

Legal Underpinnings of State-Tribal Tax Agreements

State Authority

The state entered into agreements with the tribes in Montana pursuant to the State-Tribal Cooperative Agreements Act, 18-11-101, et seq., MCA, and the following statutes:

Gasoline License Tax

15-70-234, et seq., MCA

Taxation of Alcoholic Beverages

Title 16, chapter 1, part 4, MCA

Taxation of Tobacco Products

Title 16, chapter 11, MCA

Oil and Natural Gas Production Tax

15-36-301, et seq., MCA

Tribal Authority

The governing bodies of the tribes in Montana entered into tax agreements with the state under the following provisions of their Constitutions.

Assiniboine and Sioux Tribes of the Fort Peck Reservation

Article VII, Section 1 (2000): Governmental Powers of the Tribal Executive Board: To negotiate with Federal, State and local governments, and others on behalf of the Tribes, and consult with representatives of the Department of the Interior on all activities which may affect the Tribes.

Specific to the Oil and Natural Gas Production Tax Agreement

Article X, Section 8 (2000): Business and Fiscal Authorities: To make and perform contracts and agreements of every description, not inconsistent with law or the provisions of this Constitution and Bylaws, provided that any contract if required by law shall be subject to the approval of the Secretary of the Interior, or his authorized representative.

Blackfeet Tribe

Article VI, Section 1(a) (1978): Powers of the Council: To negotiate with the federal, state and local governments on behalf of the tribe and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Blackfeet Tribe.

Chippewa Cree Indians of the Rocky Boy's Reservation

Article VI, Section 1(a),(f), and (j) (1935): Powers of the Committee:

(a) To negotiate with the Federal, State, and local Governments on behalf of the tribe and to advise and consult with representatives of the Interior Department on all activities of the Department that may affect the Rocky Boy's Reservation.

(f) To manage all economic affairs and enterprises of the Chippewa Cree Tribe, including tribal lands, tribal timber, tribal saw mill, tribal flour mill, tribal community store, and

any other tribal activities, in accordance with the terms of a charter which may be issued to the tribe by the Secretary of the Interior.

(j) To exclude from the restricted lands of the Rocky Boy's Reservation persons not legally entitled to reside therein, under ordinances which shall be subject to review by the Secretary of the Interior.

Confederated Salish and Kootenai Tribes of the Flathead Reservation

Article VI (2004): Power and Duties of the Tribal Council

Crow Tribal Council

Gas Tax Agreement

Article VI, Section 10 (1948): The Crow Tribe, through the Crow Tribal Council, shall have the power to levy, assess and collect taxes and license fees upon non-members of the Crow Tribe doing business within the boundaries of the Crow Indian Reservation, subject to review by the Secretary of the Interior.

Article VII, Section 2 (1948): The Crow Tribal Council is the medium, the body, the tribal organization through which the Crow Tribe speaks to the government and the general public.

Tobacco Tax Agreement

Article IV, Section 3(a), (c), and (k) (2002): Enumerated Powers: The Executive Branch shall exercise the following powers and responsibilities herein provided, subject to any limitations imposed upon such powers by the statutes and laws of the United States:

(a) represent the Crow Tribe of Indians in negotiation with Federal, State and local governments and other agencies, corporations, associations, or individuals in matters of welfare, education, recreation, social services and economic development affecting the Crow Tribe of Indians;

(c) engage in any business that will further the economic well-being of the members of the Tribe and undertake any economic development activity which does not conflict with the provisions of the Constitution;

(k) negotiate and approve limited waivers of sovereign immunity when such a waiver is necessary for business purposes in accordance with Article V, Section 2(f) of this Constitution.

Fort Belknap Indian Community of the Fort Belknap Reservation

Article V, Section 1(a) (1935): Powers of the Community Council: To negotiate with the Federal, State, and local governments on behalf of the community and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Fort Belknap Community.

Northern Cheyenne Tribe

Article IV, Section 1(a) (1935, amended 1960, 1996): Powers of the Tribal Council: To negotiate with the Federal, State, and local governments, on behalf of the Tribe, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Northern Cheyenne Indian Reservation.

