

1 HOUSE BILL NO. 126

2 INTRODUCED BY COBB

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RAISING CIGARETTE TAXES AND TOBACCO PRODUCTS TAXES
5 FOR DEPOSIT IN THE STATE GENERAL FUND; PROVIDING FOR THE ALLOCATION OF THE ADDITIONAL
6 TAXES; PROVIDING APPROPRIATIONS TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
7 SERVICES FOR DISTRIBUTION TO INDIAN HEALTH CLINICS AND COUNTY AND TRIBAL HEALTH
8 DEPARTMENTS; AMENDING SECTIONS 16-11-111, 16-11-119, 16-11-202, AND 17-5-408, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

10

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

12

13 Section 1. Section 16-11-111, MCA, is amended to read:

14 "16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) A tax on the purchase
15 of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is
16 imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~48~~ 28
17 cents on each package containing 20 cigarettes and, when packages contain more or less than 20
18 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

19 (2) The tax imposed in subsection (1) does not apply to quota cigarettes.

20 (3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all
21 cigarettes entering a Montana Indian reservation.22 (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes
23 to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund
24 or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized
25 Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within
26 1 year of the shipment date forfeits the refund or credit.27 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system
28 of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for
29 approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on
30 whether the quota, as established in a cooperative agreement between the department and an Indian tribe

1 or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon
 2 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation
 3 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a
 4 credit or refund. Once the quota has been filled, the department shall immediately notify all affected
 5 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will
 6 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota
 7 periods or between reservations.

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

14
 15 **Section 2.** Section 16-11-119, MCA, is amended to read:

16 "**16-11-119. Disposition of taxes -- retirement of bonds.** (1) The amount of ~~11.11%~~ 7.14% of the
 17 cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited
 18 in the state special revenue fund to the credit of the department of public health and human services for
 19 the operation and maintenance of state veterans' nursing homes.

20 (2) The amount of 35.71% of the cigarette tax collected under the provisions of 16-11-111 on
 21 each package of cigarettes must be deposited in the state general fund.

22 ~~(2)(3)~~ All remaining revenue collected under the provisions of 16-11-111, less the expense of
 23 collecting the taxes, must, in accordance with the provisions of 15-1-501, be deposited as follows:

- 24 (a) 79.75% in the long-range building program fund in the debt service fund type; and
 25 (b) 20.25% in the long-range building program account provided for in 17-7-205."

26
 27 **Section 3.** Section 16-11-202, MCA, is amended to read:

28 "**16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate**
 29 **of tax -- disposition.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct
 30 taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax

1 is paid by any other person, the payment is considered as an advance payment and must be added to the
 2 price of tobacco products and recovered from the ultimate consumer or user. Any person selling tobacco
 3 products at retail shall state or separately display in the premises where the products are sold a notice of
 4 the tax included in the selling price and charged or payable pursuant to this section. The provisions of this
 5 section do not affect the method of collection of the tax as provided in this part.

6 (2) There must be collected and paid to the state of Montana a tax of ~~42-1/2%~~ 19.4% of the
 7 wholesale price of all tobacco products to the wholesaler. Tobacco products shipped from Montana and
 8 destined for retail sale and consumption outside the state are not subject to this tax.

9 (3) (a) The amount of 35.71% of the tobacco products tax collected under this section must be
 10 deposited in the state general fund.

11 (b) The amount of 64.29% of the tobacco products tax collected under this section is pledged and
 12 appropriated for the purposes set forth in 17-5-408(2)."

13

14 **Section 4.** Section 17-5-408, MCA, is amended to read:

15 **"17-5-408. Percentage of income, corporation license, and cigarette tax pledged.** (1) (a) The state
 16 pledges and appropriates and directs to be credited as received to the debt service account money received
 17 from the collection of the individual income tax and, except as provided in 15-31-702, money received from
 18 the collection of the corporation license and income tax, as provided in 15-1-501, as may at any time be
 19 needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

20 (b) The pledge and appropriation made by this section are a first and prior charge upon all money
 21 received from the collection of the enumerated taxes.

