

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-