

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

February 23, 1979

The thirty-fifth meeting of the committee was called to order on the above date in Room 415 of the State Capitol building by the Chairman.

ROLL CALL: Roll call found all the members present but Sen. Roskie, who was excused. Witnesses providing testimony are listed on attached Register.

CONSIDERATION OF SENATE BILL 445: Senator Lowe introduced amendments for his bill, see Exh. #1, attached, and further explained his bill. He said the legislation did two things: changes the total cigarette tax from 12¢ a pack to a 50% levy which equals 12¢ at present market prices. It also puts the tax into the Long Range Building Fund to insure the same percentage would continue into the fund. He said he believes it is a sales tax and a percentage of it, 62.5%, should go into the LRB. He said the fund started at 9¢ and through the years was added to until it is now at 12¢. Some of that increase went to pay off the Veterans Honorarium which will soon be paid. He felt that with inflation increasing, building costs had also increased and he believed the tax on cigarettes should be on a percentage as well, to keep up with rising costs.

The Chairman called for other proponents and as there were none, permitted testimony by the opponents. Jerome Anderson was the first to speak and he presented a copy of his testimony, see Exh. #2, attached. He cited enforcement problems with the different cigarette sizes, prices. He also mentioned illegal sale of cigarettes in the state and thought this would cause this illegal traffic to increase as well. Bob McGee of the Department of Revenue also appeared as an opponent and cited a number of administrative problems he anticipated including the difficulties of checking each wholesaler, also problems with different stamps necessary as the tax changed.

Following their remarks Senator Lowe was permitted to close and said he did not feel the matter of the 'bootleg' cigarettes was a very serious one. He felt instead it was a matter of whether the committee felt the sales tax, as he referred to it, should vary with inflation as everything else does. It was mentioned that the price of cigarettes had increased about 80% in the past 7 years; if the tax had been proportionate it would have increased to about 37 to 40¢ per package in that time. There followed some additional discussion and hearing then closed.

CONSIDERATION OF SENATE BILL 521: Senator MacCallum introduced his bill briefly, as this was a committee bill drawn up following the hearing of SB220 regarding the use of a Hearings Officer to hear cases before a hearing before the State Tax Appeals Board. He asked Researcher Terry Cohea to further explain the bill since she had drafted the instrument. Mrs. Cohea explained

that the bill extended the period of time in which the County Tax Appeal Boards may meet to 60 days after the Department of Revenue has mailed appraisal notices. It would also permit taxpayers to file applications for hearings for 15 days after receiving those notices, and provides that a taxpayer's application be granted if the CTAB refuses to hear the application.

Helen Peterson of the STAB was also present and was called upon to contribute to the discussion. She thought there might be problems and also thought it could be very costly. She cited a cost of \$125 per day for every day the CTAB's meet and this could mean a great deal to some counties. She also wondered if the board members would continue to serve if the time were extended.

Discussion continued and members asked about changing the period during which the boards met, rather than extending them. The point was also made to insert the word 'timely' when a taxpayer made his application in order to insure that he make an effort to file such application immediately upon receipt of his appraisal notice. The Chairman called on Dennis Burr of the Department who said he didn't believe it would cost anymore for the counties to meet a short time longer than for the STAB to meet and suggested an amendment to the bill, referred to above, using the word 'timely' application. He also stated they expected reappraisal notices to go out sooner this year. Following brief discussion, hearing on SB521 then ended.

CONSIDERATION OF SENATE BILL 433: Senator Norman, sponsor of this bill, introduced his bill very briefly, introduced a letter as testimony, see Exh. #3, and then introduced Dr. Joseph Horvath who gave lengthy testimony concerning the reclaiming of Montana's soils through application of living, or organic matter. He said the bill calls for revitalizing Montana's soil and he mentioned the loss of about 30,000 acres through saline seep, the loss of good top soil through erosion and general improvement of soil that is without good top soil, such as gumbo, or clay-type soil. He said application of organic, or living matter, into the soil can increase its productivity by at least three times.

Dr. Horvath had charts to illustrate the improved yield on grain fields that had received such organic additive. He also indicated he was not averse to chemical fertilization, but explained that the addition of the natural, living matter would revitalize the soil and be a long-range improvement, eventually helping the soil to change, and improve, and increase the yields substantially.

