

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

March 4, 1987

The thirty-fourth meeting of the Senate Taxation Committee was called to order at 8:00 A.M. on March 4, 1987 by Chairman George McCallum in Room 413/415 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 312: Senator Brown, Senate District 2, presented this bill to the committee. He said SB 312 would increase the tax on the sale of cigarettes to one cent a cigarette. As originally requested the bill would have increased the tax by 10 cents a pack but it was revised to increase the tax by one cent per cigarette. The present tax is 16 cents per package of 20. If this bill would pass, a package of cigarettes of 20 would be taxed 20 cents and a package of 25 would be taxed 25 cents. The revenue generated would go to the teachers retirement fund equalization aid account, which is county wide, and the net result would be a reduction in property taxes. The fiscal note, on page two, shows what the impact on property tax would be from county to county. He said the opponents of this bill will contend that the cigarette tax in Montana is already too high and that is the primary reason consumption of cigarettes is down. He furnished the committee with tables entitled "Peak Year for Per Capita Taxable Cigarette Sales, 1950-83", "Cigarette Taxes as a Percentage of Retail Price - 1954" and "Cigarette Taxes as a Percentage of Retail Price - 1984", attached as Exhibit 1. He said the tables show there is a loss of consumption but there is a strong case for other factors than the tax. For health reasons and other reasons, people are not smoking cigarettes to the extent they used to. The Department of Revenue indicates that the amount of revenue taken in from the sale of cigarettes is declining because the rate of consumption is declining.

PROPOSERS: Eric Feaver, Montana Education Association, gave testimony in support of this bill. He said the issue here is more than simply the cost of cigarettes, it is, in fact, property tax relief. This committee has already passed SB 183, which dealt with the lottery, and this bill, in addition to SB 183, will go a long way toward correcting an inequity that needs to be corrected.

Bruce Moerer, Montana School Board Association, gave testimony in support of this bill. At their convention, they decided they would not support any type of additional revenue unless it would go toward education and property tax relief. This additional money raised by the cigarette tax would go toward property tax relief. With SB 183, the money generated by the lottery, and the money generated by this cigarette tax, this will provide property tax relief around the state.

Claudette Morton, Board of Public Education, gave testimony in support of this bill. This bill will generate revenue on a state wide basis to provide property tax relief by financing a portion of the retirement funds.

Terry Minow, Montana Federation of Teachers, gave testimony in support of this bill. The teachers retirement levy varies from county to county and the subcommittee on school finances recognized that those school levies should be equalized.

David Lackman, Montana Public Health Association and American Public Health Association, gave testimony in support of this bill. A copy of his statement is attached as Exhibit 2.

OPPONENTS: Jerome Anderson, attorney from Billings, Montana, representing the Tobacco Institute, gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 3.

Thomas W. Maddox, Executive Director, Montana Association of Tobacco and Candy Distributors, Inc., gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 4.

Robert VanDerVere, a concerned citizen lobbyist, gave testimony in opposition to this bill. He believes smokers are paying enough and a further tax should not be imposed.

Steve Buckner, Service Distributing, Inc., gave testimony in opposition to this bill. A copy of his written testimony is attached as Exhibit 5.

Tom Stump, representing Pennington's Inc., gave testimony in opposition to this bill. A copy of his testimony is attached as Exhibit 6.

Mike Purcell, owner of Golden West Enterprises, gave testimony in opposition to this bill. He said we sell everything through vending machines, candy, soft drinks and cigarettes. They have a lot of machines that were purchased 8 years ago that they are still paying on. They have had tax after tax to where they are at a level where they will have to

revamp their machines at the cost of hundreds of dollars per machine. He said when we have a 4 cent increase, we pay our customers cost. We cannot increase the machine cost except for 10 cent intervals.

Ed Buckner, representing Service Distributing, Inc., gave testimony in opposition to this bill. A copy of his statement is attached as Exhibit 7.

George A. Gierke, representing Gierke's Distributing Co., stood in opposition to this bill.

Dean Woodring, representing Sheehan's of Helena, stood in opposition to this bill.

Wally Rathbone, representing Rathbone Vending, stood in opposition to this bill.

Kay Foster, representing the Billings Chamber of Commerce, furnished information in opposition to this bill. A copy is attached as Exhibit 8.

QUESTIONS FROM THE COMMITTEE: Senator Crippen said the argument has been made that this tax money, up to this point in time, has been used for long range building and that by using this for another purpose that you would jeopardize the bonds that are already being funded by this. Also, this might inhibit future bonding from this source of funds. He asked Senator Brown to respond.

Senator Brown said what this bill proposes to do is to increase the tax on cigarettes and to use the increased revenue for property tax reduction. He does not anticipate affecting the existing bonding program.

Senator Crippen said if we wanted to build a building, we could continue to do that.

Senator Brown said there is a limit to the capacity of the income we might generate from the original 16 cent tax.

Senator Neuman asked if the distribution of the funds through the ANB would favor wealthy counties with large enrollments.

Senator Brown said this would mean we would discriminate in favor of wealthy counties. He thinks the fiscal note would show that.

Eric Feaver said Senator Brown has correctly described the situation. Where you would have the greatest impact will be in those counties that currently are considered wealthy. We would be talking about those counties who

are wealthy, with a high population of students. The counties that were impacted most significantly with SB 183. The same dynamics works for that bill as for this one.

Senator Brown said where you have the most students you have the most retired teachers.

Senator Lybeck said his understanding is this bill will reduce property taxes. He asked Senator Brown if it would take the legislature off the hook with I-105.

Senator Brown said not very much. The property tax reduction is not very significant.

Senator Eck said she understands there is some kind of standard amendment for adding to the bottom of bills in relation to I-105. She asked Senator Brown if he intended to do that.

Senator Brown said it would have to have a bigger reduction than this has.

Senator Hager said the fiscal note indicates this source of revenue is declining.

Senator Brown said the evidence indicates the sales are going down, consumption is going down. People are more and more convinced cigarettes are harmful to their health.

Senator Crippen asked Mr. Anderson if he would like to respond to the future bonding question.

Jerome Anderson said the sale of cigarettes are declining. He furnished the committee with information from a "Report of the State Department of Revenue" on the cigarette sales tax, attached as Exhibit 9. This decline obviously will have an effect on the bonding programs and there may be difficulty paying off the present bonding indebtedness. This tax has been dedicated to bonding reduction and that is where it should stay rather than be used for some other purpose.

Senator Crippen said there is a 6% a year decline now and with a 4 cent increase in the cigarette tax for future bonding and additional bonding, that would cover that decline. If we use the argument that we want to save this source of funds for bonding, our taxes are high, but certainly it would seem to him there would be support if it was used for future bonding. He asked Jerome Anderson to respond.

Mr. Anderson said he does not believe they should be used for bonding at all.

Senator Eck asked Mr. Buckner if distributors are paid anything by the state for their cost of collecting.

Steve Buckner said they are given a discount on their taxes to apply the stamps to the cigarettes and that is all. As far as any regard for being tax collectors for the state of Montana, we do not receive anything at all.

Senator Eck asked if it covered the cost.

Steve Buckner said we pay the state up front and then go out and sell the merchandise. He said we lose money because we don't get any money back from the state for the taxes that we have lost.

Senator Brown closed.

CONSIDERATION OF SB 325: Senator McCallum, Senate District 26, presented this bill to the committee. A copy of his written statement is attached as Exhibit 10.

PROPOSERS: Dennis Burr, representing the Montana Taxpayers Association, gave testimony in support of this bill. He said the committee heard a bill by Senator Smith that changed the statute concerning market value. The current law says the Department can't accept a lower value and Senator Smith's bill inserted higher into the statute. Senator Smith said if they can't accept a lower value then a higher value should also apply. This brings up a point that we base our property tax assessment on market value but it is a very difficult thing for the Department to arrive at. He furnished the committee with an information sheet entitled "Marshall Valuation Service", attached as Exhibit 11, which explains the different approaches to value, explaining the market must be studied for depreciation and for factors causing obsolescence. An example would be a residential home with six bedrooms and one small bathroom in the house. They would never sell that home for the replacement cost because it is unfunctional. If someone buys an existing manufacturing plant and produces something different than intended when the building was originally built, that will have some functional obsolescence. Economic obsolescence is a residence that is owned by an individual and a sewage plant is built next to that home. Something that has happened to your property that is caused by an outside factor. If you were producing wood widgets and someone invented plastic widgets that lasted longer, your plant would experience economic obsolescence. The Department

recognizes functional and economic obsolescence. He furnished the committee with a page of the "IRS Valuation Guide", the Administrative Rules of Montana dealing with this and information from the Department of Revenue justifying an assessment, attached as Exhibit 12. There is some disagreement between taxpayers and the Department whether the Department does consider functional and economic obsolescence on property. In general what the Department has been saying, is that functional obsolescence is probably most contained in the depreciation schedule by the Department. SB 325 is putting into statute the practices that the Department is currently using concerning functional and economic obsolescence. The value of the bill is that we are putting more of a burden on the Department and off the taxpayers with this provision. If the law says that these matters will be considered then he thinks the taxpayers would have the right to know how the Department considers them. There is no intention for this bill to go beyond that. The Department and taxpayers would feel more comfortable with this in the law.

Ward Shanahan, attorney from Helena, representing the Tax Lawyers Committee, gave testimony in support of this bill. Industrial taxpayers have problems with respect to the whole question of the use of depreciation and obsolescence in Montana. If you can't show a comparable market value with plants in Montana you have to go out in the U.S. as a market place and you can't get the State Tax Appeal Board to establish market value of a plant in Montana as comparable to a plant in Indiana. When the Department approaches the plant using replacement cost method, they come up with a plant new cost and then apply depreciation schedules, then trending factors, inflation and the effect is to phase out the depreciation schedule. No consideration is given to obsolescence factors. He thinks this is a good bill because it puts into law what is supposed to be the practice. It gives the taxpayer the right to question this and reduces the Department of Revenue's right to decide whether they are using this factor or not in any particular case. The Department sometimes would consider these things and sometimes would not.

George Bennett, Helena, representing the Northern Border Pipeline and a member of the senior tax group involved in a number of disputes involving functional and economic obsolescence, gave testimony in support of this bill. He endorses the comments made by the previous proponents. This bill will provide taxpayers to use functional and economic obsolescence when the Department of Revenue refuses to use those options. He gave several examples where this could be of assistance throughout the state.

Don Allen, representing the Montana Wood Products Assn., gave testimony in support of this bill. He said Mr. Burr's comments probably cover the overall picture of the concerns of the members of the Wood Products Assn. To put the statute into law and have it there for a basis for consideration certainly will be a good move. Over the next decade his industry foresees changes with competition with Canada and other parts of the United States. They have a great concern about being able to remain competitive in the coming years. This bill is a good move and shows some awareness to those that are planning ahead for future competitive building and change in the industry.

Stan Kaleczyc, attorney from Helena representing the Columbia Falls Aluminum Company, gave testimony in support of this bill. The Aluminum Plant has been involved in a tax dispute with the Department of Revenue which illustrates the use of economic and functional obsolescence. The Department of Revenue, using the Marshall Swift Manual, appraised the plant at \$147 million for 1986. An independent appraiser, hired by the plant, came up with \$30 million for the facilities. This bill will qualify the use of economic and functional obsolescence. Hopefully, this will benefit all taxpayers, including a large industry competing in a worldwide market.

Robert N. Holding, representing the Montana Association of Realtors, gave testimony in support of this bill. He thinks it is a question of equity and fairness and there is nothing wrong with making it part of the law of the Department. It allows the taxpayer and tax collector to start from a common ground.

OPPONENTS: None.

Greg Groepper, Property Assessment Division, Department of Revenue, gave technical comments concerning this bill. He said we do these things right now. In order to do the kind of assessing that some of the proponents of this bill talked about, we will probably need more staff to do this in the manner they envision. We have a classification system that has 20 some classes of property. We can do a better job of economic obsolescence with more staff but if we don't do it right, the entire class of property will be considered under economic obsolescence.

QUESTIONS FROM THE COMMITTEE: Senator Lybeck asked Greg Groepper what the result of the bill in the 1985 session was that granted some tax advantages to the farmers in the Yellowstone Valley on some sugar beet harvesting equipment. They no longer had a plant to sell to and

therefore their machines were of no value to the owner.

Greg Groepper said the bill that was passed in the 1985 session said that property would be exempt, sugar beet harvesting equipment would be exempt if they had two consecutive years with no contracts for sugar. The farmers did get a contract and the bill did not take effect.

Senator Eck asked Ward Shanahan if the proposal in this bill is sufficient in addressing personal property owned by industrial plants.

Ward Shanahan said this is a matter of tax procedure. These principles are important regardless of what you do to the rate of taxation on machinery.

Senator Hager said during the 1976 tax reappraisal situation our company had a problem in that we were assessed on a building based on the board by board construction method and applying what the cost to put the same building up in 1976 would be. Our company tore the building down because if we left it standing it would have cost \$450 a year in taxes. He is wondering if this bill will help that situation.

Greg Groepper said he wasn't around during that appraisal cycle so he could not tell what method was used. The underlying principle is if the product doesn't generate enough return to pay the taxes, then the wise owner will end up tearing the building down or sell it to somebody else who can generate a return on it. This will not make a difference here. If the question is will it get down to the threshold where it would be exempt, no. We might lower the value and we try to do that now. We have tried to give some consideration for economic obsolescence in the timber industry where they can qualify. We gave it to some old field equipment and the State Tax Appeal Board awarded it to a refinery. We want to make sure we can guarantee it to the people that truly deserve it and that it does not go to the people in the same class that do not deserve it.

