

HOUSE BILL NO. 92

INTRODUCED BY TUNBY
BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS AND
THE REVENUE OVERSIGHT COMMITTEE

IN THE HOUSE

| | |
|-------------------|---|
| DECEMBER 31, 1992 | INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION. |
| JANUARY 4, 1993 | FIRST READING. |
| JANUARY 28, 1993 | COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. |
| JANUARY 29, 1993 | PRINTING REPORT. |
| JANUARY 30, 1993 | ON MOTION, CONSIDERATION PASSED FOR THE DAY. |
| FEBRUARY 11, 1993 | ON MOTION, CONSIDERATION PASSED FOR THE DAY. |
| FEBRUARY 12, 1993 | SECOND READING, DO PASS. |
| FEBRUARY 13, 1993 | ENGROSSING REPORT. |
| FEBRUARY 15, 1993 | THIRD READING, PASSED. AYES, 68; NOES, 31. |
| FEBRUARY 16, 1993 | TRANSMITTED TO SENATE. |

IN THE SENATE

| | |
|-------------------|--|
| FEBRUARY 20, 1993 | INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION. |
| | FIRST READING. |
| APRIL 12, 1993 | COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED. |
| APRIL 13, 1993 | SECOND READING, CONCURRED IN. |
| APRIL 14, 1993 | THIRD READING, CONCURRED IN. AYES, 47; NOES, 2. |
| | RETURNED TO HOUSE WITH AMENDMENTS. |

IN THE HOUSE

APRIL 15, 1993

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 19, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 22, 1993

CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1993

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 23, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 92

2 INTRODUCED BY TUNBY

3 BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS AND

4 THE REVENUE OVERSIGHT COMMITTEE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
7 STATE-TRIBAL COOPERATIVE AGREEMENTS ACT INCLUDES
8 AUTHORIZATION TO ASSESS AND COLLECT OR REFUND A TAX OR
9 LICENSE OR PERMIT FEE; ESTABLISHING REQUIREMENTS FOR TAX
10 ASSESSMENT AND COLLECTION UNDER A STATE-TRIBAL TAX
11 AGREEMENT; PROVIDING A STATUTORY APPROPRIATION; AMENDING
12 SECTIONS 15-70-234, 17-7-502, 18-11-103, AND 18-11-104, MCA;
13 AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."
14

15 WHEREAS, the Legislature finds it necessary to clarify
16 provisions of the State-Tribal Cooperative Agreements Act in
17 order to reduce the delays in implementing taxation
18 agreements entered into between the State of Montana and
19 Montana Indian Tribes; and

20 WHEREAS, clarifying provisions of the State-Tribal
21 Cooperative Agreements Act will also reduce the need for
22 duplicative language, which results in increased costs
23 associated with publication of the Montana Code Annotated;
24 and

25 WHEREAS, the Supreme Court, in Oklahoma Tax Commission

1 v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S.
2 Ct. 905 (1991), stated, among alternatives, that the state
3 and a tribe may adopt a "mutually satisfactory regime" for
4 collection of a tax but did not mandate that a state collect
5 the tax; and

6 WHEREAS, in an effort to promote a
7 government-to-government relationship between the State of
8 Montana and Montana Indian Tribes and in recognition that
9 both the state and tribal governments must be trusted to act
10 responsibly, it is appropriate that the party designated to
11 collect taxes on an Indian reservation pursuant to any
12 agreement be subject to negotiation.

13 THEREFORE, the Legislature of the State of Montana finds
14 it appropriate to amend the State-Tribal Cooperative
15 Agreements Act to specifically include tax assessment and
16 collection or refund and to establish specific requirements
17 for tax assessment and collection or refund by the state, a
18 public agency, or a Montana Indian Tribe.
19

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

21 NEW SECTION. Section 1. Purpose. (1) It is the intent
22 of the legislature that this part be used to promote
23 cooperation between the state or a public agency and a
24 sovereign tribal government in mutually beneficial
25 activities and services.

(2) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

Section 2. Section 18-11-103, MCA, is amended to read:

"18-11-103. Authorization to enter agreement -- general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that ~~any-of-the~~ a public agencies agency or a tribal governments government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement ~~shall~~ must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the director of the agency is the governing body.

~~(2)(3)~~ (3) The agreement ~~shall~~ must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement."

Section 3. Section 18-11-104, MCA, is amended to read:

"18-11-104. Detailed contents of agreement. (1) The agreement authorized by 18-11-103 ~~shall~~ must specify the

following:

~~(1)(a)~~ (a) its duration;

~~(2)(b)~~ (b) the precise organization, composition, and nature of any separate legal entity created ~~thereby~~ by the agreement;

~~(3)(c)~~ (c) the purpose of the agreement;

~~(4)(d)~~ (d) the manner of financing the agreement and establishing and maintaining a budget ~~therefor~~ for the agreement;

~~(5)(e)~~ (e) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon ~~such~~ partial or complete termination;

~~(6)(f)~~ (f) provision for administering the agreement, which may include creation of a joint board responsible for ~~such~~ administration;

~~(7)(g)~~ (g) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(h) other necessary and proper matters.

~~(8)(2)~~ (2) when If an agreement involves law enforcement, it must also include:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement

1 officers when acting under the provisions of an agreement;
 2 (c) the minimum insurance required of both the public
 3 agency and the tribal government; and
 4 (d) the exact chain of command to be followed by law
 5 enforcement officers acting under the provisions of an
 6 agreement; and.
 7 (3) If an agreement involves the assessment and
 8 collection or refund of a similar tax or license or permit
 9 fee by the state or a public agency and a tribal government,
 10 it must also include:
 11 (a) the procedure for determining the amount of revenue
 12 to be shared by the state or a public agency and the tribal
 13 government;
 14 (b) the administrative procedures for collection of the
 15 shared revenue;
 16 (c) the minimum insurance or bonding required by the
 17 state or a public agency or the tribal government;
 18 (d) a statement specifying the administrative expenses
 19 to be deducted pursuant to [section 4] by the collector of
 20 the tax or license or permit fee;
 21 (e) a statement that the state or a public agency or
 22 the tribal government collecting the tax or license or
 23 permit fee is subject to an audit report by a mutually
 24 agreed upon auditor of the revenue collected and
 25 administrative expenses;

1 (f) a statement that the state or a public agency and
 2 the tribal government will cooperate to collect only one tax
 3 and will share or refund the revenue as specified in the
 4 agreement;
 5 (g) a statement that a taxpayer may not be required to
 6 pay both the state tax and the tribal tax but shall pay only
 7 one tax to one government in an amount established in the
 8 agreement; and
 9 (h) a statement that the parties to the agreement are
 10 not forfeiting any legal rights to apply their respective
 11 taxes by entering into an agreement, except as specifically
 12 set forth in the agreement
 13 {9}--any-other-necessary-and-proper-matters."
 14 **NEW SECTION. Section 4. Revenue account --**
 15 **administrative account -- distribution of revenue.** (1) The
 16 revenue collected by the state, a public agency, or a tribal
 17 government under a state-tribal cooperative agreement and
 18 the administrative expenses deducted under subsection (2)
 19 from the total revenue collected must be deposited in
 20 separate special revenue accounts.
 21 (2) The administrative expenses deducted by the state,
 22 a public agency, or a tribal government for collection of
 23 revenue may not exceed the actual cost of collecting the
 24 revenue on a reservation or 5%, whichever is less. Money
 25 from an administrative account may be expended only for the

1 purpose of administering the tax or fee imposed under the
2 state-tribal cooperative agreement or for paying the costs
3 incurred in terminating the agreement.

4 (3) Except for the administrative expenses amount
5 deducted under subsection (2), the revenue collected under a
6 state-tribal agreement must be deposited in a state special
7 revenue account or a separate tribal account and must be
8 disbursed as provided for in the agreement.

