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Senate BILL NO. 258
Boylan *McKinnon* *DeVore*

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE STATUTORY PRESUMPTION OF THE COST OF TRANSPORTATION SET FOR CIGARETTES; AMENDING SECTION 51-303, R.C.M. 1947."

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

Section 1. Section 51-303, R.C.M. 1947, is amended to read as follows:

"51-303. Definitions. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer; or

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such

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cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "department" shall mean the state department of revenue of Montana and, where the meaning or the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in

1 any manner, or by any means whatever.

2 (7) "Sell at wholesale," "sale at wholesale" and
3 "wholesale" sales shall mean and include any bona fide
4 transfer of title to cigarettes for a valuable
5 consideration, made in the ordinary course of trade or in
6 the usual conduct of the wholesaler's business, to a
7 retailer for the purpose of resale.

8 (8) "Sell at retail," "sale at retail" and "retail
9 sales" shall mean and include any transfer of title to
10 cigarettes for a valuable consideration, made in the
11 ordinary course of trade or usual conduct of the seller's
12 business, to the purchaser for consumption or use.

13 (9) "Basic cost of cigarettes" shall mean the invoice
14 cost of cigarettes to the retailer or wholesaler, as the
15 case may be, or the replacement cost of cigarettes to the
16 retailer or wholesaler, as the case may be, in the quantity
17 last purchased, whichever is lower.

18 (10) (a) The term "cost to the wholesaler" shall mean
19 the "basic cost of cigarettes" to the wholesaler plus the
20 "cost of doing business by the wholesaler," as evidenced by
21 the standards and methods of accounting regularly employed
22 by the said wholesaler in his determination of costs for
23 income tax reporting purposes for the total operation of his
24 establishment and shall include within said costs, without
25 limitation, labor costs (including salaries of executives

1 and officers), rent, depreciation, selling costs,
2 maintenance of equipment, delivery costs, all types of
3 licenses, business taxes, insurance and advertising. The
4 cost of doing business by a wholesaler shall also include
5 any rebates, patronage dividends or concessions no matter
6 how defined, and any and all other indirect or overhead
7 costs with respect to the operation of the establishment of
8 the said wholesaler, expressed as a percentage and applied
9 to the "basic cost of cigarettes."

10 (b) In the absence of the filing with the department of
11 proof which the department declares to be satisfactory of a
12 lesser or higher cost of doing business by the wholesaler
13 making the sale, the "cost of doing business by the
14 wholesaler" shall be presumed to be five per centum (5%) of
15 the "basic cost of cigarettes" to the wholesaler, plus
16 cartage to the retail outlet, if performed or paid for by
17 the wholesaler, which cartage cost, in the absence of the
18 filing with the department of satisfactory proof of a lesser
19 or higher cost, shall be considered to be ~~three-fourths-of~~
20 ~~one-per-centum-(3/4-of-1%)~~ one and one-half percent (1 1/2%)
21 of the "basic cost of cigarettes" to the wholesaler.

22 (11) (a) The term "cost to the retailer" shall mean the
23 "basic cost of cigarettes" to the retailer plus the "cost of
24 doing business by the retailer" as evidenced by the
25 standards and methods of accounting regularly employed by

1 the said retailer in his determination of costs for income
 2 tax reporting purposes for the total operation of his
 3 establishment and shall include within said costs, without
 4 limitation, labor costs, (including salaries of executives
 5 and officers), rent, depreciation, selling costs,
 6 maintenance of equipment, delivery costs, all types of
 7 licenses, business taxes, insurance, and advertising,
 8 including any rebates or concessions no matter how defined,
 9 and any and all other indirect or overhead costs with
 10 respect to the operation of the establishment of the said
 11 retailer, expressed as a percentage and applied to the
 12 "basic costs of cigarettes"; provided, however, that any
 13 retailer who purchases from the manufacturer or from any
 14 other person at or at less than or about the price normally
 15 and usually charged for purchases in wholesale quantities
 16 shall, in determining "cost to the retailer," pursuant to
 17 this subsection, add the "cost of doing business by the
 18 wholesaler," as determined in subparagraph 10 (b) of this
 19 act, to the "basic cost of cigarettes" to said retailer, as
 20 well as the "cost of doing business by the retailer."

21 (b) In the absence of the filing with the department of
 22 satisfactory proof of a lesser or higher cost of doing
 23 business by the retailer making the sale, the "cost of doing
 24 business by the retailer" shall be presumed to be ten per
 25 centum (10%) of the "basic cost of cigarettes" to the

1 retailer.

2 (c) In the absence of the filing with the department of
 3 satisfactory proof of a lesser or higher cost of doing
 4 business, the "cost of doing business by the retailer," who,
 5 in connection with the retailer's purchase, received not
 6 only the discounts ordinarily allowed upon purchases by a
 7 retailer, but also, in whole or part, the discounts
 8 ordinarily allowed upon purchases by a wholesaler, shall be
 9 presumed to be ten per centum (10%) of the sum of the "basic
 10 cost of cigarettes" and the "cost of doing business by the
 11 wholesaler."

12 (12) "Business day" shall mean any day other than a
 13 Sunday or a legal holiday."

-End-

STATE OF MONTANA

REQUEST NO. 103-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 28, 1975, 19 , there is hereby submitted a Fiscal Note for Senate Bill 258 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:

Senate Bill 258 increases the statutory presumption of the cost of transportation of cigarette from $\frac{3}{4}\%$ to $1\frac{1}{2}\%$ of the basic cost of cigarettes to the wholesaler.

CONCLUSION:

Since cigarette taxes are a per unit tax rather than a percentage of value tax, the proposed legislation will not affect state revenue.



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: January 30, 1975