Senator Halligan said when you use Marshall Valuation you determine the valuation, then use depreciation, build back in inflation factor and there is a CPI adjustment for the valuation. He asked Greg Groepper where economic obsolescence was considered.

Greg Groepper said we are talking about two different things. There is one distinction for buildings and you do not find a lot of economic obsolescence. Where you find economic obsolescence is on the machinery and equip-

ment. There is a different set of depreciation and trending tables for a particular type of industry. Some industries the equipment wears out faster. After we go through the process of trending and depreciation then we look for economic obsolescence.

Senator McCallum closed.

CONSIDERATION OF SB 387: Senator Eck, Senate District 40, presented this bill to the committee. She said this bill doesn't really provide any kind of long term revenue, even though it provides quite a bit of revenue that is needed to fund the state government. It is one time money, as was the money that we took during the special session. This bill provides that employers who withhold more than \$12,000 a year in state withholding to make their payments and reports to the state at the same time that they make their federal payments and reports. In extending this to 1988, the Fiscal Analyst's Office estimates this would yield \$18 million. This bill also applies to collecting coal, oil and gas severance tax on a monthly basis rather than a quarterly basis. She has been told that neighboring states use a monthly method of collecting taxes and she does not think this is out of line. This bill is a reasonable way for the state to collect money. It will cause the Department a little bit more hassle but over the long term it would be made up for in the fact that they would have a more regular flow of income into the state. The reason this provides this one time revenue, is you get 14 months of revenue in a 12 month period.

PROPOSERS: None.

OPPOSERS: James D. Mockler, Executive Director, Montana Coal Council, gave testimony in opposition to this bill. He said while this is a one shot thing to the general fund, it will be a long term cost to everyone affected by it. We often do not even collect taxes on a monthly basis. Coal operators would have to pay that out of their pockets. On page 7 there is a retroactive clause in the payment of our taxes back to 1985. He would assume that since they didn't pay their taxes on a monthly basis, they are now subject to penalties the same as if you don't pay on time. On page 4 the withholding is down to \$12,000. That would include almost any business employing more than 3-4 people. This would be a tremendous burden on them. This is an extremely costly bill to the industry and the small employers.

Carol Swinney, representing Cenex, gave testimony in opposition to this bill. A copy of her statement is attached as Exhibit 13.

Jerome Anderson, representing Shell Western E & P Inc., gave testimony in opposition to this bill. He said we are producing about 30% of the crude oil in Montana and for the reasons described by Carol Swinney are in opposition to this bill.

Tom Ebzery, representing NERCO Coal Corporation, gave testimony in opposition to this bill. They are opposed to the three main parts of the bill. The employer withholding requirement would be a great burden on the employer and the Department of Revenue. He said there will be a fiscal impact in terms of administering this act by the Department and he questions the cost effectiveness. The committee should carefully examine the threshold level requiring payments for employers withholding \$12,000 instead of \$300,000. The severance tax payments in the United States are done on a quarterly basis, in some cases on an annual basis and one state that he is aware of that collects the taxes on a monthly basis.

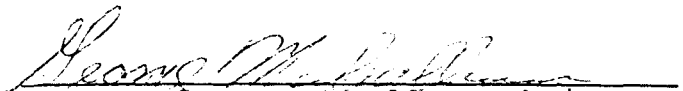
Dennis Burr, representing the Montana Taxpayers Association, gave testimony in opposition to this bill. From talking to people it appears a lot of companies will be borrowing money to pay their taxes on a monthly basis. They have not been paid for the product they produce in the time period contemplated by this bill.

Ken Williams, Entech, on behalf of coal, oil, and gas subsidiaries, Western Energy Company, gave testimony in opposition to this bill. This will require an additional administrative burden and will require us to hire an additional accountant. We do not always get paid in 30 days and the money is not always there monthly.

John Alke, representing Montana Dakota Utilities, gave testimony in opposition to this bill, particularly with regard to the oil and gas severance tax. This will provide administrative problems. A lot of the facilities are remote and we would have to send someone to collect the data on a monthly basis to obtain the information.

Senator Eck closed.

ADJOURNMENT: The meeting adjourned at 10:00 A.M.


Senator George McCallum, Chairman

ROLL CALLTAXATION

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-4-87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR NEUMAN	✓		
SENATOR SEVERSON	✓		
SENATOR LYBECK	✓		
SENATOR HAGER	✓		
SENATOR MAZUREK	✓		
SENATOR ECK	✓		
SENATOR BROWN	✓		
SENATOR HIRSCH	✓		
SENATOR BISHOP	✓		
SENATOR HALLIGAN, VICE CHAIRMAN	✓		
SENATOR McCALLUM, CHAIRMAN	✓		

Each day attach to minutes.

SENATE

Taxation

COMMITTEE

BILL SB 312, SB 325
SB 387

VISITORS' REGISTER

DATE 3-4-87

Please note bill no.

(check one)

NAME

REPRESENTING

BILL #

SUPPORT

OPPOSE

Carol Swinney	Comex	SB 387		X
Laura Raittman	Raittman Vending			X
Thomas W. Maddox	Mt. Assn. of Tobacco-Candy	SB 312		X
George A. Hight	Hight's Dist. (Mills Co.)	SB 312		X
Edward W. Bushman	Service West Livingston	SB 312		X
Steve Buckner	Service Dist - Rogers	SB 312		X
Dean Wording	Shubans of Helena	SB 312		X
James C. Cullen	Tobacco Institute	SB 312		X
James Cullen	Shell Western Exl	SB 387		X
TOM STUMP	PENNINGTON'S GF	SB 312		X
Tom Denman	Shell Western	SB 387		X
W. Z. Raittman	Raittman Vending	SB 312		X
Toni E. Cooper	Stone Container Corp	SB 325	✓	
Robert Van G. Hise	Self	SB 312		X
John Delano		312 325		
Ken Williams	Entech	SB 387		X
George Bennett	NORTHERN BORDER	SB 325	X	
Dennis Burr	MONTAX	SB 325	✓	
Dennis Burr	MONTAX	SB 387		✓
Larry Smith	General Mills	SB 325	✓	
Claretha M. Morton	Board of Public Education	SB 312	✓	
Ph. H. Hight	Mt. Chamber of Commerce	SB 325	✓	
Wendy Hight	Tax Lawyers Committee	SB 325	✓	
Jon E. Brey	NERCO Coal Corp	SB 387		✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE

Taxation

COMMITTEE

BILL SB 312, 325, 387

VISITORS' REGISTER

DATE 3-4-87

Please note bill no.

(check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOS
T.M. Rollins	ASARCO, INC	SB 387		
Kay Foster	Billings Chamber	SB 312		
Eri Olson	MEA	SB 312	✓	
BOB HELDING	MT. ASSOC. OF REALTORS	SB 325	✓	
BILL KIRKPATRICK	CHAMPION INT'L	SB 325	✓	
J.L. Hall	Exxon Co. USA	SB 387		✓
Denny Monahan	MFT	SB 312	✓	
Mary A Langley	MONTANA MINING ASSN	SB 325	✓	
Mary A Langley	" " "	SB 387		✓
Don Allen	MT. Wood Products Assn	SB 325	✓	
GEORGE OCHENSKI	MT. ENV. INF. CNTR	SB 387	✓	
John Ebzery	NEECO Coal Corp	SB 325	✓	
Bruce W. Macer	MSBA	SB 312	✓	
Jim Mockler	MT Coal Council	SB 387		✓
Jim Mockler	"	325	✓	
T.M. Rollins	ASARCO INC	SB 325	✓	
STAN KALITZKY	COLUMBIAN FALLS ALUMINUM	325	✓	
Keith Anderson	Montana Loggers Assoc.	325	✓	
Janette Fallon	MT Petroleum	387		✓
John Alke	MNU	387		✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

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

NAME: DEAN Woodring DATE: March 4th, 1960

ADDRESS: 1324 Helena Ave Box 1155

PHONE: - 933-5977 Home - Business 442-4333

REPRESENTING WHOM? Sheep Ranch of Helena

APPEARING ON WHICH PROPOSAL: SB 312

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT: I oppose SB 312

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Table C-2
PEAK YEAR FOR PER CAPITA TAXABLE CIGARETTE SALES, 1950-83

State	Peak Year	Per Capita Sales in Peak Year (in packs)	Percent of 1963 Per Capita Sales	State	Peak Year	Per Capita Sales in Peak Year (in packs)	Percent of 1963 Per Capita Sales
Alabama	1980	123.2	105.9%	Montana	1953	129.7	114.1
Alaska	1976	164.8	112.2	Nebraska	1961/1962	119.4	107.8
Arizona	1974	133.1	119.8	Nevada	1963	212.7	133.6
Arkansas	1980	131.8	103.0	New Hampshire	1972	296.2	127.2
California	1961	142.4	128.5	New Jersey	1966	144.9	119.5
Colorado	1973	137.9	110.1	New Mexico	1960/1961	105.0	109.0
Connecticut	1961	160.1	140.3	New York	1962	149.7	120.1
Delaware	1962	175.8	117.5	North Carolina	1976	230.2	135.7
Washington, DC	1966	295.9	237.7	North Dakota	1982	126.8	106.0
Florida	1961	141.1	110.6	Ohio	1967	136.4	104.9
Georgia	1980	134.0	104.2	Oklahoma	1982	147.0	105.0
Hawaii	1976	99.4	124.3	Oregon	1967 ¹	165.1	132.5
Idaho	1972	126.1	113.3	Pennsylvania	1963	128.3	102.4
Illinois	1963	1965	145.5	Rhode Island	1953	160.0	117.8
Indiana	1977	173.0	121.0	South Carolina	1978	140.4	107.1
Iowa	1981	132.9	115.0	South Dakota	1979	117.4	106.9
Kansas	1981	132.0	103.4	Tennessee	1982	131.4	101.9
Kentucky	1976	230.9	114.8	Texas	1982	131.2	103.8
Louisiana	1981	144.0	107.7	Utah	1978	79.6	115.4
Maine	1961	145.9	107.8	Vermont	1976	171.1	111.2
Maryland	1975	146.1	114.0	Virginia	1976	158.1	109.3
Massachusetts	1963	142.2	118.7	Washington	1953	115.1	112.4
Michigan	1978	141.8	110.5	West Virginia	1977	133.9	115.7
Minnesota	1981	120.8	106.7	Wisconsin	1981	119.9	112.8
Mississippi	1980	127.0	103.8	Wyoming	1979	168.6	119.4
Missouri	1980	142.1	106.0	U.S.	1978	133.8	103.9

¹Initial year for state cigarette tax.

SOURCE: The Tobacco Institute, *The Tax Burden on Tobacco*, Washington, DC, 1983, Vol. 18.

SENATE TAXATION

EXHIBIT NO. 1

DATE 3-4-87

BILL NO. SB 312

Table 13—1954
Cigarette Taxes As a Percentage of Retail Price
 (As of November 1, 1954)

<u>State</u>	<u>Weighted average price per package</u>	<u>State and Federal cigarette taxes per package</u>	<u>Taxes as a percentage of average retail price</u>
AL	24.0¢	11.0¢	45.8%
AZ	22.2	10.0	45.0
AK	25.7	14.0	54.5
CA	19.6	8.0	40.8
CO	18.2	8.0	44.0
CT	22.4	11.0	49.1
DE	21.9	11.0	50.2
DC	20.8	10.0	48.1
FL	23.9	13.0	54.4
GA	23.0	11.0	47.8
ID	22.2	11.0	49.5
IL	22.2	11.0	49.5
IN	22.8	11.0	48.2
IA	22.8	11.0	48.2
KS	22.1	11.0	49.8
KY	22.3	11.0	49.3
LA	28.8	16.0	55.6
ME	23.0	12.0	52.2
MD	19.1	8.0	41.9
MA	24.7	13.0	52.6
MI	23.3	11.0	47.2
MN	22.5	12.0	53.3
MS	23.3	12.0	51.5
MO	19.3	8.0	41.5
MT	22.7	12.0	52.9
NE	21.2	11.0	51.9
NV	23.3	11.0	47.2
NH	21.5	11.0	51.2
NJ	23.1	11.0	47.6
NM	22.9	12.0	52.4
NY	22.6	11.0	48.7
NC	19.6	8.0	40.8
ND	28.1	14.0	49.8
OH	21.0	10.0	47.6
OK	24.1	13.0	53.9
OR	18.6	8.0	43.0
PA	23.3	12.0	51.5
RI	22.7	11.0	48.5
SC	22.3	11.0	49.3
SD	22.1	11.0	49.8
TN	24.5	13.0	53.1
TX	22.3	12.0	53.8
UT	23.1	12.0	51.9
VT	22.6	12.0	53.1
VA	18.6	8.0	43.0
WA	22.7	12.0	52.9
WV	24.5	12.0	49.0
WI	22.0	11.0	50.0
WY	19.8	10.0	50.5
Average (median) for all states	22.7	11.0	48.7

Note: Prices do not include municipal cigarette taxes.

