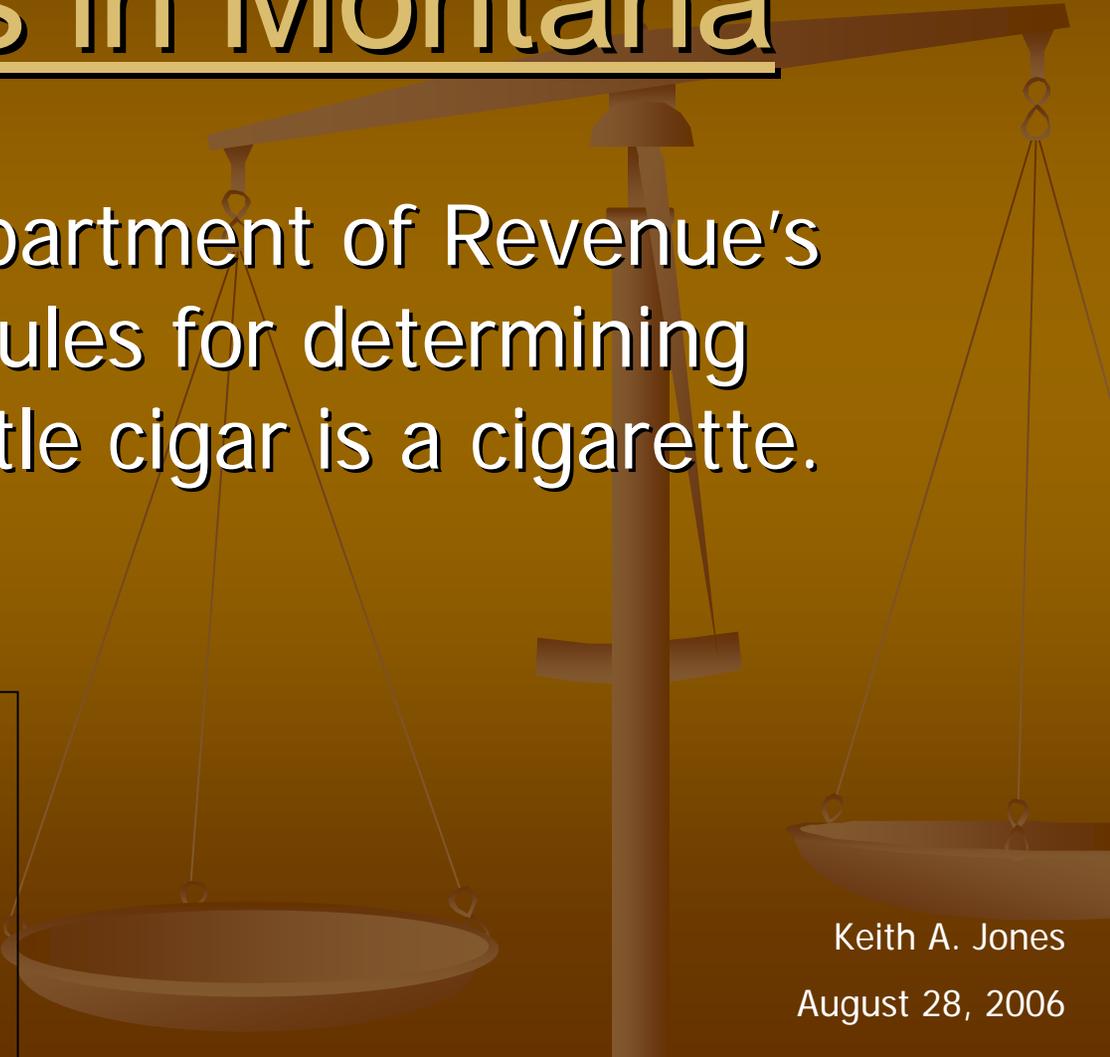


Regulation of Little Cigars in Montana



Montana Department of Revenue's proposed rules for determining whether a little cigar is a cigarette.

