

MINUTES

MONTANA SENATE 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By Senator Bob Brown, Chairman, on March 3, 1989, at 8:00 a.m.

ROLL CALL

Members Present: Senator Brown, Senator Hager, Senator Eck, Senator Bishop, Senator Halligan, Senator Walker, Senator Harp, Senator Gage, Senator Severson, Senator Mazurek, Senator Crippen, Senator Norman

Members Excused: None

Members Absent: None

Staff Present: Jill Rohyans, Committee Secretary
Jeff Martin, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 440

Presentation and Opening Statement by Sponsor:

Senator Harp, District 4, sponsor, said this is a bill to apply the cigarette sales tax to all use and consumption of cigarettes on an Indian reservation except by members of an Indian tribe on an Indian reservation. It also provides for a refund of taxes paid on cigarettes sold to tribal members. He reviewed the bill section by section. He said the bill would eliminate unfair competition between people who enjoy certain advantages on the reservation and people in the surrounding areas of the reservation who are collecting the tax and upholding the intent of the laws of Montana. In the past we have not been as diligent as we could have been about collecting all the taxes due the state. At this point in time we are needing all the income we can get. He referred the members to the fiscal note.

Senator Harp said Section 3 provides for a pre-collection tax on all cigarettes that go into a reservation area. Data says 92 cartons per person in Montana are consumed yearly. With 37,000 members on reservations in

Montana, this becomes a major tax evasion problem in the state. Montana ranks number one in the United States in the sales to tribal members. A recent U. S. Supreme Court decision in Washington state ruled that a state could impose a cigarette tax on reservations on purchases of cigarettes by non-members of Indian tribes. He submitted that we can tax these cigarettes on a consumption and a pre-collection basis. He said opposition to the bill is going to come from wholesalers who are benefitting tremendously by simply passing the cigarettes into the reservations without collecting the taxes. It is an unfair competition.

Senator Harp pointed out if this bill is enforced the projected collections would be \$1.7 million in additional revenue in FY 1990 and in FY 1991 \$2.6 million. That is a major impact.

List of Testifying Proponents and What Group they Represent:

Tom Dowling, Montana Food Distributors
Steve Bender, Deputy Director, Department of Revenue
Bill Stevens, Montana Food Distributors Association
Marck Olson, Ole's Country Stores, Inc.

List of Testifying Opponents and What Group They Represent:

Mark Staples, attorney for the wholesalers, retailers, several of the tribes, private employees and citizens who will be negatively affected by the bill
Stan Feist, Sheehan Majestic
Dave Baker, Billings Storage and Wholesale Co.
Jerry Stinson, Big Sky Brokerage
Ken Krantz, Joe's Smoke Ring
Bob Noble, Busted Ass Ranch
Tom Ryan, Self
Representative Jarvis
Fred Matt, Consolidated Salish and Kootenai Tribes
Judge Don Dupuis, store owner
Evelyn Stevenson, Confederated Salish and Kootenai Tribes
Tom Stump, Montana Association of Tobacco and Candy Distributors and Penningtons of Great Falls
Merle Lucas, Assiniboine and Sioux Tribes, Fort Peck Reservation

Testimony:

Tom Dowling, Montana Food Distributors, presented his testimony in support of the bill (Exhibit #1).

Steve Bender, Deputy Director, Department of Revenue, expressed support for the bill because the basic tenant of taxation is that taxes should be fairly and uniformly levied. Cigarette taxes are not uniformly collected and this bill would correct that situation. He submitted proposed amendments which would clarify the application of the bill. One amendment would clarify that all taxes are pre-collected on all cigarettes including those going into the reservation. The credit mechanism corrects the taxation on sales to the tribal members. The rest of the amendments are general clarifying changes (See Exhibit #2).

Bill Stevens, Montana Food Distributors Association, presented the material on Competition Comparison in Exhibit #1.

Marck Olson, Ole's Country Stores, Inc., and Montana Food Distributors, presented his testimony in support of the bill (Exhibit 2X).

OPPONENTS:

Mark Staples, attorney representing wholesalers, retailers, Indian tribes, private employees and citizens, presented his testimony in opposition to the bill (Exhibit #3). He also presented a package of petitions to the committee signed by 947 citizens in opposition to SB 440 (Exhibit #4).

Stan Feist, Co-Owner, Shehan Majestic Wholesale Co., Missoula, presented his testimony in opposition to the bill (Exhibit #5).

Dave Baker, President, Billings Storage and Warehouse Company of Billings, presented his testimony in opposition to the bill (Exhibit #6).

Jerry Stinson, Big Sky Brokerage, Great Falls, submitted his testimony in opposition to the bill (Exhibit #7). He also submitted written testimony in opposition to the bill from Ray Masters, Big Sky Brokerage Company, (Exhibit 7b).

Ken Krantz, General Manager, Joe's Smoke Ring, presented his testimony in opposition to the bill (Exhibit #8).

Bob Noble, Mule Trainer, Busted Ass Ranch, Arlee, presented his testimony in opposition to the bill (Exhibit #9).

Tom Ryan, employee, taxpayer, husband, and father from

Arlee, presented his written testimony in opposition to the bill (Exhibit #10).

Representative Bob Jarvis submitted a resolution from the Blackfeet Nation in opposition to the bill (Exhibit #11).

Fred Matt, Confederated Salish and Kootenai Tribes of the Flathead Reservation, presented testimony in opposition to the bill (Exhibit #12).

Judge Don Dupuis, Chief Judge of the Confederated Salish and Kootenai Tribes, presented testimony in opposition to the bill (Exhibit #13).

Evelyn Stevenson, Tribal Attorney for the Confederated Salish and Kootenai Tribes, presented testimony in opposition to the bill (Exhibit #14).

Tom Stump, Montana Association of Tobacco and Candy Distributors and Penningtons of Great Falls, presented his testimony in opposition to the bill (Exhibit #15).

Merle Lucas, Assiniboine and Sioux Tribes, Fort Peck Reservation, presented his testimony as a past state employee. He felt the bill would have a negative impact on employment on the reservations. He felt requiring wholesalers to keep track of sales to Indian distributors is not the complete answer. He pointed out provision has to be made for them to also keep track of sales to non-Indian distributors who sell to tribal members in order for them to receive credit. He reviewed the history of negotiations between the tribes and the state of Montana in resolving other such problems and he felt a negotiated agreement would work in this case also. He felt this legislation is a waste of taxpayers money and legislators and Indian time as it will probably end up in litigation. He urged the committee to consider killing the bill and look at a negotiated agreement instead.

Questions From Committee Members:

Senator Eck asked if the Department of Revenue had attempted to negotiate the taxation of cigarettes on the reservations.

Steve Bender replied there have been spotty negotiations on various tax matters. However, the Department has no statutory authority to conduct such negotiations or reach agreements as a result of such negotiations.

Evelyn Stevenson pointed out the authority for such negotiations is already in place in Title 18, Chapter 11, of the Montana State Private and Cooperative Agreement Act.

Senator Mazurek asked if the cooperative agreement is broad enough to allow for the contracting for the collection and sharing of tax revenues based on a negotiated agreement.

Evelyn Stevenson replied that she felt it was broad enough, in her legal opinion.

Senator Gage felt it was broad enough on an individual agreement basis, but perhaps not broad enough to cover the state's statutory authority to share the tax dollars.

Senator Gage asked if all the tribes license the dealers.

Evelyn Stevenson replied that they all do.

Closing by Sponsor:

Senator Harp said the bill is not intended to be anti-reservation or anti-tribal member. There is a distinction in the bill which is in the U.S. Constitution - no taxation of Indian tribes. What we are saying there is a distinct disadvantage whereby the wholesalers who are dealing with millions of cartons of cigarettes and are not following through with the tax collections in the Indian reservations while other wholesalers are abiding by the law. He felt the bill is worth a try and we should begin to move in this direction.

EXECUTIVE SESSION

DISPOSITION OF SENATE BILL 339

Discussion:

Jeff Martin suggested waiting for HB 607 to get to the Taxation Committee before taking action on SB 339. He said the alternative is to put it out with a coordinating instruction.

Senator Gage felt there was no need to hold SB 339. He stated HB 607 could be dealt with when and if it gets to the Senate Taxation Committee.

Senator Brown said the committee report would be released today.

Amendments and Votes: None

Recommendation and Vote: None

DISPOSITION OF HOUSE BILL 35

Discussion:

John Fitzpatrick submitted an amendment to clarify the definition of ore hauler. This was an amendment that the Department of Revenue submitted to Representative Harrington in the House. It was inadvertently overlooked at that time and now it is necessary to get it into the bill because the definition as it now stands could be interpreted to include construction equipment such as scrapers and loaders. This amendment keeps the ore haulers in the Class 8 category where they have always been.

Jeff Martin said he had discussed the repealer section (15-24-908 through 15-24-911) with Dave Boyer and he was unsure why that language was being repealed.

Steve Bender said it was his understanding that the County Assessors wanted to repeal the average inventory basis for livestock.

Senator Gage said it was his understanding that the assessors wanted that livestock assessed in the county that it was located in on the assessment date. That would be a change from current law which has them assessed on a proration basis according to their location at any given time. This would have the livestock assessed at the ranch of origin for the full year.

Ken Morrison, Department of Revenue, said the livestock average inventory is not necessary now and it is an additional burden to the assessors.

Senator Gage pointed out there is a very significant change in the bill now as it says property will be taxed where is as of January 1 regardless of where it is owned.

Amendments and Votes:

Senator Mazurek moved to adopt the amendment on page 5, line

4 (Exhibit #16). The motion CARRIED unanimously.

Recommendation and Vote: None

DISPOSITION OF HOUSE BILL 212

Discussion: None

Amendments and Votes: None

Recommendation and Vote:

Senator Halligan moved HB 212 Be Concurred In. The motion CARRIED unanimously. Senator Akelstad will carry the bill on the floor.

ADJOURNMENT

Adjournment At: 10:00 A.M.



SENATOR BOB BROWN, Chairman

BB/jdr

MIN303.jdr

ROLL CALL

TAXATION

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3/3/89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BROWN	X		
SENATOR BISHOP	X		
SENATOR CRIPPEN	X		
SENATOR ECK	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR HALLIGAN	X		
SENATOR HARP	X		
SENATOR MAZUREK	X		
SENATOR NORMAN	X		
SENATOR SEVERSON	X		
SENATOR WALKER	X		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 3, 1988

MR. PRESIDENT:

We, your committee on Taxation, having had under consideration SB 333 (first reading copy) (S 112), respectfully report that it should be amended and as so amended do pass.

1. Title, lines 7 and 8.

Following: ";" on line 7

Strike remainder of lines 7 and 8 in their entirety

2. Title, line 17.

Strike: "15-30 131,"

3. Page 2, line 12

Strike section 3 in its entirety

Re-number subsequent sections

4. Page 17, line 25 through page 18, line 2

Strike subsection (5) in its entirety

Insert: "(5) in the case of an amended return filed within the same calendar year as the original return, if the amount of tax required to be shown is less than the tax shown on the original return, subsection (1)(a), (1)(b), (2), or (3), if applicable, shall be applied by substituting the lesser amount of tax. This provision shall not apply to a reduction in tax resulting from the carryback of a net operating loss."

AND AS AMENDED DO PASS

Enacted

Bob Brown
Bob Brown, Chairman

*J.C. 7/81
11-85
11-87*

SENATE STANDING COMMITTEE REPORT

March 7, 1969

MR. PRESIDENT:

Re. your committee on Taxation, having had under consideration HR 217 (third reading copy - blue), respectfully report that HR 217 be concurred in.

