

House Bill 844

In The House

March 16, 1981	Introduced and referred to Committee on Taxation.
March 17, 1981	Fiscal note requested.
March 20, 1981	Fiscal note returned.
March 25, 1981	Committee recommend bill do not pass.

1 House BILL NO. 844  
 2 INTRODUCED BY Sandwich

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
 5 LEVYING OF A 2 PERCENT SALES AND USE TAX TO SUPPORT THE  
 6 STATE EDUCATIONAL SYSTEM, TEACHERS', POLICEMEN'S, AND  
 7 FIREFIGHTERS' RETIREMENT SYSTEMS, AND STATE GOVERNMENT BY  
 8 REPLACING CERTAIN PROPERTY TAXES; TO PROVIDE FOR  
 9 ADMINISTRATION AND PENALTIES; TO PROVIDE EXEMPTIONS FOR  
 10 FOODS, DRUGS, AND OTHER PROPERTIES; TO REPEAL THE INCOME  
 11 SURTAX; AMENDING SECTIONS 15-30-105 AND 15-30-162, MCA;  
 12 REPEALING SECTION 15-30-104, MCA; AND PROVIDING AN  
 13 APPLICABILITY DATE."

14  
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. Section 1. Short title. [Sections 1  
 17 through 41] shall be known and may be cited as the "Retail  
 18 Sales and Use Tax Act".

19 NEW SECTION. Section 2. General definitions. As used  
 20 in [sections 1 through 41], unless the context requires  
 21 otherwise, the following definitions apply:

22 (1) "Business" means any activity engaged in by any  
 23 person or caused to be engaged in by him with the object of  
 24 gain, benefit, or advantage, either direct or indirect.

25 (2) "Department" means the department of revenue.

1 (3) "Export" or "exported" means to export tangible  
 2 personal property from this state to other states as well as  
 3 to foreign countries.

4 (4) "Import" or "imported" means to import tangible  
 5 personal property into this state from other states as well  
 6 as from foreign countries.

7 (5) "In this state" or "in the state" means within the  
 8 exterior limits of the state of Montana and includes all  
 9 territory within these limits owned by or ceded to the  
 10 United States.

11 (6) "Person" means any individual, firm, partnership,  
 12 cooperative, nonprofit corporation, joint venture,  
 13 association, corporation, estate, trust, business trust,  
 14 trustee in bankruptcy, receiver, auctioneer, syndicate,  
 15 assignee, club, society, or other group or combination  
 16 acting as a unit, body politic or political subdivision,  
 17 whether public or private or quasi-public.

18 (7) "Retailer" means a person engaged in the business  
 19 of making sales of tangible personal property and taxable  
 20 services as defined in [sections 1 through 41].

21 (8) "Tangible personal property" means personal  
 22 property that may be seen, weighed, measured, felt, or  
 23 touched or is in any other manner perceptible to the senses.  
 24 The term "tangible personal property" does not include  
 25 stocks, bonds, notes, insurance, or other obligations or

1 securities.

2 (9) "Use tax" means the tax imposed upon the use,  
3 consumption, distribution, and storage of tangible personal  
4 property as defined in [sections 1 through 41].

5 NEW SECTION. Section 3. Definitions -- distribution  
6 -- lease -- storage -- use. As used in [sections 1 through  
7 41], unless the context requires otherwise, the following  
8 definitions apply:

9 (1) "Distribution" includes the transfer or delivery  
10 of tangible personal property for use, consumption, or  
11 storage by the distributee and the use, consumption, or  
12 storage of tangible personal property by a person who has  
13 processed, manufactured, refined, or converted the property.  
14 It does not include the transfer or delivery of tangible  
15 personal property for resale or any use, consumption, or  
16 storage otherwise exempt under [sections 1 through 41].

17 (2) "Lease or rental" means the leasing or renting of  
18 tangible personal property and the possession or use thereof  
19 by the lessee or rentee for a consideration, without  
20 transfer of the title to the property.

21 (3) "Storage" means any keeping or retention of  
22 tangible personal property for use, consumption, or  
23 distribution in this state or for any purpose other than the  
24 sale at retail in the regular course of business.

25 (4) "Use" means the exercise of any right or power

1 over tangible personal property incident to the ownership  
2 thereof, except that it does not include the sale at retail  
3 of that property in the regular course of business.

4 NEW SECTION. Section 4. Definitions -- sale -- retail  
5 sale. As used in [sections 1 through 41], unless the context  
6 requires otherwise, the following definitions apply:

7 (1) "Sale" means any transfer of title or possession,  
8 or both, exchange, barter, lease, or rental, conditional or  
9 otherwise, in any manner or by any means, of tangible  
10 personal property and any rendition of a taxable service for  
11 a consideration and includes the fabrication of tangible  
12 personal property for consumers who furnish, either directly  
13 or indirectly, the materials used in fabrication and the  
14 furnishing, preparing, or serving for a consideration of any  
15 tangible personal property consumed on the premises of the  
16 person furnishing, preparing, or serving such tangible  
17 personal property. A transaction whereby the possession of  
18 property is transferred but the seller retains title as  
19 security for the payment of the price is considered a sale.

20 (2) "Retail sale" or a "sale at retail" means a sale  
21 to a consumer or to any person for any purpose other than  
22 for resale in the form of tangible personal property or  
23 services taxable under [sections 1 through 41] and includes  
24 any such transaction as the department upon investigation  
25 finds to be in lieu of a sale. A sale for resale must be

1 made in strict compliance with the rules adopted pursuant to  
 2 [sections 1 through 41]. Any person making a sale for resale  
 3 that is not in strict compliance with such rules is liable  
 4 for and must pay the tax. "Retail sale" or "sale at retail"  
 5 includes:

6 (a) the sale or charges for any room or rooms,  
 7 lodging, or accommodations furnished to transients by any  
 8 hotel, motel, inn, tourist camp, tourist cabin, camping  
 9 grounds, club, or any other place in which rooms, lodging,  
 10 space, or accommodations are regularly furnished to  
 11 transients for a consideration. A transient is a person who  
 12 occupies rooms, lodgings, or accommodations for less than a  
 13 period of 90 continuous days;

14 (b) sales of tangible personal property to persons for  
 15 resale if, because of the operation of the business or its  
 16 very nature, the lack of a place of business in which to  
 17 display a certificate of registration, the lack of a place  
 18 of business in which to keep records, the lack of adequate  
 19 records, or because the persons are minors or transients or  
 20 are engaged in essentially service businesses, or for any  
 21 other reason, there is likelihood that the state will lose  
 22 tax funds due to the difficulty of policing the business  
 23 operations. The department may adopt rules requiring vendors  
 24 of or sellers to such persons to collect the tax imposed by  
 25 [sections 1 through 41] on the cost price of the tangible

1 personal property to such persons and may refuse to issue  
 2 certificates of registration, provided for in [section 15],  
 3 to such persons.

4 (c) the sale or charge of admissions;

5 (d) the charge or consideration for the service of  
 6 repairing, altering, mending, pressing, fitting, dyeing,  
 7 laundering, dry cleaning, or cleaning tangible personal  
 8 property or applying or installing tangible personal  
 9 property as a repair or replacement part of other personal  
 10 property for a consideration, whether or not the services  
 11 are performed directly or by means of coin-operated  
 12 equipment or by any other means and whether or not any  
 13 tangible personal property is transferred in conjunction  
 14 with the service, except such services as are rendered in  
 15 the construction, remodeling, repair, or maintenance of real  
 16 estate and such services as are rendered directly in  
 17 conjunction with the processing, manufacturing, refining, or  
 18 conversion of products for sale or resale;

19 (e) the charge for the service of printing or  
 20 imprinting, photographing, or copying by any means for a  
 21 consideration for persons who furnish either directly or  
 22 indirectly the materials used in conjunction with the  
 23 rendition of the service;

24 (f) the charge for barber and beauty services to  
 25 persons and animals for a consideration whether or not any

1 tangible personal property is transferred in conjunction  
2 with the performance of the service;

3 (g) the charge for motor vehicle parking service or  
4 parking space in privately owned parking lots or garages and  
5 the charge for docking or storage space for boats in  
6 privately owned boat docks or marinas;

7 (h) all charges for work relating to motor vehicles  
8 and boats of another whether or not any tangible personal  
9 property is transferred in conjunction with services  
10 performed;

11 (i) the furnishing of intrastate telephonic and  
12 telegraphic communications and services.