Members of the committee asked numerous questions of Dr. Horvath concerning the use of irrigation systems, how the matter would be distributed on the land, cost of distribution, etc. He told the committee the use of the organic matter would make dead land alive and explained the action of the matter on different soil types. He said the matter could be in pellet form and 'broadcast' on the land; it could also be plowed down. He said much of Montana is clay soil and can be revitalized also, through the addition of the matter which aerates it and allows

the soil to breathe. He said farming practices might have to be changed somewhat so that mulch, grain stalks, etc., are plowed down and returned again to the soil, returning more of the living, organic matter to its origin.

The addition of such matter to the soil would help solve several problems in the state, according to Dr. Horvath. He said cities that are now having a problem with disposition of sewage sludge might have an outlet. He mentioned also animal waste could be disposed of as well as a number of by-products of some products produced in the state. Since the bill asks for a portion of the Coal Severance Tax to aid in production and distribution, Dr. Horvath said he felt it was fitting that some of the money that comes from the soil should be used to reclaim and improve that same soil.

Also appearing as a proponent was Robert Wheeler of Montana Pumice Products who said one of the by-products of his plant was an aggregate which has also been used as an additive to the organic matter mentioned by Dr. Horvath. He therefore recommended an amendment to add "natural, inorganic materials" to be included in the matter.

Mr. Leiter spoke as a proponent also and said several representatives of the government had visited Dr. Horvath's operation and had confirmed the results shown on his charts. He mentioned several reasons he felt the proposal of Dr. Horvath was viable, including the importance of disposing of some of the state's waste matter, an ever-increasing problem.

Following the testimony members were permitted to ask questions of Dr. Horvath and he replied as to estimated cost per ton, at approximately \$55 now, but that the cost could be cut in half, at least, if produced in larger amounts. Also, he was questioned about clay ground and he said this organic matter would break up such soil so it could absorb moisture. Clay weighing approximately 95 lbs. per cu. ft. could be reduced to a weight of 65 to 70 lbs. per cu. ft. after the addition of the matter. It was also pointed out that a number of European countries are using, and have employed this method of caring for their soil for many years, to great advantage. The Netherlands in particular, was mentioned by Dr. Horvath as one country using the organic matter with great effectiveness. He stated also that some of the city waste was not of the highest quality in this country due to the large amount of plastics and he said these would have to be separated from other matter to make the best compost.

Following this discussion, meeting was adjourned.

  
JEAN A. TURNAGE - CHAIRMAN

Date Feb 25, 1979

ROLL CALL.

SENATE TAXATION COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

115

DATE FEB. 23, 1979

## COMMITTEE ON TAXATION

SEN.

BILLS 433, 445, 521

VISITORS REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	
HORVATH, Joseph C. Ph.D.	EVD-DEPOST, INC. Missoula	SB 433	X	
WHEELER, ROBERT J. M.S.	MONTEBELLO PUMICE PRODUCTS <sup>NC</sup> Montana Pumice Products, <del>Montana Pumice Products</del>	SB 433	X	
Wheeler, Michael D.		SB 433	X	
Perone, Andrew	Tobacco Tax Council	SB 445	X	
Kelly, Kelly	Tobacco Tax Council	SB 445		
Leiter, James E.	Montana Dept. of Health	SB 433	X	
STEFFECK, JAMES A.	STATE TAX APPEAL Bd	SB 1		
Bob Rundz	" " " "	"		

PROPOSED AMENDMENT TO SB #445

# 1

Amend section 1 to read:

Cigarette excise tax. After June 30, 1980, an excise tax is imposed and shall be collected and paid to the state of Montana upon cigarettes sold or possessed in this state at a rate based on the basic cost to the wholesaler of cigarettes, as defined in 16-10-103(9), less the federal tax on cigarettes. On or before January 1 of each year, the department of revenue shall set the rate which will be in effect for the succeeding fiscal year. The tax rate for each package of not more than 20 cigarettes shall be the least whole number of cents which is larger than 5% of the weighted average basic cost of a carton of ten packages net of federal tax. When packages contain more than 20 cigarettes, this rate shall apply on each 20 or fraction of 20 cigarettes contained in the package. The weighted average is to be determined using the basic cost structure of the preceding December 1.