9 (4) Money deposited in a state administrative expenses
10 account and in a state special revenue account is
11 statutorily appropriated, as provided in 17-7-502, to the
12 department or public agency that is a party to a
13 state-tribal cooperative agreement under 18-11-103, for the
14 purpose of paying administrative expenses or paying to a
15 tribe its portion of the tax or fee.

16 (5) If a tax or license or permit fee is collected or
17 refunded pursuant to a state-tribal cooperative agreement,
18 each party must receive its share as provided in the
19 agreement, notwithstanding any contrary state statutory or
20 tribal ordinance distribution formula. For distribution of
21 the remainder, the state statutory or tribal distribution
22 formula must apply as if the amount remaining after each
23 party to the agreement receives its share were the total
24 revenue collected from the tax or license or permit fee.

25 **Section 5.** Section 15-70-234, MCA, is amended to read:

1 "15-70-234. Cooperative agreement -- allocation--of
2 motor fuels taxes to-tribal-governments. (1) In order to
3 prevent the possibility of dual taxation of motor fuels
4 purchased by Montana citizens and businesses on Indian
5 reservations, the department of transportation and an Indian
6 tribe may enter into a cooperative agreement. The department
7 of transportation may, with the concurrence of the attorney
8 general, include as a member of the negotiating team a
9 representative of the department of justice who has
10 expertise in Indian matters. The department of
11 transportation shall report the status of cooperative
12 agreement negotiations to each meeting of the revenue
13 oversight committee. After negotiations are complete, the
14 agreement---must--be--presented--to--the--revenue--oversight
15 committee-for-review-and-comment-before the final agreement
16 is must be submitted to the attorney general for approval
17 pursuant to 18-11-105. The-agreement-must-provide-that-under
18 conditions-specified-in-this--section,--the--state--and--the
19 tribe--will-cooperate-to-collect-only-one-tax-that-is-at-the
20 same--level--as--the--tax--outside--the--boundaries--of--the
21 reservation-and-will-share-the-revenue-as-provided--in--this
22 section.--The--agreement-must-provide-that-the-state-and-the
23 tribe-are-not-forfeiting-any-legal--rights--to--apply--their
24 respective--taxes--by--entering-into-an-agreement,--except-as
25 specifically-set-forth-in-the-agreement.

~~{2}--The agreement may provide that the distributor may not be required to pay both the state tax and the tribal tax but shall pay only one tax to the state in an amount equal to the tax paid on gasoline that is not subject to a tribal tax.~~

~~{3}--The agreement may provide that after deducting administrative expenses equal to 5% of the amount determined under subsection {2} and the amounts necessary for refunds, the department of transportation shall, on a quarterly basis, distribute the remaining amount to the tribal government.~~

~~{4}--The agreement may provide for the collection, use, and distribution of the tax."~~

Section 6. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory

appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; [section 4]; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state

1 treasurer, for deposit in accordance with 17-2-101 through
2 17-2-107, as determined by the state treasurer, an amount
3 sufficient to pay the principal and interest as due on the
4 bonds or notes have statutory appropriation authority for
5 the payments. (In subsection (3): pursuant to sec. 7, Ch.
6 567, L. 1991, the inclusion of 19-6-709 terminates upon
7 death of last recipient eligible for supplemental benefit;
8 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
9 22-3-811 terminates June 30, 1993.)"

10 NEW SECTION. **Section 7.** Codification instruction.

11 [Sections 1 and 4] are intended to be codified as an
12 integral part of Title 18, chapter 11, part 1, and the
13 provisions of Title 18, chapter 11, part 1, apply to
14 [sections 1 and 4].

15 NEW SECTION. **Section 8.** Effective date --

16 applicability. [This act] is effective July 1, 1993, and
17 applies to tax agreements entered into on or after July 1,
18 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0092, second reading.

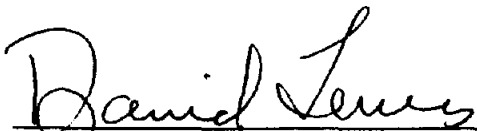
DESCRIPTION OF PROPOSED LEGISLATION:

An act amending the state-tribal cooperative agreements act; clarifying that the act includes authorization to assess and collect or refund a tax or license or permit fee; establishing requirements for tax assessment and collection under a state-tribal tax agreement; requiring a public agency to hold a public meeting prior to entering into an agreement on taxation, gambling, fish and game, or environmental regulation with a tribal government; providing a statutory appropriation; and providing an effective date and an applicability date.

FISCAL IMPACT:

The impact of this proposal on expenditures of the Departments of Revenue; Fish, Wildlife and Parks; and Health and Environmental Sciences is minimal.

Due to the numerous variables involved in possible State-Tribal agreements, the impact of the bill on current revenues cannot be determined.

 2-3-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-4-93
ROLPH TUNBY, PRIMARY SPONSOR DATE

Fiscal Note for HB0092, second reading.

HB92

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 92

INTRODUCED BY TUNBY

BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS AND

THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING--THAT
AMENDING THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT;
CLARIFYING THAT THE ACT INCLUDES AUTHORIZATION TO ASSESS AND
COLLECT OR REFUND A TAX OR LICENSE OR PERMIT FEE;
ESTABLISHING REQUIREMENTS FOR TAX ASSESSMENT AND COLLECTION
UNDER A STATE-TRIBAL TAX AGREEMENT; REQUIRING A PUBLIC
AGENCY TO HOLD A PUBLIC MEETING PRIOR TO ENTERING INTO AN
AGREEMENT ON TAXATION, GAMBLING, FISH AND GAME, OR
ENVIRONMENTAL REGULATION WITH A TRIBAL GOVERNMENT; PROVIDING
A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-234,
17-7-502, 18-11-103, AND 18-11-104, MCA; AND PROVIDING AN
EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Legislature finds it necessary to clarify
provisions of the State-Tribal Cooperative Agreements Act in
order to reduce the delays in implementing taxation
agreements entered into between the State of Montana and
Montana Indian Tribes; and

WHEREAS, clarifying provisions of the State-Tribal
Cooperative Agreements Act will also reduce the need for

duplicative language, which results in increased costs
associated with publication of the Montana Code Annotated;
and

WHEREAS, the Supreme Court, in Oklahoma Tax Commission
v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S.
Ct. 905 (1991), stated, among alternatives, that the state
and a tribe may adopt a "mutually satisfactory regime" for
collection of a tax but did not mandate that a state collect
the tax; and

WHEREAS, in an effort to promote a
government-to-government relationship between the State of
Montana and Montana Indian Tribes and in recognition that
both the state and tribal governments must be trusted to act
responsibly, it is appropriate that the party designated to
collect taxes on an Indian reservation pursuant to any
agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds
it appropriate to amend the State-Tribal Cooperative
Agreements Act to specifically include tax assessment and
collection or refund and to establish specific requirements
for tax assessment and collection or refund by the state, a
public agency, or a Montana Indian Tribe.

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

NEW SECTION. Section 1. Purpose. (1) It is the intent

of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(2) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

Section 2. Section 18-11-103, MCA, is amended to read:

"18-11-103. Authorization to enter agreement -- general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that any--of-the a public agencies agency or a tribal governments government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement shall must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the director of the agency is the governing body.

(3) The agreement shall must set forth fully the powers, rights, obligations, and responsibilities of the

parties to the agreement.

(4) (A) PRIOR TO ENTERING INTO AN AGREEMENT ON TAXATION, GAMBLING, FISH AND GAME, OR ENVIRONMENTAL REGULATION WITH A TRIBAL GOVERNMENT, A PUBLIC AGENCY SHALL PROVIDE PUBLIC NOTICE AND HOLD A PUBLIC MEETING ON THE RESERVATION WHOSE GOVERNMENT IS A PARTY TO THE PROPOSED AGREEMENT FOR THE PURPOSE OF RECEIVING COMMENTS FROM AND PROVIDING WRITTEN AND OTHER INFORMATION TO INTERESTED PERSONS WITH RESPECT TO THE PROPOSED AGREEMENT'S EFFECT ON THE COMMUNITY.

