

HOUSE BILL NO. 283

INTRODUCED BY ELLIOTT, STANG, WILSON, FORRESTER
BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 4, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 5, 1993	PRINTING REPORT.
FEBRUARY 6, 1993	SECOND READING, DO PASS.
FEBRUARY 8, 1993	ENGROSSING REPORT.
FEBRUARY 9, 1993	THIRD READING, PASSED. AYES, 74; NOES, 24.
FEBRUARY 10, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 26, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 27, 1993	THIRD READING, CONCURRED IN. AYES, 36; NOES, 13.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1
2 INTRODUCED BY

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 CIGARETTE TAX LAWS; APPLYING THE CIGARETTE SALES TAX TO ALL
7 USE AND CONSUMPTION OF CIGARETTES ON AN INDIAN RESERVATION;
8 PROVIDING AN EXCEPTION TO THE TAX FOR USE AND CONSUMPTION OF
9 CIGARETTES BY A MEMBER OF AN INDIAN TRIBE ON AN INDIAN
10 RESERVATION; PROVIDING A REFUND OR CREDIT TO A WHOLESALER
11 FOR TAXES PAID ON CIGARETTES SOLD TO A TRIBAL MEMBER;
12 REQUIRING THE DEPARTMENT OF REVENUE TO SHARE REVENUE WITH A
13 TRIBAL GOVERNMENT THAT HAS ENACTED A CIGARETTE TAX IDENTICAL
14 TO THE STATE TAX; PROVIDING A CIVIL PENALTY FOR THE
15 UNAUTHORIZED POSSESSION OR TRANSPORTATION OF UNSTAMPED
16 CIGARETTES; PROVIDING FOR SEARCH, SEIZURE, AND FORFEITURE OF
17 UNSTAMPED CIGARETTES; PROVIDING A STATUTORY APPROPRIATION;
18 AMENDING SECTIONS 16-11-111, 16-11-131, 16-11-147, AND
19 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN
20 APPLICABILITY DATE."

21
22 WHEREAS, the Legislature proposes to eliminate unfair
23 competitive business advantages now enjoyed by retailers
24 operating on Indian reservations in direct competition with
25 businesses operating off the reservations by providing that

1 cigarettes sold on an Indian reservation have a Montana
2 cigarette tax stamp affixed to the cigarette package or
3 container that requires purchasers who are not members of
4 the tribe residing on the reservation to pay the state
5 cigarette tax; and

6 WHEREAS, the Legislature also recognizes that Indian
7 tribes in Montana view as unlawful certain state taxes being
8 assessed against the tribes and tribal members on the
9 reservation; and

10 WHEREAS, although the Legislature proposes to exercise
11 its authority to seek assistance from tribal governments in
12 collecting cigarette taxes from nonmembers on the
13 reservation, the Legislature also recognizes the need for
14 negotiation with Montana Indian tribes in order to avoid
15 dual taxation and to develop a comprehensive resolution of
16 the cigarette taxation issues affecting both the state and
17 the tribes.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. **Section 1. Definitions.** As used in
21 16-11-111 and [sections 1 through 7], the following
22 definitions apply:

23 (1) "Indian reservation" means lands declared to be a
24 reservation for an Indian tribe or tribes:

25 (a) by a treaty between the tribe and a territorial

government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made.

NEW SECTION. Section 2. Stamps affixed on cigarettes

-- exception. Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

NEW SECTION. Section 3. Cooperative agreement --

revenue sharing of cigarette taxes with tribal government.

(1) In order to prevent the possibility of dual taxation of cigarettes purchased on an Indian reservation, the department and an Indian tribe may enter into a cooperative agreement. The agreement must provide that:

(a) under the conditions specified in this section, the state and the tribe will cooperate to collect only one tax that is at the same level as the tax imposed outside the boundaries of the Indian reservation and will share the revenue as provided in this section; and

(b) the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically provided for in

the agreement.

(2) If a tribal government in the state adopts an ordinance imposing a cigarette tax on cigarettes sold on the Indian reservation and requires that the tax be paid under identical conditions as those imposed by the state, the department shall collect the tax for the tribe. The consumer is not 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 cigarettes pursuant to 16-11-111.

(3) After deducting administrative expenses of not more than 5% of the amount of the tax determined in subsection (2), the department shall on a monthly basis distribute the remaining amount to the tribal government.

NEW SECTION. Section 4. Tribal cigarette administration account. (1) There is a special revenue account called the tribal cigarette administration account.

(2) The money received for administrative expenses and deducted by the department under [section 3] must be deposited in the tribal cigarette administration account.

(3) Money in the tribal cigarette administration account is statutorily appropriated, as provided in 17-7-502, to the department and may be expended only for administering collection of the cigarette tax.

NEW SECTION. Section 5. Tribal cigarette tax account.

(1) There is a special revenue account called the tribal

cigarette tax account.

(2) The tax collected under [section 3], less the administrative expenses deducted under [section 3], must be deposited in the tribal cigarette tax account.

(3) The money in the tribal cigarette tax account is statutorily appropriated, as provided in 17-7-502, to the department and must be disbursed on a monthly basis to the tribe as provided for in the agreement entered into pursuant to [section 3].

NEW SECTION. Section 6. Possession or unauthorized transportation of unstamped cigarettes -- civil penalty. (1) In lieu of the criminal penalties provided in 16-11-131, 16-11-146, and 16-11-148, the department may assess a person who unlawfully possesses or transports unstamped cigarettes a civil penalty of \$250 for the first full or partial pack of unstamped cigarettes and \$10 for each additional full or partial pack of unstamped cigarettes.

(2) The department shall determine the amount of the penalty provided in subsection (1) and notify the person who unlawfully possessed or transported the unstamped cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year.

NEW SECTION. Section 7. Sale or retention of forfeited property -- use of sale proceeds. (1) When property is

forfeited under 16-11-147, the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of 16-11-111, 16-11-131, 16-11-147, and [sections 1 through 7] or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property at public auction to the highest bidder. The department, before delivering a seized item, shall first require stamps to be affixed.

