

SENATE BILL 460

Introduced by Brown, Robert

2/28	Introduced
2/28	Referred to Taxation
3/01	Fiscal Note Requested
3/07	Fiscal Note Received
3/08	Fiscal Note Printed
3/14	Hearing
	Died in Committee

1 *Senate* BILL NO. *460*
2 INTRODUCED BY *Bob Brown*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN EXCISE TAX
5 ON THE PRIVILEGE OF ORIGINATING OR RECEIVING
6 TELECOMMUNICATIONS; PROVIDING FOR THE ADMINISTRATION AND
7 COLLECTION OF THE TAX; PROVIDING PENALTIES FOR FAILURE TO
8 COMPLY WITH THE PROVISIONS OF THE ACT; AND PROVIDING AN
9 EFFECTIVE DATE."

10
11 STATEMENT OF INTENT

12 A statement of intent is required for [this act]
13 because [section 13] delegates rulemaking authority to the
14 department of revenue. It is the intent of the legislature
15 that in adopting rules the department look to rules adopted
16 by the Illinois department of revenue to implement Chapter
17 120 of the Illinois Annotated Statutes, which [this act] is
18 based on. The Illinois statute and the rules implementing
19 the statute were upheld in Goldberg v. Sweet, decided by the
20 United States supreme court on January 10, 1989.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 NEW SECTION. Section 1. Short title. [This act] may
24 be cited as the "Telecommunications Excise Tax Act".

25 NEW SECTION. Section 2. Definitions. As used in [this

1 act], unless the context requires otherwise, the following
2 definitions apply:

3 (1) "Amount paid" means the amount charged to the
4 taxpayer's service address in the state regardless of where
5 the amount is billed or paid.

6 (2) "Department" means the department of revenue
7 provided for in 2-15-1301.

8 (3) "Director" means the director of revenue provided
9 for in 2-15-1302.

10 (4) (a) "Gross charge" means the amount paid for the
11 act or privilege of originating or receiving
12 telecommunications in the state and for all services and
13 equipment provided in connection with originating or
14 receiving telecommunications by a retailer. Gross charge is
15 valued in money whether paid in cash, credits, services,
16 property, or otherwise. A gross charge must be determined
17 without any deduction of the cost of the telecommunications,
18 materials used, labor, service, or any other expense. If
19 credit is extended, the amount of credit is included in the
20 gross charge only when paid.

21 (b) The term does not include:

22 (i) amounts added to the purchaser's bill because of a
23 charge made pursuant to:

24 (A) the tax imposed by [section 3];

25 (B) charges added to customers' bills pursuant to

1 Title 69, chapter 1, part 4, or by retailers who are not
 2 subject to regulation by the public service commission for
 3 the purpose of recovering tax liability or other amounts
 4 specified in the provisions of Title 69, chapter 1, part 4;
 5 or

6 (C) the tax imposed by section 4251 of the Internal
 7 Revenue Code.

8 (ii) charges for a telecommunication sent collect and
 9 received outside of the state;

10 (iii) charges for leased time on equipment, the storage
 11 of data or information for subsequent retrieval, or the
 12 processing of data or information intended to change its
 13 form or content. For purposes of this subsection
 14 (4)(b)(iii), equipment includes but is not limited to
 15 calculators, computers, data processing equipment,
 16 tabulating or accounting equipment, and the usage of
 17 computers under a time-sharing agreement;

18 (iv) charges for customer equipment, including
 19 equipment that is leased or rented by the customer from any
 20 source, where the charges are separately identified from
 21 other charges; or

22 (v) charges for telecommunications and all services
 23 and equipment provided in connection with the
 24 telecommunications between a parent corporation and its
 25 wholly owned subsidiaries or between wholly owned

1 subsidiaries when the tax imposed under [this act] has
 2 already been paid to a retailer and only to the extent that
 3 the charges between the parent corporation and the wholly
 4 owned subsidiaries or between the subsidiaries represent
 5 expense allocation between the corporations and not the
 6 generation of profit for the corporation rendering the
 7 service.