13 **NEW SECTION.** Section 5. Definitions -- cost and sales  
14 price -- gross proceeds and sales. As used in [sections 1  
15 through 41], unless the context requires otherwise, the  
16 following definitions apply:

17 (1) "Cost price" means the actual cost of an item or  
18 article of tangible personal property computed in the same  
19 manner as the sales price in subsection (4) without any  
20 deductions from the actual cost on account of the cost of  
21 materials used, cost of labor, or service costs,  
22 transportation charges, or any expenses whatsoever.

23 (2) "Gross proceeds" means the charges made or  
24 voluntary contributions received for the lease or rental of  
25 tangible personal property or for furnishing services,

1 computed with the same deductions, if applicable, as for  
2 sales price in subsection (4) over the term of the lease,  
3 rental, service, or use, but not less frequently than  
4 monthly.

5 (3) "Gross sales" means the sum total of all retail  
6 sales of tangible personal property or services as defined  
7 in [sections 1 through 41], without a deduction of any kind  
8 or character, except as provided in [sections 1 through 41].  
9 Gross sales do not include the federal retailers' excise  
10 tax, if this excise tax is billed to the purchaser  
11 separately from the selling price of the article, or the  
12 retail sales or use tax or any sales tax imposed by any  
13 county or city.

14 (4) "Sales price" means the total amount for which  
15 tangible personal property or services are sold, including  
16 any services that are a part of the sale, valued in money,  
17 whether paid in money or otherwise, and includes any amount  
18 for which credit is given to purchaser, consumer, or lessee  
19 by the dealer, without any deduction therefrom on account of  
20 the cost of the property sold, the cost of materials used,  
21 labor or service costs, losses, or any other expenses; but  
22 cash discounts allowed and taken on sales and finance  
23 charges, carrying charges, service charges, or interest from  
24 credit extended on sales of tangible personal property under  
25 conditional sales contracts or other conditional contracts

1 providing for deferred payments of the purchase price or  
 2 transportation charges separately stated are not included in  
 3 the sales price. If used articles are taken in trade or in a  
 4 series of trades as a credit or part payment on the sale of  
 5 new or used articles, the tax levied by [sections 1 through  
 6 41] must be paid on the net difference between the sales  
 7 price of the new or used articles and the credit for the  
 8 used articles.

9 NEW SECTION. Section 6. Imposition of sales tax.  
 10 There is levied and imposed, in addition to all other taxes  
 11 and fees of every kind now imposed by law, a license or  
 12 privilege tax upon every person who engages in the business  
 13 of selling at retail or distributing tangible personal  
 14 property in this state or who rents or furnishes any of the  
 15 things or services taxable under [sections 1 through 41], or  
 16 who stores for use or consumption in this state any item or  
 17 article of tangible personal property as defined in  
 18 [sections 1 through 41], or who leases or rents such  
 19 property within this state, to be collected in the amount to  
 20 be determined by applying the rate of 2% to:

21 (1) the sales price of each item or article of  
 22 tangible personal property when sold at retail or  
 23 distributed in this state, the tax to be computed on gross  
 24 sales;

25 (2) the gross proceeds derived from the lease or

1 rental of tangible personal property, as defined in  
 2 [sections 1 through 41], if the lease or rental of such  
 3 property is an established business or part of an  
 4 established business or is incidental or germane to the  
 5 business;

6 (3) the cost price of each item or article of tangible  
 7 personal property stored in this state for use or  
 8 consumption in this state;

9 (4) the gross proceeds derived from the sale or  
 10 charges for rooms, lodgings, or accommodations furnished to  
 11 transients as set out in [subsection (2)(a) of section 4];  
 12 and

13 (5) the gross sales of all services taxable under  
 14 [sections 1 through 41]. No services are taxable under  
 15 [sections 1 through 41] except those expressly enumerated  
 16 and made taxable.

17 NEW SECTION. Section 7. Imposition of use tax. (1)  
 18 There is levied and imposed, in addition to all other taxes  
 19 and fees except the tax imposed under [section 6], a tax  
 20 upon the use or consumption of tangible personal property in  
 21 this state, to be collected in the amount determined by  
 22 applying the rate of 2% to the cost price of each item or  
 23 article of tangible personal property used or consumed in  
 24 this state.

25 (2) (a) If tangible personal property has been

1 acquired after [the effective date of this act] for use  
 2 outside this state and subsequently becomes subject to the  
 3 tax imposed under [sections 1 through 41], it shall be taxed  
 4 on the basis of:

5 (i) its cost price if such property is brought within  
 6 this state for use within 6 months of its acquisition; or

7 (ii) its current market value (but not in excess of its  
 8 cost price) of the property at the time of its first use  
 9 within this state if brought within this state more than 6  
 10 months after its acquisition.

11 (b) The tax shall be based on such proportion of the  
 12 cost price or current market value as the duration of time  
 13 of use within this state bears to the total useful life of  
 14 the property, but it shall be presumed in all cases that the  
 15 property will remain within this state for the remainder of  
 16 its useful life unless convincing evidence is provided to  
 17 the contrary.

18 **NEW SECTION.** Section 8. Exclusions and exemptions.  
 19 "Retail sale" or "sale at retail" does not include the sale  
 20 of:

21 (1) tangible personal property that becomes an  
 22 ingredient or component part of or is consumed or destroyed  
 23 or loses its identity in the manufacture of tangible  
 24 personal property for later sale;

25 (2) specific machinery and processing equipment and

1 repair parts or replacements thereof, exclusively designed,  
 2 made for, and specifically used in the manufacture of a  
 3 product or the rendering of a taxable service;

4 (3) materials, containers, labels, sacks, cans, boxes,  
 5 drums, or bags and other packing, packaging, or shipping  
 6 materials for use in packing, packaging, or shipping  
 7 tangible personal property;

8 (4) tangible personal property delivered pursuant to  
 9 bona fide written contracts entered into before [the  
 10 effective date of this act], provided delivery is made  
 11 within 90 days after [the effective date of this act]; and  
 12 building supplies, fixtures, or equipment that enter into or  
 13 become a part of a building or other kind of structure in  
 14 this state if plans, specifications, and the construction  
 15 contract for a specific project has been entered into prior  
 16 to [the effective date of this act], provided delivery is  
 17 made within the time specified in such contract for the  
 18 completion of such specific project;

19 (5) commercial feeds, seed, plants, fertilizers,  
 20 liming materials, breeding and other livestock, semen,  
 21 breeding fees, baby chicks, turkey poults, agricultural  
 22 chemicals, fuel for drying or curing crops, containers for  
 23 fruits and vegetables, or farm machinery and all other  
 24 agricultural supplies, provided they are sold to and  
 25 purchased by farmers for use in agricultural production for

1 market;

2 (6) tangible personal property sold or leased to a  
3 public utility for use or consumption by the utility  
4 directly in the rendition of its public service;

5 (7) government subsidized school lunches sold and  
6 served to pupils and employees of schools, school textbooks  
7 sold by a local school board or authorized agency thereof,  
8 and school textbooks sold by a college or other institution  
9 of learning, not conducted for profit, for use of students  
10 attending the institution of learning;

11 (8) tangible personal property not held or used by a  
12 seller in the course of an activity for which he is required  
13 to hold a certificate of registration, sometimes referred to  
14 as "casual sales";

15 (9) tangible personal property for future use for  
16 taxable lease or rental as an established business or part  
17 of an established business or incidental or germane to the  
18 business, including a simultaneous purchase and taxable  
19 leaseback;

20 (10) tangible personal property and taxable services  
21 for use or consumption by the United States; but this  
22 exclusion does not apply to sales and leases to privately  
23 owned financial and other privately owned corporations  
24 chartered by the United States;

25 (11) tangible personal property delivered outside this

1 state for use or consumption outside this state;

2 (12) tangible personal property that is subject to:

3 (a) the gasoline and vehicle fuel tax contained in  
4 Title 15, chapter 70;

5 (b) the alcoholic beverage tax contained in Title 16,  
6 chapter 1, part 4;

7 (c) the tobacco products tax contained in Title 16,  
8 chapter 11; and

9 (d) the tax on motor vehicles contained in 61-3-502;

10 (13) fuel, electricity, and water;

11 (14) food purchased for human consumption, other than  
12 meals purchased at restaurants, hotels, motels, and other  
13 food dispensing establishments and food sold ready for  
14 immediate consumption on or off the premises;

15 (15) drugs sold by a registered pharmacist upon the  
16 prescription of a practitioner licensed to prescribe drugs  
17 to human beings in the course of his professional practice;  
18 or

19 (16) tangible personal property sold pursuant to  
20 15-17-901.

