

HOUSE BILL 983

Introduced by Bardanouve

3/08	Introduced
3/08	Referred to Taxation
3/09	First Reading
3/11	Fiscal Note Requested
3/16	Fiscal Note Received
3/19	Fiscal Note Printed
3/20	Hearing
3/27	Tabled in Committee

1 House BILL NO. 983
 2 INTRODUCED BY Richard C
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON THE
 5 SALE OF SOFT DRINKS FOR THE ACQUISITION, DEVELOPMENT,
 6 OPERATION, AND MAINTENANCE OF STATE PARKS; PROVIDING
 7 PENALTIES; AND PROVIDING EFFECTIVE DATES."
 8

9 STATEMENT OF INTENT

10 A statement of intent is required for this bill because
 11 [section 9] requires the department of revenue to adopt
 12 rules to implement the tax imposed on soft drinks. It is the
 13 intent of the legislature that the rules promulgated by the
 14 department should address, at a minimum, the following:

- 15 (1) forms and procedures for registering with the
- 16 department as a bottler;
- 17 (2) forms and procedures for filing the precollected
- 18 tax imposed by [section 2]; and
- 19 (3) other matters that the department considers
- 20 necessary for the effective and efficient implementation and
- 21 enforcement of [sections 1 through 9].

22
 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Definitions. As used in
 25 [sections 1 through 9], the following definitions apply:

1 (1) "Bottler" is a person who imports or manufactures
 2 soft drinks or who mixes, blends, or dilutes syrup or
 3 concentrate with carbonated water or other liquids into soft
 4 drinks for sale or distribution for human consumption in
 5 Montana.

6 (2) "Department" is the department of revenue
 7 established in 2-15-1301.

8 (3) "Soft drink" is:

9 (a) a nonalcoholic, carbonated beverage that is
 10 imported or is manufactured, mixed, blended, or diluted by a
 11 bottler for human consumption and distributed by a bottler
 12 in:

13 (i) a disposable or returnable container intended for
 14 delivery to the consumer for sale in Montana by a retailer
 15 without further mixing, blending, or diluting; or

16 (ii) a disposable or returnable vessel from which the
 17 beverage is dispensed by a retailer without further mixing,
 18 blending, or diluting for onsite consumption; or

19 (b) a nonalcoholic syrup or concentrate used by a
 20 retailer to mix, blend, or dilute with carbonated water or
 21 other ingredients to produce a beverage that may be
 22 dispensed for onsite consumption.

23 NEW SECTION. Section 2. Tax -- sale of soft drinks.

24 (1) There is levied, imposed, and assessed upon soft drinks
 25 sold in Montana, except soft drinks transported out of



1 Montana for retail sale and consumption outside of Montana,
2 a tax of:

3 (a) 0.068 cent an ounce on beverages included in
4 [section 1(3)(a)]; and

5 (b) 52 cents a gallon on syrup or concentrate included
6 in [section 1(3)(b)].

7 (2) A tax paid under this section is a direct tax on
8 the retail consumer, precollected only for the purpose of
9 convenience. Tax paid by any other person is an advance
10 payment and must be added to the price of the soft drinks
11 and recovered from the ultimate consumer.

12 NEW SECTION. Section 3. Bottler to precollect tax. (1)
13 The tax imposed by [section 2] must be precollected and paid
14 by the bottler to the department prior to the sale of the
15 soft drinks either to a retailer or to other persons for
16 consumption.

17 (2) The bottler shall report to the department at the
18 end of each calendar quarter the amount precollected during
19 that quarter attributable to the sale of soft drinks. The
20 report is due within 30 days following the end of the
21 calendar quarter and must be accompanied by a payment in an
22 amount equal to the tax required to be precollected under
23 subsection (1).

24 NEW SECTION. Section 4. Unlawful sales -- penalty. (1)
25 A person may not offer to sell soft drinks subject to the

1 tax imposed by [section 2] without precollecting the tax as
2 provided in [section 3].

3 (2) Violation of this section is a misdemeanor
4 punishable by a fine of not more than \$500 or imprisonment
5 for not more than 6 months.

6 NEW SECTION. Section 5. Audits -- records. (1) The
7 department may audit the books and records of any bottler to
8 ensure that the proper amount of tax imposed by [section 2]
9 has been paid. An audit may be done on the premises of the
10 bottler or at any other convenient location.

11 (2) The department may request that the bottler provide
12 the department with books, ledgers, registers, or other
13 documents necessary to verify the correct amount of tax.

14 (3) The bottler shall maintain and have available for
15 inspection by the department books, ledgers, registers, or
16 other documents showing the collection of the tax for the
17 preceding 5 years.

18 (4) Except in the case of a bottler who, with intent to
19 evade the tax, purposely or knowingly files a false or
20 fraudulent return violating the provisions of [sections 1
21 through 9], the amount of tax due under any return must be
22 determined by the department within 5 years after the return
23 is made, and the department thereafter is barred from
24 revising a return or recomputing the tax due. A proceeding
25 in court for the collection of the tax may not be instituted

1 unless notice of any additional tax is provided within the
2 5-year period.

