

SENATE BILL NO. 224
INTRODUCED BY S. KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT ENACTING A 4 PERCENT SALES TAX AND USE TAX; ALLOWING CERTAIN SALES TAX AND USE TAX EXEMPTIONS INCLUDING UNPREPARED FOOD ITEMS, MEDICAL ITEMS, AND DRUGS; PROVIDING FOR DISTRIBUTION OF SALES TAX AND USE TAX REVENUE; AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO THE STREAMLINED SALES AND USE TAX AGREEMENT; IMPLEMENTING APPROPRIATE PROVISIONS OF THE STREAMLINED SALES AND USE TAX AGREEMENT; PROVIDING THAT ONE-HALF OF THE REVENUE OF THE SALES TAX AND USE TAX BE USED TO PROVIDE A REFUNDABLE INCOME TAX CREDIT EQUAL TO 39 PERCENT OF PROPERTY TAXES PAID ON RESIDENTIAL PROPERTY; PROVIDING THAT ONE-QUARTER OF THE REVENUE OF THE SALES TAX AND USE TAX BE USED FOR UNIVERSITY SYSTEM FUNDING; PROVIDING THAT ONE-QUARTER OF THE REVENUE OF THE SALES TAX AND USE TAX BE USED IN FUNDING STATEWIDE TEACHER AND SPECIALIST PAY SCHEDULES; ESTABLISHING STATEWIDE TEACHER AND SPECIALIST PAY SCHEDULES; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** For purposes of [sections 1 through 50], unless the context requires otherwise, the following definitions apply:

- (1) "Agreement" means the Streamlined Sales and Use Tax Agreement provided for under [sections 51 through 58].
- (2) "Alcoholic beverages" means beverages that are suitable for human consumption and contain 1/2 of 1% or more of alcohol by volume.
- (3) (a) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces.
(b) The term does not include any preparation that contains flour and that requires refrigeration.
- (4) "Certified automated system" has the meaning provided in [section 52].
- (5) "Certified service provider" has the meaning provided in [section 52].
- (6) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(7) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(8) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(9) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(a) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake;

or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in subsections (7)(a)(i) through (7)(a)(v);

(b) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(c) is required to be labeled as a dietary supplement, identifiable by the "supplemental facts" box found on the label and as required pursuant to 21 CFR 101.36.

(10) "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(a) recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary and any supplement to them;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(c) intended to affect the structure or any function of the body.

(11) (a) "Durable medical equipment" means equipment, including repair and replacement parts for equipment, that:

(i) can withstand repeated use;

(ii) is primarily and customarily used to serve a medical purpose;

(iii) generally is not useful to a person in the absence of illness or injury; and

(iv) is not worn in or on the body.

(b) The term does not include mobility-enhancing equipment.

(12) "Electronic" means technology that relates to having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

(14) (a) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value.

(b) The term does not include alcoholic beverages, candy, dietary supplements, soft drinks, or tobacco.

(15) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(16) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens, regardless of whether the items meet the definition of over-the-counter drugs.

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

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

(c) The definition of lease or rental in this subsection (15) must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

(d) The term does not include:

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

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

(iii) the provision of tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection (15)(d)(iii), an operator shall do more than maintain, inspect, or set up the tangible personal property.

(18) "Maintaining an office or other place of business" means:

(a) a person having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or place of business; or

(b) an agent operating within this state under the authority of the person or its subsidiary, whether the place of business or agent is located within the state permanently or temporarily or whether or not the person or its subsidiary is authorized to do business within this state.

(19) (a) "Manufacturing" means combining or processing components or materials, including the processing of ores in a mill, smelter, refinery, or reduction facility, to increase their value for sale in the ordinary course of business.

(b) The term does not include construction.

(20) (a) "Mobility-enhancing equipment" means equipment, including repair and replacement parts, that:

(i) is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or in a motor vehicle;

(ii) is not generally used by persons with normal mobility; and

(iii) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(b) The term does not include durable medical equipment.

(21) (a) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug, as required by 21 CFR 201.66.

(b) An over-the-counter drug label includes:

(i) a drug facts panel; or

(ii) a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

(c) The term does not include grooming and hygiene products.

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

(23) (a) "Prepared food" means:

(i) food sold in a heated state or heated by the seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

(b) The term does not include food that is only cut, repackaged, or pasteurized by the seller and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer, as recommended by the food and drug administration in chapter 3, part 401.11, of its Food Code so as to prevent food-borne illnesses.

(24) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner as authorized by the laws of Montana.

(25) (a) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions of computer software programs does not cause the combination to be other than prewritten computer software.

(b) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software that the person has not written or created, the person is considered to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion of computer software that is modified or enhanced to any degree, when the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, if there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(26) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts, worn on or in the body to:

- (a) artificially replace a missing portion of the body;
- (b) prevent or correct physical deformity or malfunction; or
- (c) support a weak or deformed portion of the body.

(27) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

(28) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is

furnished.

(29) "Registration" or "seller's registration" means a seller's registration as described in [section 30].

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

(31) "Sale", "selling", or "buying" means the transfer of property for consideration.

(32) (a) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following unless separately stated on the invoice, billing, or similar document given to the purchaser:

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

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

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

(iv) delivery charges;

(v) installation charges; or

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

(b) The term does not include:

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

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

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

(iv) trade-in value of tangible personal property when the trade-in and purchase occur in one transaction.

(33) "Sales tax" and "use tax" mean the applicable tax imposed by [section 2].

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

(35) (a) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners.

(b) The term does not include beverages that contain milk or milk products, soy, rice, or similar milk

substitutes, or greater than 50% of vegetable or fruit juice by volume.

(36) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software.

