

1 House BILL NO. 673
 2 INTRODUCED BY FACT

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A LUXURY TAX
 5 OF THREE PERCENT UPON THE SALE OF CERTAIN GOODS AND
 6 SERVICES; PROVIDING FOR COLLECTION OF THE TAX; PROVIDING
 7 PENALTIES FOR EVASION."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Definitions. For the purposes of this act:

11 (1) "Selling price" means the consideration, whether
 12 money, credits, rights, or other property, expressed in the
 13 terms of money paid or delivered by a buyer to a seller, all
 14 without any deduction on account of the cost of tangible
 15 property sold, the cost of materials used, labor costs,
 16 interest, discount, delivery costs, taxes, or any other
 17 expenses whatsoever paid or accrued and without any
 18 deduction on account of losses; but shall not include the
 19 amount of cash discount actually taken by a buyer; and shall
 20 be subject to modification to the extent modification is
 21 provided for in section [5 of this act].

22 When tangible personal property is rented or leased
 23 under circumstances that the consideration paid does not
 24 represent a reasonable rental for the use of the articles so
 25 rented or leased, the "selling price" shall be determined as

1 nearly as possible according to the value of such use at the
 2 places of use of similar products of like quality and
 3 character under such rules as the department of revenue may
 4 prescribe;

5 (2) "Seller" means every person making sales at retail
 6 or retail sales to a buyer or consumer, whether as agent,
 7 broker, or principal;

8 (3) "Buyer" and "consumer" include, without limiting
 9 the scope hereof, every individual, receiver, assignee,
 10 trustee in bankruptcy, trust, estate, firm, copartnership,
 11 joint venture, club, company, joint stock company, business
 12 trust, corporation, association, society, or any group of
 13 individuals acting as a unit, whether mutual, cooperative,
 14 fraternal, nonprofit, or otherwise, municipal corporation,
 15 quasi municipal corporation, and also the state, its
 16 departments and institutions and all political subdivisions
 17 thereof, irrespective of the nature of the activities
 18 engaged in or functions performed and also the United States
 19 or any instrumentality thereof;

20 (4) "Luxury goods" include cosmetics, distilled spirits,
 21 tobacco, sporting goods, snowmobiles, off-road recreational
 22 vehicles, furs, jewelry, boats, boat motors, tents,
 23 recreational vehicles, camper units for motor vehicles,
 24 film, cameras and other photographic equipment, television
 25 sets, radios, phonographs and phonographic equipment.

1 (5) "Luxury services" include accommodations in a
2 hotel or motel, and admission to a motion picture, live
3 dramatic or musical entertainment, or spectator sporting
4 exhibition.

5 (6) "Department" means the department of revenue.

6 Section 2. Luxury tax imposed — rate. There is a tax
7 on the sale of luxury goods and luxury services within the
8 state, at the rate of three percent (3%) of the selling
9 price. This tax applies to successive sales of the same
10 property.

11 Section 3. Buyer to pay, seller to collect tax —
12 penalties. The tax hereby imposed shall be paid by the buyer
13 to the seller, and each seller shall collect from the buyer
14 the full amount of the tax payable in respect to each
15 taxable sale in accordance with the schedule of collections
16 adopted by the department pursuant to the provisions of
17 section [4 of this act]. The tax required by this act, to
18 be collected by the seller, shall be deemed to be held in
19 trust by the seller until paid to the department, and any
20 seller who appropriates or converts the tax collected to his
21 own use or to any use other than the payment of the tax to
22 the extent that the money required to be collected is not
23 available for payment on the due date as prescribed in this
24 act shall be guilty of a misdemeanor.

25 In case any seller fails to collect the tax herein

1 imposed or having collected the tax, fails to pay it to the
2 department in the manner prescribed by this act, whether
3 such failure is the result of his own acts or the result of
4 acts or conditions beyond his control, he shall,
5 nevertheless, be personally liable to the state for the
6 amount of the tax.

7 The amount of tax, until paid by the buyer to the
8 seller or to the department, shall constitute a debt from
9 the buyer to the seller and any seller who fails or refuses
10 to collect the tax as required with intent to violate the
11 provisions of this chapter or to gain some advantage or
12 benefit, either direct or indirect, and any buyer who
13 refuses to pay any tax due under this act is guilty of a
14 misdemeanor. The tax required by this act to be collected
15 by the seller shall be stated separately from the selling
16 price and for purposes of determining the tax due from the
17 buyer to the seller and from the seller to the department it
18 shall be conclusively presumed that the selling price quoted
19 in any price list, sales document, contract or other
20 agreement between the parties does not include the tax
21 imposed by this act.

22 Where a buyer has failed to pay to the seller the tax
23 imposed by this act and the seller has not paid the amount
24 of the tax to the department, the department may, in its
25 discretion, proceed directly against the buyer for

1 collection of the tax, in which case a penalty of ten
2 percent (10%) may be added to the amount of the tax for
3 failure of the buyer to pay the same to the seller,
4 regardless of when the tax may be collected by the
5 department.

6 Section 4. Collection of tax -- methods and schedules.
7 The department may adopt rules prescribing methods and
8 schedules for the collection of the tax imposed under this
9 act. Such methods and schedules may eliminate fractions of
10 one cent and may provide that no tax is imposed on sales
11 below a stated sum not exceeding twenty-five cents (\$.25).