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the items, including costs incurred by a local, state, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds must be deposited in the state general fund.

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

"16-11-111. (Temporary) Cigarette sales tax -- exemption for sale to tribal member. There (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is

levied, imposed, and assessed and there must be collected precollected by the wholesaler and paid to the state of Montana upon cigarettes sold or possessed in this state an excise tax of. The tax is 19.26 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located.

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

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

a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferrable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each

fiscal year, using the most recent census data available from the bureau of Indian affairs or populations determined in a cooperative agreement with the tribe or tribes of the Indian reservation.

16-11-111. (Effective August 15, 1993) Cigarette sales tax -- exemption for sale to tribal member. There (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is levied, imposed, and assessed and there must be collected precollected by the wholesaler and paid to the state of Montana upon cigarettes sold or possessed in this state an excise tax of. The tax is 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all

cigarettes entering a Montana Indian reservation.

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

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota

allocations are not transferrable between quota periods or between reservations.

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

Section 9. Section 16-11-131, MCA, is amended to read:

"16-11-131. Transporting cigarettes without insignia a misdemeanor -- invoices and delivery tickets required -- stop and inspection authorized. (1) It shall be is unlawful for any a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes which that do not bear the insignia (stamps) required by this part, except for a person specifically exempted in 16-11-132(2).

(2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets for the cigarettes that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the

quantity and brands of the cigarettes being transported. If the cigarettes are consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by 16-11-132 to possess unstamped cigarettes in this state.

(b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141, 16-11-147, [section 7], and this section if:

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; or

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

(3) Transportation of cigarettes from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this section, the department, its agent, or a peace officer may stop and inspect the vehicle.

(5) Any A person violating the provisions of this section is guilty of a misdemeanor and shall be punished as

hereinafter-provided."

Section 10. Section 16-11-147, MCA, is amended to read:

"16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) Any A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department, its duly authorized agent, any a sheriff or deputy, or other peace officer and is subject to forfeiture in the manner provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days thereafter of the seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department. ~~The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312.~~

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or

right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized."

Section 11. 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; [section 4]; [section 5]; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 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 12. Codification instruction.

[Sections 1 through 7] are intended to be codified as an integral part of Title 16, chapter 11, part 1, and the provisions of Title 16, chapter 11, part 1, apply to [sections 1 through 7].

NEW SECTION. Section 13. Coordination instruction. If

Bill No. [LC 145] is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void..

NEW SECTION. Section 14. Effective dates. (1)

[Sections 3 through 5 and 11 through 15] are effective on passage and approval.

(2) [Sections 1, 2, and 6 through 10] are effective

LC 0522/01

1 July 1, 1993.

2 NEW SECTION. **Section 15. Applicability.** [Sections 1,
3 2, and 6 through 10] apply to cigarette sales made by a
4 wholesaler after June 30, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0283, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the cigarette tax laws; applying the cigarette sales tax to all use and consumption of cigarettes on an Indian reservation; providing an exception to the tax for use and consumption of cigarettes by a member of an Indian tribe on an Indian reservation; providing a refund or credit to a wholesaler for taxes paid on cigarettes sold to a tribal member; requiring the Department of Revenue to share revenue with a tribal government that has enacted a cigarette tax identical to the state tax; providing a civil penalty for unauthorized possession or transportation of unstamped cigarettes; providing for search seizure, and forfeiture of unstamped cigarettes; providing a statutory appropriation; and providing effective dates and an applicability date.

ASSUMPTIONS:

1. Under this bill, all cigarettes sold in Montana except those sold on a military reservation will be stamped.
2. Under this bill, unless a quota agreement has been made with the tribal government, untaxed cigarettes will be supplied to each reservation up to a quota for that reservation. The quota of untaxed cigarettes for each reservation is the national per capita consumption of cigarettes times the number of enrolled tribal members living on that reservation.
3. Tribes residing on four Indian reservations have already reached a quota agreement concerning untaxed cigarettes with the Department of Revenue. They reside on the Crow Reservation, the Fort Peck Reservation, the Rocky Boys Reservation, and the Northern Cheyenne Reservation.
4. Unless agreements are made before July 1, 1993 the tribes residing on three Indian reservations will be impacted by the quota system of this proposal. They are the Blackfeet Reservation, the Flathead Reservation, and the Fort Belknap Reservation.
5. Under this bill there would be approximately 4,000,000 additional packs of taxed cigarettes sold in Montana.
6. The tax on a packages of cigarettes is 18 cents with an effective rate of 17.4863 cents per package.

FISCAL IMPACT:

Revenues:

The opportunity remains open for the tribes residing on the Flathead, Blackfeet, and Fort Belknap Reservations to negotiate an agreement between now and the effective date of Section 6 of this legislation. Assuming that the State of Montana and the tribes from the three Indian reservations do not enter into an agreement before that effective date and the state imposes a quota allocation, the potential revenue recovery is estimated to be approximately \$700,000.

Since there are no cooperative agreements with any Indian tribe imposing a cigarette tax identical to the state tax which would allow revenue sharing of cigarette taxes, the Department of Revenue cannot make any revenue estimates on this issue.