(B) AT LEAST 14 DAYS BUT NOT MORE THAN 30 DAYS PRIOR TO THE DATE SCHEDULED FOR THE PUBLIC MEETING, A NOTICE OF THE PROPOSED AGREEMENT AND PUBLIC MEETING MUST BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR COUNTIES IN WHICH THE RESERVATION IS LOCATED.

(C) AT THE TIME THE NOTICE OF THE MEETING IS PUBLISHED, A SYNOPSIS OF THE PROPOSED AGREEMENT MUST BE MADE AVAILABLE TO INTERESTED PERSONS."

Section 3. Section 18-11-104, MCA, is amended to read:

"18-11-104. Detailed contents of agreement. (1) The agreement authorized by 18-11-103 shall must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created thereby by the

1 agreement;
 2 {3}(c) the purpose of the agreement;
 3 {4}(d) the manner of financing the agreement and
 4 establishing and maintaining a budget therefor for the
 5 agreement;
 6 {5}(e) the method to be employed in accomplishing the
 7 partial or complete termination of the agreement and for
 8 disposing of property upon such partial or complete
 9 termination;
 10 {6}(f) provision for administering the agreement, which
 11 may include creation of a joint board responsible for such
 12 administration;
 13 {7}(g) the manner of acquiring, holding, and disposing
 14 of real and personal property used in the agreement; and
 15 (h) other necessary and proper matters.
 16 {8}(2) when If an agreement involves law enforcement,
 17 it must also include:
 18 (a) the minimum training standards and qualifications
 19 of law enforcement personnel;
 20 (b) the respective liability of each public agency and
 21 tribal government for the actions of law enforcement
 22 officers when acting under the provisions of an agreement;
 23 (c) the minimum insurance required of both the public
 24 agency and the tribal government; and
 25 (d) the exact chain of command to be followed by law

1 enforcement officers acting under the provisions of an
 2 agreement;and.
 3 (3) If an agreement involves the assessment and
 4 collection or refund of a similar tax or license or permit
 5 fee by the state or a public agency and a tribal government,
 6 it must also include:
 7 (a) the procedure for determining the amount of revenue
 8 to be shared by the state or a public agency and the tribal
 9 government;
 10 (b) the administrative procedures for collection of the
 11 shared revenue;
 12 (c) the minimum insurance or bonding required by the
 13 state or a public agency or the tribal government;
 14 (d) a statement specifying the administrative expenses
 15 to be deducted pursuant to [section 4] by the collector of
 16 the tax or license or permit fee;
 17 (e) a statement that the state or a public agency or
 18 the tribal government collecting the tax or license or
 19 permit fee is subject to an audit report by a mutually
 20 agreed upon auditor of the revenue collected and
 21 administrative expenses;
 22 (f) a statement that the state or a public agency and
 23 the tribal government will cooperate to collect only one tax
 24 and will share or refund the revenue as specified in the
 25 agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement

~~{9}--any-other-necessary-and-proper-matters."~~

NEW SECTION. Section 4. Revenue account --
administrative account -- distribution of revenue. (1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) The administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for the administrative expenses amount

deducted under subsection (2), the revenue collected under a state-tribal agreement must be deposited in a state special revenue account or a separate tribal account and must be disbursed as provided for in the agreement. IF A PUBLIC AGENCY THAT IS A PARTY TO AN AGREEMENT IS A LOCAL GOVERNMENT, THE AGREEMENT MUST PROVIDE FOR THE DISPOSITION OF REVENUE.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, PUBLIC AGENCY ORDINANCE, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, PUBLIC AGENCY, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

Section 5. Section 15-70-234, MCA, is amended to read:

1 "15-70-234. Cooperative agreement -- allocation---of
 2 motor fuels taxes to--tribal-governments. {1} In order to
 3 prevent the possibility of dual taxation of motor fuels
 4 purchased by Montana citizens and businesses on Indian
 5 reservations, the department of transportation and an Indian
 6 tribe may enter into a cooperative agreement. The department
 7 of transportation may, with the concurrence of the attorney
 8 general, include as a member of the negotiating team a
 9 representative of the department of justice who has
 10 expertise in Indian matters. The department of
 11 transportation shall report the status of cooperative
 12 agreement negotiations to each meeting of the revenue
 13 oversight committee. After negotiations are complete, the
 14 agreement--must--be--presented--to--the--revenue---oversight
 15 committee--for--review-and-comment-before THE AGREEMENT MUST
 16 BE PRESENTED TO THE REVENUE OVERSIGHT COMMITTEE FOR REVIEW
 17 AND COMMENT BEFORE the final agreement is must be submitted
 18 to the attorney general for approval pursuant to 18-11-105.
 19 The--agreement--must-provide-that-under-conditions-specified
 20 in-this-section, the state and the tribe will--cooperate--to
 21 collect--only--one--tax-that-is-at-the-same-level-as-the-tax
 22 outside-the-boundaries-of-the-reservation-and-will-share-the
 23 revenue-as-provided-in--this--section--The--agreement--must
 24 provide--that-the-state-and-the-tribe-are-not-forfeiting-any
 25 legal-rights-to-apply-their--respective--taxes--by--entering

1 into--an--agreement, except as specifically set forth in the
 2 agreement.
 3 {2}--The agreement may provide that the distributor--may
 4 not-be-required-to-pay-both-the-state-tax-and-the-tribal-tax
 5 but--shall--pay-only-one-tax-to-the-state-in-an-amount-equal
 6 to-the-tax-paid-on-gasoline-that-is-not-subject-to-a--tribal
 7 tax.
 8 {3}--The--agreement--may--provide--that--after-deducting
 9 administrative expenses equal to 5% of the amount determined
 10 under subsection {2} and the amounts necessary for--refund, the
 11 the--department--of--transportation--shall,--on--a-quarterly
 12 basis,--distribute--the--remaining--amount--to--the---tribal
 13 government.
 14 {4}--The--agreement may provide for the collection, use,
 15 and distribution of the tax."

16 **Section 6.** Section 17-7-502, MCA, is amended to read:

17 "17-7-502. Statutory appropriations -- definition --
 18 requisites for validity. (1) A statutory appropriation is an
 19 appropriation made by permanent law that authorizes spending
 20 by a state agency without the need for a biennial
 21 legislative appropriation or budget amendment.

22 (2) Except as provided in subsection (4), to be
 23 effective, a statutory appropriation must comply with both
 24 of the following provisions:

25 (a) The law containing the statutory authority must be

1 listed in subsection (3).

2 (b) The law or portion of the law making a statutory
3 appropriation must specifically state that a statutory
4 appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing
6 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
7 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
8 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
9 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
10 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
11 17-7-304; [section 4]; 19-5-404; 19-6-709; 19-8-504;
12 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506;
13 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604;
14 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361;
15 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409;
16 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206;
17 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102;
18 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;
19 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;
20 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;
21 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

22 (4) There is a statutory appropriation to pay the
23 principal, interest, premiums, and costs of issuing, paying,
24 and securing all bonds, notes, or other obligations, as due,
25 that have been authorized and issued pursuant to the laws of

1 Montana. Agencies that have entered into agreements
2 authorized by the laws of Montana to pay the state
3 treasurer, for deposit in accordance with 17-2-101 through
4 17-2-107, as determined by the state treasurer, an amount
5 sufficient to pay the principal and interest as due on the
6 bonds or notes have statutory appropriation authority for
7 the payments. (In subsection (3): pursuant to sec. 7, Ch.
8 567, L. 1991, the inclusion of 19-6-709 terminates upon
9 death of last recipient eligible for supplemental benefit;
10 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
11 22-3-811 terminates June 30, 1993.)"

