE."

<u>This fiscal note draws erroneous assumptions that were specifically addressed in the bill.</u>

The bill defines Montana produced goods on p 7 lines 19-25:

(4) For the purposes of this section, "Montana-produced goods" means articles identified by the 20 vendor as planted, cultivated, grown, harvested, raised, collected, processed, or manufactured in the state, 21 including but not limited to: 22 (a) food and drink used for humans or other animals; 23 (b) devices, instruments, fine arts, musical arts, crafts, and clothing; and 24 (c) any other good produced by a small business that is independently owned and operated 25 primarily within the state.

2. The assumption that the subtraction could apply to "all goods grown, produced, manufactured or sold in Montana" ignores the stipulation on P7 line 24-25: (c) any other good produced by a small business that is independently owned and operated 25 primarily within the state.

That stipulation makes clear that not all meat, grain, diesel fuel, manufactured products would qualify. The intent is to include goods made by Montana small businesses, sold in Montana.

3. The assumption that this bill would "allow subtractions from income generated at the farm, producer, manufacturer and wholesaler level even if the final product isn't sold to a consumer in Montana" is incorrect, as stated on page 7, line 24:

... "produced by a small business that is independently owned and operated in the state." MCA 33-27-103 defines small business: (4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on April 20, 1987.

That definition rules out large businesses. The intent is to offer 50% of the net income from the sale of Montana-produced food and goods that was generated at the point of sale by the retailer to the ultimate consumer.

4. The calculations in this assumption are based on the "total production and sale" of all agricultural products, which is far outside the scope of the bill.

5. Pass-through entities are not able to claim this subtraction.

6. The bill only addresses Montana-produced goods produced by small businesses that are independently owned and operated within the state. Nowhere are services mentioned.

7. The description of the work required to verify the small number of Montana retailers who will be in a position to apply for this subtraction as requiring “detailed auditing and verification” is implausible. Retailers already have methods for taking inventory, and adding a tag for “Montana produced”. The DoR does not audit every single tax return. There will be a subset of retailers who claim the subtraction, and a subset of those will be selected for audit. At audit, the retailer will provide documentation from the vendor, stating that the product was Montana- produced.

Technical concerns:

Small business is defined in the bill on page 7, line 24: ... “produced by a small business that is independently owned and operated in the state.” MCA 33-27-103 defines small business: (4) "Small business" means any commercial or nonprofit enterprise qualified to do business in the state and qualified as a small business under the criteria established by the federal small business administration on April 20, 1987.

The term “vendor” is defined __________

2. The subtraction will not apply to all tiers of sales (production to retail). It will apply to sale of Montana-produced food and goods that was generated at the point of sale by the retailer to the ultimate consumer.

3. The Court's interpretation of the Commerce Clause regarding taxation is not as black and white as this report suggests. First, the United States Supreme Court's interpretation of the Commerce Clause, both generally and in relation to the State's power to tax interstate commerce, has evolved substantially and fitfully over the years. There is nothing to prevent the current Supreme Court, which has an enthusiasm for overturning long standing precedent in the name of "State's rights," from overturning another precedent. See, e.g., Dobbs v. Jackson Women's Health Organization, 597 U.S. ___ (2022) (returning the right to regulate abortions to the states). More relevantly, the Court's attitude toward state taxation of interstate commerce has alternated between a blanket prohibition and varying degrees of accommodation. In 1977, the Court fashioned a four-part test that governs the validity of state taxes under the Commerce Clause. Today, a tax will survive a Commerce Clause challenge if it (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to services provided by the state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977). As such, the Court has rejected the interpretation that state taxes levied on interstate commerce are per se invalid. Id.; see also Washington Revenue Dept. v. Association of Wash. Stevedoring Cos., 435 U.S. 734 (1978).