

HOUSE BILL NO. 1012

INTRODUCED BY ELLIOTT
BY REQUEST OF THE HOUSE TAXATION COMMITTEE

IN THE HOUSE

MARCH 27, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON TAXATION.

 FIRST READING.

APRIL 3, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

APRIL 4, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

 ON MOTION, RULES SUSPENDED. BILL
 PLACED ON THIRD READING THIS DAY.

 THIRD READING, PASSED.
 AYES, 60; NOES, 39.

APRIL 5, 1991 ENGROSSING REPORT.

 TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 5, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON TAXATION.

 FIRST READING.

APRIL 12, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN AS AMENDED. REPORT
 ADOPTED.

APRIL 15, 1991 SECOND READING, CONCURRED IN.

APRIL 16, 1991 THIRD READING, CONCURRED IN.
 AYES, 46; NOES, 3.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 18, 1991 RECEIVED FROM SENATE.

APRIL 19, 1991

SECOND READING, AMENDMENTS
CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 1,012
 2 INTRODUCED BY [Signature]
 3 BY REQUEST OF THE HOUSE TAXATION COMMITTEE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO APPLY THE CIGARETTE
 6 SALES TAX TO ALL USE AND CONSUMPTION OF CIGARETTES ON AN
 7 INDIAN RESERVATION EXCEPT BY MEMBERS OF AN INDIAN TRIBE ON
 8 AN INDIAN RESERVATION; PROVIDING FOR A REFUND OF OR CREDIT
 9 FOR TAXES PAID ON CIGARETTES SOLD TO TRIBAL MEMBERS;
 10 REQUIRING A REPORT TO THE 53RD LEGISLATURE; AMENDING SECTION
 11 16-11-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND A
 12 TERMINATION DATE."

13
 14 WHEREAS, the Legislature proposes to eliminate unfair
 15 competitive business advantages now enjoyed by retailers
 16 operating on Indian reservations in direct competition with
 17 businesses operated off the reservations by requiring that
 18 cigarettes sold to non-Indian purchasers on an Indian
 19 reservation have a Montana cigarette tax stamp affixed even
 20 if sold by an Indian retailer; and

21 WHEREAS, the Legislature also recognizes that Indian
 22 tribes in Montana also view certain state taxes being
 23 assessed against the tribes and tribal members on the
 24 reservation, including fuel and alcohol taxes, as being
 25 unlawful; and

1 WHEREAS, although the Legislature proposes to exercise
 2 its constitutional authority to seek assistance from tribal
 3 authorities in collecting cigarette taxes from non-Indians
 4 on the reservations, it also recognizes the need for
 5 discussion and negotiation with Indian tribes in Montana to
 6 avoid dual taxation and to develop a comprehensive
 7 resolution of all reservation taxation issues affecting both
 8 the state and the tribes.

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

11 NEW SECTION. **Section 1.** Definitions. As used in
 12 [sections 1 through 3], the following definitions apply:

13 (1) "Indian reservation" means Indian lands federally
 14 declared to be a reservation for an Indian tribe by treaty
 15 between the tribe and any territorial government or state
 16 government or the United States government or established by
 17 acts of the United States congress or by formal decision of
 18 the executive branch of the United States.

19 (2) "Indian retailer" means a business or enterprise
 20 that is wholly owned and operated by an Indian tribe in
 21 Montana or a business or enterprise that is wholly owned and
 22 operated by one or more members of a tribe in Montana on
 23 whose reservation the business or enterprise is located.

24 **Section 2.** Section 16-11-111, MCA, is amended to read:
 25 "16-11-111. Cigarette sales tax. There-is-hereby (1) A



-2- INTRODUCED BILL
 HB 1012

1 tax on the purchase of cigarettes for consumption, use, or
 2 any purpose other than resale in the regular course of
 3 business is levied, imposed, and assessed at the following
 4 rate and there shall must be collected precollected by the
 5 wholesaler and paid to the state of Montana upon--cigarettes
 6 sold--or--possessed--in--this--state--the--following--excise--tax
 7 which--shall--be--paid--prior--to--the--time--of--sale--and--delivery
 8 of--cigarettes: 18 cents on each package containing 20
 9 cigarettes and, when packages contain more or less than 20
 10 cigarettes, then a tax on each cigarette equal to 1/20th the
 11 tax on a package containing 20 cigarettes.

12 (2) The tax imposed by this section does not apply to
 13 cigarettes sold by an Indian retailer to members of a
 14 federally recognized Indian tribe within the boundaries of
 15 the tribe's reservation located in Montana.

16 (3) The tax imposed by this section must be
 17 precollected, subject to refund or credit as provided in
 18 subsection (4), on all cigarettes entering Montana Indian
 19 reservations.

20 (4) Wholesalers making sales of cigarettes to Indian
 21 retailers may apply to the department for a refund of or
 22 credit for taxes precollected on cigarettes sold by the
 23 retailers to members of an Indian tribe on whose reservation
 24 the retail sale is made. The claim for credit or refund must
 25 be made on the wholesaler's cigarette tax return for the

1 reporting period immediately following the period during
 2 which the cigarettes were sold by the wholesaler to the
 3 retailer. If not claimed, the credit or refund is lost.

4 (5) The total amount of refunds or credits allowed by
 5 the department to all wholesalers claiming the refund or
 6 credit under subsection (4) for any reporting period may not
 7 exceed an amount that is equal to the tax due on the average
 8 individual consumption of cigarettes, determined in a manner
 9 provided by department rule, multiplied by the tribal member
 10 population of the reservation on which the sales are made.
 11 If the total amount of refunds claimed by wholesalers
 12 exceeds the amount computed, the claims by the wholesalers
 13 must be reduced proportionally based on the total amount of
 14 on-reservation business conducted by each wholesaler to the
 15 amounts necessary to make the total of all the claims equal
 16 to the allowable maximum.

17 (6) A refund or credit may not be allowed to a
 18 wholesaler unless the wholesaler certifies to the department
 19 that the economic benefit of the credit or refund has been
 20 passed on to the Indian retailers to whom the sales were
 21 made."

22 **NEW SECTION. Section 3. Revenue oversight -- state and**
 23 **tribal negotiations -- report to legislature. (1) The**
 24 **legislature directs the department of revenue to:**

25 (a) negotiate with individual tribes within the state

1 on the methods of implementing [this act];

2 (b) discuss and negotiate alternative methods for the
3 collection of cigarette taxes, including the possibility of
4 future tribal taxation, with the tribal governments of each
5 Montana reservation or their designated representatives;

6 (c) discuss and negotiate with individual Indian tribes
7 in Montana the possibility of resolving other state taxation
8 issues, including but not limited to the imposition of fuel
9 and alcohol taxes on Indian reservations, through
10 state-tribal cooperative agreements; and

11 (d) report its findings on the collection of cigarette
12 taxes pursuant to 16-11-111 and on negotiations with tribal
13 authorities on a comprehensive state-tribal taxation
14 agreement or proposed legislation to the interim committee
15 on Indian affairs prior to the 53rd legislative session.

16 (2) The legislature also directs the interim committee
17 on Indian affairs to work with the Montana tribal chairman's
18 association, the state coordinator of Indian affairs, and
19 individual tribes to:

20 (a) monitor tax collection made pursuant to 16-11-111;

21 (b) consider alternatives for cigarette tax collection,
22 including possible cooperative agreements to avoid dual
23 taxation by state and tribal governments;

24 (c) identify other unresolved taxation issues,
25 including but not limited to the imposition of fuel and

1 alcohol taxes on Indian reservations, between the state and
2 Montana Indian tribes; and

3 (d) propose legislation to the 53rd legislature that
4 would facilitate a cooperative government-to-government
5 resolution of all Indian reservation taxation issues.

