

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 13, 1985

The twenty-ninth meeting of the Taxation Committee was called to order by Chairman Thomas E. Towe in Room 413-415 of the Capitol Building at 8:07 am.

ROLL CALL: All members of the committee were present.

CONSIDERATION OF SB 249: Senator Paul Boylan, Senate District 39, was recognized as chief sponsor of the bill. He stated that a cigarette tax was needed by the state and that the current statute needed clarity in light of new larger packages of cigarettes coming on the market.

PROPONENTS

Mr. Roger Tippy, representing R. J. Reynolds Co., was recognized. He submitted his testimony in writing (Exhibit 1).

Mr. Tucker Hill, representing Phillip Morris, also submitted his testimony in writing (Exhibit 2).

Mr. Jerome Anderson, representing the Tobacco Tax Council, also spoke in support of SB 249. He said this would allow Montana to take advantage of new marketing schemes with cigarettes.

OPPONENTS

None were heard.

Questions from the committee were called for.

Mr. Robert McGee, representing the Department of Revenue responded to a question regarding the percentage of Montana cigarettes sold on Indian reservations. He said that percentage was about 15 to 20, noting that no tax is applied to those sales. He said that amount has been on the increase over the last years, doubling every year. He said some of the cigarettes flow through Montana to Washington reservations.

Senator Towe clarified the necessity for the new language. The Department of Revenue is opposed to the existing language because it would allow smaller packages to be sold which Mr. McGee said would be a difficult inventory process for wholesalers. He said they are prepared to deal with the 20 to 25 configuration.

Sneator Hager asked about the necessity for a July effective date. Mr. Tippy responded that the marketing people for the cigarette companies wanted to begin their programs in July.

Senator Boylan closed saying this changes only the method of cigarette taxation not the amount of tax paid.

MOTION: Senator Goodover moved that SB 249 do pass. The motion

carried unanimously.

CONSIDERATION OF SB 304: Chairman Towe recognized Senator John Mohar, Senate District 1, as chief sponsor of the bill. He said the bill extends the ability for publically owned facilities to be developed and have beer and wine licences. He said it does not exclude any kind of facility and that currently that extension is made for golf courses only.

PROPOSERS

There were no further proposers.

OPPOSERS

Mr. Bob Durkee, representing the Montana Tavern Association, said they oppose the bill in an effort to protect the quota system. He said he assumed it would apply even to concession stands and that special permit laws already allow this. He presented the vote on Initiative 94 (Exhibit 3) which would have eliminated the beer and wine quota system. He said there is a public mandate to control use of the product in the face of less drinking. He said the same measure was tabled by a House committee. He noted also that some athletic facilities forbid the use of alcohol anyway.

Questions from the committee were called for.

The committee discussed that a special permit was good only for three days, that the catering provisions would not allow a club to profit from the sale, that local ordinances in some cases preclude this kind of beer and wine sale.

Senator Mohar closed saying that he did not feel this bill opened too wide an area, but would allow athletic clubs the ability to sell beer and wine to their own members and spectators. He said this was an economic development issue and that he would not object to the bill being cleaned up, but he felt it should have a do pass.

CONSIDERATION OF SB 288: Senator Dorothy Eck, Senate District 40, was recognized as chief sponsor of the bill. She said the 10 percent deduction from state mark-up was originally given to Alpha Industries as an incentive. However, she said that Hawaii, having given small distilleries a like incentive, had been challenged by local dealers and in a suit that continues there is a large loss to the state of Hawaii.

PROPOSERS

Mr. Mike Garrity, attorney for the Department of Revenue said that he believes 16-2-202, MCA, is unconstitutional and places in jeopardy our state mark-up and liquor taxes. He said that Hawaii had preference exemption to state-made products, like Montana. Other suppliers paid tax under protest and now about \$110 million is in escrow in Hawaii and will likely be paid back to suppliers. He said the amount

of additional revenue is not the purpose of the bill, but that the committee should focus on what would be jeopardized if the statute is found unconstitutional. He said that a state can directly appropriate dollars to help its own businesses, but that indirect help by taxation causes it to be stricken down.

OPPONENTS

Mr. Tom Clavin, President of Alpha Industries, rose in opposition to the bill. He said that in addition to the taxes they already pay, they put money back into the state economy. He said out-of-state distillers pay nothing here, and take out billions. He resented that the fiscal note indicated a \$128,000 incentive when those dollars were never in his pocket.

