

VOTERS' INFORMATION PAMPHLET ON PROPOSED REFERENDUM NO. 68
WHICH WILL APPEAR ON THE OFFICIAL BALLOT FOR THE
SPECIAL GENERAL ELECTION TO BE HELD NOVEMBER 2, 1971

Prepared by FRANK MURRAY, Secretary of State, pursuant to
Section 37-107, Revised Codes of Montana 1947

THE NUMBER AND FORM IN WHICH REFERENDUM NO. 68 WILL APPEAR UPON
THE OFFICIAL BALLOT AT THE SPECIAL GENERAL ELECTION NOVEMBER 2,
1971, IS AS FOLLOWS:

Secretary of State's Statement

Referendum No. 68 was introduced as House Bill No. 12 in the Second Extraordinary Session of the 42nd Legislative Assembly of the State of Montana and passed the House of Representatives by a vote of 40 for and 27 against, with 25 members absent and 12 members excused. The Senate vote was 30 to 6 in favor of the bill, with 10 absent, and 9 excused. The bill was signed by the Governor on July 1, 1971.

Attorney General's Explanatory Statement

This referendum offers a choice of taxation methods between the existing 40% income tax surtax, or a 10% income tax surtax coupled with a 2% sales and use tax effective January 1, 1972. The 40% surtax on income requires that the taxpayer pay an additional 40% of his present state income tax liability. The sales and use tax, with specified exceptions, requires that a 2% tax be applied on the sale, charge or exchange of tangible personal property and taxable services; and provides a \$10.00 tax credit for each exemption allowed by state law, namely: self, dependents, blindness and age.

Referendum No. 68

Title of Bill

AN ACT PROVIDING FOR A REFERENDUM TO BE SUBMITTED TO THE ELECTORS IN NOVEMBER 1971 FOR A LAW WHICH PROVIDES FOR THE LEVYING OF A TWO PERCENT (2%) SALES AND USE TAX TO SUPPORT STATE GOVERNMENT; PROVIDING FOR THE ADMINISTRATION THEREOF AND FOR PENALTY IN CASE OF VIOLATION THEREOF; PROVIDING FOR AN INCOME TAX REFUND OR CREDIT FOR SALES AND USE TAX UPON FOOD, DRUGS AND RELATED ITEMS; PROVIDING AN INCREASE IN INCOME TAX SURTAX TO FORTY PERCENT (40%) BY AMENDING SECTION 84-4902.1, R.C.M. 1947, FOR CALENDAR YEAR 1971 IF THE REFERENDUM PASSES; PROVIDING FOR THE CONTINUANCE OF SUCH SURTAX RATE TO DECEMBER 31, 1972 IF THE REFERENDUM FAILS; PROVIDING FOR REPEAL OF ACTS OR PARTS OF ACTS IN CONFLICT HERewith AND PROVIDING EFFECTIVE DATES.

- ☐ For referendum measure No. 68.
For reduction of the 40% Income Tax Surtax to 10% and for the enactment of the 2% Sales and Use tax.
- ☐ Against referendum measure No. 68.
Against reduction of the 40% Income Tax Surtax to 10% and against enactment of the 2% Sales and Use Tax.

The following is a copy of the title and text of the proposed Referendum as passed by the Second Extraordinary Session of the Montana Forty-second Legislative Assembly and approved by the Governor on July 1, 1971, as it appears in the 1971 Montana Session Laws:

CHAPTER NO. EXTRAORDINARY 2-9
MONTANA SESSION LAWS 1971

AN ACT PROVIDING FOR A REFERENDUM TO BE SUBMITTED TO THE ELECTORS IN NOVEMBER 1971 FOR A LAW WHICH PROVIDES FOR THE LEVYING OF A TWO PERCENT (2%) SALES AND USE TAX TO SUPPORT STATE GOVERNMENT; PROVIDING FOR THE ADMINISTRATION THEREOF AND FOR PENALTY IN CASE OF VIOLATION THEREOF; PROVIDING FOR AN INCOME TAX REFUND OR CREDIT FOR SALES AND USE TAX UPON FOOD, DRUGS AND RELATED ITEMS; PROVIDING AN INCREASE IN INCOME TAX SURTAX TO FORTY PERCENT (40%) BY AMENDING SECTION 84-4902.1, R.C.M. 1947, FOR CALENDAR YEAR 1971 IF THE REFERENDUM PASSES; PROVIDING FOR THE CONTINUANCE OF SUCH SURTAX RATE TO DECEMBER 31, 1972 IF THE REFERENDUM FAILS; PROVIDING FOR REPEAL OF ACTS OR PARTS OF ACTS IN CONFLICT HERewith AND PROVIDING EFFECTIVE DATES.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1. Title of Act. This act is known and may be cited as "The 1971 Montana Revenue Act".

Section 2. Definitions. The following words, terms, and phrases shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) "Person" means any individual, firm, copartnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public, and the plural as well as the singular number.

(2) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property and any rendition of a taxable service for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication; and the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

(3) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this act, and includes any such transaction as the state board of equalization upon investigation finds to be in lieu of a sale; but sales for resale must be made in strict compliance with rules and regulations made under this act. Any person making a sale for resale which is not in strict compliance with such rules and regulations shall himself be liable for and pay the tax. "Retail sale" and a "sale at retail" include:

(i) the sale or charges for any room or rooms, lodging or accommodations furnished to transients by any hotel, motel, inn, tourist camp, tourist cabin, camping grounds, club, or any other place in which rooms, lodging, space, or accommodations are regularly furnished to transients for a consideration. A transient is a person who occupies rooms, lodgings, or accommodations for less than a period of sixty (60) continuous days.