22 (2) Except for the amount credited to the veterans' home maintenance and improvement account
 23 and the amount to be deposited in the state general fund under 16-11-119, the state pledges and
 24 appropriates and directs to be credited to the debt service account 79.75% of all remaining money received
 25 from the collection of the excise tax on cigarettes that is levied, imposed, and assessed by 16-11-111. The
 26 state also pledges and appropriates and directs to be credited as received to the debt service account ~~all~~
 27 64.29% of the money received from the collection of the taxes on other tobacco products that are or may
 28 be imposed for that purpose, including the tax imposed by 16-11-202. This section does not impair or
 29 otherwise affect the provisions and covenants contained in the resolutions authorizing the presently
 30 outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the

1 pledge and appropriation made by this section are a first and prior charge upon all money received from the
2 collection of all taxes referred to in this subsection.”

3
4 **NEW SECTION. Section 5. Appropriation.** (1) On July 1, 1997, and on July 1, 1998, there is
5 appropriated from the general fund to the department of public health and human services \$350,000 for
6 distribution as a grant of \$70,000 to each of the following Indian care health providers:

7 (a) Leo Pocha clinic, Helena;

8 (b) Indian health clinic of the Native American center, Great Falls;

9 (c) Missoula Indian center, Missoula;

10 (d) Billings Indian health board, Billings; and

11 (e) Northern American Indian health alliance, Butte.

12 (2) On July 1, 1997, and on July 1, 1998, there is appropriated from the general fund to the
13 department of public health and human services \$630,000, to be distributed in the amount of \$10,000 to
14 each county health department and each tribal health department on each reservation in the state.

15 (3) On July 1, 1997, and on July 1, 1998, there is appropriated from the general fund to the
16 department of public health and human services \$1 million, to be distributed to each county health
17 department and each tribal health department on each reservation in the state based upon population.
18 However, a county or tribal health department may not receive less than \$1,000. In determining the
19 distribution ratio, the department shall base the calculation on the percentage that each county's or
20 reservation's population bears to the population of the state. For a county with a reservation, the
21 population of the reservation within the county must be subtracted from the county population to determine
22 the distribution percentage.

23
24 **NEW SECTION. Section 6. Effective date -- applicability.** (1) [This act] is effective on passage
25 and approval.

26 (2) (a) [Section 1] applies to cigarettes that are received by a wholesaler after [the effective date
27 of this act].

28 (b) [Section 3] applies to tobacco products that are received by a wholesaler after [the effective
29 date of this act].

30 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0126, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act raising cigarette taxes and tobacco products taxes for deposit in the state general fund; providing for the allocation of the additional taxes; providing appropriations to the Department of Public Health and Human Services for distribution to Indian health clinics and county and tribal health departments and providing an immediate effective date and an applicability date.

ASSUMPTIONS:

Tax Collections:

1. The proposed increase in cigarette tax and other tobacco products tax would become effective on passage and approval and therefore would be in effect for all of FY98 and subsequent years.
2. Under current law the tax rate is 18 cents per pack of cigarettes (effective rate 17.1 cents) and under the proposal the tax rate would be 28 cents per pack (effective rate 26.6 cents).
3. A 1% increase in the price of cigarettes would decrease consumption by 4/10 of 1%. (Gary S. Becker, University of Chicago.)
4. The average price of a pack of cigarettes is \$1.50. The proposed 10 cent increase in the tax on a pack of cigarettes would decrease consumption by 2.67%.
5. Under current law there will be 71.001 million packs of cigarettes stamped in FY98 and 68.636 million in FY99. Under the proposal there would be 69.084 million in FY98 and 66.783 million in FY99.
6. Under current law cigarette collections will be \$12,141,000 in FY 98 and \$11,737,000 in FY99. (ROC, 12/2/96.) Under the proposal cigarette collections will be \$18,376,000 in FY 98 and \$17,765,000 in FY99.
7. Under current law tobacco products are taxed at 12.5% of the wholesale price. Under the proposal tobacco products are taxed at 19.4% of the wholesale price.
8. Under current law tobacco products tax collections will be \$1,831,000 in FY98 and \$1,969,000 in FY99. (ROC, 12/2/96.) Under the proposal tobacco products tax collections will be \$2,842,000 in FY98 and \$3,056,000 in FY99. (ROC, 12/2/96.)
9. Under current law, amounts allocated to the long-range building program debt service fund are transferred to the state general fund.

PHHS, Health Policy & Services Division:

10. One Grade 15 FTE and operations cost are needed to implement and manage the disbursement of these funds.
11. Revenue will be collected by the Department of Revenue and will be appropriated to PHHS through the state special revenue account for tobacco taxes.

