

1 SENATE BILL NO. 122  
2 INTRODUCED BY G. HERTZ

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF CIGARS; PROVIDING THE  
5 PREMIUM CIGAR TAX MAY NOT EXCEED A SPECIFIC AMOUNT FOR EACH PREMIUM CIGAR; DEFINING  
6 "PREMIUM CIGAR"; AMENDING SECTIONS 16-11-102 AND 16-11-111, MCA; AND PROVIDING AN  
7 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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11 Section 1. Section 16-11-102, MCA, is amended to read:

12 "16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context  
13 requires otherwise:

- 14 (a) "Contraband" means:
  - 15 (i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired,
  - 16 transported, imported, or caused to be imported in violation of this part;
  - 17 (ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed,
  - 18 held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or 5;
  - 19 (iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;
  - 20 (iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or
  - 21 (v) any cigarettes or tobacco products that violate 16-10-306.

22 (b) "Department" means the department of revenue provided for in 2-15-1301.

23 (c) "Person" means an individual, firm, partnership, corporation, association, company, committee,  
24 other group of persons, or other business entity, however formed.

25 (2) As used in this part, the following definitions apply, unless the context requires otherwise:

26 ~~(a) (i) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing~~  
27 ~~tobacco.~~

28 ~~(ii) The term does not include a cigarette.~~

1 (i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to  
2 subjobbers, tobacco product vendors, wholesalers, or retailers; or

3 (ii) purchases tobacco products from a sole distributor, another wholesaler, or any other person for  
4 the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers."  
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6 **Section 2.** Section 16-11-111, MCA, is amended to read:

7 **"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to**

8 **tribal member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than  
9 resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the  
10 state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain  
11 other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20  
12 cigarettes.

13 (b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-  
14 307.

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

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

18 (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes  
19 to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or  
20 credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian  
21 tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the  
22 shipment date forfeits the refund or credit.

23 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a  
24 system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for  
25 approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on  
26 whether the quota, as established in a cooperative agreement between the department and an Indian tribe or  
27 as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing  
28 proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes

1 to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once  
2 the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on  
3 that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of  
4 the quota period. Quota allocations are not transferable between quota periods or between reservations.

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

10 (7) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price,  
11 to the wholesaler, of all tobacco products other than cigarettes, PREMIUM cigars, and moist snuff. The tax on a  
12 PREMIUM cigar is ~~the lesser of 50%-25%~~ of the wholesale price or ~~10 35 cents a PREMIUM cigar~~. The tax on moist  
13 snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages  
14 of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the  
15 package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the  
16 state are not subject to this tax.

17 (8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the  
18 department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part  
19 must be assessed penalty and interest as provided in 15-1-216.

20 (9) A retailer who purchases tobacco products for resale on which the tobacco products tax has  
21 not been collected and paid to the department shall comply with all the provisions of this part and the rules  
22 adopted to implement this part as if it were a wholesaler.

23 (10) A retailer must assume that the tobacco products tax has not been collected and paid to the  
24 department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that  
25 states that the applicable Montana tobacco products tax is included in the total billing cost."

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27 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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