(ii) sales of tangible personal property to persons for resale if, because of the operation of the business or its very nature, or the lack of a place of business in which to display a certificate of registration, or the lack of a place of business in which to keep records, or the lack of adequate records, or because the persons are minors or transients, or because the persons are engaged in essentially service businesses, or for any other reason, there is likelihood that the state will lose tax funds due to the difficulty of policing the business operations. The state board of equalization may promulgate rules and regulations requiring ven-

dors of or sellers to such persons to collect the tax imposed by this act on the cost price of the tangible personal property to such persons and may refuse to issue certificates of registration to such persons.

(iii) the sale or charge of admissions.

(iv) the charge for the service of printing or imprinting, photographing, or copying by any means whatsoever for a consideration for persons who furnish either directly or indirectly the materials used in conjunction with the rendition of the service.

(v) the charge for barber and beauty services to persons and animals for a consideration whether or not any tangible personal property is transferred in conjunction with the performance of the service.

(vi) the charge for motor vehicle parking service or parking space in privately owned parking lots or garages and the charge for docking or storage space for boats in privately owned boat docks or marinas.

(vii) the furnishing of intrastate telephonic and telegraphic communications and services.

(4) "Gross sales" means the sum total of all retail sales of tangible personal property or services as defined in this act, without any deduction whatsoever of any kind or character, except as provided in this act. "Gross sales" do not include the federal retailers' excise tax if this excise tax is billed to the purchaser separately from the selling price of the article, or the retail sales or use tax, or any sales tax imposed by any county or city.

(5) "Sales price" means the total amount for which tangible personal property or services are sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to purchaser, consumer, or lessee by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever; but cash discounts allowed and taken on sales are not included in the sales price; nor shall the sales price include finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal property under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price or transportation charges separately stated. If used articles are taken in trade, or in a series of trades as a credit or part payment on the sale of new or used articles, the tax levied by this act shall be paid on the net difference between the sales price of the new or used articles and the credit for the used articles. In the case of motor vehicles the proceeds of the tax levied under this act shall be deposited in the general fund and not credited to the state highway fund irrespective of any other provision of law.

(6) "Cost price" means the actual cost of an item or article of tangible personal property computed in the same manner as the sales price in subparagraph (5) of this section without any deductions therefrom on account of the cost of materials used, labor, or service costs, transportation charges, or any expenses whatsoever.

(7) "Lease or rental" means the leasing or renting of tangible personal property and the possession of [sic] use thereof by the lessee or rentee for a consideration, without transfer of the title to the property.

(8) "Distribution" includes the transfer or delivery of tangible personal property for use, consumption, or storage by the distributee, and the use, consumption, or storage of tangible personal property by a person who has processed, manufactured, refined, or converted the property, but does not include the transfer or delivery of tangible personal property for resale or any use, consumption, or storage otherwise exempt under this act.

(9) "Gross proceeds" means the charges made or voluntary contributions received for the lease or rental of tangible personal property or for furnishing services, computed with the same deductions, where applicable, as for sales price in subsection (b) of this section over the term of the lease, rental, service, or use, but not less frequently than monthly.

(10) "Storage" means any keeping or retention of tangible personal property for use, consumption or distribution in this state, or for any purpose other than the sale at retail in the regular course of business.

(11) "Use" means the exercise of any right or power over tangible personal property incident to the ownership thereof, except that it does not include the sale at retail of that property in the regular course of business.

(12) "Business" means any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect.

(13) "Retailer" means every person engaged in the business of making sales of tangible personal property and taxable services as defined in this act.

(14) "Tangible personal property" means personal property, which may be seen, weighed, measured, felt, or touched, or is in any other manner perceptible to the senses. The term "tangible personal property" does not include stocks, bonds, notes, insurance or other obligations or securities.

(15) "Use tax" means the tax imposed upon the use, consumption, distribution, and storage of tangible personal property as herein defined.

(16) "In this state" or "in the state" means within the exterior limits of the state of Montana and includes all territory within these limits owned by or ceded to the United States of America.

(17) The words "import" and "imported" apply to tangible personal property imported into this state from other states as well as from foreign countries, and the words "export" and "exported" apply to tangible personal property exported from this state to other states as well as to foreign countries.

Section 3. Imposition of Sales Tax. There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed by law, a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this state, or who rents or furnishes any of the things or services taxable under this act, or who stores for use or consumption in this state any item or article of tangible personal property as defined in this act, or who leases or rents such property within this state, the same to be collected in the amount to be determined by applying the rate of two percent (2%) to:

(1) the sales price of each item or article of tangible personal property when sold at retail or distributed in state, the tax to be computed on gross sales.

(2) the gross proceeds derived from the lease or rental of tangible personal property, as defined in this act, where the lease or rental of such property is an established business, or part of an established business, or is incidental or germane to the business.

(3) the cost price of each item or article of tangible personal property stored in this state for use or consumption in this state.

(4) the gross proceeds derived from the sale or charges for rooms, lodgings or accommodations furnished to transients as set out in subparagraph (3) (i), section 2 of this act.

(5) the gross sales of all services taxable under this act. No services are taxable under this act except those expressly enumerated and made taxable.

Section 4. Imposition of Use Tax. There is levied and imposed, in addition to all other taxes and fees of every kind except the tax imposed under section 3 of this act, a tax upon the use or consumption of tangible personal property in this state, to be collected in the amount determined by applying the rate of two percent (2%) to the cost price of each item or article of tangible personal property used or consumed in this state: Provided, that tangible personal property which has been acquired after the effective date of this act for use outside this state and subsequently becomes subject to the tax imposed hereunder shall be taxed on the basis of its cost price if such property is brought within this state for use

within six (6) months of its acquisition; but if so brought within this state six (6) months or more after its acquisition, the property shall be taxed on the basis of the current market value (but not in excess of its cost price) of the property at the time of its first use within this state: Provided, further, that the tax shall be based on such proportion of the cost price or current market value as the duration of time of use within this state bears to the total useful life of the property (but it shall be presumed in all cases that the property will remain within this state for the remainder of its useful life unless convincing evidence is provided to the contrary).