12 NEW SECTION. Section 7. Codification instruction.
13 [Sections 1 and 4] are intended to be codified as an
14 integral part of Title 18, chapter 11, part 1, and the
15 provisions of Title 18, chapter 11, part 1, apply to
16 [sections 1 and 4].

17 NEW SECTION. Section 8. Effective date --
18 applicability. [This act] is effective July 1, 1993, and
19 applies to tax agreements entered into on or after July 1,
20 1993.

-End-

HOUSE BILL NO. 92

INTRODUCED BY TUNBY

BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS AND

THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING--THAT
AMENDING THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT;
CLARIFYING THAT THE ACT INCLUDES AUTHORIZATION TO ASSESS AND
COLLECT OR REFUND A TAX OR LICENSE OR PERMIT FEE;
ESTABLISHING REQUIREMENTS FOR TAX ASSESSMENT AND COLLECTION
UNDER A STATE-TRIBAL TAX AGREEMENT; REQUIRING A PUBLIC
AGENCY TO HOLD A PUBLIC MEETING PRIOR TO ENTERING INTO AN
AGREEMENT ON TAXATION, GAMBLING, FISH AND GAME, OR
ENVIRONMENTAL REGULATION WITH A TRIBAL GOVERNMENT; PROVIDING
A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-234,
17-7-502, 18-11-103, AND 18-11-104, MCA; AND PROVIDING AN
EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Legislature finds it necessary to clarify
provisions of the State-Tribal Cooperative Agreements Act in
order to reduce the delays in implementing taxation
agreements entered into between the State of Montana and
Montana Indian Tribes; and

WHEREAS, clarifying provisions of the State-Tribal
Cooperative Agreements Act will also reduce the need for

duplicative language, which results in increased costs
associated with publication of the Montana Code Annotated;
and

WHEREAS, the Supreme Court, in Oklahoma Tax Commission
v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S.
Ct. 905 (1991), stated, among alternatives, that the state
and a tribe may adopt a "mutually satisfactory regime" for
collection of a tax but did not mandate that a state collect
the tax; and

WHEREAS, in an effort to promote a
government-to-government relationship between the State of
Montana and Montana Indian Tribes and in recognition that
both the state and tribal governments must be trusted to act
responsibly, it is appropriate that the party designated to
collect taxes on an Indian reservation pursuant to any
agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds
it appropriate to amend the State-Tribal Cooperative
Agreements Act to specifically include tax assessment and
collection or refund and to establish specific requirements
for tax assessment and collection or refund by the state, a
public agency, or a Montana Indian Tribe.

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

NEW SECTION. Section 1. Purpose. (1) It is the intent

of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(2) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

Section 2. Section 18-11-103, MCA, is amended to read:

"18-11-103. Authorization to enter agreement -- general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that any--of-the a public agencies agency or a tribal governments government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement shall must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the director of the agency is the governing body.

{2}{3} The agreement shall must set forth fully the powers, rights, obligations, and responsibilities of the

parties to the agreement.

(4) (A) PRIOR TO ENTERING INTO AN AGREEMENT ON TAXATION, GAMBLING, FISH AND GAME, OR ENVIRONMENTAL REGULATION WITH A TRIBAL GOVERNMENT, A PUBLIC AGENCY SHALL PROVIDE PUBLIC NOTICE AND HOLD A PUBLIC MEETING ON THE RESERVATION WHOSE GOVERNMENT IS A PARTY TO THE PROPOSED AGREEMENT FOR THE PURPOSE OF RECEIVING COMMENTS FROM AND PROVIDING WRITTEN AND OTHER INFORMATION TO INTERESTED PERSONS WITH RESPECT TO THE PROPOSED AGREEMENT'S EFFECT ON THE COMMUNITY.

(B) AT LEAST 14 DAYS BUT NOT MORE THAN 30 DAYS PRIOR TO THE DATE SCHEDULED FOR THE PUBLIC MEETING, A NOTICE OF THE PROPOSED AGREEMENT AND PUBLIC MEETING MUST BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR COUNTIES IN WHICH THE RESERVATION IS LOCATED.

(C) AT THE TIME THE NOTICE OF THE MEETING IS PUBLISHED, A SYNOPSIS OF THE PROPOSED AGREEMENT MUST BE MADE AVAILABLE TO INTERESTED PERSONS."

Section 3. Section 18-11-104, MCA, is amended to read:

"18-11-104. Detailed contents of agreement. (1) The agreement authorized by 18-11-103 shall must specify the following:

{1}{a} its duration;

{2}{b} the precise organization, composition, and nature of any separate legal entity created thereby by the

1 agreement;

2 {3}{c} the purpose of the agreement;

3 {4}{d} the manner of financing the agreement and
4 establishing and maintaining a budget therefor for the
5 agreement;

6 {5}{e} the method to be employed in accomplishing the
7 partial or complete termination of the agreement and for
8 disposing of property upon such partial or complete
9 termination;

10 {6}{f} provision for administering the agreement, which
11 may include creation of a joint board responsible for such
12 administration;

13 {7}{g} the manner of acquiring, holding, and disposing
14 of real and personal property used in the agreement; and

15 {h} other necessary and proper matters.

16 {8}{2} when If an agreement involves law enforcement,
17 it must also include:

18 (a) the minimum training standards and qualifications
19 of law enforcement personnel;

20 (b) the respective liability of each public agency and
21 tribal government for the actions of law enforcement
22 officers when acting under the provisions of an agreement;

23 (c) the minimum insurance required of both the public
24 agency and the tribal government; and

25 (d) the exact chain of command to be followed by law

1 enforcement officers acting under the provisions of an
2 agreement;--and.

3 (3) If an agreement involves the assessment and
4 collection or refund of a similar tax or license or permit
5 fee by the state or a public agency and a tribal government,
6 it must also include:

7 (a) the procedure for determining the amount of revenue
8 to be shared by the state or a public agency and the tribal
9 government;

10 (b) the administrative procedures for collection of the
11 shared revenue;

12 (c) the minimum insurance or bonding required by the
13 state or a public agency or the tribal government;

14 (d) a statement specifying the administrative expenses
15 to be deducted pursuant to [section 4] by the collector of
16 the tax or license or permit fee;

17 (e) a statement that the state or a public agency or
18 the tribal government collecting the tax or license or
19 permit fee is subject to an audit report by a mutually
20 agreed upon auditor of the revenue collected and
21 administrative expenses;

22 (f) a statement that the state or a public agency and
23 the tribal government will cooperate to collect only one tax
24 and will share or refund the revenue as specified in the
25 agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement

~~(9)--any-other-necessary-and-proper-matters."~~

NEW SECTION. Section 4. Revenue account -- administrative account -- distribution of revenue. (1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) The administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for the administrative expenses amount

deducted under subsection (2), the revenue collected under a state-tribal agreement must be deposited in a state special revenue account or a separate tribal account and must be disbursed as provided for in the agreement. IF A PUBLIC AGENCY THAT IS A PARTY TO AN AGREEMENT IS A LOCAL GOVERNMENT, THE AGREEMENT MUST PROVIDE FOR THE DISPOSITION OF REVENUE.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, PUBLIC AGENCY ORDINANCE, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, PUBLIC AGENCY, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

Section 5. Section 15-70-234, MCA, is amended to read:

