

HOUSE BILL 52

Introduced by Wallin, et al.

6/23	Introduced
6/23	Referred to Taxation
6/23	Fiscal Note Requested
6/27	Hearing
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	Died in Committee

1 *House* BILL NO. *52*
2 INTRODUCED BY *William J. King, Knapp*
3 *Director of State Tax* *Frank Trout* *M. Helen Rasmussen* *Quinn*

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A 3.5
5 PERCENT RETAIL SALES TAX; PROVIDING FOR THE DISTRIBUTION OF
6 THE REVENUE FROM THE SALES TAX TO THE SCHOOL FOUNDATION
7 PROGRAM AND THE UNIVERSITY SYSTEM; REPLACING THE STATEWIDE
8 LEVY FOR THE UNIVERSITY SYSTEM WITH REVENUE FROM THE SALES
9 TAX; PROVIDING THAT A PERSON COLLECTING THE SALES TAX BE
10 ALLOWED TO RETAIN 1 PERCENT OF THE COLLECTIONS TO COVER THE
11 COSTS OF COLLECTING THE TAX; STATUTORILY APPROPRIATING A
12 PORTION OF THE TAX PROCEEDS TO EQUALIZATION AID AND THE
13 UNIVERSITY SYSTEM; AMENDING SECTIONS 17-7-502, 20-9-343,
14 61-3-501, AND 61-3-506, MCA; REPEALING SECTION 15-10-106,
15 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
16 APPLICABILITY DATE."
17

18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because
20 the department of revenue is granted authority to adopt
21 rules for the administration and enforcement of the sales
22 tax. The rules are intended to provide for an efficient
23 process for the collection of the tax, with minimum expense
24 to both the taxpayer and the state.

25 The legislature contemplates that rules adopted by the

- 1 department should, at a minimum, address the following:
2 (1) the registration and issuance of permits to
3 persons engaging in the business of retail sales;
4 (2) requirements for the retention of necessary
5 records by the taxpayers;
6 (3) the required security and the acceptable forms of
7 security for those taxpayers required to give security for
8 payment of the tax;
9 (4) the use of the nontaxable transaction certificate
10 and clarification of any exemption from or deduction of the
11 tax;
12 (5) the designation of necessary forms and required
13 procedures for reporting the tax;
14 (6) the necessary forms and required procedures for
15 county treasurers to collect and remit to the department the
16 sales tax for new cars; and
17 (7) the definition of terms and establishment of
18 procedures as appropriate for efficient administration of
19 the sales tax.
20

21 WHEREAS, Initiative No. 105 directed the Legislature to
22 develop a tax system fair to property taxpayers and to
23 provide adequate funding for local government and education;
24 and

25 WHEREAS, the Loble decision discovered that Initiative



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INTRODUCED BILL
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1 No. 105 had the unintended consequence of perpetuating
2 inequality of educational opportunities within the state;
3 and

4 WHEREAS, the Governor, the Legislature, the education
5 community, and interested persons have been working to
6 establish a consensus for educational reform in response to
7 the Loble decision; and

8 WHEREAS, proposals for educational reform generally
9 call for combining all district budgeted operating funds
10 into the general fund and providing for equalization through
11 the elimination of the county basic tax and retirement
12 levies; elimination of the district permissive, tuition,
13 transportation, adult education, and comprehensive insurance
14 levies; and reducing general fund reserve requirements; and

15 WHEREAS, these proposals call for establishing a
16 statewide mill levy as the major source of new revenue for
17 equalization; and

18 WHEREAS, because consensus has not yet been achieved on
19 the precise mechanisms of educational reform, it would be
20 premature to attach [this act] to any specific proposal; and

21 WHEREAS, [this act] provides an alternative revenue
22 source to the property tax proposal by maintaining the
23 statewide 45-mill levies for elementary and secondary
24 education and by replacing other school mill levies with
25 sales tax revenue; and

1 WHEREAS, [this act] fulfills the true intent of
2 Initiative No. 105 by providing property tax relief on a
3 statewide basis through the elimination of certain mill
4 levies and at the same time, in conjunction with educational
5 reform ultimately adopted by the Legislature, responds to
6 the Loble decision.

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

9 NEW SECTION. **Section 1. Definitions.** For purposes of
10 [sections 1 through 62], unless the context requires
11 otherwise, the following definitions apply:

12 (1) "Buying", "selling", "buy", "sell", or "sale"
13 means the transfer of property for consideration or the
14 performance of a service for consideration.

15 (2) "Construction" means:

16 (a) the building, altering, repairing, or demolishing
17 in the ordinary course of business of any:

18 (i) road, highway, bridge, parking area, or related
19 project;

20 (ii) building, stadium, or other structure;

21 (iii) airport, subway, or similar facility;

22 (iv) park, trail, athletic field, golf course, or
23 similar facility;

24 (v) dam, reservoir, canal, ditch, or similar facility;

25 (vi) sewage or water treatment facility, power

1 generating plant, pump station, natural gas compressing
 2 station, gas processing plant, coal gasification plant,
 3 refinery, distillery, or similar facility;
 4 (vii) sewage, water, gas, or other pipeline;
 5 (viii) transmission line;
 6 (ix) radio, television, or other tower;
 7 (x) water, oil, or other storage tank;
 8 (xi) shaft, tunnel, or other mining appurtenance; or
 9 (xii) microwave station or similar facility;
 10 (b) the leveling or clearing of land;
 11 (c) the excavating of earth;
 12 (d) the drilling of wells of any type, including
 13 seismograph shot holes or core drilling; or
 14 (e) any similar work.
 15 (3) "Department" means the department of revenue.
 16 (4) "Engaging in business" means carrying on or
 17 causing to be carried on any activity with the purpose of
 18 direct or indirect benefit.
 19 (5) "Food product for human consumption":
 20 (a) means food for domestic home consumption as
 21 defined in 7 U.S.C. 2012(g), as amended, for purposes of the
 22 federal food stamp program as defined in 7 U.S.C. 2012(h),
 23 as amended; and
 24 (b) does not mean or include:
 25 (i) medicines or preparations, in liquid, powdered,

1 granular, bottled, capsule, lozenge, or pill form, sold as a
 2 dietary supplement or adjunct not prescribed by a licensed
 3 physician;
 4 (ii) carbonated water marketed in containers;
 5 (iii) chewing gum;
 6 (iv) candies or confectioneries; or
 7 (v) seeds and plants to grow foods.
 8 (6) (a) "Gross receipts", in addition to the other
 9 meanings provided in this subsection (6), means the total
 10 amount of money or the value of other consideration received
 11 from selling property in Montana. The term includes all
 12 receipts from the sale of tangible personal property handled
 13 on consignment but excludes cash discounts allowed and taken
 14 and any type of time-price differential.
 15 (b) In an exchange in which the money or other
 16 consideration received does not represent the value of the
 17 property or service exchanged, gross receipts means the
 18 reasonable value of the property exchanged.
 19 (c) (i) Except as provided in [section 57], when the
 20 sale of property is made under any type of charge or
 21 conditional or time-sales contract, the seller shall treat
 22 all receipts, excluding any type of time-price differential,
 23 under the contracts as gross receipts at the time of the
 24 sale.
 25 (ii) If the seller transfers his interest in any such

1 contract to a third person, the seller shall pay the sales
2 tax upon the full sale contract amount, excluding any type
3 of time-price differential.

4 (d) Gross receipts includes all amounts paid by
5 members of a cooperative association or similar organization
6 for sales of personal property by the association or
7 organization.

8 (7) "Manufacturing" means combining or processing
9 components or materials to increase their value for sale in
10 the ordinary course of business. The term does not include
11 construction.