| State-Tribal Tobacco Tax Agreements | | | | | | | | |
|-------------------------------------|--|--|--|--|---|---|--|---|
| | Effective Date | Tax Formula | Enrollment Calculation | # of Enrolled Members on Effective Date | Current # of Enrolled Members (CY 2014) | Agreement Expires | Termination | Enforcement Venue |
| Blackfeet | 8/1/2005; amended October 2005 and January 2012 | 150% of the Montana per capita tobacco tax collected per quarter multiplied by the total number of enrolled tribal members living on the reservation | By affidavit, the Nation's Enrollment Office certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries | 9,120 (2005) | 9,473 | 6/30/2015; remains in effect until a new agreement is reached or upon cancellation with 30 days' written notice | May be terminated by either party with 5 years' notice without cause or 30 days' notice with cause | US District Court, Great Falls, or, if it lacks jurisdiction, a MT State District Court |
| Crow | 6/1/2005; amended 2007 | same | Use Crow Tribal enrollment population as well as members' place of residence as determined by a methodology set out by the Tribe and approved of in the state audit of the methodology; Tribe shall certify by March 31 of each year | 7,543 (2007) + # of members with US Post Office Box in Hardin determined by state audit to reside on reservation | 9,080 | 12/31/2016; automatically renewed for 10 years if no action taken by either party | May be terminated by either party at the end of a quarter with 60 days' notice | US District Court, Billings, or, if it lacks jurisdiction, a MT State District Court |
| Fort Belknap | 10/1/2003; amended 2005 and December 2011 | same | The Tribal Enrollment Office certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries | 2,682 (2005) | 4,546 | 1 year; automatically renewed for successive 1-year terms if no action taken by either party | May be terminated at the end of a quarter with 30 days' notice | US District Court, Great Falls |
| Fort Peck | amended and effective 6/1/2005; amended March 2012 | same | By affidavit, the Tribal Enrollment Office certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries | Not noted in agreement | 7,116 | 6/30/2015; remains in effect until parties renegotiate or terminate | May be terminated with 30 days' notice | US District Court, Great Falls |
| Northern Cheyenne | 3/20/2012 | same | Affidavit by the Tribal Enrollment Director certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries; includes those with off-reservation mailing addresses | 4,862 (2011) | 4,939 | 10 years; automatically renews for another 10 years if parties don't meet prior to expiration date | May be terminated by either party at the end of a quarter with 30 days' notice | MT State District Court |

| State-Tribal Tobacco Tax Agreements | | | | | | | | |
|-------------------------------------|---|-------------|---|---|---|--|--|---|
| | Effective Date | Tax Formula | Enrollment Calculation | # of Enrolled Members on Effective Date | Current # of Enrolled Members (CY 2014) | Agreement Expires | Termination | Enforcement Venue |
| Rocky Boy's | 1/1/2006; amended 2006, September 2011, and December 2011 | same | Affidavit by the Tribal Enrollment Director certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries; Total Resident Enrollment shall be determined by using the Tribe's then-current enrollment list, the most recent voting list for Tribal elections, and other written sources as appropriate; includes enrolled members living on the reservation who have off-reservation mailing addresses | 3,800 (2011) | 4,043 | 12/31/2021; six months prior to expiration, parties should meet to negotiate renewal | May be terminated by either party with 5 years' notice without cause or 30 days' notice with cause | US District Court, Great Falls, or, if it lacks jurisdiction, a MT State District Court |

| State-Tribal Alcohol Tax Agreements | | | | | | | | |
|-------------------------------------|---|---|---|---|---|---|--|---|
| | Effective Date | Tax Formula | Enrollment Calculation | # of Enrolled Members on Effective Date | Current # of Enrolled Members (CY 2014) | Agreement Expires | Termination | Enforcement Venue |
| Blackfeet | 8/1/2005; amended October 2005 and January 2012 | The tax distributed to the state general fund on Montana per capita consumption of liquor, beer, and wine for the quarter multiplied by the total number of enrolled tribal members living on the reservation | By affidavit, the Nation's Enrollment Office certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries | 9,120 (2005) | 9,473 | 6/30/2015; remains in effect until a new agreement is reached or until it's canceled with 30 days' notice by either party | May be terminated by either party with 5 years' notice without cause or 30 days' notice with cause | US District Court, or if it lacks jurisdiction, a MT state district court |
| CSKT | 7/1/2014 | same | By affidavit, the Tribal Enrollment Office certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries | 5,321 | 5,321 | 7/1/2024; remains in effect until a new agreement is reached or until it's canceled with 30 days' notice by either party | May be terminated by either party with 5 years' notice without cause or 30 days' notice with cause | US District Court, or if it lacks jurisdiction, a MT state district court |
| Fort Belknap | 7/1/1993; amended October 2003, March 2008, and March 2012 | same | The Tribal Enrollment Office certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries | 3,094 (2008) | 4,546 | rolls year to year... | May be terminated upon 30 days' written notice | Not noted in agreement |
| Fort Peck | 10/1/2002; amended June 2003, March 2004, and December 2011 | same | By affidavit, the Tribal Enrollment Office certifies by March 31 of each year the # of all enrolled members physically residing within reservation boundaries | Not noted in agreement | 7,116 | 10 years from 10/1/2003; remains in effect for successive 10 year periods if neither party terminates or if the parties fail to renew | May be terminated upon written notice to the other party | Not noted in agreement |

