

DEPARTMENT OF JUSTICE
Increased Enforcement of Tobacco Taxes Related to Initiative 149

Background

In November 2004, Montana voters approved Initiative 149 that increased tobacco taxes by approximately 140%. As a result, on January 1, 2005, tobacco taxes in Montana increased to \$1.70 per pack of cigarettes. Montana's tobacco tax is now among the highest in the nation and is substantially higher than in the surrounding states:

- Idaho - 57¢ per pack
- South Dakota - 53¢ per pack
- North Dakota - 44¢ per pack
- Wyoming - 60¢ per pack

Given the tax increase, which raised the cost of a carton of cigarettes by \$10, smokers now have a financial incentive to purchase untaxed or lower taxed cigarettes on the Internet, from certain tribal outlets and from surrounding states. The state anticipates that the illegal purchase of untaxed cigarettes will increase, and effective enforcement will be needed to protect the state's tobacco tax revenue.

Existing Enforcement Efforts

The Department of Revenue has two auditors who audit licensed wholesalers. The Department of Revenue does not have any staff to investigate and prosecute Internet sales violations, illegal smuggling operations, or sales of contraband tobacco products. Because Revenue agents are not law enforcement officers, they cannot investigate illegal tobacco sales.

Department of Justice law enforcement officers are needed for enforcement functions such as searches for illegal tobacco products, seizure of contraband and evidence, and coordinating the efforts of local, state and federal law enforcement agencies. While Revenue is authorized by statute to contract with the Department of Justice for investigations, there has never been any funding for such a contract.

The Department of Justice has one full time attorney who enforces the laws relating to the tobacco settlement. This position is funded through the Agency Legal Services bureau. As part of this enforcement effort, Department of Justice agents will soon begin monitoring retail sales outlets for violations of laws prohibiting the sale of products not on the Directory of Tobacco Products Approved for Sale in Montana. Gambling Control Division investigators now respond to occasional search and seizures requests from Revenue, but the division has no ongoing tobacco enforcement program. In comparison to other western states with high taxes, Montana has little or no enforcement capacity.

Request for Additional Investigative Staff

The Gambling Control Division would add two investigators to the 12.5 existing investigators who now provide law enforcement services related to liquor and gambling. With the addition of two FTEs, all the existing investigators will be cross-trained in tobacco violations. The additional FTEs will allow all of the investigators throughout Montana to devote increased time to tobacco enforcement. In addition to inspections of tobacco vendors, investigators would conduct investigations of alleged smuggling, counterfeit cigarettes, and tobacco products not on the Directory. They also would follow up on referrals from Department of Revenue auditors.

Gambling Control Division investigators typically go to a community within their region to:

- interview new applicants for liquor licenses,
- inspect taverns that have been remodeled and
- inspect other taverns in the vicinity to advise the owners of compliance issues.

Under this proposal, while they were in a particular community, investigators would also:

- conduct a routine check of vendors' tobacco licenses,
- check for tobacco stamps, and
- check for tobacco products not on the Directory.

Funding

The additional two investigators would be funded from the **Tobacco Settlement State Special Account** through the Department the Department of Public Health and Human Services. The amount required to equip two investigators in the field would be:

FY 2006
\$160,395

FY 2007
\$113,043