8 (5) "Interstate telecommunications" means all
 9 telecommunications that either originate or terminate
 10 outside the state.

11 (6) "Intrastate telecommunications" means all
 12 telecommunications that originate and terminate in the
 13 state.

14 (7) "Person" means any individual, firm, trust,
 15 estate, partnership, association, joint stock company, joint
 16 venture, corporation, receiver, trustee, guardian, or other
 17 entity.

18 (8) "Purchase at retail" means the acquisition,
 19 consumption, or use of telecommunications through a retail
 20 sale.

21 (9) (a) "Retail sale" means the transmitting,
 22 supplying, or furnishing of telecommunications and all
 23 services and equipment provided in connection with the
 24 transmitting, supplying, or furnishing of telecommunications
 25 to persons for consideration.

(b) The term does not include a retail sale:

(i) to a government entity; or

(ii) between a parent corporation and its wholly owned subsidiary or between wholly owned subsidiaries of a parent corporation for their use or consumption and not for resale.

(10) "Retailer" means a person engaged in the business of making retail sales.

(11) "Retailer maintaining a place of business in the state" means a retailer having or maintaining in Montana, temporarily or permanently, directly or by a subsidiary:

(a) an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business; or

(b) an agent or other representative operating within the state under the authority of the retailer or its subsidiary, irrespective of whether the retailer or subsidiary is licensed to do business in the state.

(12) "Taxpayer" means a person who individually or through his agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in the state and who incurs a tax liability under [this act].

(13) (a) "Telecommunications" includes but is not limited to messages or information transmitted through the use of local, toll, and wide-area telephone service, private

line service, channel service, telegraph service, teletypewriter, computer exchange service, cellular mobile telecommunications service, specialized mobile radio, stationary two-way radio, paging service, any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities.

(b) The term does not include:

(i) value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission; or

(ii) purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications.

NEW SECTION. Section 3. Imposition of tax -- credit -- exemptions. (1) A tax is imposed on the act or privilege of originating or receiving intrastate and interstate telecommunications by a person in the state at the rate of 5% of the gross charge for a telecommunications purchase at retail from a retailer by the person.

(2) The tax imposed by subsection (1) may not be imposed on the act or privilege of originating or receiving intrastate telecommunications to the extent prohibited by the constitution and statutes of the United States.

(3) In order to prevent multistate taxation of the act or privilege of originating or receiving interstate telecommunications, a taxpayer, upon proof that the taxpayer has paid a tax in another state on the taxable event, must be allowed a credit against the tax imposed in subsection (1) to the amount of the tax properly due and paid in the other state.

(4) Carrier access charges, right-of-access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service are exempt from the tax imposed under subsection (1) as sales for resale.

NEW SECTION. Section 4. Collection of tax. (1) The tax imposed under [section 3] must be collected from the taxpayer by a retailer maintaining a place of business in the state and remitted to the department. The tax required to be collected by [this act] and actual tax collected by the retailer constitutes a debt owed by the retailer to the state. A retailer shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege

of originating or receiving telecommunications in Montana, when sold for use, in the manner prescribed by the department. Whenever possible, the tax imposed by [this act] must be stated as a distinct item separate from the gross charge for telecommunications.

(2) In the case of coin-operated telecommunications devices, the tax may be combined with the charge for the service. If the tax imposed by [section 3] is paid by inserting coins in coin-operated telecommunications devices, the tax must be computed each time coins are inserted in the coin-operated telecommunications device to the nearest multiple of 5 cents except whenever the tax is midway between multiples of 5 cents, the next higher multiple applies.

(3) The tax imposed under [section 3] constitutes a debt of the purchaser to the retailer who provides the taxable service until paid and, if unpaid, is recoverable at law in the same manner as the original charge for the taxable service.

