

SENATE BILL 440

Introduced by Harp, et al.

2/15	Introduced
2/15	Referred to Taxation
2/16	Fiscal Note Requested
2/22	Fiscal Note Received
2/28	Fiscal Note Printed
3/03	Hearing
3/10	Committee Report--Bill Passed as Amended
3/15	Rereferred to Taxation
	Died in Committee

1 *Senate* BILL NO. *440*
 2 INTRODUCED BY *HARP* *Don* *Stang* *Harvey* *Co*
 3 *John* *Hager* *Wally* *Quinn* *NEGER* *Brady*
 4 *FIN* *DA* *SAVET* *ROSE* *BROWN*
 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 TAXES PAID
 9 ON CIGARETTES SOLD TO TRIBAL MEMBERS; AND AMENDING SECTION
 10 16-11-111, MCA."

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

12 NEW SECTION. Section 1. Legislative intent. It is the
 13 intent of the legislature to:

14 (1) eliminate unfair competitive business advantages
 15 now enjoyed by Indian retailers operating on reservations in
 16 direct competition with non-Indian businesses. This
 17 advantage arises because the Montana legislature in the past
 18 has not exercised its full constitutional authority to
 19 require that Indian enterprises collect and remit state
 20 cigarette sales taxes for sales made to non-Indian
 21 customers.

22 (2) exercise the full extent of the state's
 23 constitutional power to impose sales tax on sales by Indian
 24 retailers to non-Indian customers and to require the Indian
 25 retailers to account for and remit the taxes to the state;

1 and

2 (3) exercise its full constitutional authority to
 3 require that cigarettes sold to non-Indian purchasers on an
 4 Indian reservation must have a Montana cigarette tax stamp
 5 affixed even if sold by an Indian retailer.

6 NEW SECTION. Section 2. Definitions. As used in
 7 [sections 1 and 2], the following definitions apply:

8 (1) "Indian reservation" means Indian lands federally
 9 declared to be reservations for Indian tribes by treaty
 10 between those tribes and any territorial governments, state
 11 governments, or the United States government or established
 12 by acts of the United States congress or by formal decision
 13 of the executive branch of the United States.

14 (2) "Indian retailer" means a business or enterprise
 15 that is wholly owned and operated by an Indian tribe in
 16 Montana or a business or enterprise that is wholly owned and
 17 operated by one or more members of a tribe in Montana and
 18 that is licensed by the tribe on whose reservation the
 19 business or enterprise is located.

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

21 "16-11-111. Cigarette sales tax. ~~There is hereby~~ (1) A
 22 tax on the purchase of cigarettes for consumption, use, or
 23 any purpose other than resale in the regular course of
 24 business is levied, imposed, and assessed at the following
 25 rate and there shall must be collected precollected by the

1 wholesaler and paid to the state of Montana upon cigarettes
 2 sold or possessed in this state the following excise tax
 3 which shall be paid prior to the time of sale and delivery
 4 thereof: 16 cents on each package containing not more than
 5 20 cigarettes and, when packages contain more than 20
 6 cigarettes, then a tax on each cigarette equal to 1/20th the
 7 tax on a package containing not more than 20 cigarettes.

8 (2) The tax imposed by this section does not apply to
 9 cigarettes sold by a wholesaler to a retailer solely for
 10 resale to members of a federally recognized Indian tribe
 11 within the boundaries of an Indian reservation located in
 12 Montana.

13 (3) Wholesalers making sales of cigarettes to Indian
 14 retailers may apply to the department for a refund of or
 15 credit for taxes paid on cigarettes sold by the retailers to
 16 members of an Indian tribe. The claim for any credit or
 17 refund must be made on the wholesaler's cigarette tax return
 18 for the reporting period immediately following the period
 19 during which the cigarettes were sold by the wholesaler to
 20 the retailer. If not claimed, the credit or refund is lost.

21 (4) The total amount of refund or credits allowed by
 22 the department to all wholesalers claiming the refund or
 23 credit under subsection (3) for any reporting period must
 24 not exceed an amount that is equal to the average individual
 25 consumption of cigarettes, determined in a manner provided

1 by department rule, multiplied by the Indian population of
 2 the reservation on which sales are made. If the total
 3 amount of refunds claimed by wholesalers exceeds the amount
 4 computed, the claims by the wholesalers must be reduced
 5 proportionally based on the total amount of on-reservation
 6 business conducted by each wholesaler to amounts necessary
 7 to make the total of all the claims equal to the allowable
 8 maximum.

9 (5) No refund or credit may be allowed to a wholesaler
 10 unless the wholesaler certifies to the department that the
 11 economic benefit of the credit or refund has been passed by
 12 it to the retailers to whom the sales were made and that the
 13 retailers passed the economic benefit to purchasers of the
 14 cigarettes who are members of a federally recognized Indian
 15 tribe on whose reservation the retail sale is made."

16 NEW SECTION. Section 4. Extension of authority. Any
 17 existing authority to make rules on the subject of the
 18 provisions of [this act] is extended to the provisions of
 19 [this act].