SENATE TAXATION

EXHIBIT NO. 1

DATE 3-4-87

FILE NO. 58-312

Table 13—1984
Cigarette Taxes As a Percentage of Retail Price
 (As of November 1, 1984)

State	Weighted average price per package	State and Federal cigarette taxes per package	Taxes as a percentage of average retail price
AL	99.0c*	32.5c	32.8%
AK	102.7	24.0	23.4
AZ	98.8	31.0	31.4
AR	98.5	37.0	37.6
CA	98.0	26.0	26.5
CO	93.1	31.0	33.3
CT	118.6	42.0	35.4
DE	98.7	30.0	30.4
DC	100.4	29.0	28.9
FL	104.2	37.0	35.5
GA	90.7	28.0	30.9
HI	108.0	40.0	37.0
ID	97.6	25.1	25.7
IL	96.7*	28.0	29.0
IN	88.8	26.5	29.8
IA	99.5	34.0	34.2
KS	97.5	32.0	32.8
KY	79.3	19.0	24.0
LA	103.0	32.0	31.1
ME	98.1	36.0	36.7
MD	90.1	29.0	32.2
MA	108.3	42.0	38.8
MI	101.4	37.0	36.5
MN	101.5	34.0	33.5
MS	96.4	27.0	28.0
MO	93.7*	29.0	30.9
MT	95.5	32.0	33.5
NE	95.8	34.0	35.5
NV	109.3	31.0	28.4
NH	89.2	33.0	37.0
NJ	104.7	41.0	39.2
NM	97.5	28.0	28.7
NY	106.2*	37.0	34.8
NC	78.9	18.0	22.8
ND	100.6	34.0	33.8
OH	92.2	30.0	32.5
OK	95.1	34.0	35.8
OR	97.5	35.0	35.9
PA	100.1	34.0	34.0
RI	100.3	39.0	38.9
SC	83.0	23.0	27.7
SD	92.3	31.0	33.6
TN	92.5*	29.0	31.4
TX	102.1	35.5	34.8
UT	104.6	28.0	26.8
VT	95.5	33.0	34.6
VA	83.6*	18.5	22.1
WA	114.4	39.0	34.1
WV	103.2	33.0	32.0
WI	106.8	41.0	38.4
WY	87.4	24.0	27.5
Average for all states	97.8c	31.6c	32.3%

1987
1.25-.32-25.62

SENATE TAXATION

EXHIBIT NO. 1

DATE 3-4-87

BILL NO. S.B. 312

*Average prices here shown do not include cigarette taxes that are imposed by one or more municipalities in the 6 states identified. Prices do include state sales taxes, where applicable.

WITNESS STATEMENT

SENATE TAXATION

EXHIBIT NO. 2DATE 3-4-87BILL NO. SB 312NAME DAVID LACKMANBILL NO. SB 312ADDRESS 1400 Winne Avenue, Helena, Montana 59601 443-3494DATE 3/2/87WHOM DO YOU REPRESENT? Montana Public Health Assn. : American P.H. AssociationSUPPORT XXXX

OPPOSE _____

AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. Senate Taxation, Mon. 3/2
(Bob Brown) 10¢ increase in cigarette tax to equalize 8:00 A.M. 413/415

Comments: part of Teacher Retirement Levy.

Our associations support this bill. My instructions are contained in the preamble to a resolution. "WHEREAS cigarette smoking accounts for some 350,000 deaths each year ; and debilitates another ten million people; and studies have shown that the price of cigarettes may have a significant effect on cigarette sales to teenagers and young adults ----" I am, therefore, instructed to urge you to increase taxes on g cigarettes. Previously, in testimony on HB 544 on Feb. 20th, the point was made by a dealer that as you increase taxes, consumption decreases; and that sometime in the future sales of cigarettes might disappear- hence also taxes. If this occurred, it would be one of the greater achievements of the century in preventive medicine. A question of constitutionality was also raised. I don't see a problem as adequate precedence exists for selective sales taxes on tobacco products, alcohol and motor fuel.

Our associations are among those with the goal of " a non-smoking society in the U.S. by the year 2000." As a medical scientist with a pathology minor, I have seen the damage in walls of blood vessels which we now know are largely due to the effects of inhalation of smoke from tobacco. Now Surgeon General Koop has come out with evidence that breathing ambient air contaminated with smoke from tobacco, causes untoward symptoms in non-smokers; especially when exposure takes place in enclosed areas. It is particularly hazardous to pregnant women. I knew Surgeon General Luther Terry who promulgated the original report on smoking and health.

Dr. Terry was a physician of unquestionable integrity. Every Surgeon General since Dr. Terry has added to, and amplified, the dangers inherent in smoke from tobacco.

WITNESS STATEMENT

SENATE TAXATION

EXHIBIT NO. 2

DATE 3-4-87

BILL NO. S.B. 312

NAME Herbert G. Stoenner, Past President, Montana Division, ACS

BILL NO. SB 312

ADDRESS 1102 S. 2nd Street, Hamilton, MT 59840

DATE 1-28-87

WHOM DO YOU REPRESENT? American Cancer Society, Montana Division

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

In 1986, about 300,000 Americans died from the effects of long-term cigarette smoking - chiefly from lung cancer, emphysema, stroke and heart attacks. Many studies have conclusively shown that cigarette smoking causes 80 to 90% of lung cancer and 30% of all kinds of cancer. The latest to be associated with smoking is pancreatic cancer, which has nearly a 100% fatality rate. Deaths from lung cancer in women now exceed those from breast cancer.

Last year the Surgeon General of the Public Health Service warned the public that cigarette smoking is the chief industrial health hazard in this country. Twenty-five percent of lung cancer among non-smokers has been shown to be caused by inhalation of sidestream smoke. Many persons allergic to tobacco toxins develop acute asthmatic attacks from a very brief exposure to tobacco smoke. Clearly, sidestream tobacco smoke is a health hazard to non-smokers.

The combined number of non-smokers and ex-smokers has steadily increased, and in 1985 only 33% of men and 28% of women still smoked. Hence a smoking minority should not have the right to impose a health hazard on a non-smoking majority. Smoking in public buildings should be banned or so controlled that non-smokers have access to an area free of tobacco smoke.

CIGARETTE EXCISE TAX FACTSHEET

MONTANA

JANUARY 1987

SENATE TAXATION

EXHIBIT NO. 3

DATE 3-4-87

BILL NO. SB 312

Thomas Anderson

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SENATE TAXATION

EXHIBIT NO. 3

DATE 3-4-87

BILL NO. S.D. 31

POTENTIAL TAX REVENUES AND THE STATE OF MONTANA

In Fiscal Year 1986, Montana collected \$21.29 in cigarette excise taxes for every person aged 18 or over in the state. This excise tax revenue of \$12.9 million represented the sale of the equivalent of 80.86 million packs of 20 cigarettes. Since Fiscal Year 1983, the state excise has increased 33 percent, from 12 to 16 cents. Since the tax increase, sales from this significant tax resource have fallen 16.7 percent. Any further increase in the cigarette excise tax would be an unconscionable action against the state's smokers.

An additional increase of ⁵~~40~~ cents in the state cigarette tax would have negative impacts on sales, state income tax revenues, and on income in the trade sectors. It would erode the tax base still further by reducing sales. For Montana, a specific state econometric demand model indicates a possible sales decline of ^{2.608}~~8.000~~ million packs if the cigarette tax is increased by ⁵~~40~~ cents. This decline would probably consist of an actual cutback combined with increased illegal purchases and interstate smuggling. Any additional tax increase would also cause a significant loss of income totalling ^{\$625,900}~~\$2,250,000~~ annually to proprietors, clerks, wholesalers and retailers who trade cigarettes. The state's income tax revenue could be expected to fall ~~\$250,000~~ ^{30,170} annually.

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MONTANA AND THE CIGARETTE TAX

Montana has been taxing cigarettes since 1947. Since 1950, the tax rate has climbed from 2 cents to 16 cents a pack. To date, this tax has generated more than \$284 million in gross revenues for the state.

In the fiscal year ending June 30, 1986, gross revenue from the cigarette tax in the state amounted to nearly \$13 million, an increase in annual revenue of about 800 percent since 1950.

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EARMARKING OF TOBACCO TAXES

To increase a tax specifically to fund a particular program artificially patches a funding problem from one place in the budget to another without solving it. Cigarette excise taxes under the present system contributed nearly \$13 million in gross revenue in Fiscal Year 1986 in Montana. To increase the tax and earmark the unknown additional revenue would add further rigidity to the state fiscal system. This could eventually restrict the ability of government to meet pressing operational needs outside the designated field. In addition, earmarking tax revenue from one source for a program to which it has absolutely no connection is unwise fiscal policy.

Earmarking of revenue removes from the legislature one more segment of control over state budgeting and expenditures. The further the principle of earmarking revenue sources for specific programs is carried, the less government can do to achieve fiscal discipline and establish rational budgetary priorities.

Earmarking of taxes, for whatever purpose, has become an increasingly questionable practice. Clearly, a system of taxation where every program will have to raise its own support presents numerous concerns. Such a system would necessitate the creation of another level of government bureaucracy to handle the administrative, management and accounting functions that would be required.

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Experience has shown that such bureaucracies have a strong tendency to perpetuate themselves indefinitely without regard to their usefulness. The same holds true for those programs being earmarked. When not competing with other interests for funding, such programs often escape public and legislative scrutiny. The continuance of unnecessary programs will likely entail increased costs that will be passed on to consumers through additional tax levies.

Dedicating funds is not only questionable as a matter of government fiscal policy; almost invariably it represents an additional cost to be borne by taxpayers. With regard to cigarette excise taxes, the cost is borne disproportionately by lower income individuals.

In these days of budget crunches, it makes more sense to not start unnecessary new programs and to cut back on outdated programs. Lawmakers, frustrated by a revenue-short general fund that prohibits their launching many new programs which they deem worthy persist in dedicating special taxes to these causes. This is a desperate and dangerous trend that must be reversed. When cigarette taxes go into the general revenue fund, the competition for these dollars assures appropriate legislative examination and wise use of tax dollars.

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BILL NO. S.B. 312

BOOTLEGGING

One indirect but important measure of both organized and individual (i.e., casual) smuggling is the difference between a state's per capita cigarette sales and those of a neighboring state or the U.S. average. States into which individuals or organized crime smuggle a substantial amount of cigarettes would be expected to have a markedly lower per capita consumption. Conversely, states in which substantial sales are made for out-of-state consumption will likely exhibit relatively higher per capita cigarette consumption figures. Data for 1986 show that overall per capita consumption in Montana was 97.8 packs. The unweighted average per capita for all states was 119.5 packs. The low per capita sales for Montana implies that sizable amounts of cigarettes are purchased on Indian reservations or from states with lower tax rates than Montana.

According to a report produced by the Advisory Commission on Intergovernmental Relations (ACIR) in 1975, and updated by the Federal Bureau of Alcohol, Tobacco and Firearms, Montana loses a higher proportionate share of its cigarette tax revenue than any other state to bootlegging activity.

Any tax increase would depress legal sales in Montana still further and would lead to increases in bootlegging and further losses in expected revenue. In other states where high cigarette taxes exist, the criminal element has become involved. If Montana were to raise its tax on cigarettes, the bootlegging problem will likely grow in proportion to the tax increase.

SENATE TAXATION

EXHIBIT NO. 3

DATE 3-4-87

A COMPARISON OF STATE RATES AND TAX REVENUES

From 1983 to 1985, cigarette excise tax revenue increased in Montana to \$13.7 million. This amount represents 2.14 percent of the state's 1985 total tax revenue, and an impressive 9.8 percent of the state's total selective sales and gross receipts tax revenue.

Cigarette taxes generate more revenue for Montana than taxes on beer, liquor and wine, and public utilities. (Data from U.S. Bureau of the Census, State Government Tax Collections in 1985. Cigarette excise figures from Miscellaneous Tax Division, Montana Department of Revenue.)

SENATE TAXATION

EXHIBIT NO. 7

DATE 3-4-87

BILL NO. 50

IMPACTS OF AN INCREASE IN THE MONTANA CIGARETTE EXCISE TAX

Higher cigarette taxes will affect revenues and work weeks in sectors both directly and indirectly involved in the tobacco industry in Montana. Most of these effects will be in the form of tax revenue and wholesalers/retailers impacts.

Higher cigarette taxes and the resulting decline in the purchase of tax-paid cigarettes will also reduce state revenue from other sources, such as corporate income tax, and the individual income tax. For example, cigarettes are traffic-builders for the state's hundreds of retail establishments which sell cigarettes. When people reduce purchases of cigarettes, or turn to bootlegged cigarettes, the revenue derived from the sales and profits of other products suffers as in-store traffic declines. In addition to retailers, Montana has several primary tobacco wholesalers, other large grocers, drug and miscellaneous wholesalers who handle cigarettes across the state.

Decreased consumption due to a higher cigarette tax rate will affect supermarkets and convenience stores as well.

According to the September 1985 issue of Supermarket Business, tobacco products account for about 15 percent of all non-food sales in the United States. About 45 percent of the cigarettes sold for domestic consumption are sold in supermarkets. Those cigarettes and other tobacco products account for 3.5 percent of all supermarket sales. In convenience stores, excluding gasoline sales, cigarettes are the number one product sold. Tobacco products comprise 16 percent of gross profits in convenience stores, according to Convenience Store Merchandiser (October 1985).

