

HOUSE BILL 362

Introduced by Bardanouve

1/27	Introduced
1/27	Referred to Taxation
1/27	First Reading
1/27	Fiscal Note Requested
2/02	Fiscal Note Received
2/04	Fiscal Note Printed
2/19	Hearing
3/15	Tabled in Committee

1 *Howe* BILL NO. *362*
2 INTRODUCED BY *Bauman*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON THE
5 SALE OF SOFT DRINKS FOR THE ACQUISITION, DEVELOPMENT,
6 OPERATION, AND MAINTENANCE OF STATE PARKS; PROVIDING
7 PENALTIES; AND PROVIDING EFFECTIVE DATES."
8

9 STATEMENT OF INTENT

10 A statement of intent is required for this bill because
11 [section 9] requires the department of revenue to adopt
12 rules to implement the tax imposed on soft drinks. It is the
13 intent of the legislature that the rules promulgated by the
14 department should address, at a minimum, the following:

15 (1) forms and procedures for registering with the
16 department as a bottler;

17 (2) forms and procedures for filing the precollected
18 tax imposed by [section 2]; and

19 (3) other matters that the department considers
20 necessary for the effective and efficient implementation and
21 enforcement of [sections 1 through 9].

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

24 NEW SECTION. Section 1. Definitions. As used in
25 [sections 1 through 9], unless the context requires

1 otherwise, the following definitions apply:

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

7 (2) "Department" means the department of revenue
8 established in 2-15-1301.

9 (3) "Soft drink" means:

10 (a) a nonalcoholic, carbonated beverage that is
11 imported or is manufactured, mixed, blended, or diluted by a
12 bottler for human consumption and distributed by a bottler
13 in:

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

17 (ii) a disposable or returnable container from which the
18 beverage is dispensed by a retailer without further mixing,
19 blending, or diluting for onsite consumption; or

20 (b) a nonalcoholic syrup or concentrate used by a
21 retailer to mix, blend, or dilute with carbonated water or
22 other ingredients to produce a beverage that may be
23 dispensed for onsite consumption.

24 NEW SECTION. Section 2. Tax -- sale of soft drinks.

25 (1) There is levied, imposed, and assessed upon soft drinks

1 sold in Montana, except soft drinks transported out of
2 Montana for retail sale and consumption outside of Montana,
3 a tax of:

4 (a) 0.068 cent an ounce on beverages included in
5 [section 1(3)(a)]; and

6 (b) 52 cents a gallon on syrup or concentrate included
7 in [section 1(3)(b)].

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

13 NEW SECTION. Section 3. Bottler to precollect tax. (1)
14 The tax imposed by [section 2] must be precollected and paid
15 by the bottler to the department prior to the sale of the
16 soft drinks either to a retailer or to other persons for
17 consumption.

18 (2) The bottler shall report to the department at the
19 end of each calendar quarter the amount precollected during
20 that quarter attributable to the sale of soft drinks. The
21 report is due within 30 days following the end of the
22 calendar quarter and must be accompanied by a payment in an
23 amount equal to the tax required to be precollected under
24 subsection (1).

25 NEW SECTION. Section 4. Unlawful sales -- penalty. (1)

1 A person may not offer to sell soft drinks subject to the
2 tax imposed by [section 2] without precollecting the tax as
3 provided in [section 3].

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

7 NEW SECTION. Section 5. Audits -- records. (1) The
8 department may audit the books and records of any bottler to
9 ensure that the proper amount of tax imposed by [section 2]
10 has been paid. An audit may be done on the premises of the
11 bottler or at any other convenient location.

12 (2) The department may request that the bottler provide
13 the department with books, ledgers, registers, or other
14 documents necessary to verify the correct amount of tax.

15 (3) The bottler shall maintain and have available for
16 inspection by the department books, ledgers, registers, or
17 other documents showing the collection of the tax for the
18 preceding 5 years.

19 (4) Except in the case of a bottler who, with intent to
20 evade the tax, purposely or knowingly files a false or
21 fraudulent return violating the provisions of [sections 1
22 through 9], the amount of tax due under any return must be
23 determined by the department within 5 years after the return
24 is made and the department thereafter is barred from
25 revising a return or recomputing the tax due. A proceeding

in court for the collection of the tax may not be instituted unless notice of any additional tax is provided within the 5-year period.

(5) An application for revision may be filed with the department by a bottler within 5 years from the original due date of the return.

NEW SECTION. Section 6. Registration number --
application to department. (1) A bottler shall apply to the department for a registration number.

(2) The application must be made on a form provided by the department.

(3) Upon receipt of the completed application, the department shall assign a registration number to the bottler.

NEW SECTION. Section 7. Failure to pay or file --
penalty -- interest. (1) A bottler who fails to file the report required under [section 3] must be assessed a penalty of 2% of the tax that should have been precollected during the calendar quarter. Upon a showing of good cause, the department may waive the penalty.

(2) A bottler who fails to make payment or fails to report and make payment as required under [section 3] must be assessed a penalty of 2% of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty.

(3) If a bottler fails to file the report required under [section 3] or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the bottler.

(4) The amount required to be paid under [section 3] accrues interest at the rate of 1% a month or part of a month from delinquency until paid.

(5) All penalties and interest imposed and collected by the department under this section must be deposited in the state special revenue fund for the acquisition, development, operation, and maintenance of sites and areas described in 23-1-102.

NEW SECTION. Section 8. Bottler's discount -- refunds
-- disposition of taxes. (1) The tax imposed by [section 2] that is paid by the bottler must be paid in full to the department, less 5% defrayment for the bottler's collection and administrative expenses.

(2) If the soft drinks become unsalable, refunds of the tax paid may be made as provided in 15-1-503.

