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As of: January 14, 2009 (2:28pm)

LC2095

STATE ADMINISTRATION

**** Bill No. ****

Introduced By *****

Exhibit No. 6

Date 1/14/09

By Request of the *****

Bill No. SB30

A Bill for an Act entitled: "An Act revising the process for determining the statutory reimbursement rates for lodging for state employees and certain others engaged in state business; providing for increased reimbursement for nonreceiptable lodging and meals for state employees and certain others engaged in state business; revising the definition of "facility" in the context of the lodging facility use tax and "accommodations" in the context of the sales tax on lodging accommodations to off-set the revenue collection and distribution effects that would otherwise result from the revised reimbursement rates for lodging for state employees and certain others engaged in state business; directing the Department of Revenue to amend existing Administrative Rules to reflect the effects of statutory changes to the threshold minimum average daily accommodation charge under which the lodging facility use tax and the sales tax on accommodations do not apply; and amending sections 2-18-501, 15-65-101, and 15-68-101, MCA; and providing effective dates."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-501, MCA, is amended to read:

"2-18-501. Meals, lodging, and transportation of persons in state service. All elected state officials, appointed members of

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boards, commissions, or councils, department directors, and all other state employees must be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Except as provided ~~under~~ in subsection (3), for travel within the state of Montana, lodging the following provisions apply:

(a) Lodging must be authorized at the actual cost of lodging, not exceeding ~~\$35 per day~~ the prescribed maximum standard federal rate for each day for the location, and taxes on the allowable cost of lodging, except as provided in subsection (3), ~~plus \$5 for the morning meal, \$6 for the midday meal, and \$12 for the evening meal.~~ All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(b) Meal reimbursement for each meal may not exceed 72% of the standard federal rate that is in effect on July 1 at the beginning of each biennium, rounded to the nearest dollar.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per each day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per for each meal.

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(3) The department shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of lodging when the actual cost exceeds the maximum established in subsection (1)(a) or (2)(a).

(4) For travel to a foreign country, the following provisions apply:

(a) All elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees must be reimbursed for the cost of meals and lodging within the rates established by the department of administration when traveling in the normal course of their duties to designated areas. The department shall use the United States department of state maximum travel per diem allowances for foreign areas in establishing the rates.

(b) All claims for lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceiptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, ~~the amount of \$12~~ an amount not to exceed 50% of the federal standard rate for each day that is in effect on July 1 at the beginning of each biennium is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)(a) or (2)(a). However, when overnight accommodations are provided at the expense of a

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government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

(7) The provisions of this section may not be construed as affecting the validity of 5-2-301.

(8) The department of administration shall establish policies necessary to effectively administer this section for state government.

(9) All commercial air travel must be by the least expensive class service available."

{ Internal References to 2-18-501:

1-12-101	2-6-402*	2-15-122*	2-15-122*
2-15-124*	2-15-124*	2-15-1013*	2-15-1028*
2-15-1205*	2-15-1521*	2-15-1771*	2-15-1820*
2-15-1869*	2-15-1869*	2-15-2017*	2-15-2021*
2-15-2108*	2-15-2217*	2-15-3004*	2-15-3330*
2-17-803*	2-18-502	3-1-1004*	3-1-1104*
3-1-1605*	3-2-104*	3-5-211*	3-5-213*
3-5-215*	3-5-602*	3-6-203*	3-10-203*
3-10-203*	3-10-209*	3-10-234*	3-11-202*
3-11-204*	3-11-205*	3-12-201*	5-2-302
5-5-211*	7-5-2146*	7-14-1103*	7-14-1622*
7-32-2144*	15-2-102*	15-15-101*	15-65-101
15-68-101	17-6-610	17-7-113*	19-20-202*
20-4-132*	20-25-212*	20-31-301*	22-1-102*
22-3-804*	23-4-102*	27-6-203*	27-12-203*
37-1-133*	37-43-201*	37-61-103*	39-71-201*
40-5-906*	41-5-132*	44-1-203*	46-30-411*
50-1-211*	50-4-810*	53-2-304*	53-19-304*
67-11-104*	69-1-111*	75-6-212*	76-15-313*
76-15-721*	80-2-202*	80-8-108*	80-11-203*
80-11-305*	80-11-404*	80-11-510*	80-11-510*
81-6-312*	85-7-1505*	85-7-1613*	87-1-228*
87-1-403*	87-1-503*	87-5-505*	87-5-604*
90-1-131*	90-1-405*	90-3-1005*	90-5-202*
90-7-201*	90-9-201*	90-15-203*	ok/ddb}

