

SENATE BILL NO. 116

INTRODUCED BY NOBLE, QUILICI, HARRINGTON, NATHE, SQUIRES

IN THE SENATE

JANUARY 17, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON TAXATION.

                                  FIRST READING.

JANUARY 31, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 1, 1991                   PRINTING REPORT.

                                  ON MOTION, CONSIDERATION PASSED  
UNTIL THE 25TH LEGISLATIVE DAY.

FEBRUARY 4, 1991                   SECOND READING, DO PASS.

FEBRUARY 5, 1991                   ENGROSSING REPORT.

                                  THIRD READING, PASSED.  
AYES, 49; NOES, 0.

                                  TRANSMITTED TO HOUSE.

IN THE HOUSE

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

FEBRUARY 6, 1991                   FIRST READING.

MARCH 5, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 9, 1991                    SECOND READING, CONCURRED IN.

MARCH 11, 1991                   THIRD READING, CONCURRED IN.  
AYES, 85; NOES, 14.

                                  RETURNED TO SENATE.

IN THE SENATE

MARCH 12, 1991                   RECEIVED FROM HOUSE.

                                  SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. 116  
 2 INTRODUCED BY *Mark Andrew Hamrick*  
 3 *WVTH* *Spencer*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 MONTANA CIGARETTE SALES ACT AND THE CIGARETTE SALES TAX LAW;  
 6 REQUIRING MONTHLY PAYMENT OF THE TAX; ALLOWING THE USE OF A  
 7 HEAT-APPLIED MACHINE TO AFFIX TAX STAMPS TO CIGARETTE  
 8 PACKAGES; REMOVING THE PROHIBITION AGAINST SALE OF  
 9 CIGARETTES IN COMBINATION WITH OTHER ARTICLES; REMOVING THE  
 10 LIMIT OF 7 DAYS ON CREDIT SALES OF TOBACCO PRODUCTS;  
 11 EXTENDING THE RECORDKEEPING REQUIREMENT; REPEALING SECTIONS  
 12 16-10-202 AND 16-10-305, MCA; AMENDING SECTIONS 16-11-102,  
 13 16-11-111, 16-11-113, 16-11-115, 16-11-116, 16-11-117, AND  
 14 16-11-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

17 **Section 1.** Section 16-11-102, MCA, is amended to read:  
 18 "16-11-102. Definitions. (1) As used in this chapter,  
 19 the following definitions shall apply unless the context  
 20 requires otherwise:

21 (a) "Cigarettes" means any roll for smoking made wholly  
 22 or in part of tobacco, irrespective of size or shape and  
 23 whether or not the tobacco is flavored, adulterated, or  
 24 mixed with any other ingredient, the wrapper or cover of  
 25 which is made of nontobacco paper or any other substance or

1 material except tobacco.  
 2 (a)(b) The word "department" shall mean "Department"  
 3 means the department of revenue of the state of Montana  
 4 provided for in 2-15-1301.

5 (b)(c) The word "person" shall mean any "Person" means  
 6 an individual, firm, fiduciary, partnership, corporation,  
 7 trust, organization, or association, however formed.

8 (c) "Cigarettes" shall mean any roll for smoking made  
 9 wholly or in part of tobacco, irrespective of size or shape  
 10 and whether or not such tobacco is flavored, adulterated, or  
 11 mixed with any other ingredient, the wrapper or cover of  
 12 which is made of nontobacco paper or any other substance or  
 13 material except tobacco.

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

16 (a) The words "insignia" or "indicia" shall mean the  
 17 impression or mark approved by the department under the  
 18 provisions of this part.

19 (a) "Cigarette vendor" means a person doing business in  
 20 the state who purchases cigarettes through a wholesaler,  
 21 subjobber, or retailer for 10 or more cigarette vending  
 22 machines that he operates for a profit in premises or  
 23 locations other than his own. That person must be treated as  
 24 a wholesaler. A person who operates fewer than 10 cigarette  
 25 vending machines must be treated as a retailer.



1 (b) ~~The words "full~~ "Full face value of insignia" shall  
2 mean means the total amount of the tax levied under this  
3 part.

4 ~~(c) The words "public warehouses" shall mean agents or~~  
5 ~~representatives of manufacturers who receive cigarettes in~~  
6 ~~carload lots for distribution to wholesaler and retailers in~~  
7 ~~original cases.~~

8 ~~(d) The word "wholesaler" shall mean and include any~~  
9 ~~person resident in this state who brings or causes to be~~  
10 ~~brought into this state unstamped cigarettes purchased~~  
11 ~~directly from the manufacturers thereof and stores, sells,~~  
12 ~~or otherwise disposes of the same after they shall reach~~  
13 ~~this state, and also any person who, within this state,~~  
14 ~~manufactures or produces, directly or indirectly, cigarettes~~  
15 ~~and sells or distributes the same within this state.~~

16 (c) "Insignia" or "indicia" means the impression, mark,  
17 or stamp approved by the department under the provisions of  
18 this part.

19 (d) "Licensed retailer" means any person, other than a  
20 wholesaler, subjobber, or cigarette vendor, who is licensed  
21 under the provisions of this part.

22 (e) "Licensed subjobber" means a subjobber licensed  
23 under the provisions of this part; he must be treated as a  
24 wholesaler.

25 ~~(e)(f) The words "licensed~~ "Licensed wholesaler" shall

1 mean means a wholesaler duly licensed under the provisions  
2 of this part.

3 ~~(f) The words "cigarette vendor" shall mean and include~~  
4 ~~any person doing business in the state who purchases~~  
5 ~~cigarettes through a wholesaler, subjobber, or retailer for~~  
6 ~~10 or more cigarette vending machines which he operates for~~  
7 ~~a profit in premises or locations other than his own. Such~~  
8 ~~person shall be treated as a wholesaler. Any person who~~  
9 ~~operates less than 10 cigarette vending machines shall be~~  
10 ~~treated as a retailer.~~

11 ~~(g) The word "subjobber" shall mean and include any~~  
12 ~~person who purchases cigarettes from a licensed wholesaler~~  
13 ~~with the Montana cigarette tax insignia affixed thereto and~~  
14 ~~sells or offers to sell such cigarettes to a licensed~~  
15 ~~retailer or cigarette vendor. An isolated sale or exchange~~  
16 ~~of cigarettes between licensed retailers shall not~~  
17 ~~constitute such retailers as subjobbers. It is further~~  
18 ~~provided that a subjobber shall use the license in the~~  
19 ~~interest of the general public. If during any month more~~  
20 ~~than 35% of volume of cigarette sales be with any retail~~  
21 ~~client whose business is controlled directly or indirectly~~  
22 ~~through sanguinity or affinity with the owner or employer~~  
23 ~~for such retail business, the license shall be deemed to~~  
24 ~~have been used or to be intended to be used in violation of~~  
25 ~~16-11-144.~~

~~{h}~~ The words "licensed subjobber" shall mean a subjobber duly licensed under the provisions of this part, and he shall be treated as a wholesaler.

{g} "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

{h} "Record" means an original document, a legible facsimile, or an electronically preserved copy.

{i} The word "retailer" shall mean any "Retailer" means a person, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business of selling cigarettes at retail.

~~{j}~~ The words "licensed retailer" shall mean any person, other than a wholesaler, subjobber, or cigarette vendor, who is duly licensed under the provisions of this part.

{k}{j} The words "sale" "Sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by 30-2-106, or by gift, barter, or exchange.

{k} "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers.

A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

{l} "Wholesaler" means any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state."

**Section 2.** Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. There is hereby levied, imposed, and assessed and there shall must be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following an excise tax which shall be paid prior to the time of sale and delivery of cigarettes: of 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, then a tax on each cigarette equal to 1/20th the

1 tax on a package containing 20 cigarettes."