6 NEW SECTION. Section 4. Codification instruction.
7 [Section 1] is intended to be codified as an integral part
8 of Title 16, chapter 11, part 1, and the provisions of Title
9 16, chapter 11, part 1, apply to [section 1].

10 NEW SECTION. Section 5. Effective date. [This act] is
11 effective July 1, 1991.

12 NEW SECTION. Section 6. Termination. [This act]
13 terminates July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB1012, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to apply the cigarette sales tax to all use and consumption of cigarettes on an Indian reservation except by members of an Indian tribe on an Indian reservation; providing for a refund of or credit for taxes paid on cigarettes sold to tribal members; requiring a report to the 53rd legislature; and providing an effective date and a termination date.

ASSUMPTIONS:

1. The effective cigarette tax rate is \$0.1732 per package.
2. Under current law, cigarette tax receipts will be \$11,316,000 in FY92 and \$11,037,000 in FY93 (OBPP).
3. Currently, 28,034,910 packages of cigarettes are being sold annually to Indian reservations in Montana.
4. In 1990, per capita cigarette consumption in the United States was 100.8 packages; in Montana per capita consumption was 84.7 packages (Tobacco Institute).
5. The average annual quota per reservation, under the proposal, will be 90 packages per capita.
6. Total Indian population on reservations in Montana is 30,423 (U.S. Bureau of the Census, 1990).
7. The total number of tax-free packages of cigarettes for all reservations will be 2,738,070 for each year of the biennium.
8. Of the 28,034,910 packages currently being sold to reservations, only 2,738,070 will be sold tax free under the proposal. Of the remaining 25,296,840 packages, it is assumed that 17,280,000 packages are currently being exported out of state. It is assumed that these packages would no longer be purchased or exported. This leaves an increase in taxable packages of 8,016,840.
9. There would be collections for 10 months in FY92 due to inventory reserves leftover from FY91.
10. The potential increase in taxes would be \$1,157,000 in FY92, and \$1,389,000 in FY93.
11. The proposal would require 2.00 FTE (grade 13) field auditors for each year of the biennium at a cost of \$51,672. The operating costs associated with these positions would be \$5,200 in each year of the biennium and equipment costs would be \$7,400 in FY92 only.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning
4-1-91
DATE


JIM ELLIOTT, PRIMARY SPONSOR
4-1-91
DATE

Fiscal Note Request, HB1012, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

Department of Revenue:

| | FY '92 | | | FY '93 | | |
|-----------------------------------|--------------------|---------------------|-------------------|--------------------|---------------------|-------------------|
| | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> | <u>Current Law</u> | <u>Proposed Law</u> | <u>Difference</u> |
| <u>Expenditures:</u> | | | | | | |
| FTE | 0.00 | 2.00 | 2.00 | 0.00 | 2.00 | 2.00 |
| Personal Services | 0 | 51,672 | 51,672 | 0 | 51,672 | 51,672 |
| Operating Costs | 0 | 5,200 | 5,200 | 0 | 5,200 | 5,200 |
| Equipment Costs | 0 | 7,400 | 7,400 | 0 | 0 | 0 |
| Total | 0 | 64,272 | 64,272 | 0 | 56,872 | 56,872 |
| <u>Funding:</u> | | | | | | |
| General Fund | 0 | 64,272 | 64,272 | 0 | 56,872 | 56,872 |
| <u>Revenues:</u> | | | | | | |
| Cigarette Tax | 11,316,000 | 12,473,000 | 1,157,000 | 11,037,000 | 12,426,000 | 1,389,000 |
| <u>Funding Distribution:</u> | | | | | | |
| Debt Service (05) | 8,022,000 | 8,842,000 | 820,000 | 7,824,000 | 8,809,000 | 985,000 |
| Capital Projects (05) | <u>3,294,000</u> | <u>3,631,000</u> | <u>337,000</u> | <u>3,213,000</u> | <u>3,617,000</u> | <u>404,000</u> |
| Total | 11,316,000 | 12,473,000 | 1,157,000 | 11,037,000 | 12,426,000 | 1,389,000 |
| Impact to General Fund (decrease) | | | (64,272) | | | (56,872) |

HB 1012-1

APPROVED BY COMMITTEE
ON TAXATION

1 HOUSE BILL NO. 1012
2 INTRODUCED BY ELLIOTT
3 BY REQUEST OF THE HOUSE TAXATION COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO APPLY~~ APPLYING THE
6 CIGARETTE SALES TAX TO ALL USE AND CONSUMPTION OF CIGARETTES
7 ON AN INDIAN RESERVATION EXCEPT BY MEMBERS OF AN INDIAN
8 TRIBE ON AN INDIAN RESERVATION; PROVIDING FOR A REFUND OF OR
9 CREDIT FOR TAXES PAID ON CIGARETTES SOLD TO TRIBAL MEMBERS;
10 PROVIDING AN INCREASE IN THE APPROPRIATION TO THE DEPARTMENT
11 OF REVENUE FOR FISCAL YEARS 1992 AND 1993 TO ADMINISTER
12 COLLECTION OF CIGARETTE TAXES; PROVIDING A CIVIL PENALTY FOR
13 THE POSSESSION OF UNSTAMPED CIGARETTES; REQUIRING A REPORT
14 TO THE 53RD LEGISLATURE; AMENDING SECTION SECTIONS
15 16-11-111, 16-11-113, 16-11-119, 16-11-131, AND 16-11-133,
16 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN
17 APPLICABILITY DATE, AND A TERMINATION DATE."
18

19 WHEREAS, the Legislature proposes to eliminate unfair
20 competitive business advantages now enjoyed by retailers
21 operating on Indian reservations in direct competition with
22 businesses operated off the reservations by requiring that
23 cigarettes sold to non-Indian purchasers on an Indian
24 reservation have a Montana cigarette tax stamp affixed even
25 if sold by an Indian retailer; and

1 WHEREAS, the Legislature also recognizes that Indian
2 tribes in Montana also view certain state taxes being
3 assessed against the tribes and tribal members on the
4 reservation, including fuel and alcohol taxes, as being
5 unlawful; and

6 WHEREAS, although the Legislature proposes to exercise
7 its constitutional authority to seek assistance from tribal
8 authorities in collecting cigarette taxes from non-Indians
9 on the reservations, it also recognizes the need for
10 discussion and negotiation with Indian tribes in Montana to
11 avoid dual taxation and to develop a comprehensive
12 resolution of all reservation taxation issues affecting both
13 the state and the tribes.

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

16 NEW SECTION. Section 1. Definitions. As used in
17 [sections 1 through 3], the following definitions apply:

18 (1) "Indian reservation" means Indian lands federally
19 declared to be a reservation for an Indian tribe by treaty
20 between the tribe and any territorial government or state
21 government or the United States government or established by
22 acts of the United States congress or by formal decision of
23 the executive branch of the United States.

24 (2) "Indian retailer" means a business or enterprise
25 that is wholly owned and operated by an Indian tribe in

1 Montana or a business or enterprise that is wholly owned and
2 operated by one or more members of a tribe in Montana on
3 whose reservation the business or enterprise is located.

4 NEW SECTION. SECTION 2. STAMPS AFFIXED ON ALL
5 CIGARETTES -- EXCEPTION. EXCEPT FOR CIGARETTES SOLD ON
6 MILITARY RESERVATIONS, ALL CIGARETTES SOLD IN MONTANA MUST
7 HAVE A MONTANA CIGARETTE TAX STAMP AFFIXED PRIOR TO SALE.