12 (8) "Medicine" or "drug" means and includes any
13 substance or preparation that is:

14 (a) intended for use by external or internal
15 application to the human body or mind in the diagnosis,
16 cure, mitigation, treatment, or prevention of disease; and

17 (b) required by law or regulation to be prescribed by
18 a person licensed to prescribe the medicine or drug.

19 (9) "Permit" means a seller's permit as described in
20 [section 39].

21 (10) "Person" means:

22 (a) an individual, estate, trust, receiver,
23 cooperative association, club, corporation, company, firm,
24 partnership, joint venture, syndicate, or other entity,
25 including any gas, water, or electric utility owned or

1 operated by a county, municipality, or other political
2 subdivision of the state; or

3 (b) the United States or any agency or instrumentality
4 of the United States or the state of Montana or any
5 political subdivision of the state.

6 (11) "Sales tax" means the applicable tax imposed by
7 [section 2].

8 (12) "Therapeutic and prosthetic devices" includes but
9 is not limited to prescription eyeglasses, contact lenses,
10 dentures, or artificial limbs, prescribed or ordered by a
11 person licensed to perform medical services.

12 **NEW SECTION. Section 2. Imposition and rate of sales**
13 **tax -- limitation.** (1) Except as provided in subsection (3),
14 a sales tax of 3.5% is imposed on all gross receipts, as
15 defined in [section 1], for the privilege of engaging in
16 business in this state. The rate of the sales tax may not be
17 increased unless the increase is approved by a vote of the
18 electorate.

19 (2) For purposes of this section, the value of
20 property must be determined as of the time of acquisition,
21 introduction into this state, or conversion to use,
22 whichever is later.

23 (3) A sales tax of 2% is imposed on the sale of any
24 new motor vehicle subject to the provisions of 61-3-502. The
25 total of the tax imposed in this subsection and the tax

1 imposed in 61-3-502 may not exceed 3.5%. A seller may not
2 collect taxes imposed by this subsection. The county
3 treasurer shall collect the taxes prior to the first
4 registration in this state as provided in [section 66].

5 NEW SECTION. Section 3. Presumption of taxability --
6 value. (1) In order to prevent evasion of the sales tax and
7 to aid in its administration, it is presumed that:

8 (a) all receipts of a person engaging in business are
9 subject to the sales tax; and

10 (b) all property bought or sold by any person for
11 delivery into this state is bought or sold for a taxable
12 sale in this state.

13 (2) In an exchange in which the amount of money paid
14 does not represent the value of the property purchased, the
15 sales tax must be imposed on the reasonable value of the
16 property purchased.

17 NEW SECTION. Section 4. Separate statement of tax.

18 (1) If the sales tax is stated separately on the books of
19 the seller and the total amount of tax stated separately on
20 transactions within the reporting period is in excess of the
21 amount of sales tax otherwise payable on those transactions,
22 the excess amount of tax otherwise payable and stated on the
23 transactions within the reporting period must be included in
24 gross receipts.

25 (2) If the sales tax is not stated separately on

1 transactions, the gross receipts for sales tax purposes
2 include the total amounts received, with no deduction for
3 the sales tax.

4 NEW SECTION. Section 5. Agents for collection of
5 sales tax -- severability. (1) (a) A person who performs or
6 attempts to perform an activity within this state that
7 attempts to exploit this state's markets, who sells property
8 in this state, and who is not subject to the sales tax on
9 receipts from these sales shall collect the sales tax from
10 the buyer and pay the tax collected to the department.

11 (b) "Activity", for the purposes of this section,
12 includes but is not limited to engaging in any of the
13 following in this state:

14 (i) maintaining an office or other place of business
15 that solicits orders through employees or independent
16 contractors;

17 (ii) delivering or distributing products as a
18 consequence of an advertising or other sales program
19 directed at potential customers;

20 (iii) soliciting orders for tangible personal property
21 by means of a telecommunication or television shopping
22 system that utilizes toll-free numbers and that is intended
23 to be broadcast by cable television or other means to
24 consumers in this state;

25 (iv) soliciting orders, pursuant to a contract with a

1 broadcaster or publisher located within this state, for
 2 tangible personal property by means of advertising
 3 disseminated primarily to consumers located in this state
 4 and only secondarily to bordering jurisdictions;

5 (v) soliciting orders for tangible personal property
 6 by mail if the solicitations are substantial and recurring
 7 and if the person engaging in the activity benefits from any
 8 banking, financing, debt collection, telecommunications, or
 9 marketing activities occurring in this state or benefits
 10 from the location in this state of authorized installation,
 11 servicing, or repair facilities; or

12 (vi) soliciting orders, pursuant to a contract with a
 13 cable television operator located in this state, for
 14 tangible property by means of advertising transmitted or
 15 distributed over a cable television system in this state.

16 (2) To ensure the orderly and efficient collection of
 17 the tax imposed by [sections 1 through 62 and 66], if any
 18 application of this section is held invalid, the section's
 19 application to other situations or persons is not affected.

20 NEW SECTION. Section 6. Nontaxable transaction
 21 certificate -- requirements. (1) A nontaxable transaction
 22 certificate executed by a buyer must be in the possession of
 23 the seller at the time a nontaxable transaction occurs.

24 (2) If the seller is not in possession of a nontaxable
 25 transaction certificate within 60 days from the date notice

1 of the requirement for possession of a nontaxable
 2 transaction certificate is given to him by the department,
 3 all deductions claimed by him that require delivery of a
 4 nontaxable transaction certificate are disallowed.

5 (3) A nontaxable transaction certificate must contain
 6 the information and be in the form prescribed by the
 7 department.

8 (4) Only a buyer who has registered with the
 9 department and whose permit is not suspended or revoked may
 10 be allowed to execute a nontaxable transaction certificate.

11 (5) If the seller accepts a nontaxable transaction
 12 certificate within the required time and believes in good
 13 faith that the buyer will employ the property transferred in
 14 a nontaxable manner, the properly executed nontaxable
 15 transaction certificate is considered conclusive evidence
 16 that the proceeds from the transaction are deductible from
 17 the seller's gross receipts.

18 NEW SECTION. Section 7. Receipts of government
 19 agencies exempt. (1) Except as provided in subsection (2),
 20 all receipts of the United States or any agency or
 21 instrumentality of the United States or of this state or any
 22 political subdivision of this state are exempt from the
 23 sales tax.

24 (2) Receipts from the sale of gas, water, or
 25 electricity by a utility owned or operated by a political

1 subdivision of the state are subject to the sales tax.

2 NEW SECTION. **Section 8. Exemption -- food products.**

3 (1) Except as provided in subsection (2), receipts from
4 sales of food products for human consumption, as defined in
5 [section 1(5)(a)], are exempt from the sales tax.

6 (2) The gross receipts from food products sold in the
7 following manner are subject to the sales tax:

8 (a) any food products served as meals on or off the
9 premises of the retailer;

10 (b) milk or cream sold as beverages commonly referred
11 to as milkshakes, malted milks, or any similar beverage;

12 (c) food products furnished, prepared, or served for
13 consumption at tables, chairs, or counters or from trays,
14 glasses, dishes, or other tableware, whether provided by the
15 retailer or by a person with whom the retailer contracts to
16 furnish, prepare, or serve food products to others;

17 (d) food products sold for immediate consumption on or
18 near a location at which parking facilities are provided
19 primarily for the convenience of patrons in consuming the
20 products purchased at the location, even though such
21 products are sold on a "takeout", "to go", or "U-bake" order
22 and are actually packaged or wrapped and taken from the
23 premises of the retailer;

24 (e) food products sold for consumption within a place
25 that charges an admission fee; or

1 (f) food or drink vended by or through machines on
2 behalf of a vendor.