Keith A. Jones

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Statutory Authority

Prior definition of cigarette:

Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, *the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.*

2005 Montana Legislature defined cigarette as:

“Any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

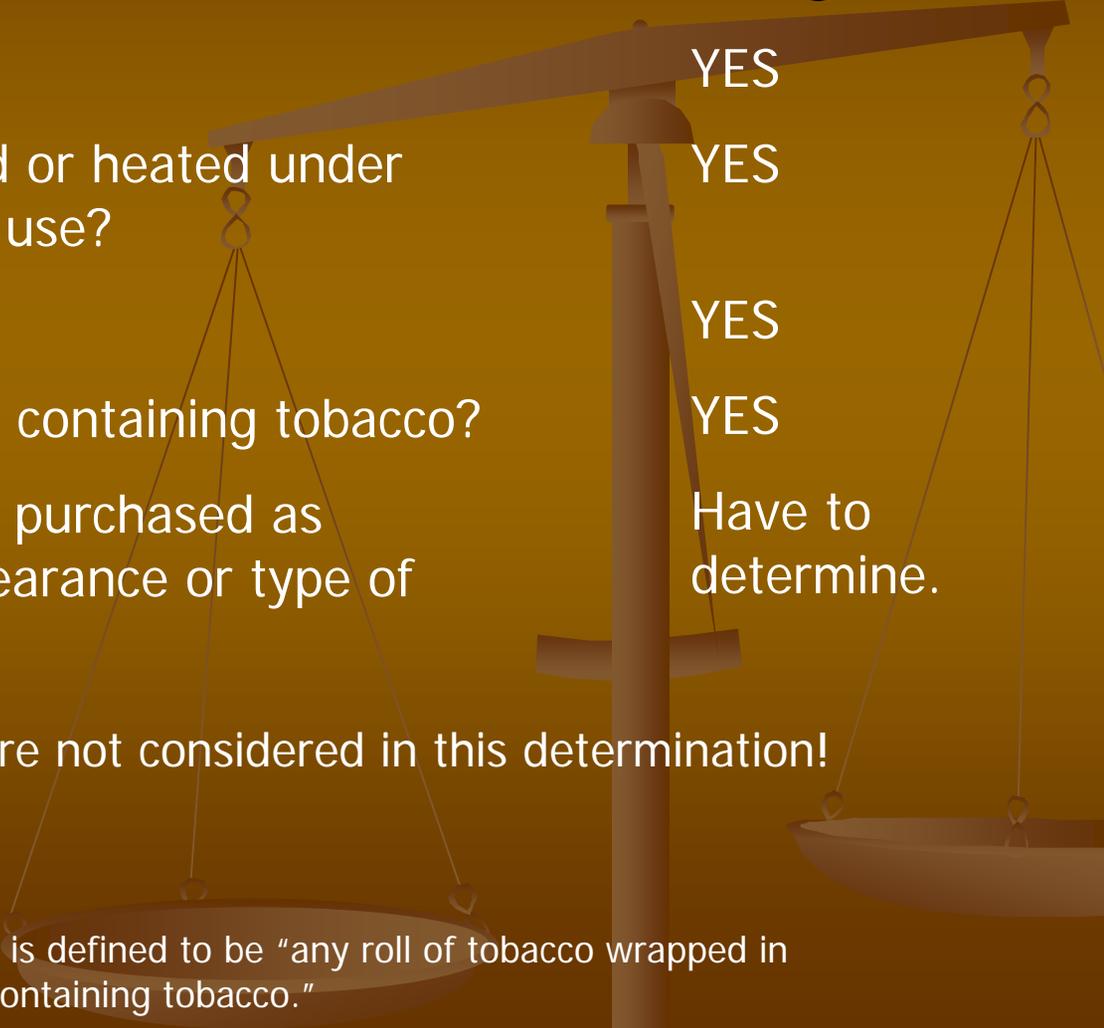
- i. any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- ii. tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or
- iii. any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in [i].”