Section 5. Exclusions and Exemptions. "Retail sale" or "sale at retail", do not include the sale of:

(1) tangible personal property which becomes an ingredient or component part, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale but does include fuel and electricity;

(2) specific machinery and processing equipment and repair parts or replacements thereof, exclusively designed and made for and specifically used in the growing or manufacturing of a product or the rendering of a taxable service;

(3) materials, containers, labels, sacks, cans, boxes, drums or bags and other packing, packaging, or shipping materials for use in packing, packaging or shipping tangible personal property;

(4) tangible personal property delivered pursuant to bona fide written contracts entered into before the date of the enactment of this act, provided delivery is made within ninety (90) days after the effective date of this act; and building supplies, fixtures or equipment that enter into or become a part of a building or other kind of structure in this state, where plans, specifications, and the construction contract for a specific project has been entered into prior to the date of the enactment of this act, provided delivery is made within the time specified in such contract for the completion of such specific project;

(5) commercial feeds, seed, plants, fertilizer, liming materials, breeding and other livestock, semen, breeding fees, baby chicks, turkey poults, agricultural chemicals, fuel, containers for fruits and vegetables, or farm machinery, provided they are sold to and purchased by farmers for use in agricultural production for market;

(6) school lunches sold and served to pupils and employees of schools and subsidized by government, and school textbooks sold by a local school board or authorized agency thereof; and school textbooks sold by a college or other institution of learning, not conducted for profit, for use of students attending the institution of learning;

(7) tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration, sometimes referred to as "casual sales";

(8) tangible personal property for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to the business, including a simultaneous purchase and taxable leaseback;

(9) tangible personal property and taxable services for use or consumption by the United States, the state of Montana or any political subdivision of this state; but this exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered by the United States, the state of Montana, or political subdivisions of this state;

(10) delivery of tangible personal property outside this state for use or consumption outside this state.

(11) fuels used for the propulsion of vehicles on the public highways and which are included within the provisions of Article XII section 1 b of the Constitution of Montana.

Section 6. Credit for taxes paid in another state. A credit shall be granted against the taxes imposed by this act with respect to a person's use in this state of tangible per-

sonal property purchased by him in another state. The amount of the credit shall be equal to the tax paid by him to another state or political subdivision thereof by reason of the imposition of a similar tax on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this act.

Section 7. Applicability or inapplicability of Use Tax in certain cases. The use tax does not apply to tangible personal property owned or acquired in this state or imported into this state, or held or stored in this state, prior to the effective date of this act. The use tax does apply to all tangible personal property imported or caused to be imported into this state on or after the effective date of this act except as provided in this act, unless the property has previously been subject to a sales or use tax in another state or political subdivision equal or greater than the tax imposed by this act for which credit is given under section 6, or unless proof is furnished that the tangible personal property imported or caused to be imported into this state was owned or acquired prior to the effective date of this act, or otherwise is exempt under this act, but the use tax does not apply to the use of any article or tangible personal property brought into the state by a non-resident individual for his personal use while visiting within the state.

Section 8. Moving residence or business into state; Use Tax. The use tax does not apply to tangible personal property purchased outside this state for use outside this state by a then non-resident natural person or a business entity not actually doing business within this state who or which later brings the tangible personal property into this state in connection with his establishment of a permanent residence or business in this state, provided that the property was purchased more than six (6) months prior to the date it was first brought into this state or prior to the establishment of the residence or business, whichever first occurs. This section does not apply to tangible personal property temporarily brought into this state for the performance of contracts for the construction, reconstruction, installation, repair, or for any other service with respect to real estate or fixtures thereon.

Section 9. Diversion of tangible personal property to personal use. The use tax applies to tangible personal property and taxable services of persons holding themselves out as sellers of goods and services when tangible personal property or taxable services are diverted to the personal use of the person, his family, or his employees.

Section 10. Dealers. The tax levied in section 3 and section 4 shall be collected from "dealers". For the purpose of this act, "dealer" means:

(1) any person physically located in this state who:

(i) manufactures or produces tangible personal property for sale at retail, for use, consumption, or distribution, or for storage to be used or consumed in this state;

(ii) imports or causes to be imported into this state tangible personal property from any state or foreign country, for sale at retail for use, consumption, or distribution, or for storage to be used or consumed in this state;

(iii) sells at retail, or offers for sale at retail, or has in possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this state, tangible personal property and taxable services as defined in this act;

(iv) has sold at retail, or used, consumed, or distributed, or stored for use or consumption in this state, tangible personal property or who has performed taxable services, and who cannot prove that the tax levied by this act has been paid on the sale at retail, the use, consumption, distribution, or storage of such tangible personal property or the charge for the rendition of taxable services;

(v) leases or rents tangible personal property, as defined in this act, for a consideration, permitting the use or possession of the property without transferring title thereto; and

(2) every other person who:

(i) maintains or has within this state, directly, or by an agent or a subsidiary, an office, distributing house, sales room, or house, warehouse, or other place of business;

(2) every other person who:

(i) maintains or has within this state, directly, or by an agent or a subsidiary, an office, distributing house, sales room, or house, warehouse, or other place of business;

(ii) solicits business in this state either by employees, independent contractors, agents or other representatives, and by reason thereof makes sales to persons within this state of tangible personal property, the use of which is taxed by this act; and any other person making sales to persons within this state of tangible personal property, the use of which is taxed by this act, who may be authorized by the state board of equalization to collect such tax;

(iii) as a representative, agent, or solicitor, for an out-of-state principal, solicits, receives and accepts orders from persons in this state for future delivery and whose principal refuses to register under this act;

(iv) shall become liable to and shall owe this state any amount of tax imposed by this act, whether or not he holds, or is required to hold, a certificate of registration under this act.