Section 2. Section 15-65-101, MCA, is amended to read:

"15-65-101. **Definitions.** For purposes of this part, the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) (a) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in 2-15-1816.

(4) (a) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily

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by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed ~~60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana~~ \$21, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

(6) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

(7) "Resort area" means an area established pursuant to 7-6-1508.

(8) "Resort area district" has the meaning provided in 7-6-1531."

{ *Internal References to 15-65-101:*
7-12-1121 7-12-1132 ok/ddb }

Section 3. Section 15-68-101, MCA, is amended to read:

"15-68-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means a building or structure

containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed ~~60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana~~ \$21, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) (a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.

(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.

(3) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for personal accident insurance;

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(iii) charges for additional drivers or underage drivers;
and
(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

(i) rental vehicle price discounts allowed and taken;
(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;
(iii) motor fuel;
(iv) intercity rental vehicle drop charges; or
(v) taxes imposed by the federal government or by state or local governments.

(4) (a) "Campground" means a place used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(5) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.

(6) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

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(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h) (1).

(c) The term does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments;
or

(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.

(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.

(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.

(7) (a) "Motor vehicle" means a light vehicle as defined in

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61-1-101, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, a quadricycle as defined in 61-1-101, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

- (i) is rented for a period of not more than 30 days;
- (ii) is rented without a driver, pilot, or operator; and
- (iii) is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.

(9) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

(10) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(11) "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

(12) "Retail sale" means any sale, lease, or rental for any

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purpose other than for resale, sublease, or subrent.

(13) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.

(14) (a) "Sales price" applies to the measure subject to sales tax and means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

(i) the seller's cost of the property sold;

(ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) delivery charges;

(v) installation charges;

(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) credit for any trade-in.

(b) The amount received for charges listed in subsections (14) (a) (iii) through (14) (a) (vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) The term does not include:

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(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

(15) "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

(16) "Seller" means a person that makes sales, leases, or rentals of personal property or services.

(17) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. Service includes activities

performed by a person for its members or shareholders.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(18) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business."

{ Internal References to 15-68-101: None. ok/ddb }

NEW SECTION. Section 4. Department to amend rule --

reason. (1) The department of revenue shall amend ARM 42.14.102, et. seq., as those sections read on January 9, 2009, to reflect the revisions in [sections 2 and 3] to the threshold minimum average daily accommodation charge under which the lodging facility use tax and the sales tax on accommodations do not apply. The department of revenue shall amend ARM 42.14.102 ARM, et. seq., as those sections read on January 9, 2009, so that the amendments are effective on and after October 1, 2009.

(2) Pursuant to section 2-4-412, MCA, the legislature's reasons for directing amendment to ARM 42.14.102, et. seq., as they read on January 9, 2009, include:

(a) that ARM 42.14.102, et. seq., as they read on January 9, 2009, will conflict with sections 15-65-101 and 15-68-101, MCA, when [sections 2 and 3] become effective on October 1, 2009;

(b) that when [sections 2 and 3], amending sections 15-65-101 and 15-68-101, MCA, become effective, the provisions of sections 15-65-101 and 15-68-101, MCA, will supercede ARM

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42.14.102, et. seq., as they read on January 9, 2009; and

(c) that pursuant to 1-2-201, [sections 1 through 3] will become effective October 1, 2009, which requires that the amendments of ARM 42.14.102, et. seq., as they read on January 9, 2009, become effective no later than [sections 1 through 3].

NEW SECTION. Section 5. {standard} Effective dates. (1)

Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 1 through 3] are effective October 1, 2009.

- END -

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