(37) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

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

NEW SECTION. Section 2. Imposition and rate of sales tax and use tax -- exceptions. (1) A sales tax of 4% is imposed on all sales of tangible personal property. The sales tax is imposed on the purchaser, and except when the purchaser has a direct payment permit as provided in [section 8], the sales tax must be collected by the seller and paid to the department by the seller. The seller holds all sales taxes collected in trust for the state. The sales tax must be applied to the sales price.

(2) For the privilege of using property within this state, there is imposed on the person using property a use tax equal to 4% of the value of the property that was:

- (a) manufactured by the person using the property within this state;
- (b) acquired outside this state as the result of a transaction that would have been subject to the sales tax had it occurred within this state;
- (c) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales tax had it occurred outside of the exterior boundaries of an Indian reservation within this state; or
- (d) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (1) or the use tax imposed by subsection (2)(b) or (2)(c) but which transaction, because of the purchaser's subsequent use of the property, is subject to the sales tax or use tax.

(3) For purposes of this section, the value of property must be determined as of the time of acquisition, introduction into this state, or conversion to use, whichever is latest.

(4) The sale of property exempt or nontaxable under [sections 1 through 50] is exempt from the tax imposed in subsections (1) and (2).

NEW SECTION. Section 3. Presumption of taxability -- value -- rounding rules. (1) In order to

prevent evasion of the sales tax or use tax and to aid in its administration, it is presumed that:

(a) all sales by a person engaging in business are subject to the sales tax or use tax; and

(b) all property bought or sold by any person for delivery into this state is bought or sold for a taxable use within this state.

(2) In determining the amount of use tax due on the use of property, it is presumed, in the absence of a preponderance of the evidence of another value, that value means the total amount of property or the reasonable value of other consideration paid for the use of the property, exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property purchased, the use tax must be imposed on the reasonable value of the property purchased.

(3) The department shall adopt rules providing for the payment of the sales tax or use tax that comply with the rounding rules adopted by the agreement.

NEW SECTION. Section 4. Credit -- out-of-state taxes. If a sales tax, use tax, or similar tax has been levied by another state or a political subdivision of another state on property that was bought outside this state but that will be used or consumed within this state and the tax was paid by the current user, the amount of tax paid may be credited against any use tax due this state on the same property. The credit may not exceed the sales tax or use tax due this state.

NEW SECTION. Section 5. Separate statement of sales tax -- no advertising to absorb or refund sales tax. (1) If a person collects a sales tax in excess of the sales tax imposed by [section 2], both the tax and the excess tax must be remitted to the department.

(2) The sales tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines.

(3) A person may not advertise, hold out, or state to the public or to any customer that the sales tax or use tax imposed by [sections 1 through 50] will be absorbed or refunded.

NEW SECTION. Section 6. Liability of user for payment of use tax. (1) A person within this state who uses property is liable to the state for payment of the use tax if the use tax is payable on the value of the property but has not been paid.

(2) The liability imposed by this section is discharged if the purchaser has paid the use tax to the seller for payment to the department.

NEW SECTION. Section 7. Collection of sales tax and use tax -- listing of business locations and agents -- severability. (1) Except when the purchaser has a direct payment permit as provided in [section 8], a person engaging in the business of selling property subject to taxation under [sections 1 through 50] shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) (a) A person that solicits or exploits the consumer market within this state by regularly and systematically performing an activity within this state and whose sales are not subject to the sales tax shall collect the use tax from the purchaser and pay the use tax collected to the department.

(b) "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following within this state:

(i) maintaining an office or other place of business that solicits orders through employees or independent contractors;

(ii) canvassing;

(iii) demonstrating;

(iv) collecting money;

(v) warehousing or storing merchandise;

(vi) delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers;

(vii) to the extent permitted by federal law, soliciting orders for property by means of telecommunications or a television shopping system or by providing telecommunications services that use toll or toll-free numbers and that are intended to be broadcast by cable television or other means to consumers within this state;

(viii) soliciting orders, pursuant to a contract with a broadcaster or publisher located within this state, for property by means of advertising disseminated primarily to consumers located within this state and only secondarily to bordering jurisdictions;

(ix) soliciting orders for property by mail through the distribution of catalogs, periodicals, advertising flyers, or other advertising;

(x) soliciting orders, pursuant to a contract with a cable television operator located within this state, for tangible personal property by means of advertising transmitted or distributed over a cable television system within this state; or

(xi) participating in an act that benefits from banking, financing, debt collection, telecommunications, or marketing activities occurring within this state or that benefits from the location within this state of authorized installation, servicing, or repair facilities.

(3) Multistate registration pursuant to the agreement may not be used as a factor to determine whether the person is conducting an activity within the state subjecting the person to the sales tax or use tax.

(4) A person engaging in business within this state shall, before making any sales, register as a seller, as provided in [section 30], and at the time of making a sale, whether within or outside of the state, collect the sales tax imposed by [section 2] from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

(5) The department may authorize the collection of the sales tax imposed by [section 2] by any retailer who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law or who has registered under the centralized registration system established under the agreement, as provided in [section 30]. When authorized, the person shall collect the use tax upon all property that, to the person's knowledge, is for use within this state and subject to taxation under [sections 1 through 50].

(6) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under [sections 1 through 50] constitute a debt owed to this state by the person required to collect the sales tax or use tax.

(7) A person selling property to residents of this state, when the property is delivered to a location within this state, shall, upon request by the department, provide a list of all sales to the department. The list must include the name and address of each purchaser and the amount of each sale. The department may pay to any person furnishing a list of sales or purchasers the reasonable costs of reproducing the list.

(8) A person engaging in business within this state shall provide to the department:

- (a) the names and addresses of all of the person's agents operating within this state; and
- (b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of business within this state.

(9) If any application of this section is held invalid, the application to other situations or persons is not affected.

