EXHIBIT 5
DATE 1-18-05
BILL 167

SECRETARY OF STATE
STATE OF MONTANA

BRAD JOHNSON
SECRETARY OF STATE

MONTANA STATE CAPITOL
PO BOX 202801
HELENA, MT 59620-2801

Memo to: **Representative Dee Brown (desk 66)**
From: **Elwood English, Chief Legal Counsel**
Date: **January 18, 2005**

In answer to your questions of this morning regarding the filings in the Secretary of State's office, I have learned the following statistics. There appears to be no way to tell what the purpose of any of these entities might be except to read each one. Also, often the purpose language is vague and may include phrases like: "...and other legal activities." Thus there is no way to ascertain the number of LLCs set up to purchase RVs.

I am attaching an article from the Missoulian which you have probably already seen, including some estimates. I am also attaching an e-mail from the Motor Vehicle Title and Registration Bureau. I think they may be reading the code in the harshest way, but I can see no reason to believe Montana LLCs cannot be set up to purchase and hold motor vehicles. If they are not driven here, it may a problem for the state where the driving takes place, but it looks like all gravy for us.

Here are the statistics:

How many are there?

corporations? – 50,872 active foreign and domestic

limited partnerships? – 1,714 active foreign and domestic

limited liability companies? – 23,446 active foreign and domestic

limited liability partnerships? – 2,162 active

How many are filed per month?

corporations? approximately 350

limited partnerships? approximately 35

limited liability companies? approximately 634

limited liability partnerships? approximately 40

What are the filing fees?

corporations? for profit - $70, non-profit - $20

limited partnerships? $20

limited liability companies? $70

limited liability partnerships? $20

Is there any way to tell how many drop out the following year?

For corporations and limited liability companies it may be possible to run a total of those dissolved involuntarily (for failure to file annual reports), but no record is kept of the totals filing for voluntary dissolution (except the individual files).

Do we tell the Dept of Revenue which entities expire or dissolve each month? No.

How hard would it be to do so? Would apparently require mainframe system enhancement at some significant expense.

-----Original Message-----
From: Marie Connolly [mailto:mconnolly@montanabar.org]
Sent: Monday, December 27, 2004 9:58 AM
To: DOJ MVD TITLE INFO
Subject: Request for Information

This is a request for information. I am an employee of the State Bar of Montana and the staff Program Coordinator for the Lawyer Referral & Information Service. As a result, I receive requests similar to the one below on a fairly regular basis. I did try to do some research and find out whether this is even legal in Montana, but wasn't able to come up with a definitive answer. I really don't want to refer people to attorneys if this isn't a legal process in Montana, so thought maybe you would be willing to shed some light on this question. Is it legal for a non Montana resident to license and title a motor home in Montana?

Thanks ~

Marie Connolly
Program Coordinator
State Bar of Montana
(406) 447-2204

-----Original Message-----
From: LaBuff, Lavene [mailto:llabuff@state.mt.us]
Sent: Monday, December 27, 2004 3:54 PM
To: mconnolly@montanabar.org
Subject: RE: Request for Information

Thank you for contacting the Title and Registration Bureau. Your inquiry is very important to us. Please find your response below.

No, you have to be an established Montana resident in order to register a vehicle. Please find below what our definition of resident is. Some counties are requiring a power bill or water bill in the person's name to show residency. Some require that you apply in person and have the vehicle at the county at the time of application. Residency is defined as: A vehicle owner must have a Montana residential address as required in Section 61-3-101 (2)(a) MCA. If a Montana resident decides not to live in a house, but will be a mobile Montana resident and live in a recreational vehicle, the person would have to show some evidence of residency such as a voter registration card, verification of paying Montana State income tax, etc. Having a Montana Driver's license is not sufficient evidence to verify residence.

I hope this helps.

La Vene La Buff
Title and Registration Bureau
Dealer and Specialized Services Section
406-846-6000 x 6080
Llabuff@state.mt.us

missoulian.com
news online

With no sales tax and buyer-friendly programs, Montana RV businesses have been booming as shoppers come from all over to make their purchases

Print Page

By COLIN McDONALD of the Missoulian

Under the awning of his new motor home, Frank Graves takes in the view of Interstate 90 from the Bretz RV and Marine dealership. He has spent three weeks and more than $250,000 in Missoula.

It is the longest vacation the California trucker has ever taken and for most of it he has been camping on the black asphalt of Bretz's parking lot, waiting for repairs on his RV.

Graves would be upset, but he just saved $16,000 in sales tax. And saving the money was as simple as setting up a limited liability corporation in Montana and spending a few days on Flathead Lake while the paperwork was processed.

The repair work was to be expected on a new vehicle that comes with radiant floor heating, a 400 horsepower Cummins diesel engine and rooms that expand at the touch of a button.

"Look at this thing," Graves said. "You got DVD, VCR, dish network with satellites, all controlled from one remote. I've spent a lot of money in this town."

Of all the states, only Alaska, Delaware, Montana, New Hampshire and Oregon do not collect a sales tax. For out-of-state residents, Montana has but one requirement: that the purchase be made via a business entity, the simplest of which is a limited liability corporation.

According to Dean Roberts, head of the Motor Vehicle Division at the state Department of Justice, there are between 4,000 and 5,000 LLCs in Montana established solely for the purpose of purchasing an RV.

