

## HOUSE BILL NO. 58

INTRODUCED BY R. ERICKSON

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "~~AN ACT PROVIDING FOR LONG-TERM CASH FLOW INTO THE~~  
5 ~~MONTANA TOBACCO SETTLEMENT TRUST FUND~~; INCREASING THE CIGARETTE TAX FROM 18 CENTS  
6 TO ~~36~~ 56 CENTS ON A PACK OF CIGARETTES; INCREASING THE TAX ON TOBACCO PRODUCTS FROM  
7 12.5 PERCENT TO ~~25~~ 50 PERCENT; ~~ALLOCATING A PORTION OF THE CIGARETTE TAX REVENUE AND~~  
8 ~~REVENUE FROM THE TAX ON TOBACCO PRODUCTS TO THE MONTANA TOBACCO SETTLEMENT~~  
9 ~~TRUST FUND~~ PROVIDING THAT REVENUE FROM THE INCREASED TAXES BE TEMPORARILY ALLOCATED  
10 FOR FUNDING K-12 EDUCATION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE  
11 QUALIFIED ELECTORS OF MONTANA AT A SPECIAL ELECTION; AMENDING SECTIONS 16-11-111,  
12 16-11-119, 16-11-202, AND 16-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE, ~~AND AN~~  
13 APPLICABILITY DATE, AND A TERMINATION DATE."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16  
17 **Section 1.** Section 16-11-111, MCA, is amended to read:

18 **"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) A tax on the purchase  
19 of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is  
20 imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~18~~ 36  
21 56 cents on each package containing 20 cigarettes and, when packages contain more or less than 20  
22 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

23 (2) The tax imposed in subsection (1) does not apply to quota cigarettes.

24 (3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all  
25 cigarettes entering a Montana Indian reservation.

26 (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes  
27 to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a  
28 refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally  
29 recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file  
30 a claim within 1 year of the shipment date forfeits the refund or credit.

1 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a  
 2 system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department  
 3 for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based  
 4 on whether the quota, as established in a cooperative agreement between the department and an Indian  
 5 tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon  
 6 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation  
 7 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given  
 8 a credit or refund. Once the quota has been filled, the department shall immediately notify all affected  
 9 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will  
 10 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota  
 11 periods or between reservations.

12 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming  
 13 the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the  
 14 tax due on the quota allocation. The department shall determine the amount of refunds or credits for each  
 15 Indian reservation at the beginning of each fiscal year, using the most recent census data available from  
 16 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian  
 17 reservation."

18

19 **Section 2.** Section 16-11-119, MCA, is amended to read:

20 **"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111  
 21 must be allocated as follows:

22 ~~— (1) The amount of 45% of the cigarette tax must be deposited in the tobacco settlement trust~~  
 23 ~~fund provided for in Article XII, section 4, of the Montana constitution.~~

24 ~~(1)(2)(1)~~ The amount of ~~11.11%~~ 5.8% 3.6% of the cigarette tax collected on each package of  
 25 cigarettes must be deposited in the state special revenue fund to the credit of the department of public  
 26 health and human services for the operation and maintenance of state veterans' nursing homes.

27 ~~(2)(3)(2)~~ The amount of ~~73.04%~~ 41.2% 91.3% must, in accordance with the provisions of  
 28 15-1-501, be deposited in the state general fund [FOR THE PURPOSES OF FUNDING K-12 BASIC ENTITLEMENTS AND  
 29 PER-ANB ENTITLEMENTS].

30 ~~(3)(4)(3)~~ The amount of ~~15.85%~~ 8% 5.1% must, in accordance with the provisions of 15-1-501,

1 be deposited in the long-range building program account provided for in 17-7-205."