1 "15-70-234. Cooperative agreement -- allocation---of
 2 motor fuels taxes to--tribal-governments. {1} In order to
 3 prevent the possibility of dual taxation of motor fuels
 4 purchased by Montana citizens and businesses on Indian
 5 reservations, the department of transportation and an Indian
 6 tribe may enter into a cooperative agreement. The department
 7 of transportation may, with the concurrence of the attorney
 8 general, include as a member of the negotiating team a
 9 representative of the department of justice who has
 10 expertise in Indian matters. The department of
 11 transportation shall report the status of cooperative
 12 agreement negotiations to each meeting of the revenue
 13 oversight committee. After negotiations are complete, the
 14 agreement--must--be--presented--to--the--revenue---oversight
 15 committee--for--review-and-comment-before THE AGREEMENT MUST
 16 BE PRESENTED TO THE REVENUE OVERSIGHT COMMITTEE FOR REVIEW
 17 AND COMMENT BEFORE the final agreement is must be submitted
 18 to the attorney general for approval pursuant to 18-11-105.
 19 The--agreement--must--provide--that--under--conditions--specified
 20 in--this--section--the--state--and--the--tribe--will--cooperate--to
 21 collect--only--one--tax--that--is--at--the--same--level--as--the--tax
 22 outside--the--boundaries--of--the--reservation--and--will--share--the
 23 revenue--as--provided--in--this--section--The--agreement--must
 24 provide--that--the--state--and--the--tribe--are--not--forfeiting--any
 25 legal--rights--to--apply--their--respective--taxes--by--entering

1 into--an--agreement,--except--as--specifically--set--forth--in--the
 2 agreement;
 3 {2}--The--agreement--may--provide--that--the--distributor--may
 4 not--be--required--to--pay--both--the--state--tax--and--the--tribal--tax
 5 but--shall--pay--only--one--tax--to--the--state--in--an--amount--equal
 6 to--the--tax--paid--on--gasoline--that--is--not--subject--to--a--tribal
 7 tax;
 8 {3}--The--agreement--may--provide--that--after--deducting
 9 administrative--expenses--equal--to--5%--of--the--amount--determined
 10 under--subsection--{2}--and--the--amounts--necessary--for--refunds,
 11 the--department--of--transportation--shall--on--a--quarterly
 12 basis--distribute--the--remaining--amount--to--the--tribal
 13 government;
 14 {4}--The--agreement--may--provide--for--the--collection,--use,
 15 and--distribution--of--the--tax."

16 **Section 6.** Section 17-7-502, MCA, is amended to read:

17 "17-7-502. Statutory appropriations -- definition --
 18 requisites for validity. (1) A statutory appropriation is an
 19 appropriation made by permanent law that authorizes spending
 20 by a state agency without the need for a biennial
 21 legislative appropriation or budget amendment.

22 (2) Except as provided in subsection (4), to be
 23 effective, a statutory appropriation must comply with both
 24 of the following provisions:

25 (a) The law containing the statutory authority must be

1 listed in subsection (3).

2 (b) The law or portion of the law making a statutory
3 appropriation must specifically state that a statutory
4 appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing
6 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
7 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
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9 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
10 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
11 17-7-304; [section 4]; 19-5-404; 19-6-709; 19-8-504;
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14 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361;
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18 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;
19 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;
20 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;
21 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

22 (4) There is a statutory appropriation to pay the
23 principal, interest, premiums, and costs of issuing, paying,
24 and securing all bonds, notes, or other obligations, as due,
25 that have been authorized and issued pursuant to the laws of

1 Montana. Agencies that have entered into agreements
2 authorized by the laws of Montana to pay the state
3 treasurer, for deposit in accordance with 17-2-101 through
4 17-2-107, as determined by the state treasurer, an amount
5 sufficient to pay the principal and interest as due on the
6 bonds or notes have statutory appropriation authority for
7 the payments. (In subsection (3): pursuant to sec. 7, Ch.
8 567, L. 1991, the inclusion of 19-6-709 terminates upon
9 death of last recipient eligible for supplemental benefit;
10 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
11 22-3-811 terminates June 30, 1993.)"

12 NEW SECTION. Section 7. Codification instruction.
13 [Sections 1 and 4] are intended to be codified as an
14 integral part of Title 18, chapter 11, part 1, and the
15 provisions of Title 18, chapter 11, part 1, apply to
16 [sections 1 and 4].

17 NEW SECTION. Section 8. Effective date --
18 applicability. [This act] is effective July 1, 1993, and
19 applies to tax agreements entered into on or after July 1,
20 1993.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
April 12, 1993

Page 2 of 2
April 12, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 92 (third reading copy -- blue), respectfully report that House Bill No. 92 be amended as follows and as so amended be concurred in.

Signed: 

Senator Mike Harrigan, Chair

That such amendments read:

1. Title, lines 13 and 14.

Following: "TAXATION" on line 13

Strike: the remainder of line 13 through "REGULATION" on line 14

2. Page 3, lines 22 and 23.

Following: "the" on line 22

Strike: the remainder of line 22 through "agency" on line 23

Insert: "governor or the governor's designee"

3. Page 4, lines 3 and 4.

Following: "TAXATION" on line 3

Strike: the remainder of line 3 through "REGULATION" on line 4

4. Page 4, lines 5 and 6.

Strike: "ON" on line 5 through "GOVERNMENT" on line 6

Insert: "at a location agreed to by the tribal government that"

5. Page 4, lines 9 and 10.

Following: "PROPOSED" on line 9

Strike: the remainder of line 9 through "COMMUNITY" on line 10

Insert: "AGREEMENT"

6. Page 6, line 12.

Following: "bonding"

Insert: ", if any,"

7. Page 6, line 14.

Following: "expenses"

Insert: ", if any,"

8. Page 6, line 21.

Following: ";

Insert: "and"

9. Page 6, line 22 through page 7, line 4.

Strike: subsections (f) and (g) in their entirety

Re-number: subsequent subsection

10. Page 7, line 14.

Following: "expenses"

Insert: ", if any,"

11. Page 7, line 17.

Strike: "The administrative"

Insert: "Administrative"

12. Page 7, line 25.

Strike: "the"

Strike: "amount"

Insert: ", if any,"

13. Page 8, line 1.

Strike: "the"

Following: "collected"

Insert: "by a public agency"

14. Page 8, line 2.

Strike: "a state"

Insert: "separate"


15. Page 8, line 3.

Strike: the first "account"

Insert: "accounts"

Strike: "or a separate tribal account"

-END-

 Amd. Coord.
Sec. of Senate

Gage
Senator Carrying Bill

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SENATE
HB92

HOUSE BILL NO. 92

INTRODUCED BY TUNBY

BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS AND

THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING--THAT
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AGENCY TO HOLD A PUBLIC MEETING PRIOR TO ENTERING INTO AN
AGREEMENT ON TAXATION,--GAMBLING,--FISH--AND--GAME,--OR
ENVIRONMENTAL-REGULATION WITH A TRIBAL GOVERNMENT; PROVIDING
A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-234,
17-7-502, 18-11-103, AND 18-11-104, MCA; AND PROVIDING AN
EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Legislature finds it necessary to clarify
provisions of the State-Tribal Cooperative Agreements Act in
order to reduce the delays in implementing taxation
agreements entered into between the State of Montana and
Montana Indian Tribes; and

WHEREAS, clarifying provisions of the State-Tribal
Cooperative Agreements Act will also reduce the need for

duplicative language, which results in increased costs
associated with publication of the Montana Code Annotated;
and

WHEREAS, the Supreme Court, in Oklahoma Tax Commission
v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S.
Ct. 905 (1991), stated, among alternatives, that the state
and a tribe may adopt a "mutually satisfactory regime" for
collection of a tax but did not mandate that a state collect
the tax; and

WHEREAS, in an effort to promote a
government-to-government relationship between the State of
Montana and Montana Indian Tribes and in recognition that
both the state and tribal governments must be trusted to act
responsibly, it is appropriate that the party designated to
collect taxes on an Indian reservation pursuant to any
agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds
it appropriate to amend the State-Tribal Cooperative
Agreements Act to specifically include tax assessment and
collection or refund and to establish specific requirements
for tax assessment and collection or refund by the state, a
public agency, or a Montana Indian Tribe.