COMMENTS ON SB 445

1/2

The Tobacco Tax Council opposes SB 445 because the effect of the bill in its introductory form is to increase the tax on cigarettes by approximately 30%. The bill provides that:

" ... After June 30, 1979, an excise tax is imposed and shall be collected and paid in the State of Montana upon cigarettes sold or possessed in this state at a rate equal to 50% of the basic cost to the wholesaler of cigarettes,\* as defined in 16 - 10 - 103 (9)."

The fiscal note issued with respect to this bill states that the average cost of a pack of cigarettes for wholesalers will be \$.3250. This price is the invoice price to the wholesaler as stated in Sect. 16 - 10 - 103 (9) which defines the "basic cost to the wholesaler of cigarettes" as the invoice cost. The invoice cost includes the Federal tax of \$.08 per package.

In computing the invoice cost it must be understood that the wholesaler pays a combination of \$.2450 which is the actual cost of a package of cigarettes to which is added the \$.08 Federal tax. These two figures added together constitute the \$.3250 cost per package which then according to statute, makes up "the basic cost to the wholesaler of cigarettes."

While the fiscal note states that effective rate of taxation would be \$.1576 the actual rate of taxation to the retail purchaser of a package of cigarettes would be \$.1625. The effective rate

rate of taxation is less because wholesalers are allowed 3% of the rate of tax to compensate them for affixing the tax indicia to each package. Thus Montana cigarette tax would be raised from \$.12 per package to \$.1625 per package, a startling ~~\$.425~~.

The balance of Senate Bill # 445 deals with the distribution of the proceeds which would be received from the cigarette tax. The bill does not change the proportional amounts going to each fund, but rather changes the language of the statute covering distribution of the proceeds, this being made necessary because of the proposed new method of taxation.

The principal author has indicated that an amendment may be offered which would change the base price upon which the tax would be figured and the amount of computation. As the undersigned understands this will be done in an effort to leave the actual tax per package at its present level. The proposed amendment would read as follows:

Cigarette excise tax. After June 30, 1979, an excise tax is imposed and shall be collected and paid to the State of Montana upon cigarettes sold or possessed in this state at a rate based on the basic cost to the wholesaler of cigarettes, as defined in 16 - 10 - 103 (9), less the Federal tax on cigarettes. On or before June 1 of each year, the Department of Revenue shall set the rate which will be in effect for the succeeding fiscal year. The tax rate for each package of not more than 20 cigarettes shall be the least whole number of cents which is larger than 5% of the average basic cost net of Federal tax on a carton of ten packages. When packages contain more than 20 cigarettes, this rate shall apply on each 20 or fraction of 20 cigarettes contained in the package.

The effect of the amendment would be to levy an indeterminate tax on cigarettes set by a combination of (a) the price structures of cigarettes and (b) administrative action by the Department of Revenue. Present wholesale prices of a package of cigarettes absent the Federal tax are 24.5 cents per package for 100 millimeter cigarettes and 23.5 cents/package for regular and King size cigarettes. ~~Applying the proposed tax to present cigarette prices would result in an increase of 1+ per package for regular and King size cigarettes.~~ Applying the proposed tax to present cigarette prices would result in an increase of 1+ per package for 100 millimeter cigarettes and the same tax per package for regular and King cigarettes as is now paid. The computation would be as follows:

Wholesale cost of one carton of 100 millimeter cigarettes	2.45
The 5% tax	12.25+ 1 package
The least whole number of cents which is larger than 5% of the basic net cost of a carton of 100 millimeter cigarettes	13+/package
Wholesale cost of one carton of regular and King size cigarettes	\$2.35
The 5% tax	11.75+/package
The least whole number of cents which is larger than 5% of the average basic net cost of a carton of regular and King size cigarettes	12+/package

Thus instead of having a set amount of tax per package of cigarettes as is now the case there would be at least two levels of tax. This method of computation is further complicated by the fact that not all cigarettes of the same size sell for ~~wholesale~~ the same price at the same time. This is particularly true when price changes occur since the manufacturing companies do not concurrently change their price structures, but rather change their prices on varying and diverse dates.