Dave Lewis 1-2593
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jim Elliott
JIM ELLIOTT, PRIMARY SPONSOR

1/26/93
DATE

Fiscal Note for HB0283, as introduced

HB 283

APPROVED BY COMMITTEE
ON TAXATION

HOUSE BILL NO. 283

INTRODUCED BY ELLIOTT, STANG, WILSON, FORRESTER

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE CIGARETTE TAX LAWS; APPLYING THE CIGARETTE SALES TAX TO ALL USE AND CONSUMPTION OF CIGARETTES ON AN INDIAN RESERVATION; PROVIDING AN EXCEPTION TO THE TAX FOR USE AND CONSUMPTION OF CIGARETTES BY A MEMBER OF AN INDIAN TRIBE ON AN INDIAN RESERVATION; PROVIDING A REFUND OR CREDIT TO A WHOLESALER FOR TAXES PAID ON CIGARETTES SOLD TO A TRIBAL MEMBER; REQUIRING THE DEPARTMENT OF REVENUE TO SHARE REVENUE WITH A TRIBAL GOVERNMENT THAT HAS ENACTED A CIGARETTE TAX IDENTICAL TO THE STATE TAX; PROVIDING A CIVIL PENALTY FOR THE UNAUTHORIZED POSSESSION OR TRANSPORTATION OF UNSTAMPED CIGARETTES; PROVIDING FOR SEARCH, SEIZURE, AND FORFEITURE OF UNSTAMPED CIGARETTES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 16-11-111, 16-11-131, 16-11-147, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that

cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes.

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

NEW SECTION. **Section 1. Definitions.** As used in 16-11-111 and [sections 1 through 7], the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes;

(a) by a treaty between the tribe and a territorial

government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made OR ANY OTHER FORMULA OR AMOUNT AGREED TO IN A STATE-TRIBAL COOPERATIVE AGREEMENT.

NEW SECTION. Section 2. Stamps affixed on cigarettes

-- exception. Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

NEW SECTION. Section 3. Cooperative agreement -- revenue sharing of cigarette taxes with tribal government.

(1) In order to prevent the possibility of dual taxation of cigarettes purchased on an Indian reservation, the department and an Indian tribe may enter into a cooperative agreement PROVIDING FOR REVENUE SHARING OF CIGARETTE TAXES WITH THE TRIBE OR ENLISTING THE TRIBE'S ASSISTANCE IN ENFORCING THE PROVISIONS OF THIS CHAPTER. The AN agreement SHARING REVENUE OF CIGARETTE TAXES WITH A TRIBE must provide that:

(a) under the conditions specified in this section, the state and the tribe will cooperate to collect only one tax that is at the same level as the tax imposed outside the

boundaries of the Indian reservation and will share the revenue as provided in this section; and

(b) the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically provided for in the agreement.

(2) If a tribal government in the state adopts an ordinance imposing a cigarette tax on cigarettes sold on the Indian reservation and requires that the tax be paid under identical conditions as those imposed by the state, the department shall collect the tax for the tribe. The consumer is not 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 cigarettes pursuant to 16-11-111. A TRIBAL TAX MUST BE DISTRIBUTED TO THE TRIBE AS DETERMINED IN A NEGOTIATED FORMULA BASED ON POPULATION.

(3) After deducting administrative expenses of not more than 5% of the amount of the tax determined in subsection (2), the department shall on a monthly basis distribute the remaining amount to the tribal government.

NEW SECTION. Section 4. Tribal cigarette administration account. (1) There is a special revenue account called the tribal cigarette administration account.

(2) The money received for administrative expenses and deducted by the department under [section 3] must be

1 deposited in the tribal cigarette administration account.

2 (3) Money in the tribal cigarette administration
3 account is statutorily appropriated, as provided in
4 17-7-502, to the department and may be expended only for
5 administering collection of the cigarette tax.

6 **NEW SECTION. Section 5. Tribal cigarette tax account.**

7 (1) There is a special revenue account called the tribal
8 cigarette tax account.

9 (2) The tax collected under [section 3], less the
10 administrative expenses deducted under [section 3], must be
11 deposited in the tribal cigarette tax account.

12 (3) The money in the tribal cigarette tax account is
13 statutorily appropriated, as provided in 17-7-502, to the
14 department and must be disbursed on a monthly basis to the
15 tribe as provided for in the agreement entered into pursuant
16 to [section 3].

17 **NEW SECTION. Section 6. Possession or unauthorized**
18 **transportation of unstamped cigarettes -- civil penalty. (1)**
19 **In lieu of the criminal penalties provided in 16-11-131,**
20 **16-11-146, and 16-11-148, the department may assess a person**
21 **who unlawfully possesses or transports unstamped cigarettes**
22 **a civil penalty of \$250 for the first full or partial pack**
23 **of unstamped cigarettes and \$10 for each additional full or**
24 **partial pack of unstamped cigarettes.**

25 (2) The department shall determine the amount of the

1 penalty provided in subsection (1) and notify the person who
2 unlawfully possessed or transported the unstamped cigarettes
3 of the amount. The penalty is due and payable on the date of
4 the notice. A penalty not paid when due is subject to
5 interest at the rate of 10% a year.

6 **NEW SECTION. Section 7. Sale or retention of forfeited**
7 **property -- use of sale proceeds. (1) When property is**
8 **forfeited under 16-11-147, the department may:**

9 (a) retain the property or any part of the property for
10 official use or, upon application by a law enforcement
11 agency of this state, another state, the District of
12 Columbia, or the United States, for the exclusive use of
13 enforcing the provisions of 16-11-111, 16-11-131, 16-11-147,
14 and [sections 1 through 7] or the laws of another state, the
15 District of Columbia, or the United States; or

16 (b) after advertising, sell the property at public
17 auction to the highest bidder. The department, before
18 delivering a seized item, shall first require stamps to be
19 affixed.

20 (2) The proceeds of a sale under this section must be
21 applied first to paying the expenses of any investigation
22 leading to the seizure of the items, including costs
23 incurred by a local, state, or federal law enforcement
24 agency, and of the forfeiture and sale proceedings,
25 including the expenses of seizure, maintenance, custody, and

1 court costs. The balance of the proceeds must be deposited
2 in the state general fund.

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

4 "16-11-111. (Temporary) Cigarette sales tax --
5 exemption for sale to tribal member. There (1) A tax on the
6 purchase of cigarettes for consumption, use, or any purpose
7 other than resale in the regular course of business is
8 levied, imposed,--and--assessed and there must be collected
9 precollected by the wholesaler and paid to the state of
10 Montana upon--cigarettes-sold-or-possessioned-in-this-state-an
11 excise-tax-of. The tax is 19.26 cents on each package
12 containing 20 cigarettes and, when packages contain more or
13 less than 20 cigarettes, a tax on each cigarette equal to
14 1/20th the tax on a package containing 20 cigarettes.