Sponsor: Cathie (Affected)

BE CONCURRED IN

Signed _____

Bob Brown

BOB BROWN, Chairman

41 0 7 1 1
7/13
H a

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

NAME: Tom Downie

DATE: 3/89

BILL NO. SB440

DATE: 3/3

ADDRESS: 3050 N. Montana Asawa

PHONE: 452-9000

REPRESENTING WHOM? Ment Food Distrib

APPEARING ON WHICH PROPOSAL: S. B. 440

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Revenue Impact of SB-440 Proposal to Tax "Smokeshop" Sales to Non-Indians

Precollection of Cigarette Tax on Sales to Smokeshops

2,067,162	Cartons sold to Smokeshops in CY '87 (DOR Reports)
<u>X</u> \$1.54	Cigarette Tax/Carion (REAC)
\$ 3,183,429	Precollected Tax

Refunds for Sales to Indians

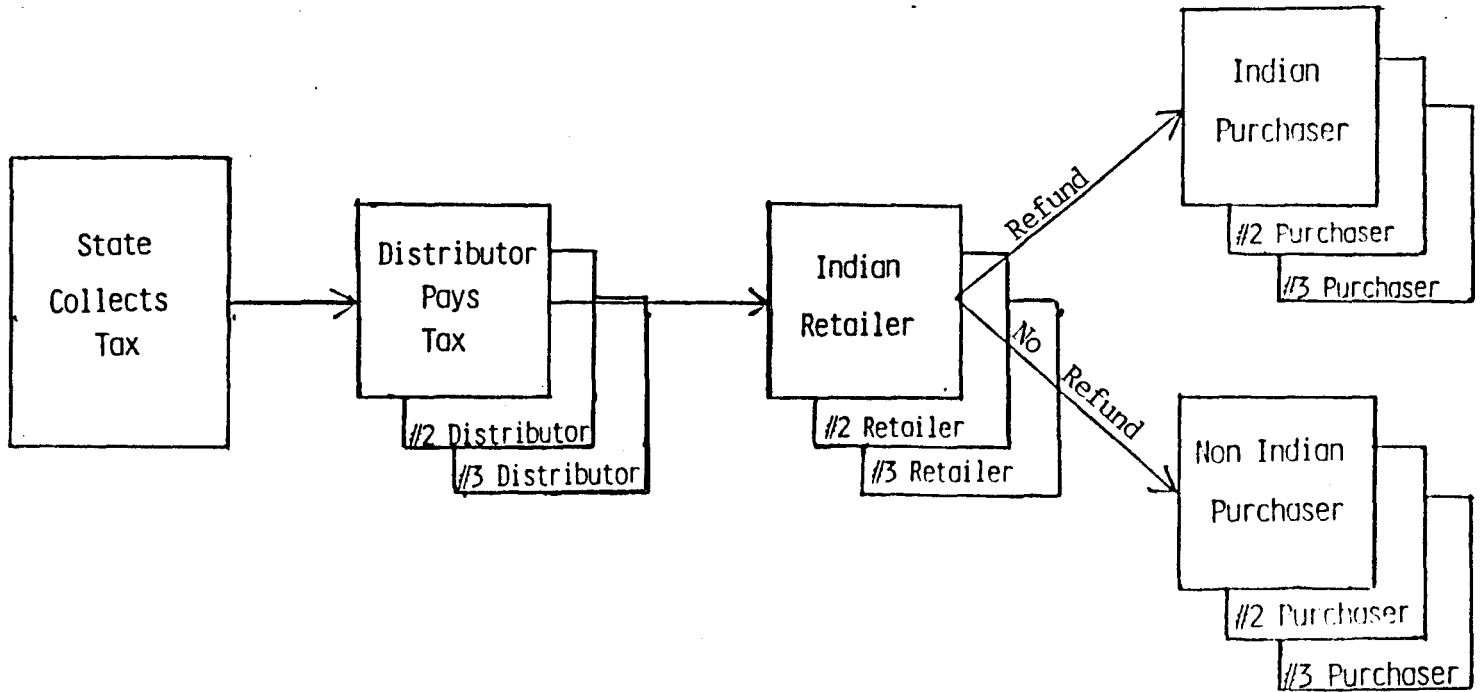
37,598	Indian Population of State (1980 Census)
<u>X</u> 91.7	Average Per Capita Consumption in CY '87
3,447,737	Packs Consumed by Indians
<u>X</u> 15.4	Cigarette Tax/Pack (cents)
\$ 530,951	Refunded Tax on Indian Consumption

Net Revenue Impact

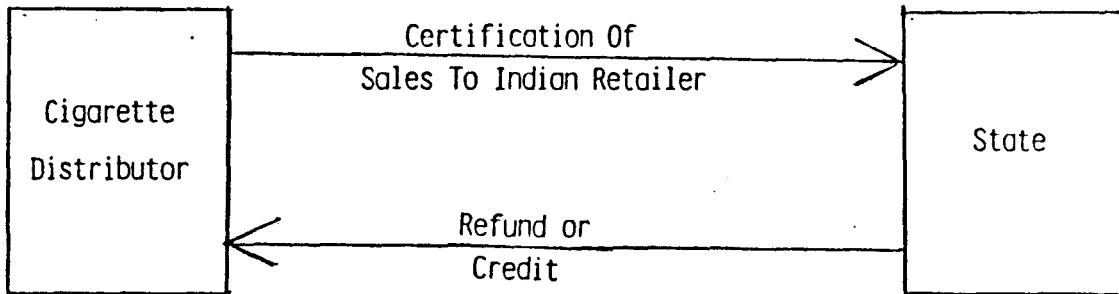
\$ 3,183,429	Precollected Tax
<u>- 530,951</u>	Refunds for Indian Consumption
\$ 2,652,478	Net Tax Collections

SB-440 CIGARETTE TAX
Sales to Non - Indians on Reservations

Payment Mechanism



Reimbursement Mechanism



Calculation Of Total Refund

$$\frac{\# \text{ Of Montanan's}}{\# \text{ Of Montana Indians}} \times \text{U.S.A. per Capita Cigarette Consumption} = \text{Non Taxable Sales}$$

SENATE TAXATION

EXHIBIT NO. 1 P. 4

DATE 3/3/89

FILE NO. SB 440

SB-440 CIGARETTE TAX
Sales to Non - Indians on Reservations

Potential Problems

Refunds Claimed - Exceed Quota

Solution

Pro Rata Refund Based On Refund Calculation

Rules and Regulations Set By Revenue Department

Enforcement of Revenue Department

Constitutionality

YES: Colville Decision

3. TAXATION

a. State Taxation

Page 443, substitute the following for *Confederated Tribes of Colville Indian Reservation v. Washington* and the notes that follow it:

**WASHINGTON v. CONFEDERATED TRIBES OF
COLVILLE INDIAN RESERVATION**

United States Supreme Court, 1980.
447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10.

Mr. Justice WHITE delivered the opinion of the Court.

The State of Washington levies a cigarette excise tax of \$1.60 per carton, on the "sale, use, consumption, handling, possession or distribution" of cigarettes within the State. The tax is enforced with tax stamps; and dealers are required to sell only cigarettes to which such stamps have been affixed. § 82.24.030. Indian tribes are permitted to possess unstamped cigarettes for purposes of resale to members of the tribe, but are required by regulation to collect the tax with respect to sales to non-members. The District Court found, on the basis of its examination of state authorities, that the legal incidence of the tax is on the purchaser in transactions between an Indian seller and a non-Indian buyer.

The State has sought to enforce its cigarette tax by seizing as contraband unstamped cigarettes bound for various tribal reservations. It claims that it is entitled to make such seizures whenever the cigarettes are destined to be sold to non-Indians without affixation of stamps or collection of the tax.

Washington also imposes a sales tax on sales of personal property, including cigarettes. This tax, which was 5% during the relevant period, is collected from the purchaser by the retailer. It does not apply to on-reservation sales to reservation Indians.

* * *

The Colville, Lummi, and Makah tribes have nearly identical cigarette sales and taxing schemes. Each Tribe has enacted ordinances pursuant to which it has authorized one or more on-reservation tobacco outlets. These ordinances have been approved by the Secretary of the Interior; and the dealer at each tobacco outlet is a federally licensed Indian trader. All three Tribes use federally restricted tribal funds to purchase cigarettes from out-of-state dealers. The Tribes distribute the cigarettes to the tobacco outlets and collect from the operators of those outlets both the wholesale distribution price and a tax of 40-to-50 cents per carton. The cigarettes remain the property of the Tribe until sale. The taxing ordinances specify that the tax is to be passed on to the ultimate consumer of the cigarettes. From 1972 through 1976, the Colville Tribe realized approximately \$266,000

CONTROL NON-TAXED CIGARETTES SOLD
ON INDIAN RESERVATIONS

1. Retail stores within 50 miles of known Reservation Cigarette Outlets effected by non-tax sales to non-Indians. Those with a (?) in the margin are stores on reservations that we believe do not handle non-tax cigarettes, but unable to verify.
2. Cigarette sales comparison - Seven stores of comparable size (one on a reservation), indicates the effect of non-tax sales.

<u>STORE & LOCATION</u>	<u>ANNUAL CIGARETTE CARTONS SOLD</u>
ROD'S IGA - ST. IGNATIUS, MT on the Flathead Reservation as compared to	2184
JACKSON'S IGA - SHELBY, MT	20800
TOM'S FOOD TOWN - CASCADE, MT	9360
WALTER'S IGA - SHERIDAN, MT	4925
LARRY'S IGA - BROADUS, MT	11109
MIKE'S IGA - CHESTER, MT	7124
VALLEY MARKET - SEELEY LAKE, MT	8688

SENATE TAXATION

NO. 1 P 11
DATE 3/3/89
BILL NO. SB 447

Wolf Point and Brockton, Fort Peck Reservation

Hippe's Super Valu, Froid
B&B IGA, Glasgow
F.T. Reynolds, Glasgow
Bill's One Stop, Glasgow
Heringer Store, Lambert
Jack & Jill, Medicine Lake
B&B Food Market, Nashua
Ernst's Super Valu, Circle
Circle Service Center, Circle
Jerry's Warehouse, Plentywood
Jack & Jill, Plentywood
Roy Super Valu, Plentywood
Prairie Market, Richey
Tande's Grocery, Scobey
Countryside Food-N- Fuel, Sidney
F.T. Reynolds, Sidney
Quilling's Market, Sidney
Sidney IGA, Sidney
Trailside General Store, Sidney
Korner 1 Stop, Nashua
? PJ's IGA, Wolf Point
? Git-N-Go, Wolf Point
? Hiway Grocery, Wolf Point
? Bob's Market, Poplar
? Tande's Grocery, Poplar
? Wally's Grocery, Poplar
? TJ's Quik Stop, Poplar

Lame Deer, Northern Cheyenne Reservation and Crow Agency,

Ashland Mercantile, Ashland
 Green's, Ashland
 Stevenson's IGA, Hardin
 Fastway Conoco, Hardin
 Valley Food, Huntley
 Express Way, Huntley
 Friendly Corner Foodtown, Hysham
 Town Market, Hysham
 Shepherd Country Market, Shepherd
 Project Mercantile, Worden
 10th Avenue Grocery, Billings
 Don's Mini Mart, Billings
 Bob's Supermarkets, Inc., Billings
 E-Z Shoppes, Billings
 GM Petroleum, Billings
 I.S.O., Billings
 Joe's Market, Billings
 Kwik Way, Billings
 Kon's Sooper, Billings
 Lockwood Superette, Billings
 Market Basket Store, Billings
 Pine Hills Country Store, Billings
 Short Stop Store, Billings
 Superamerica, Billings
 Western Drug, Billings
 Your Food Bank, Billings
 Gorham Park Grocery, Billings
 Poly Food Basket, Billings
 Quik Mart, Billings
 Poly Sooperette, Billings
 Blue Basket, Billings
 Cenex Petroleum, Billings
 Denny's Heights IGA, Billings
 DJ's Pantry, Billings
 Custer Foodtown, Custer
 Jerry's IGA, Colstrip
 GM Foods, Forsyth
 Jack's IGA, Forsyth
 ? Crow Mercantile, Crow Agency
 ? G.E.O.'s Place, Crow Agency
 ? Lame Deer IGA, Lame Deer

3/3/89

Rocky Boy Reservation
BILL NO. 55441

Lodgepole, Fort Belknap Reservation and Rocky Boy, Rocky

- Price Rite Food Farm, Fort Benton
- Stensland's IGA, Fort Benton
- Gary & Leo's IGA, Havre
- HiWay Grocery, Havre
- J.Priete Foods, Havre
- McLean's Grocery, Havre
- Mel's Food, Havre
- Tromberg's, Inc., Havre
- Town Pump, Havre
- JG's Food Farm, Big Sandy
- S&J Food Center, Big Sandy
- B N' W Thriftway, Chester
- Mike's IGA, Chester
- C-Store, Chinook
- Chuck's IGA, Chinook
- K&L Grocery, Dodson
- Gildford Mercantile, Gildford
- Handy Market, Harlem
- Hingham Grocery, Hingham
- Buckhorn Store, Malta
- Rigg's Grocery, Malta
- Westside Service, Malta
- J&J Grocery, Rudyard
- Kwik Stop, Loma

Cut Bank Creek, Blackfeet Reservation

Pendroy Mercantile, Pendroy
Jackson's IGA, Shelby
Martin's Family Market, Sunburst
Border Service, Sweetgrass
Curry's Food Farm, Valier
Dick's Grocery, Valier
Rohlf's Korner Market, Kevin
Conrad IGA, Conrad
Larry's IGA, Cut Bank
Cut Bank Meats, Cut Bank
Dupuyer Grocery, Dupuyer
Shuler's, Dupuyer
? Teeple's, Browning

