

SENATE BILL NO. 488
INTRODUCED BY D. HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING TAXES; INCREASING THE LODGING FACILITY USE TAX FROM 4 PERCENT TO 9 PERCENT AND ESTABLISHING A RENTAL VEHICLE SURCHARGE OF 9 PERCENT; DEFINING THE TAXPAYER AS THE USER OF THE LODGING FACILITY; PROVIDING THAT 5 PERCENT OF COLLECTIONS OF EITHER THE TAX OR THE SURCHARGE MAY BE KEPT BY THE FACILITY OWNER OR OPERATOR OR BY THE RENTAL VEHICLE OWNER OR OPERATOR AS AN ADMINISTRATIVE ALLOWANCE; PROVIDING THAT 55 PERCENT OF NET COLLECTIONS OF THE LODGING FACILITY USE TAX AND ALL OF THE RENTAL VEHICLE SURCHARGE ARE TO BE DEPOSITED IN THE STATE GENERAL FUND; PROVIDING FOR THE ADMINISTRATION OF THE RENTAL VEHICLE SURCHARGE, INCLUDING PENALTIES; PROVIDING THAT A PORTION OF THE PROCEEDS FROM THE RENTAL VEHICLE SURCHARGE BE ALLOCATED TO THE UNIVERSITY SYSTEM; REVISING THE TAXATION OF CIGARETTES AND TOBACCO PRODUCTS; INCREASING THE CIGARETTE TAX FROM 18 CENTS TO 70 CENTS ON A PACK OF CIGARETTES AND DEPOSITING THE AMOUNT FROM THE INCREASE IN THE STATE GENERAL FUND; ADJUSTING THE CIGARETTE TAX INSIGNIA DISCOUNTS; INCREASING THE TAX ON TOBACCO PRODUCTS FROM 12.5 PERCENT TO 25 PERCENT; ADJUSTING THE WHOLESALER'S DISCOUNT FOR TOBACCO PRODUCTS; PROVIDING FOR A GROSS RECEIPTS TAX ON RETAIL SALES IN EXCESS OF \$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; PROVIDING THAT CERTAIN TAX PROCEEDS BE USED FOR DIRECT STATE AID TO K-12 EDUCATION; TRANSFERRING \$7 MILLION FROM THE STATE WORKERS' COMPENSATION OLD FUND TO THE STATE GENERAL FUND TO BE ALLOCATED TO THE UNIVERSITY SYSTEM FOR RESEARCH AND COMMERCIALIZATION PROJECTS; REQUIRING THE PERMANENT REGISTRATION OF A LIGHT VEHICLE THAT IS 11 YEARS OLD OR OLDER; REVISING THE FEES APPLICABLE TO A PERMANENT REGISTRATION; REVISING THE ALLOCATION OF THE FEES FOR PERMANENTLY REGISTERED VEHICLES; AMENDING SECTIONS 15-1-122, 15-65-101, 15-65-111, 15-65-112, 15-65-121, 16-11-111, 16-11-114, 16-11-119, 16-11-202, 16-11-206, 39-71-2352, 61-3-315, 61-3-561, AND 61-3-562, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES."

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

Section 1. Section 15-1-122, MCA, is amended to read:

"15-1-122. Fund transfers. (1) There is transferred from the state general fund to the adoption services account, provided for in 42-2-105, \$36,764 for fiscal year 2003. Beginning with fiscal year 2004, the amount of the transfer must be increased by 10% in each succeeding fiscal year.

(2) There is transferred from the state general fund to the department of transportation state special revenue nonrestricted account the following amounts:

(a) \$75,000 in fiscal year 2003;

(b) \$2,960,715 in fiscal year 2004; and

(c) in each succeeding fiscal year, the amount in subsection (2)(b), increased by 1.5% in each succeeding fiscal year.