20 NEW SECTION. Section 5. Codification instruction.
 21 [Sections 1 and 2] are intended to be codified as an
 22 integral part of Title 16, chapter 11, part 1, and the
 23 provisions of Title 16, chapter 11, part 1, apply to
 24 [sections 1 and 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB440, 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 taxes paid on cigarettes sold to tribal members.

ASSUMPTIONS:


1. Cigarette tax receipts, under current law, will be \$10,155,000 in FY 90 and 9,705,000 in FY 91. (REAC)
2. Total population of Indians on the reservations of Montana is 37,598 which is assumed constant through the next biennium. (Census Data)
3. Annual per capita cigarette consumption in Montana was 91.7 packs in CY 87. (Income and Miscellaneous Tax Division)
4. Total cartons of cigarettes sold on the reservations were 2,067,162 in CY 87 of which 344,774 are estimated to be for Indian consumption. This consumption level on the reservations is assumed constant through the next biennium. (Income and Miscellaneous Tax Division)
5. The current effective tax on cigarettes is estimated to be \$.153968 through the next biennium. (REAC)
6. It is estimated that additional expenditures necessary to comply with this legislation would include:
Personal Services: .5 FTE Grade 9 @ \$8,943 annually. (8 months in FY 90)
Operating Expenses: Additional operating expenses of \$450 annually.
Capital Outlay: One personal computer @ \$1,148; One work station @ \$1,030 in first year.
7. The effective date for this proposal would be October 1, 1989. Due to the one month lag in collections, only eight months would be affected in FY90.

FISCAL IMPACT:

	FY90			FY91		
<u>Revenue Impact:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Cigarette Tax	\$10,155,000	\$ 11,923,319	\$ 1,768,319	\$ 9,705,000	\$ 12,357,478	\$2,652,478
<u>Fund Information:</u>						
Long-Range Building						
Debt Service	\$ 8,098,612	\$ 9,508,847	\$ 1,410,235	\$ 7,739,737	\$ 9,855,089	\$2,115,352
Long-Range Building						
Capital Projects	2,056,388	2,414,472	358,084	1,965,263	2,502,389	537,126
Total	\$10,155,000	\$ 11,923,319	\$ 1,768,319	\$ 9,705,000	\$ 12,357,478	\$2,652,478


 RAY SHACKLEFORD, BUDGET DIRECTOR
 OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/21/89


 JOHN G. HARP, PRIMARY SPONSOR

DATE 2/21/89Fiscal Note for SB440, as introducedSB 440

Fiscal Note Request, SB440 as introduced
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Additional Expenditure Impact: (General Fund)

	<u>FY 90</u>	<u>FY 91</u>
Personal Services	\$ 5,965	\$ 8,943
Operating Expenses	450	450
Capital Outlay	<u>2,178</u>	<u>0</u>
Total	\$ 8,593	\$ 9,393

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 440

INTRODUCED BY HARP, WALKER, STANG,
HARRINGTON, CRIPPEN, ECK, HAGER, HALLIGAN,
QUILICI, MERCER, GRADY, B. BROWN, MARKS,
PINSONEAULT

A BILL FOR AN ACT ENTITLED: "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 TAXES PAID
ON CIGARETTES SOLD TO TRIBAL MEMBERS; PROVIDING AUTHORITY
FOR THE DEPARTMENT OF REVENUE TO INVESTIGATE AND AUDIT
CERTAIN CIGARETTE WHOLESALERS AND RETAILERS; AND AMENDING
SECTION 16-11-111, MCA."

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

NEW SECTION. Section 1. Legislative intent. It is the
intent of the legislature to:

(1) eliminate unfair competitive business advantages
now enjoyed by Indian retailers operating on reservations in
direct competition with non-Indian businesses. This
advantage arises because the Montana legislature in the past
has not exercised its full constitutional authority to
require that Indian enterprises collect and remit state
cigarette sales taxes for sales made to non-Indian

customers.

(2) exercise the full extent of the state's
constitutional power to impose sales tax on sales by Indian
retailers to non-Indian customers and to require the Indian
retailers to account for and remit the taxes to the state;
and

(3) exercise its full constitutional authority to
require that cigarettes sold to non-Indian purchasers on an
Indian reservation must have a Montana cigarette tax stamp
affixed even if sold by an Indian retailer.

NEW SECTION. Section 2. Definitions. As used in
[sections 1 and 2], the following definitions apply:

(1) "Indian reservation" means Indian lands federally
declared to be reservations for Indian tribes by treaty
between those tribes and any territorial governments, state
governments, or the United States government or established
by acts of the United States congress or by formal decision
of the executive branch of the United States.