Section 11. Contractors. (a) Any person who contracts orally, in writing, or by purchase order, to perform construction, reconstruction, installation, repair, or any other service with respect to real estate or fixtures thereon and in connection therewith to furnish tangible personal property or taxable services, shall be deemed to have purchased the tangible personal property for use or consumption. Any sale, distribution, or lease to or storage for such person shall be deemed a sale, distribution, or lease to or storage for the ultimate consumer and not for resale, and the dealer making the sale, distribution, or lease to or storage for the person shall collect the tax to the extent required by this act.

(b) Any person who contracts to perform services in this state and is furnished tangible personal property for use under the contract by the person, or his agent or representative, for whom the contract is performed, and if a sale or use tax has not been paid to this state by the person supplying the tangible personal property, shall be deemed to be the consumer of the tangible personal property so used, and shall pay a use tax based on the fair market value of the tangible personal property so used, irrespective of whether or not any right, title or interest in the tangible personal property becomes vested in the contractor; but this subsection does not apply to the sale of tangible personal property which becomes an ingredient or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for later sale or governmental exclusion set out in section 5 of this act.

(c) Any person who contracts orally, in writing, or by purchase order to perform any service in the nature of equipment rental, and the principal part of that service is the furnishing of equipment or machinery which will not be under the exclusive control of the contractor, shall be liable for the sale or use tax on the gross proceeds from such contract to the same extent as the lessor of tangible personal property.

(d) Tangible personal property incorporated in real property construction which loses its identity as tangible personal property shall be deemed to be tangible personal property used or consumed within the meaning of this section.

(e) Nothing in this section shall be construed to affect or limit the resale exclusion provided for in this act, nor shall anything contained herein be construed to impose any sales or use tax with respect to the use in the performance of contracts with the United States or this state and its political subdivisions, of tangible personal property owned by a governmental body which actually is not used or consumed in the performance thereof.

Section 12. Certificates of registration. (a) Every person desiring to engage in or conduct business as a dealer in this state shall file with the state board of equalization an application for a certificate of registration for each place of business in this state.

(b) Every application for a certificate of registration shall be made upon a form prescribed by the state board of equalization and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state board of equalization requires. The application shall be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

(c) When the required application has been made the state board of equalization shall issue to each applicant a separate certificate of registration for each place of business within this state. A certificate of registration is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall be at all times conspicuously displayed at the place for which issued.

(d) Whenever any person fails to comply with any provision of this act or any rule or regulation of the state board of equalization relating thereto, the state board of equalization, upon hearing after giving such person ten (10) days notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended, may revoke or suspend any one or more of the certificates of registration held by such person. The notice may be personally served or served by certified mail directed to the last known address of the person. A dealer whose certificate of registration has been previously suspended or revoked shall pay the state board of equalization a fee of twenty dollars (\$20) for the renewal or reissuance of a certificate of registration.

(e) Any person who engages in business as a dealer in this state without obtaining a certificate of registration or after a certificate of registration has been suspended or revoked, and each officer of any corporation which so engages in business is guilty of a misdemeanor; each day's continuance in business in violation of this section is a separate offense.

(f) If the holder of a certificate of registration ceases to conduct his business at the place specified in his certificate, the certificate expires; and the holder shall inform the state board of equalization in writing within thirty (30) days after he has ceased to conduct the business at that place; but, if the holder of a certificate of registration desires to change his place of business to another place in this state, he shall so inform the state board of equalization in writing, and his certificate shall be revised accordingly.

(g) This section also applies to any person who engages in the business of furnishing any of the things or services taxable under this act. Also, it applies to any person who is liable only for the collection of the use tax, but that person may be issued a certificate of registration in relevant form.

Section 13. Exemption certificates. (a) All sales or leases are subject to the tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the person who makes the sale, distribution, lease, or storage, unless he takes from the purchaser or lessee a certificate to the effect that the property is exempt under this act.

(b) The certificate mentioned in this section relieves the person who takes the certificate from any liability for the payment or collection of the tax, except upon notice from the state board of equalization that the certificate is no longer acceptable. The certificate shall be signed by and bear the name and address of the purchaser or lessee, indicate the number of the certificate of registration (if any) issued to the purchaser, or lessee, indicate the general character of the taxable service rendered or tangible personal property sold, distributed, leased, or stored (or to be sold, distributed, leased, or stored under a blanket exemption certificate) and be substantially in such form as the state board of equalization prescribes.

(c) If a purchaser or lessee who gives a certificate under this section makes any use of the property other than an exempt use or retention, demonstration, or display while holding property for resale, distribution, or lease in the regular course of business, the use shall be deemed a taxable sale by the purchaser or lessee as of the time the property or service is first used by him, and the cost of the property to him shall be deemed the sales price of the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale, distribution, or lease, the purchaser shall pay the tax on the cost of the property to him and when the property is sold shall collect and pay the tax on the difference between the cost of the property to him and the retail sales price.

(d) If a purchaser gives a certificate under this section with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so

purchased, but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales or distribution from the mass of commingled goods shall be deemed to be sales or distributions of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold or distributed.

Section 14. Collection. The tax levied by this act shall be paid by the dealer, but the dealer shall separately state the amount of the tax and add the tax to the sales price or charge; and thereafter, the tax shall be a debt from the purchaser, consumer, or lessee to the dealer until paid and shall be recoverable at law in the same manner as other debts, but no action at law or suit in equity under this act may be maintained in this state by any dealer who is not registered under this act, or is delinquent in the payment of the taxes imposed under this act.