12 Section 5. Seller's monthly, estimated, annual, etc.,
13 returns -- remittances -- reporting procedures and forms.
14 Each seller, on or before the fifteenth day of the month
15 succeeding the end of each monthly period, shall make out a
16 return for the preceding monthly period, upon forms to be
17 provided by the department, setting forth the amount of all
18 sales, nontaxable sales, taxable sales, the amount of tax
19 thereon, and such other information as the department may
20 require, sign, and transmit the same to the department:
21 Provided, that any such taxpayer may elect to remit each
22 month on such forms as the department shall in its
23 discretion prescribe, an estimate of the tax to be due for
24 each month on or before the fifteenth day of the month next
25 succeeding the end of the monthly period in which the tax

1 accrued, and a quarterly return to the department on or
2 before the fifteenth day of the month next succeeding the
3 end of each quarter of every year and shall remit therewith
4 the balance of the actual tax due for the period of the
5 report: Provided further, that every person who shall elect
6 to remit a monthly "estimate of the tax to be due" as
7 hereinabove described shall remit each month at least
8 one-third (1/3) of the tax paid during the previous quarter
9 or, at least ninety percent (90%) of the tax actually
10 collected or owing during the month.

11 The department may also relieve any taxpayer or class
12 of taxpayers from the obligation of filing monthly returns
13 and may require the return to cover other reporting periods,
14 but in no event shall returns be filed for a period greater
15 than one year.

16 The department may also, by general rule, establish
17 conditions for submission of annual or semiannual
18 reconciling returns by such taxpayers or class of taxpayers
19 in lieu of quarterly returns.

20 The department may also require verified annual returns
21 from any taxpayer, setting forth such additional information
22 as it may deem necessary to correctly determine tax
23 liability.

24 The department shall, by rule, establish procedures and
25 forms for reporting consonant with efficient tax

1 administration and accounting procedure to carry into effect
2 the provisions of this act.

3 The department may also require annual returns from any
4 taxpayer, setting forth such additional information as it
5 may consider necessary to correctly determine tax liability.
6 The tax accrued under the provisions of this act, whether or
7 not collected from the buyer shall be paid by the seller to
8 the department in installments at the time of transmitting
9 the return above provided for.

10 Section 6. Disposition of revenues. (1) Ten percent
11 (10%) of all taxes collected each year under this act are
12 allocated to the earmarked revenue fund to the credit of the
13 fish and game commission. Moneys may be appropriated from
14 this account only for the acquisition, development, and
15 maintenance of outdoor recreation projects within the
16 statutory authority of the department of fish and game.

17 (2) Ninety percent (90%) of all taxes collected each
18 year are allocated on a pro rata basis to the counties of
19 the state, in proportion to each county's share of sales
20 taxed under this act. A board of county commissioners shall
21 apply funds received under this section so as to reduce
22 general property taxes levied for the support of the county
23 and the school districts therein.

-End-

STATE OF MONTANA

REQUEST NO. 230-75

FISCAL NOTE

Form BD-15

In compliance with a written request received February 13, 19 75, there is hereby submitted a Fiscal Note for House Bill 673 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 673 imposes a three percent luxury tax on specified luxury goods and services, provides for collection of the tax, penalties for evasion and distribution of 10% of the tax collections to the Fish and Game Commission Earmarked Revenue Fund, the remainder to counties.

ASSUMPTIONS:

1. Specific data relating to sales of luxury goods and services subject to the proposed tax is not available. The primary problem is that many of the specified luxury goods and services are sold by various types of business establishments.
2. Most of the sales estimates are based on U.S. Department of Commerce 1972 data. FY 1973 is assumed to be the same. Later fiscal year sales are assumed to increase at a 10% annual rate.
3. Hotels, motels, motion pictures, and live entertainment sales were \$59,977,000 in 1972. One hundred percent of such sales are subject to taxation.
4. General merchandise and miscellaneous retail goods stores' sales were \$147,457,000 in 1972. Thirty-five percent of such sales are assumed subject to the proposed tax.
5. All of automotive dealers other vehicle sales are assumed subject to the proposed tax. Such sales were \$17,150,000 in 1972. Snowmobiles, boats, campers, etc., are covered in this category.
6. Twenty percent of drug and proprietary sales are considered subject to the luxury tax. Sales in 1972 were \$56,750,000.
7. Twenty percent of women's clothing and furrier sales are assumed subject to the luxury tax. 1972 sales were \$21,803,000.
8. All of radio, television, music, and sporting good stores' sales are presumed eligible for the proposed tax. Such sales were \$25,213,000 in 1973.
9. Tobacco and distilled spirit sales were \$75,148,656 in FY 74.
10. Total sales subject to the proposed luxury tax are \$316,748,066 in FY 76 and \$348,422,873 in FY 77.
11. The Department of Revenue will incur additional expenses in administering the proposed tax.

FISCAL IMPACT:

	FY 76	FY 77
Estimated luxury tax collections deposited in the Fish and Game Commission ERA	\$ 950,244	\$ 1,045,269
Estimated Department of Revenue administrative expenses	675,000	588,000
Net impact (revenue - expenditures)	<u>\$ 275,244</u>	<u>\$ 457,269</u>

CONCLUSION:

Enactment of House Bill 673 will result in an estimated increase in net revenue to the state of \$732,513 during the 1975-77 biennium. The \$1,263,000 administrative expense will be financed from the General Fund.

LOCAL IMPACT:

Enactment of House Bill 673 will result in an estimated increase in tax collections for Montana counties of \$18 million during the 1975-77 biennium. The proposed legislation requires such funds be used to reduce general property taxes.

Michael H. Bellings
by *Karen Wilson*
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 18, 1975