15 (2) The tax imposed in subsection (1) does not apply to
16 a cigarette sale if the sale is made:

17 (a) by a retailer whose establishment is located within
18 the boundaries of an Indian reservation located in Montana;
19 and

20 (b) to an enrolled member of the federally recognized
21 Indian tribe residing on the Indian reservation where the
22 retail establishment is located.

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

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

10 (5) The distribution of tax-free cigarettes to a tribal
11 member must be implemented through a system of preapproved
12 wholesaler shipments. A licensed Montana wholesaler shall
13 contact the department for approval prior to the shipment of
14 the untaxed cigarettes. The department may authorize sales
15 based on whether the quota, AS ESTABLISHED IN A COOPERATIVE
16 AGREEMENT BETWEEN THE DEPARTMENT AND AN INDIAN TRIBE OR AS
17 SET OUT IN THIS CHAPTER, has been met. If authorized as a
18 tax-exempt sale, the wholesaler, upon providing proof of
19 order and delivery to a retailer within the boundaries of a
20 Montana Indian reservation selling cigarettes to members of
21 a federally recognized tribe or tribes of that reservation,
22 must be given a credit or refund. Once the quota has been
23 filled, the department shall immediately notify all affected
24 wholesalers that further sales on that reservation must be
25 taxed and that a claim for a refund or credit will not be

1 honored for the remainder of the quota period. Quota
 2 allocations are not transferrable between quota periods or
 3 between reservations.

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

14 16-11-111. (Effective August 15, 1993) Cigarette sales
 15 tax -- exemption for sale to tribal member. There (1) A tax
 16 on the purchase of cigarettes for consumption, use, or any
 17 purpose other than resale in the regular course of business
 18 is levied, imposed, and assessed and there must be collected
 19 precollected by the wholesaler and paid to the state of
 20 Montana upon--cigarettes-sold-or-possessioned-in-this-state-an
 21 excise--tax--of. The tax is 18 cents on each package
 22 containing 20 cigarettes and, when packages contain more or
 23 less than 20 cigarettes, a tax on each cigarette equal to
 24 1/20th the tax on a package containing 20 cigarettes.

25 (2) The tax imposed in subsection (1) does not apply to

1 a cigarette sale if the sale is made:

2 (a) by a retailer whose establishment is located within
 3 the boundaries of an Indian reservation located in Montana;
 4 and

5 (b) to an enrolled member of the federally recognized
 6 Indian tribe residing on the Indian reservation where the
 7 retail establishment is located.

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

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

20 (5) The distribution of tax-free cigarettes to a tribal
 21 member must be implemented through a system of preapproved
 22 wholesaler shipments. A licensed Montana wholesaler shall
 23 contact the department for approval prior to the shipment of
 24 the untaxed cigarettes. The department may authorize sales
 25 based on whether the quota, AS ESTABLISHED IN A COOPERATIVE

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 2 SET OUT IN THIS CHAPTER, has been met. If authorized as a
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 4 order and delivery to a retailer within the boundaries of a
 5 Montana Indian reservation selling cigarettes to members of
 6 a federally recognized tribe or tribes of that reservation,
 7 must be given a credit or refund. Once the quota has been
 8 filled, the department shall immediately notify all affected
 9 wholesalers that further sales on that reservation must be
 10 taxed and that a claim for a refund or credit will not be
 11 honored for the remainder of the quota period. Quota
 12 allocations are not transferrable between quota periods or
 13 between reservations.

14 (6) The total amount of refunds or credits allowed by
 15 the department to all wholesalers claiming the refund or
 16 credit under subsection (4) for any month may not exceed an
 17 amount that is equal to the tax due on the quota allocation.
 18 The department shall determine the amount of refunds or
 19 credits for each Indian reservation at the beginning of each
 20 fiscal year, using the most recent census data available
 21 from the bureau of Indian affairs or populations-determined
 22 AS PROVIDED in a cooperative agreement with the tribe or
 23 tribes of the Indian reservation."

24 **Section 9.** Section 16-11-131, MCA, is amended to read:

25 "16-11-131. Transporting cigarettes without insignia a

1 misdeemeanor -- invoices and delivery tickets required --
 2 stop and inspection authorized. (1) It shall-be is unlawful
 3 for any a person to transport into, receive, carry, or move
 4 from place to place within this state, except in the course
 5 of interstate commerce, any cigarettes which that do not
 6 bear the insignia (stamps) required by this part, except for
 7 a person specifically exempted in 16-11-132(2).

8 (2) (a) When transporting unstamped cigarettes, a
 9 person shall possess invoices or delivery tickets for the
 10 cigarettes that show the name and address of the consignor
 11 or seller, the name of the consignee or purchaser, and the
 12 quantity and brands of the cigarettes being transported. If
 13 the cigarettes are consigned to or purchased by a person in
 14 this state, the consignee or purchaser must be authorized by
 15 16-11-132 to possess unstamped cigarettes in this state.

16 (b) The cigarettes transported are subject to seizure,
 17 forfeiture, and sale as provided in 16-11-141, 16-11-147,
 18 [section 7], and this section if:

19 (i) there are no invoices or delivery tickets;

20 (ii) the name or address of the consignee or purchaser
 21 is falsified; or

22 (iii) the consignee or purchaser is not authorized to
 23 possess unstamped cigarettes.

24 (3) Transportation of cigarettes from a point outside
 25 the state to a point in another state is not a violation of

this section if the person transporting the unstamped cigarettes possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this section, the department, its agent, or a peace officer may stop and inspect the vehicle.

(5) Any A person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided."

