Montana Department of Revenue

Dan Bucks
Director

Brian Schweitzer
Governor

EXHIBIT 1
DATE 1.16.07
HB

Memorandum

TO: Chairman Bob Lake and Members of the House Taxation Committee

FROM: Jim McKeon, Miscellaneous Tax Unit Manger

DATE: January 16, 2007

SUBJECT: Department responses to questions asked during Tuesday, January 9, 2007 House Taxation Presentation on the Miscellaneous Taxes

During the House Tax Committee informational session on January 9, 2007 House Taxation Committee members requested additional information on various issues relating to the Miscellaneous Taxes administered by the Department of Revenue. Below are the Department's responses to these questions.

Question 1: Has cigarette consumption decreased with increased rates? Follow-up question: Are there higher smoking rates on the Indian reservations that do not pay cigarette taxes? Is this increased consumption due to the lower prices or other factors?

Answer 1: The *2005 Tax Burden on Tobacco Report,* produced by Orzecowski and Walker, reports that the total packs of Tax-Paid Cigarette Sales in Montana dropped from 71.8 million packs in 2000 to 58.8 million packs in 2005. There has also been a decrease in the consumption per capita from 75.5 packs in 2000 to 63.5 packs in 2005. Please see the attached summary of State Tax-Paid Cigarette Sales and Tax-Paid Per Capita Sales in Number of Packs for the period 2000 through 2005.

The Department does not have data on the per capita consumption of cigarette on Indian Reservations that do not pay cigarette taxes. Currently, Montana has two method of distributing cigarettes on the seven Indian Reservations in Montana. These two methods are:

1. quota system
    a. The reservation receives a set number of untaxed exempt cigarettes per month for resale based on a state-tribal agreement entered into between the Department and the Tribe, and
    b. Quota is defined in statute at 15-11-151, MCA and means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement.
2. revenue sharing

a. A state-tribal agreement entered into between the Department and the Tribe to receive tobacco products tax based on the following formula:

Per capita tax * current year tribal enrollment * 150%.

b. See definition of Quota defined in (1) (b) above.

Question 2: Are unused airline tickets included in abandoned property?

Answer 2: This question was presented before other state unclaimed property members during our bi-monthly telephone conference held on Thursday, January 11, 2007. It was determined that federal law exempts airline tickets from state escheat laws. The State of Hawaii attempted to pursue unused airline tickets and was unsuccessful due to the federal exemption.

Question 3: Are the Contractors' Gross Receipts Tax collections shown on page 67 of the draft Biennial Report the gross tax receipts or the net receipts (with the tax credit subtracted from the collection amount)?

Answer 3: The collections shown on page 67 are tax receipts net of funds paid out or reclassified to cover credits against income and property taxes. In other words, the collections shown on page 67 are the tax collections minus any refunds paid out through the income tax credit and personal property tax refund.

Question 4: What is the Department's budget for advertising unclaimed property?

Answer 4: 70-9-810 requires the Department to publish notice in state newspapers throughout the State the names of individuals for which the state received unclaimed property during the preceding year. The Department does not have a specific budget for advertising unclaimed property. The November, 2006 publication cost were $30,027.

Enclosure: Tribal Cigarette Quota Allocations and Recorded Orders for FY 2006
2000 through 2005 Tax-Paid Per Capita Sales in Number of Packs Table
2000 through 2005 State Tax-Paid Cigarette Sales

