

HOUSE BILL NO. 508
INTRODUCED BY R. LENHART

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A COUNTY TO IMPOSE A LICENSE TAX ON GRAVEL MINES FOR DEPOSIT IN THE COUNTY ROAD FUND; PROVIDING FOR A MAXIMUM TAX RATE BASED EITHER ON THE NUMBER OF YARDS OF GRAVEL MINED OR ON THE ROYALTY RATE PAID FOR THE PRIVILEGE OF MINING THE GRAVEL; PROVIDING FOR THE ADMINISTRATION OF THE TAX BY A COUNTY; PROVIDING FOR A PENALTY AND INTEREST FOR LATE PAYMENT AND NONPAYMENT; AUTHORIZING THE USE OF A WARRANT FOR DISTRAINT; AND PROVIDING A PENALTY."

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

NEW SECTION. Section 1. County license tax on gravel mines. (1) A county license tax on gravel mines may be imposed within a county by resolution of the board of county commissioners.

(2) Except as provided in subsection (3), in a county with a county license tax on gravel mines, each person engaged in or carrying on the business of working or operating any mine or mining property from which gravel is mined, extracted, or produced shall pay to the county treasurer, for the exclusive use and benefit of the county road fund, a license tax for engaging in and carrying on the business in an amount not to exceed:

(a) 5 cents a cubic yard for each yard of gravel mined, extracted, or produced by the person for the year;
or

(b) a percentage, not to exceed 10%, of any royalty payment paid by the person to the owner of the land or gravel for the right to mine or extract the gravel for that year.

(3) (a) Gravel mined, extracted, or produced for direct sale to the state of Montana or a local government entity of Montana is not subject to the tax allowed under subsection (1).

(b) Gravel mined, extracted, or produced by a farmer or rancher for personal use is not subject to the tax allowed under subsection (1) if:

(i) the owner is a farmer or rancher under the provisions of 15-30-241(6), both prior to the establishment of the mine and while the mine is in operation; and

(ii) the mine is located on land owned by the farmer or rancher, which, prior to the establishment of the mine, was owned by the farmer or rancher and was classified as agricultural land for property tax purposes.

NEW SECTION. Section 2. Quarterly payment. The annual license tax as imposed by [section 1] must be paid in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the license tax due for each quarter must be paid to the county treasurer within 30 days after the end of each quarter.

NEW SECTION. Section 3. Records. Each person subject to [section 1] shall keep a record in the form required by the county treasurer of all gravel mined, extracted, or produced by the person in the county. The records must at all times during business hours be subject to inspection by the county treasurer.

NEW SECTION. Section 4. Quarterly return. (1) Each person shall, within 30 days after the end of each quarter, make out on forms prescribed by the county treasurer and deliver to the county treasurer a statement showing the total number of taxable yards of gravel mined, extracted, or produced by the person during each month of the quarter and during the whole quarter, the amount of royalties paid during the quarter by the person for the right to mine the gravel, and any other information that the county treasurer may require, together with the total amount due to the county as license taxes for the quarter. The person shall, within 30 days and at the same time that the statement is delivered to the county treasurer, pay to the county treasurer the amount of the license taxes shown by the statement to be due to the county for the quarter for which the statement is made.

(2) A person engaged in carrying on the business at more than one place or operating more than one mine in the county may include all mines in one statement.

(3) The county treasurer may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown for the extension.

NEW SECTION. Section 5. Procedure on failure to file statement. (1) If a person fails to file any statement required by [section 4] within the time required or fails to pay the tax required by [sections 1 through 11] on or before the date that the payment is due, the county treasurer shall immediately after the time has expired proceed to determine the amount produced or the royalties paid by the person within the county during the quarter and during each month of the quarter and shall determine and fix the amount of the license taxes due to the county from the person for the quarter.

(2) The county treasurer shall add to the amount of all delinquent gravel mines license taxes the same amount of penalty and interest authorized for the department of revenue, as provided in 15-1-216(1) and (2). The county treasurer may waive a penalty for good cause shown.

NEW SECTION. Section 6. Collection -- warrant for distraint. (1) The county treasurer shall mail to the person required to file a quarterly statement and pay any license tax a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed.

(2) If all or part of the tax imposed by [sections 1 through 11] is not paid when due, the county treasurer may file a warrant for distraint. The county treasurer shall follow the same procedures required by the department of revenue, and the warrant for distraint has the same force and effect as a warrant for distraint issued by the department of revenue, as provided for in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed and recorded after the warrant for distraint is filed.

NEW SECTION. Section 7. Disposition of proceeds of tax. All license taxes collected under the provisions of [sections 1 through 11] must be deposited to the credit of the county road fund.

NEW SECTION. Section 8. Deficiency assessment -- interest. (1) When the county treasurer determines that the amount of tax due is greater than the amount disclosed by a return, the county treasurer shall mail to the taxpayer a notice of the additional tax proposed to be assessed.

(2) Any deficiency assessment must bear interest as provided in 15-1-216(2).

NEW SECTION. Section 9. Credit for overpayment -- interest on overpayment. (1) If the county treasurer determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders upon dissolution.

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

(3) (a) Interest may not accrue during any period in which the processing of a claim for a refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the county treasurer 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 that the return is due or from the date

that the return is filed, whichever is later; or

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

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 10. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless, before the expiration of the period, the taxpayer files a claim for a refund or credit or the county treasurer has determined the existence of the overpayment and has approved the refund or credit of the overpayment. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the county treasurer may propose an additional assessment, the period within which a claim for a refund or credit may be filed or a refund or credit allowed if no claim is filed is automatically extended.

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

NEW SECTION. Section 11. Penalty for violations. A violation of any of the provisions of [sections 1 through 11] is a misdemeanor and shall be punished by a fine in an amount not exceeding \$500 or by imprisonment in the county jail for a term not exceeding 6 months, or by both fine and imprisonment.

NEW SECTION. Section 12. Codification instruction. [Sections 1 through 11] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1

through 11].

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