3 NEW SECTION. **Section 9. Exemption -- special
4 supplemental food program for women, infants, and children.**

5 The receipts from the sale of food purchased under the
6 special supplemental food program for women, infants, and
7 children (WIC) as specified in 42 U.S.C. 1786, as amended,
8 are exempt from the sales tax.

9 NEW SECTION. **Section 10. Exemption -- medicines,
10 drugs, certain devices, and medical services.** (1) The gross
11 receipts from the sale of medicines, drugs, insulin, and
12 therapeutic and prosthetic devices are exempt from the sales
13 tax.

14 (2) The gross receipts from the sale of medical
15 services are exempt from the sales tax.

16 NEW SECTION. **Section 11. Exemption -- wages.** The
17 receipts of an employee from an employer for wages, salary,
18 commissions, or any other form of remuneration for personal
19 services are exempt from the sales tax.

20 NEW SECTION. **Section 12. Exemption -- agricultural
21 products.** The receipts of a grower, producer, trapper, or
22 nonprofit marketing association from the sale of livestock,
23 live poultry, unprocessed agricultural products, hides, or
24 pelts are exempt from the sales tax. Persons engaged in the
25 business of buying and selling wool or mohair or of buying

1 and selling livestock on their own account and without the
2 services of a broker, auctioneer, or other agent are
3 considered producers for the purposes of this section.

4 NEW SECTION. Section 13. Exemption -- livestock
5 feeding. A person's receipts derived from feeding,
6 pasturing, penning, or handling or training livestock prior
7 to sale are exempt from the sales tax.

8 NEW SECTION. Section 14. Exemption -- used tangible
9 personal property upon which a sales tax has been paid. The
10 receipts from the sale of used tangible personal property
11 upon which a tax has been paid pursuant to [sections 1
12 through 62 and 66] are exempt from the sales tax.

13 NEW SECTION. Section 15. Used vehicles. The receipts
14 from the sale of any vehicle other than a vehicle subject to
15 the provisions of [section 2(3)] are subject to the sales
16 tax.

17 NEW SECTION. Section 16. Certain mobile homes.
18 Receipts from the resale of a mobile home are gross
19 receipts. The seller shall retain and furnish proof
20 satisfactory to the department that the sales tax was paid
21 upon the sale in this state of the mobile home. In the
22 absence of proof, it is presumed that the tax was not paid.

23 NEW SECTION. Section 17. Exemption -- insurance
24 companies. The receipts from premiums of an insurance
25 company or any of its agents are exempt from the sales tax.

1 NEW SECTION. Section 18. Exemption -- dividends and
2 interest. The following are exempt from the sales tax:

- 3 (1) interest on money loaned or deposited;
4 (2) dividends or interest from stocks, bonds, or
5 securities; and
6 (3) proceeds from the sale of stocks, bonds, or
7 securities.

8 NEW SECTION. Section 19. Exemption -- fuel. The
9 receipts from the sale of gasoline or ethanol blended for
10 fuel on which the Montana gasoline tax has been paid under
11 Title 15, chapter 70, are exempt from the sales tax.

12 NEW SECTION. Section 20. Exemption -- isolated or
13 occasional sale of property. The receipts from the isolated
14 or occasional sale of property by a person who is not
15 regularly engaged in or who does not represent himself as
16 engaged in the business of selling the same or a similar
17 property are exempt from the sales tax.

18 NEW SECTION. Section 21. Exemption -- oil, gas, and
19 mineral interests. The receipts from the sale of oil,
20 natural gas, or mineral interests are exempt from the sales
21 tax.

22 NEW SECTION. Section 22. Exemption -- minerals --
23 exception. (1) The receipts from the sale of a mineral as
24 defined in 15-38-103 are exempt from the sales tax.

- 25 (2) Minerals refined, reduced, polished, cut, faceted,

1 or otherwise processed for the purpose of being used as or
 2 integrated into jewelry, art, or sculpture or as a
 3 decorative embellishment or adornment, either in their own
 4 right or in combination with other property, are not
 5 included in the exemption provided in this section.

6 NEW SECTION. Section 23. Exemption -- advertising.
 7 The gross receipts from the sale of advertising, including
 8 the actual creation or development of the advertising, are
 9 exempt from the sales tax. For the purpose of this section,
 10 "advertising" includes but is not limited to all advertising
 11 by:

- 12 (1) newspaper, magazine, or other publication;
- 13 (2) radio or television;
- 14 (3) billboard, banner, sign, placard, and the like;
- 15 (4) handbill; or
- 16 (5) any other advertising means, media, or method.

17 NEW SECTION. Section 24. Exemption -- construction
 18 activities. The receipts from construction activities are
 19 exempt from the sales tax.

20 NEW SECTION. Section 25. Deduction -- sale of
 21 tangible personal property for resale. Receipts from the
 22 sale of tangible personal property may be deducted from
 23 gross receipts if:

- 24 (1) the sale is made to a buyer who delivers a
 25 nontaxable transaction certificate to the seller; and

1 (2) the buyer resells or plans to resell the tangible
 2 personal property either by itself or in combination with
 3 other tangible personal property in the ordinary course of
 4 business and the property will subsequently be subject to
 5 the sales tax.

6 NEW SECTION. Section 26. Deduction -- sale to
 7 manufacturer. Receipts from the sale of tangible personal
 8 property to a buyer engaged in the business of manufacturing
 9 may be deducted from gross receipts if:

- 10 (1) the buyer delivers a nontaxable transaction
 11 certificate to the seller; and
- 12 (2) the buyer incorporates or will incorporate the
 13 tangible personal property as an ingredient or component
 14 part of the product which he is in the business of
 15 manufacturing.

16 NEW SECTION. Section 27. Deduction -- sale of
 17 tangible personal property for leasing. Receipts from the
 18 sale of tangible personal property, other than furniture or
 19 appliances, and from the rental or lease of property, other
 20 than coin-operated machines and mobile homes, that is
 21 deductible under [sections 1 through 62] may be deducted
 22 from gross receipts if:

- 23 (1) the sale is made to a buyer who delivers a
 24 nontaxable transaction certificate to the seller;
- 25 (2) the buyer is engaged in a business deriving more

1 than 50% of its receipts from leasing or selling tangible
2 personal property of the type leased; and

3 (3) the buyer does not use the property in any manner
4 other than holding it for lease or sale or leasing or
5 selling it, either by itself or in combination with other
6 tangible personal property, in the ordinary course of
7 business.

8 NEW SECTION. Section 28. Deduction -- sale of
9 tangible personal property to person engaged in construction
10 business. (1) Receipts from the sale of tangible personal
11 property may be deducted from gross receipts if the sale is
12 made to a buyer engaged in the construction business who
13 delivers a nontaxable transaction certificate to the seller.

14 (2) The buyer delivering the nontaxable transaction
15 certificate shall incorporate the tangible personal property
16 as an ingredient or component part of a construction project
17 or of an overall construction project of which it is a part.

18 NEW SECTION. Section 29. Deduction -- machinery and
19 equipment used in trade or business. (1) The receipts from
20 the sale or use of machinery or equipment used in a trade or
21 business may be deducted from gross receipts if the buyer:

22 (a) delivers a nontaxable transaction certificate to
23 the seller; or

24 (b) brings the machinery and equipment into this state
25 for use in a trade or business.

1 (2) A buyer delivering a nontaxable transaction
2 certificate shall use the machinery or equipment in a trade
3 or business. For the purpose of this section, "machinery and
4 equipment" means tangible personal property that will not be
5 consumed in or made a part of any product.

6 NEW SECTION. Section 30. Deduction -- sale of real
7 property. Receipts from the sale of real property may be
8 deducted from gross receipts.

