

HOUSE BILL NO. 86
INTRODUCED BY C. HARRIS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DOLLARS FOR EDUCATION FUND; PROVIDING THAT THE FUND CONSISTS OF REVENUE FROM AN 8 PERCENT TAX ON RENTAL VEHICLES; ESTABLISHING A RENTAL VEHICLE TAX; PROVIDING DEFINITIONS; PROVIDING FOR THE ADMINISTRATION OF THE TAX AND PROVIDING FOR PENALTIES AND INTEREST; REQUIRING THAT A RENTAL VEHICLE OWNER OR OPERATOR REGISTER WITH THE DEPARTMENT OF REVENUE; PROVIDING THAT THE RENTAL VEHICLE OWNER OR OPERATOR KEEPS 5 PERCENT OF THE TAX FOR ADMINISTERING THE COLLECTION OF THE TAX; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Dollars for education account. (1) There is a dollars for education special revenue account in the state special revenue fund established in 17-2-102. The money deposited in the account must be used to establish a dollars for education fund.

(2) There must be deposited in the dollars for education account proceeds from the rental vehicle tax as provided in [section 3].

(3) The money in the dollars for education account must be appropriated as follows:

- (a) 50% for K-12 public education; and
- (b) 50% for public postsecondary education.

NEW SECTION. Section 2. Definitions. As used in [sections 2 through 7], the following definitions apply:

(1) (a) "Gross receipts" means all receipts from sources within the state, whether in money or other consideration, received from engaging in the business of renting rental vehicles.

(b) The term does not include the amount received for motor fuel.

(2) (a) "Rental vehicle" means a light vehicle as defined in 61-1-139, a motorcycle as defined in 61-1-105, a motor-driven cycle as defined in 61-1-106, a recreational vehicle as defined in 61-1-132, a quadricycle as defined in 61-1-133, a motorboat or a sailboat as defined in 23-2-502, a snowmobile as defined

in 23-2-601, an off-highway vehicle as defined in 23-2-801, or an aircraft as defined in 67-1-101 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) The term does not include farm machinery or equipment.

(3) "Rental vehicle owner or operator" means a person who owns or leases rental vehicles and who rents or offers to rent the rental vehicles.

NEW SECTION. Section 3. Rate of rental vehicle tax -- exception -- collection and reporting -- allowances -- distribution. (1) (a) Except as provided in subsection (1)(b), there is imposed a tax on rental vehicles. The tax is 8% of the rental base price, exclusive of insurance, as stated in the rental contract. The tax must be stated in the rental contract and collected in accordance with the terms of the contract.

(b) The tax imposed by this section does not apply to the rental base price for rental vehicles rented pursuant to a contract for insurance.

(2) The rental vehicle owner or operator shall report to the department, at the end of each calendar quarter, the gross receipts actually collected during that quarter attributable to the rental contracts, exclusive of gross receipts attributable to contracts for insurance. The report must be on a form provided by the department. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to 95% of the tax required to be collected under subsection (1). The remaining 5% of the amount of the tax may be retained by the rental vehicle owner or operator as an administrative allowance for collection of the tax.

(3) The department shall credit the proceeds of the tax in accordance with the provisions of 15-1-501 to the dollars for education fund established in [section 1].

NEW SECTION. Section 4. Registration -- place of business. (1) Each rental vehicle owner or operator who is required to file a report under [section 3] is required to register with the department.

(2) Each registration must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the registrant's place or places of business, and other information that the department may require. The registration must be filed by the rental vehicle owner or operator if the owner or operator is a natural person, by a member or partner if the owner or operator is an association or partnership, or by a person authorized to sign the registration if the owner or operator is a

corporation.

(3) A rental vehicle owner or operator who fails to comply with this section is subject to a fine of not less than \$50 and not more than \$100.

NEW SECTION. Section 5. Audits -- records. (1) The department may audit the books and records of a rental vehicle owner or operator to ensure that the proper amount of the tax imposed by [section 3] has been collected. An audit may be done on the premises of the rental vehicle owner or operator or at any other convenient location.

(2) The department may request the rental vehicle owner or operator to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of the tax.

(3) The rental vehicle owner or operator shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of the rental vehicle tax for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent report violating the provisions of [sections 2 through 7], the amount of tax due under any report must be determined by the department within 5 years after the return is made. After 5 years, the department is barred from revising any report or recomputing the tax due, and a proceeding in court for the collection of the tax may not be instituted unless notice of any additional tax is provided within the 5-year period.

(5) An application for revision of the amount of tax paid may be filed with the department by a rental vehicle owner or operator within 5 years from the original due date of the report.

NEW SECTION. Section 6. Penalty for failure to file or pay. (1) A rental vehicle owner or operator who fails to file the report as required by [section 3] must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(2) A rental vehicle owner or operator who fails to make payment or fails to report and make payment as required by [section 3] must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If a rental vehicle owner or operator fails to file the report required by [section 3] or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department. The taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the rental vehicle owner or operator. The tax is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency assessment must be computed as provided in 15-1-216.

NEW SECTION. Section 7. Overpayment and underpayment. (1) If the department determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the rental vehicle owner or operator and the balance must be refunded to the owner or operator, to the owner's or operator's successor through reorganization, merger, or consolidation, or to the owner's or operator's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate that is charged on unpaid taxes as provided in 15-1-216 from the due date of the return or from the date of overpayment, whichever is later, to the date that the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during a period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the rental vehicle owner or operator to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

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

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

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by [sections 2 through 7] is considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 8. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 20, chapter 1, and the provisions of Title 20, chapter 1, apply to [section 1].

(2) [Sections 2 through 7] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 2 through 7].

NEW SECTION. Section 9. Effective date. [This act] is effective October 1, 2003.

NEW SECTION. **Section 10. Applicability.** [This act] applies to rental vehicle owners or operators that are in business and rental vehicles that are rented after September 30, 2003.

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