21 NEW SECTION. Section 9. Credit for taxes paid in  
22 another state. A credit must be granted against the taxes  
23 imposed by [sections 1 through 41] with respect to a  
24 person's use in this state of tangible personal property  
25 purchased by him in another state. The amount of the credit

1 must be equal to the tax paid by him to another state or  
 2 political subdivision thereof by reason of the imposition of  
 3 a similar tax on his purchase or use of the property. The  
 4 amount of the credit may not exceed the tax imposed by  
 5 [sections 1 through 41].

6 NEW SECTION. Section 10. Applicability or  
 7 inapplicability of use tax in certain cases. (1) The use tax  
 8 does not apply to tangible personal property owned or  
 9 acquired in this state or imported into this state or held  
 10 or stored in this state prior to [the effective date of this  
 11 act].

12 (2) The use tax does apply to tangible personal  
 13 property imported or caused to be imported into this state  
 14 on or after [the effective date of this act], except as  
 15 provided in [sections 1 through 41], unless:

16 (a) the property has previously been subject to a  
 17 sales or use tax in another state or political subdivision  
 18 equal to or greater than the tax imposed by [sections 1  
 19 through 41] for which credit is given under [section 9]; or

20 (b) proof is furnished that the tangible personal  
 21 property imported or caused to be imported into this state  
 22 was owned or acquired prior to [the effective date of this  
 23 act] or otherwise is exempt under [sections 1 through 41].

24 (3) The use tax does not apply to the use of any  
 25 article or tangible personal property brought into the state

1 by a nonresident individual for his personal use while  
 2 visiting within the state.

3 NEW SECTION. Section 11. Moving residence or business  
 4 into state -- use tax. (1) The use tax does not apply to  
 5 tangible personal property purchased outside this state for  
 6 use outside this state by a then nonresident natural person  
 7 or a business entity not actually doing business within this  
 8 state that later brings the tangible personal property into  
 9 this state in connection with establishment of a permanent  
 10 residence or business in this state if the property was  
 11 purchased more than 6 months prior to the date it was first  
 12 brought into this state or prior to the establishment of the  
 13 residence or business, whichever occurs first.

14 (2) Subsection (1) does not apply to tangible personal  
 15 property temporarily brought into this state for the  
 16 performance of contracts for the construction,  
 17 reconstruction, installation, repair, or for any other  
 18 service with respect to real estate or fixtures thereon.

19 NEW SECTION. Section 12. Diversion of tangible  
 20 personal property to personal use. The use tax applies to  
 21 tangible personal property and taxable services of persons  
 22 holding themselves out as sellers of goods and services when  
 23 tangible personal property or taxable services are diverted  
 24 to the personal use of the person, his family, or his  
 25 employees.

1        NEW SECTION. Section 13. Dealers. (1) The taxes  
 2        levied in [sections 6 and 7] must be collected from dealers.  
 3        (2) For the purpose of [sections 1 through 41], the  
 4        term "dealer" means:  
 5        (a) any person physically located in this state who:  
 6        (i) manufactures or produces tangible personal  
 7        property for sale at retail or for use, consumption, or  
 8        distribution or for storage to be used or consumed in this  
 9        state;  
 10        (ii) imports or causes to be imported into this state  
 11        tangible personal property from any state or foreign country  
 12        for sale at retail for use, consumption, or distribution or  
 13        for storage to be used or consumed in this state;  
 14        (iii) sells at retail or offers for sale at retail or  
 15        has in possession for sale at retail or for use,  
 16        consumption, or distribution or for storage to be used or  
 17        consumed in this state tangible personal property and  
 18        taxable services as defined in [sections 1 through 41];  
 19        (iv) has sold at retail or used, consumed, or  
 20        distributed or stored for use or consumption in this state  
 21        tangible personal property or who has performed taxable  
 22        services and who cannot prove that the tax levied by  
 23        [sections 1 through 41] has been paid on the sale at retail,  
 24        the use, consumption, distribution, or storage of such  
 25        tangible personal property or the charge for the rendition

1        of taxable services; or  
 2        (v) leases or rents tangible personal property, as  
 3        defined in [sections 1 through 41], for a consideration,  
 4        permitting the use or possession of the property without  
 5        transferring title thereto; and  
 6        (b) every other person who:  
 7        (i) maintains or has within this state, directly or by  
 8        an agent or a subsidiary, an office, distributing house,  
 9        salesroom, or house, warehouse, or other place of business;  
 10        (ii) solicits business in this state either by  
 11        employees, independent contractors, agents, or other  
 12        representatives and by reason thereof makes sales to persons  
 13        within this state of tangible personal property, the use of  
 14        which is taxed by [sections 1 through 41]; and any other  
 15        person making sales to persons within this state of tangible  
 16        personal property, the use of which is taxed by [sections 1  
 17        through 41], who may be authorized by the commissioner to  
 18        collect such tax;  
 19        (iii) as a representative, agent, or solicitor for an  
 20        out-of-state principal, solicits, receives, and accepts  
 21        orders from persons in this state for future delivery and  
 22        whose principal refuses to register under [sections 1  
 23        through 41]; or  
 24        (iv) becomes liable to and owes this state any amount  
 25        of tax imposed by [sections 1 through 41], whether or not he

1 holds or is required to hold a certificate of registration  
2 under [sections 1 through 41].

3 **NEW SECTION.** Section 14. Contractors. (1) Any person  
4 who contracts orally, in writing, or by purchase order to  
5 perform construction, reconstruction, installation, repair,  
6 or any other service with respect to real estate or fixtures  
7 thereon and in connection therewith to furnish tangible  
8 personal property or taxable services is considered to have  
9 purchased the tangible personal property for use or  
10 consumption. Any sale, distribution, or lease to or storage  
11 for such person is considered a sale, distribution, or lease  
12 to or storage for the ultimate consumer and not for resale,  
13 and the dealer making the sale, distribution, or lease to or  
14 storage for the person shall collect the tax to the extent  
15 required by [sections 1 through 41].

16 (2) Any person who contracts to perform services in  
17 this state and is furnished tangible personal property for  
18 use under the contract by the person or his agent or  
19 representative for whom the contract is performed, if a sale  
20 or use tax has not been paid to this state by the person  
21 supplying the tangible personal property, is considered to  
22 be the consumer of the tangible personal property so used  
23 and shall pay a use tax based on the fair market value of  
24 the tangible personal property so used, irrespective of  
25 whether or not any right, title, or interest in the tangible

1 personal property becomes vested in the contractor. This  
2 subsection does not apply to the sale of tangible personal  
3 property that becomes an ingredient or component part of or  
4 is consumed or destroyed or loses its identity in the  
5 manufacture of tangible personal property for later sale or  
6 governmental exclusion as indicated in [section 8].

7 (3) Any person who contracts orally, in writing, or by  
8 purchase order to perform any service in the nature of  
9 equipment rental and the principal part of that service is  
10 the furnishing of equipment or machinery that will not be  
11 under the exclusive control of the contractor is liable for  
12 the sales or use tax on the gross proceeds from the contract  
13 to the same extent as the lessor of tangible personal  
14 property.

15 (4) Tangible personal property incorporated in real  
16 property construction that loses its identity as tangible  
17 personal property is considered to be tangible personal  
18 property used or consumed within the meaning of this  
19 section.

