

SENATE BILL NO. 332
INTRODUCED BY TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A GROSS RECEIPTS TAX ON RETAIL SALES IN EXCESS OF ~~\$10~~ \$20 MILLION IN AN INDIVIDUAL LOCATION; PROVIDING FOR TAX RATES AND THE ALLOCATION OF THE TAX PROCEEDS; PROVIDING FOR THE REPORTING, ADMINISTRATION, AND COLLECTION OF THE TAX; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Farm implement" means any vehicle, machine, or attachment designed or adapted and used exclusively for agricultural operations and only incidentally operated or used on the highways.

(2) (a) "Gross receipts" means all receipts from retail sales from each specific store within the state, whether in the form of money, credits, or other valuable consideration, received as a result of engaging in or conducting a retail sales business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid, taxes, losses, or any other expense. A retail sales establishment may deduct the cost of employer contributions for retirement benefits and health insurance for employees from gross receipts.

(b) The term does not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person.

(2) "Retail sale" means any transfer of tangible personal property for consideration for any purpose other than for resale, sublease, or subrent.

(3) "Special mobile equipment" means a vehicle not designed for the transportation of persons or property on the highways but incidentally operated or moved over the highways, including road construction or maintenance machinery, ditch-digging apparatus, and well-boring apparatus.

(4) (a) "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.

(b) The term does not include farm implements, COAL, GAS, OIL, ELECTRICITY, special mobile equipment, or vehicles.

(5) "Vehicle" means a device in, upon, or by which any person or property may be transported or drawn that is required to be registered or that is subject to a tax or fee imposed under Title 23, chapter 2, parts 5, 6, or 8 or Title 61, chapter 3, part 5.

NEW SECTION. Section 2. Retail sales gross receipts tax. (1) There is a retail sales gross receipts tax. The tax applies to all retail sales of tangible personal property from a single establishment that are in excess of \$10 million each calendar year.

(2) The rate of tax on gross receipts in excess of ~~\$40~~ \$20 million is as follows:

(a) ~~\$40~~ \$20 million to ~~\$20~~ \$30 million, 1%;

(b) amounts in excess of ~~\$20~~ \$30 million up to and including ~~\$30~~ \$40 million, 1.5%; and

(c) amounts in excess of ~~\$30~~ \$40 million, 2%.

NEW SECTION. Section 3. Returns -- payment -- authority of department. (1) Each person engaged in a retail sales business within this state or using property within this state that is subject to tax under [sections 1 through 10] shall file a return. Retail sales businesses are subject to the reporting and payment provisions of subsection (3).

(2) (a) On or before January 31 of each year, a return, in a form adopted by the department, with a remittance of the tax owed for the preceding year, must be filed with the department. The filing and the remittance may be done electronically.

(b) The retail sales business and any agent of the business, for the purposes of reporting or paying the gross receipts tax, are subject to the audit and accountability provisions of the department.

(3) (a) For the purposes of the gross receipts tax, a return must be filed by each location of a seller required to pay the tax.

(b) A return must be filed with and payment must be received by the department on or before January 31 for taxes owed for gross receipts on retail sales occurring during the preceding year.

(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 10] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 10] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 10], 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 4. Allocation of proceeds. Retail sales gross receipt tax proceeds must be allocated, pursuant to 15-1-501, ~~as follows:~~

- ~~—— (1) 50% to the state general fund; and~~
- ~~—— (2) the remaining 50% to be equally allocated by the department to:~~
 - ~~—— (a) the university system to be used for agricultural experiment stations as authorized in 20-25-242;~~
 - ~~—— (b) local governments to be used for economic development as provided in 90-5-112; and~~
 - ~~—— (c) the department of public health and human services to be used only for affordable housing as authorized by the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq.~~

NEW SECTION. Section 5. 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 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 6. Penalties and interest for violations. The provisions of 15-1-216 apply to returns, reports, and failure to pay the tax required under [sections 1 through 10].

NEW SECTION. Section 7. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 10].

(b) If a tax imposed by [sections 1 through 10] 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 8. 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 10], a deficiency may not be assessed or collected with respect to a year 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.

NEW SECTION. Section 9. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 10] 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 15-16-102.

(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 10. Administration -- rules. The department shall:

(1) administer and enforce the provisions of [sections 1 through 10];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 10]; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 10].

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 10].

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

NEW SECTION. **Section 13. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to retail sales after December 31, 2002.

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