NEW SECTION. Section 5. Tax return by retailer -- estimated payments -- extensions. (1) Except as provided in subsection (2) on or before the 15th day of each month a retailer maintaining a place of business in the state shall make a return to the department for the preceding calendar month that states:

(a) his name;

(b) the address of his principal place of business and, if different, the address of the principal place of business from which he engages in the business of transmitting telecommunications;

(c) the total amount of gross charges billed by him for providing telecommunications during the preceding calendar month;

(d) the total amount received by him during the preceding calendar month on credit extended;

(e) deductions allowed by law;

(f) gross charges that were billed by him during the preceding calendar month and upon which the tax is imposed;

(g) the amount of tax computed based on subsection (1)(f); and

(h) other information as the department may require.

(2) If the retailer's average monthly tax billings due the department do not exceed \$100, the department may authorize the retailer's returns to be filed on a quarterly basis on April 15, July 15, October 15, and January 15.

(3) Notwithstanding any other provision of [this act] that contains the time for filing a return, a retailer who ceases to engage in a business for which he files returns under [this act], shall file a final return under [this act] with the department not more than 1 month after

discontinuing the business. The retailer shall determine the value of any consideration other than money received by him, and he shall include that value in his return. The determination is subject to review and revision by the department.

(4) Except for a retailer who is operated by a unit of local government, a retailer whose average monthly liability to the department under [this act] was \$10,000 or more during the preceding calendar year, excluding the month of highest liability and the month of lowest liability in that calendar year, shall make estimated payments to the department on or before the 7th, 15th, 22nd, and last day of the month during which tax collection liability to the department is incurred. The estimated payments must be in an amount not less than the lower of either 22.5% of the retailer's actual tax collections for the month or 25% of the retailer's actual tax collections for the same calendar month of the preceding year. The amount of the estimated payments must be credited against the final liability of the retailer's return for that month. Any outstanding credit, approved by the department, that arises from the retailer's overpayment of its final liability for a month may be applied to reduce the amount of any subsequent estimated payment or credited against the final liability of the retailer's return for any subsequent month. If any estimated

1 payment is not paid at the time or in the amount required by
2 this subsection, the retailer is liable for penalty and
3 interest on the difference between the amount due as a
4 payment and the amount actually paid, except when the
5 retailer has previously made payments for that month in
6 excess of the minimum payments previously due.

7 (5) If the director finds that the information
8 required for the making of an accurate return cannot
9 reasonably be compiled by a retailer within 15 days after
10 the close of the calendar month for which a return is to be
11 made, he may grant an extension of time for filing the
12 return for a period not to exceed 31 calendar days. The
13 granting of an extension may be conditioned upon the deposit
14 by the retailer with the department of an amount of money
15 not to exceed the amount estimated by the director to be due
16 with the return. All deposits, including any deposits
17 previously made by the retailer with the department, must be
18 credited against the retailer's liability under [this act].
19 If a deposit exceeds the retailer's present and probable
20 future liability under [this act], the department shall
21 issue the retailer a credit that may be assigned by the
22 retailer to a similar retailer under [this act], in
23 accordance with rules prescribed by the department.

24 (6) The retailer making the return provided for in
25 this section shall, at the time of making the return, pay to

1 the department the amount of tax imposed under [this act].

2 (7) The department may, upon application, authorize
3 the collection of the tax imposed under [this act] by a
4 retailer not maintaining a place of business in the state
5 who, to the satisfaction of the department, furnishes
6 adequate security to ensure collection and payment of the
7 tax. The retailer must be issued, without charge, a permit
8 to collect the tax. The authorized retailer shall collect
9 the tax on all of the gross charges for telecommunications
10 in the state in the same manner and subject to the same
11 requirements as a retailer maintaining a place of business
12 in the state. The permit is revocable by the department in
13 its discretion.

14 NEW SECTION. Section 6. Tax returns -- direct
15 payments -- receipts. (1) If a taxpayer does not pay the tax
16 imposed by [this act] to a retailer, the taxpayer shall file
17 a return with the department and pay the tax upon that
18 portion of the gross charges paid to the retailer during the
19 preceding calendar month by the 25th day of the following
20 month. The return must be filed on a form prescribed by the
21 department and contain information as the department
22 requires.