20 (5) Nothing in this section may be construed to affect  
21 or limit the resale exclusion provided for in [sections 1  
22 through 41], and nothing contained herein may be construed  
23 to impose any sales or use tax with respect to the use, in  
24 the performance of contracts with the United States or this  
25 state and its political subdivisions, of tangible personal

1 property owned by a governmental body that actually is not  
2 used or consumed in the performance thereof.

3 NEW SECTION. Section 15. Certificates of registration  
4 -- revocation. (1) Every person desiring to engage in or  
5 conduct business as a dealer in this state shall file with  
6 the department an application for a certificate of  
7 registration for each place of business in this state.

8 (2) Every application for a certificate of  
9 registration must be made upon a form prescribed by the  
10 department and shall set forth the name under which the  
11 applicant transacts or intends to transact business, the  
12 location of his place or places of business, and such other  
13 information as the department requires. The application must  
14 be signed by the owner if a natural person; in the case of  
15 an association or partnership, by a member or partner; in  
16 the case of a corporation, by an executive officer or some  
17 person specifically authorized by the corporation to sign  
18 the application.

19 (3) When the required application has been made, the  
20 department shall issue to each applicant a separate  
21 certificate of registration for each place of business  
22 within this state. A certificate of registration is not  
23 assignable and is valid only for the person in whose name it  
24 is issued and for the transaction of business at the place  
25 designated therein. It shall be at all times conspicuously

1 displayed at the place for which issued.

2 (4) If any person fails to comply with any provision  
3 of [sections 1 through 41] or any rule of the department  
4 relating thereto, the department, upon hearing after giving  
5 such person 10 days' notice in writing, specifying the time  
6 and place of hearing and requiring him to show cause why his  
7 certificate of registration should not be revoked or  
8 suspended, may revoke or suspend any one or more of the  
9 certificates of registration held by such person. The notice  
10 may be personally served or served by certified mail  
11 directed to the last-known address of the person. A dealer  
12 whose certificate of registration has been previously  
13 suspended or revoked shall pay the department a fee of \$200  
14 for the renewal or reissuance of a certificate of  
15 registration.

16 (5) Any person who engages in business as a dealer in  
17 this state without obtaining a certificate of registration  
18 or after a certificate of registration has been suspended or  
19 revoked and each officer of any corporation that so engages  
20 in business is guilty of a misdemeanor. Each day's  
21 continuance in business in violation of this section is a  
22 separate offense.

23 (6) If the holder of a certificate of registration  
24 ceases to conduct his business at the place specified in his  
25 certificate, the certificate expires and the holder shall

1 inform the department in writing within 30 days after he has  
 2 ceased to conduct the business at that place. If the holder  
 3 of a certificate of registration desires to change his place  
 4 of business to another place in this state, he shall inform  
 5 the department in writing and his certificate shall be  
 6 revised accordingly.

7 (7) This section applies to any person who engages in  
 8 the business of furnishing any of the things or services  
 9 taxable under [sections 1 through 41]. This section applies  
 10 to any person who is liable only for the collection of the  
 11 use tax, but that person may be issued a certificate of  
 12 registration in relevant form.

13 NEW SECTION. Section 16. Exemption certificates. (1)  
 14 All sales or leases are subject to the tax until the  
 15 contrary is established. The burden of proving that a sale,  
 16 distribution, lease, or storage of tangible personal  
 17 property is not taxable is upon the person who makes the  
 18 sale, distribution, lease, or storage unless he takes from  
 19 the purchaser or lessee a certificate to the effect that the  
 20 property is exempt under [sections 1 through 41].

21 (2) The certificate mentioned in this section relieves  
 22 the person who takes the certificate from any liability for  
 23 the payment or collection of the tax, except upon notice  
 24 from the department that the certificate is no longer  
 25 acceptable. The certificate must be signed by and bear the

1 name and address of the purchaser or lessee; indicate the  
 2 number of the certificate of registration, if any, issued to  
 3 the purchaser or lessee; indicate the general character of  
 4 the taxable service rendered or tangible personal property  
 5 sold, distributed, leased, or stored or to be sold,  
 6 distributed, leased, or stored under a blanket exemption  
 7 certificate; and be substantially in such form as the  
 8 department prescribes.

9 (3) If a purchaser or lessee who gives a certificate  
 10 under this section makes any use of the property other than  
 11 an exempt use or retention, demonstration, or display while  
 12 holding property for resale, distribution, or lease in the  
 13 regular course of business, the use is considered a taxable  
 14 sale by the purchaser or lessee as of the time the property  
 15 or service is first used by him, and the cost of the  
 16 property to him is considered the sales price of the retail  
 17 sale. If the sole use of the property other than retention,  
 18 demonstration, or display in the regular course of business  
 19 is the rental of the property while holding it for sale,  
 20 distribution, or lease, the purchaser shall pay the tax on  
 21 the cost of the property to him and when the property is  
 22 sold shall collect and pay the tax on the difference between  
 23 the cost of the property to him and the retail sales price.

24 (4) If a purchaser gives a certificate under this  
 25 section with respect to the purchase of fungible goods and

1 thereafter commingles these goods with other fungible goods  
 2 not so purchased but of such similarity that the identity of  
 3 the constituent goods in the commingled mass cannot be  
 4 determined, sales or distribution from the mass of  
 5 commingled goods is considered to be sales or distributions  
 6 of the goods so purchased until a quantity of commingled  
 7 goods equal to the quantity of purchased goods so commingled  
 8 has been sold or distributed.

9 NEW SECTION. Section 17. Collection. (1) The tax  
 10 levied by [sections 1 through 41] must be paid by the  
 11 dealer, but the dealer shall separately state the amount of  
 12 the tax and add the tax to the sales price or charge; and  
 13 thereafter, the tax is a debt from the purchaser, consumer,  
 14 or lessee to the dealer until paid and is recoverable at law  
 15 in the same manner as other debts, but no action at law or  
 16 suit in equity under [sections 1 through 41] may be  
 17 maintained in this state by any dealer who is not registered  
 18 under [sections 1 through 41] or is delinquent in the  
 19 payment of the taxes imposed under [sections 1 through 41].

20 (2) To eliminate separate statement of the amount of  
 21 tax in fractions of 1 cent, dealers shall add to the sales  
 22 price or charge and collect from the purchaser, consumer, or  
 23 lessee such amounts as may be prescribed by the department  
 24 to carry out the purposes of this section.

25 (3) Notwithstanding any exemption from taxes that any

1 dealer enjoys under the constitution or laws of this or any  
 2 other state or of the United States, the dealer shall  
 3 collect the tax from the purchaser, consumer, or lessee and  
 4 shall pay it over to the department as provided in [sections  
 5 1 through 41].

6 (4) Any dealer who neglects, fails, or refuses to  
 7 collect the tax upon each and every taxable sale,  
 8 distribution, lease, or storage of tangible personal  
 9 property made by him, his agents, or employees is liable for  
 10 and must pay the tax himself, and the dealer may not  
 11 thereafter be entitled to sue for or recover in this state  
 12 any part of the purchase price or rental from the purchaser  
 13 until the tax is paid. Also, any dealer who neglects, fails,  
 14 or refuses to pay or collect the tax provided in [sections 1  
 15 through 41], either by himself or through his agents or  
 16 employees, is guilty of a misdemeanor and is punishable as  
 17 provided in 46-18-212.

18 NEW SECTION. Section 18. Absorption of tax  
 19 prohibited. No person may advertise or hold out to the  
 20 public in any manner, directly or indirectly, that he will  
 21 absorb all or any part of the sales or use tax or that he  
 22 will relieve the purchaser, consumer, or lessee of the  
 23 payment of all or any part of the tax, except as authorized  
 24 under [section 33]. Any person who violates this section is  
 25 guilty of a misdemeanor and is punishable as provided in

1 46-18-212.