To eliminate separate statement of the amount of tax in fractions of one cent (1¢), dealers shall add to the sales price or charge and collect from the purchaser, consumer, or lessee such amounts as may be prescribed by the state board of equalization to carry out the purposes of this section.

Notwithstanding any exemption from taxes which any dealer enjoys under the Constitution or laws of this or any other state, or of the United States, the dealer shall collect the tax from the purchaser, consumer, or lessee and shall pay it over to the state board of equalization as herein provided.

Any dealer who neglects, fails, or refuses to collect the tax upon each and every taxable sale, distribution, lease or storage of tangible personal property made by him, his agents, or employees shall be liable for and pay the tax himself, and the dealer shall not thereafter be entitled to sue for or recover in this state any part of the purchase price or rental from the purchaser until the tax is paid. Also, any dealer who neglects, fails or refuses to pay or collect the tax herein provided, either by himself or through his agents or employees, is guilty of a misdemeanor.

Section 15. Absorption of tax prohibited. No person shall advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the sales or use tax, or that he will relieve the purchaser, consumer, or lessee of the payment of all or any part of the tax, except as authorized under section 31. Any person who violates this section is guilty of a misdemeanor.

Section 16. Returns by dealers. Every dealer required to collect or pay the sales or use tax, on or before the twenty-eighth day of the month following the month in which the tax shall become effective, shall transmit to the state board of equalization, upon a form prescribed, prepared and furnished by the state board of equalization, a return showing the gross sales, gross proceeds, or cost price, as the case may be, arising from all transactions taxable under this act during the preceding calendar month; and thereafter a like return shall be prepared and transmitted to the state board of equalization by every dealer on or before the twenty-eighth day of each month, for the preceding calendar month. The return also shall contain a statement showing the amount in each class of exclusions and exemptions which are not subject to the tax imposed by this act, or if the form so provides, the total amount thereof without specifying each class. In the case of dealers regularly keeping books and accounts on the basis of an annual period which varies fifty-two (52) to fifty-three (53) weeks, the state board of equalization may make rules and regulations for reporting consistent with the accounting period. When the tax for which any dealer is liable under this act does not exceed five dollars (\$5) in any month, or sixty dollars (\$60) in any annual reporting period, the state board of equalization may permit a dealer upon written application to file an annual return and pay the amount of tax due on the last day of the month following the end of the annual period. When the tax for which any dealer is liable under this act does not exceed ten dollars (\$10) in any month, or sixty dollars (\$60) in any annual reporting period, the state board of equalization may permit a dealer upon written application to file a quarterly return and pay the amount of tax due on the last day of the month following end of the quarterly period.

Section 17. Payment to accompany dealer's return. At the time of transmitting to the state board of equalization the return required under section 16, the dealer shall remit to the

state board of equalization therewith the amount of tax due under the applicable provisions of this act after making appropriate adjustments for purchases returned, repossessions, and accounts uncollectible and charged off as provided in sections 18, 19, and 20. The tax imposed by this act for each month becomes delinquent on the day following the twenty-eighth day of the succeeding month if not theretofore paid.

Section 18. Returned goods. If purchases are returned to the dealer by the purchaser or consumer after the tax imposed by this act has been collected or charged to the account of the purchaser, the dealer is entitled to reimbursement of the amount of tax collected or charged by him, in the manner prescribed by the state board of equalization, but the amount of tax so reimbursed to the dealer shall not include the tax paid upon any cash retained by the dealer after the return of merchandise; and if the tax has not been remitted by the dealer, the dealer may deduct it in submitting his return. The dealer shall be issued a refund by the state board of equalization equal to the net amount remitted by the dealer for the tax collected if the dealer can establish that the tax was not due.

Section 19. Repossessions. A dealer who has paid the tax on tangible personal property sold under a retained title, conditional sale, or similar contract, may take credit for the tax paid by him upon the unpaid balance due him when he repossesses the property, the credit to be administered by the state board of equalization in the same manner as provided for returned purchases under section 18. When repossessed property is resold, the sale is subject in all respects to this act.

Section 20. Bad debts. In any return filed under the provisions of this act, the dealer, under rules and regulations prescribed by the state board of equalization, may credit against the tax shown to be due on the return the amount of sales or use tax previously returned and paid on accounts which during the period covered by the current return have been found to be worthless and actually charged off for income tax purposes; except that if any accounts so charged off are thereafter in whole or in part paid to the dealer, the amount paid shall be included in the first return filed after the collection and the tax paid accordingly.

Section 21. Extensions. The state board of equalization may grant an extension upon written application therefor to the end of the calendar month in which any tax return is due hereunder or for a period not exceeding thirty (30) days, and no interest or penalty shall be charged, assessed or collected by reason of the granting of the extension, except that when an extension is granted beyond the end of the calendar month in which any tax return is due, interest on the tax at the rate of one-half ($\frac{1}{2}$) of one percent (1%) per month, or fraction thereof, shall be charged.

Section 22. Civil penalties. When any dealer fails to make any return and pay the full amount of the tax required by this act, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of twenty-five dollars (\$25) and ten percent (10%) of the tax due if the failure is for not more than thirty (30) days, with an additional five percent (5%) for each additional thirty (30) days, or fraction thereof, during which the failure continues, not to exceed twenty-five percent (25%) in the aggregate; but, if the failure is due to providential cause shown to the satisfaction of the state board of equalization, the return with remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return, where willful intent exists to defraud the state of any tax due under this act, a specific penalty of fifty percent (50%) of the amount of the proper tax shall be assessed. All penalties and interest imposed by this act shall be payable by the dealer and collectible by the state board of equalization as if they were a part of the tax imposed.

