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HB 513 SHOULD NOT REQUIRE PAYMENT OF TOBACCO TAXES IN ELECTRONIC GOLD CURRENCY

Under Section 8 of House Bill 513 (HB 513), all tobacco tax and related payments to the state are required to be made in electronic gold currency. Although other provisions of the bill *permit* the state and its political subdivisions to conduct certain financial transactions using gold and silver coin or electronic gold currency, tobacco tax payments are the only taxes that are required to be paid using electronic gold currency. Altria Client Services opposes Section 8 of HB 513, because it functions as a tax increase, benefits private businesses at the expense of Montana residents, and is unnecessary for any legitimate state purpose. Further, we believe that Section 8 raises constitutional concerns.

Section 8 is a hidden tax increase on tobacco products. By requiring tobacco taxes to be paid in electronic gold currency, Section 8 significantly increases the cost of making tax payments, due to the commissions and other transaction fees that arise from this mandated use of electronic gold currency.

- Based on our research, electronic gold currency providers charge commissions of up to 5% for exchanging dollars into electronic gold currency, plus other transaction fees.¹
- Thus, retailers and wholesalers would face additional costs when paying any tobacco tax liability.
- This added cost likely will be passed on to adult consumers, like any other tax increase. However, unlike excise or sales taxes, the true cost of this tax will be hidden from adult tobacco consumers.
- This requirement functions as a hidden tax increase on adult consumers who purchase tobacco products, since the increased cost is due to a government mandate.

This mandate benefits private businesses—most of which are located out-of-state--at the expense of Montana residents. The commissions and fees that must be paid to convert legal currency to electronic gold currency will go directly to the privately owned providers of electronic gold currency.

- The bill requires anyone paying tobacco taxes to maintain an account with an electronic gold currency provider that has been designated by the state treasurer.
- Based on our research, we believe most, if not all, of the electronic gold currency providers are located out-of-state. Thus, this bill primarily benefits (and may exclusively benefit) out-of-state business interests at the expense of Montana residents, who must pay the commissions, fees, and related transactions costs.
- Further, it appears that many of these e-currency providers are owned by foreign interests that operate outside the United States.
- Because the state treasurer chooses which companies may serve as electronic gold currency providers, a political appointee has the power to select which private parties benefit from the commissions and fees—the hidden taxes—that ultimately will be borne by adult tobacco consumers in Montana.





The tobacco tax provisions of the bill are unnecessary. The bill asserts that it will protect the state from future currency fluctuations and devaluations. However, the state can achieve the same protection by accepting the taxes in U.S. legal tender (dollars), and then itself converting the tax receipts into gold, silver or electronic gold currency.

- The state does not need to mandate payment by electronic gold currency in order to achieve its asserted goals. Montana could simply convert to electronic gold currency after it receives the tax payments.
- The state should not ask Montana taxpayers to bear the costs of these hidden taxes, especially since the state can achieve its goals by converting its funds to electronic gold currency after the state receives tobacco tax revenues.

The tobacco tax provisions are vulnerable to constitutional challenge. Section 8 likely violates one or more provisions of the United States Constitution because it prohibits payment in United States legal tender currency.

- Under 31 U.S.C. § 5103, the states cannot prohibit the use of U.S. legal tender, including U.S. coins and federal reserve notes, for purposes of payment of obligations. This legal tender provision has been upheld by the Supreme Court, and therefore any contrary state law violates the Supremacy Clause of the U.S. constitution. *See Nixon v. Philipoff*, 615 F. Supp. 890, 893 (N.D. Ind. 1985) (“[T]he states must abide by the dictates of Congress, and because 31 U.S.C. § 5103 declares that federal reserve notes as legal tender, the states are constitutionally compelled to accept them as legal tender,” *citing The Legal Tender Cases*, 110 U.S. 421, 446 (1884), *U.S. v. Rifan*, 577 F.2d 1111, 1113 (8th Cir. 1978)).
- Section 8 may also violate the due process and takings clauses of the U.S. Constitution, because it requires the transfer of money from one set of private parties (retailers, wholesalers, and adult tobacco consumers) to another set of private parties (electronic gold currency exchanges) without providing any governmental benefit that could not otherwise be achieved (for example, by the state’s purchase of electronic gold currency with its own tax revenues).

ⁱ For example, see http://centregold.com/conversion_rates/.



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