2 NEW SECTION. Section 19. Returns by dealers. (1)  
 3 Every dealer required to collect or pay the sales or use tax  
 4 shall, on or before the 28th day of each month, transmit to  
 5 the department, upon a form prescribed, prepared, and  
 6 furnished by it, a return showing the gross sales, gross  
 7 proceeds, or cost price, as the case may be, arising from  
 8 all transactions taxable under [sections 1 through 41]  
 9 during the preceding calendar month. The return also shall  
 10 contain a statement showing the amount in each class of  
 11 exclusions and exemptions that is not subject to the tax  
 12 imposed by [sections 1 through 41] or, if the form so  
 13 provides, the total amount thereof without specifying each  
 14 class. In the case of dealers regularly keeping books and  
 15 accounts on the basis of an annual period that varies from  
 16 52 to 53 weeks, the department may make rules for reporting  
 17 consistent with the accounting period.

18 (2) If the tax for which any dealer is liable under  
 19 [sections 1 through 41] does not exceed \$50 in any month or  
 20 \$500 in any annual reporting period, the department may  
 21 permit a dealer upon written application to file an annual  
 22 return and pay the amount of tax due on the last day of the  
 23 month following the end of the annual period.

24 (3) If the tax for which any dealer is liable under  
 25 [sections 1 through 41] does not exceed \$100 in any month or

1 \$1000 in any annual reporting period, the department may  
 2 permit a dealer upon written application to file a quarterly  
 3 return and pay the amount of tax due on the last day of the  
 4 month following end of the quarterly period.

5 NEW SECTION. Section 20. Payment to accompany  
 6 dealer's return. At the time of transmitting to the  
 7 department the return required under [section 19], the  
 8 dealer shall remit to the department the amount of tax due  
 9 under the applicable provisions of [sections 1 through 41]  
 10 after making appropriate adjustments for purchases returned,  
 11 repossessions, and accounts uncollectible and charged off as  
 12 provided in [sections 21 through 23]. The tax imposed by  
 13 [sections 1 through 41] for each month becomes delinquent on  
 14 the day following the 28th day of the succeeding month if  
 15 not paid before that day.

16 NEW SECTION. Section 21. Returned goods. If purchases  
 17 are returned to the dealer by the purchaser or consumer  
 18 after the tax imposed by [sections 1 through 41] has been  
 19 collected or charged to the account of the purchaser, the  
 20 dealer is entitled to reimbursement of the amount of tax  
 21 collected or charged by him, in the manner prescribed by the  
 22 department, but the amount of tax so reimbursed to the  
 23 dealer may not include the tax paid upon any cash retained  
 24 by the dealer after the return of merchandise; and if the  
 25 tax has not been remitted by the dealer, the dealer may

1 deduct it in submitting his return. The dealer must be  
2 issued a refund by the department equal to the net amount  
3 remitted by the dealer for the tax collected if the dealer  
4 can establish that the tax was not due.

5 NEW SECTION. Section 22. Repossessions. A dealer who  
6 has paid the tax on tangible personal property sold under a  
7 retained title, conditional sale, or similar contract may  
8 take credit for the tax paid by him upon the unpaid balance  
9 due him when he repossesses the property, the credit to be  
10 administered by the department in the same manner as  
11 provided for returned purchases under [section 21]. If  
12 repossessed property is resold, the sale is subject in all  
13 respects to [sections 1 through 41].

14 NEW SECTION. Section 23. Bad debts. In any return  
15 filed under the provisions of [sections 1 through 41], the  
16 dealer, under rules adopted by the department, may credit  
17 against the tax shown to be due on the return the amount of  
18 sales or use tax previously returned and paid on accounts  
19 that during the period covered by the current return have  
20 been found to be worthless and actually charged off for  
21 income tax purposes; except that if any accounts so charged  
22 off are thereafter in whole or in part paid to the dealer,  
23 the amount paid shall be included in the first return filed  
24 after the collection and the tax paid accordingly.

25 NEW SECTION. Section 24. Extensions. The department

1 may grant an extension upon written application therefor to  
2 the end of the calendar month in which any tax return is due  
3 under [sections 1 through 41] or for a period not exceeding  
4 30 days, and no interest or penalty may be charged,  
5 assessed, or collected by reason of the granting of the  
6 extension, except that when an extension is granted beyond  
7 the end of the calendar month in which any tax return is  
8 due, interest on the tax at the rate of 0.5% a month or  
9 fraction thereof must be charged.

10 NEW SECTION. Section 25. Assessment based on  
11 estimate. (1) If any dealer fails to make a return as  
12 provided by [sections 1 through 41], makes a grossly  
13 incorrect return, or makes a return that is false or  
14 fraudulent, the department shall make an estimate for the  
15 taxable period of the retail sales or distributions of the  
16 dealer, the gross proceeds from leases of tangible personal  
17 property, the taxable services by the dealer, or the cost  
18 price of all articles of tangible personal property imported  
19 by the dealer for use or consumption in the state or storage  
20 by the dealer of tangible personal property to be used or  
21 consumed in the state and assess the tax, plus penalties.  
22 The department shall give the dealer 10 days' notice in  
23 writing requiring the dealer to appear before a designee of  
24 the department with such books, records, and papers as the  
25 department requires relating to the business of the dealer

1 for the taxable period. The department may require the  
 2 dealer or the agents and employees of the dealer to give  
 3 testimony or to answer interrogatories under oath  
 4 administered by the department's designee respecting the  
 5 sale, distribution, lease, use, consumption, or storage of  
 6 tangible personal property or taxable services or the  
 7 failure to make a return thereof as provided in [sections 1  
 8 through 41]. If any dealer fails to make any return or  
 9 refuses to permit an examination of his books, records, or  
 10 papers or to appear and answer questions within the scope of  
 11 an investigation relating to the sale, distribution, lease,  
 12 use, consumption, or storage of tangible personal property  
 13 or taxable services, the department may make the assessment  
 14 based upon information available to it and issue a warrant  
 15 for the collection of the taxes and penalties found to be  
 16 due. The assessment shall be considered prima facie  
 17 correct.

18 (2) If the dealer has imported the tangible personal  
 19 property and fails to produce an invoice showing the sales  
 20 price of the articles or the invoice does not reflect the  
 21 true or actual sales price as defined in [sections 1 through  
 22 41], the department shall ascertain, in any manner feasible,  
 23 the true sales price and assess and collect the tax, with  
 24 penalties to the extent they have accrued, on the true sales  
 25 price as ascertained by it. The assessment shall be

1 considered prima facie correct.

2 (3) In the case of the lease of tangible personal  
 3 property, if the consideration given or reported by the  
 4 dealer, in the judgment of the department, does not  
 5 represent the true or actual consideration, the department  
 6 may fix it and assess and collect the tax thereon as  
 7 provided in this section, with penalties as have accrued.  
 8 The assessment shall be considered prima facie correct.

9 NEW SECTION. Section 26. Records. (1) Every dealer  
 10 required to make a return and pay or collect any tax under  
 11 [sections 1 through 41] shall keep and preserve suitable  
 12 records of the sales, leases, or purchases, as the case may  
 13 be, taxable under [sections 1 through 41] and other books of  
 14 account as necessary to determine the amount of tax due and  
 15 other pertinent information required by the department.  
 16 Every dealer shall keep and preserve for a period of 4 years  
 17 all invoices and other records of goods, wares, and  
 18 merchandise or other subjects of taxation under [sections 1  
 19 through 41], and all the books, invoices, and other records  
 20 must be open to examination at all reasonable hours by the  
 21 department or any of its duly authorized agents.

22 (2) In order to aid in the administration and  
 23 enforcement of the provisions of [sections 1 through 41],  
 24 all wholesalers and jobbers in this state shall keep a  
 25 record of all sales of tangible personal property, whether

1 the sales be for cash or on terms of credit. The records  
 2 required to be kept by all wholesalers and jobbers must  
 3 include the name and address of the purchaser, the number of  
 4 the certificate of registration issued to the purchaser, the  
 5 date of the purchase, the article purchased, and the price  
 6 at which the article is sold to the purchaser. These records  
 7 must be kept for a period of 4 years and must be open to the  
 8 inspection of the department or its authorized agents at all  
 9 reasonable hours during the day. The failure of any  
 10 wholesaler or jobber in this state to keep the records or  
 11 the failure of any wholesaler or jobber in this state to  
 12 permit an inspection of the records by the department, as  
 13 provided in this subsection, is a misdemeanor punishable as  
 14 provided in 46-18-212. Moreover, if any person who is both a  
 15 retailer and a wholesaler or jobber fails to keep proper  
 16 records showing wholesale sales and retail sales separately,  
 17 he shall pay the tax as a retailer on both classes of his  
 18 business.