§ 16-11-102(2)(a), Montana Code Annotated.

Statutory Criteria

Criteria

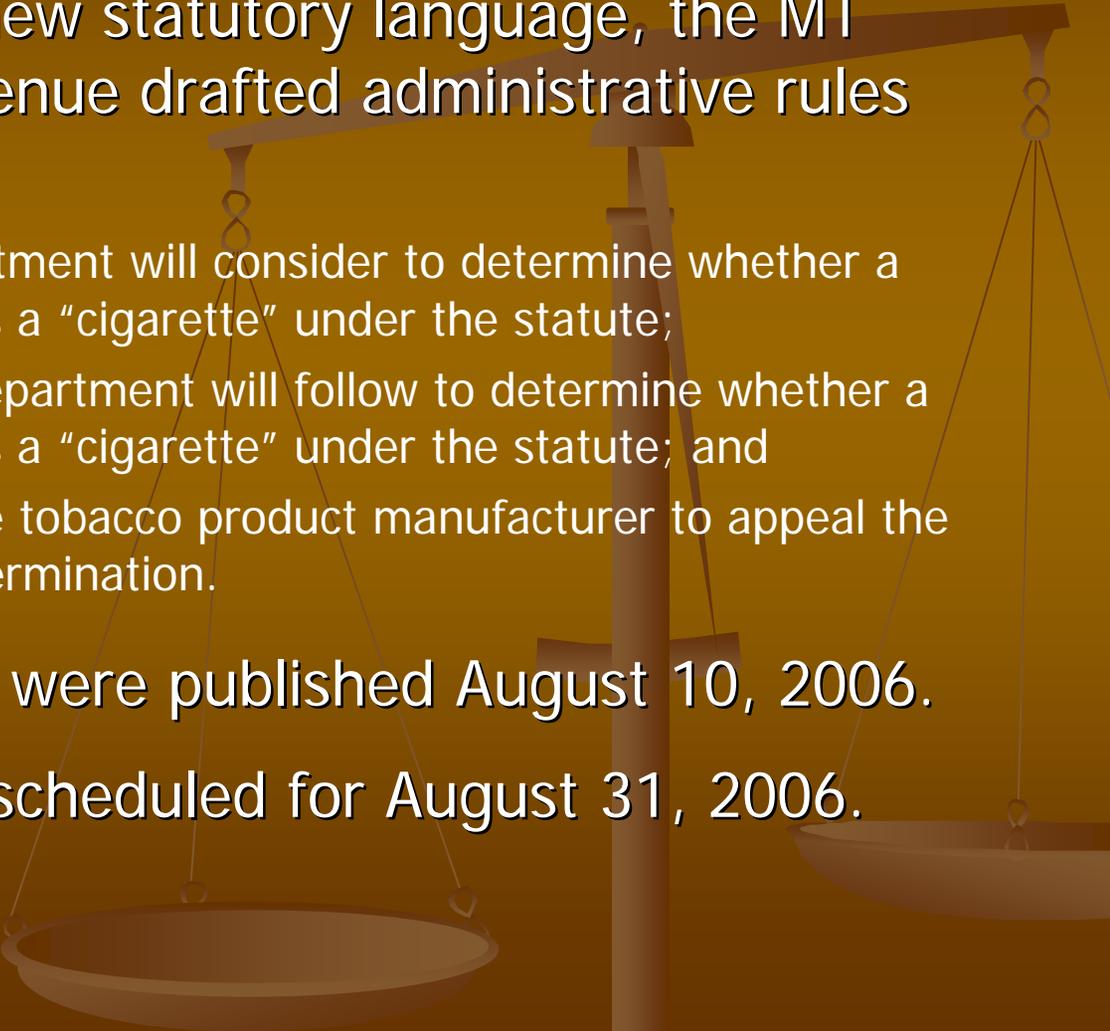
Little Cigars?