9 NEW SECTION. Section 31. Deduction -- transactions in
10 interstate commerce. Receipts from a transaction in
11 interstate commerce may be deducted from gross receipts to
12 the extent that the imposition of the sales tax would be
13 unlawful under the United States constitution.

14 NEW SECTION. Section 32. Deduction -- feed,
15 fertilizers, and agricultural supplies -- livestock
16 auctioneers. (1) Receipts from the sale of feed for
17 livestock, fish raised for human consumption, poultry,
18 animals raised for their hides or pelts, semen used in
19 animal husbandry, seeds, roots, bulbs, soil conditioners,
20 fertilizers, insecticides, insects used to control the
21 population of other insects, fungicides, weedicides,
22 herbicides, or water for irrigation purposes may be deducted
23 from gross receipts if the sale is made to a person who
24 states in writing that he is regularly engaged in the
25 business of farming, ranching, or the raising of animals for

1 their hides or pelts.

2 (2) Receipts of auctioneers from selling livestock or
3 other agricultural products at auction may be deducted from
4 gross receipts.

5 NEW SECTION. Section 33. Deduction -- certain
6 chemicals and reagents. (1) The following may be deducted
7 from gross receipts:

8 (a) receipts from the sale of chemicals or reagents to
9 any mining concern or milling company for use in processing
10 ores or oil in a mill, smelter, or refinery or in acidizing
11 oil wells; and

12 (b) receipts from the sale of chemicals or reagents in
13 an amount in excess of 18 tons.

14 (2) Receipts from the sale of explosives, blasting
15 material, or dynamite may not be deducted from gross
16 receipts.

17 NEW SECTION. Section 34. Deduction -- trade-in
18 allowance. That portion of the receipts of a seller that is
19 represented by a trade-in of tangible personal property of
20 the same type as the property being sold may be deducted
21 from gross receipts.

22 NEW SECTION. Section 35. Deduction -- certain uses of
23 special fuel. (1) Receipts from the sale of special fuel, as
24 defined in 15-70-301, on which the special fuels tax has
25 been paid under Title 15, chapter 70, or which is used in

1 agriculture or to operate machinery, equipment, or vehicles
2 used in a trade or business may be deducted from gross
3 receipts.

4 (2) Receipts from the sale of special fuel used to
5 heat buildings for human comfort are not deductible.

6 NEW SECTION. Section 36. Deduction -- sales to
7 government agencies and Indian tribes. (1) Receipts from a
8 sale to the United States or any agency or instrumentality
9 of the United States or to this state or any political
10 subdivision of this state may be deducted from gross
11 receipts.

12 (2) Receipts from a sale to the governing body of an
13 Indian tribe for use on a federally recognized Indian
14 reservation may be deducted from gross receipts.

15 NEW SECTION. Section 37. Credit -- out-of-state
16 taxes. If a gross receipts, sales, or similar tax has been
17 levied by another state or a political subdivision of
18 another state on property bought outside this state but
19 which will be used or consumed in this state and the tax was
20 paid, the amount of tax paid may be credited against any
21 sales tax due this state on the same property.

22 NEW SECTION. Section 38. Seller's permit. Upon an
23 applicant's compliance with [sections 1 through 62], the
24 department shall issue to the applicant a separate, numbered
25 seller's permit for each place of business within Montana. A

1 permit is valid until revoked or suspended but is not
2 assignable. A permit is valid only for the person in whose
3 name it is issued and for the transaction of business at the
4 place designated. The permit must be conspicuously displayed
5 at all times at the place for which it is issued.

6 NEW SECTION. Section 39. Permit application --
7 requirements -- place of business -- form. (1) (a) A person
8 desiring to engage in the business of making retail sales in
9 Montana shall file with the department an application for a
10 permit. If the person has more than one place of business,
11 an application must be filed for each place of business.

12 (i) A vending machine operator who has more than one
13 vending machine location is considered to have only one
14 place of business for purposes of this section.

15 (ii) An applicant who has no regular place of business
16 and who moves from place to place is considered to have only
17 one place of business and shall attach the permit to his
18 cart, stand, truck, or other merchandising device.

19 (b) Each person or class of persons obligated to file
20 a return under [sections 1 through 62] is required to file
21 application for a permit.

22 (2) Each application for a permit must be on a form
23 prescribed by the department and must set forth the name
24 under which the applicant intends to transact business, the
25 location of his place or places of business, and any other

1 information the department may require. The application
2 must be filed by the owner if the owner is a natural person,
3 by a member or partner if the owner is an association or
4 partnership, or by a person authorized to sign the
5 application if the owner is a corporation.

6 NEW SECTION. Section 40. Special activities --
7 permits -- penalty. (1) The operator of a flea market, craft
8 show, antique show, coin show, stamp show, comic book show,
9 convention exhibit area, or similar selling event, as a
10 prerequisite to renting or leasing space on the premises
11 owned or controlled by the operator to a person desiring to
12 engage in or conduct business as a seller, shall obtain
13 evidence that the seller is the holder of a valid seller's
14 permit issued pursuant to [section 38] or a written
15 statement from the seller that he is not offering for sale
16 any item that is taxable under [sections 1 through 62].

17 (2) "Flea market, craft show, antique show, coin show,
18 stamp show, comic book show, convention exhibit area, or
19 similar selling event", as used in this section, means an
20 activity that involves a series of sales sufficient in
21 number, scope, and character to constitute a regular course
22 of business but does not qualify as an isolated or
23 occasional sale pursuant to [section 20].

24 (3) An operator who fails or refuses to comply with
25 the provisions of this section is subject to a penalty,

1 payable to the department, of \$100 per day per seller at
 2 each selling event at which the operator fails to obtain
 3 evidence that a seller is the holder of a valid seller's
 4 permit issued pursuant to [section 38].

5 NEW SECTION. Section 41. Revocation or suspension of
 6 permit -- hearing -- notice -- appeal. (1) Subject to the
 7 provisions of subsection (2), the department may, for
 8 reasonable cause, revoke or suspend any permit held by a
 9 person who fails to comply with the provisions of [sections
 10 1 through 62].

11 (2) (a) The department shall hold a hearing on the
 12 proposed revocation or suspension after giving the person 30
 13 days' notice in writing, specifying the time and place of
 14 the hearing and the reason for the proposed revocation or
 15 suspension.

16 (b) The notice must include a requirement that the
 17 person show cause why the permit or permits should not be
 18 revoked or suspended.

19 (c) The notice must be served personally or by
 20 certified mail.

21 (3) After revocation, the department may not issue a
 22 new permit except upon application accompanied by reasonable
 23 evidence of the intention of the applicant to comply with
 24 the provisions of [sections 1 through 62]. The department
 25 may require security in addition to that authorized by

1 [section 48] in an amount reasonably necessary to ensure
 2 compliance with [sections 1 through 62] as a condition for
 3 the issuance of a new permit to such an applicant.

4 (4) A person aggrieved by the department's final
 5 decision to revoke a permit as provided in subsection (1)
 6 may appeal the decision to the state tax appeal board within
 7 30 days following the date on which the department issued
 8 its final decision.

9 (5) A decision of the state tax appeal board may be
 10 appealed to a court of competent jurisdiction.

11 NEW SECTION. Section 42. Nontaxable transaction
 12 certificate -- form. (1) The department shall provide for a
 13 uniform nontaxable transaction certificate. In order to
 14 obtain a deduction under [sections 1 through 62], a
 15 purchaser shall use the certificate when purchasing goods
 16 for resale.

17 (2) At a minimum, the certificate must provide:

18 (a) the number of the permit issued to the purchaser
 19 as provided in [section 38];

20 (b) the general character of property sold by the
 21 purchaser in the regular course of business;

22 (c) the property purchased for resale;

23 (d) the name and address of the purchaser; and

24 (e) a signature line for the purchaser.