Section 23. Assessment based on estimate. (a) If any dealer fails to make a return as provided by this act, or makes a grossly incorrect return, or a return that is false or fraudulent, the state board of equalization shall make an estimate for the taxable period of the retail sales or distributions of the dealer, or of the gross proceeds from leases of tangible personal property, or taxable services by the dealer, or the cost price of all articles of tangible personal property imported by the dealer for use or consumption in the state or storage by the dealer of tangible personal property to be used or consumed in the state,

and assess the tax, plus penalties. The state board of equalization shall give the dealer ten (10) days notice in writing requiring the dealer to appear before him or an assistant with such books, records, and papers as he requires relating to the business of the dealer for the taxable period; and the state board of equalization may require the dealer or the agents and employees of the dealer to give testimony or to answer interrogatories under oath administered by the state board of equalization respecting the sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services or the failure to make a return thereof as provided in this act. If any dealer fails to make any return or refuses to permit an examination of his books, records, or papers, or to appear and answer questions within the scope of an investigation relating to the sale, distribution, lease, use, consumption, or storage of tangible personal property, or taxable services, the state board of equalization may make the assessment based upon information available to it and issue a warrant for the collection of the taxes and penalties found to be due. The assessment shall be deemed prima facie correct.

(b) If the dealer has imported the tangible personal property and fails to produce an invoice showing the sales price of the articles, or the invoice does not reflect the true or actual sales price as defined in this act, the state board of equalization shall ascertain, in any manner feasible, the true sales price and assess and collect the tax, with penalties, to the extent they have accrued, on the true sales price as ascertained by it. The assessment shall be deemed prima facie correct.

(c) In the case of the lease of tangible personal property, if the consideration given or reported by the dealer, in the judgment of the state board of equalization, does not represent the true or actual consideration, the state board of equalization may fix it and assess and collect the tax thereon as above provided, with penalties as have accrued. The assessment shall be deemed prima facie correct.

Section 24. Records. (a) Every dealer required to make a return and pay or collect any tax under this act shall keep and preserve suitable records of the sales, leases, or purchases, as the case may be, taxable under this act, and other books of account as necessary to determine the amount of tax due hereunder, and other pertinent information as required by the state board of equalization; and every dealer shall keep and preserve for a period of four (4) years all invoices and other records of goods, wares, and merchandise, or other subjects of taxation under this act, and all the books, invoices, and other records shall be open to examination at all reasonable hours by the state board of equalization or any of its duly authorized agents.

(b) In order to aid in the administration and enforcement of the provisions of this act, all wholesalers and jobbers in this state shall keep a record of all sales of tangible personal property, whether the sales be for cash or on terms of credit. The records required to be kept by all wholesalers and jobbers shall include the name and address of the purchaser, the number of the certificate of registration issued to the purchaser, the date of the purchase, the article purchased, and the price at which the article is sold to the purchaser. These records shall be kept for a period of four (4) years and shall be open to the inspection of the state board of equalization (or its authorized agents) at all reasonable hours during the day. The failure of any wholesaler or jobber in this state to keep the records, or the failure of any wholesaler or jobber in this state to permit an inspection of the records by the state board of equalization as aforesaid, is a misdemeanor. Moreover, if any person who is both a retailer and a wholesaler or jobber fails to keep proper records showing wholesale sales and retail sales separately, he shall pay the tax as a retailer on both classes of his business.

(c) For the purpose of enforcing the collection of the tax levied by this act, the state board of equalization through its authorized agents may examine at all reasonable hours during the day the books, records, and other documents of all transportation companies, agencies, firms, or persons that conduct their business by truck, rail, water, airplane, or otherwise, in order to determine what dealers are importing or otherwise are shipping articles of tangible personal property which are liable for the tax. If the transportation company, agency, firm or person refuses to permit an examination of its or his books, records, and other documents by the state board of equalization, it or he shall be deemed guilty of a misdemeanor.

Moreover, the state board of equalization may proceed by petitioning any court of record for an order citing the transportation company, agency, firm, or person to show cause before said court of record why the books, records, and other documents should not be examined pursuant to the injunction of the court, and why a bond should not be required with proper security in the penalty of not more than two thousand dollars (\$2,000) conditioned upon compliance with the provisions hereof for a period of not more than one (1) year.

Section 25. Sale of business. If any dealer liable for any tax, penalty, or interest levied hereunder sells out his business or stock of goods or quits the business, he shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business. The return shall include any sales made at retail during liquidation. His successors or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of taxes, penalties, and interest due and unpaid until the former owner produces a receipt from the state board of equalization showing that they have been paid or a certificate stating that no taxes, penalties, or interest are due. If the purchaser of a business or stock of goods fails to withhold the purchase money as above provided, he shall be personally liable for the payment of the taxes, penalties and interest due and unpaid on account of the operation of the business by any former owner. Nothing herein shall be deemed to qualify or limit the exemption as to such a sale as is covered by section 5.

Section 26. Bond. The state board of equalization, if necessary and advisable in order to secure the collection of the tax levied by this act, may require any person subject to the tax to file with it a bond of a surety company authorized to do business in this state as surety, in such reasonable amount as the state board of equalization fixes, to secure the payment of any tax, penalty or interest due or which may become due from the person. In lieu of a bond, securities approved by the state board of equalization may be deposited with the state treasurer which securities shall be kept in the custody of the state treasurer, and shall be sold by him, at the request of the state board of equalization, at public or private sale, without notice to the depositor thereof, if necessary in order to recover any tax, penalty or interest due the state under this act. Upon the sale, the surplus, if any, above the amounts due under this act, shall be returned to the person who deposited the securities.