2

3 **Section 3.** Section 16-11-202, MCA, is amended to read:

4 **"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate**  
 5 **of tax.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the  
 6 retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any  
 7 other person, the payment is considered as an advance payment and must be added to the price of  
 8 tobacco products and recovered from the ultimate consumer or user. Any person selling tobacco products  
 9 at retail shall state or separately display in the premises where the products are sold a notice of the tax  
 10 included in the selling price and charged or payable pursuant to this section. The provisions of this section  
 11 do not affect the method of collection of the tax as provided in this part.

12 (2) There must be collected and paid to the state of Montana a tax of ~~12-1/2%~~ 25% 50% of the  
 13 wholesale price of all tobacco products to the wholesaler. Tobacco products shipped from Montana and  
 14 destined for retail sale and consumption outside the state are not subject to this tax."

15

16 **Section 4.** Section 16-11-206, MCA, is amended to read:

17 **"16-11-206. Wholesaler's discount -- disposition of taxes.** (1) The taxes specified in this part that  
 18 are paid by the wholesaler must be paid to the department in full less a 5% defrayment for the  
 19 wholesaler's collection and administrative expense ~~and. The taxes received~~ must, in accordance with the  
 20 provisions of 15-1-501, be deposited by the department in the ~~following amounts:~~ GENERAL FUND. [FIFTY  
 21 PERCENT OF THE TAX DEPOSITED IN THE GENERAL FUND MUST BE USED FOR THE PURPOSES OF FUNDING K-12 BASIC  
 22 ENTITLEMENTS AND PER-ANB ENTITLEMENTS.]

23 ~~—— (a) 55% to the state general fund; and~~

24 ~~—— (b) 45% to the tobacco trust fund provided for in Article XII, section 4, of the Montana~~  
 25 ~~constitution.~~

26 (2) Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco  
 27 products purchased become unsalable."

28

29 NEW SECTION. SECTION 5. TRANSITION. ALL WHOLESALERS, DISTRIBUTORS, AND RETAILERS SHALL PAY THE  
 30 DIFFERENCE IN TAX BETWEEN THE FORMER TAX RATE AND THE NEW TAX RATE ON ALL INVENTORY SUBJECT TO TAX HELD

1 BY THEM ON JULY 1, 2002, THAT EXCEEDS ALL INVENTORY SUBJECT TO TAX HELD BY THEM ON THE LAST DAY OF THEIR  
2 MOST RECENTLY CONCLUDED INCOME TAX REPORTING YEAR.

3

4 NEW SECTION. Section 6. Notification to tribal governments. The secretary of state shall send  
5 a copy of ~~[this act]~~ THIS ACT to each tribal government located on the seven Montana reservations and to  
6 the Little Shell band of Chippewa.

7

8 NEW SECTION. Section 7. Effective date -- applicability. ~~[This act]~~ IF APPROVED BY THE ELECTORATE,  
9 THIS ACT is effective July 1, ~~2001~~ 2002, and applies to taxes precollected and paid on the purchase of  
10 cigarettes for consumption, use, or any purpose other than resale beginning on or after July 1, ~~2001~~  
11 2002.

12

13 NEW SECTION. SECTION 8. TERMINATION. THE BRACKETED LANGUAGE IN [SECTIONS 2 AND 4] TERMINATES  
14 JUNE 30, 2003.

15

16 NEW SECTION. SECTION 9. SUBMISSION TO ELECTORATE. THIS ACT SHALL BE SUBMITTED TO THE QUALIFIED  
17 ELECTORS OF MONTANA AT A SPECIAL ELECTION TO BE HELD IN NOVEMBER 2001 BY PRINTING ON THE BALLOT THE FULL  
18 TITLE OF THIS ACT AND THE FOLLOWING:

19        ¶ FOR INCREASING TOBACCO TAXES AND ALLOCATING THE INCREASED REVENUE FOR THE SUPPORT OF  
20            K-12 EDUCATION.

21        ¶ AGAINST INCREASING TOBACCO TAXES AND ALLOCATING THE INCREASED REVENUE FOR THE SUPPORT  
22            OF K-12 EDUCATION.

23

- END -