8 **Section 3.** Section 16-11-111, MCA, is amended to read:

9 "16-11-111. Cigarette sales tax -- EXEMPTION FOR SALES
10 TO INDIANS. There--is--hereby (1) A tax on the purchase of
11 cigarettes for consumption, use, or any purpose other than
12 resale in the regular course of business is levied, imposed,
13 and assessed at the following rate and there shall ~~must~~
14 collected ~~precollected~~ by the wholesaler and paid to the
15 state of Montana upon ~~cigarettes sold or possessed in this~~
16 state ~~the following excise tax which shall be paid prior to~~
17 the ~~time of sale and delivery of cigarettes:~~ 18 cents on
18 each package containing 20 cigarettes and, when packages
19 contain more or less than 20 cigarettes, then a tax on each
20 cigarette equal to 1/20th the tax on a package containing 20
21 cigarettes.

22 (2) The tax imposed by this section does not apply to
23 cigarettes sold by an Indian retailer to members of a
24 federally recognized Indian tribe within the boundaries of
25 the tribe's reservation located in Montana.

1 (3) The tax imposed by this section must be
2 precollected, subject to refund or credit as provided in
3 subsection (4), on all cigarettes entering Montana Indian
4 reservations.

5 (4) Wholesalers PURSUANT TO THE PROCEDURE PROVIDED IN
6 SUBSECTION (5), WHOLESALERS making sales of cigarettes to
7 Indian retailers may apply to the department for a refund of
8 or credit for taxes precollected on cigarettes sold by the
9 retailers to members of an Indian tribe on whose reservation
10 the retail sale is made. ~~The claim for credit or refund must~~
11 ~~be made on the wholesaler's cigarette tax return for the~~
12 ~~reporting period immediately following the period during~~
13 ~~which the cigarettes were sold by the wholesaler to the~~
14 ~~retailer. If not claimed, the credit or refund is lost.~~

15 (5) THE DISTRIBUTION OF TAX-FREE CIGARETTES TO INDIANS
16 MUST BE IMPLEMENTED THROUGH A SYSTEM OF PREAPPROVED,
17 WHOLESALER SHIPMENTS. LICENSED MONTANA WHOLESALERS SHALL
18 CONTACT THE DEPARTMENT FOR APPROVAL PRIOR TO SHIPMENT OF THE
19 UNTAXED CIGARETTES. THE DEPARTMENT MAY AUTHORIZE SALES BASED
20 ON WHETHER THE QUOTA FOR THAT PARTICULAR SERVICE AREA HAS
21 BEEN MET. IF THE SALE IS AUTHORIZED AS TAX EXEMPT, THE
22 WHOLESALER, UPON PROVIDING PROOF OF ORDER AND DELIVERY TO AN
23 EXEMPT RETAILER, MUST BE PROVIDED A CREDIT OR A REFUND. ONCE
24 THE ALLOCATION FOR THE PARTICULAR SERVICE AREA HAS BEEN
25 FILLED, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY ALL

1 WHOLESALERS THAT ALL FURTHER SALES ON THAT RESERVATION MUST
 2 BE TAXED AND THAT CLAIMS FOR REFUND OR CREDIT WILL NOT BE
 3 HONORED FOR THE REMAINDER OF THE MONTH. ALLOCATIONS ARE NOT
 4 TRANSFERABLE BETWEEN MONTHS OR BETWEEN INDIAN RESERVATIONS.

5 {5}(6) The total amount of refunds or credits allowed
 6 by the department to all wholesalers claiming the refund or
 7 credit under subsection (4) for any reporting--period MONTH
 8 may not exceed an amount that is equal to the tax due on the
 9 average individual consumption of cigarettes,--determined-in
 10 a-manner-provided-by--department--rule, multiplied by the
 11 tribal member population of the reservation on which the
 12 sales are made. THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF
 13 REFUNDS OR CREDITS FOR EACH INDIAN RESERVATION AT THE
 14 BEGINNING OF EACH FISCAL YEAR, USING POPULATION ESTIMATES
 15 AND OTHER DATA ISSUED BY THE UNITED STATES GOVERNMENT. If
 16 the--total--amount-of-refunds-claimed-by-wholesalers-exceeds
 17 the-amount-computed,--the-claims-by-the-wholesalers--must--be
 18 reduced--proportionally--based-on--the--total--amount--of
 19 on-reservation-business-conducted-by-each-wholesaler-to--the
 20 amounts--necessary-to-make-the-total-of-all-the-claims-equal
 21 to-the-allowable-maximum.

22 {6}(7) A refund or credit may not be allowed to a
 23 wholesaler unless the wholesaler certifies to the department
 24 PURSUANT TO 16-11-132(2) that the economic benefit of the
 25 credit or refund has been passed on to the Indian retailers

1 to whom the sales were made."

2 NEW SECTION. SECTION 4. CIVIL PENALTY FOR POSSESSION
 3 OF UNSTAMPED CIGARETTES. IN LIEU OF THE CRIMINAL PENALTIES
 4 PROVIDED IN TITLE 16, CHAPTER 11, PART 1, THE DEPARTMENT MAY
 5 ASSESS A PERSON POSSESSING UNSTAMPED CIGARETTES A CIVIL
 6 PENALTY OF \$250 FOR THE FIRST FULL OR PARTIAL PACK OF
 7 UNSTAMPED CIGARETTES AND \$10 FOR EACH ADDITIONAL FULL OR
 8 PARTIAL PACK OF UNSTAMPED CIGARETTES.

9 NEW SECTION. Section 5. Revenue oversight -- state and
 10 tribal negotiations -- report to legislature. (1) The
 11 legislature directs the department of revenue to:

12 (a) negotiate with individual tribes within the state
 13 on the methods of implementing [this act];

14 (b) discuss and negotiate alternative methods for the
 15 collection of cigarette taxes, including the possibility of
 16 future tribal taxation, with the tribal governments of each
 17 Montana reservation or their designated representatives;

18 (c) discuss and negotiate with individual Indian tribes
 19 in Montana the possibility of resolving other state taxation
 20 issues, including but not limited to the imposition of fuel
 21 and alcohol taxes on Indian reservations, through
 22 state-tribal cooperative agreements; and

23 (d) report its findings on the collection of cigarette
 24 taxes pursuant to 16-11-111 and on negotiations with tribal
 25 authorities on a comprehensive state-tribal taxation

1 agreement or proposed legislation to the interim committee
 2 on Indian affairs prior to the 53rd legislative session.

3 (2) The legislature also directs the interim committee
 4 on Indian affairs to work with the Montana tribal chairman's
 5 association, the state coordinator of Indian affairs, and
 6 individual tribes to:

- 7 (a) monitor tax collection made pursuant to 16-11-111;
- 8 (b) consider alternatives for cigarette tax collection,
 9 including possible cooperative agreements to avoid dual
 10 taxation by state and tribal governments;
- 11 (c) identify other unresolved taxation issues,
 12 including but not limited to the imposition of fuel and
 13 alcohol taxes on Indian reservations, between the state and
 14 Montana Indian tribes; and
- 15 (d) propose legislation to the 53rd legislature that
 16 would facilitate a cooperative government-to-government
 17 resolution of all Indian reservation taxation issues.