Section 10. Section 16-11-147, MCA, is amended to read:

"16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) Any A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department, its duly authorized agent, any a sheriff or deputy, or other peace officer and is subject to forfeiture in the manner provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days thereafter of the seizure, the person or officer making

the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department. The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-3057--46-5-3117 and 46-5-3127.

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized."

1 **Section 11.** Section 17-7-502, MCA, is amended to read:
 2 **"17-7-502. Statutory appropriations -- definition --**
 3 **requisites for validity.** (1) A statutory appropriation is an
 4 appropriation made by permanent law that authorizes spending
 5 by a state agency without the need for a biennial
 6 legislative appropriation or budget amendment.
 7 (2) Except as provided in subsection (4), to be
 8 effective, a statutory appropriation must comply with both
 9 of the following provisions:
 10 (a) The law containing the statutory authority must be
 11 listed in subsection (3).
 12 (b) The law or portion of the law making a statutory
 13 appropriation must specifically state that a statutory
 14 appropriation is made as provided in this section.
 15 (3) The following laws are the only laws containing
 16 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 17 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;
 18 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117;
 19 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; [section
 20 4]; [section 5]; 17-3-212; 17-5-404; 17-5-424; 17-5-704;
 21 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504;
 22 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506;
 23 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604;
 24 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361;
 25 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409;

1 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206;
 2 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102;
 3 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;
 4 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808;
 5 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220;
 6 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.
 7 (4) There is a statutory appropriation to pay the
 8 principal, interest, premiums, and costs of issuing, paying,
 9 and securing all bonds, notes, or other obligations, as due,
 10 that have been authorized and issued pursuant to the laws of
 11 Montana. Agencies that have entered into agreements
 12 authorized by the laws of Montana to pay the state
 13 treasurer, for deposit in accordance with 17-2-101 through
 14 17-2-107, as determined by the state treasurer, an amount
 15 sufficient to pay the principal and interest as due on the
 16 bonds or notes have statutory appropriation authority for
 17 the payments. (In subsection (3): pursuant to sec. 7, Ch.
 18 567, L. 1991, the inclusion of 19-6-709 terminates upon
 19 death of last recipient eligible for supplemental benefit;
 20 and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of
 21 22-3-811 terminates June 30, 1993.)"
 22 **NEW SECTION. Section 12.** Codification instruction.
 23 [Sections 1 through 7] are intended to be codified as an
 24 integral part of Title 16, chapter 11, part 1, and the
 25 provisions of Title 16, chapter 11, part 1, apply to

1 [sections 1 through 7].

2 NEW SECTION. Section 13. Coordination instruction. If
3 ____ Bill No. ____ [LC 145] is passed and approved and if it
4 amends the State-Tribal Cooperative Agreements Act to
5 specifically include the assessment and collection of a tax
6 or license or permit fee and provides for revenue sharing,
7 then [sections 3 through 5 of this act] are void.

8 NEW SECTION. Section 14. Effective dates. (1)
9 [Sections 3 through 5 and 11 through 15] are effective on
10 passage and approval.

11 (2) [Sections 1, 2, and 6 through 10] are effective
12 July 1, 1993.

13 NEW SECTION. Section 15. Applicability. [Sections 1,
14 2, and 6 through 10] apply to cigarette sales made by a
15 wholesaler after June 30, 1993.

-End-

HOUSE BILL NO. 283

INTRODUCED BY ELLIOTT, STANG, WILSON, FORRESTER

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE CIGARETTE TAX LAWS; APPLYING THE CIGARETTE SALES TAX TO ALL USE AND CONSUMPTION OF CIGARETTES ON AN INDIAN RESERVATION; PROVIDING AN EXCEPTION TO THE TAX FOR USE AND CONSUMPTION OF CIGARETTES BY A MEMBER OF AN INDIAN TRIBE ON AN INDIAN RESERVATION; PROVIDING A REFUND OR CREDIT TO A WHOLESALER FOR TAXES PAID ON CIGARETTES SOLD TO A TRIBAL MEMBER; REQUIRING THE DEPARTMENT OF REVENUE TO SHARE REVENUE WITH A TRIBAL GOVERNMENT THAT HAS ENACTED A CIGARETTE TAX IDENTICAL TO THE STATE TAX; PROVIDING A CIVIL PENALTY FOR THE UNAUTHORIZED POSSESSION OR TRANSPORTATION OF UNSTAMPED CIGARETTES; PROVIDING FOR SEARCH, SEIZURE, AND FORFEITURE OF UNSTAMPED CIGARETTES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 16-11-111, 16-11-131, 16-11-147, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that

cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes.

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

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 283 (first reading copy -- white), respectfully report that House Bill No. 283 be amended as follows and as so amended be concurred in.

Signed: 
Senator Dorothy Eck, Vice-Chair

That such amendments read:

1. Title, line 13.

Strike: "IDENTICAL"

Insert: "SIMILAR"

2. Title, line 17.

Following: "CIGARETTES;"

Insert: "PROVIDING FOR A DISTRIBUTION OF PROCEEDS FROM A SALE OF
PROPERTY SEIZED;"

3. Page 3, line 4.

Following: "means"

Insert: "150% of"

4. Page 3, line 22 through page 4, line 3.

Strike: ":" on page 3, line 22 through "(b)" on page 4, line 3

5. Page 4, line 11.

Following: "tribe."

Insert: "However, the tax rate determined by a tribal government
on a negotiated quota amount need not equal the tax rate
imposed by the state."