25 NEW SECTION. Section 43. Improper use of subject of

1 purchase obtained with nontaxable transaction certificate --
 2 penalty. (1) If a purchaser who uses a nontaxable
 3 transaction certificate utilizes the subject of the purchase
 4 for a purpose other than one allowed as a deduction under
 5 [sections 1 through 62], the use is considered a taxable
 6 sale by the purchaser as of the time of first use by him and
 7 the sale price he receives is considered the gross receipts
 8 from the sale.

9 (2) A person who uses a certificate for property that
 10 will be utilized for purposes other than the purpose claimed
 11 is subject to a penalty, payable to the department, of \$100
 12 for each transaction in which an improper use of an
 13 exemption certificate has occurred.

14 (3) Upon a showing of good cause, the department may
 15 abate or waive the penalty or a portion of the penalty.

16 NEW SECTION. **Section 44.** Commingling nontaxable
 17 certificate goods. If a purchaser uses a nontaxable
 18 transaction certificate with respect to the purchase of
 19 fungible goods and commingles these goods with fungible
 20 goods not purchased with a nontaxable transaction
 21 certificate but of such similarity that the identity of the
 22 goods in the commingled mass cannot be determined, sales
 23 from the mass of commingled goods are considered to be sales
 24 of the goods purchased with the certificate until the
 25 quantity of commingled goods sold equals the quantity of

1 goods originally purchased under the certificate.

2 NEW SECTION. **Section 45.** Liability for payment of tax
 3 -- security for retailer without place of business --
 4 penalty. (1) Liability for the payment of the sales tax is
 5 not extinguished until the taxes have been paid to the
 6 department.

7 (2) A retailer who does not maintain a place of
 8 business in this state is liable for the sales tax in
 9 accordance with [sections 1 through 62] and shall furnish
 10 adequate security as required in [section 48] to ensure
 11 collection and payment of the tax. When authorized and
 12 except as otherwise provided in [sections 1 through 62], the
 13 retailer is liable for the tax upon all tangible property
 14 sold that is to be used within this state in the same manner
 15 as a retailer who maintains a place of business within this
 16 state. The permit provided for in [section 38] may be
 17 canceled at any time if the department considers the
 18 security inadequate or believes that the tax can be
 19 collected more effectively in another manner.

20 (3) An agent, canvasser, or employee of a retailer
 21 doing business in this state who is not authorized by permit
 22 from the department may not sell, solicit orders for, or
 23 deliver any tangible personal property in Montana. If an
 24 agent, canvasser, or employee violates the provisions of
 25 [sections 1 through 62], he is subject to a fine of not more

1 than \$100 for each separate transaction or event.

2 **NEW SECTION. Section 46. Application for permission**
3 **to report on accrual basis.** (1) A person who has a permit
4 issued pursuant to [section 38] may apply to the department
5 for permission to report and pay the sales tax on an accrual
6 basis.

7 (2) The application must be made on a form prescribed
8 by the department that contains information as the
9 department may require.

10 (3) A person may not report or pay the sales tax on an
11 accrual basis unless he has received written permission from
12 the department.

13 **NEW SECTION. Section 47. Returns -- authority of**
14 **department.** (1) On or before the 25th day of each month in
15 which the tax imposed by [sections 1 through 62] is payable,
16 a return for the preceding month must be filed with the
17 department, on a form provided by the department. Each
18 return must contain a confession of judgment for the amount
19 of the tax shown due, to the extent not timely paid. A
20 person making retail sales at two or more places of business
21 may file a consolidated return, subject to rules prescribed
22 by the department.

23 (2) (a) For the purposes of the sales tax, a return
24 must be filed by:

25 (i) a retailer required to pay the tax; and

1 (ii) a person:

2 (A) purchasing any items the storage, use, or other
3 consumption of which is subject to the sales tax; and

4 (B) who has not paid the tax to a retailer required to
5 pay the tax.

6 (b) Each return must be signed by the person filing
7 the return or by his agent duly authorized in writing and
8 must be accompanied by a remittance for the amount due less
9 2%. The 2% may be retained by the person making the
10 remittance.

11 (3) (a) A person liable for the taxes imposed by
12 [sections 1 through 62] shall keep records, render
13 statements, make returns, and comply with the provisions of
14 [sections 1 through 62] and the rules prescribed by the
15 department. Each return or statement must include the
16 information required by the rules of the department.

17 (b) For the purpose of determining compliance with the
18 provisions of this section, the department is authorized to
19 examine or cause to be examined any books, papers, records,
20 or memoranda relevant to making a determination of the
21 amount of tax due, whether the books, papers, records, or
22 memoranda are the property of or in the possession of the
23 person filing the return or another person. The department
24 may also:

25 (i) require the attendance of a person having

1 knowledge or information relevant to a return;

2 (ii) compel the production of books, papers, records,
3 or memoranda by a person required to attend;

4 (iii) take testimony on matters material to the
5 determination; and

6 (iv) administer oaths or affirmations.

7 (4) The returns due for July, August, and September of
8 1990 are due on or before October 25, 1990.

9 **NEW SECTION. Section 48. Security -- limitations --**
10 **sale of security deposit at auction -- bond.** (1) The
11 department may require a retailer to deposit with the
12 department security in a form and amount the department
13 determines appropriate. The deposit may not be more than
14 twice the estimated average liability for the period for
15 which the return is required to be filed or \$10,000,
16 whichever is less. The amount of security may be increased
17 or decreased by the department, subject to the limitations
18 provided in this section.

19 (2) (a) If necessary, the department may sell property
20 deposited as security at public auction to recover any sales
21 tax or amount required to be collected, including interest
22 and penalties.

23 (b) Notice of the sale must be served personally or by
24 certified mail upon the person who deposited the security.

25 (c) After the sale, any surplus above the amount due

1 and that is not required as security under this section must
2 be returned to the person who deposited the security.

3 (3) In lieu of security, the department may require a
4 retailer to file a bond, issued by a surety company
5 authorized to transact business in this state, to guarantee
6 solvency and responsibility.

7 (4) In addition to the other requirements of this
8 section, the department may require the corporate officers,
9 directors, or shareholders of a corporation to provide a
10 personal guaranty and assumption of liability for the
11 payment of the tax due under [sections 1 through 62].

12 **NEW SECTION. Section 49. Extensions.** (1) The
13 department may extend the time for filing a return and
14 remittance of tax, deficiencies, and penalties for a period
15 not to exceed 60 days from the date a return was due and may
16 require both an estimated return at the time fixed for
17 filing the regularly required return and the payment of tax
18 on the basis of the estimated return.

19 (2) If an extension of time for payment has been
20 granted under this section, interest at the rate provided in
21 [section 54(2)] is payable from the date on which payment
22 was first due without extension until the tax is paid.

23 **NEW SECTION. Section 50. Examination of return --**
24 **adjustments -- delivery of notices and demands.** (1) The
25 department may examine a return and make an investigation or

1 examination of the records and accounts of a person making
2 the return if the department considers it necessary to
3 determine the accuracy of the return.

4 (2) To determine the accuracy of a return, the
5 department may examine the records and accounts, using
6 statistical or other sampling techniques consistent with
7 generally accepted accounting principles.

8 (3) If the department determines that the amount of
9 tax due is different from the amount reported, the amount of
10 tax computed on the basis of the examination conducted
11 pursuant to subsections (1) and (2) constitutes the tax to
12 be paid.

13 (4) If the tax due exceeds the amount of tax reported
14 as due on the taxpayer's return, the excess must be paid to
15 the department within 60 days after notice of the amount and
16 demand for payment is mailed or delivered to the person
17 making the return. If the amount of the tax found due by the
18 department is less than that reported as due on the return
19 and has been paid, the excess must be refunded to the person
20 making the return in the manner provided in 15-1-503.