The Department of Revenue has indicated that the two methods of computing the tax (a) the % method as described in the original bill or (b) the % method as described in the proposed amendment create substantial administrative problems. Each method results in at least two tax structures if not more. Thus the wholesaler will be required to maintain and operate at least two meters and stamping machines as well as two inventories of stamps or stamp indicia rather than one. Each time a change would occur in the amount of tax the Department of Revenue is required to conduct inventories throughout the state. It would be difficult for the Department of Revenue with its limited staff to carry out this duty unless <sup>it</sup> is measurably increased. Similarly accounting procedures would be increased for both the Department of Revenue and the wholesalers who affix the tax indicia.

The State of New Hampshire attempted the use of the % method of cigarette taxation. Their administrator has clearly indicated that they returned to the cents per package method of taxation

such as MONTANA uses today as rapidly as possible. That state did so because of the difficulty it experienced in trying to administer the tax.

Hawaii uses the percentage method of taxation, but can do so because of its isolated location and its resulting capability of preventing the sale of contraband or untaxed cigarettes.

Montana and other continental states must use stamping of packages to identify that the tax has been paid on each package of cigarettes and thus prevent the sale of contraband or untaxed packages.

The apparent purpose of using the percentage method of taxation is to increase the rate of tax as the price per carton increases. This seeming reasonable approach to a method of taxation must be analyzed taking into consideration the following:

(1) The cigarette tax is paid by the public. It is paid by the consumer. A tax geared to inflation has the effect of contributing to increasing inflation by increasing prices to the consumer. There is no equitable reason for tying this rate of tax to inflation for the ultimate purpose of funding the Long Range Building Program from this sole source.

(2) A tax on cigarettes becomes counter-productive when it is raised to a point that encourages wide appeal efforts by the public to avoid the tax. A price increase of 5+ per package would have the effect - under the provisions of

this legislation of raising the tax per package by 2.5+. Thus the total raise would be 7.5+/package. The tax per package would be 14.75+. We have no knowledge what the tax per package would be after the first year of application under SB 445, but we know that all costs have been rising and it's reasonable to assume that prices therefore also will.

Increases in the cigarette taxation cause substantial concern not only to the tobacco industry, but also to the Department of Revenue because of cigarette "bootlegging."

It is a well known fact that when cigarette taxes are increased, smokers have several choices. First, they can cut down or abandon their use of cigarettes. Second, they can cross political boundaries (go into the neighboring states with lower taxes - to purchase cigarettes. Third, they can acquire cigarettes illegally from cigarette bootleggers; fourth, they can acquire cigarettes from non-taxed sources, such as from "smoke shops" on Indian Reservations and PX's, etc. on military installations. The following is a list of reported cigarette sales made during the year 1978 at various locations on various Indian Reservations in Montana. The significance of these figures is that during the year 1978 there were 374,376 reported sales of cartons of cigarettes at these locations, resulting in a total tax loss to the State of Montana of \$435,763.29. The list is as follows:

<u>Proprietor</u>	<u>Location</u>	<u>Total Cartons Sold</u>	<u>Total Tax Loss</u>
Conf. Salish & Kootenai	Arlee	120,422	\$140,171.23
Camos Hot Springs	Hot Springs	6,240	7,263.36
Standing Arrow	Elmo	4,440	5,168.16
Sun Lodge	Lodge Grass	2,580	3,003.12
Evans Chevron	Browning	4,535	5,278.74
J & H Service	Arlee	7,230	8,415.78
Firestone Service	Arlee	1,200	1,396.80
Arden Morales	Popular	1,388	1,615.63
Mission Smoke Shop	St. Ignatius	21,801	25,367.47
Amelia Summers	Poplar	26,065	30,339.62
H & S Smoke Shop	Poplar	36,988	43,054.03
Res. Smoke Signal	Browning	57,922	67,420.86
Donny Dupries	Ronan	83,564	97,268.49

Total Sales in Cartons and Tax Loss in 1978: 374,376 \$435,763.29

(Figures from the Montana Department of Revenue)

