

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

House BILL NO. 547

INTRODUCED BY *John D. Pecc*
George Stitt *State Senator*
Connally

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON THE SALE OF SOFT DRINKS TO SUPPORT HIGHER EDUCATION; PROVIDING PENALTIES; AND PROVIDING EFFECTIVE DATES."

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

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

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

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

(3) "Soft drink" is:

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

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

(ii) a disposable or returnable vessel from which the

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

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

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

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

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

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

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

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.

DAVID L. HUNTER DATE 2/2/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

JANET MOORE DATE 2-3-87

JANET MOORE, PRIMARY SPONSOR

Fiscal Note for HB547, as introduced.

HB 547

Fiscal Note Request, HB547, as introduced.

Form BD-15

Page 2

FISCAL IMPACT:

Revenue Impact:

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

Expenditure Impact:

	<u>FY 88</u>			<u>FY 89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
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

NET EFFECT: \$ 0 \$ 12,724,370 \$12,724,370 \$ 0 \$ 12,777,935 \$12,777,935

FUND INFORMATION:

Higher Education \$ 0 \$ 12,752,630 \$12,752,630 \$ 0 \$ 12,752,630 \$12,752,630

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.

547