21 (5) The notice and demand provided for in this section
22 must contain a statement of the computation of the tax and
23 must be:

24 (a) sent by mail to the taxpayer at the address given
25 in his return, if any, or to his last-known address; or

1 (b) served personally upon the taxpayer.

2 NEW SECTION. **Section 51. Penalties for violation.**

3 (1) (a) Subject to the provisions of subsection (1)(b), if a
4 person, without purposely or knowingly violating any
5 requirement imposed by [sections 1 through 62], fails to
6 file a return or pay the tax due on or before the date the
7 return or tax is due (determined with regard to any
8 extension of time granted for filing the return), there must
9 immediately be imposed a penalty of 5% of any tax due on the
10 return. The penalty increases by the amount of 5% of the tax
11 due for each 30-day period or portion thereof that the
12 return remains unfiled after notification of failure to
13 file.

14 (b) The penalty imposed by subsection (1)(a) may not
15 exceed 25% of the total tax due.

16 (c) Interest accrues on the unpaid tax at the rate of
17 1% for each month or part thereof during which the tax
18 remains unpaid.

19 (d) The department may not assess a penalty until the
20 penalty equals \$10 or more for any one tax period or the
21 period covered by any return or statement.

22 (2) (a) If a person purposely or knowingly violates
23 any requirement imposed by [sections 1 through 62], fails to
24 make a return, or fails to pay a tax, if one is due, at the
25 time required under the provisions of [sections 1 through

1 62], there is added to the tax an additional amount equal to
2 the greater of 25% of the tax or \$25.

3 (b) Interest accrues on the unpaid tax at the rate of
4 1% for each month or part thereof during which the tax
5 remains unpaid.

6 (3) (a) Any individual, corporation, or partnership,
7 any officer or employee of a corporation, or any member or
8 employee of a partnership who, with intent to evade any
9 requirement of [sections 1 through 62] or any lawful
10 requirement of the department adopted pursuant to [sections
11 1 through 62], purposely or knowingly fails to pay the tax
12 or to make, render, or sign any return or to supply any
13 information within the time required under the provisions of
14 [sections 1 through 62] or who purposely or knowingly makes,
15 renders, or signs any false or fraudulent return or
16 statement or supplies any false or fraudulent information is
17 subject to a civil penalty of not more than \$5,000.

18 (b) A penalty imposed by subsection (3)(a) must be
19 recovered by the department in the name of the state by
20 action in a court of competent jurisdiction.

21 (4) The department may abate or waive all or a portion
22 of the penalty imposed by subsection (1) if the taxpayer
23 establishes to the satisfaction of the department that his
24 failure to file or to pay on time was due to reasonable
25 cause and was not due to neglect on his part.

1 NEW SECTION. **Section 52. Warrants for distraint.** If a
2 tax imposed by [sections 1 through 62] or any portion of the
3 tax is not paid when due, the department may issue a warrant
4 for distraint as provided in Title 15, chapter 1, part 7.

5 NEW SECTION. **Section 53. Authority to collect**
6 **delinquent taxes.** (1) The department shall collect taxes
7 that are delinquent as determined under [sections 1 through
8 62].

9 (2) To collect delinquent taxes after the time for
10 appeal has expired, the department may direct the offset of
11 tax refunds or other funds due the taxpayer from the state,
12 except wages subject to the provisions of 25-13-614 and
13 retirement benefits.

14 (3) As provided in 15-1-705, the taxpayer has the
15 right to a hearing on the tax liability prior to any offset
16 by the department.

17 (4) The department may file a claim for state funds on
18 behalf of the taxpayer if a claim is required before funds
19 are available for offset.

20 (5) The department shall provide the taxpayer with
21 written notice of the right to request a hearing under the
22 contested case procedures of Title 2, chapter 4, on the
23 matter of the offset action or the department's intent to
24 file a claim on behalf of the taxpayer. A written request
25 for a hearing must be made within 30 days of the date of the

1 notice, and the hearing must be held within 30 days
2 following receipt by the department of the written request.

3 NEW SECTION. **Section 54.** Penalty for deficiency.

4 (1) (a) If the payment of a tax deficiency is not made
5 within 60 days after it is due and payable and if the
6 deficiency is due to negligence on the part of the taxpayer
7 but without fraud, there must be added to the amount of the
8 deficiency a penalty of 5% of the tax.

9 (b) In addition, a penalty of 5% of the delinquent tax
10 shall be assessed for each 30-day period or portion thereof
11 that the tax remains unpaid following notification of
12 delinquency.

13 (c) Interest accrues on the unpaid taxes at the rate
14 of 1% for each month or part thereof during which the taxes
15 remain unpaid. The interest must be computed from the date
16 the return and tax were originally due.

17 (d) In no event may the penalties imposed under
18 subsections (1)(a) and (1)(b) exceed 25% of the total tax
19 due.

20 (2) If the time for filing a return is extended, the
21 taxpayer shall pay, in addition to the tax due, interest
22 thereon at the rate of 1% for each month or part thereof
23 from the date the return was originally required to be filed
24 to the time of payment.

25 (3) The department may not assess a penalty until the

1 penalty equals \$10 or more for any one tax period or the
2 period covered by any return or statement.

3 NEW SECTION. **Section 55.** Limitations. Except in the
4 case of a person who, with intent to evade the tax,
5 purposely or knowingly files a false or fraudulent return
6 violating the provisions of [sections 1 through 62], the
7 amount of tax due under any return must be determined by the
8 department within 5 years after the return was made. The
9 department is barred from revising a return or recomputing
10 the tax due, and no proceeding in court for the collection
11 of the tax may be instituted unless notice of an additional
12 tax was provided within the period described in this
13 section.

14 NEW SECTION. **Section 56.** Refunds. A claim for a
15 refund made for taxes collected under [sections 1 through
16 62] must be in accordance with the procedure and time limits
17 provided in 15-1-503.

18 NEW SECTION. **Section 57.** Administration -- rules. The
19 department shall:

20 (1) administer and enforce the provisions of [sections
21 1 through 62 and 66];

22 (2) cause to be prepared and distributed forms and
23 information as may be necessary to administer the provisions
24 of [sections 1 through 62]; and

25 (3) promulgate rules as may be appropriate to

1 administer and enforce the provisions of [sections 1 through
2 62 and 66].

3 NEW SECTION. Section 58. Revocation of corporate
4 license. (1) If a corporation authorized to do business in
5 this state and required to pay the taxes imposed under
6 [sections 1 through 62] fails to comply with any of the
7 provisions of [sections 1 through 62] or any rule of the
8 department, the department may, for reasonable cause,
9 certify to the secretary of state a copy of an order finding
10 that the corporation has failed to comply with specific
11 statutory provisions or rules.

12 (2) The secretary of state shall, upon receipt of the
13 certification, revoke the license authorizing the
14 corporation to do business in this state and may issue a new
15 license only when the corporation has obtained from the
16 department an order finding that the corporation has
17 complied with its obligations under [sections 1 through 62].

18 (3) An order authorized in this section may be made
19 until the corporation is given an opportunity to be heard
20 and to show cause at a contested case hearing before the
21 department why the order should not be made. The corporation
22 must be given 30 days' notice of the time and place of the
23 hearing and the reason for the proposed order.

24 NEW SECTION. Section 59. Tax as debt. (1) The tax
25 imposed by [sections 1 through 62] and related interest and

1 penalties become a personal debt of the person required to
2 file a return from the time the liability arises, regardless
3 of when the time for payment of the liability occurs.