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1. Contains nicotine? YES
 2. Intended to be burned or heated under ordinary conditions of use? YES
 3. A roll of tobacco? YES
 4. Wrapped in substance containing tobacco? YES
 5. Likely to be offered or purchased as cigarette* due to appearance or type of tobacco used in filler? Have to determine.

NOTE: Packaging and labeling are not considered in this determination!

* This use of the term cigarette is defined to be "any roll of tobacco wrapped in paper or in any substance not containing tobacco."

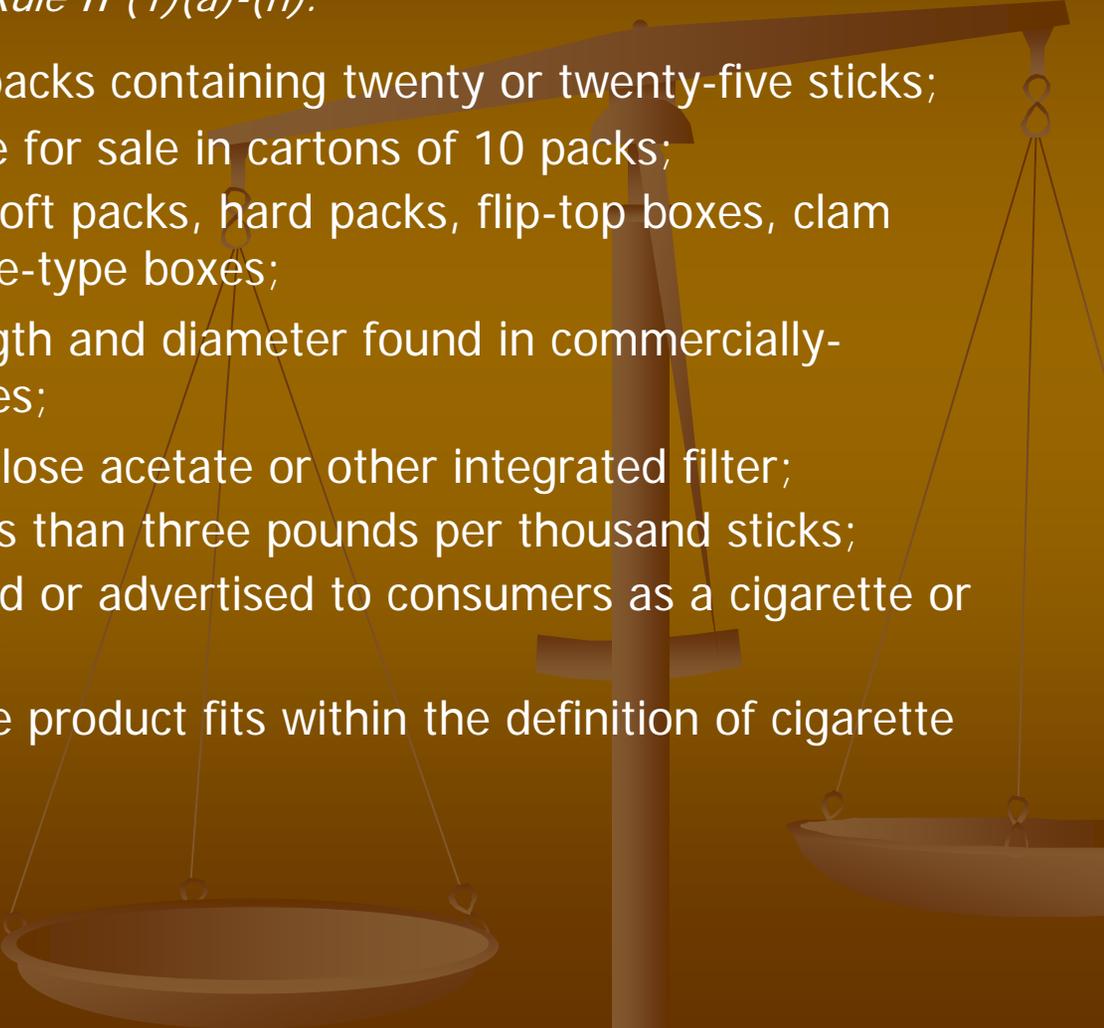
Administrative Rules



- To implement the new statutory language, the MT Department of Revenue drafted administrative rules establishing:
 1. Criteria the Department will consider to determine whether a tobacco product is a “cigarette” under the statute;
 2. Procedures the Department will follow to determine whether a tobacco product is a “cigarette” under the statute; and
 3. Procedures for the tobacco product manufacturer to appeal the Department’s determination.