State-Tribal Gas Tax Agreements

| | Effective Date | Tax Formula | Enrollment Calculation | # of Enrolled Members on Effective Date | Current # of Enrolled Members (FY 2016) | Agreement Expires | Termination | Enforcement Venue |
|---------------------|-------------------------------------|--|---|--|---|---|--|---|
| Blackfeet | October 2005; amended January 2012 | Montana per capita gasoline license tax multiplied by the number of enrolled members residing on the reservation minus a 1% administration fee; the per capita gasoline license tax is based on the prior fiscal year's gross sum of gasoline license taxes collected, adjusted by any refunds, credits, corrections, and audits and minus statutory and legislative allocations (e.g. 16% to local governments) and divided by the state population | By affidavit, the Tribe certifies to the state by March 31 of each year the number of all enrolled members physically residing within the reservation | 9,120 (2005) | 9,556 | 6/30/2015; remains in effect until a new agreement is reached or until it's canceled with 30 days' written notice | May be terminated by either party with 5 years' written notice without cause or 30 days' written notice with cause | US District Court, Great Falls, or, if it lacks or declines jurisdiction, a MT state district court |
| Crow | November 2000; amended March 2007 | same | Determined by using the Crow Tribal enrollment population as well as the members' place of residence as determined by a methodology set out by the Tribe and approved of in the State audit of the methodology; certified to the state by March 31 of each year | 7,543 (2007) plus the # of members who have a US Post Office Box address in Hardin | 9,080 | 12/31/2016; automatically renews for successive 10-year terms if no action taken | May be terminated at the end of a quarter by either party with 60 days' written notice | Not noted in agreement |
| CSKT | 8/30/2012 | same | By affidavit, the Tribes certify to the state by March 31 of each year the number of all enrolled members physically residing within the reservation | 5,321 (2012) | 5,340 | 9/8/2022; remains in effect until a new agreement is reached or on 30 day written notice that it is canceled | May be terminated by either party with 5 years' written notice without cause or 30 days' written notice with cause | US District Court, or, if it lacks or declines jurisdiction, a MT state district court |
| Fort Belknap | October 2009; amended December 2011 | same | By affidavit, the Tribes certify to the state by March 31 of each year the number of all enrolled members physically residing within the reservation | 3,300 (2009) | 4,546 | 6/30/2019; remains in effect until new agreement reached or on 30 days' written notice that it is canceled | May be terminated by either party with 1 year's written notice without cause or 30 days' with cause | US District Court, Great Falls, or, if it lacks or declines jurisdiction, a MT state district court |
| Fort Peck | March 2011; amended February 2012 | same | By affidavit, the Tribes certify to the state by March 31 of each year the number of all enrolled members physically residing within the reservation | 6,884 (2011) | 7,116 | 10 years | May be terminated on 30 days' written notice by either party | Not noted in agreement |

State-Tribal Gas Tax Agreements

| | Effective Date | Tax Formula | Enrollment Calculation | # of Enrolled Members on Effective Date | Current # of Enrolled Members (FY 2016) | Agreement Expires | Termination | Enforcement Venue |
|--------------------------|---|-------------|--|---|---|--|--|------------------------|
| Northern Cheyenne | July 2010; amended December 2011 | same | By affidavit, the Tribe certifies to the state by March 31 of each year the number of all enrolled members physically residing within the reservation; the enrollment number is determined by using the Tribe's enrollment list, the most recent reservation voters' list for tribal elections, and other written sources as appropriate; enrolled members residing on the reservation who have off-reservation mail addresses shall be included | 4,862 (2011) | 4,939 | 10 years | May be terminated on 30 days' written notice by either party | Not noted in agreement |
| Rocky Boy's | January 2006; amended May 2006, 2011, and January 2012 | same | By affidavit, the Tribe certifies to the state by March 31 of each year the number of all enrolled members physically residing within the reservation | 3,519 (2006) | 4,053 | 12/31/2021; remains in effect until a new agreement is reached or until it's canceled with 30 days' written notice | May be terminated by either party with 5 years' written notice without cause or 30 days' written notice with cause | Not noted in agreement |