2 **Section 3.** Section 16-11-113, MCA, is amended to read:

3 "16-11-113. Tax insignia. (1) ~~Within 72 hours after~~  
4 ~~receipt by~~ Except as provided in this section, the  
5 distributor or dealer of any cigarettes, ~~except as~~  
6 ~~hereinafter provided,~~ he shall cause to be securely affixed  
7 ~~thereto to the cigarettes~~ the required insignia denoting the  
8 applicable tax thereon. A person specifically exempted under  
9 the provisions of 16-11-132(2) may is not be considered to  
10 be acting unlawfully under this section.

11 (2) ~~Said~~ The insignia ~~shall must~~ be properly ~~canceled~~  
12 applied prior to sale or removal for consumption, under such  
13 regulations as that the department may prescribe.

14 ~~(3) Each package shall have the required insignia to~~  
15 ~~affix thereto in such a manner that the insignia will be~~  
16 ~~destroyed when the package is opened.~~

17 ~~(4)~~ (3) Wholesalers and retailers licensed under this  
18 part may buy, sell, or have in their possession only  
19 cigarettes which that have on each package the insignia  
20 provided for in this part ~~on each package.~~ The insignia  
21 provided for in this part ~~shall may~~ be sold only to and must  
22 be affixed only by licensed wholesalers and licensed  
23 retailers only.

24 ~~(5)~~ (4) Whenever If any cigarettes without the insignia  
25 affixed are found in the place of business of any unlicensed

1 wholesaler, retailer, or other person ~~without the insignia~~  
2 ~~affixed and canceled or not marked as having been received~~  
3 ~~by the unlicensed wholesaler, retailer, or person within the~~  
4 ~~preceding 72 hours,~~ the presumption ~~shall be~~ is that such  
5 the cigarettes are kept therein in that place of business in  
6 violation of the provisions of this part.

7 (5) Except as provided in 16-11-132(2), the insignia  
8 provided for in this part must be affixed before the sale of  
9 the cigarettes by a wholesaler."

10 **Section 4.** Section 16-11-115, MCA, is amended to read:

11 "16-11-115. Tax meter ~~machine~~ -- tax stamp-applying  
12 machine -- purchase of stamps. (1) The department may  
13 authorize any wholesaler or retailer of cigarettes licensed  
14 under this part to use a tax meter machine ~~with which~~ to  
15 imprint an insignia upon each package of cigarettes  
16 imported, sold, or delivered in this state. The insignia  
17 ~~shall must~~ be one approved by the department. Each package  
18 of cigarettes imported into ~~this state,~~ or delivered or sold  
19 ~~therein shall in this state must~~ be marked with the proper  
20 insignia of ~~such the~~ tax-stamping meter, and thereafter any  
21 original package of cigarettes so marked may be lawfully  
22 possessed and sold within the state by any wholesaler or  
23 retailer licensed under this part. The department shall  
24 supervise and check the operation of ~~such the~~ tax meter  
25 machines. ~~The operator of such~~ Before using the machine,

1 ~~before using the same,~~ the operator of the machine shall  
 2 take the machine's meter thereof to the county treasurer of  
 3 the county in which the machine is operated~~7.~~ who ~~The county~~  
 4 ~~treasurer is authorized to and~~ shall set ~~said the~~ meter for  
 5 the number of packages specified and required by the  
 6 operator. Prior to setting ~~said the~~ meter, the county  
 7 treasurer shall charge ~~said the~~ operator the amount of money  
 8 proper for ~~said the~~ setting, less the expense defrayment  
 9 provided for in 16-11-114. The county treasurer shall  
 10 collect this amount in advance unless the department has  
 11 allowed the purchaser ~~credit to delay payment~~ as provided in  
 12 16-11-117. The county treasurer shall report to the  
 13 department on forms prescribed by it the name of the  
 14 licensed wholesaler or licensed retailer and the number of  
 15 packages for which ~~said the~~ meter was set and shall forward  
 16 to the department any amounts collected from ~~said the~~  
 17 licensee.

18 (2) (a) The department may authorize a licensed  
 19 wholesaler or licensed retailer to affix tax stamps to  
 20 packages of cigarettes with a heat-applied machine approved  
 21 by the department. The department shall supervise and check  
 22 the operation of the stamp-applying machine.

23 (b) Tax stamps applied as provided in this subsection  
 24 must be purchased from the department, and payment for the  
 25 stamps must accompany the order unless the department has

1 allowed the purchaser to delay payment as provided in  
 2 16-11-117."

3 **Section 5.** Section 16-11-116, MCA, is amended to read:  
 4 "16-11-116. Resale of insignia prohibited -- rebate. No  
 5 A wholesaler or retailer ~~shall~~ may not resell to any other  
 6 wholesaler or retailer any insignia purchased by him from  
 7 the department. Any A wholesaler or retailer who has on hand  
 8 any meter settings or tax insignia at the time of  
 9 discontinuing his business of selling cigarettes may apply  
 10 to the department and be paid the face value of ~~said the~~  
 11 meter settings or tax insignia less the amount of the  
 12 expense defrayment allowed by 16-11-114."

13 **Section 6.** Section 16-11-117, MCA, is amended to read:  
 14 "16-11-117. When payment for insignia due. (1) The  
 15 department shall permit a licensed wholesaler or licensed  
 16 retailer to pay ~~for the insignia purchased, or affixation of~~  
 17 ~~insignia, within 30 days after the date of purchase~~ the  
 18 cigarette sales tax as provided in subsection (2) and shall  
 19 require such the licensee to file with the department a bond  
 20 issued by a surety company approved by the state insurance  
 21 ~~department of insurance~~ as to solvency and responsibility  
 22 and authority to transact business in the state, for such an  
 23 amount as that the department may fix, but not ~~in excess of~~  
 24 more than an amount equal to the maximum ~~insignia purchases~~  
 25 ~~incurred for a 30-day period in the previous calendar year~~

1 cigarette insignia purchases by the licensed wholesaler or  
 2 licensed retailer for any month in the previous calendar  
 3 year;--provided;--however;--that--any. However, a newly licensed  
 4 wholesaler or licensed retailer shall pay on a cash basis  
 5 for 1 complete calendar year, after which the department may  
 6 permit him ~~30-days-to-pay-for-the-purchase-or-affixation--of~~  
 7 insignia to pay the cigarette sales tax as provided in  
 8 subsection (2) and shall require a bond as hereinabove  
 9 provided in this section.

10 (2) Payment for insignia is due on or before the 15th  
 11 day of each month, and each licensed wholesaler or licensed  
 12 retailer shall pay the tax imposed under 16-11-111 on  
 13 cigarettes sold by him during the preceding calendar month."

14 **Section 7.** Section 16-11-118, MCA, is amended to read:

15 "16-11-118. Records of tax meter users and stampers.  
 16 All tax meter users and stampers shall keep for ~~a-period-of~~  
 17 ~~1-year~~ 5 years all invoices of cigarettes purchased and  
 18 imported by them, all receipts issued by them and insignia  
 19 purchased, ~~also~~ and an accurate record of all sales of  
 20 cigarettes by ~~such~~ the tax meter users or stampers, showing  
 21 the name and address of each purchaser, the date of sale,  
 22 the quantity of each kind sold, the name of any carrier, the  
 23 shipping point, and destination. ~~Such~~ The tax meter users or  
 24 stampers shall permit the department, and its assistants,  
 25 authorized agents, or representatives to examine all taxable

1 items of cigarettes, invoices, receipts, books, paper,  
 2 memoranda, and records as may be necessary to determine  
 3 whether the tax meter machine or tax stamp-applying machine  
 4 has been used as required or the insignia required by this  
 5 part had been purchased and used or to determine the amount  
 6 of such tax as may be due or unpaid."

7 NEW SECTION. Section 8. Repealer. Sections 16-10-202  
 8 and 16-10-305, MCA, are repealed.

9 NEW SECTION. Section 9. Saving clause. [This act] does  
 10 not affect rights and duties that matured, penalties that  
 11 were incurred, or proceedings that were begun before [the  
 12 effective date of this act].