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

NEW SECTION. Section 1. Purpose. (1) It is the intent

1 of the legislature that this part be used to promote
2 cooperation between the state or a public agency and a
3 sovereign tribal government in mutually beneficial
4 activities and services.

5 (2) It is the goal of the legislature to prevent the
6 possibility of dual taxation by governments while promoting
7 state, local, and tribal economic development.

8 **Section 2.** Section 18-11-103, MCA, is amended to read:

9 "18-11-103. Authorization to enter agreement -- general
10 contents. (1) Any one or more public agencies may enter into
11 an agreement with any one or more tribal governments to:

12 (a) perform any administrative service, activity, or
13 undertaking that ~~any--of-the a~~ public agencies agency or a
14 tribal governments government entering into the contract is
15 authorized by law to perform; and

16 (b) assess and collect or refund any tax or license or
17 permit fee lawfully imposed by the state or a public agency
18 and a tribal government and to share or refund the revenue
19 from the assessment and collection.

20 (2) The agreement ~~shall~~ must be authorized and approved
21 by the governing body of each party to the agreement. If a
22 state agency is a party to an agreement, the director-of-the
23 agency GOVERNOR OR THE GOVERNOR'S DESIGNEE is the governing
24 body.

25 ~~{2}{3}~~ The agreement ~~shall~~ must set forth fully the

1 powers, rights, obligations, and responsibilities of the
2 parties to the agreement.

3 (4) (A) PRIOR TO ENTERING INTO AN AGREEMENT ON
4 TAXATION,---GAMBLING,---FISH---AND---GAMB,---OR---ENVIRONMENTAL
5 REGULATION WITH A TRIBAL GOVERNMENT, A PUBLIC AGENCY SHALL
6 PROVIDE PUBLIC NOTICE AND HOLD A PUBLIC MEETING ON-THE
7 RESERVATION-WHOSSE-GOVERNMENT AT A LOCATION AGREED TO BY THE
8 TRIBAL GOVERNMENT THAT IS A PARTY TO THE PROPOSED AGREEMENT
9 FOR THE PURPOSE OF RECEIVING COMMENTS FROM AND PROVIDING
10 WRITTEN AND OTHER INFORMATION TO INTERESTED PERSONS WITH
11 RESPECT TO THE PROPOSED AGREEMENT'S-EFFECT-ON-THE--COMMUNITY
12 AGREEMENT.

13 (B) AT LEAST 14 DAYS BUT NOT MORE THAN 30 DAYS PRIOR TO
14 THE DATE SCHEDULED FOR THE PUBLIC MEETING, A NOTICE OF THE
15 PROPOSED AGREEMENT AND PUBLIC MEETING MUST BE PUBLISHED IN A
16 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR COUNTIES
17 IN WHICH THE RESERVATION IS LOCATED.

18 (C) AT THE TIME THE NOTICE OF THE MEETING IS PUBLISHED,
19 A SYNOPSIS OF THE PROPOSED AGREEMENT MUST BE MADE AVAILABLE
20 TO INTERESTED PERSONS."

21 **Section 3.** Section 18-11-104, MCA, is amended to read:

22 "18-11-104. Detailed contents of agreement. (1) The
23 agreement authorized by 18-11-103 ~~shall~~ must specify the
24 following:

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1 {2}(b) the precise organization, composition, and
2 nature of any separate legal entity created thereby by the
3 agreement;

4 {3}(c) the purpose of the agreement;

5 {4}(d) the manner of financing the agreement and
6 establishing and maintaining a budget therefor for the
7 agreement;

8 {5}(e) the method to be employed in accomplishing the
9 partial or complete termination of the agreement and for
10 disposing of property upon such partial or complete
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13 may include creation of a joint board responsible for such
14 administration;

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16 of real and personal property used in the agreement; and

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23 tribal government for the actions of law enforcement
24 officers when acting under the provisions of an agreement;

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1 agency and the tribal government; and

2 (d) the exact chain of command to be followed by law
3 enforcement officers acting under the provisions of an
4 agreement; and.

5 (3) If an agreement involves the assessment and
6 collection or refund of a similar tax or license or permit
7 fee by the state or a public agency and a tribal government,
8 it must also include:

9 (a) the procedure for determining the amount of revenue
10 to be shared by the state or a public agency and the tribal
11 government;

12 (b) the administrative procedures for collection of the
13 shared revenue;

14 (c) the minimum insurance or bonding, IF ANY, required
15 by the state or a public agency or the tribal government;

16 (d) a statement specifying the administrative expenses,
17 IF ANY, to be deducted pursuant to [section 4] by the
18 collector of the tax or license or permit fee;

19 (e) a statement that the state or a public agency or
20 the tribal government collecting the tax or license or
21 permit fee is subject to an audit report by a mutually
22 agreed upon auditor of the revenue collected and
23 administrative expenses; AND

24 ~~{f}--a--statement--that--the--state--or--a--public--agency--and~~
25 ~~the--tribal--government--will--cooperate--to--collect--only--one--tax~~

~~and will share or refund the revenue as specified in the agreement;~~

~~(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and~~

~~(h)(F) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement~~

~~(i) any other necessary and proper matters."~~

NEW SECTION. Section 4. Revenue account --
administrative account -- distribution of revenue. (1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, IF ANY, deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) The administrative ADMINISTRATIVE expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying

the costs incurred in terminating the agreement.

(3) Except for the administrative expenses amount, IF ANY, deducted under subsection (2), the revenue collected BY A PUBLIC AGENCY under a state-tribal agreement must be deposited in a state SEPARATE special revenue account ACCOUNTS or a separate tribal account and must be disbursed as provided for in the agreement. IF A PUBLIC AGENCY THAT IS A PARTY TO AN AGREEMENT IS A LOCAL GOVERNMENT, THE AGREEMENT MUST PROVIDE FOR THE DISPOSITION OF REVENUE.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, PUBLIC AGENCY ORDINANCE, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, PUBLIC AGENCY, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue

1 collected from the tax or license or permit fee.

2 **Section 5.** Section 15-70-234, MCA, is amended to read:

3 "15-70-234. Cooperative agreement -- allocation--of
4 motor fuels taxes to--tribal-governments. {1} In order to
5 prevent the possibility of dual taxation of motor fuels
6 purchased by Montana citizens and businesses on Indian
7 reservations, the department of transportation and an Indian
8 tribe may enter into a cooperative agreement. The department
9 of transportation may, with the concurrence of the attorney
10 general, include as a member of the negotiating team a
11 representative of the department of justice who has
12 expertise in Indian matters. The department of
13 transportation shall report the status of cooperative
14 agreement negotiations to each meeting of the revenue
15 oversight committee. After negotiations are complete, the
16 agreement--must--be--presented--to--the--revenue--oversight
17 committee--for--review-and-comment-before THE AGREEMENT MUST
18 BE PRESENTED TO THE REVENUE OVERSIGHT COMMITTEE FOR REVIEW
19 AND COMMENT BEFORE the final agreement is must be submitted
20 to the attorney general for approval pursuant to 18-11-105.
21 The--agreement--must--provide--that--under--conditions--specified
22 in--this--section--the--state--and--the--tribe--will--cooperate--to
23 collect--only--one--tax--that--is--at--the--same--level--as--the--tax
24 outside--the--boundaries--of--the--reservation--and--will--share--the
25 revenue--as--provided--in--this--section--The--agreement--must

1 provide--that--the--state--and--the--tribe--are--not--forfeiting--any
2 legal--rights--to--apply--their--respective--taxes--by--entering
3 into--an--agreement--except--as--specifically--set--forth--in--the
4 agreement--