NEW SECTION. Section 8. Direct payment of sales tax -- direct payment permits. (1) The department may issue direct payment permits to any person liable for the payment of more than \$500 a year in sales taxes. A person shall apply to the department, on forms approved by the department. By applying for a direct payment permit, the applicant acknowledges that the applicant assumes all obligations to pay any sales tax due under [sections 1 through 50] made by the applicant as a direct payment permit holder. A direct payment permit may be revoked by the department at any time upon 90 days' written notice to the permittee. Any permittee

may be audited by the department.

(2) A direct payment permit holder shall pay any sales tax authorized under [sections 1 through 50] directly to the department. The permittee must receive an exemption certificate, as provided in [section 9], using the direct payment permit as a basis for the exemption.

NEW SECTION. Section 9. Exemption certificate -- form -- rules. (1) The department shall provide for a uniform exemption certificate. An electronic or digitally usable version of an exemption certificate may also be provided. A purchaser shall provide the exemption certificate number when purchasing goods for resale or for other nontaxable transactions.

(2) At a minimum, the exemption certificate must provide:

- (a) a unique identification number;
- (b) the nature of the exemption, such as:
 - (i) the purchase of types of property for resale;
 - (ii) the purchase of types of property for manufacturing;
 - (iii) that the purchaser is authorized to make direct payments; or
 - (iv) that the purchaser is an entity exempt from payment of sales tax;
- (c) the name and address of the purchaser; and
- (d) if it is a paper certificate, a signature line for the purchaser.

(3) The department shall adopt rules to provide procedures for application for an exemption certificate prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person eligible for an exemption certificate within this state prior to [the applicability date of this section] that has applied in a timely fashion is issued an exemption certificate prior to [the applicability date of this section].

NEW SECTION. Section 10. Exemption certificate -- requirements. (1) A purchaser or lessee shall provide an exemption number to the seller or lessor at the time that a nontaxable transaction occurs.

(2) A purchaser presenting an exemption number shall provide information on the purchaser's identity and the nature of the purchaser's exemption as prescribed by the department.

(3) If the seller or lessor accepts an exemption certificate at the time of the sale or lease and obtains proper information on the identity of the purchaser and the nature of the purchaser's exemption, then the purchaser is liable for payment of any tax due on sales or leases in which the purchaser incorrectly claimed an exemption. If the incorrect claim was made with the intent to evade the payment of the sales tax, the purchaser

is subject to the penalty provided in [section 33].

NEW SECTION. Section 11. Exemption -- government agencies -- exception. (1) Except as provided in subsection (2), all sales by, sales to, or uses by the United States, this state, an agency or instrumentality of the United States or of this state, a political subdivision of this state, an Indian tribe, or a foreign government are exempt from the sales tax and use tax.

(2) The sale of natural gas, water, electricity, telecommunications services, refuse collection, or other utility services is not exempt from the sales tax and use tax.

NEW SECTION. Section 12. Exemption -- food products. (1) Except as provided in subsection (2), the sale or use of food and food ingredients is exempt from the sales tax and use tax.

(2) The sale of prepared food and food sold through vending machines is taxable, but prepared food offered or delivered as part of a residential living arrangement and consumed by an individual that is party to the arrangement or by patients of a health care facility is exempt from the sales tax and use tax.

NEW SECTION. Section 13. Exemption -- medicine, drugs, and certain devices. The following are exempt from the sales tax and use tax:

(1) prescription drugs, over-the-counter drugs, durable medical equipment, and mobility-enhancing equipment; and

(2) insulin, oxygen, and therapeutic and prosthetic devices.

NEW SECTION. Section 14. Exemption -- motor vehicles -- fuel. (1) The sale and use of a vehicle subject to a tax or fee imposed under Title 61, chapter 3, part 5, are exempt from the sales tax and use tax.

(2) The sale and use of gasoline, ethanol blended for fuel, and special fuel, including natural gas or propane, upon which tax has been paid or will be paid under Title 15, chapter 70, are exempt from the sales tax and use tax.

(3) The sale and use of special fuel that is exempt from taxation under Title 15, chapter 70, part 3, are exempt from the sales tax and use tax.

NEW SECTION. Section 15. Exemption -- insurance premiums. The premiums of an insurance company, a health service corporation, a health maintenance organization, or a fraternal benefit society or of a

producer of the company, corporation, organization, or society are exempt from the sales tax.

NEW SECTION. Section 16. Exemption -- dividends and interest. The following are exempt from the sales tax:

- (1) interest on money loaned or deposited;
- (2) dividends or interest from stocks, bonds, or securities;
- (3) proceeds from the sale of stocks, bonds, or securities; and
- (4) commissions or fees derived from the business of buying, selling, or promoting any stock, bond, or security.

NEW SECTION. Section 17. Exemption -- isolated or occasional sale or lease of property. The isolated or occasional sale or lease of property by a person that is not regularly engaged in or that does not claim to be engaged in the business of selling or leasing the same or a similar property is exempt from the sales tax and use tax. Occasional sales include sales that are occasional but not continuous and that are made for the purpose of fundraising by nonprofit organizations, including but not limited to youth clubs, service clubs, and fraternal organizations.

NEW SECTION. Section 18. Exemption -- personal effects. The use by an individual of personal or household effects brought into the state for the establishment by the individual of an initial residence within this state and the use of property brought into the state by a nonresident for the nonresident's own nonbusiness use while temporarily within this state are exempt from the use tax.

NEW SECTION. Section 19. Exemption -- feed -- fertilizers. The sale or use of the following when used in the course of an agricultural business is exempt from the sales tax and use tax:

- (1) feed for livestock;
- (2) semen, ova, and embryos used in animal husbandry;
- (3) seeds, roots, and bulbs;
- (4) soil conditioners and fertilizers;
- (5) insecticides, insects used to control weeds or the population of other insects, fungicides, weedicides, and herbicides; and
- (6) water for commercial irrigation.