TRIBAL CIGARETTE QUOTA ALLOCATIONS AND RECORDED ORDERS FOR FY 2006

Cigarette Quota and Total Quota Expended

Reservation	Enrollment (4/2004)	Type of Agreement	Determination of Quota Amounts	Term - Renewal	Expiration Date
(01) Blackfeet - Blackfoot Tribe	9,120	1995 - Revenue Sharing	Revenue sharing is based on Montana Per capita collected in the prior year - per 5/1995 agreement	5 years - annual review	6/30/2011
(02) Crow - Crow Tribe of Indians	7,532	2001 - Cigarette Quota	86,377 cartons/yr Per agreement Jan. 2001, quota is determined by 1997 National per capita	5 years- automatically renewed if no action	1/1/2011
(03) Flathead - Confederated Salish & Kootenai Tribes	4,493	None - MCA, 16-11-155		None	None
(04) Ft. Belknap - Fort Belknap Community Council for the Gros Ventre & Assiniboine Tribes	2,682	Revenue Sharing 10/03		10 year	9/1/2013
(05) Ft. Peck - Assiniboine and Sioux Tribes	6,206	2000 - Revenue Sharing		10 year	1/1/2010
(06) N. Cheyenne - Northern Cheyenne Tribe	4,212	1992 - Cigarette Quota	34,354 cartons/yr Agreement Dec. 1992 quota is determined by a maximum number for 34,354 cartons per year	10 year automatic renewal	1/1/2013
(07) Rocky Boy - Chippewa Cree Tribe	3,519	1992 - Cigarette Quota - Became Revenue Sharing 1/1/2006	18,524 cartons/yr - Per Aug 1992 Agreement quota is based on Montana per capita consumption	5 year automatic renewal - 8/1/97 renewed 5 year automatic renewal - 8/1/2002	8/1/2007

Tribal Quota and Recorded Quota Used/ Or Revenue Distribution

	Enrollment				
(01) Blackfeet - Blackfoot Tribe	9,120	Revenue Sharing	FY 2006 Distribution of Cig & Tobacco	Cigarette $1,141,323.39 Other Tobacco $129,465.62	
(02) Crow - Crow Tribe of Indians	7,532	Revenue Sharing	FY 2006 Distribution of Cig & Tobacco	Cigarette $1,001,898.85 Other Tobacco $113,189.74	
(03) Flathead - Confederated Salish & Kootenai Tribes	4,493	2004 - Quota - 55,380 2005 - Quota - 48,457 2006 - Quota 44,333	2004 - Used - 48,944 2005 - Used - 48,457 2006 - Used - 44,333	Statutory formula to figure quota is: (national average for individual consumption is 65.1 x 150% x enrolled members living on the reservation =4,540 / by 10 to reflect the number of cartons	
(04) Ft. Belknap - Fort Belknap Community Council for the Gros Ventre & Assiniboine Tribes	2,682	Became revenue sharing 10/03	FY 2006 Distribution of Cig & Tobacco	Cigarette $348,818.55 Other Tobacco $39,407.85	
(05) Ft. Peck - Assiniboine and Sioux Tribes	6,206	2000 - Revenue Sharing	FY 2006 Distribution of Cig & Tobacco	Cigarette $807,146.86 Other Tobacco $91,187.60	
(06) N. Cheyenne - Northern Cheyenne Tribe	4,212	2004 - Quota -34,354 2005 - Quota - 34,354 2006 - Quota - 34,354	2004 - Used - 16,905 2005 - Used - 25,288 2006 - Used - 29,462	Per latest agreement Northern Cheyenne Tribes quota is 34,354 annually unless re negotiated.	
(07) Rocky Boy - Chippewa Cree Tribe	3,519	Became Revenue Sharing 1/1/2006	FY 2006 Distribution of Cig & Tobacco	Cigarette $222,503.83 Other Tobacco $25,571.84	

Current fiscal year quarterly tax collections from cigarette and other tobacco products / current year state population = per capita tax X current year tribal enrollment x 150% = quarterly tribal distribution amount (payable within 30 days after the end of each quarter).