Questions from the committee were called for. Senator Goodover asked how this affected other local incentives. Mr. Garrity said that for this purpose all would have to receive the same benefit. Senator Goodover said that coal severance tax is likewise discriminatory. Mr. Garrity said that it represents a uniform application of a tax.

Senator Mazurek noted that reduction in mark-up is not a subsidy as it does not represent one dollar in the pocket.

Senator Severson asked why if the state can exclude it cannot discriminate. Mr. Garrity said that the Supreme Court found no merit in that argument and that once a business was allowed in the state, the interstate commerce clause must apply.

Mr. Garrity told the committee that the Department retained the Hawaiian counsel to review and comment on Montana law and his conclusion had been that it was constitutionally defective.

Senator Towe requested that the Department supply the committee with all information possible on the subject.

Senator Goodover clarified that it applied only to liquor and not to beer.

Senator Mazurek questioned if the partial exemption as opposed to the complete exemption would save the Montana statute. Mr. Garrity said that his research indicated that it would not.

Senator Towe asked Mr. Clavin about the mark-up decrease. Mr. Clavin said they never charged extra because of mark-up decrease. "We try to be at the law end," he said.

Senator Eck closed saying she was pleased for the attorneys on the committee. She said she wants to provide incentive to "Made in Montana" businesses, and also have Montana tax policy stand constitutional scrutiny.

FURTHER CONSIDERATION OF SB 234: Senator Severson was recognized and said that he had worked through six examples of the differences in the manuals.

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Mr. Blake Wordal of the Montana Farm Equipment Dealers was recognized and said that the IT book derived its figures in a way considered a "trade secret". He said the farm equipment dealers organizations believe that it is done on straight line depreciation.

The committee concluded that there is a problem with the manual switch.

Sneator Towe asked how far back the books go. Senator Severson said that IT goes back to 1964 and that the Official Guidebook goes back to 1954 in some instances.

Mr. Groepper reminded the committee that a supplemental schedule is required by law. He said that equipment in the corner of the yard is considered junk if the farmer says it is. On the other hand, he said that the Broadwater County Assessor picked up \$2 million in taxable value of major equipment by visiting farms personally.

Senator Eck said the committee needed to focus on the age of the equipment and give the Department some relief in the administration of the tax.

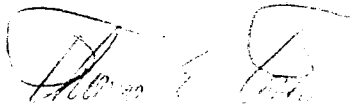
Senator McCallum said the committee should direct that the Department use a particular guide book and a particular value for the tax base.

In response to questions Mr. Wordal said that "as is" value would most accurately represent market value of machinery, keeping in mind that the Official Guidebook does not consider auctions or private sales, but only those through farm equipment dealers.

Senator Towe suggested that language be drafted for the bill somehow instructing the Department to recognize functional and economic obsolescence on equipment and buildings. The committee, after further discussion, agreed.

Mr. Groepper said that there is not enough time in this tax cycle to deal with that question intelligently. He suggested that the committee direct the Department to use local value until economic obsolescence can be defined. He said for this time only, attach the farm buildings to the residence and let it all be discounted until a study can be done. He said it will take time to do it functionally and fairly.

Senator Towe adjourned the meeting at 10 am.



Chairman

ROLL CALL

SENATE TAXATION COMMITTEE

49th Legislative Session -- 1985

Date 13 February 85 8:06am.

Location -- Room 413-415

| Name | Present | Absent | Excused |
|------|---------|--------|---------|
|------|---------|--------|---------|

| | | | |
|------------------|---|---|--|
| Senator Brown | ✓ | | |
| Senator Eck | ✓ | | |
| Senator Goodover | ✓ | | |
| Senator Hager | ✓ | | |
| Senator Halligan | ✓ | | |
| Senator Hirsch | ✓ | | |
| Senator Lybeck | ✓ | | |
| Senator Mazurek | ✓ | | |
| Senator McCallum | ✓ | | |
| Senator Neuman | | ✓ | |
| Senator Severson | ✓ | | |
| Senator Towe | ✓ | | |

DATE February 13, 1985

COMMITTEE ON Taxation

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

NAME: TOM CLAVIN DATE: 2/13/85

ADDRESS: 109 ELmwood Ln.

PHONE: 443-3421

REPRESENTING WHOM? Alpha Industries, Inc

APPEARING ON WHICH PROPOSAL: S.B. 288

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

BEFORE THE TAXATION COMMITTEE
MONTANA STATE SENATE

Senate Bill 249 by Boylan,)
To Tax Cigarettes in Larger)
Packs On a Per-Cigarette Basis)

STATEMENT IN SUPPORT --
R.J. REYNOLDS CO.