Section 27. Jeopardy assessment. If the state board of equalization deems that the collection of any tax or any amount of tax, required to be collected and paid under this act, may be jeopardized by delay, it shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of the assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties. In the case of a tax for a current period, the state board of equalization may declare the taxable period of the taxpayer immediately terminated and shall cause notice of the finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and the tax shall be immediately due and payable, whether or not the time otherwise allowed by law for filing a return and paying the tax has expired. Assessments provided for in this section shall become immediately due and payable, and if any tax, penalty or interest is not paid upon demand of the state board of equalization, it shall proceed to collect it by legal process, or, in its discretion, it may require the taxpayer to file a bond sufficient to protect the interest of the state.

Section 28. Direct payment permits. (a) Notwithstanding any other provisions of this act, the state board of equalization may authorize (1) a manufacturer, mine operator, or public service corporation that is a user, consumer, distributor, or lessee to which sales, distributions, leases, or storage of tangible personal property are made under circumstances which normally make it impossible at the time thereof to determine the manner in which the property will be used by the person, or (2) any person who stores tangible personal property in this state for use both within and outside this state, to pay any tax levied by this act directly to this state and waive the collection of the tax by the dealer; but no such authority shall be granted or exercised except upon application to the state board of equalization and the issuance by the state board of equalization of a direct payment permit. If a direct payment permit is granted, payment of the tax on all sales, distributions, and leases, including sales, distributions, leases, and storage of tangible personal property and sales of taxable services for use known at the time thereof shall be made directly to the state board of equalization by the permit holder.

(b) On or before the twenty-eighth day of each month every permit holder shall make and file with the state board of equalization a return for the preceding month in the form prescribed by the state board of equalization showing the total value of the tangible personal property used, the amount of tax due from the permit holder (which amount shall be paid to the state board of equalization with such return) and such other information as the state board of equalization deems necessary. The state board of equalization, upon written request by the permit holder, may grant a reasonable extension of time for making and filing returns and paying the tax. Interest on the tax at the rate of one-half ($\frac{1}{2}$) of one percent (1%) per month, or fraction thereof, shall be charged on every extended payment.

(c) It is the duty of every permit holder required to make a return and pay tax under this section to keep and preserve suitable records of purchases, together with invoices of purchases, bills of lading, and other pertinent records and documents in the form the state board of equalization requires by regulation. All records and other documents shall be open during business hours to the state board of equalization or its duly authorized agents and shall be preserved for a period of four (4) years, unless the state board of equalization, in writing, authorizes their destruction or disposal at an earlier date.

(d) A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or cancelled for cause by the state board of equalization.

(e) Persons who hold a direct payment permit which has not been cancelled shall not be required to pay the tax to the dealer as otherwise herein provided. Such persons shall notify each dealer from whom purchases or leases of tangible personal property are made of their direct payment permit number and that the tax is being paid directly to the state board of equalization. Upon receipt of the notice, the dealer shall be absolved from all duties and liabilities imposed by this act for the collection and remittance of the tax with respect to sales, distributions, leases, or storage of tangible personal property to the permit holder. Dealers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each purchaser may be ascertained.

(f) Upon the cancellation or surrender of a direct payment permit, the provisions of this act, shall thereafter apply to the person who previously held the permit, and the person shall promptly notify in writing dealers from whom purchases, leases, and storage of tangible personal property are made of the cancellations or surrender. Upon receipt of the notice, the dealer shall be subject to the provisions of this act, with respect to all sales, distributions, leases, or storage of tangible personal property thereafter made to the person.

Section 29. Vending machine sales. Whenever a dealer makes sales of tangible personal property through vending machines, or in any other manner making collection of the tax impractical, the state board of equalization may authorize the dealer to prepay the tax and waive collection from the purchaser and may require the dealer to furnish bond sufficient to secure prepayment of the tax. The dealer shall be required to print upon the property sold or post on the vending machine a statement to the effect that the tax has been paid in advance. The terms and conditions of this section are inapplicable unless the dealer makes application to the state board of equalization for the authority herein contained, and unless the state board of equalization finds that the collection of the tax in the manner otherwise provided in this act is impractical.

Section 30. Tax warrants. The state board of equalization, when any tax becomes delinquent under this act, may issue a warrant for the collection of the tax, penalty, and interest from each delinquent taxpayer.

Section 31. Erroneous assessments. Upon any claim of an erroneous or illegal assessment or collection, the taxpayer shall have his remedy under section 84-4923.1, R.C.M. 1947. The section cited is applicable to all sales and use taxes imposed under this act.

Section 32. Period of limitations. The taxes imposed by this act shall be assessed within three (3) years from December 31 of the year in which the taxes became due and payable; but in the case of a false or fraudulent return with intent to evade payment of

the taxes imposed by this act, or a failure to file a return, the taxes may be assessed, or a proceeding in court for the collection of such taxes may be begun without assessment at any time within six (6) years from December 31 of the year in which the taxes became due and payable.

Section 33. Violation of act by dealer a misdemeanor. Any dealer subject to the provisions of this act who fails or refuses to furnish any return herein required to be made, or fails or refuses to furnish a supplemental return or other data required by the state board of equalization, or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this act, punishment for which is not otherwise herein provided, is guilty of a misdemeanor.

Section 34. Administration. The state board of equalization shall administer and enforce the assessment and collection of the taxes and penalties imposed by this act. It shall design, prepare, print, and furnish to all dealers, or make available to them, all necessary forms for filing returns together with instructions to assure a full collection from dealers and an accounting for the taxes due, but failure of any dealer to receive or procure forms or instructions, or both, shall not relieve him from the payment of the tax at the time and in the manner herein provided.

Section 35. Rules and regulations. The state board of equalization may make and publish reasonable rules and regulations not inconsistent with this act, other applicable laws, or the Constitution of this state, or of the United States, for the enforcement of the provisions of this act and the collection of the revenue hereunder.

