

SENATE BILL NO. 45

INTRODUCED BY D. HARRINGTON

BY REQUEST OF THE DEPARTMENT OF TRANSPORTATION

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A UNIFORM STATUTE OF LIMITATIONS ON ASSESSMENT OF TAXES, PENALTIES, AND INTEREST FOR GASOLINE, SPECIAL FUELS, AND COMPRESSED NATURAL GAS; PROVIDING CONDITIONS UNDER WHICH THE STATUTE OF LIMITATIONS DOES NOT APPLY; AMENDING SECTIONS 15-70-212, 15-70-355, AND 15-70-720, MCA; REPEALING SECTION 15-70-335, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 15-70-212, MCA, is amended to read:

~~"15-70-212. Statute of limitations. Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency shall be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later. (1) If, in the opinion of the department, any return of a taxpayer is incorrect, the department may revise the return.~~

(2) Except as provided in subsections (3), (4), and (5), the amount of tax due under any return may be determined by the department within 3 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

(3) If a taxpayer does not file a return as required under this chapter, the department may, at any time, audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and, based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

(4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due.

(5) The statute of limitations does not apply to the assessment or collection of taxes, penalty, or interest in the following instances:



- 1 (a) when an audit is initiated by the department prior to 3 years from the filing of the return;
 2 (b) for any tax, penalty, or interest that is legally due and payable within 3 years of the date of a notice
 3 of intent to audit; or
 4 (c) for any period for which a taxpayer files a return reporting tax due and fails to remit the tax reported
 5 on the return in full.
 6 (6) The department shall provide notice of its action under this section to the taxpayer. The taxpayer may
 7 request a hearing, and the hearing must be conducted as a contested case as provided in Title 2, chapter 4, part
 8 6."

9
 10 **Section 2.** Section 15-70-355, MCA, is amended to read:

11 "**15-70-355. Statute of limitations -- special fuel user and distributor.** ~~Except in the case of a~~
 12 ~~fraudulent return or of neglect or refusal to make a return, every deficiency must be assessed within 3 years from~~
 13 ~~the due date of the return or the date of filing the return, whichever period expires later. (1) The provisions of~~
 14 ~~this section apply to a special fuel user and a special fuel distributor.~~

15 (2) If, in the opinion of the department, any return of a taxpayer is incorrect, it may revise the return.

16 (3) Except as provided in subsections (4), (5), and (6), the amount of tax due under any return may be
 17 determined by the department within 3 years after the return was filed, regardless of whether the return was filed
 18 on or after the last day prescribed for filing. For the purposes of this section, a tax return due under this chapter
 19 and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for
 20 filing.

21 (4) If a taxpayer does not file a return as required under this chapter, the department may, at any time,
 22 audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and,
 23 based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

24 (5) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that
 25 violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed
 26 and the tax may be collected at any time after it becomes due.

27 (6) The statute of limitations does not apply to the assessment or collection of taxes, penalty, or interest
 28 in the following instances:

- 29 (a) when an audit is initiated by the department prior to 3 years from the filing of the return;
 30 (b) for any tax, penalty, or interest that is legally due and payable within 3 years of the date of a notice

1 of intent to audit; or

2 (c) for any period for which a taxpayer files a return reporting tax due and fails to remit the tax reported
3 on the return in full.

4 (7) The department shall provide notice of its action under this section to the taxpayer. The taxpayer
5 may request a hearing, and the hearing must be conducted as a contested case as provided in Title 2, chapter
6 4, part 6."

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8 **Section 3.** Section 15-70-720, MCA, is amended to read:

9 **"15-70-720. Statute of limitations.** ~~Except in the case of a fraudulent return or of neglect or refusal to~~
10 ~~make a return, a deficiency must be assessed within 3 years from the due date of the return or the date of filing~~
11 ~~the return.~~ (1) If, in the opinion of the department, any return of a taxpayer is incorrect, it may revise the return.

12 (2) Except as provided in subsections (3), (4), and (5), the amount of tax due under any return may be
13 determined by the department within 3 years after the return was filed, regardless of whether the return was filed
14 on or after the last day prescribed for filing. For the purposes of this section, a tax return due under this chapter
15 and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for
16 filing.

17 (3) If a taxpayer does not file a return as required under this chapter, the department may, at any time,
18 audit the taxpayer or estimate the taxable income of the taxpayer from any information in its possession and,
19 based upon the audit or estimate, assess the taxpayer for the taxes, penalties, and interest due the state.

20 (4) If a taxpayer, with intent to evade the tax, purposely or knowingly files a false or fraudulent return that
21 violates a provision of this chapter, the amount of tax due may be determined at any time after the return is filed
22 and the tax may be collected at any time after it becomes due.

23 (5) The statute of limitations does not apply to the assessment or collection of taxes, penalty, or interest
24 in the following instances:

25 (a) when an audit is initiated by the department prior to 3 years from the filing of the return;

26 (b) for any tax, penalty, or interest that is legally due and payable within 3 years of the date of a notice
27 of intent to audit; or

28 (c) for any period for which a taxpayer files a return reporting tax due and fails to remit the tax reported
29 on the return in full.

30 (6) The department shall provide notice of its action under this section to the taxpayer. The taxpayer may

1 request a hearing, and the hearing must be conducted as a contested case as provide in Title 2, chapter 4, part
2 6."

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4 NEW SECTION. Section 4. Repealer. Section 15-70-335, MCA, is repealed.

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6 NEW SECTION. Section 5. Effective date. [This act] is effective July 1, 2005.

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