6. Page 6, line 23.

Following: "state,"

Insert: "tribal,"

7. Page 7, line 1.

Following: "proceeds"

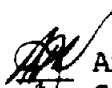
Insert: ", less an amount that is based on the value of the
property seized on an Indian reservation and that is
allocated to a tribe pursuant to a state-tribal cooperative
agreement,"

8. Page 17, line 15.

Strike: "June"

Insert: "September"

-END-


Amd. Coord.
Sec. of Senate

Stang
Senator Carrying Bill

HB 283

SENATE

SENATE COMMITTEE OF THE WHOLE AMENDMENT

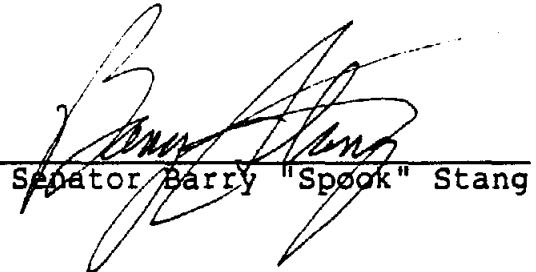
March 26, 1993 1:18 pm

Mr. Chairman: I move to amend House Bill No. 283 (third reading copy -- blue).

ADOPT

REJECT

Signed:


Senator Barry "Spook" Stang

That such amendments read:

1. Page 13, lines 5 and 8.

Following: "agent,"

Insert: "[the department of justice,]"

2. Page 14, line 20.

Following: "designee"

Insert: "[, with the assistance of the department of justice,]"

3. Page 17, line 2.

Following: "instruction."

Insert: "(1)"

4. Page 17, line 8.

Following: line 7

Insert: "(2) If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in [sections 9 and 10] are void."

-END-

SENATE

HB 283

r681317CW.Sma

1 HOUSE BILL NO. 283

2 INTRODUCED BY ELLIOTT, STANG, WILSON, FORRESTER

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 CIGARETTE TAX LAWS; APPLYING THE CIGARETTE SALES TAX TO ALL
7 USE AND CONSUMPTION OF CIGARETTES ON AN INDIAN RESERVATION;
8 PROVIDING AN EXCEPTION TO THE TAX FOR USE AND CONSUMPTION OF
9 CIGARETTES BY A MEMBER OF AN INDIAN TRIBE ON AN INDIAN
10 RESERVATION; PROVIDING A REFUND OR CREDIT TO A WHOLESALER
11 FOR TAXES PAID ON CIGARETTES SOLD TO A TRIBAL MEMBER;
12 REQUIRING THE DEPARTMENT OF REVENUE TO SHARE REVENUE WITH A
13 TRIBAL GOVERNMENT THAT HAS ENACTED A CIGARETTE TAX IDENTICAL
14 SIMILAR TO THE STATE TAX; PROVIDING A CIVIL PENALTY FOR THE
15 UNAUTHORIZED POSSESSION OR TRANSPORTATION OF UNSTAMPED
16 CIGARETTES; PROVIDING FOR SEARCH, SEIZURE, AND FORFEITURE OF
17 UNSTAMPED CIGARETTES; PROVIDING FOR A DISTRIBUTION OF
18 PROCEEDS FROM A SALE OF PROPERTY SEIZED; PROVIDING A
19 STATUTORY APPROPRIATION; AMENDING SECTIONS 16-11-111,
20 16-11-131, 16-11-147, AND 17-7-502, MCA; AND PROVIDING
21 EFFECTIVE DATES AND AN APPLICABILITY DATE."

22
23 WHEREAS, the Legislature proposes to eliminate unfair
24 competitive business advantages now enjoyed by retailers
25 operating on Indian reservations in direct competition with

1 businesses operating off the reservations by providing that
2 cigarettes sold on an Indian reservation have a Montana
3 cigarette tax stamp affixed to the cigarette package or
4 container that requires purchasers who are not members of
5 the tribe residing on the reservation to pay the state
6 cigarette tax; and

7 WHEREAS, the Legislature also recognizes that Indian
8 tribes in Montana view as unlawful certain state taxes being
9 assessed against the tribes and tribal members on the
10 reservation; and

11 WHEREAS, although the Legislature proposes to exercise
12 its authority to seek assistance from tribal governments in
13 collecting cigarette taxes from nonmembers on the
14 reservation, the Legislature also recognizes the need for
15 negotiation with Montana Indian tribes in order to avoid
16 dual taxation and to develop a comprehensive resolution of
17 the cigarette taxation issues affecting both the state and
18 the tribes.

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 NEW SECTION. Section 1. Definitions. As used in
22 16-11-111 and [sections 1 through 7], the following
23 definitions apply:

24 (1) "Indian reservation" means lands declared to be a
25 reservation for an Indian tribe or tribes:

(a) by a treaty between the tribe and a territorial government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means 150% OF the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made OR ANY OTHER FORMULA OR AMOUNT AGREED TO IN A STATE-TRIBAL COOPERATIVE AGREEMENT.

NEW SECTION. Section 2. Stamps affixed on cigarettes
 -- exception. Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

NEW SECTION. Section 3. Cooperative agreement --
 revenue sharing of cigarette taxes with tribal government.
 (1) In order to prevent the possibility of dual taxation of cigarettes purchased on an Indian reservation, the department and an Indian tribe may enter into a cooperative agreement PROVIDING FOR REVENUE SHARING OF CIGARETTE TAXES WITH THE TRIBE OR ENLISTING THE TRIBE'S ASSISTANCE IN ENFORCING THE PROVISIONS OF THIS CHAPTER. The AN agreement SHARING REVENUE OF CIGARETTE TAXES WITH A TRIBE must provide that:

~~(a) --under the conditions specified in this section, the state --and-- the tribe will cooperate to collect only one tax~~

~~that is at the same level as the tax imposed outside the boundaries of the Indian reservation and will share the revenue as provided in this section; and~~

~~(b) the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically provided for in the agreement.~~

(2) If a tribal government in the state adopts an ordinance imposing a cigarette tax on cigarettes sold on the Indian reservation and requires that the tax be paid under identical conditions as those imposed by the state, the department shall collect the tax for the tribe. HOWEVER, THE TAX RATE DETERMINED BY A TRIBAL GOVERNMENT ON A NEGOTIATED QUOTA AMOUNT NEED NOT EQUAL THE TAX RATE IMPOSED BY THE STATE. The consumer is not 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 cigarettes pursuant to 16-11-111. A TRIBAL TAX MUST BE DISTRIBUTED TO THE TRIBE AS DETERMINED IN A NEGOTIATED FORMULA BASED ON POPULATION.

