

## Talking Points on HB 833 (Secs 2-8), formerly SB 138, Insurance “Stuffing”

- First, it bears mentioning that the representatives and members of Montana’s insurance industry strongly support compliance with all state and federal tax laws.

- The proponents of the bill erroneously state that Montana insurers receive “preferential tax treatment.” Insurers that write in Montana are subject to a 2.75% tax on premiums written in the state. Unlike corporate tax, which is applied to *net* income, the Montana premium tax is more akin to a tax on gross revenues. This results in insurance companies paying a significantly higher tax in Montana than their corporate counterparts. In fact, in 2005, the insurance industry paid \$61 million in premium taxes to Montana. Using figures from the property and casualty insurers, it is estimated that the premium tax generated over three times the tax revenue than similar, noninsurance entities would have paid under conventional, net profit, formulae. Finally, it is important to note that Montana’s 2.75% premium tax rate is already substantially higher than the national average, and the highest of all of our neighboring states, except Idaho, which is the same.

- SB 138, which now exists verbatim in HB 833 (Sections 2 through 8), is an attempt to place California case law into Montana statute to address a “problem” that cannot be demonstrated to exist in Montana. The California problem arose out of a California statute that the California Supreme Court ruled to be unconstitutional under the California constitution.

- Congress has eliminated the incentive to engage in the practice that the bill addresses by amending the exemption in IRC Sec. 501(c)(15) to apply to companies with less than \$600K *gross receipts* rather than the previous exemption of \$350K *in premiums*.

- SB 138 imposes significant and unnecessary reporting burdens on all legitimate insurers in Montana, *and* on any legitimate corporation which happens to have an interest in an insurance company. The DOR already has access to the revenue information of both corporations and insurers through their respective regulators here and in other states. Moreover, the bill delegates to the Montana DOR expansive rulemaking authority with legislative guidelines that would amount to dual regulation of what is already the most highly regulated industry in the State.

- The bill will adversely affect the existing tax treatment of legitimate corporations that have an affiliation with an insurance entity, including conflicting dividend deduction treatment, ownership interests, and responding to retroactive applicability of the proposed law.

- When asked for details that are the basis of the problem in Montana, the DOR indicated they could not be discussed due to privacy rights of the offending companies. It is a certainty, however, that no industry representative who testified against the bill is aware of any legitimate insurance company engaged in the activity that the bill attempts to address. In fact the fiscal note states and the DOR testified in committee that only 2 to 4 unidentified companies would be implicated in Montana with only a speculation of the amount of revenue that may be generated. The bill is an overbroad solution to an inadequately defined or nonexistent problem.