18 **SECTION 6. SECTION 16-11-113, MCA, IS AMENDED TO READ:**

19 "16-11-113. Tax insignia. (1) Within 72 hours after
 20 receipt by the distributor or dealer of any cigarettes,
 21 except as hereinafter provided, he shall cause to be
 22 securely affixed thereto the required insignia denoting the
 23 tax thereon. ~~A--person--specifically--exempted--under--the~~
 24 ~~provisions-of-16-11-113(2)--may--not--be--considered--to--be~~
 25 ~~acting-unlawfully-under-this-section.~~

1 (2) Said insignia shall be properly canceled prior to
 2 sale or removal for consumption, under such regulations as
 3 the department may prescribe.

4 (3) Each package shall have the required insignia to
 5 affix thereto in such a manner that the insignia will be
 6 destroyed when the package is opened.

7 (4) Wholesalers and retailers licensed under this part
 8 may buy, sell, or have in their possession only cigarettes
 9 which have the insignia provided for in this part on each
 10 package. The insignia provided for in this part shall be
 11 sold to and affixed by licensed wholesalers and licensed
 12 retailers only.

13 (5) Whenever any cigarettes are found in the place of
 14 business of any unlicensed wholesaler, retailer, or other
 15 person without the insignia affixed and canceled or not
 16 marked as having been received by the unlicensed wholesaler,
 17 retailer, or person within the preceding 72 hours, the
 18 presumption shall be that such cigarettes are kept therein
 19 in violation of the provisions of this part."

20 **SECTION 7. SECTION 16-11-119, MCA, IS AMENDED TO READ:**

21 "16-11-119. Disposition of taxes -- retirement of
 22 bonds. ~~At~~ (1) Except as provided in subsection (2), all
 23 moneys collected under the provisions of 16-11-111, less the
 24 expense of collecting all the taxes levied, imposed, and
 25 assessed by said section, shall be paid to the state

1 treasurer and deposited as follows: 70.89% in the long-range
 2 building program fund in the debt service fund type and
 3 29.11% in the long-range building program fund in the
 4 capital projects fund type.

5 (2) The following money, collected pursuant to
 6 16-11-111, is appropriated to the department:

| | |
|---------------------------|-----------------|
| 7 <u>Fiscal year 1992</u> | <u>\$64,272</u> |
| 8 <u>Fiscal year 1993</u> | <u>56,872"</u> |

9 **SECTION 8. SECTION 16-11-131, MCA, IS AMENDED TO READ:**

10 "16-11-131. Transporting cigarettes without insignia a
 11 misdemeanor. It shall be unlawful for any person to
 12 transport into, receive, carry, or move from place to place
 13 within this state, except in the course of interstate
 14 commerce, any cigarettes which do not bear the insignia
 15 required by this part, ~~except for a person specifically~~
 16 ~~exempted in 16-11-132(2).~~ Any person violating the
 17 provisions of this section is guilty of a misdemeanor and
 18 shall be punished as hereinafter provided."

19 **SECTION 9. SECTION 16-11-133, MCA, IS AMENDED TO READ:**

20 "16-11-133. Sale and use of cigarettes without insignia
 21 unlawful. Every person who sells any package of cigarettes
 22 which does not bear the insignia required by this part and
 23 every person who uses or consumes a cigarette within this
 24 state, taken from a package which does not bear the required
 25 insignia, is guilty of a misdemeanor and shall be punished

1 as hereinafter provided, ~~except that a person specifically~~
 2 ~~exempted under the provisions of 16-11-132(2) may not be~~
 3 ~~considered to be acting unlawfully under this section."~~

4 **NEW SECTION. Section 10. Codification instruction.**
 5 ~~{Section 1}~~ is [SECTIONS 1, 2, AND 4] ARE intended to be
 6 codified as an integral part of Title 16, chapter 11, part
 7 1, and the provisions of Title 16, chapter 11, part 1, apply
 8 to ~~{section 1}~~ [SECTIONS 1, 2, AND 4].

9 **NEW SECTION. Section 11. Effective date** ---
 10 APPLICABILITY. [This act] is effective ~~July 1, 1991~~ ON
 11 PASSAGE AND APPROVAL AND APPLIES TO SALES MADE BY A
 12 WHOLESALE AFTER JUNE 30, 1991.

13 **NEW SECTION. Section 12. Termination.** [This act]
 14 terminates July 1, 1993.

-End-

1 HOUSE BILL NO. 1012

2 INTRODUCED BY ELLIOTT

3 BY REQUEST OF THE HOUSE TAXATION COMMITTEE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO APPLY~~ APPLYING THE
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18 (1) "Indian reservation" means Indian lands federally
 19 declared to be a reservation for an Indian tribe by treaty
 20 between the tribe and any territorial government or state
 21 government or the United States government or established by
 22 acts of the United States congress or by formal decision of
 23 the executive branch of the United States.

24 (2) "Indian retailer" means a business or enterprise
 25 that is wholly owned and operated by an Indian tribe in

1 Montana or a business or enterprise that is wholly owned and
 2 operated by one or more members of a tribe in Montana on
 3 whose reservation the business or enterprise is located.

4 NEW SECTION. SECTION 2. STAMPS AFFIXED ON ALL
 5 CIGARETTES -- EXCEPTION. EXCEPT FOR CIGARETTES SOLD ON
 6 MILITARY RESERVATIONS, ALL CIGARETTES SOLD IN MONTANA MUST
 7 HAVE A MONTANA CIGARETTE TAX STAMP AFFIXED PRIOR TO SALE.

8 **Section 3.** Section 16-11-111, MCA, is amended to read:

9 "16-11-111. Cigarette sales tax -- EXEMPTION FOR SALES
 10 TO INDIANS. There--is--hereby (1) A tax on the purchase of
 11 cigarettes for consumption, use, or any purpose other than
 12 resale in the regular course of business is levied, imposed,
 13 and assessed at the following rate and there shall must be
 14 collected precollected by the wholesaler and paid to the
 15 state of Montana upon-cigarettes-sold-or-possessioned-in-this
 16 state-the-following-excise-tax-which-shall-be-paid-prior--to
 17 the--time--of--sale--and-delivery-of-cigarettes: 18 cents on
 18 each package containing 20 cigarettes and, when packages
 19 contain more or less than 20 cigarettes, then a tax on each
 20 cigarette equal to 1/20th the tax on a package containing 20
 21 cigarettes.

22 (2) The tax imposed by this section does not apply to
 23 cigarettes sold by an Indian retailer to members of a
 24 federally recognized Indian tribe within the boundaries of
 25 the tribe's reservation located in Montana.

1 (3) The tax imposed by this section must be
 2 precollected, subject to refund or credit as provided in
 3 subsection (4), on all cigarettes entering Montana Indian
 4 reservations.

5 (4) Wholesalers PURSUANT TO THE PROCEDURE PROVIDED IN
 6 SUBSECTION (5), WHOLESALERS making sales of cigarettes to
 7 Indian retailers may apply to the department for a refund of
 8 or credit for taxes precollected on cigarettes sold by the
 9 retailers to members of an Indian tribe on whose reservation
 10 the retail sale is made. The-claim-for-credit-or-refund-must
 11 be--made--on--the--wholesaler's-cigarette-tax-return-for-the
 12 reporting-period-immediately--following--the--period--during
 13 which--the--cigarettes--were--sold--by-the-wholesaler-to-the
 14 retailer. If not claimed, the credit or refund is lost.

