



The MSA does not specify how states use the MSA payments they receive. To date, Montana has used a portion of the payments to fund its tobacco enforcement activities and has directed a significant portion of the remainder to public health programs. Provided the Department of Justice and the Department of Revenue are able to adequately enforce the qualifying statute, reallocating MSA payments to the General Fund should not explicitly affect whether Montana has diligently enforced its qualifying statute. However, the PMs have already signaled their intention to inquire into how the states have spent their MSA payments. To date, Montana has balanced enforcement activities with the underlying public health purposes of the MSA and the qualifying statute. Reallocating funds from public health to the general fund has the potential to impact a court's view of whether the state reached an appropriate balance in using MSA money for protecting the public's health. Therefore this office believes caution is appropriate, especially when the precise boundaries of "diligent enforcement" have not yet been decided.