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THE BURDEN OF EXISTING TAXES

The Montana cigarette tax is already a regressive and inequitable tax. The cigarette tax discriminates against the estimated 200,000 residents of the state who smoke, but the tax falls most heavily on those least able to afford it. Because the percentage of income devoted to buying cigarettes falls as income rises, Montana cigarette taxes are already levied at higher effective rates on the disadvantaged and those on fixed incomes than on the more affluent. Any increase in the current tax rate will add to the tax burden on the lower income groups and will contribute further to the overall regressivity of the state tax structure. An increase of 5 cents would mean a 9 cent or 112.5 percent increase in the tax in less than four years. To this one must add the 100 percent increase in Federal Tax which occurred in 1983. Current State and Federal tax on cigarettes totals 32 cents.

In 1986, more than 30 percent of what Montana smokers paid for a pack of cigarettes went to the Federal and state governments in the form of taxes. For a family with two average smokers, the following chart illustrates the burden of cigarette taxes in Montana as they fall on different income levels at the current and potential future rates. (See Table I).

More than 100,000 families, or nearly 20 percent, have an effective buying income of less than \$10,000 per year. All told, more than one-third of the total households have incomes less than \$15,000. It is these families who will suffer the most from an increase in the cigarette tax rate. A family with an income

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of \$10,000 with two average smokers pays two and one-half times as much of its income for the pleasure of smoking as does a more affluent family making \$25,000 a year.

In addition, more than 11 percent of Montana residents are aged 65 or over. For these elderly persons, many of whom are living on a fixed income, any increase in the cigarette tax rate could threaten this affordable pleasure.

Under the current tax, a household in Montana with two average smokers pays \$350.00 in state and federal taxes on cigarettes a year for the pleasure of smoking. If the state were to increase its tax another five cents - an additional 31 percent increase - that tax figure would rise to \$405.00 annually.

SENATE TAXATION

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3-4-87

TABLE I

PERCENTAGE OF INCOME PAID IN ALL TAXES ON CIGARETTES AT CURRENT
AND POTENTIAL FUTURE RATES

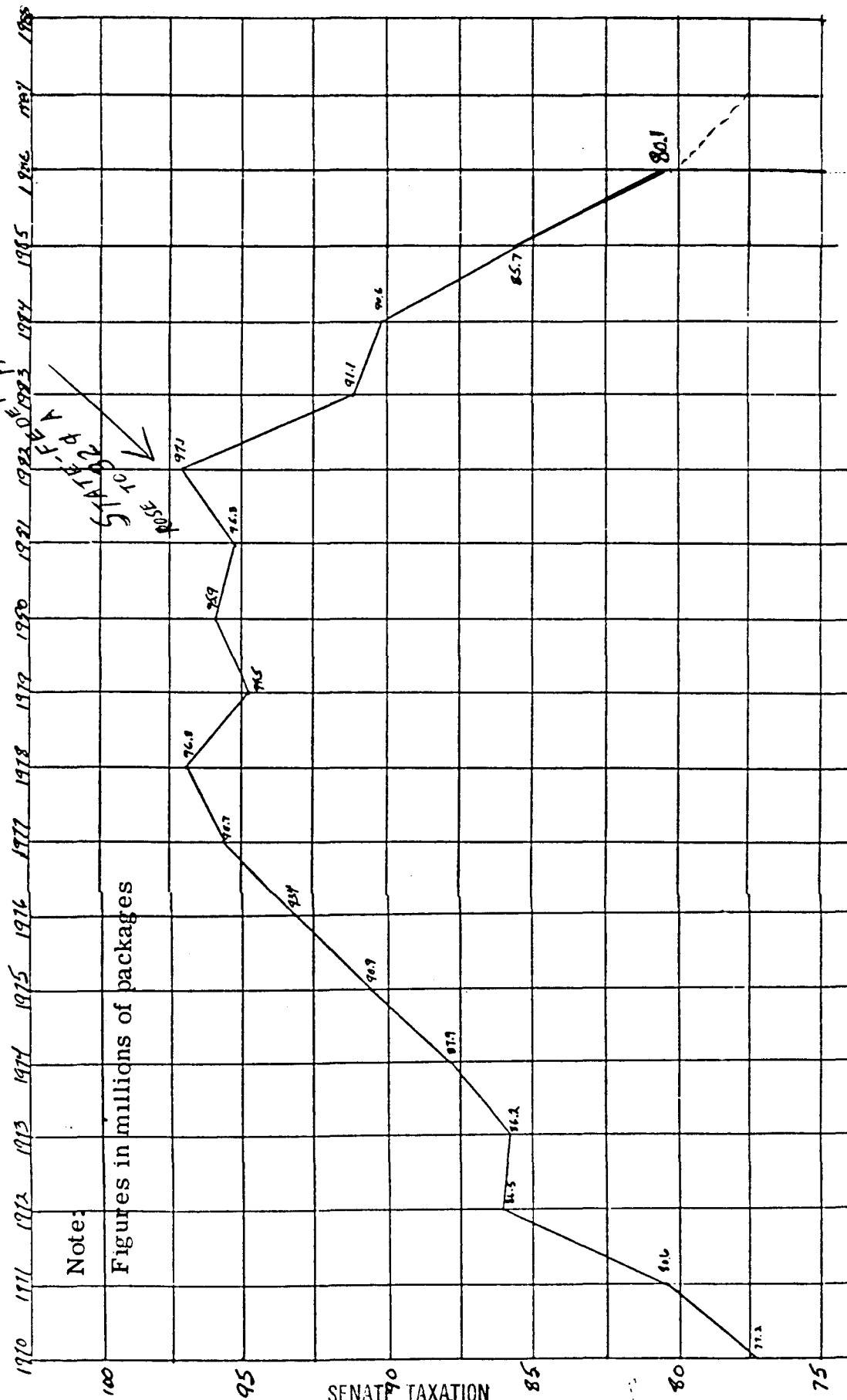
FOR A FAMILY WITH TWO AVERAGE SMOKERS IN MONTANA

<u>Income</u>	Percentage of Income	Percentage of Income
	Paid in Taxes on Cigarettes	Paid in Taxes on Cigarettes
	<u>(current rate)</u>	<u>(with proposed 10 cent hike)</u>
\$ 5,000	7.0%	8.1%
8,000	4.4	5.1
10,000	3.5	4.0
15,000	2.3	2.7
21,500*	1.7	1.9
25,000	1.4	1.6

* approximate state median household income

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Montana Department of Revenue provided the following figures
on sales of state tax-paid cigarettes: by fiscal years:



SENATE TAXATION

EXHIBIT NO. 3

DATE 3-4-87

BILL NO. S.B. 312

Terone Anderson

Copy for Committee Secretary
(This sheet to be used by those testifying on a bill.)

NAME: Thomas W. Maddox DATE: March 4, 1987

17 77 LeGrande Cannon Blvd.,
ADDRESS: P.O. Box 123
Helena MT 59624

PHONE: (406) 442 - 1582

REPRESENTING WHOM? Montana Association of Tobacco and Candy Distributors Inc.

APPEARING ON WHICH PROPOSAL: SB 312

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT: We oppose SB312.

It would tax cigarettes and have teachers looking to, or depending on,
revenue from cigarettes for their life's after-work security; their pensions.

Parents wants teachers to guide young minds away from tobacco.
Manufacturers devote educational programs to guide young minds from using
tobacco during school years.

To enact SB312 would be POOR PUBLIC POLICY, and totally
adverse to the interests of the total citizenry.

We submit the attached four pages of testimony, and several
documentary exhibits to support our position as opposed to SB312.

We urge the committee to kill SB312.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION

EXHIBIT NO. 4

DATE 3-4-87

BILL NO. SB312

Mr. Chairman, and members of the committee: My name is Tom Maddox, executive director for 25 years of the Montana Association of Tobacco and Candy Distributors, a nonprofit corporation.

Our association members are comprised of small businesses, family - owned, and they are good business citizens of Montana. ^{*1footnote} They pay all kinds of taxes for the support of our government, and for our school system, including taxes which go toward payment of pensions to our school teachers. Our association members favor assessment of taxes for such general services for all of our citizens — taxes which are assessed on the broadest possible base of citizens.

We oppose Senate Bill 312 as a highly selective tax on a highly selective narrow base of 23 per cent of Montana's adult population, who enjoy smoking cigarettes.

SB312 proposes to increase the state cigarette tax to 1¢ a cigarette, or to 20¢ a pack of 20, or 25¢ a pack of 30 cigarettes. The current state tax is 16¢ a pack of 20 cigarettes. SB312 proposes a 25 per cent increase a pack of 20. A 25 per cent increase on any general tax assessed on and paid by the general citizenry would go a long, long way toward solving all projected deficits. However, SB312 is not the solution to our state's over-all financial problems.

Such an increase in this selective sales tax would result in loss of private business, loss of family income, and a tax effective loss to the state. (See EXHIBITS B AND C)

*1 Footnote: History of membership in EXHIBIT A. Roster of membership attached to testimony copy filed with committee secretary.

Cigarette consumption in Montana has fallen at substantially a greater rate than the national declining trend. Montana Department of Revenue statistics (Exhibit C) show that since the high point for Montana cigarette consumption at the old tax rate, Montana sales of state-taxed cigarettes have fallen 18 per cent — from 97.1 million packs in 1982, to 80.1 million packs in 1986.

A more detailed analysis of these losses shows how the wholesale and more than 5,000 retail cigarette distributors lost business. It's clear that the state of Montana has shared great tax loss in this area of selective tax on sales of a highly selected product.

Study the impact of increasing selective sales taxes by referring to the latest tax level — 12¢ a pack, and the highest point of state tax collected — \$11.3 million at that tax level. This computes to a state tax yield of \$941,667 for each 1 cent of tax. Then the state increased our state sales tax on cigarettes to 16 cents a pack of 20. The result was that for the latest year of tax returns — 1986 fiscal year, the state realized \$12.5 million. The legislature increased this tax 33 per cent and collected only about \$1 million more revenue. This compute to a substantially reduced state yield of \$781,500 for each 1 cent of tax. The tax increase resulted in a loss of revenue production of \$160,154 for each 1 cent of tax.

In evaluating the fiscal note on this bill, please apply the experience of our latest mistake in raising select tax on a selected targeted product. Please apply this catastrophic experience on what selective sales taxes are doing to our good taxpaying business community, to their personal incomes, what they pay the state on income tax, the loss when they reduce their work force, as well as the loss to the state's fiscal wellbeing. (See Exhibit D for statistical basis)

SENATE TAXATION
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DATE _____
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There is great harm in this particular taxation and we believe this merits the committee's serious consideration. Personally, you and I pay income tax based upon our gains, our income or our profit from what we earn. A corporation paying corporate tax is assessed and pays out of profits. This is NOT SO with the cigarette tax. Most of us — most consumers — give little thought to hidden taxes as we pay for the product. The state charges a license fee to wholesale distributors — only a few survive relative to the 55 thriving when this taxation began. Licensed wholesale distributors are very tightly controlled by the state in all phases of handling cigarettes. The state tax on wholesalers is assessed against the basic cost invoiced by the manufacturer. Both the manufacturer and the state squeeze the basic cost and the state tax out of the wholesale distributor virtually on a cash basis. The wholesaler cannot market cigarettes until he pays the state up front for tax insignia or "stamps". Then the distributor must hire people of moderate skills to affix the state tax insignia to the cigarettes. These costs — paid to the manufacturer, paid to the state and for payroll — all are from working capital requirements of business. Not from profits or earnings as just about everyone else pays for taxes. Collecting this tax in this fashion is costly to the wholesale distributors who are forced to prepay tax at a collective nearly \$1 million a month — about \$40,000 every working day on the average. This amounts to a forced loan to the state of Montana.

Thus, this selective tax fails the tax versus benefit test. It punishes a relatively few among our adult population.

Increasing the tax becomes extremely sensitive in this business which requires high volume to generate profit from the low margins involved.

Our competitors selling cigarettes from reservation-based smokeshops are delighted with every cigarette state tax increase. For their sales rise accordingly.

We oppose SB312 for a further reason:

It is clear that it is not good public policy for the legislature—and for school teachers — to look for revenue — to depend on such revenue — from so criticized a product and habits as financial support for schools — or for teachers' pensions.

Parents want the teachers to help guide young minds away from tobacco. So do the manufacturers who have aimed educational programs toward young people and their avoidance of tobacco at school age.

We thank the committee for this opportunity to oppose SB312.

We respectfully urge the committee to vote right, and kill this bill.

BACKGROUND MEMO RE: TAX IMPACT ON BUSINESS

BEFORE MONTANA ENACTED A STATE TAX (2¢ a pack of 20) ON CIGARETTES IN 1947, THERE WERE 55 WHOLESALE TOBACCO DISTRIBUTORS. THE GREAT MAJORITY WERE MONTANA FAMILY-OWNED SMALL BUSINESSES.

TODAY ONLY A DOZEN MONTANA FAMILY-OWNED TOBACCO WHOLESALE BUSINESSES SURVIVE. THE FEW OTHER TOBACCO LICENSEES ARE THE ASSOCIATED FOODS, CONTROLLED IN UTAH, SUPER VALUE-OWNED RYANS WHOLESALE, CONTROLLED IN MINNESOTA, WEST COAST GROCERY, RUN FROM OREGON, WITH OTHER OUT-OF-STATE FIRMS DISTRIBUTING TOBACCO ACROSS MONTANA BORDERS.