- The proposed rules were published August 10, 2006.
- A public hearing is scheduled for August 31, 2006.

Administrative Criteria

A tobacco product may be considered a cigarette if it meets two or more of the following criteria: *New Rule II (1)(a)-(h)*.

1. the product is sold in packs containing twenty or twenty-five sticks;
 2. the product is available for sale in cartons of 10 packs;
 3. the product is sold in soft packs, hard packs, flip-top boxes, clam shells or other cigarette-type boxes;
 4. the product is of a length and diameter found in commercially-manufactured cigarettes;
 5. the product has a cellulose acetate or other integrated filter;
 6. the product weighs less than three pounds per thousand sticks;
 7. the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
 8. other evidence that the product fits within the definition of cigarette in 16-11-102, MCA.
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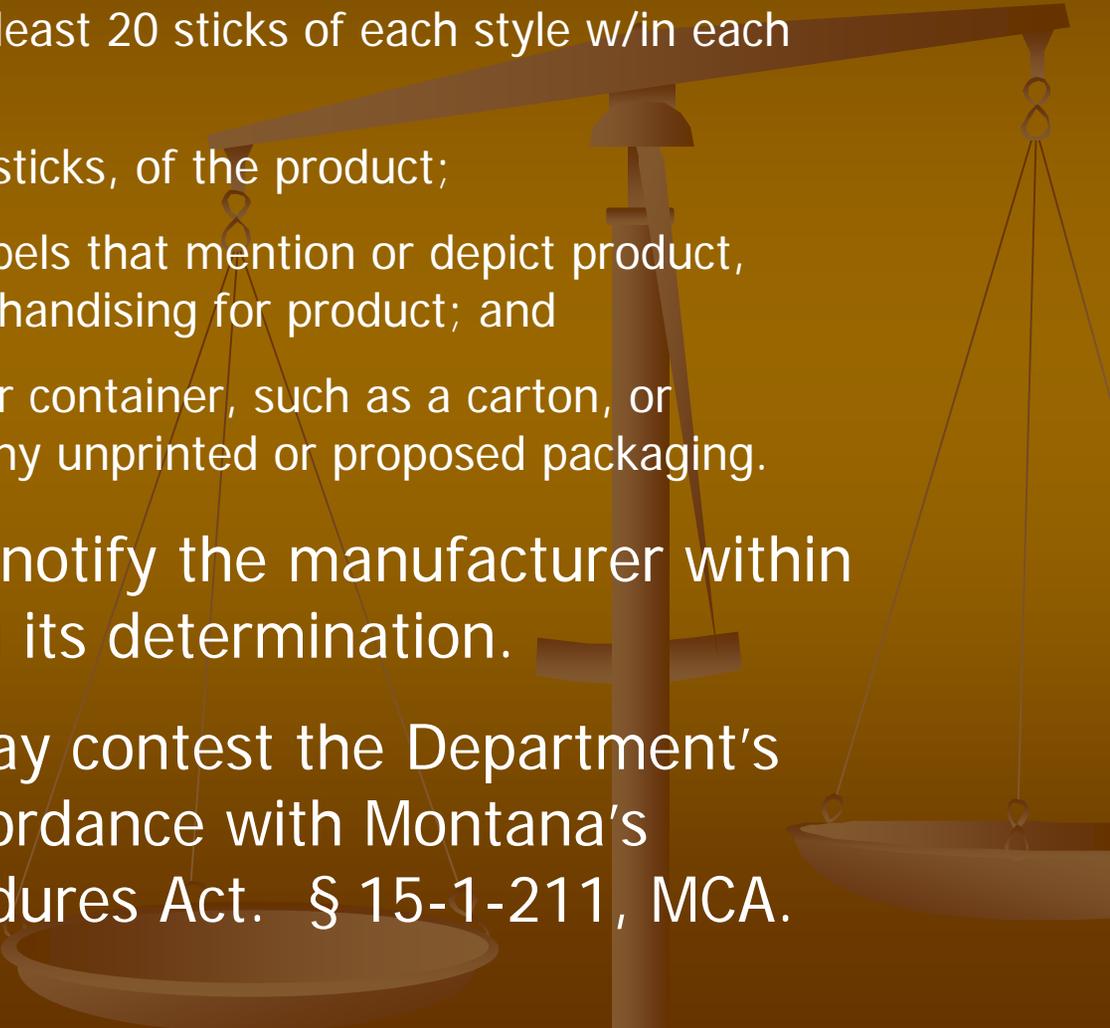
Administrative Criteria