NEW SECTION. Section 20. Exemption -- agricultural products -- livestock feeding. (1) (a) The sale of livestock, live poultry, unprocessed agricultural products, hides, or pelts by a grower, producer, trapper, or nonprofit marketing association is exempt from the sales tax.

(b) A person engaged in the business of buying and selling wool or mohair or of buying and selling livestock on the person's own account and without the services of a broker, auctioneer, or other agent is considered a producer for the purposes of subsection (1)(a).

(2) Sales from feeding, pasturing, penning, or handling or training livestock prior to sale are exempt from the sales tax.

NEW SECTION. Section 21. Exemption -- minerals -- exceptions. (1) The sale or lease of interests in minerals, as defined in 15-38-103, is exempt from the sales tax and use tax.

(2) Except as provided in subsections (5) and (6), the sale or use of a mineral, as defined in 15-38-103, is exempt from the sales tax and use tax.

(3) Minerals used by the producer of the minerals for purposes of exploring for, producing, or transporting minerals are exempt from the sales tax and use tax, except that the exemption does not include refined petroleum products.

(4) The sale or use of platinum and palladium, whenever refined and preserved in coins, ingots, bars, or other similar forms, is exempt from the sales tax and use tax.

(5) Minerals used as or integrated into jewelry, art, or sculpture or used as a decorative embellishment or adornment, either in their own right, in combination with other property, or after being refined, reduced, polished, cut, faceted, or otherwise processed, are not included in the exemption provided in this section.

(6) Minerals that are used for producing energy or that are used for conversion into energy are subject to the sales tax or use tax unless the energy is produced or converted for resale as a form of energy.

NEW SECTION. Section 22. Exemption -- certain chemicals, reagents, and substances. (1) The sale or use by any person of any chemical, reagent, or other substance that is normally used or consumed in the processing of ores or petroleum, in a mill, smelter, refinery, or reduction facility, or in acidizing oil wells is exempt from the sales tax and use tax.

(2) The sale or use of explosives, blasting material, or dynamite is not exempt from the sales tax and use tax.

NEW SECTION. Section 23. Nontaxability -- sale for resale. The sale of property for resale is nontaxable if:

- (1) the sale is made to a purchaser with an exemption certificate; and
- (2) the purchaser resells the property either by itself or in combination with other property in the ordinary course of business and the property will ultimately be subject to the sales tax.

NEW SECTION. Section 24. Nontaxability -- sale to miner or manufacturer. (1) The sale of property to a purchaser engaged in the business of mining or manufacturing is nontaxable if:

- (a) the purchaser has an exemption certificate; and
 - (b) (i) the purchaser incorporates the property as an ingredient or component part of the product in the business of mining or manufacturing; or
(ii) the purchaser uses the property to extract a mineral and the property is required to be abandoned in place, in accordance with state regulations, when production of the mineral from a mine or wellhead permanently ceases.
- (2) For the purposes of this section, electrical energy or electricity used or consumed by electrolytic reduction used in the reduction or refinement of ores is considered a component part of the product.

NEW SECTION. Section 25. Nontaxability -- sale or lease of real property or improvements and lease of mobile homes. (1) (a) The sale or lease of real property or improvements is nontaxable.

- (b) The lease or rental of a mobile home for a period of 1 month or more is nontaxable.
- (2) The inclusion of furniture or appliances furnished by the landlord or lessor as part of a leased or rented dwelling, house, mobile home, cabin, condominium, or apartment is nontaxable.

NEW SECTION. Section 26. Nontaxability -- transactions in interstate commerce -- certain property used in interstate commerce. The following are nontaxable:

- (1) A transaction in interstate commerce is nontaxable to the extent that the imposition of the sales tax or use tax would be unlawful under the United States constitution.
- (2) Transmitting messages or conversations by radio is nontaxable when the transmissions originate from a point outside this state and are received at a point within this state.
- (3) The sale of radio or television broadcast time is nontaxable if the advertising message is supplied by or on behalf of a national or regional seller or an advertiser that does not have its principal place of business

within this state or that is not incorporated under the laws of this state.

NEW SECTION. Section 27. Nontaxability -- sale of tangible personal property for leasing. The sale of property, other than furniture or appliances, is nontaxable if:

- (1) the sale is made to a purchaser that has an exemption certificate;
- (2) the purchaser is engaged in a business deriving more than 50% of its receipts from selling or leasing property of the type leased; and
- (3) the purchaser does not use the property in any manner, other than holding it for sale or lease or selling or leasing it, either by itself or in combination with other property, in the ordinary course of business.

NEW SECTION. Section 28. Nontaxability -- lease for subsequent lease. The lease of property, other than furniture or appliances, is nontaxable if:

- (1) the lease is made to a lessee who has an exemption certificate; and
- (2) the lessee does not use the property in any manner, other than for subsequent lease in the ordinary course of business.

NEW SECTION. Section 29. Nontaxability -- use tax -- use of property for leasing. The value of leased property is not considered in computing the use tax due if the person holding the property for lease:

- (1) is engaged in a business that derives a substantial portion of its receipts from selling or leasing property of the type leased;
- (2) does not use the property in any manner, other than holding it for sale or lease or selling or leasing it, either by itself or in combination with other tangible personal property, in the ordinary course of business; and
- (3) does not use the property in a manner incidental to the performance of a service.

NEW SECTION. Section 30. Seller's registration -- rules. (1) A person that wishes to engage in business within this state shall register as a seller before engaging in business within this state.

(2) Registration may be directly with the department or through the multistate central registration system as provided in the agreement. Sellers registered through the multistate central registration system agree to collect and remit sales taxes and use taxes for taxable Montana sales and comply with audit and compliance provisions established through the agreement.