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

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0116, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to generally revise the Montana Cigarette Sales Act and the Cigarette Sales Tax Law; requiring monthly payment of the tax; allowing the use of a heat-applied machine to affix tax stamps to cigarette packages; removing the prohibition against sale of cigarettes in combination with other articles; removing the limit of 7 days on credit sales of tobacco products; extending the recordkeeping requirement and providing an effective date.

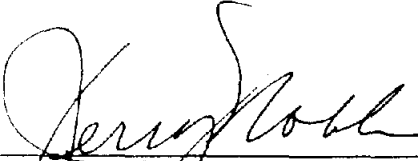
ASSUMPTIONS:

1. Cigarette sales are 65.329 million packs in FY92 and 63.721 million packs in FY93 (OBPP).
2. All wholesalers who currently pay cash for cigarette sales tax stamps (approx. 52.5% of all wholesalers) will switch to the delayed payment program. In reality, not all of the wholesalers will switch to delayed payment. However, this assumption allows for the maximum fiscal impact to be determined.
3. The annual rate of interest for short-term investment is 8.1% for FY92 (OBPP).
4. All cigarette wholesalers receive 30 days of interest free credit on purchases of tax stamps.
5. Purchases of tax stamps by wholesalers are currently evenly distributed throughout each month.
6. Revenue from the cigarette sales tax is allocated as follows under current law: 70.89% long-range building debt service and 29.11% long-range building capital projects.

FISCAL IMPACT

see next page

 1-22-91  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning

 1/23/91  
\_\_\_\_\_  
JERRY NOBLE, PRIMARY SPONSOR                      DATE  
Fiscal Note for SB0116, as introduced

**SB 116**

FISCAL IMPACT:

Expenditures:

In order to maintain integrity in accounting of the tax, the proposed legislation will initially require several changes in administration of the cigarette sales tax. This will result in a one-time additional operating expenditure of approximately \$5,280 during FY91 (General Fund).

Revenues:

	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>
Cigarette Sales Tax	11,315,942	10,820,942	(495,000)	11,037,326	11,037,326	0

Fund Information:

Long-Range Building Debt Service (05)	8,021,871	7,670,971	(350,900)	7,824,360	7,824,360	0
Long-Range Building Capital Projects (05)	3,294,071	3,149,971	(144,100)	3,212,966	3,212,966	0
Loss of Interest Earnings (General Fund)			(40,000)			

SB 116

APPROVED BY COMMITTEE  
ON TAXATION

SENATE BILL NO. 116

INTRODUCED BY NOBLE, QUILICI, HARRINGTON, NATHE, SQUIRES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA CIGARETTE SALES ACT AND THE CIGARETTE SALES TAX LAW; REQUIRING MONTHLY PAYMENT OF THE TAX; ALLOWING THE USE OF A HEAT-APPLIED MACHINE TO AFFIX TAX STAMPS TO CIGARETTE PACKAGES; REMOVING THE PROHIBITION AGAINST SALE OF CIGARETTES IN COMBINATION WITH OTHER ARTICLES; REMOVING THE LIMIT OF 7 DAYS ON CREDIT SALES OF TOBACCO PRODUCTS; EXTENDING THE RECORDKEEPING REQUIREMENT; REPEALING SECTIONS 16-10-202 AND 16-10-305, MCA; AMENDING SECTIONS 16-11-102, 16-11-111, 16-11-113, 16-11-115, 16-11-116, 16-11-117, AND 16-11-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of no tobacco paper or any other substance or

material except tobacco.

(b) The word "department" shall mean "Department" means the department of revenue of the state of Montana provided for in 2-15-1301.

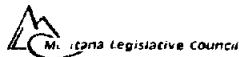
(c) The word "person" shall mean any "Person" means an individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed.

(d) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

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

(a) The words "insignia" or "indicia" shall mean the impression or mark approved by the department under the provisions of this part.

(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that he operates for a profit in premises or locations other than his own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.



1 (b) ~~The words "full~~ "Full face value of insignia" shall  
2 mean means the total amount of the tax levied under this  
3 part.

4 ~~{c}--The--words--"public-warehouses"--shall--mean--agents--or~~  
5 ~~representatives--of--manufacturers--who--receive--cigarettes--in~~  
6 ~~carload--lots--for--distribution--to--wholesaler--and--retailers--in~~  
7 ~~original--cases--~~

8 ~~{d}--The--word--"wholesaler"--shall--mean--and--include--any~~  
9 ~~person--resident--in--this--state--who--brings--or--causes--to--be~~  
10 ~~brought--into--this--state--unstamped--cigarettes--purchased~~  
11 ~~directly--from--the--manufacturers--thereof--and--stores,--sells,~~  
12 ~~or--otherwise--disposes--of--the--same--after--they--shall--reach~~  
13 ~~this--state,--and--also--any--person--who,--within--this--state,~~  
14 ~~manufactures--or--produces,--directly--or--indirectly,--cigarettes~~  
15 ~~and--sells--or--distributes--the--same--within--this--state.~~

16 (c) "Insignia" or "indicia" means the impression, mark,  
17 or stamp approved by the department under the provisions of  
18 this part.

19 (d) "Licensed retailer" means any person, other than a  
20 wholesaler, subjobber, or cigarette vendor, who is licensed  
21 under the provisions of this part.

22 (e) "Licensed subjobber" means a subjobber licensed  
23 under the provisions of this part; he must be treated as a  
24 wholesaler.

25 (f)(f) ~~The--words--"licensed~~ "Licensed wholesaler" shall

1 mean means a wholesaler duly licensed under the provisions  
2 of this part.

3 ~~{f}--The--words--"cigarette--vendor"--shall--mean--and--include~~  
4 ~~any--person--doing--business--in--the--state--who--purchases~~  
5 ~~cigarettes--through--a--wholesaler,--subjobber,--or--retailer--for~~  
6 ~~10--or--more--cigarette--vending--machines--which--he--operates--for~~  
7 ~~a--profit--in--premises--or--locations--other--than--his--own--Such~~  
8 ~~person--shall--be--treated--as--a--wholesaler.--Any--person--who~~  
9 ~~operates--less--than--10--cigarette--vending--mac--lines--shall--be~~  
10 ~~treated--as--a--retailer.~~

11 ~~{g}--The--word--"subjobber"--shall--mean--and--include--any~~  
12 ~~person--who--purchases--cigarettes--from--a--licensed--wholesaler~~  
13 ~~with--the--Montana--cigarette--tax--insignia--affixed--thereto--and~~  
14 ~~sells--or--offers--to--sell--such--cigarettes--to--a--licensed~~  
15 ~~retailer--or--cigarette--vendor--An--isolated--sale--or--exchange~~  
16 ~~of--cigarettes--between--licensed--retailers--shall--not~~  
17 ~~constitute--such--retailers--as--subjobbers.--It--is--further~~  
18 ~~provided--that--a--subjobber--shall--use--the--license--in--the~~  
19 ~~interest--of--the--general--public--If--during--any--month--more~~  
20 ~~than--35%--of--volume--of--cigarette--sales--be--with--any--retail~~  
21 ~~client--whose--business--is--controlled--directly--or--indirectly~~  
22 ~~through--sanguinity--or--affinity--with--the--owner--or--employer~~  
23 ~~for--such--retail--business,--the--license--shall--be--deemed--to~~  
24 ~~have--been--used--or--to--be--intended--to--be--used--in--violation--of~~  
25 ~~16--11--144.~~

~~{h}--The--words--"licensed--subjobber"--shall--mean--a subjobber--duly--licensed--under--the--provisions--of--this--part, and--he--shall--be--treated--as--a--wholesaler.~~

{g} "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

{h} "Record" means an original document, a legible facsimile, or an electronically preserved copy.