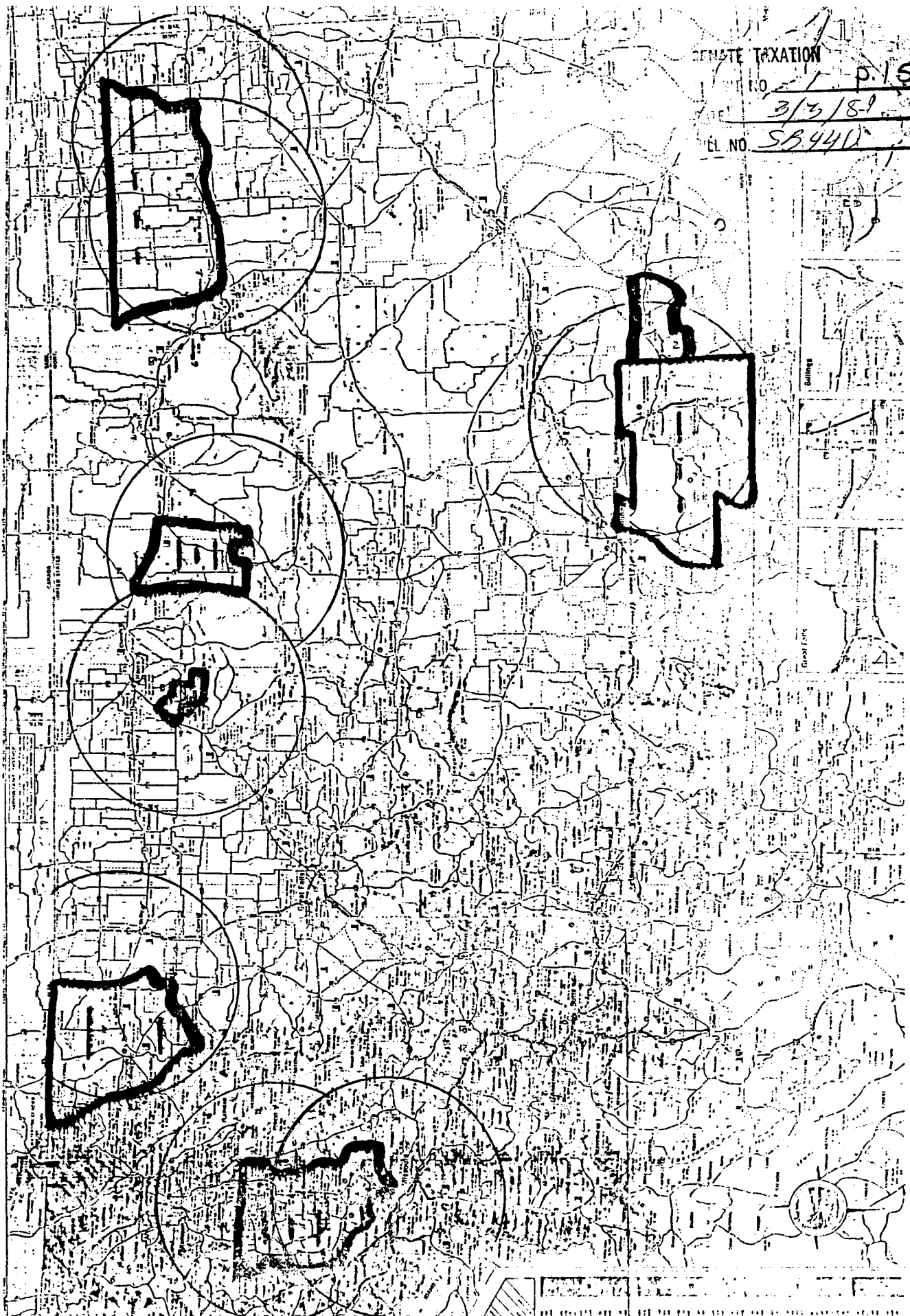
1 p. 14
3/3/89
BILL NO. 53440

REMOTE TAXATION

NO. 1 p. 15

DATE 3/3/89

REL. NO. SB440



ES
Builings
Great Lakes



SENATE TAXATION

EXHIBIT NO. 2

DATE 3/3/89

BILL NO. SB 440

AMENDMENTS TO SB 440 *from Dept. of Revenue*

Introduced (white) copy

1. Title, line 8.
Following: "MEMBERS;"
Insert: "PROVIDING AUTHORITY FOR THE DEPARTMENT OF REVENUE TO INVESTIGATE AND AUDIT WHOLESALERS AND RETAILERS;"

2. Page 3, line 9 and 10.
Following: "by" on line 9
Strike: "a wholesaler to a"
Insert: "an Indian"
Following: "retailer" on line 9
Strike: "solely for resale"

3. Page 3, line 11.
Following: "of"
Strike: "an Indian"
Insert: "the tribe's"

4. Page 3, line 12.
Following: "Montana."
Insert: "The tax imposed by this section shall be precollected on all cigarettes entering Montana Indian reservations subject to refund or credit as provided in subsection (3)."

5. Page 3, line 15.
Following: "taxes"
Strike: "paid"
Insert: "precollected"

6. Page 3, line 16.
Following: "tribe"
Insert: "on whose reservation the retail sale is made."

7. Page 3, line 21.
Following: "of"
Strike: "refund"
Insert: "refunds"

8. Page 4, line 1.
Following: "the"
Strike: "Indian"
Insert: "tribal member"

9. Page 4, line 15.
Following: "reservation"
Insert: "in Montana"

10. Page 4, line 16.

Following: line 15

Insert: "(6) The Department may investigate the facts surrounding the certification and audit the books and records of wholesalers and retailers to determine whether the economic benefit of the refunds or credits was passed on as required by subsection (5). If the Department determines that the economic benefit was not passed on as required, it shall not provide any further refunds or credits to the wholesaler, unless the wholesaler presents substantial evidence in addition to certification that the economic benefit was passed on. In addition the wholesaler shall return any refunds or credits received during the preceding three years where the economic benefit was not passed on."

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

EXHIBIT NO. 72
 DATE 3/3/89
 BILL NO. SB 440
 DATE: 3.3.89

NAME: Mark R. Olson

ADDRESS: Box 3356 Missoula Mt. 59806

PHONE: 406-549-8904

REPRESENTING WHOM? Oles Country Stores Inc., Montana Food Dist.

APPEARING ON WHICH PROPOSAL: SB 440

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: In Washington vs. Confederated Tribes of the Colville Indian Reservation, United States Supreme Court Decision 1960, Justice White stated "Indian tobacco dealers make a large majority of their sales to non-Indians - residents of nearby communities who journey to the reservation especially to take advantage of the claimed tribal exemption from the state cigarette and sales taxes." As a competing retailer I feel the illegal sale of untaxed cigarettes to non-Indians gives an unfair advantage to the Indian smoke shops. It also puts a larger burden of taxation on those who do pay the cigarette tax. It also denies the state of Montana taxes it should

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.
 We will be able to collect.

Testimony by opponents states that over 30,000 cases of cigarettes are shipped to western Montana alone. That is more than 1 case per Indian in

SENATE TAXATION

EXHIBIT NO. 3 P.1
DATE 3/5/89
BILL NO. SB 440

TESTIMONY OF MARK STAPLES
REPRESENTING WHOLESALERS, RETAILERS,
INDIAN TRIBES, PRIVATE EMPLOYEES AND CITIZENS
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS MARK STAPLES AND I REPRESENT TODAY THE WHOLESALERS, RETAILERS, SEVERAL OF THE INDIAN TRIBES, AND THE PRIVATE EMPLOYEES AND CITIZENS WHO WILL BE NEGATIVELY AFFECTED BY THIS PROPOSED LEGISLATION. EACH OF THESE FACTIONS, HAS INDIVIDUAL OPPONENTS TO THIS BILL WHO WILL TESTIFY BRIEFLY AFTER ME.

THIS LEGISLATION HAS MAJOR PROBLEMS. IT WON'T DO WHAT IT'S INTENDED TO DO. IT DOESN'T WORK AND IT MAY NOT BE LEGAL. THAT'S JUST FOR STARTERS. BUT LET'S GO INTO IT. AS FOR ITS LEGALITY-RECENT CASES IN FEDERAL TRIAL AND APPELLATE COURTS HAVE FAVORED INDIAN TRIBE'S CONTENTIONS IN NUMEROUS STATES THAT THEY SHOULD BE ABLE TO OPERATE SMOKE SHOPS WITHOUT STATE REGULATIONS. THE RULINGS HAVE VIRTUALLY ENDED THE RAIDS THAT WERE BEING CONDUCTED BY DISTRICT ATTORNEYS AND OTHER LAW MEN ON INDIAN SMOKE SHOPS IN OTHER STATES.

TESTIMONY FOLLOWING MINE WILL NARROW IN FURTHER ON THE LEGAL COMPLICATIONS INHERENT IN THIS LEGISLATION BUT SUFFICE TO SAY THAT PASSAGE OF THIS BILL WOULD WITHOUT A DOUBT LEAD TO MAJOR LITIGATION WHICH THE STATE VERY WELL COULD LOSE.

AS FOR THE MECHANICS OF THIS BILL - WHETHER IT WILL WORK. I SIMPLY ASK YOU TO TURN YOUR ATTENTION TO THE PROVISIONS IN THIS

BILL THAT PURPORT TO EXPLAIN HOW IT WORKS. WHAT YOU HAVE HERE BASICALLY IS THE WHOLESALERS OF TOBACCO PRODUCTS IN MONTANA BECOMING TAX COLLECTORS FOR THE STATE OF MONTANA. IF YOU TURN YOU ATTENTION TO SECTION 3 OF THE BILL, YOU'LL NOTE THAT IT SAYS "WHOLESALERS MAKING SALES OF CIGARETTES TO INDIAN RETAILERS MAY APPLY TO THE DEPARTMENT FOR REFUND OF OR CREDIT FOR PAID ON CIGARETTES SOLD BY THE RETAILERS TO MEMBERS OF AN INDIAN TRIBE." THAT LOOKS OK ON ITS FACE, BUT LET'S TRACK IT DOWN. GO OVER TO SECTION 5 WHICH TELLS YOU HOW THIS WHOLESALER WHO HAS TO BANKROLL THIS SITUATION GETS HIS MONEY BACK - WHICH HE DOESN'T REALLY GET BACK AS YOU'LL SEE. SECTION 5 SAYS "NO REFUND OR CREDIT MAY BE ALLOWED TO A WHOLESALER UNLESS THE WHOLESALER CERTIFIES TO THE DEPARTMENT THAT THE ECONOMIC BENEFIT OF THE CREDIT OR REFUND HAS BEEN PASSED BY IT, THE WHOLESALER, TO THE RETAILER, TO WHOM THE SALES WERE MADE AND THAT THE RETAILER PASS THE ECONOMIC BENEFIT TO PURCHASERS OF THE CIGARETTES WHO ARE MEMBERS OF A FEDERALLY RECOGNIZED INDIAN TRIBE ON WHOSE RESERVATION THE RETAIL SALE IS MADE." OH, SO THE WHOLESALER HAS TO POLICE THE RETAILER AND MAKE SURE THAT THE MONEY THAT HE GIVES BACK TO THE RETAILER ONCE HE GETS THE REBATE FROM THE STATE OF MONTANA GOES TO THE CONSUMER. QUESTIONS - HOW? HOW? HOW? HOW AND WHEN DOES THE CONSUMER GET THE DISCOUNT PRICE? UP FRONT? AND THUS THE RETAILER FINANCES IT? OR DOES THE RETAILER TRY TO FIND THOSE CONSUMERS THAT HE SOLD THEM TO AT THE HIGHER PRICE WHO WERE INDIANS ONCE THE REBATE COMES BACK FROM THE STATE THROUGH THE WHOLESALER AND GO OUT AND GIVE THEM THEIR CHANGE? IN THE MEANTIME, EITHER WAY YOU LOOK AT IT, HOW DOES THE RETAILER DISTINGUISH BETWEEN INDIAN AND NON-

INDIAN PURCHASER. OH EXCUSE ME, NOT JUST BETWEEN THE
THE NON-INDIAN PURCHASER, BUT BETWEEN THE NON-INDIAN AND THE
INDIAN AND THE INDIAN WHO IS A REGISTERED TRIBAL MEMBER ON THE
RESERVATION WHERE THE SALES ARE TAKING PLACE. IN TRUTH, THE STATE
GETS MONEY TAX-FREE FOR THE PERIOD DURING WHICH WHOLESALERS AND
RETAILERS GO WITHOUT. COMMERCE AT THE RETAIL, WHOLESALE AND I
MUST SAY AT THE ADMINISTRATIVE LEVEL HERE IN HELENA COULD VERY
WELL COME TO A STANDSTILL OVER THIS TO REACH A REVENUE THE SIZE
OF WHICH IS ALSO VERY DEBATABLE. IN FACT, AS TESTIMONY WILL
SHOW, THIS REVENUE WILL NOT COME TO THE STATE OF MONTANA. THIS
REVENUE WILL GO ELSEWHERE AND WITH IT WILL GO THE JOBS AND THE
ECONOMIC BENEFITS THAT THESE BUSINESSES DID GIVE TO MONTANA IN
LIEU OF AND FAR IN EXCESS OF THESE PURPORTED REVENUES.