Table 11
Tax-Paid Per Capita Sales in Number of Packs
(During Fiscal Years Ending June 30)

State	2000	2001	2002	2003	2004	2005
AL	96.2	90.5	84.8	82.2	87.9	82.4
AK	66.0	65.2	63.7	63.6	63.6	60.2
AZ	58.5	54.1	52.0	48.2	42.5	42.3
AR	99.4	101.7	87.2	91.6	79.8	82.1
CA	41.6	38.0	35.8	34.7	33.1	33.1
CO	73.0	70.4	66.2	63.8	60.7	57.9
CT	71.4	68.7	66.4	59.7	53.1	49.9
DE	140.7	141.4	142.4	184.2	176.0	178.8
DC	50.2	43.9	44.4	45.6	38.4	37.3
FL	82.5	78.6	77.9	76.7	74.2	75.3
GA	88.1	85.9	79.5	83.1	68.1	70.2
HI	31.9	42.8	51.1	51.2	47.4	47.0
ID	66.9	66.7	63.3	64.7	60.8	58.3
IL	70.0	67.1	70.9	51.4	60.0	52.2
IN	125.5	121.4	121.4	101.1	97.7	96.1
IA	88.9	86.5	85.4	85.4	83.7	83.9
KS	79.8	78.1	77.5	60.7	56.3	54.9
KY	156.2	152.6	140.8	175.8	174.4	181.8
LA	104.3	83.1	97.0	82.9	85.6	91.0
ME	82.9	81.2	79.6	74.6	72.4	71.5
MD	57.7	58.1	56.0	49.5	48.9	48.7
MA	58.3	54.8	55.5	47.5	43.6	42.7
MI	83.7	79.2	78.1	72.3	68.5	57.9
MN	76.0	74.2	71.0	71.7	73.0	65.7
MS	97.2	93.9	91.5	91.2	88.4	88.8
MO	113.8	107.8	99.2	106.4	105.0	103.4
Montana MT	75.5	74.8	74.4	71.7	68.0	63.5
NE	77.6	69.8	77.3	68.4	61.8	61.0
NV	93.2	90.5	82.2	86.6	69.9	69.7
NH	147.3	136.1	131.6	146.2	148.4	138.6
NJ	60.1	57.7	58.4	48.1	43.0	37.5
NM	53.8	53.7	52.2	53.5	35.4	35.5
NY	57.8	48.0	46.5	35.3	33.7	32.4
NC	109.0	100.1	98.5	97.7	95.6	93.8
ND	72.5	70.1	68.5	65.7	65.7	66.0
OH	99.9	100.0	96.8	90.2	85.9	89.0
OK	108.9	108.1	102.0	103.0	101.6	98.2
OR	72.0	68.6	66.6	60.9	55.2	53.2
PA	87.9	86.8	86.9	74.7	68.9	62.8
RI	83.1	79.5	74.7	67.3	61.1	49.4
SC	103.9	96.6	97.5	95.7	92.2	94.0
SD	75.1	78.1	75.4	73.2	69.3	68.7
TN	108.7	103.5	103.4	93.2	96.5	97.0
TX	69.3	62.1	58.3	58.9	55.8	55.4
UT	40.7	38.7	40.1	36.5	34.2	33.6
VT	88.9	94.3	93.0	77.9	69.2	63.9
VA	96.7	94.1	92.1	95.5	97.4	82.5
WA	52.8	50.2	45.0	40.1	37.7	37.2
WV	107.9	109.4	110.7	122.2	104.0	102.4
WI	80.1	78.2	75.3	71.0	69.9	70.1
WY	90.5	92.9	93.2	115.5	47.5	76.4
All Taxing States						
Weighted Average*	85.2	81.8	79.8	78.7	76.2	75.0
Median	82.5	78.6	77.5	73.2	68.5	66.0
National**	77.4	73.7	71.7	67.9	65.1	63.3
Adult Per Capita***	104.3	99.2	96.4	91.3	87.6	84.5

*Data for individual states are based on the total number of packages taxed. The population figures used for the states are Census Bureau estimates as of July 1 of the respective fiscal years.

**Figures prior to 1960 are based upon federal dollar collections; from 1960 on figures shown are based upon "taxable removals."