15 (5) THE DISTRIBUTION OF TAX-FREE CIGARETTES TO INDIANS
 16 MUST BE IMPLEMENTED THROUGH A SYSTEM OF PREAPPROVED,
 17 WHOLESALER SHIPMENTS. LICENSED MONTANA WHOLESALERS SHALL
 18 CONTACT THE DEPARTMENT FOR APPROVAL PRIOR TO SHIPMENT OF THE
 19 UNTAXED CIGARETTES. THE DEPARTMENT MAY AUTHORIZE SALES BASED
 20 ON WHETHER THE QUOTA FOR THAT PARTICULAR SERVICE AREA HAS
 21 BEEN MET. IF THE SALE IS AUTHORIZED AS TAX EXEMPT, THE
 22 WHOLESALER, UPON PROVIDING PROOF OF ORDER AND DELIVERY TO AN
 23 EXEMPT RETAILER, MUST BE PROVIDED A CREDIT OR A REFUND. ONCE
 24 THE ALLOCATION FOR THE PARTICULAR SERVICE AREA HAS BEEN
 25 FILLED, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY ALL

1 WHOLESALERS THAT ALL FURTHER SALES ON THAT RESERVATION MUST
 2 BE TAXED AND THAT CLAIMS FOR REFUND OR CREDIT WILL NOT BE
 3 HONORED FOR THE REMAINDER OF THE MONTH. ALLOCATIONS ARE NOT
 4 TRANSFERABLE BETWEEN MONTHS OR BETWEEN INDIAN RESERVATIONS.

5 ~~{5}(6)~~ The total amount of refunds or credits allowed
 6 by the department to all wholesalers claiming the refund or
 7 credit under subsection (4) for any reporting--period MONTH
 8 may not exceed an amount that is equal to the tax due on the
 9 average individual consumption of cigarettes--determined-in
 10 a-manner-provided-by--department--rule, multiplied by the
 11 tribal member population of the reservation on which the
 12 sales are made. THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF
 13 REFUNDS OR CREDITS FOR EACH INDIAN RESERVATION AT THE
 14 BEGINNING OF EACH FISCAL YEAR, USING POPULATION ESTIMATES
 15 AND OTHER DATA ISSUED BY THE UNITED STATES GOVERNMENT. If
 16 the--total--amount-of-refunds-claimed-by-wholesalers-exceeds
 17 the-amount-computed--the-claims-by-the-wholesalers--must--be
 18 reduced---proportionally---based-on--the--total--amount--of
 19 on-reservation-business-conducted-by-each-wholesaler-to--the
 20 amounts--necessary-to-make-the-total-of-all-the-claims-equal
 21 to-the-allowable-maximum.

22 ~~{6}(7)~~ A refund or credit may not be allowed to a
 23 wholesaler unless the wholesaler certifies to the department
 24 PURSUANT TO 16-11-132(2) that the economic benefit of the
 25 credit or refund has been passed on to the Indian retailers

1 to whom the sales were made."

2 NEW SECTION. SECTION 4. CIVIL PENALTY FOR POSSESSION
 3 OF UNSTAMPED CIGARETTES. IN LIEU OF THE CRIMINAL PENALTIES
 4 PROVIDED IN TITLE 16, CHAPTER 11, PART 1, THE DEPARTMENT MAY
 5 ASSESS A PERSON POSSESSING UNSTAMPED CIGARETTES A CIVIL
 6 PENALTY OF \$250 FOR THE FIRST FULL OR PARTIAL PACK OF
 7 UNSTAMPED CIGARETTES AND \$10 FOR EACH ADDITIONAL FULL OR
 8 PARTIAL PACK OF UNSTAMPED CIGARETTES.

9 NEW SECTION. Section 5. Revenue oversight -- state and
 10 tribal negotiations -- report to legislature. (1) The
 11 legislature directs the department of revenue to:

12 (a) negotiate with individual tribes within the state
 13 on the methods of implementing [this act];

14 (b) discuss and negotiate alternative methods for the
 15 collection of cigarette taxes, including the possibility of
 16 future tribal taxation, with the tribal governments of each
 17 Montana reservation or their designated representatives;

18 (c) discuss and negotiate with individual Indian tribes
 19 in Montana the possibility of resolving other state taxation
 20 issues, including but not limited to the imposition of fuel
 21 and alcohol taxes on Indian reservations, through
 22 state-tribal cooperative agreements; and

23 (d) report its findings on the collection of cigarette
 24 taxes pursuant to 16-11-111 and on negotiations with tribal
 25 authorities on a comprehensive state-tribal taxation

1 agreement or proposed legislation to the interim committee
 2 on Indian affairs prior to the 53rd legislative session.

3 (2) The legislature also directs the interim committee
 4 on Indian affairs to work with the Montana tribal chairman's
 5 association, the state coordinator of Indian affairs, and
 6 individual tribes to:

- 7 (a) monitor tax collection made pursuant to 16-11-111;
- 8 (b) consider alternatives for cigarette tax collection,
 9 including possible cooperative agreements to avoid dual
 10 taxation by state and tribal governments;
- 11 (c) identify other unresolved taxation issues,
 12 including but not limited to the imposition of fuel and
 13 alcohol taxes on Indian reservations, between the state and
 14 Montana Indian tribes; and
- 15 (d) propose legislation to the 53rd legislature that
 16 would facilitate a cooperative government-to-government
 17 resolution of all Indian reservation taxation issues.

18 **SECTION 6. SECTION 16-11-113, MCA, IS AMENDED TO READ:**

19 "16-11-113. Tax insignia. (1) Within 72 hours after
 20 receipt by the distributor or dealer of any cigarettes,
 21 except as hereinafter provided, he shall cause to be
 22 securely affixed thereto the required insignia denoting the
 23 tax thereon. ~~A--person--specifically--exempted--under--the~~
 24 ~~provisions-of-16-11-113(2)--may--not--be--considered--to--be~~
 25 ~~acting-unlawfully-under-this-section.~~

1 (2) Said insignia shall be properly canceled prior to
 2 sale or removal for consumption, under such regulations as
 3 the department may prescribe.

4 (3) Each package shall have the required insignia to
 5 affix thereto in such a manner that the insignia will be
 6 destroyed when the package is opened.

7 (4) Wholesalers and retailers licensed under this part
 8 may buy, sell, or have in their possession only cigarettes
 9 which have the insignia provided for in this part on each
 10 package. The insignia provided for in this part shall be
 11 sold to and affixed by licensed wholesalers and licensed
 12 retailers only.

13 (5) Whenever any cigarettes are found in the place of
 14 business of any unlicensed wholesaler, retailer, or other
 15 person without the insignia affixed and canceled or not
 16 marked as having been received by the unlicensed wholesaler,
 17 retailer, or person within the preceding 72 hours, the
 18 presumption shall be that such cigarettes are kept therein
 19 in violation of the provisions of this part."

20 **SECTION 7. SECTION 16-11-119, MCA, IS AMENDED TO READ:**

21 "16-11-119. Disposition of taxes -- retirement of
 22 bonds. ~~At~~ (1) Except as provided in subsection (2), all
 23 moneys collected under the provisions of 16-11-111, less the
 24 expense of collecting all the taxes levied, imposed, and
 25 assessed by said section, shall be paid to the state

1 treasurer and deposited as follows: 70.89% in the long-range
2 building program fund in the debt service fund type and
3 29.11% in the long-range building program fund in the
4 capital projects fund type.

