

HOUSE BILL NO. 750

INTRODUCED BY R. BROWN, BITNEY, FORRESTER, KEENAN, MANGAN, MOOD, A. OLSON, SHEA,
F. THOMAS, YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT TEMPORARILY INCREASING THE TAX ON CIGARETTES;
REVISING THE ALLOCATION OF CIGARETTE TAXES; TEMPORARILY REVISING THE INSIGNIA DISCOUNT;
TRANSFERRING UP TO \$29 MILLION FROM THE COAL SEVERANCE TAX TRUST FUND TO THE GENERAL
FUND FOR PURPOSES OF APPROPRIATION; APPROPRIATING FUNDS FOR CERTAIN STATE PROGRAMS
FOR THE 2004-05 FISCAL BIENNIUM; AMENDING SECTIONS 16-11-111, 16-11-114, AND 16-11-119, MCA;
AND PROVIDING AN EFFECTIVE 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.

(b) The tax on each package containing 20 cigarettes is: 18 cents on each package containing 20 cigarettes and, when packages contain

(i) beginning July 1, 2003, through June 30, 2005, 43 50 cents; and

(ii) after June 30 BEGINNING JULY 1, 2005, 48 25 cents; AND

(III) BEGINNING JULY 1, 2013, 18 CENTS.

(c) Whenever a package contains other than 20 cigarettes, a the tax on each cigarette equal to is 1/20th of the tax on a package containing 20 cigarettes.

(b)(d) The tax computed under subsection (1)(a) subsections (1)(b) and (1)(c) 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. 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) 2.26% from July 1, 2003, through June 30, 2005, 4.36% from July 1, 2005, through June 30, 2013, and after that date 6% for the first 2,580 cartons or portion thereof of 2,580 cartons purchased in any calendar month;

(2) 1.51% from July 1, 2003, through June 30, 2005, 2.91% from July 1, 2005, through June 30, 2013, and after that date 4% for the next 2,580 cartons or portion thereof of 2,580 cartons purchased in any calendar month; and

(3) 1.13% from July 1, 2003, through June 30, 2005, 2.18% from July 1, 2005, through June 30, 2013, and after that date 3% 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 be allocated as follows:

(1) The ~~amount of 11.11%~~ following amounts of the cigarette tax collected on each package of cigarettes must be deposited 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:

(a) from July 1, 2003, through June 30, 2005, ~~4.65%~~ 3.92%; and

(b) after June 30 BEGINNING JULY 1, 2005, ~~11.11%~~ 7.84%; AND

(c) BEGINNING JULY 1, 2013, 11.11%.

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

(a) from July 1, 2003, through June 30, 2005, ~~88.72%~~ 80.16%; and

(b) after June 30 BEGINNING JULY 1, 2005, ~~73.04%~~ 60.01%; AND

(c) BEGINNING JULY 1, 2013, 73.04%.

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

(a) from July 1, 2003, through June 30, 2005, ~~6.63%~~ 5.59%; and

(b) after June 30 BEGINNING JULY 1, 2005, ~~15.85%~~ 11.19%; AND

(c) BEGINNING JULY 1, 2013, 15.85%.

(4) FROM JULY 1, 2003, THROUGH JUNE 30, 2005, THE AMOUNT OF 10.33% MUST BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND PROVIDED FOR IN 17-5-703, AND FROM JULY 1, 2005, THROUGH JUNE 30, 2013, 20.96% MUST BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND PROVIDED FOR IN 17-5-703."

NEW SECTION. **Section 4. Fund transfer from coal severance tax trust fund.** (1) There is transferred up to \$29 million from the coal severance tax trust fund to the general fund prior to June 30, 2004, for appropriation. The office of budget and program planning shall determine the timing of transfers and the amount to be transferred subject to the \$29 million limit.

(2) PRIOR TO MAKING THE TRANSFER AUTHORIZED IN THIS SECTION, THE BUDGET DIRECTOR SHALL ENTER INTO AN IRREVOCABLE CONTRACT WITH THE DIRECTOR OF THE DEPARTMENT OF REVENUE THAT INCORPORATES THE PROVISIONS OF [SECTION 6] AND 16-11-119(4). THE TRANSFER AUTHORIZED IN THIS SECTION MAY NOT BE MADE UNTIL THE IRREVOCABLE CONTRACT HAS BEEN EXECUTED.

NEW SECTION. SECTION 5. 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 6. PLEDGE. IN ACCORDANCE WITH THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF MONTANA, THE STATE PLEDGES THAT IT WILL NOT IN ANY WAY IMPAIR THE OBLIGATIONS OF ANY AGREEMENT BETWEEN THE BUDGET DIRECTOR AND THE DEPARTMENT OF REVENUE CONCERNING THE LEVY, COLLECTION, AND DEPOSIT OF CIGARETTE TAXES.

NEW SECTION. Section 7. Appropriations. The following amounts are appropriated as biennial appropriations from the general fund for the fiscal biennium beginning July 1, 2003, and ending June 30, 2005:

- (1) ~~\$29 million~~ \$4,625,445 to the department of public health and human services;
- (2) ~~\$5 million~~ \$8,194,680 to the Montana university system;
- (3) ~~\$11 million~~ \$6,630,586 to the department of corrections; ~~and~~
- (4) ~~\$5,126,448~~ TO THE OFFICE OF PUBLIC INSTRUCTION;
- ~~(4)(5)~~ ~~\$4 million~~ \$3,600,000 to the judiciary;
- (6) ~~\$2,034,940~~ TO THE LEGISLATIVE BRANCH;
- (7) ~~\$581,197~~ TO THE GOVERNOR'S OFFICE;
- (8) ~~\$6,404~~ TO THE COMMISSIONER OF POLITICAL PRACTICES;
- (9) ~~\$1,071,153~~ TO THE DEPARTMENT OF REVENUE;
- (10) ~~\$135,075~~ TO THE DEPARTMENT OF ADMINISTRATION;
- (11) ~~\$19,653~~ TO THE APPELLATE DEFENDER COMMISSION;
- (12) ~~\$511,867~~ TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS;
- (13) ~~\$823,858~~ TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY;
- (14) ~~\$10,597~~ TO THE DEPARTMENT OF LIVESTOCK;
- (15) ~~\$1,687,300~~ TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION;
- (16) ~~\$68,882~~ TO THE DEPARTMENT OF AGRICULTURE;
- (17) ~~\$1,114,085~~ TO THE DEPARTMENT OF COMMERCE;
- (18) ~~\$32,922~~ TO THE CRIME CONTROL DIVISION;
- (19) ~~\$590,092~~ TO THE DEPARTMENT OF JUSTICE;

(20) \$198,725 TO THE DEPARTMENT OF LABOR AND INDUSTRY;

(21) \$46,926 TO THE DEPARTMENT OF MILITARY AFFAIRS;

(22) \$33,343 TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND;

(23) \$46,252 TO THE MONTANA ARTS COUNCIL;

(24) \$371,695 TO THE MONTANA STATE LIBRARY COMMISSION; AND

(25) \$34,887 TO THE MONTANA HISTORICAL SOCIETY.

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. Three-fourths vote required. Because [section 3 4] transfers funds from the coal severance tax trust fund to the general fund for appropriation by a majority vote, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

NEW SECTION. Section 10. Effective date. [This act] is effective July 1, 2003.

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