{i} ~~The word--"retailer"--shall--mean--any~~ "Retailer" means a person, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business of selling cigarettes at retail.

~~{j}--The--words--"licensed--retailer"--shall--mean--any person,--other--than--a--wholesaler,--subjobber,--or--cigarette vendor,--who--is--duly--licensed--under--the--provisions--of--this part.~~

{k}{j} The words "sale" "Sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by 30-2-106, or by gift, barter, or exchange.

{k} "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers.

A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

{l} "Wholesaler" means any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state."

**Section 2.** Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. There is hereby levied, imposed, and assessed and there shall must be collected and paid to the state of Montana upon cigarettes sold or possessed in this state ~~the following an~~ excise tax ~~which--shall--be--paid--prior--to--the--time--of--sale--and--delivery~~ of cigarettes: of 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, then a tax on each cigarette equal to 1/20th the

1 tax on a package containing 20 cigarettes."

2 **Section 3.** Section 16-11-113, MCA, is amended to read:

3 "16-11-113. **Tax insignia.** (1) ~~Within--72--hours--after~~  
4 ~~receipt---by~~ Except as provided in this section, the  
5 distributor or dealer of any cigarettes, ~~---except---as~~  
6 ~~hereinafter--provided, he~~ shall cause to be securely affixed  
7 ~~thereto to the cigarettes~~ the required insignia denoting the  
8 ~~applicable tax thereon.~~ A person specifically exempted under  
9 the provisions of 16-11-132(2) may is not be considered to  
10 be acting unlawfully under this section.

11 (2) ~~Said~~ The insignia shall must be properly canceled  
12 ~~applied~~ prior to sale ~~or removal for consumption,~~ under such  
13 regulations as that the department may prescribe.

14 ~~{3}--Each package shall have the--required--insignia--to~~  
15 ~~affix--thereto--in--such--a manner--that--the--insignia--will--be~~  
16 ~~destroyed--when--the--package--is--opened.~~

17 ~~{4}~~(3) Wholesalers and retailers licensed under this  
18 part may buy, sell, or have in their possession only  
19 cigarettes which that have on each package the insignia  
20 provided for in this part ~~on each package.~~ The insignia  
21 provided for in this part shall may be sold only to and must  
22 be affixed only by licensed wholesalers and licensed  
23 retailers only.

24 ~~{5}~~(4) Whenever If any cigarettes without the insignia  
25 affix d are found in the place of business of any unlicensed

1 wholesaler, retailer, or other person ~~without--the--insignia~~  
2 ~~affixed--and--canceled--or--not--marked--as--having--been--received~~  
3 ~~by--the--unlicensed--wholesaler,--retailer,--or--person--within--the~~  
4 ~~preceding--72--hours,~~ the presumption shall ~~be~~ is that such  
5 the cigarettes are kept therein in that place of business in  
6 violation of the provisions of this part.

7 (5) Except as provided in 16-11-132(2), the insignia  
8 provided for in this part must be affixed before the sale of  
9 the cigarettes by a wholesaler."

10 **Section 4.** Section 16-11-115, MCA, is amended to read:

11 "16-11-115. **Tax meter machine -- tax stamp-applying**  
12 **machine -- purchase of stamps.** (1) The department may  
13 authorize any wholesaler or retailer of cigarettes licensed  
14 under this part to use a tax meter machine ~~with which~~ to  
15 imprint an insignia upon each package of cigarettes  
16 imported, sold, or delivered in this state. The insignia  
17 shall must be one approved by the department. Each package  
18 of cigarettes imported into ~~this state,~~ or delivered or sold  
19 therein shall in this state must be marked with the proper  
20 insignia of such the tax-stamping meter, and thereafter any  
21 original package of cigarettes so marked may be lawfully  
22 possessed and sold within the state by any wholesaler or  
23 retailer licensed under this part. The department shall  
24 supervise and check the operation of such the tax meter  
25 machines. ~~The--operator--of--such~~ Before using the machine,

1 ~~before using the same~~, the operator of the machine shall  
 2 take the machine's meter thereof to the county treasurer of  
 3 the county in which the machine is operated, ~~who~~ The county  
 4 ~~treasurer is authorized to and~~ shall set ~~said the~~ meter for  
 5 the number of packages specified and required by the  
 6 operator. Prior to setting ~~said the~~ meter, the county  
 7 treasurer shall charge ~~said the~~ operator the amount of money  
 8 proper for ~~said the~~ setting, less the expense defrayment  
 9 provided for in 16-11-114. The county treasurer shall  
 10 collect this amount in advance unless the department has  
 11 allowed the purchaser ~~credit to--delay--payment~~ CREDIT as  
 12 provided in 16-11-117. The county treasurer shall report to  
 13 the department on forms prescribed by it the name of the  
 14 licensed wholesaler or licensed retailer and the number of  
 15 packages for which ~~said the~~ meter was set and shall forward  
 16 to the department any amounts collected from ~~said the~~  
 17 licensee.

18 (2) (a) The department may authorize a licensed  
 19 wholesaler or licensed retailer to affix tax stamps to  
 20 packages of cigarettes with a heat-applied machine approved  
 21 by the department. The department shall supervise and check  
 22 the operation of the stamp-applying machine.

23 (b) Tax stamps applied as provided in this subsection  
 24 must be purchased from the department, and payment for the  
 25 stamps must accompany the order unless the department has

1 allowed the purchaser to delay payment as provided in  
 2 16-11-117."

3 **Section 5.** Section 16-11-116, MCA, is amended to read:

4 "16-11-116. Resale of insignia prohibited -- rebate. No  
 5 A wholesaler or retailer shall may not resell to any other  
 6 wholesaler or retailer any insignia purchased by him from  
 7 the department. Any A wholesaler or retailer who has on hand  
 8 any meter settings or tax insignia at the time of  
 9 discontinuing his business of selling cigarettes may apply  
 10 to the department and be paid the face value of ~~said the~~  
 11 meter settings or tax insignia less the amount of the  
 12 expense defrayment allowed by 16-11-114."

13 ~~Section 6--Section 16-11-117, MCA, is amended to read:~~

14 ~~"16-11-117.--When payment--for--insignia--due: (1)--The~~  
 15 ~~department--shall--permit--a--licensed--wholesaler--or--licensed~~  
 16 ~~retailer--to--pay--for--the--insignia--purchased,--or--affixation--of~~  
 17 ~~insignia,--within--30--days--after--the--date--of--purchase~~ the  
 18 ~~cigarette--sales--tax--as--provided--in--subsection--(2)--and--shall~~  
 19 ~~require--such~~ the licensee to file with the department a bond  
 20 ~~issued--by--a--surety--company--approved--by--the--state~~ insurance  
 21 ~~department--of--insurance--as--to--solvency--and--responsibility~~  
 22 ~~and--authority--to--transact--business--in--the--state,--for--such~~ an  
 23 ~~amount--as~~ that the department may fix, but not in excess of  
 24 ~~more--than~~ an amount equal to the maximum insignia purchases  
 25 incurred for any 30 day period in the previous calendar year

1 ~~cigarette insignia purchases by the licen. d--wholesaler--or~~  
 2 ~~licensed--retailer--for--any--month--in--the--previous--calendar~~  
 3 ~~year;--provided;--however;--that--any;--However;--a newly-licensed~~  
 4 ~~wholesaler--or--licensed--retailer--shall--pay--on--a--cash--basis~~  
 5 ~~for--1--complete--calendar--year;--after--which--the--department--may~~  
 6 ~~permit--him 30--days--to--pay--for--the--purchase--or--affixation--of~~  
 7 ~~insignia to pay the--cigarette--sales--tax--as--provided--in~~  
 8 ~~subsection--(2) and--shall--require--a--bond--as hereinabove~~  
 9 ~~provided in this section.~~