THE STATE -FEDERAL CIGARETTE TAXES HAVE ESCALATED TO 32 CENTS A 20-PACK AND TO 40 CENTS A 25-PACK. IN FISCAL 1985, MONTANANS PAID \$27.4 MILLION STATE-FEDERAL CIGARETTE TAXES

MONTANA TOBACCO WHOLESALE DISTRIBUTORS PREPAY CIGARETTE TAXES OUT OF CAPITAL. OTHER BUSINESSES ARE NOT UNDER SUCH BURDEN OF BEING FORCED TO USE THEIR CAPITAL INVESTMENT BEFORE SELLING THEIR PRODUCTS.

THE NATIONALLY OWNED GIANT GROCERY WHOLESALE DISTRIBUTORS WITH THOUSANDS OF PRODUCTS, INCLUDING PRODUCT LINES BEYOND FOOD, HAVE A FAR GREATER ABILITY TO PREPAY TOBACCO TAXES, THAN THE SMALLER MONTANA FAMILY-OWNED BUSINESSES WITH RELATIVELY FEW PRODUCTS. THE GIANT FOREIGN OR OUT-OF-STATE CORPORATIONS USE CIGARETTES AS A LEVER TO ENHANCE THEIR ADVANTAGE. WHILE THE SMALLER MONTANA DISTRIBUTORS OPERATE UNDER A CIGARETTE FAIR SALES ACT WHICH PROHIBITS SALES BELOW COSTS, THE LARGER GROCERY WAREHOUSES REBATE MONEY TO RETAIL CUSTOMERS ON OVER-ALL ALL-PRODUCTS VOLUME, INCLUDING CIGARETTES. THE MONTANA DEPARTMENT OF REVENUE HOLDS THAT THIS IS A LEGAL PROMOTIONAL ACT.

THE GIANT GROCERY WHOLESALE CORPORATIONS LURE RETAIL CUSTOMERS AWAY FROM THE MONTANA TOBACCO WHOLESALE DISTRIBUTORS BY CONTINUALLY OFFERING PROMOTIONAL DISCOUNTS.

THIS IS A MAJOR CAUSE OF THE DECLINE OF THE INDEPENDENT, FAMILY-OWNED MONTANA TOBACCO WHOLESALE BUSINESS: CONTINUING LOSS OF CUSTOMERS TO NATIONALLY OWNED COMPETITORS WHO HAVE FOUND A WAY TO MAKE MONTANA LAW AND DEPARTMENT LEGAL OPINIONS WORK TO THEIR ADVANTAGE. THE GREATER THE TAX, THE GREATER THE LEVERAGE.

THERE IS ANOTHER MAJOR LOSS OF BUSINESS FOR DISTRIBUTION OF ALL STATE-TAXED CIGARETTES. A GOVERNMENT STUDY HAS DETERMINED THAT MONTANA HAS THE GREATEST PER CAPITA SALES OF CIGARETTES WITHOUT STATE TAX FROM FEDERAL RESERVATIONS. EVERY SUCH SALE IS A LOSS FOR THE STATE AND PLACES A FURTHER DISADVANTAGE ON THE LICENSED DISTRIBUTOR. MILLIONS OF CIGARETTES ARE COMING INTO MONTANA FROM OREGON, WASHINGTON STATE, IDAHO AND ELSEWHERE. THE GREATER THE MONTANA CIGARETTE TAX, THE GREATER THE LOSS OF STATE-TAXED CIGARETTE SALES.

CIGARETTE CONSUMPTION IS FALLING
AT A FAR GREATER RATE IN
MONTANA THAN THE NATIONAL
TREND.

NOTE THE U. S. D. A. PROJECTS
THIS DECLINE IS EXPECTED
TO CONTINUE THE REST
OF THIS DECADE.

The Independent Record, Helena, Mont., Monday, December 29, 1986 - 48

BUSINESS

Total cigarette consumption is falling

WASHINGTON (AP) — A new look at tobacco use by Americans shows that total cigarette consumption rose 70 percent from 1950 to 1981 and then fell about 9 percent from 1981 to 1986.

The Agriculture Department report said that total cigarette use is expected to decline the remainder of this decade because of tax increases, health concerns and smoking restrictions.

An example of new restrictions is the government's ban on smoking of cigarettes, pipes and cigars in federal buildings except in designated areas, effective Feb. 8, 1987.

"The new regulations will reverse existing policy which permits smoking except where 'no smoking' signs are posted," the report said. "Federal building

entrances will have signs reading, 'No Smoking Except in Designated Areas.' However, government agencies will have wide latitude in setting aside smoking areas."

According to the analysis, which is part of a forthcoming outlook report on the tobacco situation, cigar and smoking tobacco uses have also dropped steadily since 1970 and are expected to decline further through the remainder of the 1980s.

The use of snuff gained in popularity between the mid-1970s to the mid-1980s because of big spending on advertising and a shift away from other forms of tobacco, the report said. But that is changing, too.

"Snuff and chewing tobacco consumption may decline in the remainder of this decade, because federal excise taxes have been placed on smokeless tobacco products, television and radio advertising is now prohibited and effective in late February 1987, three rotating warning labels will appear on smokeless tobacco containers and in print advertisements," the report said. "The labels will warn consumers that the product may cause mouth cancer, gum disease and tooth loss, and that it contains nicotine and is addictive."

Verner N. Grise of the department's Economic Research Service told a USDA outlook meeting earlier this month that U.S. cigarette production may drop to about 658 billion "pieces" this year, a decline of 7 billion from 1985 and 78 billion below the 1981 production record.

THE SALES FELL

18 PER CENT
IN MONTANA
— FROM 97.1
MILLION PACKS
IN 1982, TO 80.1
MILLION PACKS
IN 1986. SEE

THE MONTANA
DEPARTMENT OF REVENUE CHART ON THE
NEXT SHEET.

In 1982 state-federal tax on a pack of 20 cigarettes was increased to 32 cents. Packs of 25 cigarettes bear even higher tax.

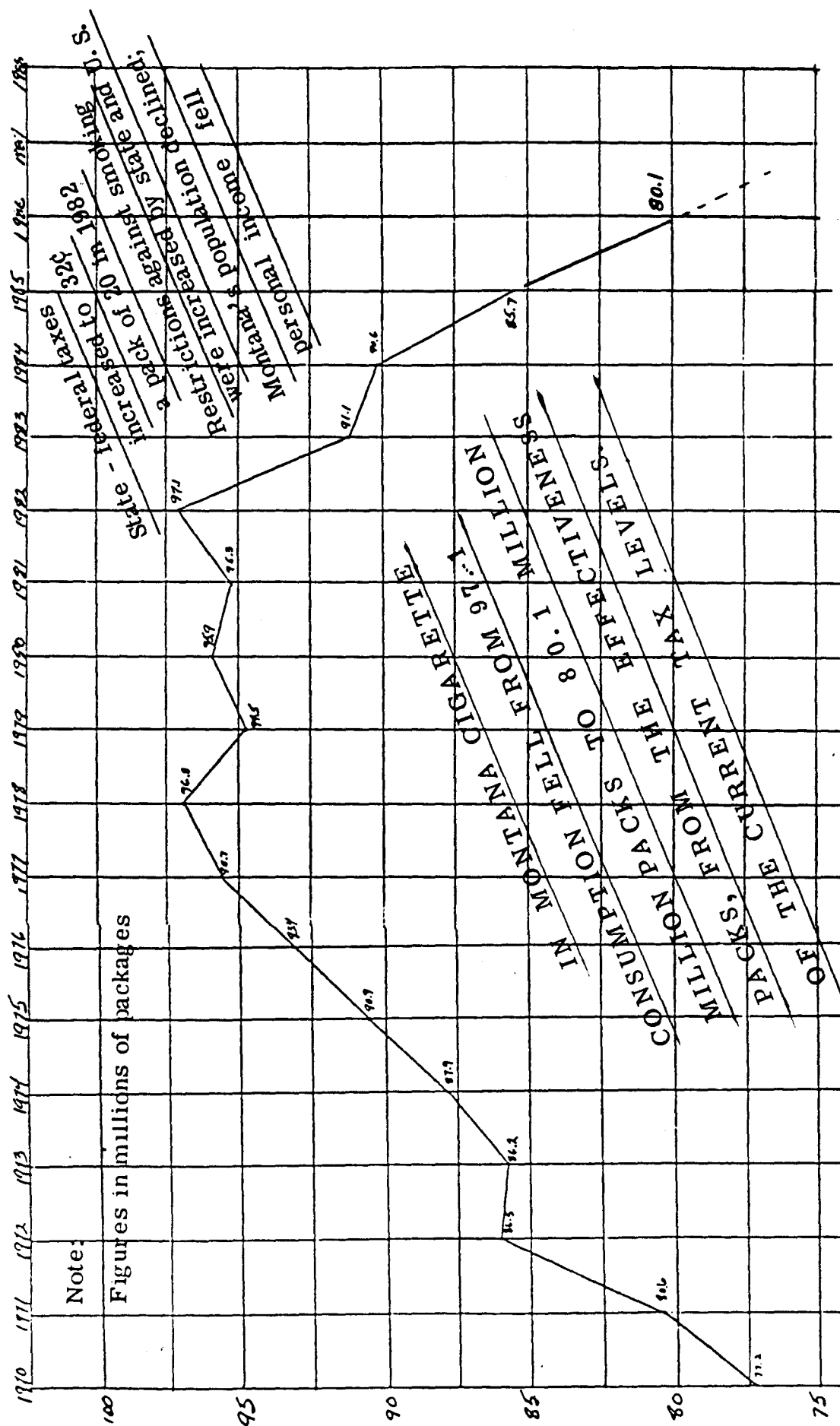
SENATE TAXATION

EXHIBIT NO. 4

DATE 3-4-87

BILL NO. SB 312

Montana Department of Revenue provided the following figures on sales of state tax-paid cigarettes: by fiscal years:



Montana
Historical Cigarette Tax Data for the State of Montana Since 1950
First Cigarette Tax Enacted in 1947

Year	Rate (cents)	Date changed	Gross state cigarette taxes (in thousands of dollars)	Net state cigarette tax collections (in thousands of dollars)	State tax-paid cigarette sales (millions of packs)	Per capita sales (packs)	Average retail price of cigarette taxes as a percentage of retail price	State & Federal cigarette taxes as a percentage of retail price	State net per 1¢ of tax:
1950	2		1,490	1,341	74.5	133.5	NA	NA	
1951	4	12/7/50	2,168	2,029	69.9	117.5	NA	NA	
1952	4		2,910	2,765	72.8	123.6	NA	NA	
1953	4		3,077	2,923	76.9	129.7	NA	NA	
1954	4		2,938	2,791	73.4	121.1	NA	NA	
1955	4		2,907	2,762	72.7	118.6	22.7	52.9	
1956	4		2,089	2,933	77.2	123.9	24.2	49.59	
1957	5	2/25/57	3,286	3,132	77.1	119.3	23.7	50.63	
1958	8	7/1/57	5,410	5,190	66.6	100.6	30.1	53.16	
1959	8		6,036	5,735	75.5	113.7	30.2	52.98	
1960	8		6,149	5,900	77.2	115.7	30.7	52.12	
1961	8		6,462	6,139	80.8	119.1	30.2	53.0	
1962	8		6,535	6,208	81.7	119.8	30.7	52.1	
1963	8		6,742	6,405	84.3	118.9	30.5	52.5	
1964	8		6,378	6,059	79.7	112.8	30.8	51.9	
1965	8		6,654	6,321	83.2	118.0	31.0	51.6	
1966	8		6,488	6,164	81.1	114.9	30.9	51.8	
1967	8		6,623	6,292	82.8	118.0	31.3	51.1	
1968	8		6,514	6,188	81.4	116.1	32.4	49.4	
1969	8		6,511	6,186	91.4	117.4	32.6	49.1	
1970	8		6,167	5,856	77.2	111.2	34.0	47.1	
1971	12	3/5/71	6,996	6,679	80.6	115.6	34.7	46.1	
1972	12		10,379	10,068	86.5	122.2	40.1	49.9	
1973	12		10,344	10,033	86.2	119.9	40.9	48.9	
1974	12		10,549	10,233	87.9	121.9	41.8	47.9	
1975	12		10,908	10,581	90.9	123.7	43.7	45.8	
1976	12		11,204	10,868	93.4	124.9	45.3	44.2	
1977	12		11,479	11,135	95.7	127.0	47.6	42.0	
1978	12		11,618	11,270	96.8	127.2	51.9	38.5	at 12¢ high yield:
1979	12		11,337	10,996	94.5	120.3	53.7	37.2	
1980	12		11,504	11,159	95.9	122.0	56.7	35.3	
1981	12		11,436	11,093	95.3	121.1	60.4	33.1	
1982	12		11,649	11,300	97.1	122.4	65.7	30.4	\$ 941,667 1982
1983	12		10,930	10,602	91.1	113.7	77.2	25.9	
1984	16	7/1/83	13,072	12,652	90.6	110.1	91.3	35.0	
1985	16		13,712	13,256	85.7	103.6	95.5	33.5	at 16¢
1986	16								\$ 781,513 1986

All figures are for fiscal year ending June 30th. The notation NA means not available.
 1986 16 12,504,000 80.1*

* Loss: 17 million packs with 16¢ tax for 1986

Loss: \$ 160,154 per 1¢

SENATE TAXATION

EXHIBIT NO. 4

DATE 3-4-87

BILL NO. S.B. 312

MANUFACTURERS DEVELOPED A LOWER COST CIGARETTE PRODUCT FOR LOWER INCOME CONSUMERS TO OFFSET THE NATIONWIDE DECLINE IN CIGARETTE SALES

The GENERIC cigarette products were developed. Currently, major manufacturers offer king sized generic cigarettes to wholesalers at a base cost of \$2.85 a carton.