23 (2) If a taxpayer pays the tax imposed by [this act]
24 directly to the department, the department, upon request of
25 the taxpayer, shall issue a receipt to the taxpayer showing

1 that he has paid the tax. The receipt is sufficient to
2 relieve the taxpayer from further liability for the amount
3 of tax to which the receipt refers.

4 NEW SECTION. Section 7. Resale number. (1) If a
5 person who originates or receives telecommunications in
6 Montana claims to be a reseller of the telecommunications,
7 the person shall apply to the department for a resale
8 number. The applicant shall state facts that demonstrate to
9 the department why the applicant is not liable for tax under
10 [this act] on any of his purchases. The applicant shall
11 furnish any additional information as the department may
12 require.

13 (2) Upon approval of an application, the department
14 shall assign and certify a resale number to the applicant.
15 The department may cancel a number that is obtained through
16 misrepresentation or used to originate or receive
17 telecommunications tax-free when the telecommunications are
18 not for resale or the person has discontinued making
19 resales.

20 (3) Except as provided in this section, the act or
21 privilege of originating or receiving telecommunications in
22 the state may not be made tax-free on the ground of being a
23 sale for resale unless the person has an active resale
24 number from the department and furnishes the number to the
25 retailer that certifies to the retailer that a sale to the

1 person is nontaxable because it is a sale for resale.

2 NEW SECTION. Section 8. Credits or refunds. (1) If it
3 appears that an amount of tax, penalty, or interest has been
4 paid in error under [this act] by a taxpayer, as
5 distinguished from a retailer, the taxpayer may file a claim
6 for credit or refund with the department.

7 (2) If it appears that an amount of tax, penalty, or
8 interest has been paid in error under [this act] by a
9 retailer who is authorized or required to collect and remit
10 the tax, the retailer may file a claim for credit or refund
11 with the department. A credit or refund may not be allowed
12 for a retailer unless the retailer has repaid the amount to
13 his customer. The retailer shall show that the customer:

14 (a) bore the burden of the tax and did not shift the
15 burden of the tax directly or indirectly;

16 (b) if he shifted the burden of the tax, he has repaid
17 the amount to his own customer; and

18 (c) is not entitled to receive any reimbursement for
19 the tax from any source other than his retailer or be
20 relieved of the burden in any other manner.

21 (3) If it appears that the department needs to issue a
22 credit or refund under [this act], it shall first apply the
23 amount of the credit or refund against any amount of tax,
24 penalty, or interest due under [this act] from the person.
25 The department may withhold issuance of the credit or refund

1 pending the final disposition of proceedings and may apply
2 the credit or refund against any amount found to be due to
3 the department. The balance, if any, of the credit or refund
4 must be issued to the person entitled to the credit or
5 refund.

6 (4) If tax, penalty, or interest is not due and a
7 proceeding is not pending to determine whether the person is
8 indebted to the department for tax, penalty, or interest, a
9 credit memorandum or refund must be issued to the claimant.
10 The credit memorandum may be assigned and set over by the
11 lawful holder of the credit memorandum, subject to
12 department rules, to any other person who is subject to
13 [this act]. The amount of the credit memorandum must be
14 applied by the department against any tax, penalty, or
15 interest due or to become due under [this act] from the
16 assignee.

17 (5) A claim for credit or refund filed with the
18 department for an amount erroneously paid more than 3 years
19 prior to the date of the claim may not be credited or
20 refunded.

21 (6) A person shall file a claim for a credit or refund
22 on forms provided by the department. The department shall
23 examine the claim and determine the amount of credit or
24 refund to which the claimant is entitled and notify the
25 claimant of its determination.