Section 36. Administration of oaths. The state board of equalization and such other officers or employees of the department of taxation as the state board of equalization authorizes in writing, may administer oaths for the purpose of enforcing and administering the provisions of this act.

Section 37. Secrecy of information. Except in accordance with proper judicial order, or as provided by law, it is unlawful for the state board of equalization (or any agent), auditor, or other officer or employee to divulge or make known in any manner the amount of sales, the amount of tax paid, or any other particulars set forth or disclosed in any return required by this act. Nothing in this act shall be construed to prohibit the publication of statistics so classified as to prevent the identity of particular reports or returns and the items thereof, or the inspection by the legal representative of this state of the report or return of any taxpayer who applies for a review or appeal from any determination or against whom an action or proceeding is about to be instituted or has been instituted to recover any tax or penalty imposed by this act.

Section 38. Exchange of information with other tax officials. The state board of equalization may furnish to the tax officials of any other state and its political subdivision, the political subdivisions of this state, the District of Columbia, and the United States and its territories, any information contained in tax returns and reports and related schedules and documents filed pursuant to the tax laws of this state, or in the report of an audit or investigation made with respect thereto: Provided, that said jurisdictions grant similar privileges to this state and that the information is to be used only for tax purposes.

Section 39. Sales tax fund—creation—sales tax refund fund—appropriations. (a) There is hereby created in the office of the state treasurer and subject to his control and custody a fund to be known and designated as the "Sales and Use Tax Fund".

(b) All moneys collected under this act shall be paid by the state board of equalization into the sales and use tax fund.

(c) A portion of the amount deposited in the "Sales and Use Tax Fund" not exceeding two hundred thousand dollars (\$200,000) to June 30, 1972 and not exceeding seven hundred fifty thousand dollars (\$750,000) in any fiscal year thereafter shall be retained and

is hereby appropriated as a "Sales and Use Tax Administration and Enforcement Fund" for the purposes of administration and enforcement of this act; there shall be retained in the "Sales and Use Tax Fund" such amounts as are necessary for the purpose of repaying overpayments made under this act, for the purpose of paying any other erroneous receipts illegally assessed, collected, or which are excessive in amount, and for the payment of the income tax credits or refunds otherwise provided in this act and there is hereby appropriated from this fund so much as may be necessary for the payment of said refunds and credits.

The balance shall be paid into the general fund of the state of Montana.

Section 40. Increased income surtax. Section 84-4902.1, R.C.M. 1947, is amended to read as follows:

"84-4902.1. Surtax. After the amount of tax liability has been computed for all taxable years commencing on or after December 31, 1970 but before December 31, 1972 each person filing a Montana individual income tax return shall add, as a surtax, forty percent (40%) of the tax liability, and the amount so arrived at is the amount due the state of Montana. Thereafter the surtax shall be ten percent (10%) of the tax liability."

Section 41. Refund or Credit for Sales and Use Tax upon Food, Drugs and Other Related Items. The state board of equalization shall allow a refund or credit to persons who file individual income tax returns under the Montana Income Tax Act (sections 84-4901 et seq. R.C.M. 1947) for taxable years beginning on and after January 1, 1972 and who have continuously resided in this state for the twelve (12) months ending on the last day of their taxable year. The refund shall be made for each exemption, including that for blindness or age sixty-five (65) years or over, for which a deduction is claimed on the taxpayer's Montana income tax return except that no refund or credit may be claimed for an exemption which represents a person filing a Montana income tax return claiming a deduction for his own personal exemption. In no event shall more than one (1) taxpayer be allowed refund or credit for the same exemption. The refund or credit shall be computed by multiplying ten dollars (\$10) times each exemption for which a deduction is allowable. The refund or credit shall be allowed each person who files an individual income tax return and shall be paid out of monies collected under the sales and use tax hereinabove provided for, and as follows:

- (1) if no income tax is due the state, the refund shall be paid to the person filing the return;
- (2) if income tax due is less than the computed amount, the difference between the income tax due and the computed amount shall be paid to the person filing the return;
- (3) if income tax due is greater than the computed amount, the computed amount shall be allowed as a credit.

Section 42. Referendum. There shall be a referendum upon this act except for sections 40 and 46 to be submitted to the electors of this state at a special general election to be held November 2, 1971 for their approval or rejection.

Section 43. The referendum shall be submitted to the electors on an official ballot which shall contain the title of this act and the number of the referendum. The question shall be presented in the following form:

- ☐ For referendum measure.....
For reduction of the 40% Income Tax Surtax to 10% and for the enactment of the 2% Sales and Use tax.
- ☐ Against referendum measure.....
Against reduction of the 40% Income Tax Surtax to 10% and against enactment of the 2% Sales and Use Tax.

Section 44. Reduced Income Surtax. If the majority of the electors vote in the affirmative on the referendum provided for in sections 42 and 43, section 84-4902.1, R.C.M. 1947, shall be amended to read as follows:

"84-4902.1. Surtax. After the amount of tax liability has been computed for all taxable years commencing on or after December 31, 1970 but before December 31, 1971 each person filing a Montana individual income tax return shall add, as a surtax, forty percent (40%) of the tax liability and the amount so arrived at is the amount due the state of

Montana. Thereafter the surtax shall be ten percent (10%) of the tax liability."

Section 45. Repealer. All acts or parts of acts in conflict herewith are hereby repealed.

Section 46. Effective date.

(a) Section 40 of this act shall be effective upon passage and approval.

(b) If approved by a majority of the voters voting for and against the referendum herein provided the Sales and Use Tax shall be imposed upon all taxable transactions occurring on and after January 1, 1972.

Approved: July 1, 1971.