19 (3) For the purpose of enforcing the collection of the  
 20 tax levied by [sections 1 through 41], the department  
 21 through its authorized agents may examine during business  
 22 hours the books, records, and other documents of all  
 23 transportation companies, agencies, firms, or persons that  
 24 conduct their business by truck, rail, water, airplane, or  
 25 otherwise, in order to determine the dealers that are

1 importing or otherwise shipping articles of tangible  
 2 personal property which are liable for the tax. If the  
 3 transportation company, agency, firm, or person refuses to  
 4 permit an examination of its or his books, records, and  
 5 other documents by the department, it or he is guilty of a  
 6 misdemeanor punishable as provided in 46-18-212. Moreover,  
 7 the department may proceed by citing the transportation  
 8 company, agency, firm, or person to show cause before any  
 9 court of record why the books, records, and other documents  
 10 should not be examined pursuant to the injunction of the  
 11 court and why a bond should not be required with proper  
 12 security in the penalty of not more than \$2,000, conditioned  
 13 upon compliance with the provisions of this section for a  
 14 period of not more than 1 year.

15 NEW SECTION. Section 27. Sale of business. If any  
 16 dealer liable for any tax, penalty, or interest levied under  
 17 [sections 1 through 41] sells out his business or stock of  
 18 goods or quits the business, he shall make a final return  
 19 and payment within 15 days after the date of selling or  
 20 quitting the business. The return must include any sales  
 21 made at retail during liquidation. His successors or  
 22 assigns, if any, shall withhold a sufficient amount of the  
 23 purchase money to cover the amount of taxes, penalties, and  
 24 interest due and unpaid until the former owner produces a  
 25 receipt from the department showing that they have been paid

1 or a certificate stating that no taxes, penalties, or  
 2 interest are due. If the purchaser of a business or stock of  
 3 goods fails to withhold the purchase money as provided in  
 4 this section, he shall be personally liable for the payment  
 5 of the taxes, penalties, and interest due and unpaid on  
 6 account of the operation of the business by any former  
 7 owner. Nothing in this section may be considered to qualify  
 8 or limit the exemption as to such a sale as is covered by  
 9 [section 8].

10 NEW SECTION. Section 28. Bond. The department, if  
 11 necessary and advisable in order to secure the collection of  
 12 the tax levied by [sections 1 through 41], may require any  
 13 person subject to the tax to file with him a bond of a  
 14 surety company authorized to do business in this state as  
 15 surety, in such reasonable amount as the department fixes,  
 16 to secure the payment of any tax, penalty, or interest due  
 17 or that may become due from the person. In lieu of a bond,  
 18 securities approved by the department may be deposited with  
 19 the state treasurer, which securities shall be kept in the  
 20 custody of the state treasurer and shall be sold by him at  
 21 the request of the department at public or private sale,  
 22 without notice to the depositor thereof, if necessary, in  
 23 order to recover any tax, penalty, or interest due the state  
 24 under [sections 1 through 41]. Upon the sale, the surplus,  
 25 if any, above the amounts due under [sections 1 through 41]

1 must be returned to the person who deposited the securities.

2 NEW SECTION. Section 29. Jeopardy assessment. If the  
 3 department considers that the collection of any tax or any  
 4 amount of tax required to be collected and paid under  
 5 [sections 1 through 41] may be jeopardized by delay, he  
 6 shall make an assessment of the tax or amount of tax  
 7 required to be collected and shall mail or issue a notice of  
 8 the assessment to the taxpayer together with a demand for  
 9 immediate payment of the tax or of the deficiency in tax  
 10 declared to be in jeopardy, including penalties. In the case  
 11 of a tax for a current period, the department may declare  
 12 the taxable period of the taxpayer immediately terminated  
 13 and shall cause notice of the finding and declaration to be  
 14 mailed or issued to the taxpayer, together with a demand for  
 15 immediate payment of the tax based on the period declared  
 16 terminated, and the tax is immediately due and payable  
 17 whether or not the time otherwise allowed by law for filing  
 18 a return and paying the tax has expired. Assessments  
 19 provided for in this section become immediately due and  
 20 payable, and if any tax, penalty, or interest is not paid  
 21 upon demand of the department, it shall proceed to collect  
 22 it by legal process or, in its discretion, it may require  
 23 the taxpayer to file a bond sufficient to protect the  
 24 interest of the state.

25 NEW SECTION. Section 30. Direct payment permits.

1 (1) (a) Notwithstanding any other provision of [sections 1  
2 through 41], upon application to the department and the  
3 issuance by the department of a direct payment permit, the  
4 department may authorize the following persons to pay any  
5 tax levied by [sections 1 through 41] directly to this state  
6 and waive the collection of the tax by the dealer:

7 (i) a manufacturer, mine operator, or public service  
8 corporation that is a user, consumer, distributor, or lessee  
9 to which sales, distributions, leases, or storage of  
10 tangible personal property are made under circumstances that  
11 normally make it impossible at the time thereof to determine  
12 the manner in which the property will be used by the person;  
13 or

14 (ii) any person who stores tangible personal property  
15 in this state for use both within and outside this state.

16 (b) If a direct payment permit is granted, payment of  
17 the tax on all sales, distributions, and leases, including  
18 sales, distributions, leases, and storage of tangible  
19 personal property and sales of taxable services for use  
20 known at the time thereof, must be made directly to the  
21 department by the permit holder.

22 (2) On or before the 28th day of each month, every  
23 permit holder shall make and file with the department a  
24 return for the preceding month in the form prescribed by the  
25 department showing the total value of the tangible personal

1 property used, the amount of tax due from the permit holder  
2 (which amount shall be paid to the department with such  
3 return), and such other information as the department  
4 considers necessary. The department, upon written request  
5 by the permit holder, may grant a reasonable extension of  
6 time for making and filing returns and paying the tax.  
7 Interest on the tax at the rate of 0.5% a month, or fraction  
8 thereof, must be charged on every extended payment.

9 (3) Each permit holder required to make a return and  
10 pay tax under this section shall keep and preserve suitable  
11 records of purchases, together with invoices of purchases,  
12 bills of lading, and other pertinent records and documents  
13 in the form the department requires by rule. All records and  
14 other documents must be open during business hours to the  
15 inspection of the department and must be preserved for a  
16 period of 4 years unless the department, in writing,  
17 authorizes their destruction or disposal at an earlier date.

18 (4) A permit granted pursuant to this section is valid  
19 until surrendered by the holder or canceled for cause by the  
20 department.

21 (5) A person who holds a direct payment permit that  
22 has not been canceled may not be required to pay the tax to  
23 the dealer. The person shall notify each dealer from whom  
24 purchases or leases of tangible personal property are made  
25 of his direct payment permit number and that the tax is

1 being paid directly to the department. Upon receipt of the  
 2 notice, the dealer is absolved from all duties and  
 3 liabilities imposed by [sections 1 through 41] for the  
 4 collection and remittance of the tax with respect to sales,  
 5 distributions, leases, or storage of tangible personal  
 6 property to the permitholder. Dealers who make sales upon  
 7 which the tax is not collected by reason of the provisions  
 8 of this section shall maintain records in such manner that  
 9 the amount involved and identity of each purchaser may be  
 10 ascertained.

11 (6) Upon the cancellation or surrender of a direct  
 12 payment permit, the provisions of [sections 1 through 41]  
 13 thereafter apply to the person who previously held the  
 14 permit, and the person shall promptly notify in writing  
 15 dealers from whom purchases, leases, and storage of tangible  
 16 personal property are made of the cancellation or surrender.  
 17 Upon receipt of the notice, the dealer is subject to the  
 18 provisions of [sections 1 through 41] with respect to all  
 19 sales, distributions, leases, or storage of tangible  
 20 personal property thereafter made to the person.

