

HOUSE BILL NO. 763  
INTRODUCED BY K. GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT TEMPORARILY INCREASING THE TAX ON CIGARETTES; TRANSFERRING UP TO \$29 MILLION FROM THE COAL SEVERANCE TAX TRUST FUND TO THE GUARANTEE ACCOUNT FOR PURPOSES OF APPROPRIATION; TEMPORARILY REVISING THE INSIGNIA DISCOUNT; REQUIRING AN IRREVOCABLE CONTRACT PRIOR TO MAKING THE FUND TRANSFER; PROVIDING AN APPROPRIATION FOR COMMUNITY COLLEGES; 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 the latest date provided in 16-11-119(4), 65 cents; and

(ii) after the latest date provided in 16-11-119(4), 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) 1.77% from June 30, 2003, through the latest date provided in 16-11-119(4) and after that date 6% for the first 2,580 cartons or portion thereof of 2,580 cartons purchased in any calendar month;

(2) 1.19% from June 30, 2003, through the latest date provided in 16-11-119(4) 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) 0.89% from June 30, 2003, through the latest date provided in 16-11-119(4) 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 the latest date provided in subsection (4), 3.05%; and

(b) after the latest date provided in subsection (4), 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 the latest date provided in subsection (4), 82.19%; and

(b) after the latest date provided in subsection (4), 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 the latest date provided in subsection (4), 4.36%; and

(b) after the latest date provided in subsection (4), 15.85%.

(4) The amount of 10.40% must be deposited in the coal severance tax trust fund from July 1, 2003, through the later of June 30, 2013, or the date on which a total of \$29 million plus interest of 6.75% a year is deposited under this subsection."

**NEW SECTION. Section 4. 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 5. Fund transfer from coal severance tax trust fund.** (1) Prior to June 30, 2004, there is transferred up to \$29 million from the coal severance tax trust fund to the guarantee account provided for in 20-9-622, which is statutorily appropriated. 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 4] 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 6. Appropriation.** There is appropriated from the general fund to the board

of regents of higher education \$500,000 for each fiscal year of the biennium beginning July 1, 2003, to be used for funding community colleges.

NEW SECTION. **Section 7. 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 8. Three-fourths vote required.** Because [section 5] transfers funds from the coal severance tax trust fund to the guarantee account to allow 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 9. Effective date.** [This act] is effective July 1, 2003.

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