(3) The department shall register each applicant eligible to engage in business within this state and

provide a separate, numbered seller's registration for each location in which the applicant is maintaining an office or other place of business. A registration is valid until revoked or suspended but is not assignable. A registration is valid only for the person in whose name it is issued and for the transaction of business at the place designated. The registration must be conspicuously displayed at all times at the place for which it is issued.

(4) The department shall adopt rules to provide procedures for application for and provision for registering sellers engaging in business within this state prior to [the applicability date of this section]. The rules adopted by the department must ensure that each person engaging in business within this state prior to [the applicability date of this section] has the opportunity to be registered prior to [the applicability date of this section].

NEW SECTION. Section 31. Seller's registration application -- requirements -- place of business -- form. (1) (a) A person that wishes to engage in business within this state shall file with the department an application for a seller's registration. If the person has more than one location in which the person is maintaining an office or other place of business, an application may include multiple locations.

(b) A vending machine operator who has more than one vending machine location is considered to have only one place of business for purposes of this section.

(c) An applicant who does not maintain an office or other place of business and who moves from place to place is considered to have only one place of business and shall attach proof of registration to the applicant's cart, stand, truck, or other merchandising device.

(2) Each person or class of persons obligated to file a return under [sections 1 through 50], other than persons with direct payment permits and certified service providers, is required to file an application for a seller's registration.

(3) Each application for registration may be either an electronic or a paper form and must be prescribed by the department. The application must meet the requirements of the multistate central registration system under the agreement even if the applicant intends to make local retail sales only in Montana. The form 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 made by the owner if the owner is a natural person, by a member or partner if the owner is an association or partnership, or by an authorized person if the owner is a corporation.

NEW SECTION. Section 32. Revocation or suspension of seller's registration -- appeal. (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any seller's

registration held by a person that fails to comply with the provisions of [sections 1 through 50].

(2) A proposed revocation or suspension is subject to the uniform dispute review procedure established in 15-1-211.

(3) If a registration is revoked, the department may not allow a new registration except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of [sections 1 through 50]. The department may require security in addition to that authorized by [section 40] in an amount reasonably necessary to ensure compliance with [sections 1 through 50] as a condition for registration of the applicant.

(4) A person aggrieved by the department's final decision to revoke a seller's registration, as provided in subsection (1), may appeal the decision to the state tax appeal board within 30 days after the date on which the department issued its final decision.

(5) A decision of the state tax appeal board may be appealed to the district court.

NEW SECTION. Section 33. Improper use of subject of purchase obtained with exemption certificate -- penalty. (1) If a purchaser that uses an exemption certificate uses the subject of the purchase for a purpose other than one allowed as nontaxable under [sections 1 through 50], the use is considered a taxable sale as of the time of first use by the purchaser and the sales price is the price that the purchaser paid. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged. Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.

(2) A person that uses an exemption certificate for purchase of property that will be used for other than the claimed exempt use is subject to a penalty, payable to the department. The penalty for each transaction in which an improper use of an exemption certificate has occurred is the greater of:

(a) \$100; or

(b) 20% of the sales price of the property.

(3) Upon a showing of good cause, the department may abate or waive the penalty or a portion of the penalty.

NEW SECTION. Section 34. Commingling goods -- exemption certificate. If a purchaser uses an exemption certificate with respect to the purchase of fungible goods and commingles these goods with fungible goods that were not purchased with an exemption certificate but that are of such similarity that the identity of the

goods in the commingled mass cannot be determined, sales from the mass of commingled goods are considered to be sales of the goods purchased with the exemption certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the exemption certificate.

NEW SECTION. Section 35. Liability for payment of tax -- security for retailer without place of business -- penalty. (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A seller that does not maintain an office or other place of business within this state is liable for the sales tax or use tax in accordance with [sections 1 through 50] and may be required to furnish adequate security, as provided in [section 40], to ensure collection and payment of the taxes. The seller's registration provided for in [section 30] may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer doing business within this state who is not registered as a seller may not sell, solicit orders for, or deliver any property within Montana. If an agent, canvasser, or employee violates the provisions of [sections 1 through 50], the person is subject to a \$250 fine for each separate transaction or event.

NEW SECTION. Section 36. Application for permission to report on accrual basis. (1) A person that is a registered seller may apply to the department for permission to report and pay the sales tax or use tax on an accrual basis.

(2) The application must be made on a form, prescribed by the department, that contains information that the department may require.

(3) A person may not report or pay the sales tax or use tax on an accrual basis unless the person has received written permission from the department.

NEW SECTION. Section 37. Returns -- payment -- authority of department. (1) Each person engaged in business within this state or using property within this state that is subject to tax under [sections 1 through 50] shall file a return. Sellers that are registered under the agreement and use either a certified automated system or a certified service provider, as defined in the agreement in [section 52], are subject to the reporting and payment provisions of subsection (2) of this section. All other sellers are subject to the reporting and payment provisions of subsection (3).

(2) (a) On or before the 20th day of each month, a return, in a form adopted by the department in conformance with the agreement, with a remittance of the tax owed for the preceding month, must be filed with the department. The filing and the remittance may be done electronically.

(b) The seller and any agent of the seller, for the purposes of reporting or paying the sales tax or use tax, are subject to the audit and accountability provisions of the agreement.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a seller required to collect the tax;

(ii) a purchaser with a direct payment permit; and

(iii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) A return must be filed with and payment must be received by the department on or before the 20th day of each month for taxes owed for sales occurring during the preceding month. A seller that has a tax liability that averages less than \$100 a month may report and pay the tax on a quarterly basis and shall file the return with payment received by the department before the 20th day of the month after the end of the quarter.

(c) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(d) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

(4) (a) A person required to report and pay to the department a tax under [sections 1 through 50] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 50] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department. The department shall comply with the provisions of the agreement in determining reports and records management requirements in reference to sellers that are registered under the agreement.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 50], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
- (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
- (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
- (iv) take testimony on matters material to the determination; and
- (v) administer oaths or affirmations.