Inasmuch as the state-federal cigarette tax is fixed at the same rate for all cigarettes, regardless of base costs, the state-federal tax on several generic cigarette packages is \$3.20 a carton.

THUS, THE TOTAL TAX IS 123 PER CENT ON BASIC COST.

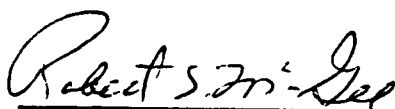
AND THE TOTAL TAX IS 35 ¢ GREATER THAN THE BASIC COST.

TO SUPPORT THE FOREGOING, REFER TO THE MONTANA DEPARTMENT OF REVENUE COST COMPUTATION BELOW:

**EFFECTIVE DECEMBER 17, 1986
MINIMUM CIGARETTE COSTS
GENERIC CIGARETTES**

R. J. Reynolds Tobacco Company
Brown & Williamson Tobacco Company

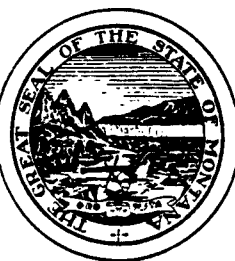
	<u>Kings</u>	<u>100's</u>
Manufacturer's base cost	\$2.85	\$3.10
Federal tax per carton	1.60	1.60
Montana tax per carton	1.60	1.60
	<u>\$6.05</u>	<u>\$6.30</u>
5% presumed cost of doing business	.3025	.315
.0075 cartage	.0445375	.045725
MINIMUM WHOLESALE COST	<u>\$6.40</u>	<u>\$6.67</u>
10% presumed cost of doing business	.640	.667
MINIMUM RETAIL COST	<u>\$7.04</u>	<u>\$7.34</u>
PER PACK	\$.71	\$.74



Robert S. McGee, Program Supervisor
Miscellaneous Tax Section
Income Tax Division
(406)444-2465

Note: The Department of Revenue cost computation above is in conformity with the Supreme Court Decision Number 11851, MATCD vs. State.

DEPARTMENT OF REVENUE



TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

EFFECTIVE DECEMBER 17, 1986 MINIMUM CIGARETTE COSTS

American Tobacco Company Brown & Williamson Tobacco Company
Liggett & Myers Tobacco Company R. J. Reynolds Tobacco Company

	Regulars Kings (see below) Filters	100's 120's
Manufacturer's base cost	*1- \$5.53	\$5.83
Federal tax per carton	1.60	1.60
Montana tax per carton	1.60	1.60
	\$8.73	\$9.03
5% presumed cost of doing business	.4365	.4515
.0075 cartage	.065475	.067725
MINIMUM WHOLESALE COST	\$9.24	\$9.55
10% presumed cost of doing business	.924	.955
MINIMUM RETAIL COST	\$10.17	\$10.51
PER PACK	\$ 1.02	\$ 1.06

	Richland 25's Century 25's	
	85mm	100mm
Manufacturers base cost	\$4.73	\$5.03
Federal tax per carton	2.00	2.00
Montana tax per carton	2.00	2.00
	\$8.73	\$9.03
5% presumed cost of doing business	.4365	.4515
.0075 cartage	.065475	.067725
MINIMUM WHOLESALE COST	\$9.24	\$9.55
10% presumed cost of doing business	.924	.955
MINIMUM RETAIL COST	\$10.17	\$10.51
PER PACK	\$ 1.02	\$ 1.06

The following king size plain end cigarettes carry a higher manufacturer's price that is the same as the 100's and 120's, and have a MINIMUM WHOLESALE COST \$9.55. MINIMUM RETAIL COST of \$10.51. PER PACK \$1.06. Pall Mall Reds \$1.32 PER PACK. Marlboro 25's \$1.28 PER PACK.

Herbert Tareyton (Non filter) Chesterfield Kings
Pall Mall Red (Non filter) Raleigh Plain End

*1- TAX OF \$3.20 58 PERCENT ON BASIC COST

SENATE TAXATION

EXHIBIT NO. 4

3-4-88

58.9312

Independent, Service . . .

Montana Wholesale Distributors of Tobacco products, candy, soft drinks, sundries
Warehouses — Alpha by cities — Personnel

(Area Code 406)

O-owner P-principal EE-Executive
OW-owner's wife PS-spouse EW-spouse

ANACONDA 59711

Roach & Smith Distributors Inc.
403 Chestnut St.

Joe Markovich-0 (N. Keenan) 563-2835-home
Ruth Markovich-ow

563-2041 - office

Dale Markovich-P (o?)
Maureen Markovich-ps
Rich Todorovich (J Haff)
Colleen Todorovich

BILLINGS 59103
SERVICE CANDY Company

Donald J. Bollinger-o
Mary Ann Bollinger-o/ow (Jan-Mar)
1810 Avenida del Mundo
607 E Encanto
Coronado CA 92119

P. O. Box 1794

252-2822 - office

Jack Bollinger-E
Kay Bollinger-eo
2038 St. Andrews Drive
Billings MT 59101
248-1491 - home

Phil McBride--e
Karen McBride - ew
2501 Terry Ave.,
Billings MT 59102

William L. Warner-e
Betty Warner - ew
1043 Terry Ave.,
Billings MT 59102
252-5292 - home

BOZEMAN 59715

Service Distributing Company
P. O. Box 1887
109 East Mendenhall street
1-800-221-0508
586 - 9183

Steve Buckner - 0
412 E. Front st.)temporary address:
Missoula MT 59802 Jan. -Mar)
543 - 4755 - home

Ellis Lewis (retiring June 15)--o
Wanda Lewis -ow
507 S. 11th Ave., Livingston MT 59047

BUTTE 59701

Harkins Wholesale Inc.
445 Centennial Ave.
782 - 1268

William Harkins - o
J. W. Harkins - o
Jack Harkins - o
809 West Silver Street
Butte MT 59701
723 - 3657 - home

SENATE TAXATION

EXHIBIT NO. 4

DATE 3-4-87

BILL NO. 5 B 312

GLENDIVE 59330

Reynolds Wholesale Grocers

Kenneth B. McGovern - 0

GREAT FALLS 59403
Pennington's Inc.
P. O. Box 2546
911 River Drive
453 - 7628

C. L. Pennington - o
27 Prospect Drive
452 - 0427 - home
John Guza - e - Gen'l. Mgr.
141 Trailer Terrace
452 - 4258

Loy Ann Rembe - o
Karl Rembe - os

Susan Parker - o
Michael W. Parker - os

HAVRE 59501
Pennington's Inc. of Havre
P. O. Box 1720 X
265 - 5558

Lloyd J. Goulet - e
2135 1st Ave.
265 - 5117

HELENA 59624
Sheehan's of Helena Inc.
P. O. Box 1155
1324 Helena Ave.
442 - 4333

Stan Feist - o
Dean Woodring - e
Reyna Woodring - ew
Blue Sky Heights - Box 42
Clancy MT 59634
933 - 5977
Stan Feist - o) See Sheehan-Majestic Inc.
Tom Watson - o) Missoula

KALISPELL 59903
Glacier Wholesale Inc.
P. O. Box 5279
16 West Reserve Drive (59901)
752 - 4479

W. Allen Arlint - o
Betty Arlint - ow
555 Three Mile Drive
257 - 3397 - home
Bill A. Arlint - o
Linda Arlint - ow
50 Stonecrest Drive
752 - 6808

MILES CITY 59501
Gierke Distributing Co.
215 North 7th street
252 - 1563

George A. Gierke - o
Iola Gierke - ow
Yellowstone Valley - R. Rte.
232 - 1590 - home

Allen Gierke - o (use office address)
Tracey Gierke - ow
Robert (Bud) Gierke - o
Marge Gierke - ow
1502 Batchelor
232 - 0345 - home

SENATE TAXATION
EXHIBIT NO. 4
DATE 3-4-87
BILL NO. 58312

Page 3 Montana wholesale distributors

MISSOULA 59807

Sheehan-Majestic Inc.
P. O. Box 7248
1301 S. 3rd West

543 - 5109

Stan Feist - o
Linda Feist - ow
543 - 4447
Thomas Watson - o
212 Crestline Drive
Missoula MT 59801
549 - 5934
Syndee Watson - ow

SHELBY 59474

Pennington's Inc.
P. O. Box 459
815 Oilfield Avenue

434 - 5141

Ben Ruff - e
Phyllis - eo
735 N. Marias Ave.
434 - 2756

Gary Ruff - e
Terri Ruff - eo

SIDNEY 59270

East-Mont Enterprises Inc.
P. O. Box 526
608 East Main street
482 - 2910

Alan Burgess - o
Rosemarie Burgess - ow
Miranda Burgess - o
1313 S. Central Avenue
482 - 2943

WOLF POINT 59201

Hi-Line Wholesale Co.
212 Benton Street
653 - 1313 - o

Tom B. Ault - o
Wanda Ault - ow
745 Knapp street
653 - 1008
Burl Ault - o (retired)
Eunice Ault - ow
123 East Johnson Street
653 - 2806

HELENA 59624

Montana Association of Tobacco
and Candy Distributors Inc.

P. O. Box 123
442 - 1582

Thomas W. Maddox - executive director
Marilyn L. Maddox - secretary- eow
1777 LeGrande Cannon Blvd.,
442 - 1582

SENATE TAXATION

EXHIBIT NO. 4

DATE 3-4-87

BILL NO. S.B. 312

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

NAME: Steven E. Buckner DATE: March 4, 1987

ADDRESS: 109 E. Mendenhall

PHONE: 586-9183

REPRESENTING WHOM? Service Distributing, Inc.

APPEARING ON WHICH PROPOSAL: SB312

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION

EXHIBIT NO. 5

DATE 3-4-87

BILL NO. SB 312

Mr. Chairman; members of the committee:

My name is Steve Buckner, and I am here to oppose SB3 which proposes to increase the state cigarette tax ~~\$2~~^{40¢} a carton. Presently, I am a graduating senior in business administration at the University of Montana. Throughout my years of education, I have consistently heard of the detriments of being involved with tobacco products from past teachers, and I find it somewhat ironic that these same teachers are planning on using a cigarette tax to finance their own retirement system. It is disturbing to think that teachers will be relying on an industry with ever decreasing sales to finance their future security.

I have been involved in the wholesale business since the eighth grade, and this past year I have had the chance to become heavily involved in our newly owned family wholesale business. As I leave the University of Montana, the future looks very exciting in the wholesale business, and I am proud to be a part of this industry. But a constant assault on cigarettes which is a crucial part of our business, does put some doubt in my mind as to our stability.

The action that this committee should take on this bill depends on the objective of this committee. If your purpose is to totally eliminate cigarette consumption and the present tax base, the committee should pass this bill forward. For the state to maintain this tax base, this committee should leave the state cigarette tax as is. I thank the committee for this opportunity to express my views. I am sure the committee will make the right decision.

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

NAME: TOM STUMP DATE: 3/4/87

ADDRESS: P.O. Box 3546 GREAT FALLS 59403

PHONE: 452-7628

REPRESENTING WHOM? PENNINGTON'S INC GREAT FALLS-SHELBY HARBOR

APPEARING ON WHICH PROPOSAL: SB 312

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT:

THE CONGRESSIONAL BUDGET OFFICE CALLS
TAXES ON CIGARETTES THE MOST REGRESSIVE TAX
IN THE US. THESE SELECTIVE SALES TAXES
SHIFT THE BURDEN OF GOVERNMENT AWAY
FROM THE BROAD BASE OF INCOME & PROPERTY
TAXING TO AN EVER DECREASING BASE WITH
OVERALL RESULT OF LOST REVENUE TO THE STATE
IN ADDITION, WITH FARMARKING THESE FUNDS
FOR A SPECIFIC USE, THE STATE FURTHER
COMES OUT A LOSER. PLEASE VIL THIS
Bill
ALSO SEE ATTACHED.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION

EXHIBIT NO. 6

DATE 3-4-87

BILL NO. SB312

I am Tom Stump and I am here to voice my opposition to SB312. I am representing Pennington's Inc., a family owned wholesale distribution concern in Great Falls. Pennington's has been in business for forty years and we cover North Central Montana from Glasgow to Glacier National Park to Lincoln to Harlowton and including Lewistown, Havre, Shelby, Conrad and Cut Bank. We have 68 Montanans employeeed.

Historical information shows that for every increase in cigarette sales taxes, the consumption goes down. This results in decreased revenue to the state.

That is what happens to the state. What happens to us, business in Montana, is equally damaging. Decreased consumption means decreased sales and profits. This results in lost revenues and employees which in turn results in more decreased taxes to the state in the form of income, real and personal property and payroll taxes, to name a few. This continues to damage the businesses that we service and service us. For example, grocery stores, gas stations, restaurants, and repair shops. These people rely on the profits generated through sales of the products that you are proposing to tax more heavily.

The State of Montana in general is coming out the loser in this bill when all aspects are taken as a whole.

In addition to the negative effects of increasing the sales tax on these products, the revenue generated by this proposal would go to benefit a select group of people, the same people that are teaching our children the negative at-

SENATE TAXATION

EXHIBIT NO. 6

DATE 3-4-87

BILL NO. S.B. 312

tributes of tobacco. I do not understand this relationship. It is a clear example of flogging the horse that pulls the plow.

