

HOUSE BILL NO. 413  
INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF CIGARETTES AND OTHER TOBACCO PRODUCTS; INCREASING THE CIGARETTE TAX FROM 18 CENTS TO \$1 ON A PACK OF CIGARETTES; REVISING THE DISTRIBUTION OF THE CIGARETTE TAX; PROVIDING THAT A PORTION OF THE CIGARETTE TAX INCREASE BE ALLOCATED TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR STATE MATCHING FUNDS FOR MEDICAID-FUNDED MENTAL HEALTH SERVICES AND FOR PROVIDING MENTAL HEALTH SERVICES FOR PERSONS WHO ARE AT OR BELOW 150 PERCENT OF THE FEDERAL POVERTY LEVEL; PROVIDING THAT A PORTION OF THE CIGARETTE TAX INCREASE BE DEPOSITED IN THE GENERAL FUND; ADJUSTING THE CIGARETTE TAX INSIGNIA DISCOUNTS; ESTABLISHING A TAX ON MOIST SNUFF; PROVIDING THAT THE TAX ON MOIST SNUFF IS 83 CENTS AN OUNCE; INCREASING THE TAX ON OTHER TOBACCO PRODUCTS FROM 12.5 PERCENT TO 62.5 PERCENT OF THE WHOLESALE PRICE; ADJUSTING THE WHOLESALERS' DISCOUNT FOR TOBACCO PRODUCTS; AMENDING SECTIONS 16-11-111, 16-11-114, 16-11-119, 16-11-201, 16-11-202, AND 16-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 16-11-111, MCA, is amended to read:

**"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~18 cents~~ \$1 on each package containing 20 cigarettes, ~~and, when~~ Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit

for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a ~~credit or refund~~ or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

**Section 2.** Section 16-11-114, MCA, is amended to read:

**"16-11-114. Insignia discount.** Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(1) ~~6%~~ 1.08% for the first 2,580 cartons or portion ~~thereof~~ of 2,580 cartons purchased in any calendar month;

(2) ~~4%~~ 0.72% for the next 2,580 cartons or portion ~~thereof~~ of 2,580 cartons purchased in any calendar month; and

(3) ~~3%~~ 0.54% for purchases in excess of 5,160 cartons in any calendar month."

**Section 3.** Section 16-11-119, MCA, is amended to read:

**"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111 must,

in accordance with the provisions of 15-1-501, be ~~allocated~~ deposited as follows:

(1) ~~The amount of 11.11% of the cigarette tax collected on each package of cigarettes must be deposited 2.55%~~ in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(2) ~~The amount of 73.04% must, in accordance with the provisions of 15-1-501, be deposited 63.8%~~ in the state general fund;

(3) ~~The amount of 15.85% must, in accordance with the provisions of 15-1-501, be deposited 3.65%~~ in the long-range building program account provided for in 17-7-205; and

(4) 30% in the state special revenue fund to the credit of the department of public health and human services for state matching funds for medicaid-funded mental health services and for providing mental health services under 53-21-702 for persons with incomes at or below 150% of the federal poverty level."

**Section 4.** Section 16-11-201, MCA, is amended to read:

**"16-11-201. Definitions.** As used in this part, the following definitions apply, unless the context requires otherwise:

(1) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.

(2) "Retailer" means any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

~~(2)~~(3) "Sale" or "sell" means any transfer of tobacco products for a consideration, exchange, barter, gift, offer for sale, or distribution, in any manner or by any means.

~~(3)~~(4) "Tobacco product" means a substance other than cigarettes that is intended for human consumption and that contains tobacco.

~~(4)~~(5) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or other reduction.

~~(5)~~(6) "Wholesaler" means any person who purchases tobacco products directly from the manufacturer or from any other person who purchases from the manufacturer and who acquires the products for sale to retail dealers."

**Section 5.** Section 16-11-202, MCA, is amended to read:

**"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of**

**tax.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. ~~Any~~ A person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of ~~42 1/2%~~ 62.5% of the wholesale price, to the wholesaler, of all tobacco products, other than moist snuff to the wholesaler. The tax on moist snuff is 83 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax."

**Section 6.** Section 16-11-206, MCA, is amended to read:

**"16-11-206. Wholesaler's discount -- disposition of taxes.** The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a ~~5%~~ 1.2% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

NEW SECTION. **Section 7. Transition.** All wholesalers, distributors, and retailers shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory subject to tax held by them on July 1, 2003, that exceeds all inventory subject to tax held by them on the last day of their most recently concluded income tax reporting year.

NEW SECTION. **Section 8. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 10. Applicability.** [This act] applies to sales of cigarettes and other tobacco products after June 30, 2003.

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