PHHS, Senior & Long Term Care:

11. The Montana veterans' homes are partially funded with tobacco tax revenues.
12. The total dollar amount of tobacco tax revenue will remain adequate to fund the current law operations of the veterans' homes.

(Continued)

Dave Lewis 1-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JOHN COBB PRIMARY SPONSOR DATE

Fiscal Note for HB0126, as introduced

HB 126

FISCAL IMPACT

PHHS, Health Policy & Services Division:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	34,400	34,400
Operations	10,500	10,500
Equipment	4,000	0
Grants (Appropriated in bill)	<u>1,980,000</u>	<u>1,980,000</u>
Total	\$2,028,900	\$2,024,900

Funding:

General Fund (01)	\$2,028,900	\$2,024,900
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REVENUE IMPACT:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Revenues:</u>		
Cigarette Tax	6,235,000	6,027,000
Tobacco Products Tax	1,011,000	1,088,000

Fund Allocation:

Building Fund (02)	(58,000)	(56,000)
Veterans' Nursing Homes (02)	(36,000)	(35,000)
General Fund (Inc. LRBP Debt) (01)	7,239,000	7,106,000
Tribal Governments (02)	<u>101,000</u>	<u>100,000</u>
Total	7,246,000	7,115,000

NET IMPACT ON FUND BALANCES (Revenue - Expenditures):

Building Fund (02)	(58,000)	(56,000)
Veterans' Nursing Homes (02)	(36,000)	(35,000)
General Fund (Inc. LRBP Debt) (01)	5,210,100	5,081,100
Tribal Governments (02)	<u>101,000</u>	<u>100,000</u>
Total	5,217,100	5,090,100

TECHNICAL NOTES:

The FY98 impact does not take into account the following considerations:

1. There will be a delay in realizing increased revenues estimated in this note. This is due to the fact that the tax increase will apply to cigarettes received by the wholesaler after the effective date of this act. Therefore, any inventory on hand at the wholesale level will be distributed at the lower tax rate. The department will require a physical inventory at the effective date of the increase to insure the correct amount of taxes are collected.

The alternative is to require a physical inventory and impose the tax on all cigarettes sold after the effective date of this act.

2. There appears to be a conflict with the proposed allocation of the tobacco products tax and the allocation set forth in 16-11-206.

MOTION TO TAKE FROM TABLE,
PRINT & PLACE ON 2ND READING

COMMITTEE ON TAXATION

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INTRODUCED BY COBB

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(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

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5 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will
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11 Indian reservation at the beginning of each fiscal year, using the most recent census data available from
12 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian
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23 collecting the taxes, must, in accordance with the provisions of 15-1-501, be deposited as follows:

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25 (b) 20.25% in the long-range building program account provided for in 17-7-205."

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29 **of tax -- disposition.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct
30 taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax

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2 price of tobacco products and recovered from the ultimate consumer or user. Any person selling tobacco
3 products at retail shall state or separately display in the premises where the products are sold a notice of
4 the tax included in the selling price and charged or payable pursuant to this section. The provisions of this
5 section do not affect the method of collection of the tax as provided in this part.

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10 deposited in the state general fund.

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18 the collection of the corporation license and income tax, as provided in 15-1-501, as may at any time be
19 needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

20 (b) The pledge and appropriation made by this section are a first and prior charge upon all money
21 received from the collection of the enumerated taxes.

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23 and the amount to be deposited in the state general fund under 16-11-119, the state pledges and
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25 from the collection of the excise tax on cigarettes that is levied, imposed, and assessed by 16-11-111. The
26 state also pledges and appropriates and directs to be credited as received to the debt service account ~~at~~
27 64.29% of the money received from the collection of the taxes on other tobacco products that are or may
28 be imposed for that purpose, including the tax imposed by 16-11-202. This section does not impair or
29 otherwise affect the provisions and covenants contained in the resolutions authorizing the presently
30 outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the

1 pledge and appropriation made by this section are a first and prior charge upon all money received from the
2 collection of all taxes referred to in this subsection."
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16 department of public health and human services \$1 million, to be distributed to each county health
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18 However, a county or tribal health department may not receive less than \$1,000. In determining the
19 distribution ratio, the department shall base the calculation on the percentage that each county's or
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21 population of the reservation within the county must be subtracted from the county population to determine
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28 (b) [Section 3] applies to tobacco products that are received by a wholesaler after [the effective
29 date of this act].
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