"They are looking to register in a state that offers lower registration fees than the competition," said John Bennett, whose Missoula law firm specializes in establishing LLCs. "Right now, Montana is the prettiest girl at the dance because it doesn't have a general sales tax and it doesn't have a specific tax targeted at RVs."

Based on an estimated average registration fee of $336 per vehicle and two vehicles per LLC, because most RVs are purchased with a tow-along vehicle, Montana's annual out-of-state RV sales windfall is at least $3 million.

Every year, Bennett estimates 1,000 to 2,000 LLCs are added to the list.

Mark Bretz, president of Bretz RV and Marine, one of the largest RV dealerships in the United States, said 40 percent of his new RV sales are to LLCs. It's a trend that has grown rapidly over the past five years, thanks in large part to online advertising and the network of RV campgrounds around the country.

And U.S. citizens aren't the only takers. For the same reasons people from California and Texas set up companies in Montana, foreigners who want to tour the United States in an RV also set up LLCs.

Peter and Elke Evans are from New Zealand, and are pleased with the money they saved and the ease of doing business in Missoula. Like Graves, they set up a limited liability company to purchase their RV and saved thousands of dollars in sales taxes they would have paid in other states.

They were also able to get insurance and extend their visas with the help of Bennett.

"It's the only way to do it," Peter Evans said. "It gives you more spending money."

The Evanses won't take their new RV back to New Zealand, but will tour the United States - one region at a time - for

part of each year. In between trips, they'll keep the rig in Missoula.

For local law firms like Bennett's, which charge around $1,000 to handle the paperwork to set up an LLC, it's good business. Hundreds of companies are "headquartered" and receive mail at his law firm on Main Street.

Because of Missoula's position between Glacier and Yellowstone national parks and its concentration of RV dealerships, the city has become a hub for limited liability corporations. Bennett said his law firm has helped thousands of clients avoid paying a state sales tax, and has processed so many LLCs the Montana secretary of state's office lowered the handling fee.

Out-of-state law firms offer a similar service, and advertise fees for creating a Montana LLC for as little as $261. Bennett said out-of-state firms set up the majority of RV-purchasing LLCs.

As would be expected, the practice is not popular with other states.

"There is a question of whether Montana has some obligation to protect those tax bases in other states," Roberts said. "We do have pressure from other states to change our law, because they are not getting their taxes."

During the 2001 Legislature, a bill was proposed to close the loophole that allows vehicles to be registered in Montana without being "garaged" in Montana. The bill was defeated by lobbyists representing LLC lawyers and RV dealers, Roberts said.

While there is no question under Montana law that the practice is legal, the issue becomes complicated when an RV leaves the state. Under most other states' laws, if an RV is brought into a state where its owner lives, the owner must pay a use tax.

Identical to a sales tax, the use tax is triggered not by a vehicle's purchase, but by its arrival and use in that state.

In the past three years, the Washington Department of Revenue has handled more than 400 cases and collected more than $10 million from Washington state residents who tried to avoid paying a sales tax by purchasing and registering their vehicles in other states.

Washington has some of the strictest rules against out-of-state vehicle registration and has a team of auditors dedicated to pursuing companies that have been created for the sole purpose of avoiding sales taxes.

"These LLCs do not have economic substance," said Dan Bucks, executive director of the Multistate Tax Commission, a government agency established to improve the fairness, efficiency and effectiveness of state tax systems. "The use tax is not owed by the LLC, but actually by the individual using the RV."

Again, depending on the interpretation of states laws and aggressiveness of state auditors, the argument can be made that while the Montana LLCs are legitimate businesses on paper, they are not legitimate businesses in substance - they don't do business, and therefore the tax burden is simply transferred to the individual using the RV.

"What has happened is that the tax burden for the schools and the police and fire departments has been transferred to the person who has paid the sales tax," Bucks said.

That's why many states, including Washington and Idaho, rely heavily on tips from disgruntled, taxpaying neighbors to find and prosecute falsely registered vehicles. Highway patrol officers also report suspicious rigs when they find in-state residents driving vehicles with Montana plates.

"I would advise them not to do this unless they plan to use the RV outside of the state for a substantial period of time," said D. John Thornton, a Boise, Idaho, tax lawyer. "There is no validity for a business set up just to avoid paying sales tax."

But detection is not easy. RVs are designed for cross-country travel, so out-of-state plates are common and rarely raise suspicion. And while the money generated from falsely registered vehicles is significant, it pales in comparison to the tax dodging by businesses, so state auditors tend to pursue those big-ticket cases.

Finally, for people like Graves - who has had legal counsel from both Montana and California lawyers - it is possible in some states to register the vehicle legally without invoking California's use tax.

Graves will keep his RV out of California and parked at an RV park in Arizona for the first four months. He'll keep all his receipts from Montana and Arizona to document the vehicle was out of the state in case he is ever scrutinized by the state of California.

At the end of 10 months, when he can finally retire from trucking, Graves will hit the road with his two cats and establish a new residency in Georgia. While he travels around the country, he will keep his RV registered in Montana and pay Bennett a fee every year to update his LLC.

Because the RV will be traveling continuously outside of California, it will not invoke California's use tax, Bennett said.

Before he left Missoula last week, Graves bought personalized license plates for his RV - PITT 1 - and for his tow-along car - PITT 2.

PITT, he said, stands for Pain In The Tush.

"I wanted pain in the ass," Graves said, "but they told me it was too vulgar."

Reporter Colin McDonald can be reached at 523-5259 or **cmcdonald@missoulian.com**.

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