AND THAT'S THE THIRD PROBLEM. AS TESTIMONY WILL SHOW, THIS
LEGISLATION EVEN IF IT COULD PRODUCE THE REVENUES THAT THE FISCAL
NOTE PRESENTS WILL SURELY CAUSE FAR GREATER REVENUE LOSSES IN
TERMS OF EMPLOYMENT, IN TERMS OF TAXES, IN TERMS OF LICENSE FEES,
IN TERMS OF UNEMPLOYMENT AND IN TERMS OF WELFARE, THAN OBVIOUSLY
HAS BEEN CONTEMPLATED. MY ESTIMATIONS JUST FROM THE TESTIMONY OF
THE PEOPLE WHO WILL APPEAR BEFORE YOU, WHEN YOU TAKE THEIR DIRECT
ECONOMIC IMPACT, REACHES TOWARDS THE MILLION DOLLAR LEVEL. WHEN
YOU USE THE ACCEPTED MULTIPLIER 4 AS TO THE IMPACT OF THOSE
FIGURES ON AN ECONOMY, YOU EASILY HAVE \$4,000,000. UNFORTUNATELY
THE WEATHER HAS CAUSED DOZENS OF PEOPLE FROM EASTERN AND NORTHERN
MONTANA NOT TO COME. SO THE FIGURES I'M GIVING YOU AND THE
NUMEROUS NAMES ON THE PETITIONS WE WILL SUBMIT, WHICH BY THE WAY
WERE GATHERED WITHIN ONE WEEK, THESE FIGURES ARE FOR JUST ONE

SENATE TAXATION

EXHIBIT NO. 5 P. 4

DATE 3/3/89
SB 440

SECTION OF MONTANA. CLEARLY THE IMPACT OF THIS LEGISLATION HAS NOT BEEN CONTEMPLATED. SURELY THE NEGATIVE ECONOMIC IMPACT HAS NOT BEEN CONTEMPLATED. THE LEGAL FUTURE OF THIS LEGISLATION HAS NOT BEEN RESEARCHED AND THE MECHANICS OF IT ARE SIMPLY UNWORKABLE. I HAVE BEHIND ME OPPONENTS OF THIS BILL WHO REPRESENT THE WHOLESALERS, THE RETAILERS, THE TRIBES AND THE CITIZENS OF MONTANA. I NOW DEFER TO THEM. I WOULD LIKE TO RESERVE THE RIGHT TO CLOSE.

CLOSING STATEMENTS OF MARK STAPLES
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. THIS LEGISLATION IS A PRIME EXAMPLE OF A PROCESS BEST EXPRESSED AS READY - FIRE- AIM.

IT WILL CREATE A MAJOR POLITICAL, LEGAL, SOCIAL, PRACTICAL, PHILOSOPHICAL AND ECONOMIC DISRUPTION FOR INDIANS AND NON-INDIANS ALIKE.

THE FISCAL NOTE SAYS IT CAN BE RUN BY ONE PERSON WORKING HALF-TIME OR ONE-HALF PERSON WORKING FULL TIME WITH A FULL BUDGET OF \$450 OPERATING EXPENSES. I'LL BE LOOKING FOR THE "S" ON THIS PERSON'S CAPE - OR "HALF-S'D" AS THE CASE MAY BE.

ON TOP OF THAT THIS IS FOR CONGRESS TO LEGISLATE OR THE STATE ADMINISTRATION TO NEGOTIATE.

I URGE YOU REALIZE THIS BILL IS D.O.A. BUT CALL IT "DO NOT PASS!"

2-22-89

SENATE TAXATION

EXHIBIT NO. 4

* WE, THE UNDERSIGNED, ARE FAMILIAR WITH THE TEXT AND MEANING OF SENATE BILL 440 RELATING TO THE TAXATION OF CIGARETTES. WE BELIEVE THIS BILL IS UNFAIR AND THAT ITS ENACTMENT INTO LAW WOULD HAVE VERY SERIOUS NEGATIVE EFFECTS ON OUR LOCAL ECONOMY AND OUR GENERAL WELFARE AND WE URGE THAT THE BILL BE DEFEATED.

* SAMPLE: Additional signatures to this bill were submitted with this. SIGNATURE ADDRESS

Chuck Higson	Col. Falls mt
Melody Loop	Lakeside, Mt. 59922
Arland D. Peralta	Clinton mt. 59825
Dwight W. Greenfield	300 White Coyote Rd 59821
W. Edward Keller	242 N. Francis Missoula 59802
Patricia P. Keller	242 N. FRANCIS MISSOULA MT 59802
Dorothy Higson	15 Drury rd Missoula
Amy Neerhaus	2021 Burlington, Missoula, MT 59802
Lamaral Paine	P.O. Box 653 St Ignace, MT
Knute Parker	721 Rollins #1 Missoula MT 59801
Brent M. Parker	721 ROLLINS #1 MISSOULA MT. 59801
Markus Wilder	High Arlee Mt 59821
Valerie M. McDonald	Box 12, St Ignace, MT
Lynn A. Barwin	Box 4161 Missoula MT
Jenna J. Auld	298 Beaverhead Lane Ronan
Frank J. Jones	9490 Miller Creek
Shirley Kner	5245 HWY 200 Thompson Falls MT
Paul Matheson	Box 842 Thompson Falls MT 59873
Robert J. Stewart	Box 971 Ronan 59864
John W. [unclear]	2105 W. Main St Stevensville, MT
Phyllis [unclear]	1613 Selma Pl Missoula, MT 59801
Debra [unclear]	275 Corvallis Rd Coeurville MT 59828
B. [unclear]	Box 711 Fernington MT

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

SENATE TAXATION
EXHIBIT NO. 5 P.1

DATE 3/3/89

NAME: STAN FEIST

BILL NO. 3-3-89 SB440

ADDRESS: Box 7248 Missoula, mt

PHONE: 406-543-5100

REPRESENTING WHOM? Sheehan Majestic

APPEARING ON WHICH PROPOSAL: S. B. 440

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION
EXHIBIT NO. 5 P.2
DATE 3/3/89
BILL NO. SB 440

TESTIMONY OF STAN FEIST
CO-OWNER OF SHEHAN MAJESTIC WHOLESALE COMPANY
A FAMILY OWNED BUSINESS IN MISSOULA, MONTANA
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS STAN FEIST. I AM THE CO-OWNER OF SHEHAN MAJESTIC WHOLESALE COMPANY, A FAMILY OWNED BUSINESS IN MISSOULA, MONTANA.

OUR BUSINESS, WHICH HAS DISTRIBUTED CANDY, TOBACCO AND CIGARETTES IN MONTANA FOR 35 YEARS, STARTED AS A HUSBAND AND WIFE OPERATION BUT NOW HAS GROWN TO 28 FULL TIME EMPLOYEES. THIS IS THE KIND OF POSITIVE GROWTH THAT MONTANA NEEDS.

IN 1972, LEGISLATION IN THIS LEGISLATIVE BODY GAVE US THE RIGHT TO SELL CIGARETTES TO THE INDIAN RESERVATIONS, NOW ON MARCH 3, 1989, THE PROponents OF THIS BILL WANT TO INTRODUCE TO THE STATE OF MONTANA NEGATIVE BUSINESS PLANNING. WHAT DO I MEAN BY "NEGATIVE BUSINESS PLANNING?" I MEAN THAT THE IMPACT OF THIS BILL WOULD IMMEDIATELY CAUSE ME TO LAY OFF 6 FULL TIME EMPLOYEES WHO EACH EARN APPROXIMATELY \$20,000 IN GROSS WAGES ANNUALLY. AND THAT'S JUST THE BEGINNING.

DO WE REALLY WANT THESE GOOD EMPLOYEES, THESE MONTANA INCOME TAX PAYING CITIZENS TO FALL OFF THE TAX ROLLS AND ON TO UNEMPLOYMENT AND WELFARE ALONG WITH THEIR FAMILIES? I HOPE NOT. AS A MONTANA DISTRIBUTOR, WE WORK WITH THE DEPARTMENT OF REVENUE. THIS ISN'T GOING TO BE JUST ANOTHER LOSS TO THE DEPARTMENT OF REVENUE, WHO WILL SURELY LOSE CONTROL OF THE CIGARETTES IN MONTANA.

EXHIBIT NO. 5 P.3
DATE 3/3/89
BILL NO. SB441

COMMITTEE MEMBERS, PLEASE REMEMBER THAT THESE CIGARETTES ARE STORED IN A BONDED WAREHOUSE IN BILLINGS, MONTANA. FURTHER TESTIMONY WILL TELL YOU THE IMPACT ON THAT WAREHOUSE IF THIS BILL PASSES. THEN THEY ARE TRUCKED BY MONTANA FREIGHT CARRIERS TO MONTANA DISTRIBUTOR. IN THAT INDUSTRY AS WELL, JOBS WILL BE LOST. ON BEHALF OF MY 28 EMPLOYEES AND I'M SURE ON BEHALF OF ALL THE OTHER EMPLOYEES THAT WILL LOSE THEIR JOBS SO THAT A TAX REVENUE THAT WILL NOT BE REALIZED CAN BE SOUGHT TO BE IMPOSED, I EARNESTLY ASK THAT YOU USE COMMON SENSE AND VOTE AGAINST SENATE BILL 440.

THANK YOU.

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

EMPHASIS: 6 RI
DATE: 3/3/89
BILL NO. SB440

NAME: David H. Baker DATE: 3/3/89

ADDRESS: Box 20858 Billings, MT 59106

PHONE: 259-5543

REPRESENTING WHOM? BILLINGS STORAGE & WARE CO.

APPEARING ON WHICH PROPOSAL: Senate Bill # 440

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT:

Oppose Bill - T of loss
Business now being done by Mt
Business will be done by out of
state citizens with no interest in
Montana.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY OF DAVE BAKER
PRESIDENT OF THE BILLINGS STORAGE AND WAREHOUSE AND COMPANY
OF BILLINGS, MONTANA
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS DAVID BAKER AND I AM THE PRESIDENT OF THE BILLINGS STORAGE AND WAREHOUSE AND COMPANY IN BILLINGS, MONTANA, WHERE WE HAVE CONTRACTUAL WORKING RELATIONSHIPS WITH THE SIX MAJOR TOBACCO COMPANIES, AND IN THAT CAPACITY, WE RECEIVE, STORE AND SHIP CIGARETTE ORDERS ALL OVER THE STATE OF MONTANA.

VIRTUALLY EVERY TOBACCO CASE COMING INTO THE STATE OF MONTANA COMES INTO AND GOES OUT OF MY WAREHOUSE. TO POINT OUT THE IMPACT OF THIS BILL, I'D LIKE YOU TO KNOW THAT WE HANDLE ABOUT 30,000 CASES A YEAR THAT GO TO MISSOULA ALONE, TO BE DISTRIBUTED TO WESTERN MONTANA, BY SHEHAN MAJESTIC, WHOSE REPRESENTATIVE YOU HAVE HEARD TODAY AND FEIST-WASTEN, WHOSE REPRESENTATIVE YOU'VE ALSO HEARD. THESE DISTRIBUTORS IN TURN, DISTRIBUTE A LARGE PORTION OF WHAT I GIVE THEM TO THE RESERVATIONS OF WESTERN MONTANA.

I ESTIMATE THAT THE AVERAGE CASE OF CIGARETTES WEIGHS 35 POUNDS. TAKING THE 28,000 CASES THAT WOULD BE AFFECTED BY THIS LEGISLATION, THAT IS JUST THE 28,000 CASES THAT GO INTO MISSOULA AND THE WESTERN RESERVATIONS, AND MULTIPLY THAT BY THE 35 POUND PER CASE AVERAGE, THE LOSS OF MY MISSOULA BUSINESS ALONE WILL RESULT IN 1,150,000 POUNDS LESS TONNAGE COMING THROUGH MY WAREHOUSE OPERATION. WITH NO OTHER BUSINESS TO REPLACE THAT

SENATE TAXATION
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DATE 5/3/89
SB440

TONNAGE, THE RESULT WILL BE WITHOUT A DOUBT, REDUCING OUR
WORK FORCE. YOU'VE HEARD ENOUGH TESTIMONY TODAY TO KNOW THE
EXTRAPOLATION THAT COMES FROM HIGH-PAYING JOBS THAT SUPPORT
FAMILIES AND PAY TAXES, BEING LOST UPON THE ECONOMY TO MONTANA.
LET ME EXTRAPOLATE INTO A DIRECTION WHICH HASN'T BEEN GONE INTO
YET. WE, OF COURSE, SHIP THE CIGARETTES OUT OF OUR WAREHOUSES.
THEY'RE SHIPPED BY VARIOUS CARRIERS AND TRUCKING LINES AND THE
AVERAGE SHIPMENT OF THESE CARRIERS IS TWO TO FIVE THOUSAND
POUNDS. NOW AT THE CLASS 85 INTRASTATE RATES THAT WOULD APPLY, I
ESTIMATE THAT THE CARRIERS WILL LOSE \$60,000 TO \$80,000 IN
CARRIER REVENUES JUST FROM THE LOSS OF SHIPMENTS TO MISSOULA
ALONE. AGAIN, THIS WILL MOST SURELY RESULT IN PERSONNEL
REDUCTIONS FOR THEM WITH THE SAD EXTRAPOLATIONS THAT YOU'RE ALL
TOO AWARE OF.