(3) After deducting administrative expenses of not more than 5% of the amount of the tax determined in subsection (2), the department shall on a monthly basis distribute the remaining amount to the tribal government.

NEW SECTION. Section 4. Tribal cigarette

administration account. (1) There is a special revenue account called the tribal cigarette administration account.

(2) The money received for administrative expenses and deducted by the department under [section 3] must be deposited in the tribal cigarette administration account.

(3) Money in the tribal cigarette administration account is statutorily appropriated, as provided in 17-7-502, to the department and may be expended only for administering collection of the cigarette tax.

NEW SECTION. Section 5. Tribal cigarette tax account.

(1) There is a special revenue account called the tribal cigarette tax account.

(2) The tax collected under [section 3], less the administrative expenses deducted under [section 3], must be deposited in the tribal cigarette tax account.

(3) The money in the tribal cigarette tax account is statutorily appropriated, as provided in 17-7-502, to the department and must be disbursed on a monthly basis to the tribe as provided for in the agreement entered into pursuant to [section 3].

NEW SECTION. Section 6. Possession or unauthorized transportation of unstamped cigarettes -- civil penalty. (1) In lieu of the criminal penalties provided in 16-11-131, 16-11-146, and 16-11-148, the department may assess a person who unlawfully possesses or transports unstamped cigarettes

a civil penalty of \$250 for the first full or partial pack of unstamped cigarettes and \$10 for each additional full or partial pack of unstamped cigarettes.

(2) The department shall determine the amount of the penalty provided in subsection (1) and notify the person who unlawfully possessed or transported the unstamped cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year.

NEW SECTION. Section 7. Sale or retention of forfeited property -- use of sale proceeds. (1) When property is forfeited under 16-11-147, the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of 16-11-111, 16-11-131, 16-11-147, and [sections 1 through 7] or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property at public auction to the highest bidder. The department, before delivering a seized item, shall first require stamps to be affixed.

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation

leading to the seizure of the items, including costs incurred by a local, state, TRIBAL, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, LESS AN AMOUNT THAT IS BASED ON THE VALUE OF THE PROPERTY SEIZED ON AN INDIAN RESERVATION AND THAT IS ALLOCATED TO A TRIBE PURSUANT TO A STATE-TRIBAL COOPERATIVE AGREEMENT, must be deposited in the state general fund.

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

"16-11-111. (Temporary) Cigarette sales tax -- exemption for sale to tribal member. There (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is levied, imposed, and assessed and there must be collected precollected by the wholesaler and paid to the state of Montana upon cigarettes sold or possessed in this state an excise tax of. The tax is 19.26 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana;

and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located.

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

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

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, AS ESTABLISHED IN A COOPERATIVE AGREEMENT BETWEEN THE DEPARTMENT AND AN INDIAN TRIBE OR AS SET OUT IN THIS CHAPTER, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of

1 order and delivery to a retailer within the boundaries of a
 2 Montana Indian reservation selling cigarettes to members of
 3 a federally recognized tribe or tribes of that reservation,
 4 must be given a credit or refund. Once the quota has been
 5 filled, the department shall immediately notify all affected
 6 wholesalers that further sales on that reservation must be
 7 taxed and that a claim for a refund or credit will not be
 8 honored for the remainder of the quota period. Quota
 9 allocations are not transferrable between quota periods or
 10 between reservations.

11 (6) The total amount of refunds or credits allowed by
 12 the department to all wholesalers claiming the refund or
 13 credit under subsection (4) for any month may not exceed an
 14 amount that is equal to the tax due on the quota allocation.
 15 The department shall determine the amount of refunds or
 16 credits for each Indian reservation at the beginning of each
 17 fiscal year, using the most recent census data available
 18 from the bureau of Indian affairs or populations-determined
 19 AS PROVIDED in a cooperative agreement with the tribe or
 20 tribes of the Indian reservation.

21 16-11-111. (Effective August 15, 1993) Cigarette sales
 22 tax -- exemption for sale to tribal member. There (1) A tax
 23 on the purchase of cigarettes for consumption, use, or any
 24 purpose other than resale in the regular course of business
 25 is levied, imposed, and assessed and there must be collected

1 precollected by the wholesaler and paid to the state of
 2 Montana upon-cigarettes-sold-or-possessioned-in-this--state--an
 3 excise--tax--of. The tax is 18 cents on each package
 4 containing 20 cigarettes and, when packages contain more or
 5 less than 20 cigarettes, a tax on each cigarette equal to
 6 1/20th the tax on a package containing 20 cigarettes.

7 (2) The tax imposed in subsection (1) does not apply to
 8 a cigarette sale if the sale is made:

9 (a) by a retailer whose establishment is located within
 10 the boundaries of an Indian reservation located in Montana;
 11 and

12 (b) to an enrolled member of the federally recognized
 13 Indian tribe residing on the Indian reservation where the
 14 retail establishment is located.

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

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

1 refund or credit.

2 (5) The distribution of tax-free cigarettes to a tribal
 3 member must be implemented through a system of preapproved
 4 wholesaler shipments. A licensed Montana wholesaler shall
 5 contact the department for approval prior to the shipment of
 6 the untaxed cigarettes. The department may authorize sales
 7 based on whether the quota, AS ESTABLISHED IN A COOPERATIVE
 8 AGREEMENT BETWEEN THE DEPARTMENT AND AN INDIAN TRIBE OR AS
 9 SET OUT IN THIS CHAPTER, has been met. If authorized as a
 10 tax-exempt sale, the wholesaler, upon providing proof of
 11 order and delivery to a retailer within the boundaries of a
 12 Montana Indian reservation selling cigarettes to members of
 13 a federally recognized tribe or tribes of that reservation,
 14 must be given a credit or refund. Once the quota has been
 15 filled, the department shall immediately notify all affected
 16 wholesalers that further sales on that reservation must be
 17 taxed and that a claim for a refund or credit will not be
 18 honored for the remainder of the quota period. Quota
 19 allocations are not transferrable between quota periods or
 20 between reservations.