21 NEW SECTION. Section 31. Vending machine sales. If a  
 22 dealer makes sales of tangible personal property through  
 23 vending machines or in any other manner making collection of  
 24 the tax impractical, the department may authorize the dealer  
 25 to prepay the tax and waive collection from the purchaser

1 and may require the dealer to furnish bond sufficient to  
 2 secure prepayment of the tax. The dealer must be required to  
 3 print upon the property sold or post on the vending machine  
 4 a statement to the effect that the tax has been paid in  
 5 advance. The terms and conditions of this section are  
 6 inapplicable unless the dealer makes application to the  
 7 department for the authority contained in this section and  
 8 unless the department finds that the collection of the tax  
 9 in the manner otherwise provided in [sections 1 through 41]  
 10 is impractical.

11 NEW SECTION. Section 32. Tax warrants. If any tax  
 12 becomes delinquent under this act, the department may issue  
 13 a warrant for the collection of the tax, penalty, and  
 14 interest from each delinquent taxpayer.

15 NEW SECTION. Section 33. Erroneous assessments. Upon  
 16 any claim of an erroneous or illegal assessment or  
 17 collection, the taxpayer has his remedy under Title 15,  
 18 chapter 2, part 3, which is applicable to all sales and use  
 19 taxes imposed under [sections 1 through 41].

20 NEW SECTION. Section 34. Period of limitations. The  
 21 taxes imposed by [sections 1 through 41] must be assessed  
 22 within 3 years from December 31 of the year in which the  
 23 taxes became due and payable; but in the case of a false or  
 24 fraudulent return with intent to evade payment of the taxes  
 25 imposed by [sections 1 through 41] or a failure to file a

1 return, the taxes may be assessed or a proceeding in court  
 2 for the collection of the taxes may be begun without  
 3 assessment at any time within 6 years from December 31 of  
 4 the year in which the taxes became due and payable.

5 NEW SECTION. Section 35. Administration. The  
 6 department shall administer and enforce the assessment and  
 7 collection of the taxes and penalties imposed by [sections 1  
 8 through 41]. It shall design, prepare, print, and furnish to  
 9 all dealers or make available to them all necessary forms  
 10 for filing returns, together with instructions to assure a  
 11 full collection from dealers and an accounting for the taxes  
 12 due, but failure of any dealer to receive or procure forms  
 13 or instructions, or both, does not relieve him from the  
 14 payment of the tax at the time and in the manner provided in  
 15 [sections 1 through 41].

16 NEW SECTION. Section 36. Rules -- deduction guides.  
 17 (1) The department may adopt rules consistent with [sections  
 18 1 through 41] for the enforcement of the provisions of  
 19 [sections 1 through 41] and the collection of the revenue  
 20 under [sections 1 through 41].

21 (2) (a) The department shall promulgate and publish  
 22 sales tax deduction guides for the purpose of aiding the  
 23 taxpayer in calculating allowable deductions relevant to  
 24 income taxes, which guides shall be based on the following  
 25 factors:

- 1 (i) size of income;  
 2 (ii) size of family; and  
 3 (iii) rate of tax.

4 (b) The guides so promulgated do not preclude any  
 5 taxpayer from claiming as a deduction the amount of taxes,  
 6 levied under the provisions of [sections 1 through 41],  
 7 actually paid by him.

8 NEW SECTION. Section 37. Secrecy of information.  
 9 Except in accordance with a proper judicial order or as  
 10 provided by law, it is unlawful for any agent, auditor, or  
 11 other officer or employee of the department to divulge or  
 12 make known in any manner the amount of sales, the amount of  
 13 tax paid, or any other particulars set forth or disclosed in  
 14 any return required by [sections 1 through 41]. Nothing in  
 15 [sections 1 through 41] may be construed to prohibit the  
 16 publication of statistics, if classified so as to prevent  
 17 the identity of particular reports or returns and the items  
 18 thereof, or the inspection by the legal representative of  
 19 this state of the report or return of any taxpayer who  
 20 applies for a review or appeal from any determination or  
 21 against whom an action or proceeding is about to be  
 22 instituted or has been instituted to recover any tax or  
 23 penalty imposed by [sections 1 through 41].

24 NEW SECTION. Section 38. Exchange of information with  
 25 other tax officials. The department may furnish to the tax

1 officials of any other state and its political subdivisions,  
 2 the political subdivisions of this state, the District of  
 3 Columbia, and the United States and its territories any  
 4 information contained in tax returns, reports, and related  
 5 schedules and documents filed pursuant to [sections 1  
 6 through 41] or in the report of an audit or investigation  
 7 made with respect thereto, if those jurisdictions grant  
 8 similar privileges to this state and the information is to  
 9 be used only for tax purposes.

10 NEW SECTION. Section 39. Sales tax account --  
 11 creation -- sales tax refund account -- appropriations --  
 12 uses. (1) There is within the earmarked revenue fund an  
 13 account to be known and designated as the "sales and use tax  
 14 account".

15 (2) All money collected under [sections 1 through 41]  
 16 must be paid by the department into the sales and use tax  
 17 account.

18 (3) A portion of the amount deposited in the sales and  
 19 use tax account not exceeding \$750,000 in any fiscal year  
 20 must be retained and is hereby appropriated as a "sales and  
 21 use tax administration and enforcement account" for the  
 22 purposes of administration and enforcement of [sections 1  
 23 through 41]. There must be retained in the sales and use tax  
 24 account such amounts as are necessary for the purpose of  
 25 repaying overpayments made under [sections 1 through 41],

1 for the purpose of paying any other erroneous receipts  
 2 illegally assessed or collected or which are excessive in  
 3 amount, and for the payment of the refunds otherwise  
 4 provided in [sections 1 through 41], and there is hereby  
 5 appropriated from this account so much as may be necessary  
 6 for the payment of these refunds and credits.

7 (4) The balance in the sales and use tax account is  
 8 dedicated exclusively to and is solely available for  
 9 appropriation and use pursuant to such appropriation for the  
 10 following purposes:

11 (a) funding teachers' retirement under Title 19,  
 12 chapter 4;

13 (b) replacing any property tax on business inventories  
 14 and livestock and other agricultural products under  
 15 15-6-136;

16 (c) funding police and firefighters' retirement under  
 17 Title 19, chapters 9 through 11;

18 (d) replacing 7 mills of the permissive levy for  
 19 school districts under 20-9-352;

20 (e) replacing in the general fund the equivalent of a  
 21 10% surtax on incomes; and

22 (f) with any remaining balance, reducing first the  
 23 additional state levy for equalization aid under 20-9-351  
 24 and then the basic county levy for the elementary and high  
 25 school district foundation program under 20-9-331 and

1 20-9-333.

2 NEW SECTION. Section 40. Civil penalties. If a dealer  
3 fails to make any return and pay the full amount of the tax  
4 required by [sections 1 through 41], there must be imposed,  
5 in addition to other penalties provided in [sections 1  
6 through 41], a civil penalty to be added to the tax in the  
7 amount of \$10 and 10% of the tax due if the failure is for  
8 not more than 30 days, with an additional 5% for each  
9 additional 30 days or fraction thereof during which the  
10 failure continues, not to exceed 25% in the aggregate.  
11 However, if the failure is due to providential cause shown  
12 to the satisfaction of the department, the return with  
13 remittance may be accepted exclusive of penalties. In the  
14 case of a false or fraudulent return, if willful intent  
15 exists to defraud the state of any tax due under [sections 1  
16 through 41], a civil penalty of 50% of the amount of the  
17 proper tax shall be assessed. All penalties and interest  
18 imposed by [sections 1 through 41] are payable by the dealer  
19 and collectible by the department as if they were a part of  
20 the tax imposed.

21 NEW SECTION. Section 41. Violation of act by dealer a  
22 misdemeanor. Any dealer subject to the provisions of  
23 [sections 1 through 41] who fails or refuses to furnish any  
24 return required to be made under [sections 1 through 41] or  
25 a supplemental return or other data required by the

1 department, who makes a false or fraudulent return with  
2 intent to evade a tax levied under [sections 1 through 41],  
3 who makes a false or fraudulent claim for refund, who gives  
4 or knowingly receives a false or fraudulent exemption  
5 certificate, or who violates any other provision of  
6 [sections 1 through 41], punishment for which is not  
7 otherwise provided in [sections 1 through 41], is guilty of  
8 a misdemeanor and is punishable as provided in 46-18-212.