IF IN FACT THIS BUSINESS IS LOST, WHICH IT WILL BE IF THIS
LEGISLATION IS PASSED, MY GUESS IS THAT THE REVENUES WILL NOT GO
TO THE STATE OF MONTANA WHICH PROponents SUGGEST TO YOU. ON THE
CONTRARY, I BELIEVE THAT THE RETAILERS WILL SIMPLY PURCHASE THEM
FROM OUT OF STATE CONCERNS THAT CAN SELL THEM TO THEM AT A PRICE
THAT WILL NOW UNDERCUT THE MONTANA WHOLESALE PRICE. WHAT EFFECT
DOES THAT HAVE ON US? WELL FIRST OF ALL, I'M VERY FAMILIAR WITH
THE INTERSTATE TRUCKING BUSINESS. WITH INTERSTATE TRUCKERS
OFFERING DISCOUNTS TODAY OF 40-60% FOR THE KIND OF VOLUME WE'RE
TALKING HERE, THIS BILL WILL CAUSE BUSINESS TO DRIFT TO DENVER,
SEATTLE, SPOKANE, PORTLAND AND ALL OTHER AREAS WHERE CIGARETTE
COMPANIES HAVE OPERATIONS SUCH AS MINE.

EXCUSE ME, DID I SAY DRIFT? LET ME REPHRASE THAT. IT WILL

SENATE TAXATION
EXHIBIT NO. 6 p 4
DATE 3/3/59
BILL NO. SB 440

CAUSE THE BUSINESS TO GALLOP. NO, LET ME SAY IT AGAIN, TO
STAMPEDE TO THESE AREAS. TRUCKERS WILL BE OUT THERE DOING BACK-
SPRINGS AND FIGHTING FOR THIS KIND OF BUSINESS, I GUARANTEE YOU,
TO BRING THOSE CIGARETTES INTO THE STATE OF MONTANA. NOW, IF YOU
HAVE LAWS AGAINST THIS SORT OF THING, I'M NOT AN EXPERT IN THAT
DEPARTMENT, AND MAYBE YOU HAVE SOMETHING IN THE BOOKS THAT
SUPPOSEDLY STOPS THAT. I DARE SAY THAT IT WON'T. THE RESULT OF
ALL THIS IS AGAIN BUSINESS THAT IS NOT BEING DONE IN MONTANA.
BUSINESS THAT HAS BEEN AVAILABLE FOR THE MONTANA WAREHOUSES, THE
MONTANA TRUCKER AND THE MONTANA DISTRIBUTOR WILL NOW STAMPEDE OUT
OF STATE AND MOST LIKELY BE GONE FOREVER. AS A CONCERNED
BUSINESSMAN, AS A CONCERNED TAXPAYER, AND AS A CONCERNED VOTER, I
URGE YOU TO RECOMMEND A "DO NOT PASS" FOR SENATE BILL 440.

THANK YOU.

7
SENATE TAXATION

EXHIBIT NO. 7 P.1
DATE 3/3/89
FILE NO. SB440

JERRY STINSON
EMPLOYEE OF
BIG SKY BROKERAGE COMPANY
GREAT FALLS, MONTANA
AND A
MONTANA RESIDENT TAX PAYER

Our company employs me as an Account Manager representing several manufacturers.

Big Sky Brokerage employs 22 people in various capacities. Our general office is at 511 13th Avenue South, Great Falls, Montana.

In reviewing the economic impact that SB440 could have, if passed, we offer the following evaluation as it could affect our company:

The estimated sales in reservation stores is 1,600,000 carton of cigarettes.

We estimate that 10% of those sales are from one of the companies we represent, namely Liggett & Myers Tobacco Company, Division of the Liggett Group, Inc. This would equate out to 160,000 cartons of cigarettes.

SENATE TAXATION

EXHIBIT NO. 7 R2

DATE 3/3/89

Using an average cost per carton of \$7.00, this would equate 58448
to \$1,120,000 worth of cigarettes.

Using a brokerage payment rate of 4%, this would make our
income \$44,800.

Should this go to out of state distributors, we would receive
no brokerage payment.

The loss of \$44,800 would equate to the cost of 2 employees
per year to our firm.

Sincerely,

BIG SKY BROKERAGE

Jerry Stinson
Account Manager

JS/ar

71
SENATE TAXATION

EXHIBIT NO. 76

DATE 3/3/89

SB 440

WRITTEN TESTIMONY
OF
M. RAY MASTERS
SENIOR VICE PRESIDENT
BIG SKY BROKERAGE COMPANY
GREAT FALLS, MONTANA

Before the Taxation Subcommittee of the Montana Senate on
the Senate Bill 440 - March 3, 1989 - Statement as follows:

As a small businessman in Montana, I am interested in broadening
our tax base as much as possible. I believe the Bill in question
must have had this in mind.

Although I am on the Board of Directors of Montana Food Distributors,
my position and statements here represent the fact that I
own 50% of a small Montana business and am a Montana tax payer.
We represent manufacturers lines in Montana, including a company
selling cigarettes.

The premis of the Bill to collect Montana taxes of cigarettes
to shops on the reservation to whites is laudable, if it were
enforceable. The shops on the reservation are not required
to buy their cigarettes from Montana tobacco distributors.

Those stores have been buying an apparent large majority of their needs from Montana sources since 1972, when the law was changed allowing Montana distributors to sell them cigarettes without State of Montana tax being applied.

Some shops presently are buying from outside Montana, cigarettes which do not have state tax applied to them. Washington and Idaho are two states whose distributors currently sell these shops unstamped cigarettes that I am aware of. I do not know status of North Dakota, South Dakota, or Wyoming in this regard but would expect them to sell Eastern Montana shops on reservations if legally allowed to do so.


Should SB440 become law, the reservation stores selling cigarettes will undoubtedly continue to do business. My concern is that they will change their source of supply to out of state. If a business has a choice between a supply source charging \$1.60 per carton tax and one not charging tax, I feel that business would definitely change to the no-tax source. (Even though SB440 offers return of tax to certified sales to certain people, the paperwork requirements would discourage most stores, plus the initial money tied up with the added \$1.60 per carton purchase cost.)

SENATE TAXATION
EXHIBIT NO. 7b
DATE 3/3/59
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page 3

I understand the frustration of store owners near reservations with the present situation. The problem with this current Bill is that it legislates to Montana distributors, but cannot control the supply of source of these stores in a Federal Preserve. The only thing this Bill would change is the source of supply to these stores. Montana representatives would lose the sale and out of distributors would gain.

We ask that you vote against this Bill which is well intended but would not achieve its desired goal. It would really only hurt Montana Businesses.

Sincerely,
BIG SKY BROKERAGE

M. Ray Masters
Senior Vice President

RM/ar

SENATE TAXATION

EXHIBIT NO. 8 p.l.

DATE 3/3/89

BILL NO. SB 440

TESTIMONY OF KEN KRANTZ
GENERAL MANAGER OF JOE'S SMOKE RING
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS KEN KRANTZ. I AM THE GENERAL MANAGER OF JOE'S SMOKE RING WITH RETAIL BUSINESS LOCATED IN EVARO AND ARLEE, MONTANA.

AT THESE RETAIL OUTLETS WE SELL GASOLINE, FAST FOOD, GENERAL MERCHANDISE AND OF COURSE, OUR SUBJECT TODAY, CIGARETTES. JOE'S SMOKE RING HAS 27 FULL TIME EMPLOYEES AND THAT'S RIGHT NOW WHEN WE ARE AT THE LOW EBB OF OUR OPERATION. THIS FIGURE GOES UP TO 60 EMPLOYEES DURING OUR PEAK SEASON OF APRIL THROUGH THE END OF HUNTING SEASON IN NOVEMBER. OUR TOTAL YEARLY PAYROLL IS OVER \$400,000.

WE HAVE BEEN IN BUSINESS FOR OVER 17 YEARS. AS THE MANAGER OF THESE BUSINESSES FOR THE PAST 7 YEARS, I CAN TELL YOU TODAY THAT OVER HALF OF THE CIGARETTES WE SELL ARE TO OUT-OF-STATE TOURIST TRAFFIC. IN FACT, DURING OUR OFF-SEASON, OUR SALES PERCENTAGES ARE 60% TO IN-STATE RESIDENTS - 40% TO OUT-OF-STATE, BUT DURING OUR PEAK SEASON, THE PERCENTAGES ARE DRASTICALLY REVERSED AND WE SELL 80% OF OUR CIGARETTES TO OUT-OF-STATE BUYERS. WHAT IS THE EFFECT OF THIS AND WHAT IS THE RELEVANCE TO SENATE BILL 440? OF THAT 80% OF OUT-OF-STATE BUYERS, AT LEAST HALF BUY IN VOLUME. WE HAVE CUSTOMERS WHO HAVE BEEN WITH US FOR YEARS WHO BUY 30-100 CARTONS AT A TIME AND IN FACT CALL AHEAD TO SEE IF WE ARE STOCKED TO SATISFY THEIR NEEDS. PRIMARILY, THESE PEOPLE CONSIST OF OUT-OF-STATE TRUCKERS, SALES PEOPLE AND OTHER

REGULAR OUT-OF-STATE VISITORS. COMPARED TO THESE CUSTOMERS, THE IN-STATE DRIVER WHO COMES TO THE RESERVATION TO GET TAX-EXEMPT CIGARETTES IS A VERY SMALL PART OF OUR BUSINESS.

THE TRUTH OF THE MATTER IS, THAT BECAUSE THESE CUSTOMERS ARE PEOPLE WHO FOR THE MOST PART WOULD NOT BUY CIGARETTES IN THE STATE OF MONTANA WERE IT NOT FOR THE DISCOUNT PRICE AND WERE IT NOT FOR THE RELATIONSHIP THAT THEY HAD BUILT UP OVER THE YEARS WITH JOE'S SMOKE RING. THE FISCAL NOTES ESTIMATIONS OF A MILLION OR TWO DOLLARS IN ADDED REVENUES TO THE STATE OF MONTANA WILL SIMPLY NOT HOLD UP. THE FACT IS THAT IT WILL BE A FRACTION OF THIS BECAUSE THE CIGARETTE SALES THAT ARE SUPPOSE TO GENERATE THIS TAX REVENUE WILL SIMPLY NOT OCCUR.

ON THE OTHER HAND, WHAT IS AN EFFECT THAT WILL HAPPEN AND IS REAL IS THE EFFECT THAT WILL HAVE ON MINE AND OTHER BUSINESSES LIKE MY BUSINESS. I'LL GIVE YOU STRAIGHT FACTS. I'LL GIVE YOU FACTS THAT WILL HOLD UP. I'VE MADE THE MOST CONSERVATIVE ESTIMATE THAT I CAN OF THE EFFECTS OF THE PASSAGE OF THIS BILL. I ESTIMATE THAT WE WOULD IMMEDIATELY LOSE 10 FULL TIME PAYING JOBS, RANGING IN SALARY FROM \$28,000 A YEAR FOR MYSELF DOWN TO \$22,000 A YEAR FOR ONE OF OUR STAFF. IN BETWEEN ARE THE TOTAL SALARY RANGE, AND THOSE 10 PEOPLE WOULD LOSE A COMBINED YEARLY WAGE OF \$115,176 AND THAT'S BEFORE YOU USE THE MULTIPLIER OF WHAT THOSE \$115,000 WOULD DO IN THE COMMUNITY, WHICH YOU KNOW IS FOUR. SO RIGHT OFF THE TOP WE'VE LOST ALMOST A HALF A MILLION DOLLARS IN SALARY. IN ADDITION, THOSE 10 FAMILIES, A NUMBER OF WHICH ARE SINGLE PARENT FAMILIES, HAVE A TOTAL NUMBER OF DEPENDENTS OF 47. THIS IS MY MOST CONSERVATIVE ESTIMATE. A MORE REALISTIC ESTIMATE IS THAT 15

TO 20 OF THE FULL TIME POSITIONS WOULD BE LOST. YOU CAN DO THE
EXTRAPOLATION - NOW WE'RE CLOSE TO A MILLION DOLLARS LOST IN
LOCAL ECONOMIC IMPACT.