5 {2}--The--agreement--may--provide--that--the--distributor--may
6 not--be--required--to--pay--both--the--state--tax--and--the--tribal--tax
7 but--shall--pay--only--one--tax--to--the--state--in--an--amount--equal
8 to--the--tax--paid--on--gasoline--that--is--not--subject--to--a--tribal
9 tax--

10 {3}--The--agreement--may--provide--that--after--deducting
11 administrative--expenses--equal--to--5%--of--the--amount--determined
12 under--subsection--{2}--and--the--amounts--necessary--for--refunds,
13 the--department--of--transportation--shall--on--a--quarterly
14 basis--distribute--the--remaining--amount--to--the--tribal
15 government--

16 {4}--The--agreement--may--provide--for--the--collection--use--
17 and--distribution--of--the--tax--"

18 **Section 6.** Section 17-7-502, MCA, is amended to read:

19 "17-7-502. Statutory appropriations -- definition --
20 requisites for validity. (1) A statutory appropriation is an
21 appropriation made by permanent law that authorizes spending
22 by a state agency without the need for a biennial
23 legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be
25 effective, a statutory appropriation must comply with both

of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; [section 4]; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying,

and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 7. Codification instruction. [Sections 1 and 4] are intended to be codified as an integral part of Title 18, chapter 11, part 1, and the provisions of Title 18, chapter 11, part 1, apply to [sections 1 and 4].

NEW SECTION. Section 8. Effective date -- applicability. [This act] is effective July 1, 1993, and applies to tax agreements entered into on or after July 1, 1993.

-End-

Conference Committee
on House Bill 92
Report No.1, April 20, 1993

Page 1 of 2

April 20, 1993
Page 2 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 92 met and considered:

1. Senate Taxation Committee amendments dated April 12, 1993

and recommend that House Bill 92 (reference copy -- salmon) be amended as follows:

1. Page 4, lines 7 and 8.

Following: "~~GOVERNMENT~~" on line 7

Strike: remainder of line 7 through "THAT" on line 8

Insert: "on the reservation whose government"

2. Page 6, line 23.

Following: "~~expenses,~~"

Strike: "~~AND~~"

3. Page 7, line 7.

Following: line 6

Insert: "(f) a statement that the state or a public agency and the tribal government will cooperate to collect only one tax and will share or refund the revenue as specified in the agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and"

Renumber: subsequent subsection

Further, that this Conference Committee report be adopted.

For the House:

Robert Tunby
Rep. Tunby, Chair

Bob Gervais
Rep. Gervais

Mike Foster
Rep. Foster

For the Senate:

Wm Yellowtail
Sen. Yellowtail, Chair

Sen. Stang
Sen. Stang

Sen. Gage
Sen. Gage

ADOPT

REJECT

871519CC.Hpf

m

C.C.R.#1
HB 92
871519CC.Hpf

HOUSE BILL NO. 92

INTRODUCED BY TUNBY

BY REQUEST OF THE COMMITTEE ON INDIAN AFFAIRS AND

THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~CLARIFYING--THAT~~
~~AMENDING~~ THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT;
~~CLARIFYING THAT THE ACT~~ INCLUDES AUTHORIZATION TO ASSESS AND
 COLLECT OR REFUND A TAX OR LICENSE OR PERMIT FEE;
 ESTABLISHING REQUIREMENTS FOR TAX ASSESSMENT AND COLLECTION
 UNDER A STATE-TRIBAL TAX AGREEMENT; REQUIRING A PUBLIC
AGENCY TO HOLD A PUBLIC MEETING PRIOR TO ENTERING INTO AN
AGREEMENT ON TAXATION--GAMBLING--FISH--AND--GAME--OR
ENVIRONMENTAL-REGULATION WITH A TRIBAL GOVERNMENT; PROVIDING
 A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-234,
 17-7-502, 18-11-103, AND 18-11-104, MCA; AND PROVIDING AN
 EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Legislature finds it necessary to clarify
 provisions of the State-Tribal Cooperative Agreements Act in
 order to reduce the delays in implementing taxation
 agreements entered into between the State of Montana and
 Montana Indian Tribes; and

WHEREAS, clarifying provisions of the State-Tribal
 Cooperative Agreements Act will also reduce the need for

1 duplicative language, which results in increased costs
 2 associated with publication of the Montana Code Annotated;
 3 and

WHEREAS, the Supreme Court, in Oklahoma Tax Commission
v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S.
 Ct. 905 (1991), stated, among alternatives, that the state
 and a tribe may adopt a "mutually satisfactory regime" for
 collection of a tax but did not mandate that a state collect
 the tax; and

WHEREAS, in an effort to promote a
 government-to-government relationship between the State of
 Montana and Montana Indian Tribes and in recognition that
 both the state and tribal governments must be trusted to act
 responsibly, it is appropriate that the party designated to
 collect taxes on an Indian reservation pursuant to any
 agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds
 it appropriate to amend the State-Tribal Cooperative
 Agreements Act to specifically include tax assessment and
 collection or refund and to establish specific requirements
 for tax assessment and collection or refund by the state, a
 public agency, or a Montana Indian Tribe.

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

NEW SECTION. Section 1. Purpose. (1) It is the intent



of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(2) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

Section 2. Section 18-11-103, MCA, is amended to read:

"18-11-103. Authorization to enter agreement -- general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that any--of-the a public agencies agency or a tribal governments government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement shall must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the director-of-the agency GOVERNOR OR THE GOVERNOR'S DESIGNEE is the governing body.

(3) The agreement shall must set forth fully the

powers, rights, obligations, and responsibilities of the parties to the agreement.

(4) (A) PRIOR TO ENTERING INTO AN AGREEMENT ON TAXATION, GAMBLING, FISH, AND GAME, OR ENVIRONMENTAL REGULATION WITH A TRIBAL GOVERNMENT, A PUBLIC AGENCY SHALL PROVIDE PUBLIC NOTICE AND HOLD A PUBLIC MEETING ON THE RESERVATION WHOSE GOVERNMENT AT A LOCATION AGREED TO BY THE TRIBAL GOVERNMENT THAT ON THE RESERVATION WHOSE GOVERNMENT IS A PARTY TO THE PROPOSED AGREEMENT FOR THE PURPOSE OF RECEIVING COMMENTS FROM AND PROVIDING WRITTEN AND OTHER INFORMATION TO INTERESTED PERSONS WITH RESPECT TO THE PROPOSED AGREEMENT'S EFFECT ON THE COMMUNITY AGREEMENT.

(B) AT LEAST 14 DAYS BUT NOT MORE THAN 30 DAYS PRIOR TO THE DATE SCHEDULED FOR THE PUBLIC MEETING, A NOTICE OF THE PROPOSED AGREEMENT AND PUBLIC MEETING MUST BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY OR COUNTIES IN WHICH THE RESERVATION IS LOCATED.

(C) AT THE TIME THE NOTICE OF THE MEETING IS PUBLISHED, A SYNOPSIS OF THE PROPOSED AGREEMENT MUST BE MADE AVAILABLE TO INTERESTED PERSONS."

