

ATTORNEY GENERAL
STATE OF MONTANA

EXHIBIT 3

DATE 02/07/13

HB 2

Tim Fox
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

February 6, 2013

Representative Ryan Osmundson,
Chair Senator Alan Olson, Co-Chair Members
Joint Appropriations-General Government Sub-committee

RE: Proponent for Montana Department of Revenue budget, HB 2

Dear Chairman Osmundson and members of the committee,

The Department of Justice (DOJ) supports the provision in the Department of Revenue's (DOR) Decision Package 701 which requests continued stable funding for three full-time tobacco auditors to continue inspections of tobacco wholesale and retail marketers operating within the State of Montana.

In 1998, Montana was among the Settling States that signed the Master Settlement Agreement (MSA) resolving claims by most of the states against the major cigarette manufacturers. Between 1999 and April 2012, Montana received \$391,740,286.22 pursuant to the terms of the MSA; in 2012 Montana's MSA payment was \$30,202,735.70, and in 2011 the State received \$29,624,899.91.

The MSA offers the tobacco manufacturers a chance to reduce Montana's share of the tobacco companies' annual payments if they can show Montana did not "diligently enforce" tobacco statutes codified at Montana Code Ann. §§ 16-11-401 through 404 ("the Statutes"). DOJ and DOR work collaboratively to enforce these Statutes. The tobacco companies have claimed in the past that adequate funding of enforcement personnel is relevant to whether the State is "diligently enforcing" its Statutes.

In the context of the 2003 diligent enforcement dispute, the tobacco companies have argued that states that have failed to audit tobacco tax collections and sales failed to "diligently enforce" the tobacco statutes, and therefore are subject to reductions in MSA payments. The exact legal nature of what constitutes diligent enforcement has not yet been determined for Montana or any other state.

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Approving the provision of DOR's Decision Package 701 which provides for three full-time tobacco auditors will help protect ongoing MSA settlement payments to Montana.

Sincerely,



GRADEN HAHN
Assistant Attorney General

gh/kw

c: Mr. Gene Walborn
Mr. Jon Bennion