Thank you for letting me voice my opinion and I trust that you will take into consideration the aforementioned thoughts in your decision making process, especially earmarking the proceeds for a specific use.

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

NAME: Edward D. Buckner DATE: 3/4/87

ADDRESS: 619 MEADOWLARK LN. LIVINGSTON, MT. 59047

PHONE: 222-6044

REPRESENTING WHOM? SERVICE DISTRIBUTING, INC. ^{BOZEMAN} LIVINGSTON

APPEARING ON WHICH PROPOSAL: SB312

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENT: THIS Bill is DETRIMENTAL TO THE Distribution
system Throught-out THE STATE OF MONTANA. Small
Wholesalers A VITAL LINK TO RURAL COMMUNITY'S IN
MONTANA depend ON THE SALE OF CIGARETTES to help
COMPLEMENT
~~SOME~~ THE distribution OF Food products AND
OTHER items BENEFICIAL TO THE EXISTENCE OF SMALL
BUSINESS. THIS Bill is DESIGNED TO KILL SALES OF
CIGARETTES AND will ultimately BRING IN LESS REVENUE
TO THE STATE OF MONTANA. PLEASE Vote TO KILL
SB 312

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION

EXHIBIT NO. 7

DATE 3-4-87

BILL NO. SB312

Mr. Chairman; members of the committee:

My name is Edward Buckner. My family — my wife and two sons and I — own and operate the Service Distributing Company. This is a small business, a wholesale distribution business with warehouses in Bozeman and Livingston. Our products are varied and we distribute to several hundred retail stores over a wide area of southcentral Montana, from the Wyoming border north.

Among our products, cigarettes are an important part of our business. My family business must pay for cigarettes on just about a cash basis. We also must pay the state of Montana taxes on cigarettes up front — out of our business capital — before we can complete distribution or collect for cigarettes from our retail customers.

Believe me when I say — ^{/the state's /}and ^{/experience} supports our belief — any increase in select sales taxes on cigarettes will result in loss of our business, and loss of tax revenue for the state of Montana.

I RESPECTFULLY URGE YOU TO VOTE THAT SENATE BILL 312 DO NOT PASS FROM THIS COMMITTEE.

I BELIEVE THAT THE STATE'S OVER-ALL NEEDS FOR REVENUE ARE BETTER GENERATED WITH MORE GENERAL TAXES ON ALL OF THE PEOPLE — NOT ON THE SMALL PERCENTAGE OF OUR CITIZENS WHO ENJOY SMOKING CIGARETTES.

I BELIEVE THAT IT IS BASICALLY WRONG TO LOOK TO SUCH A SMALL NUMBER OF CITIZENS — OUR CIGARETTE SMOKERS — TO FUND A RETIREMENT OR PENSION SYSTEM FOR OUR SCHOOL TEACHERS.

AGAIN, PLEASE VOTE TO KILL SENATE BILL 312. THANK YOU
FOR THIS OPPORTUNITY TO EXPRESS MY THINKING AND OPPOSITION

SENATE TAXATION
EXHIBIT NO. 7

DATE 3-4-87

BILL NO. S.B. 312



March 4, 1987

TESTIMONY IN OPPOSITION TO SB312

My name is Kay Foster. I appear on behalf of the Billings Area Chamber of Commerce to oppose SB312.

The Billings Chamber has given active support to broad-based reform of the Montana tax system, including the enactment of a statewide sales tax to provide property tax relief and funding for our educational system. We recognize the need to fund the teacher retirement levy. However, we vigorously oppose any legislative action to single out particular industries to provide a temporary infusion of revenue into a failing tax system. To further tax cigarette sales is a feeble approach at avoiding true tax fairness and reform.

We urge this committee to reject this discriminatory sales tax and others that will come before you.

SENATE TAXATION

EXHIBIT NO. 8

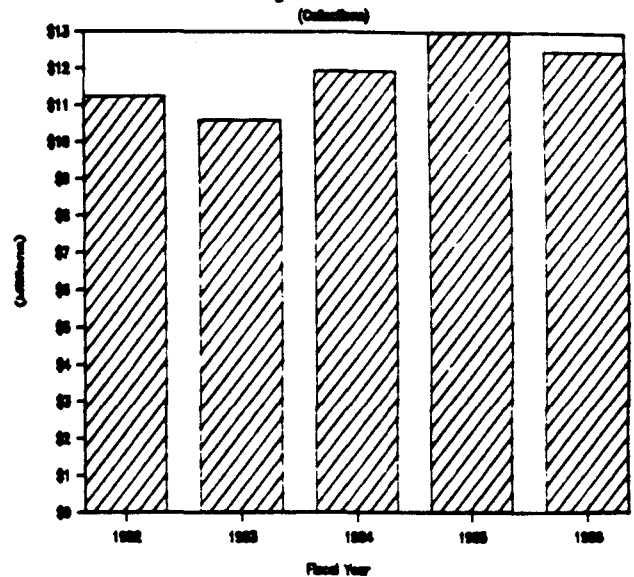
DATE 3-4-87

BILL NO. SB312

Cigarette Sales Tax

Cigarette wholesalers in the state pay a tax of 16¢ per package of 20 cigarettes. The tax is included in the retail price of the cigarettes. A tax insignia must be affixed to each package within 72 hours after receipt by the distributor or dealer. Wholesalers and dealers are entitled to purchase insignias at face value less the following percentages which are allowed to defray costs of affixing insignias and precollecting the tax on behalf of the State of Montana:

- 1) 6% for up to 2,580 cartons purchased in any calendar month;
- 2) 4% for any portion of the next 2,580 cartons purchased in any calendar month; and
- 3) 3% for purchases in excess of 5,160 cartons in any calendar month.

Cigarette Tax

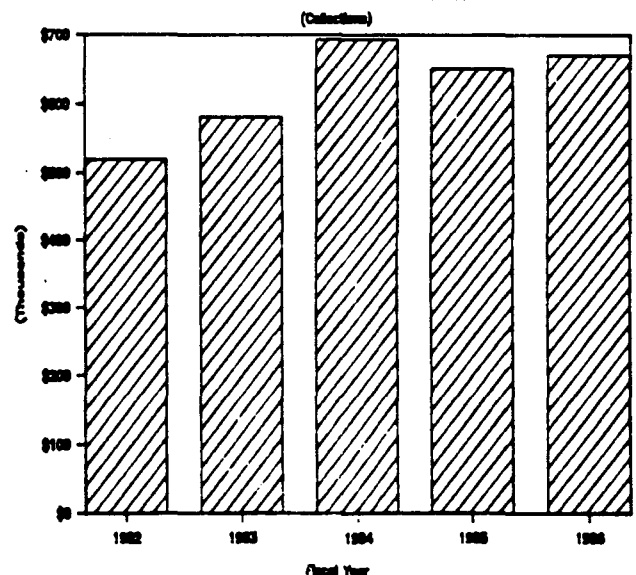
All money collected from the Cigarette Sales Tax is deposited in the Long-Range Building Program Fund. 79.75% of the deposits are allocated to the Debt Service Fund Type and 20.25% go to the Capital Projects Fund Type.

Cigarette Sales Tax Collections

FY 82	FY 83	FY 84	FY 85	FY 86
\$11,233,044	\$10,580,701	\$11,929,453	\$12,984,626	\$12,469,883

Tobacco Products Tax

All tobacco products, excluding cigarettes, are subject to a tax of 12½% of their wholesale price. The tax is collected from the wholesaler less a 5% defrayment for collection and administrative expenses. Collections are deposited in the Long-Range Building Program Debt Service Fund.

Tobacco Products Tax

SENATE TAXATION

EXHIBIT NO. 9

DATE 3-4-87

BILL NO. SB312

Tobacco Products Tax Collections

FY 82	FY 83	FY 84	FY 85	FY 86
\$ 519,448	\$ 581,203	\$ 692,897	\$ 650,793	\$ 669,932

SENATE TAXATION

EXHIBIT NO. 9DATE 3-4-87BILL NO. S.B. 312

SENATE BILL 325

ALTHOUGH MARKET VALUE IS THE STANDARD FOR PROPERTY ASSESSMENTS IN MONTANA, THE MONTANA DEPARTMENT OF REVENUE USUALLY USES CONSTRUCTION COSTS LESS DEPRECIATION AS THE BASIS FOR ASSESSMENTS. THE DEPARTMENT HAS ADOPTED DEPRECIATION SCHEDULES THAT ARE USED TO ADJUST 1982 CONSTRUCTION COSTS TO THE AGE OF THE PROPERTY BEING ASSESSED.

THERE ARE THREE COMPONENTS OF DEPRECIATION: 1) PHYSICAL DETERIORATION, 2) FUNCTIONAL OBSOLESCENCE AND 3) ECONOMIC OBSOLESCENCE. WHILE PHYSICAL DETERIORATION MAY BE ADEQUATELY ACCOUNTED FOR WITH DEPRECIATION TABLES, FUNCTIONAL AND ECONOMIC OBSOLESCENCE CAUSE A LOSS IN VALUE THAT CANNOT BE ANTICIPATED BY PHYSICAL DEPRECIATION TABLES.

FUNCTIONAL DEPRECIATION MAY BE CAUSED BY A POORLY DESIGNED PRODUCTION FACILITY OR BY ADAPTING AN EXISTING PLANT TO PRODUCE SOMETHING NOT ORIGINALLY INTENDED. IN EITHER CASE, THE MARKET VALUE OF THE FACILITY WILL BE LOWER THAN ITS REPLACEMENT COST LESS PHYSICAL DEPRECIATION. A RESIDENCE WITH 5 BEDROOMS AND ONLY ONE BATHROOM IS AN EXAMPLE OF FUNCTIONAL OBSOLESCENCE. THE HOME WILL NOT SELL FOR ITS REPLACEMENT COST LESS PHYSICAL DEPRECIATION.

ECONOMIC OBSOLESCENCE IS A LOSS IN VALUE DUE TO FACTORS FROM OUTSIDE THE PROPERTY. A CAFE IN A SMALL TOWN WHICH HAS BEEN BY-PASSED BY AN INTERSTATE HIGHWAY WILL EXPERIENCE ECONOMIC OBSOLESCENCE AS A PORTION OF ITS BUSINESS WILL NOT PASS THE CAFE AGAIN. NEW TECHNOLOGY WHICH REPLACES A PRODUCT OR PRODUCTION METHOD WILL CAUSE ECONOMIC OBSOLESCENCE. THE FACILITY WILL NO LONGER SELL FOR REPLACEMENT COST LESS DEPRECIATION.

SENATE TAXATION

EXHIBIT NO. 10

DATE 3-4-87

BILL NO. SB325

THE DEPARTMENT OF REVENUE RECOGNIZES THAT FUNCTIONAL AND ECONOMIC OBSOLESCENCE ARE PART OF DEPRECIATION AND THE DEPARTMENT MAINTAINS THAT THEY ARE ALLOWED WHERE APPLICABLE. SENATE BILL 325 MAKES IT EXPLICIT THAT OBSOLESCENCE AS WELL AS PHYSICAL DEPRECIATION MUST BE CONSIDERED IN ESTIMATING MARKET VALUE BY THE COST APPROACH. IT IS NOT SUFFICIENT TO SAY THAT OBSOLESCENCE IS ACCOUNTED FOR IN THE DEPRECIATION SCHEDULES. THE DEPARTMENT MUST ACCOUNT FOR IT SEPARATELY OR SHOW HOW IT IS INCLUDED IN THE DEPRECIATION TABLES. SENATE BILL 325 WILL ALLOW THE PROPERTY OWNER TO RECEIVE AN EXPLANATION OF THE TREATMENT OF THESE ITEMS, SOMETHING SOME PROPERTY OWNERS FEEL HAS BEEN NEGLECTED IN THE PAST.

2/23/87

SENATE TAXATION

EXHIBIT NO. 10

DATE 3-4-87

BILL NO. S.B. 325

CONCEPTS OF VALUE

The Marshall Valuation Service is designed primarily as a guide to the determination of Replacement Cost as an approach to value. In addition, typical lives of structures, a guide to capitalization of income, the Marshall and Swift building and equipment cost indices, and several other guidelines to value are included.

In establishing concepts of value, the first criterion of the reliability of any concept is its supportability. It should allow the estimate of value to be based on logical evidence and actual fact which can be supported by documentation. All items considered as indicators of value must have a firm foundation in fact. Therefore, replacement cost figures used in valuation should be established by the action and reaction of the market and should reflect all factors that go into that market.

Marshall and Swift costs are based on actual end costs of structures to the user. Therefore, they reflect labor efficiency, cost of money, fees, and many other items which are not included in the basic costs of labor and materials. They are designed to give accurate present day Replacement Costs which will form a sound foundation for the cost approach to value.

APPROACHES TO VALUE

In appraisal literature and in appraisal reports, three approaches to value are nearly always mentioned:

COST APPROACH MARKET APPROACH INCOME APPROACH

Actually, in appraising for market value, the Market Approach is primary no matter which other approach is used. Because of this, all data in the Marshall Valuation Service is being continuously updated with actual costs of construction.

If the Income Approach is used, the market must be studied to determine fair yield rates, fair rents and expenses, and remaining life expectancy, so this approach is actually subsidiary to the Market Approach.

If the Cost Approach is used, the market should be studied to determine actual up-to-date costs of structures, which is why the Marshall Valuation Service is based on end costs of buildings to the buyer or owner. Also, in the Cost Approach, the market must be studied for depreciation and for factors causing obsolescence. The Marshall Valuation Service is also used in adjusting sales prices for market comparisons.