This listing shows that nearly one-half million dollars in cigarette tax money was lost through these reported sales. This compares to a total income to Montana of approximately 11.6 million dollars during the year 1978. The loss in cigarette tax sales was significant. The Department of Revenue figures show that over the last years untaxed sales of cigarettes have increased year by year. This has resulted in a loss of a substantial amount of money to Montana. It means, in effect, that as you increase taxes on an item such as cigarettes which can be purchased from a number of sources, the user will ultimately seek to obtain cigarettes either from a source where no tax has to be paid or in the alternative from a source where the tax is less than that in Montana. For instance, in Wyoming, where the state tax is 8 cents per pack as compared to the state tax in Montana of 12 cents per pack, the sales of cigarettes were significantly higher per capita, even though the

population of Wyoming is much less than that of Montana. Per capita sales of cigarettes in Wyoming during 1978 were 160.3 packs, as compared to 127.2 packs in Montana.

In the State of Washington, where the tax per package of cigarettes is 16 cents as compared to 9 cents per pack in the State of Oregon, sales per capita in Washington were only 101.3 packs, while sales per capita in Oregon were 156.3 packs. From these figures it is reasonable to assume that Montana and Washington cigarette smokers are obtaining a portion of their supplies of cigarettes in Wyoming and Oregon because the ultimate cost per carton is significantly less.

The CBS show "60 Minutes" recently devoted a large portion of its Sunday program to the problem of cigarette bootlegging. Bootlegging of cigarettes on the East Coast and in the central part of the United States has become a major and significant national problem. In New York, for example, an estimated 480,000,000 packages of cigarettes moved through illegal channels in the course of a year, with a resultant loss of revenue to that state. Statistics prove that the most visible consequence of cigarette bootlegging is the revenue loss to state and local governments in high-tax states. The Advisory Commission on Intergovernmental Relations, in a report published in May, 1977, stated that \$337,000,000 in revenues is lost each year through such smuggling of cigarettes into high-tax states. It is well known that cigarettes are bootlegged clear across the United States. Such sales are unreported

and thus it is impossible in a state such as Montana to reach a fair determination of how many cigarettes are being brought into this state and are being sold on an untaxed basis. However, through investigations made in some of the states on the East Coast, startling figures emerge with respect to the amount of cigarette bootlegging involved. For instance, in Pennsylvania, which is a high-tax state, it is estimated that 13 per cent of the cigarettes smoked in that state today are contraband.

A ready market exists for contraband cigarettes, and organized crime has infiltrated the distribution channels. Higher and higher state taxes on cigarettes lead many customers to seek their cigarettes through these illegal sources. Although the otherwise honest citizen may feel he is only voicing his frustrations at the exorbitant taxes on cigarettes when he purchases smuggled cigarettes, what he really is doing is financing a variety of other underworld activities such as drug peddling, prostitution, and loan sharking.

We are concerned that constant and continuing increases in cigarette taxes will contribute to the increase of the bootlegging syndrome.

In analyzing the figures previously set forth in this comment concerning cigarette sales on Indian Reservations, it is pertinent to note that the major portion of those sales was made at locations reasonably near the population centers in Missoula and its surrounding area. If one adds the sales made at Arlee, Hot Springs,

St. Ignatius, and Ronan, which are within an easy Sunday afternoon drive from Missoula, it is clear that the major portion of reservation cigarette sales has occurred at those locations. As cigarette taxes increase it is reasonable to assume that such sales will continue to increase.

Finally it is pertinent to note that Montana's tax is presently 12+ per pack as compared to the following tax rates in surrounding states:

Wyoming	_____	8+/pack
Idaho	_____	9.1+/pack
North Dakota	_____	11+/pack
South Dakota	_____	12+/pack
Every Indian Reservation	_____	0+/pack

Wyoming consumed 160+ packages per capita as of July 1, 1978. Montana consumed 127 packs per capita. The Wyoming tax is 8+ per package. The Montana tax is 12+ per package. In fact Wyoming's tax is lower than any of the surrounding states, per capita consumption is much larger than any of the surrounding states. Thus it is reasonable to assume that Wyoming is furnishing cigarettes to many residents of surrounding states, including Montana.