Section 3. Section 18-11-104, MCA, is amended to read:

"18-11-104. Detailed contents of agreement. (1) The agreement authorized by 18-11-103 shall must specify the following:

(a) its duration;

1 ~~(2)~~(b) the precise organization, composition, and
 2 nature of any separate legal entity created thereby by the
 3 agreement;
 4 ~~(3)~~(c) the purpose of the agreement;
 5 ~~(4)~~(d) the manner of financing the agreement and
 6 establishing and maintaining a budget therefor for the
 7 agreement;
 8 ~~(5)~~(e) the method to be employed in accomplishing the
 9 partial or complete termination of the agreement and for
 10 disposing of property upon such partial or complete
 11 termination;
 12 ~~(6)~~(f) provision for administering the agreement, which
 13 may include creation of a joint board responsible for such
 14 administration;
 15 ~~(7)~~(g) the manner of acquiring, holding, and disposing
 16 of real and personal property used in the agreement; and
 17 (h) other necessary and proper matters.
 18 ~~(8)~~(2) when If an agreement involves law enforcement,
 19 it must also include:
 20 (a) the minimum training standards and qualifications
 21 of law enforcement personnel;
 22 (b) the respective liability of each public agency and
 23 tribal government for the actions of law enforcement
 24 officers when acting under the provisions of an agreement;
 25 (c) the minimum insurance required of both the public

1 agency and the tribal government; and
 2 (d) the exact chain of command to be followed by law
 3 enforcement officers acting under the provisions of an
 4 agreement; and.
 5 (3) If an agreement involves the assessment and
 6 collection or refund of a similar tax or license or permit
 7 fee by the state or a public agency and a tribal government,
 8 it must also include:
 9 (a) the procedure for determining the amount of revenue
 10 to be shared by the state or a public agency and the tribal
 11 government;
 12 (b) the administrative procedures for collection of the
 13 shared revenue;
 14 (c) the minimum insurance or bonding, IF ANY, required
 15 by the state or a public agency or the tribal government;
 16 (d) a statement specifying the administrative expenses,
 17 IF ANY, to be deducted pursuant to [section 4] by the
 18 collector of the tax or license or permit fee;
 19 (e) a statement that the state or a public agency or
 20 the tribal government collecting the tax or license or
 21 permit fee is subject to an audit report by a mutually
 22 agreed upon auditor of the revenue collected and
 23 administrative expenses; AND
 24 ~~(f) -- a statement that the state or a public agency and~~
 25 ~~the tribal government will cooperate to collect only one tax~~

~~and will share or refund the revenue as specified in the agreement;~~

~~(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and~~

(F) A STATEMENT THAT THE STATE OR A PUBLIC AGENCY AND THE TRIBAL GOVERNMENT WILL COOPERATE TO COLLECT ONLY ONE TAX AND WILL SHARE OR REFUND THE REVENUE AS SPECIFIED IN THE AGREEMENT;

(G) A STATEMENT THAT A TAXPAYER MAY NOT BE REQUIRED TO PAY BOTH THE STATE TAX AND THE TRIBAL TAX BUT SHALL PAY ONLY ONE TAX TO ONE GOVERNMENT IN AN AMOUNT ESTABLISHED IN THE AGREEMENT; AND

~~(h)(F)(H) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement~~

~~(9) any other necessary and proper matters."~~

NEW SECTION. Section 4. Revenue account -- administrative account -- distribution of revenue. (1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, IF ANY, deducted under subsection (2) from the total revenue collected must be

deposited in separate special revenue accounts.

(2) ~~The administrative~~ ADMINISTRATIVE expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for the administrative expenses amount, IF ANY, deducted under subsection (2), the revenue collected BY A PUBLIC AGENCY under a state-tribal agreement must be deposited in a state SEPARATE special revenue account ACCOUNTS ~~or a separate tribal account~~ and must be disbursed as provided for in the agreement. IF A PUBLIC AGENCY THAT IS A PARTY TO AN AGREEMENT IS A LOCAL GOVERNMENT, THE AGREEMENT MUST PROVIDE FOR THE DISPOSITION OF REVENUE.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or

1 refunded pursuant to a state-tribal cooperative agreement,
 2 each party must receive its share as provided in the
 3 agreement, notwithstanding any contrary state statutory,
 4 PUBLIC AGENCY ORDINANCE, or tribal ordinance distribution
 5 formula. For distribution of the remainder, the state
 6 statutory, PUBLIC AGENCY, or tribal distribution formula
 7 must apply as if the amount remaining after each party to
 8 the agreement receives its share were the total revenue
 9 collected from the tax or license or permit fee.

10 **Section 5.** Section 15-70-234, MCA, is amended to read:

11 "15-70-234. Cooperative agreement -- allocation--of
 12 motor fuels taxes to-tribal-governments. {1} In order to
 13 prevent the possibility of dual taxation of motor fuels
 14 purchased by Montana citizens and businesses on Indian
 15 reservations, the department of transportation and an Indian
 16 tribe may enter into a cooperative agreement. The department
 17 of transportation may, with the concurrence of the attorney
 18 general, include as a member of the negotiating team a
 19 representative of the department of justice who has
 20 expertise in Indian matters. The department of
 21 transportation shall report the status of cooperative
 22 agreement negotiations to each meeting of the revenue
 23 oversight committee. After negotiations are complete, the
 24 agreement--must--be--presented--to--the--revenue--oversight
 25 committee-for-review-and-comment-before THE AGREEMENT MUST

1 BE PRESENTED TO THE REVENUE OVERSIGHT COMMITTEE FOR REVIEW
 2 AND COMMENT BEFORE the final agreement is must be submitted
 3 to the attorney general for approval pursuant to 18-11-105.
 4 The-agreement-must-provide-that-under--conditions--specified
 5 in--this--section, the state and the tribe will cooperate to
 6 collect only one tax that is at the same level as the tax
 7 outside the boundaries of the reservation and will share the
 8 revenue as provided in this section. The agreement must
 9 provide that the state and the tribe are not forfeiting any
 10 legal rights to apply their respective taxes by entering
 11 into an agreement, except as specifically set forth in the
 12 agreement.

13 {2}--The agreement may provide that the distributor may
 14 not be required to pay both the state tax and the tribal tax
 15 but shall pay only one tax to the state in an amount equal
 16 to the tax paid on gasoline that is not subject to a tribal
 17 tax.

18 {3}--The agreement may provide that after deducting
 19 administrative expenses equal to 5% of the amount determined
 20 under subsection {2} and the amounts necessary for refunds,
 21 the department of transportation shall, on a quarterly
 22 basis, distribute the remaining amount to the tribal
 23 government.

24 {4}--The agreement may provide for the collection, user
 25 and distribution of the tax."

Section 6. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition --
requisites for validity. (1) A statutory appropriation is an
appropriation made by permanent law that authorizes spending
by a state agency without the need for a biennial
legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be
effective, a statutory appropriation must comply with both
of the following provisions:

(a) The law containing the statutory authority must be
listed in subsection (3).

(b) The law or portion of the law making a statutory
appropriation must specifically state that a statutory
appropriation is made as provided in this section.

(3) The following laws are the only laws containing
statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409;
17-7-304; [section 4]; 19-5-404; 19-6-709; 19-8-504;
19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506;
19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604;
19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361;
20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409;

23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206;
37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102;
53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;
75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;
80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;
90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the
principal, interest, premiums, and costs of issuing, paying,
and securing all bonds, notes, or other obligations, as due,
that have been authorized and issued pursuant to the laws of
Montana. Agencies that have entered into agreements
authorized by the laws of Montana to pay the state
treasurer, for deposit in accordance with 17-2-101 through
17-2-107, as determined by the state treasurer, an amount
sufficient to pay the principal and interest as due on the
bonds or notes have statutory appropriation authority for
the payments. (In subsection (3): pursuant to sec. 7, Ch.
567, L. 1991, the inclusion of 19-6-709 terminates upon
death of last recipient eligible for supplemental benefit;
and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 7. Codification instruction.
[Sections 1 and 4] are intended to be codified as an
integral part of Title 18, chapter 11, part 1, and the
provisions of Title 18, chapter 11, part 1, apply to

1 [sections 1 and 4].

2 NEW SECTION. Section 8. Effective date --
3 applicability. [This act] is effective July 1, 1993, and
4 applies to tax agreements entered into on or after July 1,
5 1993.

-End-