10 ~~(2)--Payment--for--insignia--is--due--on--or--before--the--15th~~  
 11 ~~day--of--each--month;--and--each--licensed--wholesaler--or--licensed~~  
 12 ~~retailer--shall--pay--the--tax--imposed--under--16--11--111--on~~  
 13 ~~cigarettes--sold--by--him--during--the--preceding--calendar--month."~~

14 **Section 6.** Section 16-11-118, MCA, is amended to read:

15 "16-11-118. Records of tax meter users and stampers.  
 16 All tax meter users and stampers shall keep for a period of  
 17 1--year 5 years all invoices of cigarettes purchased and  
 18 imported by them, all receipts issued by them and insignia  
 19 purchased, also and an accurate record of all sales of  
 20 cigarettes by such the tax meter users or stampers, showing  
 21 the name and address of each purchaser, the date of sale,  
 22 the quantity of each kind sold, the name of any carrier, the  
 23 shipping point, and destination. Such The tax meter users or  
 24 stampers shall permit the department, and its assistants,  
 25 authorize agents, or representatives to examine all taxable

1 items of cigarettes, invoices, receipts, books, paper,  
 2 memoranda, and records as may be necessary to determine  
 3 whether the tax meter machine or tax stamp-applying machine  
 4 has been used as required or the insignia required by this  
 5 part had been purchased and used or to determine the amount  
 6 of such tax as may be due or unpaid."

7 **NEW SECTION. Section 7.** Repealer. Sections 16-10-202  
 8 and 16-10-305, MCA, are repealed.

9 **NEW SECTION. Section 8.** Saving clause. [This act] does  
 10 not affect rights and duties that matured, penalties that  
 11 were incurred, or proceedings that were begun before [the  
 12 effective date of this act].

13 **NEW SECTION. Section 9.** Effective date. [This act] is  
 14 effective July 1, 1991.

-End-



## SENATE BILL NO. 116

INTRODUCED BY NOBLE, QUILICI, HARRINGTON, NATHE, SQUIRES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA CIGARETTE SALES ACT AND THE CIGARETTE SALES TAX LAW; REQUIRING MONTHLY PAYMENT OF THE TAX; ALLOWING THE USE OF A HEAT-APPLIED MACHINE TO AFFIX TAX STAMPS TO CIGARETTE PACKAGES; REMOVING THE PROHIBITION AGAINST SALE OF CIGARETTES IN COMBINATION WITH OTHER ARTICLES; REMOVING THE LIMIT OF 7 DAYS ON CREDIT SALES OF TOBACCO PRODUCTS; EXTENDING THE RECORDKEEPING REQUIREMENT; REPEALING SECTIONS 16-10-202 AND 16-10-305, MCA; AMENDING SECTIONS 16-11-102, 16-11-111, 16-11-113, 16-11-115, 16-11-116, ~~16-11-117~~, AND 16-11-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or

material except tobacco.

(b) The word "department" shall mean "Department" means the department of revenue of the state of Montana provided for in 2-15-1301.

(c) The word "person" shall mean any "Person" means an individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed.

(d) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

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

(a) The words "insignia" or "indicia" shall mean the impression or mark approved by the department under the provisions of this part.

(b) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that he operates for a profit in premises or locations other than his own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.

THIRD READING

1 (b) ~~The words "full~~ "Full face value of insignia" shall  
2 mean means the total amount of the tax levied under this  
3 part.

4 ~~(c) The words "public warehouses" shall mean agents or~~  
5 ~~representatives of manufacturers who receive cigarettes in~~  
6 ~~carload lots for distribution to wholesaler and retailers in~~  
7 ~~original cases.~~

8 ~~(d) The word "wholesaler" shall mean and include any~~  
9 ~~person resident in this state who brings or causes to be~~  
10 ~~brought into this state unstamped cigarettes purchased~~  
11 ~~directly from the manufacturers thereof and stores, sells,~~  
12 ~~or otherwise disposes of the same after they shall reach~~  
13 ~~this state; and also any person who, within this state,~~  
14 ~~manufactures or produces, directly or indirectly, cigarettes~~  
15 ~~and sells or distributes the same within this state.~~

16 (c) "Insignia" or "indicia" means the impression, mark,  
17 or stamp approved by the department under the provisions of  
18 this part.

19 (d) "Licensed retailer" means any person, other than a  
20 wholesaler, subjobber, or cigarette vendor, who is licensed  
21 under the provisions of this part.

22 (e) "Licensed subjobber" means a subjobber licensed  
23 under the provisions of this part; he must be treated as a  
24 wholesaler.

25 ~~(f)(f)~~ The words "licensed Licensed wholesaler" shall

1 mean means a wholesaler duly licensed under the provisions  
2 of this part.

3 ~~(f) The words "cigarette vendor" shall mean and include~~  
4 ~~any person doing business in the state who purchases~~  
5 ~~cigarettes through a wholesaler, subjobber, or retailer for~~  
6 ~~10 or more cigarette vending machines which he operates for~~  
7 ~~a profit in premises or locations other than his own. Such~~  
8 ~~person shall be treated as a wholesaler. Any person who~~  
9 ~~operates less than 10 cigarette vending machines shall be~~  
10 ~~treated as a retailer.~~

11 (g) The word "subjobber" shall mean and include any  
12 person who purchases cigarettes from a licensed wholesaler  
13 with the Montana cigarette tax insignia affixed thereto and  
14 sells or offers to sell such cigarettes to a licensed  
15 retailer or cigarette vendor. An isolated sale or exchange  
16 of cigarettes between licensed retailers shall not  
17 constitute such retailers as subjobbers. It is further  
18 provided that a subjobber shall use the license in the  
19 interest of the general public. If during any month more  
20 than 35% of volume of cigarette sales be with any retail  
21 client whose business is controlled directly or indirectly  
22 through sanguinity or affinity with the owner or employer  
23 for such retail business, the license shall be deemed to  
24 have been used or to be intended to be used in violation of  
25 16-11-144.

~~(h) The words "licensed subjobber" shall mean a subjobber duly licensed under the provisions of this part, and he shall be treated as a wholesaler.~~

(g) "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

(h) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

(i) ~~The word "retailer" shall mean any~~ "Retailer" means a person, other than a wholesaler, subjobber, or cigarette vendor, who is engaged in the business of selling cigarettes at retail.

~~(j) The words "licensed retailer" shall mean any person, other than a wholesaler, subjobber, or cigarette vendor, who is duly licensed under the provisions of this part.~~

~~(k)(j)~~ The words "sale" "Sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by 30-2-106, or by gift, barter, or exchange.

(k) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers.

A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.

(1) "Wholesaler" means any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells, or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes within this state."

**Section 2.** Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax. There is hereby levied, imposed, and assessed and there shall must be collected and paid to the state of Montana upon cigarettes sold or possessed in this state the following an excise tax which shall be paid prior to the time of sale and delivery of cigarettes: of 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, then a tax on each cigarette equal to 1/20th the

1 tax on a package containing 20 cigarettes."

2 **Section 3.** Section 16-11-113, MCA, is amended to read:

3 "16-11-113. Tax insignia. (1) Within ~~72 hours after~~  
4 ~~receipt~~ by Except as provided in this section, the  
5 distributor or dealer of any cigarettes, ~~except as~~  
6 ~~hereinafter provided,~~ he shall cause to be securely affixed  
7 thereto to the cigarettes the required insignia denoting the  
8 applicable tax thereon. A person specifically exempted under  
9 the provisions of 16-11-132(2) ~~may~~ is not be considered to  
10 be acting unlawfully under this section.

11 (2) ~~Said~~ The insignia ~~shall~~ must be properly canceled  
12 applied prior to sale ~~or removal for consumption,~~ under such  
13 regulations as that the department may prescribe.