- Also, the Department defined “cigar”: A roll of tobacco that is wrapped in 100% natural leaf tobacco, OR
 1. Any substance that contains 75% or more tobacco which did not in the reconstitution process lose its tobacco character (taste, aroma, identifiable chemical components) and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars, and
 2. Does not meet the criteria of a cigarette in New Rule II (1)(a)-(h).

Department Determinations

- Two ways to instigate a Department determination:
 1. If manufacturer requests a determination, the Department must make one. *New Rule III (1) and (2).*
 2. If the Department receives info from a source other than the manufacturer, the Department may conduct a review and make a determination. *New Rule III (3).*

Department Determinations



- Information from the manufacturer: *New Rule III (4)*.
 1. Product samples of at least 20 sticks of each style w/in each brand family;
 2. Weight, per thousand sticks, of the product;
 3. Advertisements and labels that mention or depict product, and point-of-sale merchandising for product; and
 4. Package and any larger container, such as a carton, or detailed graphics for any unprinted or proposed packaging.
- The Department will notify the manufacturer within 10 days after making its determination.
- The manufacturer may contest the Department's determination in accordance with Montana's Administrative Procedures Act. § 15-1-211, MCA.

Ramifications

What happens when the Department determines that a tobacco product is a “cigarette” under this definition?