21 (6) The total amount of refunds or credits allowed by
 22 the department to all wholesalers claiming the refund or
 23 credit under subsection (4) for any month may not exceed an
 24 amount that is equal to the tax due on the quota allocation.
 25 The department shall determine the amount of refunds or

1 credits for each Indian reservation at the beginning of each
 2 fiscal year, using the most recent census data available
 3 from the bureau of Indian affairs or populations--determined
 4 AS PROVIDED in a cooperative agreement with the tribe or
 5 tribes of the Indian reservation."

6 **Section 9.** Section 16-11-131, MCA, is amended to read:

7 "16-11-131. Transporting cigarettes without insignia a
 8 misdemeanor -- invoices and delivery tickets required --
 9 stop and inspection authorized. (1) It shall be is unlawful
 10 for any a person to transport into, receive, carry, or move
 11 from place to place within this state, except in the course
 12 of interstate commerce, any cigarettes which that do not
 13 bear the insignia (stamps) required by this part, except for
 14 a person specifically exempted in 16-11-132(2).

15 (2) (a) When transporting unstamped cigarettes, a
 16 person shall possess invoices or delivery tickets for the
 17 cigarettes that show the name and address of the consignor
 18 or seller, the name of the consignee or purchaser, and the
 19 quantity and brands of the cigarettes being transported. If
 20 the cigarettes are consigned to or purchased by a person in
 21 this state, the consignee or purchaser must be authorized by
 22 16-11-132 to possess unstamped cigarettes in this state.

23 (b) The cigarettes transported are subject to seizure,
 24 forfeiture, and sale as provided in 16-11-141, 16-11-147,
 25 [section 7], and this section if:

1 (i) there are no invoices or delivery tickets;
 2 (ii) the name or address of the consignee or purchaser
 3 is falsified; or
 4 (iii) the consignee or purchaser is not authorized to
 5 possess unstamped cigarettes.
 6 (3) Transportation of cigarettes from a point outside
 7 the state to a point in another state is not a violation of
 8 this section if the person transporting the unstamped
 9 cigarettes possesses adequate invoices or delivery tickets
 10 that give the name and address of the out-of-state consignor
 11 or seller and the out-of-state consignee or purchaser.
 12 (4) If the department, its authorized agent, [THE
 13 DEPARTMENT OF JUSTICE,] or a peace officer of the state has
 14 knowledge or reasonable grounds to believe that a vehicle is
 15 transporting cigarettes in violation of this section, the
 16 department, its agent, [THE DEPARTMENT OF JUSTICE,] or a
 17 peace officer may stop and inspect the vehicle.
 18 (5) Any A person violating the provisions of this
 19 section is guilty of a misdemeanor and shall be punished as
 20 hereinafter provided."

21 **Section 10.** Section 16-11-147, MCA, is amended to read:
 22 "16-11-147. Seizure and forfeiture of unlawful
 23 cigarettes. (1) Any A motor vehicle, airplane, conveyance,
 24 vehicle, or other means of transportation in which
 25 cigarettes are being unlawfully transported, together with

1 the cigarettes and other equipment or personal property used
 2 in connection with and found in that transportation, is
 3 subject to seizure by the department, its duly authorized
 4 agent, any a sheriff or deputy, or other peace officer and
 5 is subject to forfeiture in the manner provided in
 6 subsection (2).

7 (2) Upon the seizure of any cigarettes and within 2
 8 days thereafter of the seizure, the person or officer making
 9 the seizure shall deliver an inventory of the property
 10 seized to the person from whom the seizure was made, or any
 11 other person having a right or interest in the seized
 12 property, if known, and file a copy of the inventory with
 13 the department. ~~The person from whom the seizure was made or~~
 14 ~~any other person claiming an interest in the property seized~~
 15 ~~may apply for its return as provided in 46-5-385, 46-5-311,~~
 16 ~~and 46-5-312.~~

17 (3) If a person other than the person from whom the
 18 property was seized as described in subsection (2) does not
 19 notify the department in writing of a claim of ownership or
 20 right of possession of the items seized within 15 days of
 21 the date of the inventory required in subsection (2), the
 22 seized property is considered forfeited.

23 (4) If a person notifies the department in writing of a
 24 claim of ownership or right of possession of the items
 25 seized within 15 days of the date of inventory required in

subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee[, WITH THE ASSISTANCE OF THE DEPARTMENT OF JUSTICE,] in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized."

Section 11. 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; [section 4]; [section 5]; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 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 12. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 16, chapter 11, part 1, and the provisions of Title 16, chapter 11, part 1, apply to [sections 1 through 7].

NEW SECTION. Section 13. Coordination instruction. (1) If House Bill No. 92 is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void.

(2) IF HOUSE BILL NO. 609 AND [THIS ACT] ARE BOTH PASSED AND APPROVED, THEN THE BRACKETED REFERENCES TO THE DEPARTMENT OF JUSTICE IN [SECTIONS 9 AND 10 OF THIS ACT] ARE EFFECTIVE. IF HOUSE BILL NO. 609 IS NOT PASSED AND APPROVED, THEN THE BRACKETED REFERENCES TO THE DEPARTMENT OF JUSTICE IN [SECTIONS 9 AND 10] ARE VOID.

NEW SECTION. Section 14. Effective dates. (1) [Sections 3 through 5 and 11 through 15] are effective on passage and approval.

(2) [Sections 1, 2, and 6 through 10] are effective July 1, 1993.

NEW SECTION. Section 15. Applicability. [Sections 1, 2, and 6 through 10] apply to cigarette sales made by a wholesaler after June SEPTEMBER 30, 1993.

-End-