IN TRUTH, WHAT WILL PROBABLY HAPPEN BECAUSE PEOPLE WILL NO
LONGER STOP FOR OUR FAST FOOD, PEOPLE WILL NO LONGER STOP FOR OUR
GASOLINE, PEOPLE WILL NO LONGER STOP FOR OUR OTHER PRODUCTS, ALL
OF WHICH DO GIVE REVENUE TO THE STATE, IS THAT YOU WILL BE THE
LOSER AND WE WILL BE THE LOSER AND MOST PROBABLY THESE WILL GO
FROM SUCCESSFUL RESERVATION BUSINESSES WITH MANAGEMENT TEAMS AND
STAFF PEOPLE BACK TO THE MOM AND POP STANDS THAT MAKE NO
CONTRIBUTION THAT THEY ONCE WERE. THE COST TO THE STATE OF
MONTANA IN TERMS OF LOST TAXATION FROM THE OTHER ITEMS AND IN
TERMS OF LOST EMPLOYMENT, LOST INCOME TAX AND THE WELFARE
PAYMENTS THAT WILL HAVE TO BE MADE TO THESE OUT-OF-WORK PEOPLE IS
INESTIMABLE. BUT I'M SURE YOU CAN DO THE MATH.

IN SHORT, THIS BILL WILL NOT ACCOMPLISH WHAT IT IS LAID OUT
TO DO AND WILL HAVE THE OPPOSITE EFFECT. I THANK YOU FOR
LISTENING TO ME AND I URGE YOU TO RECOMMEND A "DO NOT PASS" FOR
THIS LEGISLATION.

THANK YOU.

3/3/89SB 440

TESTIMONY OF BOB NOBLE
MULE TRAINER, BUSTED ASS RANCH, ARLEE, MONTANA
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS BOB NOBLE. I'M A MULE TRAINER AT THE BUSTED ASS RANCH IN ARLEE, MONTANA. I'M HERE TODAY AS A NON-TRIBAL MEMBER WHO RESIDES ON THE FLATHEAD INDIAN RESERVATION. AFTER REVIEWING THE PROPOSED LEGISLATION OF SB-440, I ASK YOUR ASSISTANCE IN RECOMMENDING A VOTE OF "DO NOT PASS." I ASK FOR THIS NOT AS A RETAILER, NOR AS A WHOLESALER, BUT SIMPLY AS A PRIVATE CITIZEN AND TAXPAYER OF THE STATE OF MONTANA WHO WILL BE NEGATIVELY IMPACTED BY THIS LEGISLATION IN THE AREA THAT I LIVE. I'VE ALWAYS TAKEN PRIDE IN FOLLOWING LEGISLATION. I LIKE TO ANALYZE IT. I LIKE TO STUDY IT. ANY WAY YOU LOOK AT THIS, IT'S A MESS. IF PASSED, IT NOT ONLY PUTS INDIAN RETAILERS IN THE POSITION OF BEING TAX COLLECTORS FOR THE STATE OF MONTANA, BUT MAKES WHOLESALERS TAX COLLECTORS AS WELL. THIS EXTENSION OF AUTHORITY SETS A VERY BAD PRECEDENT AND AS A PRIVATE CITIZEN, IT GRATES ON ME.

THIS BILL WOULD CREATE AN UNMITIGATED ADMINISTRATIVE NIGHTMARE. AND WHILE, MOST UNDOUBTEDLY, UNMANAGEABLE, FOR THE SAKE OF ARGUMENT, LET'S GO AHEAD AND SAY THAT IT WAS ATTEMPTED. THIS BILL DOES NOT RELY ON A REAL CENSUS OF OUR POPULATION, BUT ON HYPOTHETICAL EQUATIONS, "DETERMINED IN A MANNER BY DEPARTMENT RULE." THE BILL SPEAKS TO A USE OF A FORMULA IN DETERMINING REBATES ON THE AVERAGE INDIVIDUAL CONSUMPTION. NOW AS A PRIVATE

CITIZENS AND A COMMON SENSE GUY, I CAN SEE THAT THIS IS AVERAGE AND NOT ACTUAL. SECTION 5 STATES THIS. IT SAYS "NO REFUND OR CREDIT MAY BE ALLOWED TO A WHOLESALER UNLESS THE WHOLESALER CERTIFIES TO THE DEPARTMENT THAT THE ECONOMIC BENEFIT OF THE CREDIT OR REFUND HAS BEEN PASSED TO THE RETAILER AND ON TO THE CONSUMER . . ." AND SO ON, BUT YOU'VE HEARD IT BEFORE, YOU KNOW WHAT A MESS IT IS. WHAT IS AVERAGE FOR A PERSONAL PURCHASE IF THAT'S GOING TO BE THE TRIGGER FOR THESE COLLECTIONS? IF IT'S AVERAGE, DOES THIS MEAN A CONSUMER WHO IS ABOVE-AVERAGE, WHO SAY, SMOKES TWICE THE AVERAGE, SHOULD BE REBATED THE SAME AS THE CONSUMER WHO SMOKES HALF THE AVERAGE, SAY HALF A PACK A DAY AS OPPOSED TO A PACK, TWO, MORE? IF IT'S A PERSONAL PURCHASE, WHO IS GOING TO MAINTAIN THESE INDIVIDUAL PURCHASE RECORDS AND HOW WILL THEY MAINTAIN THE CONFIDENTIALITY THAT I, AS A CONSUMER, EXPECT WHEN I GO IN AND BUY AND DON'T WANT TO HAVE TO GIVE MY NAME, RANK AND SERIAL NUMBER TO DO SO, MUCH LESS MY RACE.

ALSO, MY COMMON SENSE TELLS ME THAT IF THIS IS A PERSONAL PURCHASE, WHICH IT IS, SHOULDN'T THE MONIES COLLECTED FROM INDIVIDUALS WHO ARE EXEMPT DRAW INTEREST FOR THEM ON THE REBATE? WHO'S GOING TO PAY THE ADMINISTRATIVE COST?

IN SHORT, MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I HAVE TO RESPECTFULLY SAY THAT THE IMPLEMENTATION OF THIS LEGISLATION WILL NOT ONLY BE A COSTLY AND UNWIELDY MANAGEMENT RESPONSIBILITY FOR YOU IN THE STATE OF MONTANA, IT'S GOING TO SERIOUSLY AFFECT THE ECONOMIC BASE OF RURAL MONTANA. MOST RETAILERS WHOM THIS LEGISLATION IMPACTS ARE LOCAL MERCHANTS WHO RELY EXCLUSIVELY ON LOCAL HELP. THESE RETAIL OUTLETS ARE IN RURAL AREAS WHICH HAVE

3/5/89

BILL NO. SB 440

LITTLE OR NO STEADY EMPLOYMENT, EXCEPT FOR SOME OF THESE BUSINESSES. THE UNEMPLOYMENT RATE FOR THE STATE OF MONTANA IS 6.9%. I KNOW YOU'RE TRYING TO WORK ON THIS. I SUSPECT THAT YOUR MOTIVES BEHIND THIS ARE GOOD, BUT LET ME TELL YOU THE REAL FACTS. THE UNEMPLOYMENT RATES ON MONTANA'S SEVEN RESERVATIONS, WHICH YOU DON'T INCLUDE IN YOURS, ARE AS FOLLOWS:

- BLACKFOOT - 36%
- CROW - 67%
- FLATHEAD - 27%
- FORT PECK - 40%
- NORTHERN CHEYENNE - 60%
- ROCKY BOY - 70%
- FORT BELKNAP - 78.9% !

THESE PERCENTAGES COME FROM THE STATE INDIAN COORDINATOR'S OFFICE AND WERE TAKEN FROM THE BUREAU OF INDIAN AFFAIRS STUDY. THEY ARE HORRID NOW, WHAT WOULD THEY BE LIKE IF YOU MAKE THE TERRIBLE MISTAKE OF PASSING THIS BILL? I PROPOSE TO YOU THAT THE RESULTS WILL BE DEVASTATING. I KNOW, I LIVE THERE. I THEREFORE RESPECTFULLY REQUEST YOUR SUPPORT IN DEFEATING THIS LEGISLATION AND ASK THAT YOU VOTE EMPHATICALLY "DO NOT PASS."

THANK YOU.

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

EXHIBIT NO. 70 p1

DATE 3/3/89

TITLE NO. SB 448

NAME: Tom RYAN

DATE: 31 MAR 1989

ADDRESS: 2032 McLeod Rd Arlee MT

PHONE: 726 3197

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: 440

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENT:

I am resident of idle County and work at J&S Smoke Ring I support myself, my wife and seven children if this bill is passed I will most likely lose my job

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE TAXATION

EXHIBIT NO. 10 p 2

DATE 3/3/89

BILL NO. SB440

TESTIMONY OF TOM RYAN
EMPLOYEE, TAXPAYER, HUSBAND AND FATHER
FROM ARLEE, MONTANA
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS TOM RYAN. I'M A RETIRED, TWENTY-YEAR UNITED STATES NAVY VETERAN, WHO'S NOW EMPLOYED AS A REPAIRMAN, CLERK AND LITTLE BIT OF EVERYTHING AT THE SMOKE RING IN ARLEE, MONTANA. I'M HERE TO ASK YOU ONE QUESTION AND TO MAKE TWO STATEMENTS.

FIRST, HOW WOULD THE STATE OF MONTANA LIKE TO SUPPORT ME, MY WIFE AND MY SEVEN KIDS? WHILE YOU COGNATE ON YOUR ANSWER TO THAT, I'D LIKE TO MAKE TWO SIMPLE STATEMENTS. I DON'T WANT TO LOSE MY JOB SO PLEASE DON'T PASS SENATE BILL 440.

THANK YOU.

BLACKFEET NATION

EXHIBIT NO 11 p.1
DATE 3/3/89
TRIBAL COUNCIL 9B44

EXECUTIVE COMMITTEE

P. O. BOX 260
BROWNING, MONTANA 59417
(406) 338-7175

TOM WHITFORD, SR., CHAIRMAN
BERNARD ST. GODDARD, VICE-CHAIRMAN
MARVIN WEATHERWAX, SECRETARY
LELAND GROUND, TREASURER

TOM WHITFORD, SR.
BERNARD ST. GODDARD
MARVIN WEATHERWAX
LELAND GROUND
CHARLES DEROCHE
ROGER SASSY RUNNING CRANE
LLOYD H. CURLY REEVIS
DARRYL CORDG HORN
DONALD P. LITTLE DOG

RESOLUTION

No. 177-89

- WHEREAS, The Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation, and
- WHEREAS, The Blackfeet Tribal Business Council has been organized to represent, develop, protect and advance the views, interests, education and resources of the Blackfeet Indian Reservation, and
- WHEREAS, The Blackfeet Tribal Business Council has reviewed Senate Bill No. 440 as presented in the current session of the Montana State Legislature, and
- WHEREAS, The Blackfeet Tribal Business Council has been advised of the legal, political and practical consequences of S.B. 440 as proposed and officially opposes said Bill as an intrusion on the sovereignty of the Blackfeet Tribe and an undue administration and economic burden on the Indian retailers doing business on the Blackfeet Indian Reservation,
- WHEREAS, S.B. 440 presents uncertain constitutional issues, including but not limited to, the civil and criminal enforceability and jurisdictional parameters of S.B. 440, the additional imposition of administrative responsibilities, costs and expenses on Indian businesses, and the mechanisms by which the State of Montana proposes to regulate and otherwise implement S.B. 440, and
- WHEREAS, The Blackfeet Tribe has demonstrated a willingness to discuss with the State of Montana issues which tend to stimulate controversy and polarize relations between the Indian Tribes and the State of Montana, but S.B. 440 has not provided for a workable solution and stabilization of a government-to-government relationship between the Blackfeet Tribe and the State of Montana, and
- WHEREAS, The Blackfeet Tribe is cognizant of the current inequitable taxing situation on the Blackfeet Indian Reservation, a prime example of which is the fact that the effective tax yield by the Blackfeet Tribe on oil and gas production is

4.25%, while that of the State of Montana is 22-25%, yet the Blackfeet Tribe has taken a broad view of the situation in hopes of a formal cooperative agreement with the State of Montana in this and other areas, and

WHEREAS, S.B. 440 will further exacerbate an already volatile situation with respect to taxation on Indian Reservations in that it will force Indian Tribes to re-examine their present schemes of limited taxation, since S.B. 440 clearly demonstrates a callous approach to said problems, and

WHEREAS, The Blackfeet Tribal Business Council is desirous of formally and publicly voicing its opposition to S.B. 440 for the aforementioned reasons, now

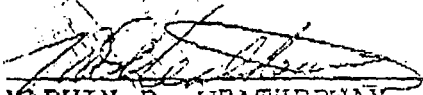
THEREFORE BE IT RESOLVED that:

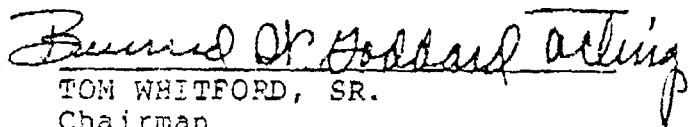
1) That the Blackfeet Tribal Business Council hereby formally and publicly opposes the enactment of Senate Bill 440 by the Montana State Legislature.