1 (7) A claim for a credit or refund is considered to to
2 be filed with the department on the date it is received by
3 the department. Upon receipt of a claim for credit or
4 refund under [this act], an employee of the department,
5 authorized in writing by the director to acknowledge receipt
6 of claims, shall execute and deliver or mail to the claimant
7 or his authorized agent a written receipt acknowledging that
8 the claim has been filed. The receipt must describe the
9 claim in sufficient detail to identify it and state the date
10 the department received it. In the absence of a written
11 receipt, the records of the department as to when the claim
12 was received by the department are considered *prima facie*
13 correct in the event of a dispute between the claimant and
14 the department.

15 (8) Until the credit memorandum is issued or the
16 refund is paid, a credit or refund that is allowed under
17 [this act] must bear interest at the rate of 1% a month or
18 fraction of a month from the date when the erroneous
19 payment, for which the credit or refund is allowed, was made
20 to the department.

21 (9) When the department determines that the claimant
22 is entitled to a refund, the refund must be made from an
23 appropriation available for that purpose. If it appears that
24 the amount appropriated would permit not everyone having an
25 allowed claim during the period covered by the appropriation

1 to receive a cash refund, the department by rule shall
2 define the types of cases that qualify as hardship cases and
3 provide for the payment of refunds in hardship cases.

4 (10) If a retailer fails to pay tax on gross charges
5 for telecommunications and is required by the department to
6 pay the tax, the retailer, without filing a formal claim
7 with the department, must be allowed to take credit against
8 the tax liability to the extent the retailer has paid the
9 tax to its vendor of the telecommunications that are
10 purchased and used for resale by the retailer. Penalty and
11 interest may not be charged to the retailer on account of
12 the credit. However, when the credit is allowed by the
13 department, the vendor is precluded from refunding any of
14 the tax to the retailer and from filing a claim for refund
15 or credit with respect to that amount.

16 NEW SECTION. Section 9. Books -- records -- other
17 documents. (1) A retailer maintaining a place of business in
18 the state under [this act] and a taxpayer making direct tax
19 payments to the department under [this act] shall keep
20 books, records, papers, and other documents that include the
21 information required by [sections 6 and 7] to be reported to
22 the department by filing timely returns with the department.
23 All books, records, papers, and other documents required to
24 be kept by [this act] must at all times during business
25 hours be subject to inspection by the department or its

1 agents.

2 (2) The department may, upon written authorization of
3 the director, destroy any returns, records, papers, or
4 memoranda pertaining to the returns upon the expiration of
5 any period covered by the returns to which the department is
6 authorized to establish liability.

7 NEW SECTION. Section 10. Investigations and hearings.

8 (1) For the purpose of administering and enforcing the
9 provisions of [this act], the department may:

10 (a) hold investigations and hearings concerning any
11 matter covered by [this act];

12 (b) examine books, papers, records, or memoranda
13 bearing upon the business transacted or purchased by the
14 retailer or taxpayer;

15 (c) require the attendance of the retailer or
16 taxpayer, an officer or employee of the retailer or
17 taxpayer, or a person having knowledge of the business; and

18 (d) take testimony and require proof of information
19 submitted at the hearing.

20 (2) In the conduct of an investigation or hearing, the
21 department is not bound by the rules of evidence, and an
22 informality in a proceeding or the manner of taking
23 testimony may not invalidate an order or decision or rule
24 made, approved, or confirmed by the department. The
25 provisions of Title 15, chapter 1, part 3 apply to hearings

1 and investigations conducted pursuant to [this act].

2 NEW SECTION. Section 11. Confidentiality --

3 penalties. (1) All information received by the department
4 from returns filed under [this act] or from any
5 investigations conducted under [this act] are confidential
6 except for official purposes. A person who divulges any
7 information received under [this act] in any manner, except
8 in accordance with a proper judicial order, is guilty of a
9 misdemeanor.

10 (2) [This act] does not prevent the department from
11 publishing or making available to the public the names and
12 addresses of retailers and taxpayers filing returns under
13 [this act] or from publishing reasonable statistics
14 concerning the operation of the tax, if the contents of
15 returns are grouped into aggregates in a way that the
16 information contained in an individual return is not
17 disclosed.