NEW SECTION. Section 38. Credit for bad debts -- taxes paid if account collected. (1) (a) Sales taxes paid by a person filing a return under [section 37] on sales found to be worthless and actually deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent payment of the tax. A bad debt must be deducted on the return of the period during which the bad debt is written off as uncollectible in the seller's books and records and must be eligible to be deducted for federal income tax purposes, whether or not the seller is actually required to file federal income tax returns.

(b) A bad debt deduction may not include:

- (i) finance charges or interest, either on the sale itself or that is attributed to the late payment of the purchase price;
- (ii) sales taxes or use taxes charged on the sales price;
- (iii) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
- (iv) expenses incurred in attempting to collect any debt; and
- (v) repossessed property.

(2) If the accounts are subsequently collected, the sales tax must be paid and reported on the return filed for the period in which the collection is made. If the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within 5 years of the date of the return on which the bad debt could first be collected.

(3) For the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property and the tax on the property and second to interest, service charges, and any other charges.

(4) If filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on behalf of the seller, any bad debt allowance.

(5) If the books and records of the seller claiming the bad debt allowance support an allocation of the

bad debts among several states, the bad debts may be allocated among those states.

NEW SECTION. Section 39. Vendor allowance. (1) In lieu of the vendor allowance provided in subsection (3), certified service providers must receive a monetary allowance determined as provided in the agreement, and the sellers using the certified service providers may not receive a vendor allowance. The vendor allowance must be funded entirely from sales tax proceeds collected by the sellers using the certified service providers.

(2) In addition to the vendor allowance provided in subsection (3), a registered seller using a certified automated system shall receive a percentage of the tax determined to be payable to the state. The percentage must be determined as provided in the agreement.

(3) (a) A person filing a return under [section 37] may claim a monthly vendor allowance for each permitted location in the amount of 1.5% of the tax determined to be payable to the state or \$250 a month, whichever is less.

(b) A person filing a quarterly return may claim 5% of the tax determined to be payable to the state or \$150 a quarter, whichever is less.

(c) The allowance may be deducted on the return.

NEW SECTION. Section 40. Security -- limitations -- bond. (1) The department may require a retailer to deposit with the department security in a form and amount that the department determines is appropriate. The security deposit may not be more than twice the estimated average liability for the period for which a return is required to be filed or \$10,000, whichever is less.

(2) In lieu of security, the department may require a retailer to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(3) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under [sections 1 through 50].

NEW SECTION. Section 41. Examination of return -- adjustments -- delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 37] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment are mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform dispute review procedure provided in 15-1-211.

NEW SECTION. Section 42. Penalties and interest for violation. The provisions of 15-1-216 apply to returns, reports, and failure to pay the tax required under [sections 1 through 50].

NEW SECTION. Section 43. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 50].

(b) If a tax imposed by [sections 1 through 50] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

NEW SECTION. Section 44. Limitations. (1) Except in the case of a person that purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of

[sections 1 through 50], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date that the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period to which consent was given.

(3) The limitations prescribed for giving notice of a proposed assessment of additional tax under subsection (1) do not apply if:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitations; or
(ii) until 1 year after any changes in the person's federal tax have become final or any amended federal return is filed as a result of a suspension of the federal statute, whichever occurs later; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return, as required by 15-30-146 or 15-31-506, until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

NEW SECTION. Section 45. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 50] must be filed within 5 years of the date that the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes in [section 42].

(b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or
(ii) the amount of overpayment and interest does not exceed \$1.

NEW SECTION. Section 46. Administration -- rules. (1) The department shall:

- (a) administer and enforce the provisions of [sections 1 through 50];
- (b) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 50]; and
- (c) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 50].

(2) In administering the provisions of [sections 1 through 50], the department shall, when applicable and not in conflict with Montana law, follow the provisions of the Streamlined Sales and Use Tax Agreement adopted pursuant to [sections 51 through 58]. The department shall report to the revenue and transportation interim committee, as provided in 5-5-227, on:

- (a) the operation of the Streamlined Sales and Use Tax Agreement and the benefits and costs to the state of its participation; and
- (b) changes to the Streamlined Sales and Use Tax Agreement that require changes in Montana law for compliance with the agreement.

NEW SECTION. Section 47. Revocation of corporate license -- hearing authorized -- appeal. (1) If a corporation authorized to do business within this state and required to pay the taxes imposed under [sections 1 through 50] fails to comply with any of the provisions of [sections 1 through 50] or any rule of the department, the department may, for reasonable cause, certify to the secretary of state a copy of an order finding that the corporation has failed to comply with specific statutory provisions or rules.

(2) The secretary of state shall, upon receipt of the certification, revoke the certificate authorizing the corporation to do business within this state and may issue a new certificate only when the corporation has obtained from the department an order finding that the corporation has complied with its obligations under [sections 1 through 50].

(3) An order authorized in this section may not be made until the corporation is given an opportunity to be heard before the department as provided in Title 2, chapter 4.

(4) A final decision of the department may be appealed to the state tax appeal board.

NEW SECTION. Section 48. Taxpayer quitting business -- liability of successor. (1) (a) All taxes payable under [sections 1 through 50] are due and payable immediately whenever a taxpayer quits business, sells, exchanges, or otherwise disposes of the business, or disposes of the stock of goods.

(b) The taxpayer shall make a return and pay the taxes due within 10 days after the taxpayer quits

business, sells, exchanges, or otherwise disposes of the business, or disposes of the stock of goods.

(2) Except as provided in subsection (4), a person that becomes a successor is liable for the full amount of the tax and shall withhold from the sales price payable to the taxpayer a sum sufficient to pay any tax due until the taxpayer produces either a receipt from the department showing payment in full of any tax due or a statement from the department that tax is not due.