2) That the Chairman and Secretary are hereby authorized to sign this Resolution.

ATTEST:

THE BLACKFEET TRIBE OF THE
BLACKFEET INDIAN RESERVATION

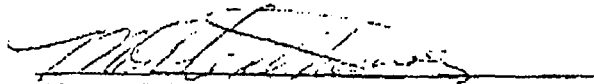

MARVIN D. WEATHERWAX
Secretary


TOM WHITFORD, SR.
Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council in a duly called, noticed and convened Special Session, assembled the 2nd day of March, 1989, with Six (6) members present to constitute a quorum, and with a vote of Six (6) FOR and None (0) OPPOSED.

(SEAL)


MARVIN D. WEATHERWAX
Secretary

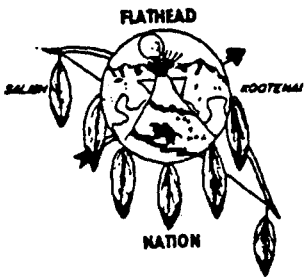
SENATE TAXATION

EXHIBIT NO. 13 P. 2

DATE 3/3/54

BILL NO. SB 440

TESTIMONY OF THE
CONFEDERATED SALISH AND
KOOTENAI TRIBES OF THE
FLATHEAD RESERVATION, MONTANA
ON SENATE BILL 440



SEPARATE TAXATION
EXHIBIT NO. 13 P. 3
DATE 3/3/89
SB 441

**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION**



P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Bernice Hewankorn - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Michael T. (Mickey) Pablo - Chairman
Donald (Fred) Matt - Vice-Chairman
Elmer (Sonny) Morigeau, Jr.
Floyd W. Nicolai
Louis W. Adams
Laurence Kenmille
Robert L. (Bob) McCrea
Lloyd D. Irvine
Joe Dog Felsman
Pat Lefthand

**Testimony of the
Confederated Salish and
Kootenai Tribes of the
Flathead Reservation, Montana
On Senate Bill 440**

My name is Donald Frederick Matt, Vice Chairman of the Tribal Council for the Confederated Salish and Kootenai Tribes. I am here representing the Tribal Council's position in opposition to Senate Bill 440. As we read the bill its primary purpose is to be one of revenue generating through the elimination of sales, of tax free cigarettes to individuals who are not authorized by law to be entitled to such an exemption.

While this purpose may in and of itself be laudatory we submit that the bill if passed will not generate sufficient revenues to off-set the negative financial effects of the bill. To date the Tribes and the State have by their mutual conduct avoided colliding on this tax issue. Montana has not sought to collect taxes for sales of cigarettes to non-Indians and the Tribes have not set up a procedure whereby Tribal members can take full advantage of the exemptions from state taxation they are entitled to take. Examples of these exemptions include the state gasoline tax, the liquor tax and property taxes of fee hold lands by Tribal members within the Reservation.

If this bill is passed the Tribes will have no choice but to fully implement a process whereby the taxes now being voluntarily paid by Tribal members, but which they are not legally required to pay, will no longer be paid by the membership of the Tribes.

In addition this bill, if passed, would result in the closure of individual Tribal members business enterprises on reservations throughout the state. These individual enterprises employ people who would be without a job with the passage of this bill. They would of necessity become temporarily at least dependent on the state welfare system for their existence.

This bill, therefore, other than permitting the state to flex its legal muscle, will not result in an improvement of the revenues coming into the state's treasury. The opposite result will in fact occur. The Confederated Salish and Kootenai Tribes therefore strongly urge that this bill not be given a do pass vote.

Donald Frederick Matt
Vice Chairman, Tribal Council
Confederated Salish and
Kootenai Tribes

TESTIMONY OF JUDGE DON DUPUIS
CHIEF JUDGE OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS DON DUPUIS AND I COME BEFORE YOU AS A MAN WHO WEARS TWO HATS. I AM A OWNER AND OPERATOR OF TWO SMOKE SHOPS OF MY OWN, ONE IN POLSON, MONTANA AND ONE ON THE EAST SHORE OF FLATHEAD LAKE. BOTH ARE IN LAKE COUNTY, MONTANA. I AM ALSO THE CHIEF JUDGE OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES.

WEARING MY BUSINESS MAN-HAT, IN AN EFFORT TO AVOID REPETITION, I CAN TELL YOU THAT THE NUMBERS AND THE IMPACT OF THOSE NUMBERS AS EXPRESSED BY MR. KRANTZ, WHEN TESTIFYING AS TO THE EFFECT OF THIS ON HIS TWO SMOKE SHOPS, PARALLELS MY OWN. MY MOST IMPORTANT TESTIMONY BEFORE YOU, HOWEVER, I BELIEVE, BEGINS WHERE THAT TESTIMONY LEAVES OFF, AND THAT'S WHAT HAPPENS WHEN THESE PEOPLE ARE LAID OFF AND THEIR DEPENDENT FAMILIES GO ON WELFARE AND THE CYCLE OF UNEMPLOYMENT AND POVERTY BEGINS AGAIN IN THESE AREAS.

MY COURT IS A COURT OF GENERAL JURISDICTION. WE SEE THOUSANDS OF CASES EACH YEAR, RANGING FROM PROBATE MATTERS, CIVIL SUITS, JUVENILE LAW, FAMILY LAW, AND CRIMINAL PROSECUTIONS. WITH THE POSSIBLE EXCEPTION OF THE PROBATES, I BELIEVE THIS BILL, IF PASSED, WILL HAVE A TRAGIC IMPACT ON ALL THE OTHER AREAS OF LAW AND I GUESS REALLY I SHOULDN'T EXCLUDE PROBATE, BECAUSE OF COURSE THE MOST HORRIBLE EXTENSION OF THE CYCLE OF POVERTY, DESPAIR, AND VIOLENCE THAT I AM ABOUT TO SPEAK ABOUT IS AN INCREASE IN THE

RATE OF SUICIDE.

WITHOUT BEING OVERLY SIMPLISTIC BUT IN AN EFFORT TO BE BRUTALLY HONEST WITH YOU, OUT OF THE CRIMINAL CASES I HAVE BEFORE ME EACH YEAR AND THE CASES INVOLVING BROKEN FAMILIES, DIVORCES AND THE REPLACEMENT OF THE UNFORTUNATE CHILDREN OF THESE SITUATIONS, A VERY HIGH PERCENTAGE CAN BE ATTRIBUTED TO THE HEART-BREAKING LEVEL OF UNEMPLOYMENT THAT PERVADES OUR SOCIETY.

SINCE THE APPEARANCE OF THESE BUSINESSES, WHICH HAVE ALLOWED US TO GO FROM AN ECONOMIC BASE OF ROAD-SIDE STANDS WITH MOM AND POP OPERATORS EXISTING AMID A FLOOD OF WELFARE DEPENDENCE, WE HAVE COME TO HAVE, AT LEAST ON A SEASONAL BASIS, A GROWING TRIBAL ECONOMY. THIS HAS IN TURN CREATED A SURGE IN THE SELF-CONFIDENCE LEVEL OF THE PEOPLE OF MY JURISDICTION AND THAT SELF-CONFIDENCE LEVEL SURELY COMES FROM ECONOMIC INDEPENDENCE WHICH CREATES SELF-WORTH, WHICH KEEPS PEOPLE OUT OF THE CYCLE OF ALCOHOLISM, VIOLENCE, CRIME, BROKEN HOMES AND WELFARE. WE'RE A LONG WAY FROM HAVING THOSE PROBLEMS SOLVED, AS SOCIETY IS AT LARGE, HOWEVER, IN MY OPINION FROM THE BENCH, WHERE I SEE ALL ASPECTS OF TRIBAL LIFE, AS POSSIBLY NO ONE ELSE DOES, I CAN NOTE FIRST HAND THE POSITIVE EFFECTS THAT THESE ISLANDS OF ECONOMIC SELF-DETERMINATION HAVE BROUGHT TO OUR PEOPLE.

I CANNOT BEGIN TO ESTIMATE THE COST TO THE STATE OF MONTANA IN MONEY IF THIS BILL PASSES, BUT I DO KNOW THAT IT WILL BE EXTENSIVE BEYOND WHATEVER REVENUE YOU BRING IN. I CAN TELL YOU THAT THE COST IN HUMAN TRAGEDY BASED ON THE CYCLE OF DESPAIR THAT UNEMPLOYMENT CAUSES, AS I'VE SAID, WILL BE CATASTROPHIC. I THEREBY FEEL THAT AS REPRESENTATIVES OF ALL PEOPLE OF THE STATE

SENATE TAXATION

SENATE 13 P. 4

DATE 3/3/84

BILL NO. SB440

OF MONTANA, AND AS THOSE WHO ARE TO BE LOOKING OUT FOR THE BEST INTERESTS OF HER PEOPLE, I HOPE YOU WILL SEE CLEAR TO RECOMMEND "DO NOT PASS" ON THIS BILL. I SINCERELY FEEL THAT THE FUTURE OF A GREAT MANY PEOPLE DEPENDS UPON YOUR DECISION.

THANK YOU.

(This sheet to be used by those testifying

SENATE Bill.) 14 P.F.

DATE: 3/3/89

SENATE Bill: SB441

DATE: 3-3-89

NAME: Evelyn M. Stevenson

ADDRESS: Box 278, Pablo, MT 59855

PHONE: 675-2700 x 526

REPRESENTING WHOM? Confederated Salish & Kootenai Tribes

APPEARING ON WHICH PROPOSAL: Senate Bill 440

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? yes

COMMENT:

Prepared testimony to be submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY OF EVELYN M. STEVENSON
TRIBAL ATTORNEY FOR THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION
ON SENATE BILL 440
BEFORE THE SENATE TAXATION COMMITTEE
MARCH 3, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. MY NAME IS EVELYN M. STEVENSON. I AM THE TRIBAL ATTORNEY FOR THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION. I HAVE WORKED WITH THE INDIAN CIGARETTE TAX ISSUE FOR ABOUT 15 YEARS.

WHEN MONTANA FIRST BECAME A TERRITORY, THERE WAS A CLEAR EXPRESSION OF INTENT TO NEVER INTERFERE WITH THE RIGHTS, PRIVILEGES AND IMMUNITIES GUARANTEED INDIAN TRIBES AND INDIAN PEOPLES WITHIN MONTANA BORDERS. THAT LANGUAGE APPEARED IN MONTANA'S 1879 CONSTITUTION AND AGAIN IN THE 1972 AMENDED CONSTITUTION. MONTANA'S HISTORICAL COMMITMENT TO PRESERVATION OF INDIAN CULTURE AND TRIBAL GOVERNMENTS IS WELL DOCUMENTED. SUPPORT FOR THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIPS BETWEEN THE STATE OF MONTANA AND THE TRIBES IN THIS STATE IS CODIFIED AT 18-11-101 ET SEQ WHICH PROVIDES FOR STATE-TRIBAL COOPERATIVE AGREEMENTS THROUGH THE NEGOTIATIVE PROCESS.

SINCE THE STATE OF MONTANA HAS NO JURISDICTION OVER THE TRIBES OR THE INDIAN PEOPLE IN MATTERS OF TAXATION AND REGULATION, THE IMPLEMENTATION OF A LAW SUCH AS SB-440 BECOMES EXTREMELY CUMBERSOME AND UNWIELDY WITHOUT THE TRIBE'S ENACTMENT OF THEIR OWN COMPANION LEGISLATION. A STATE/TRIBAL COOPERATIVE AGREEMENT IS NOT JUST THE PREFERRED APPROACH FOR TWO SOVEREIGN

GOVERNMENTS TO REACH A MEETING OF THE MINDS, IT IS PERHAPS THE ONLY RATIONAL METHOD FOR ACHIEVING COMPLIANCE.

THE CONSTITUTION OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION PROVIDES THAT THE TRIBAL COUNCIL IS THE APPROPRIATE AUTHORITY FOR REGULATING INDIAN PEOPLE AND INDIAN INTERESTS ON THE RESERVATION. THE TRIBAL COUNCIL IS THE GOVERNING BODY CHARGED WITH MANAGEMENT OF ALL ECONOMIC AFFAIRS AND ENTERPRISES OF THE TRIBES AND ITS MEMBERSHIP.