(3) For ~~fiscal year 2002 and for each succeeding~~ fiscal year, there is transferred from the state general fund to the accounts, entities, or recipients indicated the following amounts:

(a) to the motor vehicle recycling and disposal program provided for in Title 75, chapter 10, part 5:

(i) \$2 for each new application for a motor vehicle title and for each transfer of a motor vehicle title for which a fee is paid pursuant to 61-3-203; and

(ii) \$1 for each passenger car or truck under 8,001 pounds GVW that is annually registered for licensing pursuant to Title 61, chapter 3, part 3, and \$2 for each permanently registered vehicle. Fifteen cents of each dollar must be used for the purpose of reimbursing the hired removal of abandoned vehicles during the calendar year following the calendar year in which the fee was paid. Any portion of the 15 cents not used for abandoned vehicle removal reimbursement during the calendar year following its payment must be used as provided in 75-10-532;

(b) to the noxious weed state special revenue account provided for in 80-7-816:

(i) \$1 for each off-highway vehicle subject to payment of the fee in lieu of tax, as provided for in 23-2-803; and

(ii) \$1.50 for each annually registered light vehicle, truck or bus weighing less than 1 ton, logging truck, vehicles weighing more than 1 ton, motorcycle, quadricycle, and motor home subject to registration or reregistration pursuant to 61-3-321 and \$3 for each permanently registered light vehicle;

(c) to the department of fish, wildlife, and parks:

(i) \$2.50 for each motorboat, sailboat, or personal watercraft receiving a certificate of number under 23-2-512, with 20% of the amount received to be used to acquire and maintain pumpout equipment and other boat facilities;

(ii) \$5 for each snowmobile registered under 23-2-616, with \$2.50 to be used for enforcing the purposes

of 23-2-601 through 23-2-644 and \$2.50 designated for use in the development, maintenance, and operation of snowmobile facilities;

(iii) \$1 for each duplicate snowmobile decal issued under 23-2-617;

(iv) \$5 for each off-highway vehicle decal issued under 23-2-804 and each off-highway vehicle duplicate decal issued under 23-2-809, with 40% of the money used to enforce the provisions of 23-2-804 and 60% of the money used to develop and implement a comprehensive program and to plan appropriate off-highway vehicle recreational use;

(v) to the state special revenue fund established in 23-1-105, \$3.50 for each recreational vehicle, camper, motor home, and travel trailer registered or reregistered and subject to the fee in 61-3-321 or 61-3-524; and

(vi) an amount equal to 20% of the funds collected pursuant to 23-2-518 to be deposited in the motorboat account to be used as provided in 23-2-533;

(d) to the state veterans' cemetery account, provided for in 10-2-603, \$10 for each veteran's license plate issued pursuant to 61-3-332(10)(a)(ii), (10)(f), and (10)(h);

(e) to the supplemental benefits for highway patrol officers' retirement account provided for in 19-6-709, 25 cents for each motor vehicle registered, other than trailers or semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(f) 25 cents a year for each annually registered vehicle and \$1 for each permanently registered vehicle subject to the fee in 61-3-321(6) for deposit in the state special revenue fund to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(4) For fiscal year 2002, there is transferred from the state general fund to the state special revenue fund to be used for purposes of state funding of district court expenses, as provided in 3-5-901, \$5,742,983 in lieu of the amount deposited by the state treasurer under 61-3-509(3), as that subsection read prior to the amendment of 61-3-509 in 2001.

(5) For each fiscal year, ~~beginning with fiscal year 2002~~, the department of justice shall provide to the department of revenue a count of the vehicles required for the calculations in subsection (3). The department of justice shall provide a separate count of vehicles that are permanently registered pursuant to 61-3-562. ~~Transfer amounts for fiscal year 2002 must be based on vehicle counts for calendar year 2000.~~ Transfer amounts in each ~~succeeding~~ fiscal year must be based on vehicle counts in the most recent calendar year for which vehicle information is available.

(6) The amounts transferred from the general fund to the designated recipient must be appropriated as

state special revenue in the general appropriations act for the designated purposes."

Section 2. Section 15-65-101, MCA, is amended to read:

"15-65-101. Definitions. For purposes of this part, the following definitions apply:

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) (a) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

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

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

~~(4)~~(5) (a) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

(b) The term does not include any health care facility, as defined in 50-5-101, any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under ~~the age of~~ age of 18 years for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

~~(5)~~(6) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

~~(6)~~(7) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

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

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

Section 3. Section 15-65-111, MCA, is amended to read:

"15-65-111. Tax rate. (1) There is imposed on the ~~user of~~ consumer who uses a facility a tax at a rate equal to ~~4%~~ 9% of the accommodation charge collected by the facility.

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

Section 4. Section 15-65-112, MCA, is amended to read:

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

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1)."