9 Section 42. Section 15-30-105, MCA, is amended to  
10 read:

11 "15-30-105. Tax on nonresident -- alternative tax  
12 based on gross sales. (1) A like tax is imposed upon every  
13 person not resident of this state, which tax shall be  
14 levied, collected, and paid annually at the rates specified  
15 in 15-30-103 with respect to his entire net income as herein  
16 defined from all property owned and from every business,  
17 trade, profession, or occupation carried on in this state.

18 (2) Pursuant to the provisions of Article III, section  
19 2, of the Multistate Tax Compact, every nonresident taxpayer  
20 required to file a return and whose only activity in Montana  
21 consists of making sales and who does not own or rent real  
22 estate or tangible personal property within Montana and  
23 whose annual gross volume of sales made in Montana during  
24 the taxable year does not exceed \$100,000 may elect to pay  
25 an income tax of 1/2 of 1% of the dollar volume of gross

1 sales made in Montana during the taxable year. Such tax  
 2 shall be in lieu of the taxes imposed under 15-30-103 and  
 3 ~~15-30-104~~. The gross volume of sales made in Montana during  
 4 the taxable year shall be determined according to the  
 5 provisions of Article IV, sections 16 and 17, of the  
 6 Multistate Tax Compact."

7 Section 43. Section 15-30-162, MCA, is amended to  
 8 read:

9 "15-30-162. Investment credit. (1) There is allowed as  
 10 a credit against the taxes imposed by 15-30-103 and  
 11 ~~15-30-104~~ a percentage of the credit allowed with respect to  
 12 certain depreciable property under section 38 of the  
 13 Internal Revenue Code of 1954, as amended, or as section 38  
 14 may be renumbered or amended.

15 (2) The amount of the credit allowed for the taxable  
 16 year is the sum of:

17 (a) 20% of the amount of credit determined under  
 18 section 46(a)(2) of the Internal Revenue Code of 1954, as  
 19 amended, or as section 46(a)(2) may be renumbered or  
 20 amended;

21 (b) the investment credit carryovers carried to the  
 22 taxable year as provided in subsection (4); and

23 (c) the investment credit carrybacks carried to the  
 24 taxable year as provided for in subsection (4).

25 (3) Notwithstanding the provisions of subsection (2),

1 the investment credit allowed for the taxable year may not  
 2 exceed the taxpayer's tax liability for the taxable year. In  
 3 the event the taxpayer's tax liability for the taxable year  
 4 exceeds \$5,000, the investment credit may not exceed \$5,000  
 5 plus 50% of the tax liability in excess of \$5,000. In the  
 6 case of a husband and wife who file separate returns, the  
 7 investment credit may not exceed \$2,500 plus 50% of the tax  
 8 liability in excess of \$2,500 unless the spouse of the  
 9 taxpayer has no qualified investment for and no unused  
 10 credit carryback or carryover to the taxable year of the  
 11 spouse that ends with or within the taxpayer's taxable year.

12 (4) If any part of the investment credit is not  
 13 applied against the tax liability for the taxable year  
 14 because of the limitations imposed under subsection (3), the  
 15 unused portion shall be carried back and carried forward in  
 16 accordance with the provisions of section 46(b) of the  
 17 Internal Revenue Code of 1954, as amended, or as section  
 18 46(b) may be renumbered or amended.

19 (5) The investment credit allowed by this section is  
 20 subject to recapture as provided for in section 47 of the  
 21 Internal Revenue Code of 1954, as amended, or as section 47  
 22 may be renumbered or amended."

23 Section 44. Severability. If a part of this act is  
 24 invalid, all valid parts that are severable from the invalid  
 25 part remain in effect. If a part of this act is invalid in

1 one or more of its applications, the part remains in effect  
2 in all valid applications that are severable from the  
3 invalid applications.

4 Section 45. Repealer. Section 15-30-104, MCA, is  
5 repealed.

6 Section 46. Applicability date. This act applies to  
7 taxable years beginning on or after January 1, 1992.

-End-

## STATE OF MONTANA

REQUEST NO. 439-81

## FISCAL NOTE

Form BD-15

In compliance with a written request received March 17, 19 81, there is hereby submitted a Fiscal Note for HOUSE BILL 844 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

An act to provide for the levying of a 2 percent sales and use tax to support the state educational system, teachers', policemen's, and firefighters' retirement systems, and state government by replacing certain property taxes; to provide for administration and penalties; to provide exemptions for foods, drugs, and other properties; to repeal the income surtax; and providing an applicability date.

ASSUMPTIONS

1. Total annual amount of taxable sales = \$2 - 2.8 billion, to be distributed equally throughout the year.
2. The base personal exemption allowance is \$800.
3. The Department of Revenue forecast of income tax receipts is the basis for comparison.
4. There will be a two month collection lag between taxable sales and receipt of the associated taxes.
5. The cost of administering a sales tax would require increased expenditures by the Department of Revenue of \$1.75 million annually. It is assumed that \$750 thousand will be from sales tax receipts and \$1 million from a general fund appropriation.

FISCAL IMPACT

REVENUE	FY 82	FY 83
Individual Income Tax Collections		
Under current law	\$161.556 M	\$167.993 M
Under proposed law	<u>158.733 M</u>	<u>152.721 M</u>
Estimated Decrease	(\$ 2.823 M)	(\$ 15.272 M)
Sales And Use Tax		
Under current law	\$ 0	\$ 0
Under proposed law	<u>13.333 M-18.667 M</u>	<u>40.000 M-56.000 M</u>
Estimated Increase	\$13.333 M-18.667 M	\$40.000 M-56.000 M
Total Revenue		
Under current law	\$161.556 M	\$167.993 M
Under proposed law	<u>172.006 M-177.400 M</u>	<u>192.721 M-208.721 M</u>
Estimated Increase	\$ 10.450 M- 15.844 M	\$ 24.728 M- 40.728 M
EXPENDITURES FOR SALES TAX ADMINISTRATION		
Under current law	\$ 0 M	\$ 0 M
Under proposed law	<u>1.750 M</u>	<u>1.750 M</u>
Estimated Increase	\$ 1.750 M	\$ 1.750 M

Continued on Page 2.

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: \_\_\_\_\_

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FISCAL IMPACT (continued)	FY 82	FY 83
<b>NET EFFECT</b>		
Under current law	\$161.556 M	\$167.993 M
Under proposed law	<u>170.316 M-175.650 M</u>	<u>190.971 M-206.971 M</u>
Estimated Increase	\$ 8.760 M- 14.094 M	\$ 22.978 M- 38.978 M
 <b>FUND INFORMATION</b>		
<b>General Fund</b>		
Under current law	\$103.396 M	\$107.516 M
Under proposed law	<u>100.589 M</u>	<u>96.742 M</u>
Estimated Decrease	(\$ 2.807 M)	(\$ 10.774 M)
<b>Earmarked Revenue Fund</b>		
<b>School Foundation Program</b>		
Under current law	\$ 40.389 M	\$ 41.998 M
Under proposed law	<u>39.683 M</u>	<u>38.180 M</u>
Estimated Decrease	(\$ 0.706 M)	(\$ 3.818 M)
<b>Earmarked Revenue Fund</b>		
<b>Sales Tax Receipts</b>		
<b>Available for Appropriation</b>		
Under current law	\$ 0 M	\$ 0 M
Under proposed law	<u>12.583 M-17.917 M</u>	<u>39.250 M-55.250 M</u>
Estimated Increase	\$12.583 M-17.917 M	\$39.250 M-55.250 M
<b>Sinking Fund *</b>		
Under current law	\$ 17.771 M	\$ 18.479 M
Under proposed law	<u>17.461 M</u>	<u>16.799 M</u>
Estimated Decrease	(\$ 0.310 M)	(\$ 1.680 M)

\* A portion of this account may be transferred to the General Fund as Long Range Bond Excess.

PREPARED BY THE DEPARTMENT OF REVENUE

*David M. Lewis*  
 BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-20-81