5 (2) The following money, collected pursuant to
6 16-11-111, is appropriated to the department:

| | | |
|---|------------------|----------|
| 7 | Fiscal year 1992 | \$64,272 |
| 8 | Fiscal year 1993 | 56,872" |

9 **SECTION 8. SECTION 16-11-131, MCA, IS AMENDED TO READ:**

10 "16-11-131. Transporting cigarettes without insignia a
11 misdemeanor. It shall be unlawful for any person to
12 transport into, receive, carry, or move from place to place
13 within this state, except in the course of interstate
14 commerce, any cigarettes which do not bear the insignia
15 required by this part, ~~except for a person specifically~~
16 ~~exempted in 16-11-132(2).~~ Any person violating the
17 provisions of this section is guilty of a misdemeanor and
18 shall be punished as hereinafter provided."

19 **SECTION 9. SECTION 16-11-133, MCA, IS AMENDED TO READ:**

20 "16-11-133. Sale and use of cigarettes without insignia
21 unlawful. Every person who sells any package of cigarettes
22 which does not bear the insignia required by this part and
23 every person who uses or consumes a cigarette within this
24 state, taken from a package which does not bear the required
25 insignia, is guilty of a misdemeanor and shall be punished

1 as hereinafter provided, ~~except that a person specifically~~
2 ~~exempted under the provisions of 16-11-132(2) may not be~~
3 ~~considered to be acting unlawfully under this section."~~

4 **NEW SECTION. Section 10. Codification instruction.**
5 ~~{Section-1}~~ **is** [SECTIONS 1, 2, AND 4] **ARE** intended to be
6 codified as an integral part of Title 16, chapter 11, part
7 1, and the provisions of Title 16, chapter 11, part 1, apply
8 to ~~{section-1}~~ [SECTIONS 1, 2, AND 4].

9 **NEW SECTION. Section 11. Effective date** ~~---~~
10 **APPLICABILITY.** [This act] is effective ~~July 17, 1991~~ **ON**
11 **PASSAGE AND APPROVAL AND APPLIES TO SALES MADE BY A**
12 **WHOLESALE AFTER JUNE 30, 1991.**

13 **NEW SECTION. Section 12. Termination.** [This act]
14 terminates July 1, 1993.

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 2
April 12, 1991

Page 1 of 2
April 12, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 1012 (third reading copy -- blue), respectfully report that House Bill No. 1012 be amended and as so amended be concurred in:

1. Title, lines 5 through 13.

Following: "APPLY"

Strike: remainder of line 5 through "CIGARETTES," on line 13

Insert: "REQUIRING NEGOTIATIONS BETWEEN THE STATE AND TRIBAL GOVERNMENTS FOR COLLECTION OF A CIGARETTE SALES TAX FROM NON-INDIAN PURCHASERS FOR CIGARETTES SOLD ON INDIAN RESERVATIONS; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT FINDINGS CONCERNING NEGOTIATIONS TO THE INTERIM COMMITTEE ON INDIAN AFFAIRS;"

2. Title, line 13.

Following: "REQUIRING"

Strike: "A REPORT"

Insert: "THE INTERIM COMMITTEE ON INDIAN AFFAIRS TO PROPOSE LEGISLATION"

3. Title, lines 14 through 17.

Following: "LEGISLATURE;" on line 14

Strike: remainder of line 14 through "MCA;" on line 16

Following: "DATE" on line 16

Strike: remainder of line 16 through "DATE," on line 17

4. Page 1, line 19 through page 6, line 8.

Strike: page 1, line 19 through page 6, line 8 in their entirety
Re-number: subsequent sections

5. Page 6, lines 12 and 13.

Following: line 11

Strike: subsection (a) in its entirety

Re-number: subsequent subsections

6. Page 6, line 17.

Following: "representatives"

Insert: ", the Montana tribal chairman's association, and the state coordinator of Indian affairs"

7. Page 6, lines 23 and 24.

Following: "on" on line 23

Strike: remainder of line 23 through "on" on line 24

8. Page 7, line 7.

Following: "monitor"

Insert: "negotiations conducted pursuant to subsection (1)(a) for proposed cigarette"

Following: "collection"

Strike: remainder of line 7 through "16-11-111"

9. Page 7, line 11.

Following: line 10

Insert: "(c) after public hearings and consultation with tobacco wholesalers and retailers, propose legislation to the 53rd legislature to provide for collection of the cigarette sales tax from non-Indian purchasers for cigarettes sold on Indian reservations. The legislation must include a mechanism to prevent dual taxation by providing for revenue sharing between the state and a tribal government that has adopted an ordinance imposing a cigarette tax that is identical to that imposed by the state."

Re-number: subsequent subsections

10. Page 7, line 18 through page 10, line 8.

Strike: sections 6 through 10 in their entirety
Re-number: subsequent sections

11. Page 10, lines 9 and 10.

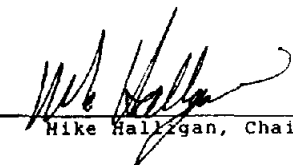
Following: "date"

Strike: "-- APPLICABILITY"

12. Page 10, lines 11 and 12.

Following: "APPROVAL" on line 11

Strike: remainder of line 11 through "1991" on line 12

Signed: 

Mike Halligan, Chairman

MA 4-12-91
Add. Coord.

SB 4-12-91
Sec. of Senate

12:55

1 HOUSE BILL NO. 1012

2 INTRODUCED BY ELLIOTT

3 BY REQUEST OF THE HOUSE TAXATION COMMITTEE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO APPLY~~ APPLYING THE

6 CIGARETTE SALES TAX TO ALL USE AND CONSUMPTION OF CIGARETTES

7 ON AN INDIAN RESERVATION EXCEPT BY MEMBERS OF AN INDIAN

8 TRIBE ON AN INDIAN RESERVATION; PROVIDING FOR A REFUND OF OR

9 REDIT FOR TAXES PAID ON CIGARETTES SOLD TO TRIBAL MEMBERS;

10 PROVIDING AN INCREASE IN THE APPROPRIATION TO THE DEPARTMENT

11 OF REVENUE FOR FISCAL YEARS 1992 AND 1993 TO ADMINISTER

12 COLLECTION OF CIGARETTE TAXES; PROVIDING A CIVIL PENALTY FOR

13 THE POSSESSION OF UNSTAMPED CIGARETTES; REQUIRING

14 NEGOTIATIONS BETWEEN THE STATE AND TRIBAL GOVERNMENTS FOR

15 COLLECTION OF A CIGARETTE SALES TAX FROM NON-INDIAN

16 PURCHASERS FOR CIGARETTES SOLD ON INDIAN RESERVATIONS;

17 REQUIRING THE DEPARTMENT OF REVENUE TO REPORT FINDINGS

18 CONCERNING NEGOTIATIONS TO THE INTERIM COMMITTEE ON INDIAN

19 AFFAIRS; REQUIRING A REPORT THE INTERIM COMMITTEE ON INDIAN

20 AFFAIRS TO PROPOSE LEGISLATION TO THE 53RD LEGISLATURE;

21 AMENDING SECTION SECTIONS ~~16-11-111~~, ~~16-11-113~~, ~~16-11-119~~

22 ~~16-11-131~~ AND ~~16-11-133~~; MCA; AND PROVIDING AN IMMEDIATE

23 EFFECTIVE DATE; AN APPLICABILITY DATE; AND A TERMINATION

24 DATE."

25

1 WHEREAS, the Legislature proposes to eliminate unfair

2 competitive business advantages now enjoyed by retailers

3 operating on Indian reservations in direct competition with

4 businesses operated off the reservations by requiring that

5 cigarettes sold to non-Indian purchasers on an Indian

6 reservation have a Montana cigarette tax stamp affixed even

7 if sold by an Indian retailer; and

8 WHEREAS, the Legislature also recognizes that Indian

9 tribes in Montana also view certain state taxes being

10 assessed against the tribes and tribal members on the

11 reservation, including fuel and alcohol taxes, as being

12 unlawful; and

13 WHEREAS, although the Legislature proposes to exercise

14 its constitutional authority to seek assistance from tribal

15 authorities in collecting cigarette taxes from non-Indians

16 on the reservations; it also recognizes the need for

17 discussion and negotiation with Indian tribes in Montana to

18 avoid dual taxation and to develop a comprehensive

19 resolution of all reservation taxation issues affecting both

20 the state and the tribes;

21

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

23 NEW SECTION. Section 1. Definitions. As used in

24 Sections 1 through 3, the following definitions apply:

25 (1) "Indian reservation" means Indian lands federally

1 declared-to-be-a-reservation-for-an-Indian-tribe-by-treaty
 2 between-the-tribe-and-any-territorial-government-or-state
 3 government-or-the-United-States-government-or-established-by
 4 acts-of-the-United-States-congress-or-by-formal-decision-of
 5 the-executive-branch-of-the-United-States.