I am Roger Tippy of Helena, lobbyist for the R.J. Reynolds Co., cigarette manufacturers who decided two years ago to begin marketing cigarettes in packs of 25. In most states they simply started selling them this way. In a few states, cigarette tax laws were an obstacle because they taxed the cigarettes in units of 20 or 10. Under Montana's law, which taxes cigarettes in increments of 20, a pack of 25 would have to pay the same tax as two packs of 20 would pay. The bill would change this system so that the larger packs would be taxed at a rate equal to the rate per cigarette on the 20-packs. Thus, if the state tax remains 16 cents per pack of 20, the tax would be 20 cents on a pack of 25. Should the state tax on a pack of 20 become 24 cents, it would go to 32 cents -- rather than 48 cents -- on a pack of 25 under the bill.

Two aspects of the fiscal note warrant comment. First, there is no change in consumption or tax collections if the bill passes. Smokers would switch from packs of 20 to packs of 25 which would last them longer. If the bill is not enacted, however, Reynolds will not market its 25-pack brand under the tax disadvantage noted. The only outlets for 25-packs would probably be the smokeshops in Indian country. Second, the fiscal note presents the state's costs of acquiring two sets of tax insignia or decals. Remember that each pack of 25 sold has replaced one and one-quarter packs of 20 for which the state does not now have to buy decals. That savings should be offset against the stated cost of these decals.

The restriction in current law to taxing in increments of 20 serves no discernible purpose whatsoever. Eliminating this particular obstacle to marketing by giving SB249 your "do pass" recommendation will give cigarette consumers a wider selection.

DATED: February 13, 1985.

MR. CHAIRMAN, MEMBERS OF THE SENATE TAXATION COMMITTEE:

My name is Tucker Hill. I am representing Philip Morris, USA and am in support of Senate Bill 249. This bill will change the method of taxing cigarettes when packaged in amounts greater than twenty cigarettes per package. This bill will not result in any decrease in taxes paid to the State of Montana but will allow a new packaging effort-- 25 cigarettes to a package-- to be taxed on a proportional basis. The tax on a package of 20 cigarettes in Montana is 16 cents. If this bill is approved the tax on a package of 25 cigarettes will rise to 20 cents. No loss in revenue will occur. If this legislation fails, a package of 25 cigarettes would be taxed at 32 cents and would therefore prevent this new marketing effort to be undertaken in Montana.

46 states have passed laws or made administrative changes to allow packages with 25 cigarettes to be sold without undo tax consequences. I would ask that the committee support this legislation. Thank you, Mr. Chairman.

This is the official vote on I-94...November 2, 1982:

| COUNTIES | Precincts | Registration | Total Vote Cast | De | Initiative No. 94 | | COUNTY SEATS |
|-------------------------------|-----------|--------------|-----------------|----|----------------------------|---------|-------------------------------|
| | | | | | BEER AND WINE QUOTA SYSTEM | | |
| | | | | | For | Against | |
| *First Congressional District | | | | | | | *First Congressional District |
| *Beaverhead | 16 | 4672 | 3637 | | 1099 | 2395 | *Dillon |
| Big Horn | 18 | 6319 | 4980 | | 1528 | 2702 | Hardin |
| Blaine | 14 | 3527 | 2771 | | 871 | 1763 | Chinook |
| *Broadwater | 7 | 2116 | 1642 | | 511 | 1047 | *Townsend |
| Carbon | 20 | 5440 | 4429 | | 1460 | 2768 | Red Lodge |
| Carter | 13 | 1190 | 962 | | 292 | 570 | Ekalaka |
| Cascade | 51 | 37520 | 28106 | | 9395 | 16803 | Great Falls |
| Chouteau | 17 | 3837 | 3208 | | 945 | 2146 | Fort Benton |
| Custer | 15 | 7083 | 5421 | | 1583 | 3111 | Miles City |
| Daniels | 16 | 1785 | 1458 | | 366 | 959 | Scobey |
| Dawson | 10 | 6338 | 4824 | | 1426 | 3214 | Glendive |
| *Deer Lodge | 10 | 6625 | 5043 | | 1692 | 2842 | *Anaconda |
| Fallon | 6 | 2221 | 1826 | | 439 | 1193 | Baker |
| Fergus | 16 | 7747 | 6158 | | 1877 | 3932 | Lewistown |
| *Flathead | 34 | 28678 | 21516 | | 8197 | 12622 | *Kalispell |
| *Gallatin | 32 | 27685 | 18730 | | 8352 | 9626 | *Bozeman |
| Garfield | 8 | 1172 | 988 | | 279 | 628 | Jordan |
| *Glacier | 14 | 5225 | 3720 | | 1248 | 2204 | *Cut Bank |
| Golden Valley | 2 | 678 | 588 | | 155 | 406 | Ryegate |
| *Granite | 4 | 1660 | 1321 | | 423 | 845 | *Philipsburg |
| Hill | 24 | 10011 | 7691 | | 2144 | 4531 | Havre |
| *Jefferson | 10 | 3964 | 3121 | | 1235 | 1759 | *Boulder |
| Judith Basin | 11 | 1807 | 1492 | | 407 | 1016 | Stanford |
| *Lake | 28 | 10267 | 8178 | | 2876 | 4988 | *Polson |
| *Lewis and Clark | 40 | 27275 | 18966 | | 8229 | 10084 | *Helena |
| *Liberty | 4 | 1477 | 1220 | | 328 | 801 | *Chester |
| *Lincoln | 22 | 8786 | 6240 | | 2427 | 3534 | *Libby |
| *Madison | 6 | 3543 | 2850 | | 916 | 1789 | *Virginia City |
| McCone | 8 | 1671 | 1446 | | 378 | 993 | Circle |
| *Meagher | 5 | 1287 | 1059 | | 339 | 651 | *White Sulphur Springs |
| *Mineral | 6 | 2171 | 1566 | | 612 | 868 | *Superior |
| *Missoula | 61 | 45902 | 29781 | | 15567 | 12112 | *Missoula |
| Musselshell | 10 | 2891 | 2470 | | 763 | 1578 | Roundup |
| *Park | 7 | 7588 | 6033 | | 2150 | 3584 | *Livingston |
| Petroleum | 1 | 378 | 288 | | 84 | 194 | Winnett |
| Phillips | 21 | 3109 | 2463 | | 664 | 1606 | Malta |
| *Pondera | 14 | 3883 | 3193 | | 753 | 1909 | *Conrad |
| Powder River | 11 | 1647 | 1394 | | 464 | 822 | Broadus |
| *Powell | 12 | 3611 | 2868 | | 940 | 1730 | *Deer Lodge |
| Prairie | 5 | 1196 | 1025 | | 245 | 705 | Terry |
| *Ravalli | 20 | 13477 | 10008 | | 3764 | 5848 | *Hamilton |
| Richland | 17 | 6125 | 4379 | | 1245 | 2883 | Sidney |
| Roosevelt | 20 | 4897 | 3559 | | 1112 | 2177 | Wolf Point |
| Rosebud | 14 | 6244 | 4163 | | 1491 | 2480 | Forsyth |
| *Sanders | 14 | 4951 | 3848 | | 1446 | 2148 | *Thompson Falls |
| Sheridan | 16 | 3221 | 2576 | | 776 | 1601 | Plentywood |
| *Silver Bow | 34 | 21430 | 16576 | | 6629 | 9126 | *Butte |
| Stillwater | 9 | 3518 | 2895 | | 924 | 1800 | Columbus |
| Sweet Grass | 4 | 2058 | 1701 | | 514 | 1093 | Big Timber |
| Teton | 10 | 3921 | 3256 | | 927 | 2167 | Choteau |
| *Toole | 19 | 3478 | 2752 | | 820 | 1778 | *Shelby |
| Treasure | 5 | 699 | 603 | | 165 | 408 | Hysham |
| Valley | 23 | 6041 | 4674 | | 1412 | 2819 | Glasgow |
| Wheatland | 5 | 1436 | 1113 | | 359 | 712 | Harlowton |
| Wibaux | 3 | 891 | 691 | | 177 | 347 | Wibaux |
| Yellowstone | 88 | 59519 | 40616 | | 15858 | 18307 | Billings |
| TOTALS | 929 | 445888 | 328082 | | 121078 | 182724 | |

74% Voter Turnout

EXHIBIT 3 -- SB 304
February 13, 1985

STANDING COMMITTEE REPORT

February 13, 19 85

MR. PRESIDENT

We, your committee on TAXATION

having had under consideration Senate Bill No. 249

first reading copy (white)
color

TAX CIGARETTES IN PACKS OF MORE THAN 20 ON PER CIGARETTE BASIS

Respectfully report as follows: That Senate Bill No. 249

DO PASS

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Senator Thomas E. Towe,

Chairman.