14 ~~(3) Each package shall have the required insignia to~~  
15 ~~affix thereto in such a manner that the insignia will be~~  
16 ~~destroyed when the package is opened.~~

17 ~~(4)~~ (3) Wholesalers and retailers licensed under this  
18 part may buy, sell, or have in their possession only  
19 cigarettes which that have on each package the insignia  
20 provided for in this part ~~on each package.~~ The insignia  
21 provided for in this part ~~shall~~ may be sold only to and must  
22 be affixed only by licensed wholesalers and licensed  
23 retailers only.

24 ~~(5)~~ (4) Whenever If any cigarettes without the insignia  
25 affix d are found in the place of business of any unlicensed

1 wholesaler, retailer, or other person ~~without the insignia~~  
2 ~~affixed and canceled or not marked as having been received~~  
3 ~~by the unlicensed wholesaler, retailer, or person within the~~  
4 ~~preceding 72 hours,~~ the presumption ~~shall be~~ is that such  
5 the cigarettes are kept therein in that place of business in  
6 violation of the provisions of this part.

7 (5) Except as provided in 16-11-132(2), the insignia  
8 provided for in this part must be affixed before the sale of  
9 the cigarettes by a wholesaler."

10 **Section 4.** Section 16-11-115, MCA, is amended to read:

11 "16-11-115. Tax meter machine ~~-- tax stamp applying~~  
12 ~~machine -- purchase of stamps.~~ (1) The department may  
13 authorize any wholesaler or retailer of cigarettes licensed  
14 under this part to use a tax meter machine ~~with which~~ to  
15 imprint an insignia upon each package of cigarettes  
16 imported, sold, or delivered in this state. The insignia  
17 ~~shall~~ must be one approved by the department. Each package  
18 of cigarettes imported into ~~this state,~~ or delivered or sold  
19 ~~therein shall in this state must~~ be marked with the proper  
20 insignia of such the tax-stamping meter, and thereafter any  
21 original package of cigarettes so marked may be lawfully  
22 possessed and sold within the state by any wholesaler or  
23 retailer licensed under this part. The department shall  
24 supervise and check the operation of such the tax meter  
25 machines. ~~The operator of such~~ Before using the machine,

1 ~~before using the same,~~ the operator of the machine shall  
 2 take the machine's meter thereof to the county treasurer of  
 3 the county in which the machine is operated, ~~who~~ The county  
 4 treasurer is authorized to and shall set said the meter for  
 5 the number of packages specified and required by the  
 6 operator. Prior to setting said the meter, ~~the county~~  
 7 treasurer shall charge said the operator the amount of money  
 8 proper for said the setting, ~~less the expense defrayment~~  
 9 provided for in 16-11-114. The county treasurer shall  
 10 collect this amount in advance unless the department has  
 11 allowed the purchaser credit ~~to--delay--payment~~ CREDIT as  
 12 provided in 16-11-117. The county treasurer shall report to  
 13 the department on forms prescribed by it the name of the  
 14 licensed wholesaler or licensed retailer and the number of  
 15 packages for which said the meter was set and shall forward  
 16 to the department any amounts collected from said the  
 17 licensee.

18 (2) (a) The department may authorize a licensed  
 19 wholesaler or licensed retailer to affix tax stamps to  
 20 packages of cigarettes with a heat-applied machine approved  
 21 by the department. The department shall supervise and check  
 22 the operation of the stamp-applying machine.

23 (b) Tax stamps applied as provided in this subsection  
 24 must be purchased from the department, and payment for the  
 25 stamps must accompany the order unless the department has

1 allowed the purchaser to delay payment as provided in  
 2 16-11-117."

3 **Section 5.** Section 16-11-116, MCA, is amended to read:

4 "16-11-116. Resale of insignia prohibited -- rebate. No  
 5 A wholesaler or retailer shall may not resell to any other  
 6 wholesaler or retailer any insignia purchased by him from  
 7 the department. Any A wholesaler or retailer who has on hand  
 8 any meter settings or tax insignia at the time of  
 9 discontinuing his business of selling cigarettes may apply  
 10 to the department and be paid the face value of said the  
 11 meter settings or tax insignia less the amount of the  
 12 expense defrayment allowed by 16-11-114."

13 ~~Section 6.--Section 16-11-117, MCA, is amended to read:~~

14 ~~"16-11-117.--When payment--for--insignia--due (1)--The~~  
 15 ~~department--shall--permit--a--licensed--wholesaler--or--licensed~~  
 16 ~~retailer--to--pay--for--the--insignia--purchased--or--affixation--of~~  
 17 ~~insignia--within--30--days--after--the--date--of--purchase the~~  
 18 ~~cigarette--sales--tax--as--provided--in--subsection--(2)--and--shall~~  
 19 ~~require--such the--licensee--to--file--with--the--department--a--bond~~  
 20 ~~issued--by--a--surety--company--approved--by--the--state insurance~~  
 21 ~~department--of--insurance--as--to--solvency--and--responsibility~~  
 22 ~~and--authority--to--transact--business--in--the--state--for--such an~~  
 23 ~~amount--as that the--department--may--fix--but--not--in--excess--of~~  
 24 ~~more--than an--amount--equal--to--the--maximum--insignia--purchases~~  
 25 ~~incurred--for--any 30--day--period--in--the--previous--calendar--year~~

~~cigarette insignia purchases by the licensed wholesaler or licensed retailer for any month in the previous calendar year; provided, however, that any. However, a newly licensed wholesaler or licensed retailer shall pay on a cash basis for a complete calendar year, after which the department may permit him 30 days to pay for the purchase or affixation of insignia to pay the cigarette sales tax as provided in subsection (2) and shall require a bond as hereinabove provided in this section.~~

~~(2) Payment for insignia is due on or before the 15th day of each month, and each licensed wholesaler or licensed retailer shall pay the tax imposed under 16-11-111 on cigarettes sold by him during the preceding calendar month.~~

**Section 6.** Section 16-11-118, MCA, is amended to read:

**"16-11-118. Records of tax meter users and stampers.**

All tax meter users and stampers shall keep for a period of 1 year 5 years all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, also and an accurate record of all sales of cigarettes by such the tax meter users or stampers, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and destination. Such The tax meter users or stampers shall permit the department, and its assistants, authorized agents, or representatives to examine all taxable

items of cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine whether the tax meter machine or tax stamp-applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of such tax as may be due or unpaid."

**NEW SECTION. Section 7.** Repealer. Sections 16-10-202 and 16-10-305, MCA, are repealed.

**NEW SECTION. Section 8.** Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION. Section 9.** Effective date. [This act] is effective July 1, 1991.

-End-

## 1 SENATE BILL NO. 116

2 INTRODUCED BY NOBLE, QUILICI, HARRINGTON, NATHE, SQUIRES

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 MONTANA CIGARETTE SALES ACT AND THE CIGARETTE SALES TAX LAW;  
6 REQUIRING-MONTHLY-PAYMENT-OF-THE-TAX; ALLOWING THE USE OF A  
7 HEAT-APPLIED MACHINE TO AFFIX TAX STAMPS TO CIGARETTE  
8 PACKAGES; REMOVING THE PROHIBITION AGAINST SALE OF  
9 CIGARETTES IN COMBINATION WITH OTHER ARTICLES; REMOVING THE  
10 LIMIT OF 7 DAYS ON CREDIT SALES OF TOBACCO PRODUCTS;  
11 EXTENDING THE RECORDKEEPING REQUIREMENT; REPEALING SECTIONS  
12 16-10-202 AND 16-10-305, MCA; AMENDING SECTIONS 16-11-102,  
13 16-11-111, 16-11-113, 16-11-115, 16-11-116, ~~16-11-117~~, AND  
14 16-11-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:17 **Section 1.** Section 16-11-102, MCA, is amended to read:18 "16-11-102. Definitions. (1) As used in this chapter,  
19 the following definitions shall apply unless the context  
20 requires otherwise:

21 (a) "Cigarettes" means any roll for smoking made wholly  
22 or in part of tobacco, irrespective of size or shape and  
23 whether or not the tobacco is flavored, adulterated, or  
24 mixed with any other ingredient, the wrapper or cover of  
25 which is made of nontobacco paper or any other substance or

1 material except tobacco.