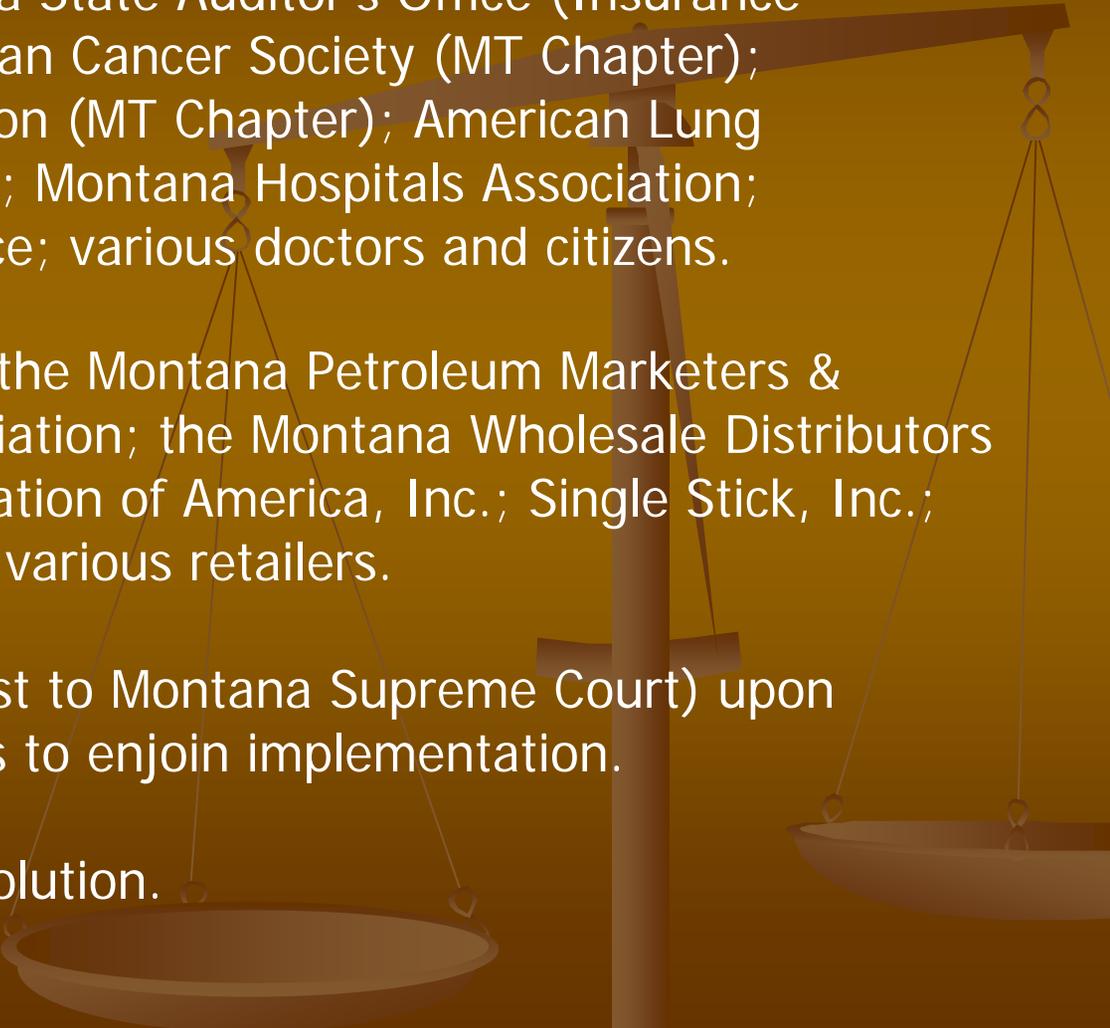
Tax Consequence: The product is subject to the Montana cigarette tax of \$1.70 per pack of 20 (prorated for other package sizes). § 16-11-111(1), MCA. The product will also be subject to Montana’s stamping requirements. § 16-11-113(1), MCA.

Packaging Consequence: Montana’s Youth Access to Tobacco Products Control Act prohibits the sale of single cigarettes as well as the sale of packages containing less than 20. § 16-11-307(1) and (2), MCA.

MSA Consequence: NONE. The definition of cigarette in Montana’s MSA statutes differs from Montana’s amended taxing definition of cigarette, so there is no MSA consequence due to the Department’s determination. § 16-11-402(4), MCA.

Minimum Pricing Consequence: NONE. The definition of cigarette in Montana’s minimum pricing laws differs from Montana’s amended taxing definition of cigarette, so there is no minimum pricing consequence due to the Department’s determination. § 16-10-103(3), MCA.

Developments



Substantial support from Montana Department of Public Health and Human Services; Montana State Auditor's Office (Insurance Commission); the American Cancer Society (MT Chapter); American Heart Association (MT Chapter); American Lung Association (MT Chapter); Montana Hospitals Association; Tobacco-Free Kids Alliance; various doctors and citizens.

Substantial opposition from the Montana Petroleum Marketers & Convenience Store Association; the Montana Wholesale Distributors Association; Cigar Association of America, Inc.; Single Stick, Inc.; various wholesalers; and various retailers.

Threatened litigation (at least to Montana Supreme Court) upon approval of the new rules to enjoin implementation.

Option: Seek a legislative solution.

Questions & Comments

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Thank you!