18 (3) [This act] does not prevent the department from
19 making available to the United States or any other state,
20 for official purposes, information received by the
21 department in the administration of [this act], if the other
22 government entity agrees to divulge requested tax
23 information to the department. The furnishing of returns
24 filed and information related to the returns under [this
25 act], upon request to auditors for official use, is

1 considered to be official purposes as provided in this
2 subsection.

3 NEW SECTION. Section 12. Application of
4 administrative procedure act. The Montana administrative
5 procedure act applies to all rules adopted and proceedings
6 conducted under [this act].

7 NEW SECTION. Section 13. Rules. The department may
8 adopt and enforce rules relating to the administration and
9 enforcement of [this act].

10 NEW SECTION. Section 14. Violation -- felony. A
11 retailer or taxpayer who fails to make a return, makes a
12 fraudulent return, or purposely or knowingly violates any
13 provision of [this act] is guilty of a felony.

14 NEW SECTION. Section 15. Codification instruction.
15 [Sections 1 through 14] are intended to be codified as an
16 integral part of Title 15, and the provisions of Title 15
17 apply to [sections 1 through 14].

18 NEW SECTION. Section 16. Severability. If a part of
19 [this act] is invalid, all valid parts that are severable
20 from the invalid part remain in effect. If a part of [this
21 act] is invalid in one or more of its applications, the part
22 remains in effect in all valid applications that are
23 severable from the invalid applications.

24 NEW SECTION. Section 17. Effective date. [This act]
25 is effective July 1, 1989.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB460, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing an excise tax on the privilege of originating or receiving telecommunications; providing for the administration and collection of the tax; providing penalties for failure to comply with the provisions of the act; and providing an effective date.

ASSUMPTIONS:

1. The revenue from the telephone license tax is estimated to be \$3,821,000 in FY90 and \$3,971,000 in FY91. (REAC) At a tax rate of 1.725% the estimated gross revenue for telephone business within the state subject to the telephone license tax is \$221,507,000 for FY90 and \$230,203,000 for FY91.
2. It is estimated that telephone business within the state subject to the telephone license tax represents approximately 53% of total telephone business. The estimate for gross revenue for total telephone business is \$417,938,000 for FY90 and \$434,345,000 for FY91. (Department of Revenue)
3. The tax rate under the proposal is 5% of the gross charge for all intrastate and interstate telecommunications (see Section on Technical or Mechanical Defects).
4. The proposal will require added administrative costs for two additional FTE's, plus data processing development and ongoing maintenance. (Department of Revenue)
5. The effective date of the proposal is July 1, 1989. Monthly collection of the tax will result in a one month lag in receipts.
6. The proposal does not provide for the distribution of the tax receipts.

FISCAL IMPACT:

Revenue Impact:	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Telecommunications						
Tax	\$ 0	\$19,156,000	\$19,156,000	\$ 0	\$21,648,000	\$21,648,000
Expenditure Impact:						
Department of Revenue						
Personal Services	\$ 0	\$ 71,792	\$ 71,792	\$ 0	\$ 45,792	\$ 45,792
Operating Expenses	0	15,400	15,400	0	5,710	5,710
Equipment	0	6,600	6,600	0	6,600	6,600
Total	\$ 0	\$ 93,792	\$ 93,792	\$ 0	\$ 58,102	\$ 58,102

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

The proposal does not repeal chapter 15 section 53 MCA, which is the telephone company license tax. The current tax is 1.725% of gross income in excess of \$250 quarterly derived from any telephone business within this state. The fiscal note assumes that chapter 15 section 53 would remain intact.

The proposal does not provide for the distribution of the tax receipts.

Ray Shackleford DATE 3/7/89

RAY SHACKLEFORD, BUDGET DIRECTOR
Office of Budget and Program Planning

Bob Brown DATE 3/7/89
BOB BROWN, PRIMARY SPONSOR

Fiscal Note for SB460, as introduced

SB 460