2 (a)(b) The word "department" shall mean "Department"  
3 means the department of revenue of the state of Montana  
4 provided for in 2-15-1301.

5 (b)(c) The word "person" shall mean any "Person" means  
6 an individual, firm, fiduciary, partnership, corporation,  
7 trust, organization, or association, however formed.

8 (c) "Cigarettes" shall mean any roll for smoking made  
9 wholly or in part of tobacco, irrespective of size or shape  
10 and whether or not such tobacco is flavored, adulterated, or  
11 mixed with any other ingredient, the wrapper or cover of  
12 which is made of nontobacco paper or any other substance or  
13 material except tobacco.

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

16 (a) The words "insignia" or "indicia" shall mean the  
17 impression or mark approved by the department under the  
18 provisions of this part.

19 (a) "Cigarette vendor" means a person doing business in  
20 the state who purchases cigarettes through a wholesaler,  
21 subjobber, or retailer for 10 or more cigarette vending  
22 machines that he operates for a profit in premises or  
23 locations other than his own. That person must be treated as  
24 a wholesaler. A person who operates fewer than 10 cigarette  
25 vending machines must be treated as a retailer.

1 (b) ~~The words "full~~ "Full face value of insignia" shall  
2 mean means the total amount of the tax levied under this  
3 part.

4 ~~(c) The words "public warehouses" shall mean agents or~~  
5 ~~representatives of manufacturers who receive cigarettes in~~  
6 ~~carload lots for distribution to wholesaler and retailers in~~  
7 ~~original cases.~~

8 ~~(d) The word "wholesaler" shall mean and include any~~  
9 ~~person resident in this state who brings or causes to be~~  
10 ~~brought into this state unstamped cigarettes purchased~~  
11 ~~directly from the manufacturers thereof and stores, sells,~~  
12 ~~or otherwise disposes of the same after they shall reach~~  
13 ~~this state, and also any person who, within this state,~~  
14 ~~manufactures or produces, directly or indirectly, cigarettes~~  
15 ~~and sells or distributes the same within this state.~~

16 (c) "Insignia" or "indicia" means the impression, mark,  
17 or stamp approved by the department under the provisions of  
18 this part.

19 (d) "Licensed retailer" means any person, other than a  
20 wholesaler, subjobber, or cigarette vendor, who is licensed  
21 under the provisions of this part.

22 (e) "Licensed subjobber" means a subjobber licensed  
23 under the provisions of this part; he must be treated as a  
24 wholesaler.

25 ~~(e)(f) The words "licensed~~ "Licensed wholesaler" shall

1 mean means a wholesaler duly licensed under the provisions  
2 of this part.

3 ~~(f) The words "cigarette vendor" shall mean and include~~  
4 ~~any person doing business in the state who purchases~~  
5 ~~cigarettes through a wholesaler, subjobber, or retailer for~~  
6 ~~10 or more cigarette vending machines which he operates for~~  
7 ~~a profit in premises or locations other than his own. Such~~  
8 ~~person shall be treated as a wholesaler. Any person who~~  
9 ~~operates less than 10 cigarette vending machines shall be~~  
10 ~~treated as a retailer.~~

11 ~~(g) The word "subjobber" shall mean and include any~~  
12 ~~person who purchases cigarettes from a licensed wholesaler~~  
13 ~~with the Montana cigarette tax insignia affixed thereto and~~  
14 ~~sells or offers to sell such cigarettes to a licensed~~  
15 ~~retailer or cigarette vendor. An isolated sale or exchange~~  
16 ~~of cigarettes between licensed retailers shall not~~  
17 ~~constitute such retailers as subjobbers. It is further~~  
18 ~~provided that a subjobber shall use the license in the~~  
19 ~~interest of the general public. If during any month more~~  
20 ~~than 35% of volume of cigarette sales be with any retail~~  
21 ~~client whose business is controlled directly or indirectly~~  
22 ~~through sanguinity or affinity with the owner or employer~~  
23 ~~for such retail business, the license shall be deemed to~~  
24 ~~have been used or to be intended to be used in violation of~~  
25 ~~16-11-144.~~



1       ~~{h} The words "licensed subjobber" shall mean a~~  
 2       ~~subjobber duly licensed under the provisions of this part,~~  
 3       ~~and he shall be treated as a wholesaler.~~

4       ~~{g} "Public warehouses" means agents or representatives~~  
 5       ~~of manufacturers who receive cigarettes in carload lots for~~  
 6       ~~distribution in original cases to wholesalers and retailers.~~

7       ~~{h} "Record" means an original document, a legible~~  
 8       ~~facsimile, or an electronically preserved copy.~~

9       ~~{i} The word "retailer" shall mean any "Retailer" means~~  
 10       ~~a person, other than a wholesaler, subjobber, or cigarette~~  
 11       ~~vendor, who is engaged in the business of selling cigarettes~~  
 12       ~~at retail.~~

13       ~~{j} The words "licensed retailer" shall mean any~~  
 14       ~~person, other than a wholesaler, subjobber, or cigarette~~  
 15       ~~vendor, who is duly licensed under the provisions of this~~  
 16       ~~part.~~

17       ~~{k}{j} The words "sale" "Sale" and "sell" shall mean~~  
 18       ~~and include any transfer of cigarettes by sale, as defined~~  
 19       ~~by 30-2-106, or by gift, barter, or exchange.~~

20       ~~{k} "Subjobber" means a person who purchases from a~~  
 21       ~~licensed wholesaler cigarettes with the Montana cigarette~~  
 22       ~~tax insignia affixed and sells or offers to sell the~~  
 23       ~~cigarettes to a licensed retailer or cigarette vendor. An~~  
 24       ~~isolated sale or exchange of cigarettes between licensed~~  
 25       ~~retailers does not constitute those retailers as subjobbers.~~

1       A licensed subjobber shall use the license in the interest  
 2       of the general public. If during any month more than 35% of  
 3       the volume of cigarette sales by a subjobber is with any  
 4       retail client whose business is controlled directly or  
 5       indirectly through consanguinity or affinity with the owner  
 6       or employer for that retail business, the license is  
 7       considered to have been used or to be intended to be used in  
 8       violation of this part.

9       {l} "Wholesaler" means any person resident in this  
 10       state who brings or causes to be brought into this state  
 11       unstamped cigarettes purchased directly from their  
 12       manufacturers and stores, sells, or otherwise disposes of  
 13       the cigarettes after they reach this state. The term  
 14       includes a person who, within this state, manufactures or  
 15       produces cigarettes, directly or indirectly, and sells or  
 16       distributes the cigarettes within this state."

17       **Section 2.** Section 16-11-111, MCA, is amended to read:  
 18       "16-11-111. Cigarette sales tax. There is hereby  
 19       levied, imposed, and assessed and there shall must be  
 20       collected and paid to the state of Montana upon cigarettes  
 21       sold or possessed in this state ~~the following an~~ excise tax  
 22       ~~which shall be paid prior to the time of sale and delivery~~  
 23       ~~of cigarettes: of~~ 18 cents on each package containing 20  
 24       cigarettes and, when packages contain more or less than 20  
 25       cigarettes, then a tax on each cigarette equal to 1/20th the

1 tax on a package containing 20 cigarettes."

2 **Section 3.** Section 16-11-113, MCA, is amended to read:

3 "16-11-113. Tax insignia. (1) Within ~~72~~ hours after  
4 receipt ~~by~~ Except as provided in this section, the  
5 distributor or dealer of any cigarettes ~~;~~ ~~except~~ ~~as~~  
6 hereinafter ~~provided;~~ he shall cause to be securely affixed  
7 thereto to the cigarettes the required insignia denoting the  
8 applicable tax thereon. A person specifically exempted under  
9 the provisions of 16-11-132(2) may is not be considered to  
10 be acting unlawfully under this section.

