

November 9, 1992 LB 1, 5

Coordsen's amendment and we will go on from there with a bill which has a greatly reduced fiscal impact.

PRESIDENT MOUL: Thank you, Senator Lamb. Senator Hall.

SENATOR HALL: Thank you, Madam President and members. Again, I rise in opposition to the Coordsen amendment and want to speak to the issue that is raised by Senator Lamb in relation to what is the surcharge. Others have raised it too as a property tax, if you will, and I would argue that it is absolutely not a property tax. What it amounts to is an excise tax and our own Supreme Court has declared in other decisions, in particularly State v. Gaylen, they have said that an excise tax, using the term in its broad meaning as opposed to a property tax, includes taxes sometimes designated by statute or referred to as privilege taxes, license taxes, occupation taxes, and business taxes; that on a number of occasions this court has similarly recognized that a tax upon the doing of an act is an excise tax and not a property tax. What the court was saying there is that by using depreciation, in other words exercising the act of being able to write off depreciation on one's income tax, you have then a tax on that act which is an excise tax, and that is exactly what the surcharge on depreciation is. It is not a property tax. As you all know, in Bahensky the court never even addressed the issue. They skirted the issue for the simple fact that they didn't want to knock it down because there was nothing to knock down. They didn't have to answer that question. They knew that the case was a moot one because of their own previous decisions that would have declared the surcharge to be an excise tax, and that is exactly what we have here. We don't have a property tax by any stretch of one's imagination. It is an excise tax on the privilege of declaring depreciation under the federal income tax system. And, yes, then we tax that as do a couple of other states in some form or fashion across the country, not directly similar to this, but we do have an excise tax in this surcharge, one that raises approximately \$50 million, one that I believe does not hamper the economic development of the state. As a matter of fact, I think the State Chamber of Commerce is on-line being in support of LB 1. This is not an issue that will kill the economic initiatives in this state by any stretch of the matter. Frankly, if you want to look at putting a damper on an already stagnant economy move to some of the other issues that have been talked about, such as LB 5. Those kinds of things we all know will dramatically impact this state and would move us into the very top few in