(3) If a tax is due but has not been paid as provided in subsection (1)(b), the successor is liable for the payment of the full amount of tax. The payment of the tax by the successor is considered to be a payment upon the sales price, and if the payment is greater in amount than the sales price, the amount of the difference becomes a debt due to the successor from the taxpayer owing the tax under subsection (1).

(4) (a) A successor is not liable for any tax due from the person that the successor acquired a business or stock of goods from if:

(i) the successor gives written notice to the department of the acquisition; and

(ii) an assessment is not issued by the department against the former operator of the business within 6 months of receipt of the notice from the successor.

(b) If an assessment is issued by the department, a copy of the assessment must also be mailed to the successor, or if an assessment is not mailed to the successor, the successor is not liable for the tax due.

NEW SECTION. Section 49. Tax as debt. (1) The tax imposed by [sections 1 through 50] and related interest and penalties become a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(2) The debt of the personal representative of the estate of a decedent or a fiduciary is limited to the person's official or fiduciary capacity. However, if the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the taxes, interest, and penalties, the person is personally liable for any deficiency.

(3) (a) This section applies to those corporate officers, directors, or shareholders required by the department to personally guarantee the payment of the taxes for their corporations.

(b) In addition to the liability imposed by subsection (3)(a), the officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the state the amounts imposed by [sections 1 through 50] and who fails to pay the tax is liable to the state for the amounts imposed by [sections 1 through 50] and the penalty and interest due on the amounts.

NEW SECTION. Section 50. Information -- confidentiality -- agreements with another state. (1) (a)

Except as provided in subsections (2) and (3), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under [sections 1 through 50] or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-303 for violating the confidentiality of individual income tax information.

(2) (a) In addition to the agreement, the department may enter into other agreements with the taxing officials of other states for the interpretation and administration of the laws of their states that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of [sections 1 through 50], the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 1 through 50], the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

NEW SECTION. Section 51. Uniform sales and use tax administration. [Sections 51 through 58] may be cited as the "Uniform Sales and Use Tax Administration Act".

NEW SECTION. Section 52. Definitions. As used in [sections 51 through 58], the following definitions apply:

(1) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, to determine the amount of tax to remit to the appropriate state, and to maintain a record of the transaction.

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

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

(5) "Sales tax" means the tax levied under [section 2].

(6) "Seller" means a person making sales, leases, or rentals of personal property.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use tax" means the tax levied under [section 2].

NEW SECTION. Section 53. Authority to enter agreement. (1) The department of revenue is authorized and directed to enter into the agreement with one or more states to simplify and modernize sales tax and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department of revenue is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and a certified automated system and to establish performance standards for multistate sellers.

(2) The department of revenue is further authorized to take other actions reasonably required to implement the provisions of [sections 51 through 58]. Other actions authorized by this section include but are not limited to the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the agreement.

(3) The department of revenue or the department of revenue's designee is authorized to represent this state before the other states that are signatories to the agreement.

NEW SECTION. Section 54. Relationship to state law. A provision of the agreement, in whole or in part, does not invalidate or amend any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement within this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

NEW SECTION. Section 55. Agreement requirements. The department of revenue may not enter into the agreement unless the agreement requires each state to abide by the following requirements:

(1) The agreement must set restrictions to achieve over time more uniform rates in Montana through the following:

(a) limiting the number of state rates;

- (b) limiting the application of maximums on the amount of state tax that is due on a transaction;
 - (c) limiting the application of thresholds on the application of state tax.
- (2) The agreement must establish uniform standards for the following:
- (a) the sourcing of transactions to taxing jurisdictions;
 - (b) the administration of exempt sales;
 - (c) the allowances that a seller may take for bad debts;
 - (d) sales tax and use tax returns and remittances.
- (3) The agreement must require states to develop and adopt uniform definitions of sales tax and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.
- (4) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales taxes and use taxes for all signatory states.
- (5) The agreement must provide that registration with the central registration system and the collection of sales taxes and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- (6) The agreement must provide for reduction of the burdens of complying with local sales taxes and use taxes through the following:
- (a) restricting variances between the state and local tax bases;
 - (b) requiring states to administer any sales taxes and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
 - (c) restricting the frequency of changes in the local sales tax and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales taxes and use taxes;
 - (d) providing notice of changes in local sales tax and use tax rates and of changes in the boundaries of local taxing jurisdictions.
- (7) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.
- (8) The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.
- (9) The agreement must require each state to adopt a uniform policy for certified service providers that

protects the privacy of consumers and maintains the confidentiality of tax information.

(10) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

NEW SECTION. Section 56. Cooperating sovereigns. The agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales taxes and use taxes under the adopted law of each member state.

NEW SECTION. Section 57. Limited binding and beneficial effect. (1) The agreement binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(2) Consistent with subsection (1), no person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(3) No law of this state, or the application of a law of this state, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

NEW SECTION. Section 58. Seller and third-party liability. (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales tax and use taxes. As the seller's agent, the certified service provider is liable for sales tax and use tax due each member state on all sales transactions that it processes for the seller, except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales tax or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items that it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if

the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified service system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

NEW SECTION. Section 59. Sales tax and use tax account. (1) There is within the state special revenue fund an account for sales tax and use tax money.

(2) All money collected under [sections 1 through 50] must be paid by the department into the account for sales tax and use tax money.

(3) There must be retained in the account for sales tax and use tax money the amounts necessary under [sections 1 through 50] to repay overpayments, pay any erroneous receipts illegally assessed or collected or that are excessive in amount, and pay any other refunds otherwise required.