| | | Gas Tax Payment Calculation (FY 2016) | | | | | | | |
|--|--------------------|---------------------------------------|---------------|---------------|-----------------|---------------|---------------|-------------------|-----------------|
| | | Blackfeet | Chippewa Cree | CSKT | Crow | Fort Belknap | Fort Peck | Northern Cheyenne | Total |
| Gas tax received FY 2015 | \$ 136,354,064.00 | | | | | | | | |
| Less: gas tax refunds | \$ (1,793,878.00) | | | | | | | | |
| Less: statutory government allocations | \$ (21,529,630.00) | | | | | | | | |
| Net state retained gas tax | \$ 113,030,556.00 | | | | | | | | |
| Divided by avg MT population | | 1,021,114 | 1,021,114 | 1,021,114 | 1,015,165 | 1,021,114 | 1,021,114 | 1,021,114 | |
| Gasoline tax dollars paid per capita | | \$ 110.69 | \$ 110.69 | \$ 110.69 | \$ 111.34 | \$ 110.69 | \$ 110.69 | \$ 110.69 | |
| Multiplied by enrolled members living on reservation | | 9,556 | 4,053 | 5,340 | 9,080 | 4,546 | 7,116 | 4,939 | |
| Tribal shares of gas tax before administrative costs | | \$ 1,057,753.64 | \$ 448,626.57 | \$ 591,084.60 | \$ 1,010,967.20 | \$ 503,196.74 | \$ 787,670.04 | \$ 546,697.91 | \$ 4,945,996.70 |
| Less: 1% administration fee* | | \$ (10,577.54) | \$ (4,486.27) | \$ (5,910.85) | \$ (10,109.67) | \$ (5,031.97) | \$ (7,876.70) | \$ (5,466.98) | \$ (49,459.97) |
| Tribal share of gas tax | | \$ 1,047,176.10 | \$ 444,140.30 | \$ 585,173.75 | \$ 1,000,857.53 | \$ 498,164.77 | \$ 779,793.34 | \$ 541,230.93 | \$ 4,896,536.73 |
| Quarterly amount | | \$ 261,794.03 | \$ 111,035.08 | \$ 146,293.44 | \$ 250,214.38 | \$ 124,541.19 | \$ 194,948.33 | \$ 135,307.73 | \$ 1,224,134.18 |

| *Additional Distribution - Unused Administration Fees (FY 2015) | |
|---|--------------|
| Blackfeet | \$ 6,644.45 |
| Chippewa Cree | \$ 2,831.35 |
| CSKT | \$ 3,692.20 |
| Crow | \$ 6,390.46 |
| Fort Belknap | \$ 3,181.64 |
| Fort Peck | \$ 4,980.33 |
| Northern Cheyenne | \$ 3,456.69 |
| Total | \$ 31,177.12 |

**Tribal Revenue Sharing Distributions for
Tobacco and Alcohol Agreements FY 2010-2015**

| <u>TRIBE</u> | <u>REVENUE TYPE</u> | <u>FY2010</u> | <u>FY2011</u> | <u>FY2012</u> | <u>FY2013</u> | <u>FY2014</u> | <u>FY2015</u> | <u>Total Tobacco</u> | <u>Total Alcohol</u> |
|--------------------------------|----------------------|---------------|---------------|---------------|---------------|---------------|---------------|----------------------|----------------------|
| FORT PECK | TOBACCO DISTRIBUTION | \$945,508 | \$903,870 | \$951,091 | \$932,228 | \$902,767 | \$894,376 | \$5,529,840 | \$ 865,435 |
| | ALCOHOL DISTRIBUTION | \$150,403 | \$145,934 | \$155,313 | \$155,508 | \$125,501 | \$132,776 | | |
| BLACKFEET | TOBACCO DISTRIBUTION | \$1,257,287 | \$1,197,457 | \$1,242,363 | \$1,232,233 | \$1,198,110 | \$1,195,526 | \$7,322,976 | \$ 1,287,167 |
| | ALCOHOL DISTRIBUTION | \$198,139 | \$198,501 | \$207,816 | \$223,226 | \$225,331 | \$234,154 | | |
| CROW | TOBACCO DISTRIBUTION | \$1,108,813 | \$1,059,837 | \$1,069,949 | \$1,057,040 | \$1,025,086 | \$1,145,674 | \$6,466,399 | |
| | ALCOHOL DISTRIBUTION | N/A | N/A | N/A | N/A | N/A | N/A | | |
| ROCKY BOYS | TOBACCO DISTRIBUTION | \$487,131 | \$462,045 | \$526,362 | \$522,577 | \$512,913 | \$508,737 | \$3,019,765 | |
| | ALCOHOL DISTRIBUTION | N/A | N/A | N/A | N/A | N/A | N/A | | |
| FORT BELKNAP | TOBACCO DISTRIBUTION | \$426,541 | \$406,242 | \$460,368 | \$439,852 | \$493,952 | \$571,365 | \$2,798,321 | \$ 444,379 |
| | ALCOHOL DISTRIBUTION | \$67,239 | \$67,343 | \$76,987 | \$79,675 | \$71,419 | \$81,716 | | |
| NORTHERN CHEYENNE | TOBACCO DISTRIBUTION | N/A | N/A | \$180,213 | \$647,031 | \$626,583 | \$620,759 | \$2,074,587 | |
| | ALCOHOL DISTRIBUTION | N/A | N/A | N/A | N/A | N/A | N/A | | |
| CSKT | TOBACCO DISTRIBUTION | N/A | N/A | N/A | N/A | N/A | N/A | | \$ 131,208 |
| | ALCOHOL DISTRIBUTION | N/A | N/A | N/A | N/A | N/A | \$131,208 | | |
| Total FY 2010 - FY 2015 | | | | | | | | \$27,211,887 | \$ 2,728,189 |

