

1 SENATE BILL NO. 366

2 INTRODUCED BY K. TOOLE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A TAX ON A CORPORATION FOR GROSS
5 RECEIPTS THAT EXCEED \$40 MILLION IN A YEAR; PROVIDING THAT GROSS RECEIPTS TAX PAYMENTS
6 ARE A CREDIT AGAINST CORPORATE LICENSE TAXES AND CORPORATE INCOME TAXES; PROVIDING
7 FOR THE ADMINISTRATION OF THE GROSS RECEIPTS TAX INCLUDING PAYMENT OF ESTIMATED
8 TAXES, INTEREST FOR DELINQUENT PAYMENTS, AND PROVISIONS RELATING TO PENALTIES,
9 OVERPAYMENT, AND TIME LIMITATIONS; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN
10 APPLICABILITY DATE."

11

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

13

14 NEW SECTION. **Section 1. Definition.** As used in [sections 1 through 13], "gross receipts" means all
15 receipts from sources within the state, whether in the form of money, credits, or other valuable consideration,
16 received from engaging in or conducting a business, without deduction on account of the cost of the property
17 sold, the cost of the materials used, labor or service costs, interest paid, taxes, losses, or any other expense.
18 The term does not include cash discounts allowed and taken on sales and sales refunds, either in cash or by
19 credit, uncollectible accounts written off from time to time, or payments received in final liquidation of accounts
20 included in the gross receipts of any previous return made by the person.

21

22 NEW SECTION. **Section 2. Tax imposed on gross receipts of certain corporations.** Each
23 corporation doing business in Montana that had gross receipts exceeding \$40 million during the tax year shall
24 pay for that tax year a tax of 1% on all gross receipts exceeding \$40 million.

25

26 NEW SECTION. **Section 3. Credit against corporate license or income tax.** Taxes paid under the
27 provisions of [sections 1 through 13] may be used as a credit against taxes imposed under 15-31-121,
28 15-31-122, and 15-31-403. The credit may not exceed the taxpayer's liability under 15-31-121, 15-31-122, or
29 15-31-403. The credit must be applied to the year in which the gross receipts taxes were paid.

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1 **NEW SECTION. Section 4. Return to be filed.** (1) Each corporation subject to the gross receipts tax
2 imposed under [sections 1 through 13] shall for each tax year file a return of its gross receipts for the tax year
3 in the manner and form prescribed by the department. The return must contain all of the facts, data, and
4 information that are appropriate and that in the opinion of the department are necessary to determine the
5 correctness of the gross receipts tax return and to carry out the provisions of [sections 1 through 13]. The return
6 must be signed by the president, the vice president, the treasurer, the assistant treasurer, or the chief accounting
7 officer.

8 (2) If the corporation is reporting on a calendar-year basis, the return must be filed with the department
9 on or before May 15 following the close of the calendar year. If the corporation is reporting on a fiscal-year basis,
10 the return must be filed with the department on or before the 15th day of the 5th month following the close of its
11 fiscal year.

12 (3) (a) A corporation is allowed an automatic extension of time for filing its return of up to 6 months
13 following the date prescribed for filing of its tax return. The tax and interest must be paid when the return is filed.
14 Interest must be added to the tax due as provided in [section 7].

15 (b) The department may grant an additional extension of time for the filing of a return whenever in its
16 judgment good cause exists.

17 (4) Receivers, trustees in bankruptcy, or assignees overseeing the property or operating the business
18 of a corporation subject to the gross receipts tax imposed by [sections 1 through 13] shall make the return in the
19 same manner and form as the corporation is required to make the return. Any gross receipts tax due on the
20 basis of the return is assessed and collected in the same manner as if assessed directly against the corporation
21 of whose business or property the receiver, trustee, or assignee has custody and control. The receiver, trustee,
22 or assignee shall pay the tax out of the property of the corporation prior to the claims of creditors or stockholders.

23
24 **NEW SECTION. Section 5. Assessment and payment of tax -- estimated tax payment -- amount**
25 **of required installments.** (1) All taxpayers shall compute the amount of tax payable under [sections 1 through
26 13] and shall remit the amount to the department on or before the 15th day of the 5th month following the close
27 of the tax year. The money collected under [sections 1 through 13] must be deposited, subject to the provisions
28 of 15-1-501(3), by the department into the state general fund.

29 (2) (a) Each corporation shall make estimated tax payments if its annual estimated taxes are \$10,000
30 or more. The estimated payments must be made in installments as follows:

1 (i) For a corporation taxed on a calendar-year basis, the due date is:

2 1st.....April 15

3 2nd.....June 15

4 3rd.....September 15

5 4th.....December 15

6 (ii) For a corporation taxed on a fiscal-year basis, the due date is:

7 1st.....15th day of the 4th month

8 2nd.....15th day of the 6th month

9 3rd.....15th day of the 9th month

10 4th.....15th day of the 12th month

11 (b) Except as provided in [section 6], the amount of any required installment is 25% of the required
12 annual payment. The required annual payment is the lesser of:

13 (i) 80% of the tax shown on the return for the tax year or, if a return is not filed, 80% of the tax for that
14 year; or

15 (ii) 100% of the tax shown on the return of the corporation for the preceding tax year if the preceding tax
16 year was a period of 12 months and if the corporation filed a return for that year.