4 (2) In the case of an executor or administrator of the
5 estate of a decedent or in the case of a fiduciary, the debt
6 is that of the person in his official or fiduciary capacity
7 only. However, if he has voluntarily distributed the assets
8 held in his capacity without reserving sufficient assets to
9 pay the taxes, interest, and penalties, he is personally
10 liable for any deficiency.

11 (3) This section also applies to those corporate
12 officers, directors, or shareholders required by the
13 department to personally guarantee the payment of the tax
14 for their corporations.

15 NEW SECTION. Section 60. Information --
16 confidentiality -- agreements with another state. (1) (a)
17 Except as provided in subsections (1)(b) and (2), it is
18 unlawful for an employee of the department or any other
19 public official or public employee to divulge or otherwise
20 make known any information disclosed in a report or return
21 required to be filed under [sections 1 through 62] or any
22 information concerning the affairs of the person making the
23 return that is acquired from his records, officers, or
24 employees in an examination or audit.

25 (b) Subsection (1)(a) does not apply to information

1 obtained from the taxpayer making the report or return in
2 connection with a proceeding involving taxes due under
3 [sections 1 through 62] or to compliance with the provisions
4 of subsection (2).

5 (c) Nothing in this section may be construed to
6 prohibit the department from publishing statistics if they
7 are classified in a way that does not disclose the identity
8 and content of any particular return or report. A person
9 violating the provisions of this section is subject to the
10 penalty provided in 15-30-303 for violating the
11 confidentiality of individual income tax information.

12 (2) (a) The department may enter into an agreement
13 with the taxing officials of another state for the
14 interpretation and administration of the laws of their state
15 that provide for the collection of sales taxes in order to
16 promote fair and equitable administration of the laws and to
17 eliminate double taxation.

18 (b) The department, in order to implement the
19 provisions of [sections 1 through 62], may furnish
20 information on a reciprocal basis to the taxing officials of
21 another state or to the taxing officials of a municipality
22 of this state that has a local sales tax.

23 (3) In order to facilitate processing of returns and
24 payments of taxes required by [sections 1 through 62], the
25 department may contract with vendors and may disclose data

1 to the vendors. The data disclosed must be administered by
2 the vendor in a manner consistent with this section.

3 NEW SECTION. Section 61. Sales tax account --
4 administration and enforcement account. (1) There is within
5 the state special revenue fund a sales tax account.

6 (2) All money collected under [sections 1 through 62
7 and 66] must be paid by the department into the sales tax
8 account.

9 (3) (a) Except as provided in subsection (3)(b),
10 2 1/2% of the amount deposited in the sales tax account must
11 be retained as a sales tax administration and enforcement
12 account for the purposes of administration and enforcement
13 of [sections 1 through 62 and 66].

14 (b) The amount deposited in the sales tax
15 administration and enforcement account may not exceed actual
16 expenses incurred, encumbered, or anticipated in any fiscal
17 year for the purposes of administration and enforcement of
18 [sections 1 through 62 and 66] unless the additional amounts
19 are specifically otherwise appropriated by law.

20 (4) There must be retained in the sales tax account
21 the amounts necessary under [sections 1 through 62 and 66]
22 to repay overpayments, pay any erroneous receipts illegally
23 assessed or collected or that are excessive in amount, and
24 pay any other refunds otherwise required.

25 NEW SECTION. Section 62. Disposition of sales tax

1 revenue -- legislative appropriation. (1) Sales tax revenue
2 remaining after allocation to the sales tax administration
3 and enforcement account established in [section 61] is
4 allocated as follows:

5 (a) 80% to the state special revenue fund for state
6 equalization aid as provided in 20-9-343; and

7 (b) 15% to the state special revenue fund for the
8 support, maintenance, and improvement of the Montana
9 university system.

10 (2) The allocation made under subsection (1)(a) is a
11 statutory appropriation as provided in 17-7-502 and must be
12 distributed monthly from the fund to qualifying school
13 districts.

14 **Section 63.** Section 17-7-502, MCA, is amended to read:

15 "17-7-502. Statutory appropriations -- definition --
16 **requisites for validity.** (1) A statutory appropriation is an
17 appropriation made by permanent law that authorizes spending
18 by a state agency without the need for a biennial
19 legislative appropriation or budget amendment.

20 (2) Except as provided in subsection (4), to be
21 effective, a statutory appropriation must comply with both
22 of the following provisions:

23 (a) The law containing the statutory authority must be
24 listed in subsection (3).

25 (b) The law or portion of the law making a statutory

1 appropriation must specifically state that a statutory
2 appropriation is made as provided in this section.

3 (3) The following laws are the only laws containing
4 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
5 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
6 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-70-101;
7 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
8 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
9 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
10 19-12-301; 19-13-604; 20-6-406; 20-8-111; 23-5-306;
11 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027;
12 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206;
13 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108;
14 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161;
15 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; section
16 62]; and section 13, House Bill No. 861, Laws of 1985.

17 (4) There is a statutory appropriation to pay the
18 principal, interest, premiums, and costs of issuing, paying,
19 and securing all bonds, notes, or other obligations, as due,
20 that have been authorized and issued pursuant to the laws of
21 Montana. Agencies that have entered into agreements
22 authorized by the laws of Montana to pay the state
23 treasurer, for deposit in accordance with 17-2-101 through
24 17-2-107, as determined by the state treasurer, an amount
25 sufficient to pay the principal and interest as due on the

1 bonds or notes have statutory appropriation authority for
2 such payments. (In subsection (3), pursuant to sec. 10, Ch.
3 664, L. 1987, the inclusion of 39-71-2504 terminates June
4 30, 1991.)"

5 **Section 64.** Section 20-9-343, MCA, is amended to read:

6 "20-9-343. Definition of and revenue for state
7 equalization aid. (1) As used in this title, the term "state
8 equalization aid" means ~~those moneys~~ the money deposited in
9 the state special revenue fund as required in this section
10 plus any legislative appropriation of money from other
11 sources for distribution to the public schools for the
12 purpose of equalization of the foundation program.

13 (2) ~~The legislative appropriation legislature shall~~
14 biennially appropriate money for state equalization aid
15 ~~shall be made in a single sum for the biennium.~~ The
16 superintendent of public instruction ~~has authority to~~ may
17 spend such the appropriation, together with the earmarked
18 revenues provided in subsection (3), as required for
19 foundation program purposes throughout the biennium.

20 (3) The following ~~shall~~ must be paid into the state
21 special revenue fund for state equalization aid to public
22 schools of the state:

23 (a) 31.8% of all money received from the collection of
24 income taxes under chapter 30 of Title 15;

25 (b) 25% of all money, except as provided in 15-31-702,

1 received from the collection of corporation license and
2 income taxes under chapter 31 of Title 15, as provided by
3 15-1-501;

4 (c) ~~100% of~~ the money allocated to state equalization
5 from the collection of the severance tax on coal;

6 (d) ~~100% of~~ the money received from the treasurer of
7 the United States as the state's shares of oil, gas, and
8 other mineral royalties under the federal Mineral Lands
9 Leasing Act, as amended;

10 (e) interest and income money described in 20-9-341
11 and 20-9-342;

12 (f) income from the education trust fund account; and
13 (g) money received from the collection of the sales
14 tax as provided for in [section 62]; and

15 ~~{g}{h} in addition to these revenues,~~ the surplus
16 revenues collected by the counties for foundation program
17 support according to 20-9-331 and 20-9-333.

18 (4) Any surplus revenue in the state equalization aid
19 account in the second year of a biennium may be used to
20 reduce the appropriation required for the next succeeding
21 biennium."

22 **Section 65.** Section 61-3-501, MCA, is amended to read:

23 "61-3-501. **When vehicle taxes and fees are due.** (1)
24 Property taxes, new car taxes, sales taxes, and fees must be
25 paid on the date of registration or reregistration of the

1 vehicle.