Whichever approach is used, the Marshall Valuation Service, used in accordance with the accompanying instructions, will give a sound basis derived from factual cost data obtained from the construction market.

MARKET VALUE

By appraisal teaching, by court decisions, by insurance contract, and by statutory law, the basis of all valuation is becoming more and more to be Market Value.

An ideal definition might be that Market Value would be the average selling price of an infinite number of identical properties sold at the same time in a freely competitive market, but this is an hypothesis which can never exist and therefore the following definition is more desirable.

Fair Market Value and Market Value are synonymous and are defined as the highest price estimated in terms of money which a property will bring if exposed for sale on the open market with a reasonable time to find a purchaser who buys with full knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used.

ELEMENTS OF MARKET VALUE

1. A buyer and a seller, both solvent and willing to effect an exchange of property for money, both having a reasonable knowledge of the uses and possibilities of the property.
2. Money, according to many court decisions, does not necessarily mean cash but may be the equivalent under financing which is conventional for the time, place, and type of property.
3. Reasonable knowledge of the possible uses of the property means knowledge of circumstances, facts, and conditions which informed people who deal in that type of property would generally know.
4. A freely competitive market where buyers and sellers may determine and consider all elements of value and where substitute properties compete for buyers in the market. Neither buyer nor seller should be under any compulsion to buy or sell.
5. Market value is value in exchange to persons generally and based on the most profitable use to persons generally. It does not assume inferior or superior management. This general person who might buy must exist or reasonably be expected to exist in the future, either among the hundreds for whose money a small tract home might compete or the one corporate person who might consider buying a specialized plant. It must not be a mythical or hypothetical person.

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3. Capitalization of income.

Each one of these approaches - cost, market and income - warrants some discussion. It should be recognized that the usual appraisal will reflect a use of at least a combination of the latter two methods rather than a strict adherence to one method only.

✓ Reproduction Cost Less Observed Depreciation

This approach is the one most difficult to use, the one where there is the most risk of error and, therefore, the one that is the least reliable. Even if the approach is properly used, it generally tends to set the upper limit of value, particularly in periods of rising costs, since it is reasonable to assume that an informed buyer would not pay more for the improvements than it would cost to reproduce them. A serious defect of this method as a means to evaluate real estate for tax purposes is that it does not produce a result which is compatible with the fair market value definition as intended by the tax laws. It is by far the least valid method in this respect.

The approach requires, fundamentally, an estimate of the cost of replacing a structure (including the cost of the non-productive investment of funds during the construction period), an estimate of the depreciation and obsolescence that has taken place in the existing structure, and an appraisal of the land involved. When estimating replacement costs, appraisers employ engineering manuals to obtain cost data, but it happens, particularly where there are wide differences of opinion between appraisers, that engineers, architects, contractors, and others are required to properly develop costs. It is obvious that this approach requires great skill on the part of the appraiser and that the cost and depreciation estimates required in the approach are bound to lead to controversy.

Reproduction cost less observed depreciation is a valuable tool for the appraising of hospitals, schools, public buildings and other properties owned by nonprofit organizations since there is no market for them nor is there productive income from them in the economic sense. Its use is extremely limited for ordinary Federal tax valuation purposes.

Comparable Sales

An arm's length sale of the property in question on the valuation date would be determinative of its fair market value, and would also, with few exceptions, eliminate the need to arrive at a value by other means. Lacking such circumstances, the next best indication of value would be the price for which a reasonably comparable piece of property was sold. It is extremely unlikely, if not impossible, that an exactly comparable property can be found, it will suffice to consider sales of similar property, making adjustments for such differences as exist between the comparatives and the property to be valued.



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into something possessing a new nature or name and adopted to a new use.

(3) All property which has been certified by the department of health to control air water pollution shall be placed in Class 5.

(4) All property which has been included in a new industry classification shall be placed in Class 5. (History: Sec. 15-1-201 MCA; IMP, Sec. 15-8-111 MCA; NEW MAR p. 1270, Eff. 7/1/82.)

42.22.1306 VALUATION OF INDUSTRIAL PROPERTY OTHER THAN LAND

All property other than land or improvements to land shall be valued by trending the original installed cost to a current replacement cost, then depreciating on an age/life basis to compensate for ordinary physical deterioration and/or functional obsolescence. (History: Sec. 15-1-201 MCA; IMP Sec. 15-8-111 MCA; NEW MAR p. 1270, Eff. 7/1/82.)

42.22.1307 TREND FACTORS The trending factors for all property other than land or improvements to land shall be published annually by the department. These factors will be taken from the Marshall Valuation Service except in those instances when the taxpayer can demonstrate to the department that another source of information will provide a more reliable indication of replacement/reproduction cost and thus the resulting "market value" for the industry as a whole. (History: Sec. 15-1-201 MCA; IMP Sec. 15-8-111 MCA; NEW; MAR p. 1270, Eff. 7/1/82.)

42.22.1308 DEPRECIATION SCHEDULES Depreciation schedules for all property, other than land or improvements to land, shall be published annually by the department. These depreciation schedules will be an expanded version of the depreciation schedule provided by the Marshall Valuation Service. These depreciation rates will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to technological changes within the process during the life expectancy period. (History: Sec. 15-1-201 MCA; IMP Sec. 15-8-111 MCA; NEW MAR p. 1270, Eff. 7/1/82.)

42.22.1309 ECONOMIC OBSOLESCENCE Extraordinary functional and/or economic obsolescence are treated on a case by case basis. (History: Sec. 15-1-201 MCA; IMP Sec. 15-8-111 MCA; NEW, MAR p. 1270, Eff. 7/1/82.)

42.22.1310 ISSUANCE OF DEPRECIATION AND TRENDING SCHEDULES The schedules referred to in Rules 42.22.1307 and 42.22.1308 shall be supplied to its local agent by the 15th day of January of each year. A taxpayer may request such

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

NAME: GEORGE A. GIERKE DATE: 3-4-87

ADDRESS: 215 N. 7TH ST. Miles City, Mont 59301

PHONE: 232-1563

REPRESENTING WHOM? GIERKE'S DISTRIBUTING Co

APPEARING ON WHICH PROPOSAL: SB 312

DO YOU: SUPPORT? _____ AMEND? _____

OPPOSE? X

COMMENT: Please oppose SB 312

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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3. Acquire the original installed cost (direct and indirect) for the subject equipment.
4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).
5. Depreciate the RCN on the basis of age to arrive at sound value.

Example:

Industry - Sawmill
Economic life - 10 years
1986 Table - Table 6 (Subsection 1)

<u>Case</u>	<u>I</u>	<u>II</u>
<u>Equipment - Motor</u>		
<u>Original Installed Cost</u>	<u>\$ 200</u>	<u>\$ 100</u>
<u>Year Installed</u>	<u>1980</u>	<u>1972</u>

Case I

<u>Cost</u>	<u>\$ 200</u>
<u>x Trend</u>	<u>1.227</u>
<u>RCN</u>	<u>245</u>
<u>x % Good</u>	<u>.49</u>
<u>Sound Value</u>	<u>\$ 120</u>

Case II.

<u>Cost</u>	<u>\$ 100</u>
<u>x Trend</u>	<u>1.596*</u>
<u>RCN</u>	<u>245</u>
<u>x % Good</u>	<u>.20</u>
<u>Sound Value</u>	<u>\$ 32</u>

* The trending factor is applied only to the last year of the economic life. Although the equipment is 15 years old, it is trended by the 10th year trend.

AUTH: 15-1-201 MCA; IMP: 15-6-138 and 15-8-111 MCA.

3. A public hearing was held on November 20, 1986, to consider the proposed adoption of these rules. Several persons appeared at the hearing to offer oral testimony and written comments were received from one taxpayer. Gregg Groepper and Randolph Wilke, Property Assessment Division, appeared on behalf of the Department.

Pfizer, Inc., through its attorney, submitted comment concerning the adoption of the rules. The first comment relates to a lack of foundation for the development of trend factors. The foundation for the rule is the Marshall Valuation Service. In addition, language has been added to the rule explaining how the Marshall Valuation Service data is used to develop the trending and depreciation schedules. The rule relating to industrial machinery and equipment trend factors is being adopted so that taxpayers will have direct knowledge of the trend factors which are being applied to their industrial machinery and equipment for ad valorem tax purposes. The rule will operate in conjunction with ARM 42.22.1307. That rule reflects that the trend factors are developed annually from the Marshall Valuation Service. Accordingly, there is a foundation for the development of the trend factors set forth in the new rule.

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The second comment offered on behalf of Pfizer is that the Department of Revenue has denied taxpayers due process of law in adopting these rules since the taxpayers have no ability to know the foundation for the rules, the methods of their compilation, or the persons who compiled them. The Department of Revenue asserts that the foundation for the development of the rules has been set forth above. A rule is not legally defective because the methodology by which it was compiled is not set forth within the rule.

The third comment offered on behalf of Pfizer was to the effect that the rules are incomplete because they do not define the concept of depreciation. The Department has previously defined the concept of depreciation, insofar as it affects the valuation of industrial property, at ARM 42.22.1308.

Flying J Inc., through its attorney, submitted written comments pertaining to the adoption of the rules. Flying J. Inc. raised five points for the Department's consideration. First, it suggests that the use of trend factors is discriminatory because they fail to take into account the operating or nonoperating character of the property being valued. This comment is an argument for economic obsolescence. The Department of Revenue always considers economic obsolescence when it values industrial machinery and equipment. Consequently, the comment is not well taken.

Second, Flying J. Inc. suggested that the trending and depreciation tables do not adequately account for technical and functional obsolescence in industrial machinery and equipment. This comment is in error. The Department of Revenue's trending and depreciation schedules are premised upon an economic life expectancy. The economic life expectancy of industrial machinery and equipment will account for all forms of physical and functional obsolescence of the property being valued.

Third, Flying J. suggested that the proposed trending tables and depreciation schedules do not reflect a true life expectancy of industrial machinery and equipment. The comment is incorrect to the extent that the commentator apparently believed that the life expectancy starts again following a sale. This is not the case. The thrust of the rest of the comment is that whenever a taxpayer acquires industrial machinery and equipment, the Department of Revenue commences a new economic life expectancy period for that machinery and equipment. The commentator suggested that at the date of acquisition, the property is typically "worn out." The Department's experience in this area leads it to believe that taxpayers acquire capital assets because they have economic utility to the taxpayers. Industrial machinery and equipment is maintained in such a fashion so that it will continue to have economic utility and to produce the industrial product for which it was designed.

Fourth, Flying J. suggests that the trend factors and depreciation schedules do not reflect market value as required by Montana law. The Department of Revenue has relied on the

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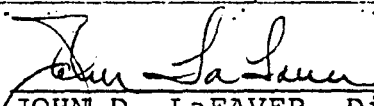
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replacement cost method, including trending and depreciation based on an economic life expectancy, for a number of years. That methodology has been challenged several times by taxpayers in the State of Montana. The Department's methodology has been sustained by the State Tax Appeal Board in contested case proceedings. The Department believes its methodology does yield market value of property.

Fifth, Flying J. suggested that the adoption of the rules should be prospective in nature and not retroactive. The 1986 tax assessments for industrial machinery and equipment have been prepared. They were based upon the same cost replacement methodology, with trending and depreciation, as they had been for many years. Consequently, taxpayers in Montana had an opportunity to challenge those assessments if they desired to do so. The Department will continue to use its cost replacement methodology, with trending and depreciation, because it yields market value and because it promotes equalization within the same tax class.

4. The authority for the rules is 15-1-201, MCA, and the rules implement 15-6-138 and 15-8-111, MCA.


JOHN D. LaFAVER, Director
Department of Revenue

Certified to Secretary of State 12/15/86

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CENEX • Post Office Box 21479 • 1601 Lewis Ave. • Billings, Montana 59104 • (406) 245-4747

Senate Taxation Committee
Capitol Building, Helena, Montana
March 4, 1987
SB 387

SENATE TAXATION

EXHIBIT NO. 13

DATE 3-4-87

BILL NO. SB 387

My name is Carol Swinney. I represent CENEX, a company which has produced oil and gas in Montana since 1946.

Senate Bill 387 provides for the monthly reporting and payment of the oil and gas severance tax.

Oil and gas producers in Montana pay three different taxes to the state: the severance tax, the privilege and license tax and the resource indemnity trust tax. Currently, the severance tax is reported quarterly on the same form as the privilege and license tax and the resource indemnity trust tax, using the same volumes and gross values for each type of tax. We object to reporting and paying the severance tax monthly while continuing to accumulate volumes and values for quarterly totals to report the other two taxes. This duplicate reporting would be an extreme administrative burden. All taxes should be reported together, preferably quarterly, or there is an inefficient duplication of effort and burdensome reporting requirements.

Our second objection to SB 387 is that due dates are not reasonable for reporting gas production. Since most oil and gas producers sell their gas to gas plants, volumes and values are not generally available from the purchaser before the end of the month following the month of production. Due to the volume

of gas produced in Montana by CENEX, it would be virtually impossible to accumulate this data in time to have the reports filed within 30 days after the end of each month. Another state in which we do business requires monthly reporting but allows 45 days for gas reporting and payment. Although we object to reporting monthly at all, due dates for gas reporting must be made reasonable.

In summary CENEX opposes passage of Senate Bill 387 because of the burdensome reporting requirements and impractical due dates for reporting gas production.

Thank you.

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