3 (5) An application for revision may be filed with the
4 department by a bottler within 5 years from the original due
5 date of the return.

6 NEW SECTION. Section 6. Registration number --
7 application to department. (1) A bottler shall apply to the
8 department for a registration number.

9 (2) The application must be made on a form provided by
10 the department.

11 (3) Upon receipt of the completed application, the
12 department shall assign a registration number to the
13 bottler.

14 NEW SECTION. Section 7. Failure to pay or file --
15 penalty -- interest. (1) A bottler who fails to file the
16 report required under [section 3] must be assessed a penalty
17 of 2% of the tax that should have been precollected during
18 the calendar quarter. Upon a showing of good cause, the
19 department may waive the penalty.

20 (2) A bottler who fails to make payment or fails to
21 report and make payment as required under [section 3] must
22 be assessed a penalty of 2% of the amount that was not paid.
23 Upon a showing of good cause, the department may waive the
24 penalty.

25 (3) If a bottler fails to file the report required

1 under [section 3] or if the department determines that the
2 report understates the amount of tax due, the department may
3 determine the amount of the tax due and assess that amount
4 against the bottler.

5 (4) The amount required to be paid under [section 3]
6 accrues interest at the rate of 1% a month or part of a
7 month from delinquency until paid.

8 (5) All penalties and interest imposed and collected by
9 the department under this section must be deposited in the
10 state special revenue fund for the acquisition, development,
11 operation, and maintenance of sites and areas described in
12 23-1-102.

13 NEW SECTION. Section 8. Bottler's discount -- refunds
14 -- disposition of taxes. (1) The tax imposed by [section 2]
15 that is paid by the bottler must be paid in full to the
16 department, less 5% defrayment for the bottler's collection
17 and administrative expenses.

18 (2) If the soft drinks become unsalable, refunds of the
19 tax paid may be made as provided in 15-1-503.

20 (3) The department shall deposit the tax paid in the
21 state special revenue fund for the acquisition, development,
22 operation, and maintenance of sites and areas described in
23 23-1-102.

24 NEW SECTION. Section 9. Department to adopt rules. The
25 department shall adopt rules necessary to implement the

LC 1871/01

1 provisions of [sections 1 through 9].

2 NEW SECTION. **Section 10.** Codification instruction.

3 [Sections 1 through 9] are intended to be codified as an
4 integral part of Title 15, and the provisions of Title 15
5 apply to [sections 1 through 9].

6 NEW SECTION. **Section 11.** Effective dates. (1) [Section
7 9] and this section are effective on passage and approval.

8 (2) [Sections 1 through 8] are effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0983, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a tax on the sale of soft drinks for the acquisition, development, operation, and maintenance of state parks; providing penalties; and providing effective dates.

ASSUMPTIONS:

1. Per capita soft drink consumption in Montana is the same as the national average: 50 gallons per year.
2. The population in Montana is estimated to be 804,000 in FY92 and 808,000 in FY93 (OBPP).
3. The proposal places a tax of \$0.00068 an ounce on carbonated beverages, and a tax of \$0.52 per gallon of syrup or concentrate. One gallon of syrup makes 6 gallons of soft drink so the two taxes are equivalent.
4. Total collections under this proposal, less a 5% defrayment to bottlers, are deposited in the state special revenue fund for the acquisition, development, operation, and maintenance of state parks.
5. The soft drink tax is effective July 1, 1991. The tax is to be paid quarterly and there is a one month time lag in collections resulting in 3 quarters worth of collections for FY92.
6. The proposal would require an additional .25 FTE (Grade 8) to administer the collections for each year of the biennium and an additional .10 FTE (Grade 16) for computer development for FY92 at a total personal services cost of \$8,513 in FY92 and \$4,873 in FY93. The operating costs associated with these positions would be \$1,895 in FY92 and \$325 in FY93. Equipment costs would be \$4,430 in FY92.
7. Collections, under the proposal, less a 5% defrayment to bottlers, would be \$2,482,350 in FY92 and \$3,340,595 in FY93.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 3-16-91


FRANCIS BARDANOUE, PRIMARY SPONSOR DATE
3-19-91

Fiscal Note for HB0983, as introduced

HB 983-1

FISCAL IMPACT:
Department of Revenue:

	FY '92			FY '93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
F.T.E.	0	0.35	0.35	0	0.25	0.25
Personal Services	0	8,513	8,513	0	4,873	4,873
Operating Costs	0	1,895	1,895	0	325	325
Equipment	0	4,430	4,430	0	0	0
Total	0	14,838	14,838	0	5,198	5,198
<u>Funding:</u>						
General Fund	0	14,838	14,838	0	5,198	5,198
<u>Revenues:</u>						
Soft Drink Tax (02)	0	2,482,350	2,482,350	0	3,322,150	3,322,150
General Fund Impact			(14,838)			(5,198)

HB 983-1