

HOUSE BILL NO. 826

INTRODUCED BY M. CUNNINGHAM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAX ON CIGARETTES FROM \$1.70 ON EACH PACKAGE CONTAINING 20 CIGARETTES TO \$2.70; AND AMENDING SECTION 16-11-111, MCA."

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

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

"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~\$1.70~~ \$2.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

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

(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

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

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

13 (7) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price,
14 to the wholesaler, of all tobacco products other than cigarettes, premium cigars, and moist snuff. The tax on a
15 premium cigar is the lesser of 50% of the wholesale price or 35 cents a premium cigar. The tax on moist snuff is
16 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist
17 snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package.
18 Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not
19 subject to this tax.

20 (8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the
21 department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part
22 must be assessed penalty and interest as provided in 15-1-216.

23 (9) A retailer who purchases tobacco products for resale on which the tobacco products tax has
24 not been collected and paid to the department shall comply with all the provisions of this part and the rules
25 adopted to implement this part as if it were a wholesaler.

26 (10) A retailer must assume that the tobacco products tax has not been collected and paid to the
27 department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that
28 states that the applicable Montana tobacco products tax is included in the total billing cost."

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