11 (2) ~~Said~~ The insignia ~~shall~~ must be properly canceled  
12 applied prior to sale ~~or removal for consumption,~~ under such  
13 regulations as that the department may prescribe.

14 ~~{3}~~ ~~Each package shall have the required insignia to~~  
15 ~~affix thereto in such a manner that the insignia will be~~  
16 ~~destroyed when the package is opened.~~

17 ~~{4}~~ {3} Wholesalers and retailers licensed under this  
18 part may buy, sell, or have in their possession only  
19 cigarettes which that have on each package the insignia  
20 provided for in this part ~~on each package.~~ The insignia  
21 provided for in this part ~~shall~~ may be sold only to and must  
22 be affixed only by licensed wholesalers and licensed  
23 retailers only.

24 ~~{5}~~ {4} Whenever If any cigarettes without the insignia  
25 affix d are found in the place of business of any unlicensed

1 wholesaler, retailer, or other person ~~without the insignia~~  
2 ~~affixed and canceled or not marked as having been received~~  
3 ~~by the unlicensed wholesaler, retailer, or person within the~~  
4 ~~preceding 72 hours,~~ the presumption shall be is that such  
5 the cigarettes are kept therein in that place of business in  
6 violation of the provisions of this part.

7 {5} Except as provided in 16-11-132(2), the insignia  
8 provided for in this part must be affixed before the sale of  
9 the cigarettes by a wholesaler."

10 **Section 4.** Section 16-11-115, MCA, is amended to read:

11 "16-11-115. Tax meter machine ~~-- tax stamp-applying~~  
12 machine -- purchase of stamps. {1} The department may  
13 authorize any wholesaler or retailer of cigarettes licensed  
14 under this part to use a tax meter machine ~~with which~~ to  
15 imprint an insignia upon each package of cigarettes  
16 imported, sold, or delivered in this state. The insignia  
17 ~~shall~~ must be one approved by the department. Each package  
18 of cigarettes imported into ~~this state;~~ or delivered or sold  
19 therein ~~shall~~ in this state must be marked with the proper  
20 insignia of ~~such~~ the tax-stamping meter, and thereafter any  
21 original package of cigarettes so marked may be lawfully  
22 possessed and sold within the state by any wholesaler or  
23 retailer licensed under this part. The department shall  
24 supervise and check the operation of ~~such~~ the tax meter  
25 machines. ~~The operator of such~~ Before using the machine,

1 ~~before-using-the-same,~~ the operator of the machine shall  
 2 take the machine's meter thereof to the county treasurer of  
 3 the county in which the machine is operated, ~~who~~ The county  
 4 ~~treasurer is-authorized-to-and~~ shall set said the meter for  
 5 the number of packages specified and required by the  
 6 operator. Prior to setting said the meter, the county  
 7 treasurer shall charge said the operator the amount of money  
 8 proper for said the setting, less the expense defrayment  
 9 provided for in 16-11-114. The county treasurer shall  
 10 collect this amount in advance unless the department has  
 11 allowed the purchaser credit ~~to--delay--payment~~ CREDIT as  
 12 provided in 16-11-117. The county treasurer shall report to  
 13 the department on forms prescribed by it the name of the  
 14 licensed wholesaler or licensed retailer and the number of  
 15 packages for which said the meter was set and shall forward  
 16 to the department any amounts collected from said the  
 17 licensee.

18 (2) (a) The department may authorize a licensed  
 19 wholesaler or licensed retailer to affix tax stamps to  
 20 packages of cigarettes with a heat-applied machine approved  
 21 by the department. The department shall supervise and check  
 22 the operation of the stamp-applying machine.

23 (b) Tax stamps applied as provided in this subsection  
 24 must be purchased from the department, and payment for the  
 25 stamps must accompany the order unless the department has

1 allowed the purchaser to delay payment as provided in  
 2 16-11-117."

3 **Section 5.** Section 16-11-116, MCA, is amended to read:

4 "16-11-116. Resale of insignia prohibited -- rebate. No  
 5 A wholesaler or retailer shall may not resell to any other  
 6 wholesaler or retailer any insignia purchased by him from  
 7 the department. Any A wholesaler or retailer who has on hand  
 8 any meter settings or tax insignia at the time of  
 9 discontinuing his business of selling cigarettes may apply  
 10 to the department and be paid the face value of said the  
 11 meter settings or tax insignia less the amount of the  
 12 expense defrayment allowed by 16-11-114."

13 ~~Section-6--Section-16-11-117--MCA--is-amended-to-read:~~

14 ~~"16-11-117--When-payment--for--insignia--due--(1)--The~~  
 15 ~~department--shall--permit--a-licensed-wholesaler-or-licensed~~  
 16 ~~retailer-to-pay-for-the-insignia-purchased,--or-affixation-of~~  
 17 ~~insignia,--within-30-days-after--the--date--of--purchase~~ the  
 18 ~~cigarette--sales-tax-as-provided-in-subsection-(2)--and-shall~~  
 19 ~~require-such~~ the licensee to file with the department a bond  
 20 ~~issued-by-a-surety-company-approved-by-the--state~~ insurance  
 21 ~~department--of--insurance--as-to-solvency-and-responsibility~~  
 22 ~~and-authority-to-transact-business-in-the-state,--for-such~~ an  
 23 ~~amount-as~~ that the department may fix, but not in excess of  
 24 ~~more--than~~ an amount equal to the maximum insignia purchases  
 25 incurred for any 30 day period in the previous calendar year

1 cigarette insignia purchases by the licen. d--wholesaler--or  
 2 licensed--retailer--for--any--month--in--the--previous--calendar  
 3 year; provided, however, that any; However, a newly licensed  
 4 wholesaler or licensed retailer shall pay on a cash basis  
 5 for a complete calendar year, after which the department may  
 6 permit him 30 days to pay for the purchase or affixation of  
 7 insignia to pay the cigarette sales tax as provided in  
 8 subsection (2) and shall require a bond as hereinabove  
 9 provided in this section:

10 (2) Payment for insignia is due on or before the 15th  
 11 day of each month, and each licensed wholesaler or licensed  
 12 retailer shall pay the tax imposed under 16-11-111 on  
 13 cigarettes sold by him during the preceding calendar month."

14 **Section 6.** Section 16-11-118, MCA, is amended to read:

15 "16-11-118. Records of tax meter users and stampers.  
 16 All tax meter users and stampers shall keep for a period of  
 17 1 year 5 years all invoices of cigarettes purchased and  
 18 imported by them, all receipts issued by them and insignia  
 19 purchased, also and an accurate record of all sales of  
 20 cigarettes by such the tax meter users or stampers, showing  
 21 the name and address of each purchaser, the date of sale,  
 22 the quantity of each kind sold, the name of any carrier, the  
 23 shipping point, and destination. Such The tax meter users or  
 24 stampers shall permit the department, and its assistants,  
 25 authorized agents, or representatives to examine all taxable

1 items of cigarettes, invoices, receipts, books, paper,  
 2 memoranda, and records as may be necessary to determine  
 3 whether the tax meter machine or tax stamp-applying machine  
 4 has been used as required or the insignia required by this  
 5 part had been purchased and used or to determine the amount  
 6 of such tax as may be due or unpaid."

7 **NEW SECTION. Section 7.** Repealer. Sections 16-10-202  
 8 and 16-10-305, MCA, are repealed.

9 **NEW SECTION. Section 8.** Saving clause. [This act] does  
 10 not affect rights and duties that matured, penalties that  
 11 were incurred, or proceedings that were begun before [the  
 12 effective date of this act].

13 **NEW SECTION. Section 9.** Effective date. [This act] is  
 14 effective July 1, 1991.

-End-