17 (3) The application of this section to tax years of less than 12 months must be in accordance with rules
18 adopted by the department.

19 (4) At the election of the corporation, any installment of the estimated tax may be paid before the date
20 prescribed for its payment.

21
22 **NEW SECTION. Section 6. Estimated payments -- tax returns -- interest.** (1) For corporations failing
23 to make estimated payments according to the schedule provided in [section 5], there is charged interest in the
24 amount of 12% a year.

25 (2) Interest must be paid on the amount of the required installment set forth in [section 5] that exceeds
26 the amount, if any, of the installment paid on or before the last date prescribed for payment.

27 (3) (a) Interest with respect to an underpayment of any installment may not be charged if the total
28 amount of all payments of estimated tax made on or before the last date prescribed for the payment of the
29 installment equals or exceeds the amount that would have been required to be paid on or before that date if the
30 estimated tax were an amount equal to 80% of the tax for the tax year, computed by placing on an annualized

1 basis the gross receipts:

2 (i) for the first 3 months of the tax year in the case of the installment required to be paid in the 4th
3 month;

4 (ii) for the first 3 months or for the first 5 months of the tax year in the case of the installment required
5 to be paid in the 6th month;

6 (iii) for the first 6 months or for the first 8 months of the tax year in the case of the installment required
7 to be paid in the 9th month; and

8 (iv) for the first 9 months or for the first 11 months of the tax year in the case of the installment required
9 to be paid in the 12th month of the tax year.

10 (b) For purposes of subsection (3)(a), gross receipts must be placed on an annualized basis by:

11 (i) multiplying by 12 the gross receipts referred to in subsection (3)(a); and

12 (ii) dividing the resulting amount by the number of months in the tax year (3, 5, 6, 8, 9, or 11, as the case
13 may be) referred to in subsection (3)(a).

14 (4) (a) Interest with respect to an underpayment of any installment may not be charged if the total
15 amount of all payments of estimated tax made on or before the last date prescribed for the payment of the
16 installment equals or exceeds 80% of the amount determined under subsection (4)(b).

17 (b) To determine the amount for any installment:

18 (i) take the gross receipts for all months during the tax year preceding the filing month;

19 (ii) divide the amount by the base period percentage for all months during the tax year preceding the
20 filing month;

21 (iii) determine the tax on the amount calculated under subsection (4)(b)(ii); and

22 (iv) multiply the tax computed under subsection (4)(b)(iii) by the base period percentage for the filing
23 month and all months during the tax year preceding the filing month.

24 (5) For purposes of this section, the base period percentage for any period of months is the average
25 percentage that the gross receipts for the corresponding months in each of the 3 preceding tax years bear to
26 the gross receipts of the 3 preceding years.

27 (6) This section applies only if the base period percentage for any 6 consecutive months of the tax year
28 equals or exceeds 70%.

29 (7) The department may by rule provide for the determination of the base period percentage in the case
30 of reorganizations, new corporations, and other similar circumstances.

1 (8) As used in this section, "filing month" means the month in which the installment is required to be
2 paid.

3
4 **NEW SECTION. Section 7. Interest -- delinquent penalty.** (1) Except as provided in [section 6], if
5 any tax due under [sections 1 through 13] is not paid when due as provided in [section 5], by reason of extension
6 or otherwise, interest is added to the tax due as provided in 15-1-216.

7 (2) If the tax for a corporation is not paid on or before the due date of the return, as provided in [section
8 5(2)], or if the tax is not paid on or before the due date of the return, as provided in [section 5(3)], penalties must
9 be assessed as provided in 15-1-216.

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11 **NEW SECTION. Section 8. Credit for overpayment -- interest on overpayment.** (1) If the
12 department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid,
13 the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer
14 and the balance must be refunded to the taxpayer or its successor through reorganization, merger, or
15 consolidation or to its shareholders upon dissolution.

16 (2) Interest is allowed on overpayments at the same rate as is charged on delinquent taxes due from
17 the later of the due date of the return or from the date of overpayment to the date the department approves
18 refunding or crediting of the overpayment. Interest does not accrue during any period when the processing of
19 a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information
20 requested by the department for the purpose of verifying the amount of the overpayment. Interest may not be
21 allowed:

22 (a) if the overpayment is refunded within 6 months from the date the return is due or from the date the
23 return is filed, whichever is later; or

24 (b) if the amount of interest is less than \$1.

25 (3) A payment not made incident to a bona fide and orderly discharge of an actual gross receipts tax
26 liability or one reasonably assumed to be imposed by [sections 1 through 13] is not considered an overpayment
27 with respect to which interest is allowable.

28
29 **NEW SECTION. Section 9. Statute of limitations.** (1) Except as otherwise provided in this section,
30 a deficiency may not be assessed or collected with respect to the year for which a gross receipts tax return is

1 filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return
2 was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered
3 filed on the last day. If the taxpayer, before the expiration of the 5-year period, consents in writing to an
4 assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed
5 upon.