NEW SECTION. Section 60. Disposition of sales tax and use tax revenue -- legislative appropriation. (1) Sales tax and use tax revenue deposited in the account for sales tax and use tax money established in [section 59] must be allocated as follows:

(a) 25% to the state special revenue fund for statewide public school teachers' and specialists' salaries as provided in [section 63];

(b) 25% to the state special revenue fund for the support, maintenance, and improvement of the Montana university system, vocational-technical programs within the university system, and community college districts, subject to the board of regents' supervision, as provided in [section 62]; and

(c) 50% to the state general fund to offset residential property tax relief as provided in [section 61].

(2) This section provides for the disposition of sales tax and use tax revenue. Allocations may not be made from the account for sales tax and use tax money until appropriated by the legislature.

NEW SECTION. Section 61. Tax credit for residential property -- definition. (1) A taxpayer is

allowed a refundable credit against taxes otherwise due under this chapter in an amount equal to 39% of the amount of property taxes actually paid by the taxpayer on the taxpayer's residential property. The credit is in addition to any deduction claimed for property taxes paid on the property and any credit received under the residential property tax credit for the elderly under 15-30-171 through 15-30-179.

(2) The credit allowed under this section may be refunded to the taxpayer if the amount of the credit exceeds the amount of the taxpayer's tax liability.

(3) For purposes of this section, "residential property" means:

- (a) a single-family residence or a rental multifamily dwelling unit, including a trailer, manufactured home, or mobile home;
- (b) appurtenant improvements to the residence or dwelling;
- (c) the parcel of land upon which the single-family residence or rental multifamily dwelling unit and the appurtenant improvements to the residence or dwelling unit are located; and
- (d) leasehold improvements.

NEW SECTION. Section 62. University system funding. There is allocated from the money collected from the sales tax and use tax to the state special revenue fund 25% of the sales tax and use tax, as provided in [section 60], for the support, maintenance, and improvement of the Montana university system, vocational-technical programs within the university system, and community college districts, subject to the board of regents' supervision.

NEW SECTION. Section 63. Statewide certified teachers' and specialists' salaries. (1) Except as provided in subsection (3), effective for the school fiscal year beginning July 1, 2004, a school district shall, at a minimum, pay each teacher or specialist who is certified as class 1, class 2, class 4, or class 5 or pay each teacher or specialist identified by the superintendent of public instruction as being certified as class 6 or class 7, as follows:

Step	BA	BA+10	BA+20	BA+30	BA+40	BA+50	BA+60	BA+70	BA+80	BA+90
1	\$25,000	25,750	26,523	27,318	28,138	28,982	29,851	30,747	31,669	32,619
2	25,750	26,523	27,318	28,138	28,982	29,851	30,747	31,669	32,619	33,598
3	26,523	27,318	28,138	28,982	29,851	30,747	31,669	32,619	33,598	34,606
4		28,138	28,982	29,851	30,747	31,669	32,619	33,598	34,606	35,644
5		28,982	29,851	30,747	31,669	32,619	33,598	34,606	35,644	36,713

6	30,747	31,669	32,619	33,598	34,606	35,644	36,713	37,815
7	31,669	32,619	33,598	34,606	35,644	36,713	37,815	38,949
8		33,598	34,606	35,644	36,713	37,815	38,949	40,118
9		34,606	35,644	36,713	37,815	38,949	40,118	41,321
10			36,713	37,815	38,949	40,118	41,321	42,561
11			37,815	38,949	40,118	41,321	42,561	43,838
12				40,118	41,321	42,561	43,838	45,153
13				41,321	42,561	43,838	45,153	46,507
14					43,838	45,153	46,507	47,903
15					45,153	46,507	47,903	49,340

(2) Effective for school fiscal years beginning on or after July 1, 2004, a school district shall pay the base salary provided in subsection (1) or (3) multiplied by the rate of increase in the consumer price index for all urban consumers, published by the bureau of labor statistics of the U.S. department of labor, for the preceding December-to-December period.

(3) If a collective bargaining agreement establishes a higher base salary than the base established in subsection (1) or (2), the state shall pay the base salary established through collective bargaining.

(4) (a) In addition to the compensation provided for in subsection (1), (2), or (3), the state shall, for the school fiscal year beginning July 1, 2004, pay each certified teacher or specialist who has completed 20 years of credited service recognized by the Montana teachers' retirement system 5% of the employee's base salary.

(b) For the school fiscal year beginning July 1, 2004, in addition to the longevity allowance provided under subsection (4)(a), the state shall pay each teacher or specialist who has completed 25 years of credited service recognized by the Montana teachers' retirement system an additional 3% of the employee's base salary.

(5) In addition to the base salary provided in subsection (1), (2), or (3) and the longevity increases provided in subsection (4), the state shall pay to each qualified teacher or specialist a:

- (a) \$1,000 annual stipend to each teacher or specialist holding a master's or doctoral degree;
- (b) \$2,000 annual stipend to each teacher or specialist for national certification during the term of certification;
- (c) \$1,000 student-teacher advisership stipend each semester; and
- (d) \$1,000 annual stipend plus 3 days of release time for a personal instruction committee assignment.

(6) As used in this section, the following definitions apply:

- (a) "BA" means baccalaureate degree.

- (b) "BA+" means the number of credits earned since receiving the BA.
- (c) "Credits" means college semester hour credits and equivalent inservice credits.

NEW SECTION. Section 64. Codification instruction. (1) [Sections 1 through 60] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 60].

(2) [Section 61] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 61].

(3) [Section 62] is intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [section 62].

(4) [Section 63] is intended to be codified as an integral part of Title 20, chapter 4, and the provisions of Title 20, chapter 4, apply to [section 63].

NEW SECTION. Section 65. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 66. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 67. Effective date. [This act] is effective January 1, 2004.

NEW SECTION. Section 68. Applicability. [This act] applies to the sale of goods after December 31, 2003.

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