Federal Transportation Funding Payments to Tribes in Montana

Federal Highway Authority (FHA) Funding FY 2015*

| Tribal Name | Tribal Share Allocation | 2% for Tribal Transportation Planning |
|---------------------------------------|----------------------------|---|
| Assiniboine & Sioux Tribes-Fort Peck | \$4,557,576.29 | \$103,581.28 |
| Blackfeet Tribe | \$2,706,995.79 | \$61,522.63 |
| Chippewa Cree Indians - Rocky Boy's | \$1,687,310.60 | \$38,347.97 |
| Confederated Salish & Kootenai Tribes | \$1,206,240.38 | \$27,414.55 |
| Crow | \$5,232,276.91 | \$118,915.38 |
| Fort Belknap Indian Community | \$2,467,516.84 | \$56,079.93 |
| Northern Cheyenne Tribe | \$2,098,713.00 | \$47,698.02 |
| Total | \$19,956,629.82 | \$453,559.77 |

Tribal Transportation Safety Awards

| Tribal Name | Total Award Amount |
|--|-----------------------|
| Confederated Salish and Kootenai Tribes of the Flathead Nation | \$167,751.00 |
| Fort Belknap Indian Community | \$639,500.00 |
| Fort Peck Assiniboine Sioux Tribes | \$234,500.00 |
| Northern Cheyenne | \$70,900.00 |
| | \$1,112,651.00 |

Tribal Transportation Bridge Award

| Tribal Name | Total Award Amount |
|-----------------|---------------------|
| Blackfeet Tribe | \$262,500.00 |
| | \$262,500.00 |

Transportation Investment Generating Economic Recovery Grants

| Tribal Name | Total Award Amount |
|------------------------------------|---------------------|
| Fort Peck Assiniboine Sioux Tribes | \$692,829.00 |
| | \$692,829.00 |

*This FHA funding flows directly to Fort Peck and CSKT and through the BIA for other tribes in Montana.

Federal Transportation Funding Payments to Tribes in Montana

Federal Transit Authority (FTA) Funding FY 2015**

| Tribal Name | Total Award Amount |
|--------------------------------------|---------------------------|
| Blackfeet Tribe | \$307,661.00 |
| Confederated Salish and Kootenai | |
| Tribes of the Flathead Nation | \$726,291.00 |
| Assiniboine & Sioux Tribes-Fort Peck | \$310,602.00 |
| Crow (for FY 2014 services) | \$49,456.00 |
| | \$1,394,010.00 |

**This FTA funding flows through the Montana Department of Transportation.

According to MDT, FTA funding is used to provide three types of services:

1. Fixed Routes provide public transportation service along a predetermined route according to a fixed schedule.
2. Commuter Fixed Route Service is fixed route service that is provided a couple of hours in the morning and a couple of hours in the early evening to provide services primarily to get to work and home
3. Demand Response is any non-fixed route system transporting individuals that requires advanced scheduling. An advance request for service is a key characteristic of this type of service.

Below are the services that Blackfeet, CSKT, Fort Peck, and Crow provide along with their last year's ridership numbers.

| Tribe | Service | SFY 15 Rides |
|--------------|--|---------------------|
| Blackfeet | Demand Response | 12,422 |
| CSKT | Intercity, Commuter Fixed Route, and Demand Response | 49,392 |
| Fort Peck | Commuter Fixed Route and Demand Response | 79,482 |
| Crow | Demand Response | 16,537 (SFY 14) |