6 (2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after
7 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment,
8 whichever period expires later, unless before the expiration of the period the taxpayer files a claim for the refund
9 or credit or the department determines there was an overpayment and approves a refund or credit. If the
10 taxpayer agrees in writing under the provisions of subsection (1) to extend the time within which the department
11 may propose an additional assessment, the period within which a claim for refund or credit may be filed or a
12 credit or refund allowed if a claim is not filed is automatically extended.

13 (3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or
14 an action to collect the tax may be brought at any time. If the return is required to be filed and the taxpayer files
15 a fraudulent return, the 5-year period provided for in subsection (1) does not begin until the department discovers
16 the fraud.

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18 **NEW SECTION. Section 10. Inspection of books, papers, records, and memoranda.** (1) A person
19 required to report and pay to the department a tax under [sections 1 through 13] shall keep records, render
20 statements, make returns, and comply with the provisions of [sections 1 through 13] and the rules prescribed
21 by the department. Each return or statement must include the information required by the rules of the
22 department.

23 (2) For the purpose of determining compliance with the provisions of [sections 1 through 13], the
24 department is authorized to examine or cause to be examined any books, papers, records, or memoranda
25 relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda
26 are the property of or in the possession of the person filing the return or another person. In determining
27 compliance, the department may use statistical sampling and other sampling techniques consistent with
28 generally accepted auditing standards. The department may also:

- 29 (a) require the attendance of a person having knowledge or information relevant to a return;
30 (b) compel the production of books, papers, records, or memoranda by the person required to attend;

1 (c) implement the provisions of 15-1-703 if the department determines that the collection of the tax is
2 or may be jeopardized because of delay;

3 (d) take testimony on matters material to the determination; and

4 (e) administer oaths or affirmations.

5

6 **NEW SECTION. Section 11. Estimation of tax upon failure to file statement or pay tax -- notice.**

7 (1) If a corporation fails, neglects, or refuses to file the statement required by [section 4] within the time required
8 or fails to pay the tax required by [sections 1 through 13] on or before the date payment is due, the department
9 shall proceed to estimate the total gross receipts of the corporation within this state during the tax year.

10 (2) The department shall compute the amount of gross receipts tax due from the corporation and shall
11 mail to the corporation a letter and tax assessment statement setting forth the amount of delinquent tax, penalty,
12 and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed.

13

14 **NEW SECTION. Section 12. Suspension or forfeiture on delinquency.** (1) If a tax computed and
15 levied under [sections 1 through 13] is not paid or if a return is not filed before 5 p.m. on the last day of the 11th
16 month after the date of delinquency, the corporate powers, rights, and privileges of the delinquent taxpayer, if
17 it is a domestic corporation, must be suspended, and if the delinquent taxpayer is a foreign corporation, it forfeits
18 its rights to do business in this state.

19 (2) If a domestic corporation subject to [sections 1 through 13] fails for a period of 5 consecutive years
20 either to file a return or to pay the gross receipts tax, the department shall notify the corporation by mail
21 addressed to the latest address on file in its office that the corporation will be dissolved if it fails to file all
22 delinquent reports and pay all delinquent gross receipts taxes within a period of 60 days from the date the notice
23 was mailed. If the delinquent reports are not made and all delinquent gross receipts taxes are not paid before
24 the expiration of the 60-day period, the department shall certify this fact to the secretary of state, who upon
25 receipt of the certification shall dissolve the corporation. The secretary of state shall indicate the dissolution on
26 official records.

27 (3) The department shall transmit the name of each corporation that has been suspended, has forfeited
28 its right to do business in the state, or is to be dissolved to the secretary of state, who shall immediately record
29 the matter so that notice of the action is available to the public. The suspension, forfeiture, or dissolution is
30 effective immediately when the matter is recorded.

1 (4) A corporation that has been suspended or has forfeited its right to do business in the state may have
2 the suspension or forfeiture lifted upon filing of delinquent returns and payment of owed taxes, interest, and
3 penalties within 1 year of the recordation of the suspension or forfeiture with the secretary of state. A suspension
4 may be lifted if more than 1 year but less than 2 years have elapsed since the recordation of the suspension or
5 forfeiture upon filing of delinquent returns, payment of owed taxes, and payment of double the amount of penalty
6 and interest.

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8 **NEW SECTION. Section 13. Rules.** The department may adopt rules necessary to administer the
9 gross receipts tax established in [sections 1 through 13].

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11 **NEW SECTION. Section 14. Credit for gross receipts tax.** As provided in [section 3], gross receipts
12 taxes paid under the provisions of [sections 1 through 13] are a credit against taxes imposed under 15-31-121,
13 15-31-122, and 15-31-403.

14
15 **NEW SECTION. Section 15. Codification instruction.** (1) [Sections 1 through 13] are intended to
16 be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].
17 (2) [Section 14] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions
18 of Title 15, chapter 31, apply to [section 14].

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20 **NEW SECTION. Section 16. Effective date.** [This act] is effective January 1, 2006.

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22 **NEW SECTION. Section 17. Applicability.** [This act] applies to gross receipts received after
23 December 31, 2005.

24 - END -