6 (2)--"Indian-retailer"--means-a-business-or-enterprise
 7 that-is-wholly-owned-and-operated-by-an-Indian-tribe-in
 8 Montana-or-a-business-or-enterprise-that-is-wholly-owned-and
 9 operated-by-one-or-more-members-of-a-tribe-in-Montana-on
 10 whose-reservation-the-business-or-enterprise-is-located.

11 NEW-SECTION--SECTION-2--STAMPS---AFFIXED---ON---ALL
 12 CIGARETTES---EXCEPTION--EXCEPT--FOR--CIGARETTES--SOLD--ON
 13 MILITARY--RESERVATIONS,--ALL-CIGARETTES-SOLD-IN-MONTANA-MUST
 14 HAVE-A-MONTANA-CIGARETTE-TAX-STAMP-AFFIXED-PRIOR-TO-SALE.

15 Section-3--Section-16-11-1117-MCA, is amended to read:
 16 "16-11-1117--Cigarette-sales-tax ---EXEMPTION-FOR--SALES
 17 TO--INDIANS: There-is-hereby (1)-A-tax-on-the-purchase-of
 18 cigarettes-for-consumption, use, or any purpose other than
 19 resale-in-the-regular-course-of-business-is-levied, imposed,
 20 and-assessed-at-the-following-rate-and-there shall must-be
 21 collected precollected-by-the-wholesaler-and-paid-to-the
 22 state-of-Montana-upon-cigarettes-sold-or-possession-in-this
 23 state-the-following-excise-tax-which-shall-be-paid-prior-to
 24 the-time-of-sale-and-delivery-of-cigarettes; 10-cents-on
 25 each-package-containing-20-cigarettes-and, when--packages

1 contain-more-or-less-than-20-cigarettes, then-a-tax-on-each
 2 cigarette-equal-to-1/20th-the-tax-on-a-package-containing-20
 3 cigarettes.

4 (2)--The-tax-imposed-by-this-section-does-not-apply-to
 5 cigarettes-sold-by-an-Indian-retailer-to-members-of-a
 6 federally-recognized-Indian-tribe-within-the-boundaries-of
 7 the-tribe's-reservation-located-in-Montana.

8 (3)--The-tax-imposed-by-this-section-must-be
 9 precollected, subject-to-refund-or-credit-as-provided-in
 10 subsection-(4), on-all-cigarettes-entering-Montana-Indian
 11 reservations.

12 (4)--Wholesalers PURSUANT-TO-THE-PROCEDURE-PROVIDED-IN
 13 SUBSECTION-(5), WHOLESALERS making-sales-of-cigarettes-to
 14 Indian-retailers-may-apply-to-the-department-for-a-refund-of
 15 or-credit-for-taxes-precollected-on-cigarettes-sold-by-the
 16 retailers-to-members-of-an-Indian-tribe-on-whose-reservation
 17 the-retail-sale-is-made. The-claim-for-credit-or-refund-must
 18 be-made-on-the-wholesaler's-cigarette-tax-return-for-the
 19 reporting-period-immediately-following-the-period-during
 20 which-the-cigarettes-were-sold-by-the-wholesaler-to-the
 21 retailer. If-not-claimed, the-credit-or-refund-is-lost.

22 (5)--THE-DISTRIBUTION-OF-TAX-FREE-CIGARETTES-TO--INDIANS
 23 MUST--BE--IMPLEMENTED--THROUGH--A--SYSTEM--OF--PREAPPROVED,
 24 WHOLESALER-SHIPMENTS,--LICENSED--MONTANA--WHOLESALERS--SHALL
 25 CONTACT-THE-DEPARTMENT-FOR-APPROVAL-PRIOR-TO-SHIPMENT-OF-THE

1 UNTAXED CIGARETTES, THE DEPARTMENT MAY AUTHORIZE SALES BASED
 2 ON WHETHER THE QUOTA FOR THAT PARTICULAR SERVICE AREA HAS
 3 BEEN MET. IF THE SALE IS AUTHORIZED AS TAX EXEMPT, THE
 4 WHOLESALE, UPON PROVIDING PROOF OF ORDER AND DELIVERY TO AN
 5 EXEMPT RETAILER, MUST BE PROVIDED A CREDIT OR A REFUND, ONCE
 6 THE ALLOCATION FOR THE PARTICULAR SERVICE AREA HAS BEEN
 7 FILLED, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY ALL
 8 WHOLESALE THAT ALL FURTHER SALES ON THAT RESERVATION MUST
 9 BE TAXED AND THAT CLAIMS FOR REFUND OR CREDIT WILL NOT BE
 10 HONORED FOR THE REMAINDER OF THE MONTH. ALLOCATIONS ARE NOT
 11 TRANSFERABLE BETWEEN MONTHS OR BETWEEN INDIAN RESERVATIONS.
 12 {5}{6} The total amount of refunds or credits allowed
 13 by the department to all wholesalers claiming the refund or
 14 credit under subsection (4) for any reporting period MONTH
 15 may not exceed an amount that is equal to the tax due on the
 16 average individual consumption of cigarettes, determined in
 17 a manner provided by department rule, multiplied by the
 18 tribal member population of the reservation on which the
 19 sales are made. THE DEPARTMENT SHALL DETERMINE THE AMOUNT OF
 20 REFUNDS OR CREDITS FOR EACH INDIAN RESERVATION AT THE
 21 BEGINNING OF EACH FISCAL YEAR, USING POPULATION ESTIMATES
 22 AND OTHER DATA ISSUED BY THE UNITED STATES GOVERNMENT. If
 23 the total amount of refunds claimed by wholesalers exceeds
 24 the amount computed, the claims by the wholesalers must be
 25 reduced proportionally based on the total amount of

1 on reservation business conducted by each wholesaler to the
 2 amounts necessary to make the total of all the claims equal
 3 to the allowable maximum.
 4 {6}{7} A refund or credit may not be allowed to a
 5 wholesaler unless the wholesaler certifies to the department
 6 PURSUANT TO 16-11-132(2) that the economic benefit of the
 7 credit or refund has been passed on to the Indian retailers
 8 to whom the sales were made."
 9 NEW SECTION. SECTION 4. CIVIL PENALTY FOR POSSESSION
 10 OF UNSTAMPED CIGARETTES. IN LIEU OF THE CRIMINAL PENALTIES
 11 PROVIDED IN TITLE 16, CHAPTER 11, PART 1, THE DEPARTMENT MAY
 12 ASSESS A PERSON POSSESSING UNSTAMPED CIGARETTES A CIVIL
 13 PENALTY OF \$250 FOR THE FIRST PUFF OR PARTIAL PACK OF
 14 UNSTAMPED CIGARETTES AND \$10 FOR EACH ADDITIONAL PUFF OR
 15 PARTIAL PACK OF UNSTAMPED CIGARETTES.
 16 NEW SECTION. Section 1. Revenue oversight -- state and
 17 tribal negotiations -- report to legislature. (1) The
 18 legislature directs the department of revenue to:
 19 (a) negotiate with individual tribes within the state
 20 on the methods of implementing {this act};
 21 {b}{A} discuss and negotiate alternative methods for
 22 the collection of cigarette taxes, including the possibility
 23 of future tribal taxation, with the tribal governments of
 24 each Montana reservation or their designated
 25 representatives, THE MONTANA TRIBAL CHAIRMAN'S ASSOCIATION,

