

HOUSE BILL NO. 288  
INTRODUCED BY R. ERICKSON

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RENTAL VEHICLE TAX OF 9 PERCENT; PROVIDING THAT 5 PERCENT OF COLLECTIONS OF THE TAX MAY BE KEPT BY THE RENTAL VEHICLE OWNER OR OPERATOR AS AN ADMINISTRATIVE ALLOWANCE; PROVIDING THAT 22 PERCENT OF THE NET RENTAL CAR TAX IS TO BE DISTRIBUTED WITH THE PROCEEDS OF THE LODGING FACILITY USE TAX, THAT 35 PERCENT IS APPROPRIATED FOR THE PURPOSES OF MATCHING UNIVERSITY SYSTEM GRANTS UNDER A PROGRAM OF THE NATIONAL SCIENCE FOUNDATION, AND THAT THE BALANCE IS TO BE DEPOSITED IN THE STATE GENERAL FUND; PROVIDING FOR THE ADMINISTRATION OF THE RENTAL VEHICLE TAX, INCLUDING PENALTIES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-65-121 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Rental vehicle tax -- definitions.** As used in [sections 1 through 6], 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 or insurance.

(2) (a) "Rental vehicle" means a passenger vehicle designed or used to transport persons upon the highways of the state that:

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

(ii) is rented without a driver;

(iii) is designed to transport 15 or fewer passengers; and

(iv) has a manufacturer's rated capacity of 1 ton or less.

(b) The term does not include a vehicle provided to a customer to use while the customer's vehicle is being repaired or maintained.

(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 2. Rate of rental vehicle tax -- collection and reporting -- distribution.**

(1) There is imposed a tax on rental vehicles. The tax is 9% of the gross receipts, 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.

(2) The rental vehicle owner or operator shall report to the department, at the end of each calendar quarter, the gross receipts and taxes actually collected during that quarter attributable to the rental contracts. 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 proceeds of the rental vehicle tax must be distributed as follows:

(a) 22% must be distributed as provided in 15-65-121;

(b) 35% is statutorily appropriated, as provided in 17-7-502, to the board of regents to be used for matching funds for the experimental program to stimulate competitive research administered by the national science foundation; and

(c) the balance must be deposited in the state general fund.

**NEW SECTION. Section 3. Permit application -- place of business.** (1) Prior to engaging in the business of renting vehicles, a prospective rental vehicle owner or operator shall file with the department an application for a permit. If the prospective rental vehicle owner or operator has more than one location in which the owner or operator maintains an office or other place of business, an application may include multiple locations.

(2) Each rental vehicle owner or operator who is required to file a report under [sections 1 through 6] is required to file an application for a permit.

(3) Each application for a permit 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 applicant's place or places of business, and other information that the department may require. The application 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 application if the owner or operator is a corporation.

(4) 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 4. 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 2] 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 that the rental vehicle owner or operator 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 1 through 6], 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 may be filed with the department by a rental vehicle owner or operator within 5 years from the original due date of the report.

(6) The rental vehicle owner or operator is liable for all amounts due under audit findings. A rental vehicle owner or operator is not entitled to retain 5% of the amount of tax on gross receipts discovered through an audit.

**NEW SECTION. Section 5. Penalty for failure to file or pay.** (1) A rental vehicle owner or operator who fails to file the report as required by [section 2] 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 file a report and make payment as required by [section 2] 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 2] 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 rental vehicle owner or operator 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 6. 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 rental vehicle owner or operator, to the rental vehicle owner's or operator's successor through reorganization, merger, or consolidation, or to the rental vehicle 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 1 through 6] is considered an overpayment with respect to which interest is allowable.

**Section 7.** Section 15-65-121, MCA, is amended to read:

**"15-65-121. (Temporary) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 and the portion of the rental vehicle tax provided for in [section 2(3)] must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before

allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received under 15-65-111 each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. ~~For the fiscal year ending June 30, 2003, the amount of \$1.7 million must be deposited in the state general fund.~~ The balance of the tax proceeds received under 15-65-111 and [section 2] each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce, except as provided in section 1, Chapter 11, Special Laws of August 2002; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for

funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2007--sec. 3, Ch. 469, L. 2001.)

**15-65-121. (Effective July 1, 2007) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 and the portion of the rental vehicle tax provided for in [section 2(3)] must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received under 15-65-111 each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received under 15-65-111 and [section 2] each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

**Section 8.** Section 17-7-502, MCA, is amended to read:

**"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; [section 2]; 15-70-101; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305;

19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005; pursuant to sec. 17, Ch. 414, L. 2001, the inclusion of 2-15-151 terminates December 31, 2006; and pursuant to sec. 2, Ch. 594, L. 2001, the inclusion of 17-3-241 becomes effective July 1, 2003.)"

**NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 6].

**NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 2003.

**NEW SECTION. Section 11. Applicability.** [This act] applies to rental vehicle receipts collected after June 30, 2003.

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