



# Tobacco Tax in Indian Country

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The Montana Departments of Revenue and Transportation and the seven reservation tribal governments in the state have negotiated eleven revenue sharing agreements for excise taxes on the on-reservation sale of alcohol, tobacco, and fuel, and in one instance, oil and natural gas production. These agreements, their history, and implications are addressed in depth in MBPC’s recent Policy Basics report, “[Taxes in Indian Country, Part 2.](#)” Provided here, however, is a brief overview of **how state-tribal tobacco tax agreements work in Indian Country**. It is important to note that this area is fluid, continuously affected by possible renegotiations and changes to the specific terms of the individual revenue sharing agreements.

In Montana, excise taxes on tobacco are imposed at the distributor level and included in the sale price of the item. Generally, the state pre-collects all taxes on cigarette and tobacco products sold on the reservations and then remits a portion of each tax to the tribal governments on a quarterly basis. As stipulated in the revenue-sharing agreements, this portion—which is an approximation of the on-reservation sales to enrolled tribal members—is **calculated by multiplying 150 percent of the Montana per capita tobacco tax collected statewide, by the total number of enrolled tribal members living on that particular reservation.**<sup>1</sup>

The single exception to this formula is the Confederated Salish and Kootenai Tribes (CSKT), whose members do not pay the state tax on cigarettes they purchase on the Flathead Reservation.<sup>2</sup> Because of this, the CSKT government does not receive a remittance share of this particular tax from the state; instead, they receive a limited number of tax-free cigarettes according to quotas set by Montana law. Any sales to tribal members above the quota, however, are taxed.<sup>3</sup> Likewise, all sales to non-tribal members on the reservation are taxed.

The table below outlines the revenue each government derived in **FY 2016** from their **tobacco tax revenue** sharing agreement, as well as the **current status and expiration date** of each agreement.

Government	Tax Revenue	Status and Expiration Date
State of Montana	\$81,332,431	N/A
Blackfeet Nation	\$1,198,687	6/30/2015; Agreement remains in effect until a new agreement is reached or upon cancellation with thirty days written notice.
Chippewa Cree Tribe	\$510,528	12/31/2021; Agreement stipulates that parties should meet to renegotiate renewal six months prior to expiration date.
Confederated Salish and Kootenai Tribes	N/A	(Instead of tax revenue, the CSKT receive tax-free cigarettes pursuant to quotas set by state statutes. See MCA 16-11-155 for more details.)
Crow Tribe	\$1,218,269	12/31/2016; Agreement is automatically renewed for ten years if no action is taken by either party.
Fort Belknap Indian Community	\$572,384	One year; Agreement is automatically renewed for successive one-year terms if no action is taken by either party.
Fort Peck Tribes	\$895,971	6/30/2015; Agreement remains in effect until parties renegotiate or terminate.
Northern Cheyenne Tribe	\$510,528	3/20/2022; Agreement automatically renews for another ten years if parties do not meet prior to the expiration date.

Sources: “Partners in Building a Stronger Montana: 2016 State-Tribal Relations Report;” “Legal Underpinnings of State-Tribal Tax Agreements”

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<sup>1</sup> Montana Legislative Services Staff, “Legal Underpinning of State-Tribal Tax Agreements,” 2015. <http://leg.mt.gov/content/Committees/Interim/2015-2016/State-Tribal-Relations/Meetings/Oct-2015/legal-underpinnings.pdf>.

<sup>2</sup> *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463 (1976). <https://supreme.justia.com/cases/federal/us/425/463/case.html>.

<sup>3</sup> Montana Code Annotated 16-11-111. [http://www.leg.mt.gov/bills/mca/title\\_0160/chapter\\_0110/part\\_0010/section\\_0110/0160-0110-0010-0110.html](http://www.leg.mt.gov/bills/mca/title_0160/chapter_0110/part_0010/section_0110/0160-0110-0010-0110.html).