(3) The department shall deposit the tax paid in the state special revenue fund for the acquisition, development, operation, and maintenance of sites and areas described in 23-1-102.

NEW SECTION. Section 9. Department to adopt rules. The

1 department shall adopt rules necessary to implement the
2 provisions of [sections 1 through 9].

3 NEW SECTION. **Section 10.** Codification instruction.
4 [Sections 1 through 9] are intended to be codified as an
5 integral part of Title 15, and the provisions of Title 15
6 apply to [sections 1 through 9].

7 NEW SECTION. **Section 11.** Effective dates. (1) [Section
8 9 and this section] are effective on passage and approval.

9 (2) [Sections 1 through 8] are effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0362, as introduced.

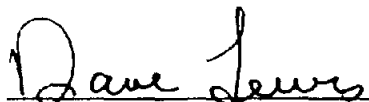
DESCRIPTION OF PROPOSED LEGISLATION:

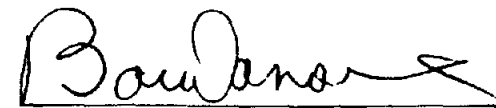
An act imposing a tax on the sale of soft drinks for the acquisition, development, operation, and maintenance of state parks; providing penalties; and providing effective dates.

ASSUMPTIONS:

1. U.S. per capita soft drink consumption was 42.5 gallons per person in 1990 as compared with 20.8 gallons in 1970 (U.S. Department of Agriculture, Economic Research Service).
2. U.S. per capita soft drink consumption is projected to increase to 47.3 gallons in FY94 and to 48.5 gallons in FY95 (Montana Department of Revenue).
3. Montana's per capita soft drink consumption is assumed to follow the national trend, adjusted by the ratio of per capita dollar sales of soft drinks in grocery stores in Montana as compared with the nation.
4. The adjustment factor for Montana is .967 (computed from U.S. Bureau of the Census data).
5. Estimated Montana population for FY94 is 823,000, and 829,000 for FY95 (Revenue Oversight Committee).
6. Projected Montana soft drink consumption for FY94 is 37,212,771 and 38,377,865 for FY95.
7. The proposed legislation places a tax of \$.00068 per ounce (\$.087 per gallon) on packaged carbonated beverages, and \$.52 per gallon on syrup or concentrate. One gallon of syrup/concentrate is equivalent to six gallons of soft drinks, which yields the same tax rate for syrup/concentrate and the final soft drink product.
8. The proposed tax is effective July 1, 1993 and is to be paid within 30 days following the close of a calendar quarter. Current state accounting practices related to accruing revenue, result in all tax revenue related to FY94 and FY95 sales being recorded in FY94 and FY95, respectively.
9. Because of the cost to bottlers and importers of collecting the tax, they are only required to submit 95 percent of actual tax collections to the Department of Revenue, according to Section 8 of the legislation.
10. Per the legislation, all collections received by the Department of Revenue are to be deposited in the state special revenue fund for the acquisition, development, operation, and maintenance of state parks.
11. All Department of Revenue administrative costs would be part of state special revenue fund expenditures (the bill is not specific on this point).

FISCAL IMPACT: (See next page)

 2-1-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-4-93
FRANCIS BARDANOUE, PRIMARY SPONSOR DATE

Fiscal Note for HB0362, as introduced

HB 362

FISCAL IMPACT:

Expenditures:

Department of Revenue

Income and Misc. Tax Division

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	123.45	123.70	0.25	123.45	123.70	0.25
Personal Services	\$ 3,296,520	\$3,301,393	\$4,873	\$ 3,305,267	\$3,310,140	\$4,873
Operating Expenses	1,424,031	1,425,926	1,895	1,390,128	1,390,453	325
Equipment	<u>72,561</u>	<u>76,991</u>	<u>4,430</u>	<u>52,971</u>	<u>52,971</u>	<u>0</u>
Total	\$ 4,793,112	\$4,804,310	\$11,198	\$ 4,748,366	\$4,753,564	\$5,198
General Fund	\$ 4,298,112	\$4,298,112	\$0	\$ 4,238,366	\$4,238,366	\$0
State Special	<u>495,000</u>	<u>506,198</u>	<u>11,198</u>	<u>510,000</u>	<u>515,198</u>	<u>5,198</u>
Total	\$ 4,793,122	\$4,804,310	\$11,198	\$ 4,748,366	\$4,753,564	\$5,198

Data Processing Division

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	49.60	50.10	0.50	49.60	49.60	0
Personal Services	\$ 1,515,949	\$1,536,233	\$20,284	\$ 1,520,006	\$1,520,006	\$0
Operating Expenses	146,395	146,395	0	143,406	143,406	0
Equipment	<u>13,578</u>	<u>13,578</u>	<u>0</u>	<u>12,691</u>	<u>12,691</u>	<u>0</u>
Total	\$ 1,675,922	\$1,696,206	\$20,284	\$ 1,676,103	\$1,676,103	\$0
General Fund	\$ 1,046,610	\$1,046,610	\$0	\$ 1,046,902	\$1,046,902	\$0
State Special	85,313	105,597	20,284	86,505	86,505	0
Liquor Proprietary	<u>543,999</u>	<u>543,999</u>	<u>0</u>	<u>542,696</u>	<u>542,696</u>	<u>0</u>
Total	\$ 1,675,922	\$1,696,206	\$20,284	\$ 1,676,103	\$1,676,103	\$0

Revenues:

	<u>FY '94</u>			<u>FY '95</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Soft Drink Tax	\$ 0	\$3,075,635	\$3,075,635	\$ 0	\$3,171,931	\$3,171,931

Net Impact:

State Special Revenue Fund	\$3,044,153	\$3,166,733
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