1 AND THE STATE COORDINATOR OF INDIAN AFFAIRS;
 2 {d}(B) discuss and negotiate with individual Indian
 3 tribes in Montana the possibility of resolving other state
 4 taxation issues, including but not limited to the imposition
 5 of fuel and alcohol taxes on Indian reservations, through
 6 state-tribal cooperative agreements; and
 7 {d}(C) report its findings on the---collection---of
 8 cigarette---taxes---pursuant---to-16-11-111---and-on negotiations
 9 with tribal authorities on a comprehensive state-tribal
 10 taxation agreement or proposed legislation to the interim
 11 committee on Indian affairs prior to the 53rd legislative
 12 session.
 13 (2) The legislature also directs the interim committee
 14 on Indian affairs to work with the Montana tribal chairman's
 15 association, the state coordinator of Indian affairs, and
 16 individual tribes to:
 17 (a) monitor NEGOTIATIONS CONDUCTED PURSUANT TO
 18 SUBSECTION (1)(A) FOR PROPOSED CIGARETTE tax collection made
 19 pursuant-to-16-11-111;
 20 (b) consider alternatives for cigarette tax collection,
 21 including possible cooperative agreements to avoid dual
 22 taxation by state and tribal governments;
 23 (C) AFTER PUBLIC HEARINGS AND CONSULTATION WITH TOBACCO
 24 WHOLESALE AND RETAILERS, PROPOSE LEGISLATION TO THE 53RD
 25 LEGISLATURE TO PROVIDE FOR COLLECTION OF THE CIGARETTE SALES

1 TAX FROM NON-INDIAN PURCHASERS FOR CIGARETTES SOLD ON INDIAN
 2 RESERVATIONS. THE LEGISLATION MUST INCLUDE A MECHANISM TO
 3 PREVENT DUAL TAXATION BY PROVIDING FOR REVENUE SHARING
 4 BETWEEN THE STATE AND A TRIBAL GOVERNMENT THAT HAS ADOPTED
 5 AN ORDINANCE IMPOSING A CIGARETTE TAX THAT IS IDENTICAL TO
 6 THAT IMPOSED BY THE STATE.
 7 {e}(D) identify other unresolved taxation issues,
 8 including but not limited to the imposition of fuel and
 9 alcohol taxes on Indian reservations, between the state and
 10 Montana Indian tribes; and
 11 {d}(E) propose legislation to the 53rd legislature that
 12 would facilitate a cooperative government-to-government
 13 resolution of all Indian reservation taxation issues.
 14 ~~SECTION 6. SECTION 16-11-113, MCA, IS AMENDED TO READ:~~
 15 ~~"16-11-113. Tax insignia--(1)--Within--72--hours--after~~
 16 ~~receipt--by--the--distributor--or--dealer--of--any--cigarettes,~~
 17 ~~except--as--hereinafter--provided,--he--shall--cause--to--be~~
 18 ~~securely--affixed--thereto--the--required--insignia--denoting--the~~
 19 ~~tax--thereon.--A--person--specifically--exempted--under--the~~
 20 ~~provisions--of--16-11-113(2)--may--not--be--considered--to--be~~
 21 ~~acting--unlawfully--under--this--section.~~
 22 (2)--Said--insignia--shall--be--properly--canceled--prior--to
 23 sale--or--removal--for--consumption,--under--such--regulations--as
 24 the--department--may--prescribe.
 25 (3)--Each--package--shall--have--the--required--insignia--to

1 affix thereto in such a manner that the insignia will be
2 destroyed when the package is opened.

3 (4) Wholesalers and retailers licensed under this part
4 may buy, sell, or have in their possession only cigarettes
5 which have the insignia provided for in this part on each
6 package. The insignia provided for in this part shall be
7 sold to and affixed by licensed wholesalers and licensed
8 retailers only.

9 (5) Whenever any cigarettes are found in the place of
10 business of any unlicensed wholesaler, retailer, or other
11 person without the insignia affixed and canceled or not
12 marked as having been received by the unlicensed wholesaler,
13 retailer, or person within the preceding 72 hours, the
14 presumption shall be that such cigarettes are kept therein
15 in violation of the provisions of this part.

16 SECTION 7. SECTION 16-11-119, MCA, IS AMENDED TO READ:
17 "16-11-119. Disposition of taxes ----- retirement of
18 bonds. All (1) Except as provided in subsection (2), all
19 moneys collected under the provisions of 16-11-111, less the
20 expense of collecting all the taxes levied, imposed, and
21 assessed by said section, shall be paid to the state
22 treasurer and deposited as follows: 70.89% in the long range
23 building program fund in the debt service fund type and
24 29.11% in the long range building program fund in the
25 capital projects fund type.

1 (2) The following money, collected pursuant to
2 16-11-111, is appropriated to the department:

3 Fiscal year 1992 ----- \$64,272
4 Fiscal year 1993 ----- 56,872

5 SECTION 8. SECTION 16-11-131, MCA, IS AMENDED TO READ:
6 "16-11-131. Transporting cigarettes without insignia a
7 misdemeanor. It shall be unlawful for any person to
8 transport into, receive, carry, or move from place to place
9 within this state, except in the course of interstate
10 commerce, any cigarettes which do not bear the insignia
11 required by this part, except for a person specifically
12 exempted in 16-11-132(2). Any person violating the
13 provisions of this section is guilty of a misdemeanor and
14 shall be punished as hereinafter provided."

15 SECTION 9. SECTION 16-11-133, MCA, IS AMENDED TO READ:
16 "16-11-133. Sale and use of cigarettes without insignia
17 unlawful. Every person who sells any package of cigarettes
18 which does not bear the insignia required by this part and
19 every person who uses or consumes a cigarette within this
20 state, taken from a package which does not bear the required
21 insignia, is guilty of a misdemeanor and shall be punished
22 as hereinafter provided, except that a person specifically
23 exempted under the provisions of 16-11-132(2) may not be
24 considered to be acting unlawfully under this section."

25 NEW SECTION. Section 10. Codification instruction.

1 ~~{Section--i}--is {SECTIONS--17-27-AND-4}--ARE--intended--to--be~~
2 ~~codified--as--an--integral--part--of--Title--167--chapter--117--part~~
3 ~~17--and--the--provisions--of--Title--167--chapter--117--part--17--apply~~
4 ~~to--{section--i} {SECTIONS--17-27-AND-4}.~~

5 NEW SECTION. Section 2. Effective date --
6 APPLICABILITY. [This act] is effective July--17--1991 ON
7 PASSAGE AND APPROVAL AND--APPLIES--TO--SALES--MADE--BY--A
8 WHOLESALER--AFTER--JUNE--307-1991.

9 NEW SECTION. Section 3. Termination. [This act]
10 terminates July 1, 1993.

-End-