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

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

1 ~~"16-11-111. Cigarette sales tax. There-is-hereby (1) A~~
 2 ~~tax on the purchase of cigarettes for consumption, use, or~~
 3 ~~any purpose other than resale in the regular course of~~
 4 ~~business is levied, imposed, and assessed at the following~~
 5 ~~rate and there-shall must be collected precollected by the~~
 6 ~~wholesaler and paid to the state of Montana upon-cigarettes~~
 7 ~~sold-or-possessioned-in-this-state--the--following--excise--tax~~
 8 ~~which--shall--be-paid-prior-to-the-time-of-sale-and-delivery~~
 9 ~~thereof: 16 cents on each package containing not more than~~
 10 ~~20 cigarettes and, when packages contain more than 20~~
 11 ~~cigarettes, then a tax on each cigarette equal to 1/20th the~~
 12 ~~tax on a package containing not more than 20 cigarettes.~~

13 ~~(2) The tax imposed by this section does not apply to~~
 14 ~~cigarettes sold by a--wholesaler--to-a AN INDIAN retailer~~
 15 ~~solely-for-resale to members of a federally recognized~~
 16 ~~Indian tribe within the boundaries of an-Indian THE TRIBE'S~~
 17 ~~reservation located in Montana.~~

18 ~~(3) THE TAX IMPOSED BY THIS SECTION MUST BE~~
 19 ~~PRECOLLECTED ON ALL CIGARETTES ENTERING MONTANA INDIAN~~
 20 ~~RESERVATIONS SUBJECT TO REFUND OR CREDIT AS PROVIDED IN~~
 21 ~~SUBSECTION (4).~~

22 ~~{3}(4) Wholesalers making sales of cigarettes to~~
 23 ~~Indian retailers may apply to the department for a refund of~~
 24 ~~or credit for taxes paid PRECOLLECTED on cigarettes sold by~~
 25 ~~the retailers to members of an Indian tribe ON WHOSE~~

1 ~~RESERVATION THE RETAIL SALE IS MADE. The claim for any~~
 2 ~~credit or refund must be made on the wholesaler's cigarette~~
 3 ~~tax return for the reporting period immediately following~~
 4 ~~the period during which the cigarettes were sold by the~~
 5 ~~wholesaler to the retailer. If not claimed, the credit or~~
 6 ~~refund is lost.~~

7 ~~{4}(5) The total amount of refund REFUNDS or credits~~
 8 ~~allowed by the department to all wholesalers claiming the~~
 9 ~~refund or credit under subsection {3} (4) for any reporting~~
 10 ~~period must not exceed an amount that is equal to the~~
 11 ~~average individual consumption of cigarettes, determined in~~
 12 ~~a manner provided by department rule, multiplied by the~~
 13 ~~Indian TRIBAL MEMBER population of the reservation on which~~
 14 ~~sales are made. If the total amount of refunds claimed by~~
 15 ~~wholesalers exceeds the amount computed, the claims by the~~
 16 ~~wholesalers must be reduced proportionally based on the~~
 17 ~~total amount of on-reservation business conducted by each~~
 18 ~~wholesaler to amounts necessary to make the total of all the~~
 19 ~~claims equal to the allowable maximum.~~

20 ~~{5}(6) No refund or credit may be allowed to a~~
 21 ~~wholesaler unless the wholesaler certifies to the department~~
 22 ~~that the economic benefit of the credit or refund has been~~
 23 ~~passed by it to the retailers to whom the sales were made~~
 24 ~~and that the retailers passed the economic benefit to~~
 25 ~~purchasers of the cigarettes who are members of a federally~~

1 recognized Indian tribe on whose reservation IN MONTANA the
2 retail sale is made.

3 (7) THE DEPARTMENT MAY INVESTIGATE THE FACTS
4 SURROUNDING THE CERTIFICATION AND MAY AUDIT THE BOOKS AND
5 RECORDS OF WHOLESALERS AND RETAILERS TO DETERMINE WHETHER
6 THE ECONOMIC BENEFIT OF THE REFUNDS OR CREDITS WAS PASSED ON
7 AS REQUIRED IN SUBSECTION (6). IF THE DEPARTMENT DETERMINES
8 THAT THE ECONOMIC BENEFIT WAS NOT PASSED ON AS REQUIRED, IT
9 MAY NOT PROVIDE ANY FURTHER REFUNDS OR CREDITS TO THE
10 WHOLESALER UNLESS THE WHOLESALER PRESENTS SUBSTANTIAL
11 EVIDENCE IN ADDITION TO THE CERTIFICATION THAT THE ECONOMIC
12 BENEFIT WAS PASSED ON. IN ADDITION, THE WHOLESALER SHALL
13 RETURN ANY REFUNDS OR CREDITS RECEIVED DURING THE PRECEDING
14 3 YEARS IF THE ECONOMIC BENEFIT WAS NOT PASSED ON."

15 NEW SECTION. Section 4. Extension of authority. Any
16 existing authority to make rules on the subject of the
17 provisions of [this act] is extended to the provisions of
18 [this act].

19 NEW SECTION. Section 5. Codification instruction.
20 [Sections 1 and 2] are intended to be codified as an
21 integral part of Title 16, chapter 11, part 1, and the
22 provisions of Title 16, chapter 11, part 1, apply to
23 [sections 1 and 2].

-End-