

SENATE BILL NO. 392

INTRODUCED BY D. BROWN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LODGING FACILITY USE TAX AND THE ACCOMMODATIONS SALES TAX; REQUIRING A PUBLIC LISTING OF LODGING FACILITIES THAT ARE IN COMPLIANCE WITH COLLECTION AND REPORTING OBLIGATIONS; PROVIDING THAT TOWNHOMES AND VACATION HOMES ARE REQUIRED TO WITHHOLD AND REMIT TAXES; AMENDING SECTIONS 15-65-101 AND 15-68-101, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Public listing of accommodation facilities -- public compliance check.**

(1) The department of revenue shall maintain a public listing of each accommodation or facility that collects taxes pursuant to 15-65-112 and 15-68-102.

(2) The public listing must be a free internet database of the accommodations and facilities described in subsection (1), organized by county and type of lodging facility, including but not limited to a hotel, motel, resort, dormitory, condominium inn, townhome, dude ranch, guest ranch, hostel, public lodginghouse, bed and breakfast facility, or vacation home rented by or on behalf of the owner, and must include the following information:

- (a) the county in which the accommodation or facility is located;
- (b) the business name of the accommodation or facility or, if the accommodation or facility does not have a name, the name of the owner of the accommodation or facility;
- (c) the address of the accommodation or facility; and
- (d) any additional information considered relevant by the department.

(3) For the purpose of this section, "accommodation" has the meaning provided in 15-68-101.

**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.

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

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

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

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

12 (b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a  
13 corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years  
14 for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average  
15 daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under  
16 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented  
17 solely on a monthly basis or for a period of 30 days or more.

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

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

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

25 (8) "Resort area district" has the meaning provided in 7-6-1531."  
26

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

28 **"15-68-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the  
29 following definitions apply:

30 (1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites

1 that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

2 (b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort,  
3 dormitory, condominium inn, townhome, dude ranch, guest ranch, hostel, public lodginghouse, ~~or~~ bed and  
4 breakfast facility, or vacation home rented by or on behalf of the owner.

5 (c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a  
6 corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for  
7 camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average  
8 daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under  
9 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented  
10 solely on a monthly basis or for a period of 30 days or more.

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

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

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

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

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

17 (iii) charges for additional drivers or underage drivers; and

18 (iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the  
19 rental vehicle.

20 (b) The term does not include:

21 (i) rental vehicle price discounts allowed and taken;

22 (ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the  
23 privilege of operating as a concessionaire at an airport terminal building;

24 (iii) motor fuel;

25 (iv) intercity rental vehicle drop charges; or

26 (v) taxes imposed by the federal government or by state or local governments.

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

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

1 more.

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

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

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

10 (c) The term does not include:

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

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

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

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

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

23 (7) (a) "Motor vehicle" means a light vehicle as defined in 61-1-101, a motorcycle as defined in 61-1-101,  
24 a motor-driven cycle as defined in 61-1-101, a quadricycle as defined in 61-1-101, a motorboat or a sailboat as  
25 defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

26 (i) is rented for a period of not more than 30 days;

27 (ii) is rented without a driver, pilot, or operator; and

28 (iii) is designed to transport 15 or fewer passengers.

29 (b) Motor vehicle includes:

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

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

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

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

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

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

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

11 (12) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or  
12 subrent.

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

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

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

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

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

24 (iv) delivery charges;

25 (v) installation charges;

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

28 (vii) credit for any trade-in.

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

1 purchaser.

2 (c) The term does not include:

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

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

7 or

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

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

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

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

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

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

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

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

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25 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an  
26 integral part of Title 15, chapter 65, part 1, and the provisions of Title 15, chapter 65, part 1, apply to [section 1].

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28 **NEW SECTION. Section 5. Applicability.** [This act] applies to tax years beginning after December 31,  
29 2015.

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