

SENATE BILL NO. 11
INTRODUCED BY D. HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE LODGING FACILITY USE TAX FROM 4 PERCENT TO 8 PERCENT AND ESTABLISHING A RENTAL VEHICLE SURCHARGE OF 8 PERCENT; DEFINING THE TAXPAYER AS THE USER OF THE FACILITY; PROVIDING THAT 5 PERCENT OF COLLECTIONS OF EITHER THE TAX OR THE SURCHARGE MAY BE KEPT BY THE FACILITY OWNER OR OPERATOR OR BY THE RENTAL VEHICLE OWNER OR OPERATOR AS AN ADMINISTRATIVE ALLOWANCE; PROVIDING THAT ONE-HALF OF NET COLLECTIONS OF THE LODGING FACILITY USE TAX AND ALL OF THE RENTAL VEHICLE SURCHARGE ARE TO BE DEPOSITED IN THE STATE GENERAL FUND; PROVIDING FOR THE ADMINISTRATION OF THE RENTAL VEHICLE SURCHARGE, INCLUDING PENALTIES; AMENDING SECTIONS 15-65-101, 15-65-111, 15-65-112, AND 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. 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) "Consumer" means the user of a facility. For the purposes of 15-65-111, the consumer is the taxpayer.

~~(3)~~(4) "Council" means the tourism advisory council established in 2-15-1816.

~~(4)~~(5) (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 by persons under ~~the age of~~ 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, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

~~(5)(6)~~ "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)(7)~~ "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)(8)~~ "Resort area" means an area established pursuant to 7-6-1508.

~~(8)(9)~~ "Resort area district" has the meaning provided in 7-6-1531."

Section 2. Section 15-65-111, MCA, is amended to read:

"15-65-111. Tax rate. (1) There is imposed on the ~~user of~~ consumer who uses a facility a tax at a rate equal to ~~4%~~ 8% of the accommodation charge collected by the facility.

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging."

Section 3. Section 15-65-112, MCA, is amended to read:

"15-65-112. Collection and reporting. (1) The owner or operator of a facility shall collect the tax imposed by 15-65-111 from the consumer.

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility. 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 owner or operator as an administrative allowance for the collection of the tax."

Section 4. 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 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% 8% of that amount from the tax proceeds received 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. Fifty percent of the balance of the remaining tax proceeds must be deposited in the state general fund. ~~The~~ Of the balance remaining, 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 each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the general fund, 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 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% 8% of that amount from the tax proceeds received 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. Fifty percent of the balance of the remaining tax proceeds must be deposited in the state general fund. The balance of the tax proceeds received 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, or deposited in the state general fund 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."

NEW SECTION. Section 5. Rental vehicle surcharge -- definitions. As used in [sections 5 through 10], 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 passenger vehicle 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 6. Rate of rental vehicle surcharge -- collection and reporting -- distribution. (1) There is imposed a surcharge on rental vehicles. The surcharge is 8% of the rental base price, exclusive of insurance, as stated in the rental contract. The surcharge 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 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 surcharge required to be collected under subsection (1). The remaining 5% of the amount of the surcharge may be retained by the rental vehicle owner or operator as an administrative allowance for collection of the surcharge.

(3) The department shall deposit the proceeds of the rental vehicle surcharge in the state general fund.

NEW SECTION. Section 7. 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 5 through 10] 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 8. 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 surcharge imposed by [section 6] 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 surcharge.

(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 surcharge for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the surcharge, purposely or knowingly files a false or fraudulent report violating the provisions of [sections 5 through 10], the amount of surcharge 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 surcharge due, and a proceeding in court for the collection of the surcharge may not be instituted unless notice of any additional surcharge 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.

NEW SECTION. Section 9. Penalty for failure to file or pay. (1) A rental vehicle owner or operator who fails to file the report as required by [section 6] 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 6] 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 6] or if the

department determines that the report understates the amount of surcharge due, the department may determine the amount of the surcharge 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 surcharge becomes final, the department shall mail a notice and demand for payment to the rental vehicle owner or operator. The surcharge 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 10. Overpayment and underpayment. (1) If the department determines that the amount of surcharge, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any surcharge, 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 surcharge liability or one reasonably assumed to be imposed by [sections 5 through 10] is considered an overpayment with respect to which interest is allowable.

NEW SECTION. Section 11. Codification instruction. [Sections 5 through 10] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 5 through 10].

NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2003.

NEW SECTION. **Section 13. Applicability.** [This act] applies to accommodation charges collected and rental vehicle receipts collected after June 30, 2003.

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