A LONG LINE OF CASE LAW MAKES CLEAR THAT A STATE MUST NOT TAKE ACTION THAT WILL IN ANY WAY INFRINGE ON THE RIGHTS OF RESERVATION INDIANS TO GOVERN THEMSELVES. MOST RECENTLY, IN 1986, THE NINTH CIRCUIT AGAIN ADDRESSED THE ISSUE OF A CIGARETTE TAX ON INDIAN RESERVATIONS AND REITERATED THAT THE COURTS WERE REQUIRED TO "BALANCE THE STATE'S INTEREST IN APPLYING ITS CIGARETTE TAX TO ON-RESERVATION SALES TO NON-INDIANS AGAINST THE IMPACT FROM THE TAX'S IMPOSITION ON THE TRIBE'S ABILITY TO GOVERN ITSELF EFFECTIVELY." CHEMENEWU TRIBE V. CALIFORNIA STATE BD, 800 F2d 1446 (9TH CIR. 1986).

IN ADDITION TO THE IMPACT UPON WHOLESALERS AND RETAILERS, NO CONSIDERATION HAS BEEN GIVEN TO AN EXTENSIVE ECONOMIC IMPACT IN OTHER AREAS. PERIPHERAL BUSINESSES GENERALLY NOT OWNED BY INDIANS WOULD BE SERIOUSLY AFFECTED BY THE REDUCED FLOW OF OUT-OF-STATE TOURISTS. ADDITIONALLY, THE TRIBES AND THE INDIAN PEOPLE NOW PAY MANY STATE TAXES, EITHER DIRECTLY OR INDIRECTLY, THAT WOULD NEED TO BE RE-EXAMINED GIVEN THE IMPLIED BAD FAITH OF SB-440'S INTRODUCTION. STATE TAXES ON MILK, DIESEL, GASOLINE, ALCOHOLIC

SENATE JOURNAL
PAGE 14 P. 4
DATE 3/3/89
BILL NO. SB 440

BEVERAGES ARE JUST A FEW EXAMPLES AMONG THE MANY. THE TRIBES ALONE EMPLOY BETWEEN 750 AND 900 PEOPLE, DEPENDING UPON SEASON, AND TRIBALLY OWNED RIGS SUCH AS POLICE CARS AND CONSERVATION VEHICLES USE A GREAT DEAL OF GASOLINE. BY ONLY ONE EXAMPLE, IT CAN BE SEEN THAT THE OFFSET OF ONE TAX FOR ANOTHER COULD BE IMPRESSIVE. THE LIST CONTINUES AND MONTANA COULD WELL LOSE SEVERAL MILLIONS OF DOLLARS TO RECOUP A FRACTION OF THAT IN ANOTHER ARENA.

SENATE BILL 440 IS ILL TIMED AND UNSOUND NOT ONLY FROM THE TRIBE'S PERSPECTIVE BUT FROM THAT OF THE STATE OF MONTANA AS WELL. TRIBAL ECONOMISTS AND STATE ECONOMISTS SHOULD HAVE FIRST COMPARED THE LOST REVENUES WITH ALL RELEVANT CORRELATIVE FACTORS. THAT COMPREHENSIVE ANALYSIS SHOULD THEN HAVE BEEN THE BASIS FOR THE STATE AND TRIBAL GOVERNMENTS TO REACH A MEANINGFUL RESOLUTION THAT WOULD HAVE BEEN LEGALLY BINDING AND POLITICALLY PALATABLE.

THANK YOU.

SENATE TAXATION
EXHIBIT NO. 15 P.1
DATE 3/3/89
BILL NO. SB 440

To the Montana Senate Taxation Committee

I am Tom Stump and I oppose Senate Bill 440.

I stand before you today not only as President of the Montana Association of Tobacco and Candy Distributors but as a Montana businessman directly affected by this proposed legislation. I am here to convey to you our experiences with regard to sales of cigarettes to the Native American reservations. The State of Montana with its vast resources cannot police, guarantee, or prove that the sales of non-taxed cigarettes are ending up in the hands of the members of a federally protected tribe. With that in mind, how can a small distributor in today's economy be expected to shoulder such a burden, especially when said distributors have no power vested in them to monitor, nor the monetary funds available to execute the aforementioned responsibilities.

Should this legislation pass, I fear that the flood gates would open to the large out of state wholesalers to sell non-taxed cigarettes to the reservations. Buying from an out of state source would mean less hassle to the Native American businessman and would put the Montana distributors at a definite disadvantage. The State of Montana does not have the legislative power nor the human resources to regulate out of state businesses to assure compliance to state laws. This in turn would devastate Montana distributors and result in lost revenues and jobs throughout the state.

As a majority of you are aware, we are revenue collection agents for the State. We already pay up front for the taxes paid

on cigarettes and affix the insignias or stamps to cigarette packs prior to sales. Again, should this legislation pass, we would experience a double blow to our pocketbook. First, we would have to pay for the additional stamps for cigarettes presently not stamped and the added labor to affix them. Secondly, we would have to carry the amounts due on these sales until we would be reimbursed from the state. With the depressed economy we are all in, few businesses could handle such a financial onus.

I personally doubt this legislation would survive a legal challenge from any Native American tribe. The only entity that has the power to tax these people is the federal government.

In closing, I urge you to allow this business to stay in Montana and the people that service the tribes to continue as is.

VOTE NO ON SENATE BILL 440.

Thank you.

Signed,

Tom Stump
President,

Montana Association of Tobacco and Candy Distributors

Secretary/ Treasurer,
Pennington's, Great Falls.

SENATE TAXATION

EXHIBIT NO. 16

DATE 3/3/89

BILL HB 35


Proposed Amendment
to HB 35

1. Page 5, Line 4

Following: "are"

Insert : "primarily designed and"

Respectfully submitted


John Fitzpatrick

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

SB 440
3-3-89

NAME: Bob Gervais DATE: 3/3/89

ADDRESS: Box 57
CAPITAL STATION Albany

PHONE: 449-4800

REPRESENTING WHOM? H. D # 9

APPEARING ON WHICH PROPOSAL: S.B. 440

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: Rad Bill

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB 440
3-3-89 ps 1

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 319

BY REVENUE AND TAXATION COMMITTEE

RECEIVED
MAR 4 1989
OFFICE OF LEGAL
AFFAIRS

1 AN ACT
2 RELATING TO THE APPLICATION OF THE SALES AND CIGARETTE TAXES ON INDIAN RESER-
3 VATIONS; PROVIDING A STATEMENT OF INTENT; AMENDING SECTION 63-2501, IDAHO
4 CODE, TO APPLY THE CIGARETTE TAX TO USE OR CONSUMPTION OF CIGARETTES;
5 AMENDING SECTION 63-2506, IDAHO CODE, TO APPLY THE CIGARETTE TAX TO ALL
6 SALES EXCEPT TO MEMBERS OF AN INDIAN TRIBE ON AN INDIAN RESERVATION AND
7 ESTABLISHING A REFUND OR CREDIT METHOD OF ACCOUNTING FOR THE EXEMPTION;
8 AND REPEALING SECTION 63-3622Z, IDAHO CODE, RELATING TO THE SALES TAX
9 EXEMPTION GRANTED TO CERTAIN INDIAN ENTERPRISES.

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. STATEMENT OF LEGISLATIVE INTENT. It is the intent of this act
12 to eliminate unfair competitive business advantages now enjoyed by Indian
13 enterprises operating on reservations in direct competition with non-Indian
14 businesses. This advantage arises because the Idaho legislature in the past
15 has not exercised its full constitutional authority to require that Indian
16 enterprises collect and remit state sales and cigarette taxes in regard to
17 sales made to non-Indian customers. By this act, the legislature intends to
18 exercise the full extent of the state's constitutional power to impose sales
19 tax on sales by Indian retailers to non-Indian customers and to require such
20 Indian retailers to account for and remit such taxes to the state. Addition-
21 ally, the legislature intends to exercise its full constitutional authority to
22 require that cigarettes sold to non-Indian purchasers on an Indian reservation
23 must have an Idaho cigarette tax stamp affixed, even if sold by an Indian or
24 an Indian enterprise.

25 SECTION 2. That Section 63-2501, Idaho Code, be, and the same is hereby
26 amended to read as follows:

27 63-2501. PURPOSE. It is the intent and purpose of this act to levy a tax
28 on all cigarettes sold; used, consumed, ~~handted-or--distributed~~ or purchased
29 for any purpose other than resale in the regular course of business, within
30 this state, and to precollect the tax from the person who first sells, uses,
31 consumes; receives, handles, or distributes the cigarettes.

32 SECTION 3. That Section 63-2506, Idaho Code, be, and the same is hereby
33 amended to read as follows:

34 63-2506. IMPOSITION OF TAX. (a) A tax upon the purchase, ~~storage;--use;~~
35 for any purpose other than resale in the regular course of business, consump-
36 tion, handting;--distribution-or-wholesale-sale or use of cigarettes is hereby
37 imposed at the rate of 180/200 of \$.01 for each cigarette, which tax shall be
38 precollected and paid by the wholesaler, and collected by the state tax com-
39 mission.

40 (b) The tax imposed by this section shall not apply to cigarettes sold by

1 a wholesaler to an Indian retailer solely for resale within the boundaries of
2 an Indian reservation located in Idaho to members of a federally recognized
3 Indian tribe. Any cigarettes which are nontaxable under this subsection are
4 required to have affixed the cigarette stamps required by this chapter.

5 (c) Wholesalers making sales of cigarettes to Indian retailers located on
6 an Indian reservation located in Idaho may apply to the commission for a
7 refund of taxes paid on cigarettes sold by such retailers to members of an
8 Indian tribe. The claim for any such refund must be made by the wholesaler and
9 approved by the commission before such cigarettes are sold by the wholesaler
10 to the retailer. If not so claimed, the refund shall be lost.

11 (d) The total amount of refund allowed by the commission to all whole-
12 salers claiming a refund under the preceding subsection for any reporting
13 period shall not exceed an amount which is equal to the cigarette tax on the
14 average annual allocated consumption of cigarettes for all Indian tribes
15 located in Idaho. The allocated number of cigarettes for each federally recog-
16 nized Indian tribe shall be determined by multiplying the tribal service area
17 population as determined by the bureau of Indian affairs by the greater of:

18 (1) The national cigarette consumption per capita average, as compiled
19 for the most recently completed calendar or fiscal year by the tobacco
20 institute; or

21 (2) The cigarette consumption per capita average for a federally recog-
22 nized Indian tribe, as compiled for the most recently completed calendar
23 or fiscal year.

24 (e) No refund shall be allowed to a wholesaler, unless the wholesaler
25 certifies to the commission that the economic benefit of the refund has been
26 passed by it to the retailers to whom the sales were made.

27 (f) As used in this section, the term "Indian reservation" means Indian
28 lands federally declared to be reservations because they are reserved for
29 Indian tribes by treaty between Indian tribes and any territorial governments,
30 state governments, or the United States government; or established by acts of
31 the United States congress; or established by formal decision of the executive
32 branch of the United States.

33 (g) As used in this section, the term "Indian retailer" means only a
34 business or enterprise which is wholly owned and operated by an Idaho Indian
35 tribe identified in section 67-4001, Idaho Code, or a business or enterprise
36 which is wholly owned and operated by one or more members of such a tribe and
37 is licensed by the tribe on whose reservation the business or enterprise is
38 located.

39 SECTION 4. That Section 63-3622Z, Idaho Code, be, and the same is hereby
40 repealed.

DATE

3/3/89

COMMITTEE ON

Paratition

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
TOM MADDUX	MT. ASSN. OF TOBACCO & CANDY DISTRIBUTORS	5440		X
Gene Beckers	Service Distribution, Inc.	440		X
David Baker	Billings Street Warehouse	440		X
STAN FEIST	Shawhan Majestic	440		X
Jerry Stinson	Big Sky Brokerage	440		X
Dan Dupuis	Tape owner	440		X
Rea BOBERVAIS	H.D. #9	440		X
Tom RYAN	Myself	4440		X
Gul MATH	CS & K Tribes	440		X
BOB NOBLE	BUSTED ASS RANCH	440		X
Eric Kaplan	Attorney	440		X
DEB BOYES	SELF	440		F
Wayne Boyes	self	440		X
LARRY CLINKENBEARD	JOES SMOKE RING	440		X
Dorothy Clinkenbeard	Joe's Smoke Ring	440		X
				X
Bob Wheeler	Joe's Jiffy Stop	440		X
Dorothy Wheeler	Joe's Jiffy Stop	440		X
Mark R. Olson	Olson Country Stores Inc	440	X	
Patricia L Olson	" " " "	"	X	
Tom Bowring	Montkora Distrib	440	X	
Bill Stevens	MT Food Dist Assn	440	X	
Ken Thraut	Joe's Smoke Ring			X
Tom Sharp	MT ASSN TOBACCO / CANDY DIST. PENNINGTONS, ET FALLS	440		X
Frank Lyons	Shrouters store	440	X	

(Please leave prepared statement with Secretary)