***Adult per capita based on Census Bureau estimates of population aged 18 and over.

Table 10
State Tax-Paid Cigarette Sales
(in Millions of Packs)
(During Fiscal Years Ending June 30)

State	2000	2001	2002	2003	2004	2005
AL	428.3	402.3	378.5	366.8	395.6	372.8
AK	43.1	40.9	40.4	40.4	41.3	39.6
AZ	280.7	277.4	276.1	256.0	237.4	242.7
AR	261.6	271.8	234.8	246.6	219.6	225.8
CA	1,352.7	1,287.6	1,234.9	1,196.1	1,184.0	1,187.2
CO	304.1	302.9	292.6	281.7	276.2	266.4
CT	234.4	234.0	227.4	204.4	185.1	174.6
DE	108.0	110.8	113.4	146.7	143.9	148.4
DC	26.2	25.1	25.4	26.1	21.6	20.7
FL	1,256.9	1,255.8	1,277.3	1,258.2	1,262.5	1,309.3
GA	705.6	703.6	666.2	696.5	591.5	625.8
HI	40.0	51.8	62.6	62.7	59.6	59.4
ID	90.2	86.3	83.6	85.5	83.0	81.3
IL	843.0	833.9	885.2	641.3	759.6*	663.2
IN	758.7	737.9	742.1	617.9	605.1	598.1
IA	257.8	253.0	249.7	249.7	246.4	247.6
KS	213.0	209.9	208.8	163.7	153.5	150.1
KY	624.1	616.8	572.5	714.5	718.3	753.1
LA	461.5	371.5	433.3	370.3	384.7	410.2
ME	104.4	103.6	102.4	96.0	94.5	94.0
MD	304.2	307.8	301.0	266.1	269.3	271.1
MA	361.1	347.8	354.0	303.2	280.5	273.9
MI	809.7	787.0	780.1	722.8	690.0	585.1
MN	367.1	365.0	352.8	356.5	369.2**	334.7
MS	273.6	267.0	261.5	260.5	254.7	257.5
MO	630.4	603.0	558.3	599.1	598.8	595.8
Montana MT	71.8	67.5	67.3	64.9	62.4	58.8
NE	132.2	119.4	132.4	117.2	107.5	106.6
NV	174.3	180.9	173.1	182.3	156.6	162.7
NH	180.4	168.2	165.7	184.2	191.1	180.1
NJ	491.5	485.8	495.2	408.1	371.3	325.3
NM	100.0	97.7	95.4	97.9	66.3	67.6
NY	1,048.7	910.7	884.4	670.7	647.6	624.4
NC	847.6	806.1	806.6	799.7	803.9	801.0
ND	48.0	45.0	43.4	41.7	41.7	42.0
OH	1,130.3	1,135.8	1,101.0	1,026.0	982.5	1,018.7
OK	367.4	373.0	352.8	356.5	356.7	345.8
OR	244.6	234.6	231.3	211.5	196.5	191.2
PA	1,072.6	1,065.4	1,067.4	917.7	852.5	778.7
RI	82.9	83.3	79.1	71.2	65.7	53.4
SC	401.0	387.6	396.2	388.6	382.3	394.4
SD	58.3	58.9	57.1	55.4	53.0	53.0
TN	615.2	588.9	593.6	535.2	563.7	571.7
TX	1,394.6	1,294.7	1,244.3	1,256.3	1,234.6	1,244.7
UT	89.8	86.3	91.0	82.8	80.3	81.4
VT	54.8	57.4	57.0	47.7	42.8	39.7
VA	676.7	666.3	662.1	686.3	719.6	617.0
WA	309.2	295.8	269.5	240.3	231.1	231.6
WV	198.6	197.9	199.5	220.2	188.3	185.7
WI	426.5	419.4	408.3	387.6	384.5	388.4
WY	47.5	45.9	46.1	57.1	23.8	38.6
Total	21,405.0	20,727.2	20,434.9	19,336.3	18,921.9	18,590.4

*IL packs reflect 13 or more months of activity due to conversion to new tax system.
**MN includes June 2004 accelerated payment.