

HB 547 INTRODUCED BY MOORE, ET AL.  
SOFT DRINK TAX TO SUPPORT HIGHER EDUCATION

1/30 INTRODUCED  
1/30 REFERRED TO TAXATION  
1/30 FISCAL NOTE REQUESTED  
2/03 FISCAL NOTE RECEIVED  
2/18 HEARING  
2/18 COMMITTEE REPORT--BILL NOT PASSED AS AMENDED  
2/21 ADVERSE COMMITTEE REPORT ADOPTED 81 11

1 *House* BILL NO. *547*  
2 INTRODUCED BY *Sen. Steve Hancock*  
3 *Connally*  
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON THE  
5 SALE OF SOFT DRINKS TO SUPPORT HIGHER EDUCATION; PROVIDING  
6 PENALTIES; AND PROVIDING EFFECTIVE DATES."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Definitions. As used in [this act], the  
10 following definitions apply:

11 (1) "Bottler" is a person who imports or manufactures  
12 soft drinks or mixes, blends, or dilutes syrup or  
13 concentrate with carbonated water or other liquids into soft  
14 drinks for sale or distribution for human consumption in  
15 Montana.

16 (2) "Department" is the department of revenue  
17 established in 2-15-1301.

18 (3) "Soft drink" is:

19 (a) a nonalcoholic, carbonated beverage imported or  
20 manufactured, mixed, blended, or diluted by a bottler for  
21 human consumption and distributed by the bottler in:

22 (i) a disposable or returnable container intended for  
23 delivery to the consumer for sale in Montana by a retailer  
24 without further mixing, blending, or diluting; or

25 (ii) a disposable or returnable vessel from which the

1 beverage is dispensed by a retailer without further mixing,  
2 blending, or diluting for on-site consumption; or

3 (b) a nonalcoholic syrup or concentrate used by a  
4 retailer to mix, blend, or dilute with carbonated water or  
5 other ingredients to produce a beverage that may be  
6 dispensed for on-site consumption.

7 Section 2. Tax -- sale of soft drinks. (1) There is  
8 levied, imposed, and assessed upon soft drinks sold in  
9 Montana, except soft drinks transported out of Montana for  
10 retail sale and consumption outside of Montana, a tax of:

11 (a) 0.25 cent an ounce on beverages included in  
12 [section 1(3)(a)]; and

13 (b) \$1.92 a gallon on syrup or concentrate included in  
14 [section 1(3)(b)].

15 (2) A tax paid under this section is a direct tax on  
16 the retail consumer, precollected only for the purpose of  
17 convenience. Tax paid by any other person is an advance  
18 payment and must be added to the price of the soft drinks  
19 and recovered from the ultimate consumer.

20 Section 3. Bottler to precollect tax. The tax imposed  
21 under [section 2] must be precollected and paid by the  
22 bottler to the department prior to the sale of the soft  
23 drinks either to a retailer or to other persons for  
24 consumption.

25 Section 4. Bottler's sale without tax prepayment a

1 misdemeanor -- penalty. A bottler who sells any soft drinks  
 2 without first paying the tax under [section 2] in the manner  
 3 and at the time specified under rule by the department is  
 4 guilty of a misdemeanor and must be enjoined by an action,  
 5 pursued in the district court of Lewis and Clark County,  
 6 from selling soft drinks for not less than 1 month or more  
 7 than 1 year.

8 Section 5. Unlawful sales -- penalty. (1) No person  
 9 may offer to sell soft drinks subject to the tax imposed in  
 10 [section 2] without prepaying the tax as provided in  
 11 [section 3].

12 (2) Violation of this section is a misdemeanor  
 13 punishable by a fine of not more than \$500 or imprisonment  
 14 for not more than 6 months.

15 Section 6. Bottler's discount -- disposition of taxes.  
 16 The taxes imposed in [section 2] that are paid by the  
 17 bottler must be paid in full to the department, less 5%  
 18 defrayment for his collection and administrative expenses.  
 19 The department shall deposit the tax paid in the state  
 20 special revenue fund for the use of the commissioner of  
 21 higher education for purposes of higher education. If the  
 22 soft drinks become unsalable, refunds of the tax paid may be  
 23 made as provided in 15-1-503.

24 Section 7. Department to adopt rules. The department  
 25 shall adopt rules necessary to implement the provisions of

1 [sections 1 through 6].

2 Section 8. Effective dates. (1) Section 7 and this  
 3 section are effective on passage and approval.

4 (2) Sections 1 through 6 are effective July 1, 1987.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB547, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a tax on the sale of soft drinks to support higher education; providing penalties; and providing effective dates.

ASSUMPTIONS:

1. Per capita soft drink consumption in Montana is the same as the national average: 50.42 gallons per year ("Impact", Marketing, Financial and Economic News and Research for the Wine and Spirits Executive," Oct. 15, 1985, page 7). All soft drink consumption in Montana will be taxed under this proposal.
2. The population of Montana will be 832,000 in FY88 and 835,000 in FY89 (REAC).
3. There are 128 fluid ounces in a gallon of soft drink. Therefore the tax per gallon under this proposal would be 32 cents.
4. The \$1.92 tax proposed for syrup or concentrate is proportionate to the \$.32 per gallon tax proposed for packaged soft drinks (i.e., 1 gallon of syrup or concentrate is used to make 6 gallons of soft drink).
5. Total collections under this proposal, less a 5% defrayment to bottlers, are deposited in a special revenue fund for higher education.
6. For purposes of estimating expenditures, there are 50 soft drink bottlers involved in the sale of soft drinks for consumption in Montana.
7. Annual Expenditures: Grade 9, Step 2-\$14,642; Benefits-\$1,044; Equipment-\$2,300; Telephone-\$500; Supplies-\$400; Space-\$292; Training-\$100; Forms and Mailing-\$1,500.
8. One time expenditures: One personal computer and accessories-\$7,582.



DATE

2/2/87

DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning



DATE

2-3-87

JANET MOORE, PRIMARY SPONSOR

Fiscal Note for HB547, as introduced.

HB 547

FISCAL IMPACT:

Revenue Impact:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Soft Drink tax	\$ 0	\$12,752,630	\$12,752,630	\$ 0	\$ 12,798,613	\$12,798,613

Expenditure Impact:

	FY 88			FY 89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Personal Services	\$ 0	\$ 14,642	\$ 14,642	\$ 0	\$ 14,642	\$ 14,642
Operating Expense	0	12,574	12,574	0	4,992	4,992
Benefits	0	1,044	1,044	0	1,044	1,044
Total	\$ 0	\$ 28,260	\$ 28,260	\$ 0	\$ 20,678	\$ 20,678

<u>NET EFFECT:</u>	\$ 0	\$ 12,724,370	\$12,724,370	\$ 0	\$ 12,777,935	\$12,777,935
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FUND INFORMATION:

Higher Education	\$ 0	\$ 12,752,630	\$12,752,630	\$ 0	\$ 12,752,630	\$12,752,630
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TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

This bill does not specify the frequency or timing of tax payments. The bill does not specify a statute of limitations. The standard statute of limitations for other taxes is 5 years. The proposal also does not comply with enforcement procedures and penalties commonly used with other taxes. From the definition offered in Section 1(3)(b) it is not clear whether syrups and concentrates must be blended with carbonated water to qualify as a soft drink. As a tax on the retail consumer rather than the distributor, the proposed tax may not be subject to collection on Indian reservations. The effective date of this proposal would allow the Department of Revenue only a short period of time to implement the program.