In summary, the Tobacco Tax Council opposes SB 445 in its original form or as it is proposed and amend it for the following reasons:

- (1) The tax is indeterminate.
- (2) The tax will be of several levels or amounts making it very difficult and expensive to administer and enforce.
- (3) The tax will be counter-productive in that it will encourage more evasion.
- (4) The tax will contribute to inflation.
- (5) Cigarette tax increases simply serve to increase the margin of profit realized by the Indian Smoke Shops and cigarette "bootleggers" who are presently making \$2.00 and more net profit on each carton of cigarettes which they sell.

Jerome Anderson  
Kelly Addy

Representing the  
Tobacco Tax Council

#3

1650 Madeline Avenue  
Missoula, MT 59801

February 21, 1979

Senator William Norman  
U.S. Senate  
Capitol Building  
Helena, MT 59601

Dear Senator Norman:

I am writing in support of Senate Bill 433 which will activate and financially support the commercial use of sewage waste compost in the agricultural communities of Montana. This treated sewage waste was utilized in vegetation/growth studies here at the University of Montana in a water pollution course several years ago. We found the material to be an excellent fertilizer additive. Furthermore, there was no infectious bacteria activity, and all vegetables grown in the soils augmented with this waste product were free from animal (including human) bacteria.

The new process being utilized by EKO-KOMPOST, INC. produces an excellent soil conditioner and fertilizer. Once this product is established by your bill as a continuous and viable source of fertilizer for our farming communities, it will more than likely bring about expansion of a great number of companies utilizing and distributing the product. This in turn will reduce the pollution of our rivers and allow for the wise and economical use of a product which we now waste.

I hope you are successful in getting this bill passed.

Sincerely,

  
Clancy Gordon

# Wheatgrass barriers slow erosion

SIDNEY — Montana's soil is blowin' in the wind.

The United States Department of Agriculture reports of all states in the Great Plains area experiencing wind erosion in 1978, Montana was the hardest hit.

But researchers at the Northern Plains Soil and Water Research Center are doing something about it.

Francis Siddoway is studying how grass barriers can reduce wind erosion in fields. He's found wheatgrass barriers near Sidney reduce wind speed by about 45 percent.

Siddoway plants rows of wheatgrass anywhere from 18 inches to three feet wide, 50 feet apart.

Siddoway said soil will not blow until wind speed is 12 miles an hour at a height of one foot about the ground.

"A little reduction in wind speed greatly reduces the amount of soil that will blow," he said.

"For example, a 24 mph wind at a height of one foot, erodes eight times as much soil as a 12 mph wind, while a 30 mph wind at that height will erode almost 16 times as much soil. So, any reduction in wind speed you can make is very important."

Shelterbelts may accomplish close to the same thing as wheatgrass barriers, but in low rainfall areas such as Sidney, shelterbelts are hard to grow. Siddoway also believes grass barriers are better because they are narrower and shorter, leaving fewer exposed areas.

There are some other advantages to grass barriers. Snow is piled behind them. This helps reduce erosion further because

the snow keeps the soil wet longer. Wet soil or soil covered with snow doesn't blow away.

The barriers also store water.

"You can store as much water with a barrier as you can with summer fallow," Siddoway said. "So they're a big help in getting enough moisture for re-cropping."

Wheatgrass barriers are especially effective where land is left bare, according to Siddoway. The permanent barriers provide protection until a crop can hold the soil.

Siddoway's studies show wheatgrass is the best grass for barriers because it's easy to establish and grows quickly. It attains a height of around four feet in two years.

"The big objection farmers have to barriers is you have a

lot of borders to plant and harvest next to," he said. "There are around 30,000 acres planted in these barriers in eastern Montana and western North Dakota and there's more going in every year. They're the best thing for wind erosion in the Great Plains.

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The land

MILOPS

## Sailboat tillers recalled

Hobie Cat, California manufacturer of sailboats, is recalling all metal tiller extensions.

Because of danger of electrocution that may occur if a sailboat mast comes in contact with an electrical line, the company is replacing the metal tiller extensions without charge.

Doc's Dockyard  
Owners of this is legal

bring it  
noxious. The association reports that the average

adult consumed 35.7 gallons of beer and 12.5 gallons of