2 (2) If the anniversary date for reregistration of a
3 vehicle passes while the vehicle is owned and held for sale
4 by a licensed new or used car dealer, property taxes abate
5 on such the vehicle properly reported with the department of
6 revenue until the vehicle is sold and thereafter the
7 purchaser shall pay the pro rata balance of the taxes due
8 and owing on the vehicle.

9 (3) In the event a vehicle's registration period is
10 changed under 61-3-315, all taxes and other fees due ~~thereon~~
11 ~~shall on the vehicle must~~ be prorated and paid from the last
12 day of the old period until the first day of the new period
13 in which the vehicle ~~shall--be~~ is registered. ~~Thereafter~~
14 After a change of registration period, taxes and other fees
15 must be paid from the first day of the new period for a
16 minimum period of 1 year. When the change is to a later
17 registration period, taxes and fees ~~shall must~~ be prorated
18 and paid based on the same tax year as the original
19 registration period. ~~Thereafter,---during~~ During the
20 appropriate anniversary registration period, the owner of
21 each vehicle shall again register or reregister and shall
22 pay all taxes and fees due thereon for a 12-month period."

23 NEW SECTION. Section 66. Collection of sales tax on
24 new motor vehicles. (1) The county treasurer shall collect
25 the sales tax imposed under [section 2(5)]. The tax must be

1 paid by the purchaser when he applies for his original
2 registration under 61-3-501.

3 (2) The sales tax shall be 2% of:

4 (a) the purchase price listed on a copy of the
5 original invoice from the vendor; or

6 (b) if there is no invoice, the published list price
7 furnished by the department of revenue.

8 (3) The proceeds from this tax must be remitted to the
9 state treasurer every 30 days for credit to the sales tax
10 account in the state special revenue fund.

11 **Section 67.** Section 61-3-506, MCA, is amended to read:

12 "61-3-506. (Temporary) Rules. The department of
13 revenue shall adopt rules for the payment of property taxes
14 and sales tax for new cars, and the department of highways
15 shall adopt rules for the payment of new car taxes under the
16 provisions of 61-3-313 through 61-3-316, 61-3-501, and
17 61-3-520. The department of revenue may adopt rules for the
18 proration of taxes for the implementation and administration
19 of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520, but
20 shall specifically provide that new car taxes shall be for a
21 12-month period. (Terminates December 31, 1993--sec. 11,
22 Ch. 525, L. 1989.)

23 61-3-506. (Effective January 1, 1994) Rules. The
24 department of revenue shall adopt rules for the payment of
25 property taxes and sales tax for new cars, and the

1 department of highways shall adopt rules for the payment of
 2 new car taxes under the provisions of 61-3-313 through
 3 61-3-316 and 61-3-501. The department of revenue may adopt
 4 rules for the proration of taxes for the implementation and
 5 administration of 61-3-313 through 61-3-316 and 61-3-501,
 6 but shall specifically provide that new car taxes shall be
 7 for a 12-month period."

8 NEW SECTION. Section 68. Repealer. Section 15-10-106,
 9 MCA, is repealed.

10 NEW SECTION. Section 69. Codification instructions.
 11 (1) [Sections 1 through 62] are intended to be codified as
 12 an integral part of Title 15, and the provisions of Title 15
 13 apply to [sections 1 through 62].

14 (2) [Section 66] is intended to be codified as an
 15 integral part of Title 61, chapter 3, and the provisions of
 16 Title 61, chapter 3, apply to [section 66].

17 NEW SECTION. Section 70. Severability. If a part of
 18 [this act] is invalid, all valid parts that are severable
 19 from the invalid part remain in effect. If a part of [this
 20 act] is invalid in one or more of its applications, the part
 21 remains in effect in all valid applications that are
 22 severable from the invalid applications.

23 NEW SECTION. Section 71. Saving clause. [This act]
 24 does not affect rights and duties that matured, penalties
 25 that were incurred, or proceedings that were begun before

1 [the effective date of this act].

2 NEW SECTION. Section 72. Applicability. [This act]
 3 applies January 1, 1990.

4 NEW SECTION. Section 73. Effective date. [This act]
 5 is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB52, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

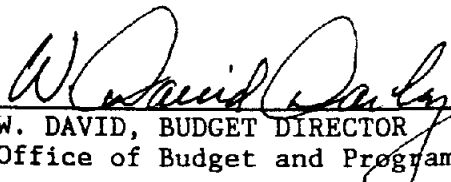
An act establishing a 3.5 percent retail sales tax; providing for the distribution of the revenue from the sales tax to the school foundation program and the university system; replacing the statewide levy for the university system with revenue from the sales tax; providing that a person collecting the sales tax be allowed to retain 1 percent of the collections to cover the costs of collecting the tax; statutorily appropriating a portion of the tax proceeds to equalization aid and the university system; and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

1. The sales tax provided for in this proposal is projected to produce annual revenue of \$149,973,000 in calendar year 1990, \$156,888,000 in calendar year 1991, and \$164,121,000 in calendar year 1992.
2. The proposal does not provide for a use tax.
3. Revenue from the sales tax is distributed evenly in each month of the year. Total sales tax collections are projected to be \$62,489,000 in FY90, \$152,854,000 in FY91, and \$159,902,222 in FY92.
4. The total sales tax on new automobiles and trucks is 3.5 percent.
5. The sales tax revenue projections assume that the sales tax will be fully operational by January 1, 1990; that vendors will be in full compliance with the sales tax provisions; and that imposition of a sales tax has no adverse impacts on consumption. (See Technical Note, below.)
6. Sales tax revenue is distributed 2.5% to administration, 78% to school equalization, and 19.5% to the university system.
7. Total statewide taxable valuation is projected to be \$1,903,008,000 in FY90, and \$1,882,194,000 in FY91 (HJR13).
8. The current law statewide 6-mill levy for the university system is repealed.

FISCAL IMPACT:Revenue Impact:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Retail Sales Tax	\$ 0	\$ 62,489,000	\$ 62,489,000	\$ 0	\$152,854,000	\$152,854,000
University Levy	11,418,000	0	(11,418,000)	11,293,164	0	(11,293,164)
Total	\$11,418,000	\$ 62,489,000	\$ 51,071,000	\$11,293,164	\$152,854,000	\$141,560,836


W. DAVID, BUDGET DIRECTOR DATE 6/27/89
Office of Budget and Program Planning


NORM WALLIN, PRIMARY SPONSOR DATE 6/27/89

Fiscal Note for HB52, as introduced**HB52**

Fund Information:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Foundation Program	\$ 0	\$ 48,741,000	\$ 48,741,000	\$ 0	\$119,226,000	\$119,226,000
University System	11,418,000	12,185,000	767,000	11,293,164	29,807,000	18,513,836
Admin. Account	0	1,563,000	1,563,000	0	3,821,000	3,821,000
Total	\$11,418,000	\$ 62,489,000	\$ 51,071,000	\$11,293,164	\$152,854,000	\$141,560,836

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

The title of the bill as drafted indicates that vendors will be allowed to retain 1% of sales tax collections to defray the costs of collecting the tax. However, Section 47 of the draft provides for an allowance of 2%.

Section 68 repeals MCA 15-10-106. There is no MCA 15-10-106, the university levy is in MCA 15-10-105.

Finally, the bill draft provides for an applicability date of January 1, 1990. The department has consistently maintained that lead time necessary to implement a sales tax of this nature is 12 to 18 months. An applicability date of July 1, 1990, with the first tax receipts anticipated for January 1, 1991 would provide a more realistic time frame for efficient implementation of this proposal. Also, allowing administrative expenditures equal to 2.5% of actual sales tax receipts does not provide the necessary front end funding needed to prepare computerized accounting systems, develop appropriate forms, etc.