Section 5. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct ~~4%~~ 9% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. Fifty-five percent of the balance of the remaining tax proceeds must be deposited in the state general fund. ~~The~~ Of the balance remaining, the amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in 22-3-1004. For the fiscal year ending June 30, 2003, the amount of \$1.7 million must be deposited in the state general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the general fund, deposited in the fund or funds from

which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

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

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

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

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

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

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

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

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

15-65-121. (Effective July 1, 2007) Distribution of tax proceeds. (1) The proceeds of the tax imposed

by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct ~~4%~~ 9% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. Fifty-five percent of the balance of the remaining tax proceeds must be deposited in the state general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, ~~or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the state general fund~~ is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

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

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

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

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

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

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

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

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

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

NEW SECTION. Section 6. Rental vehicle surcharge -- definitions. As used in [sections 6 through 11], the following definitions apply:

(1) (a) "Gross receipts" means all receipts from sources within the state, whether in money or other consideration, received from engaging in the business of renting rental vehicles.

(b) The term does not include the amount received for motor fuel.

(2) (a) "Rental vehicle" means a passenger vehicle that:

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

(ii) is rented without a driver;

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

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

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

(3) "Rental vehicle owner or operator" means a person who owns or leases rental vehicles and who rents or offers to rent the rental vehicles.

NEW SECTION. Section 7. Rate of rental vehicle surcharge -- collection and reporting -- distribution. (1) There is imposed a surcharge on rental vehicles. The surcharge is 9% of the rental base price, exclusive of insurance, as stated in the rental contract. The surcharge must be stated in the rental contract and collected in accordance with the terms of the contract.

(2) The rental vehicle owner or operator shall report to the department, at the end of each calendar quarter, the gross receipts actually collected during that quarter attributable to the rental contracts, exclusive of gross receipts attributable to contracts for insurance. The report must be on a form provided by the department.

The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to 95% of the surcharge required to be collected under subsection (1). The remaining 5% of the amount of the surcharge may be retained by the rental vehicle owner or operator as an administrative allowance for collection of the surcharge.

(3) The department shall deposit the proceeds of the rental vehicle surcharge in the state general fund. Up to \$8 million of the proceeds of the rental vehicle surcharge proceeds deposited in the general fund under this section must be allocated to the university system with, with \$3 million of that amount used for research and commercialization projects.

NEW SECTION. Section 8. Permit application -- place of business. (1) Prior to engaging in the business of renting vehicles, a prospective rental vehicle owner or operator shall file with the department an application for a permit. If the prospective rental vehicle owner or operator has more than one location in which the owner or operator maintains an office or other place of business, an application may include multiple locations.

(2) Each rental vehicle owner or operator who is required to file a report under [sections 6 through 11] is required to file an application for a permit.

(3) Each application for a permit must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the rental vehicle owner or operator if the owner or operator is a natural person, by a member or partner if the owner or operator is an association or partnership, or by a person authorized to sign the application if the owner or operator is a corporation.

(4) A rental vehicle owner or operator who fails to comply with this section is subject to a fine of not less than \$50 and not more than \$100.

NEW SECTION. Section 9. Audits -- records. (1) The department may audit the books and records of a rental vehicle owner or operator to ensure that the proper amount of the surcharge imposed by [section 7] has been collected. An audit may be done on the premises of the rental vehicle owner or operator or at any other convenient location.

(2) The department may request that the rental vehicle owner or operator provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of the surcharge.

(3) The rental vehicle owner or operator shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of the rental vehicle surcharge for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the surcharge, purposely or knowingly files a false or fraudulent report violating the provisions of [sections 6 through 11], the amount of surcharge due under any report must be determined by the department within 5 years after the return is made. After 5 years, the department is barred from revising any report or recomputing the surcharge due, and a proceeding in court for the collection of the surcharge may not be instituted unless notice of any additional surcharge is provided within the 5-year period.

(5) An application for revision may be filed with the department by a rental vehicle owner or operator within 5 years from the original due date of the report.

NEW SECTION. Section 10. Penalty for failure to file or pay. (1) A rental vehicle owner or operator who fails to file the report as required by [section 7] must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as provided in 15-1-206.

(2) A rental vehicle owner or operator who fails to make payment or fails to file a report and make payment as required by [section 7] must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) (a) If a rental vehicle owner or operator fails to file the report required by [section 7] or if the department determines that the report understates the amount of surcharge due, the department may determine the amount of the surcharge due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department. The rental vehicle owner or operator may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the surcharge becomes final, the department shall mail a notice and demand for payment to the rental vehicle owner or operator. The surcharge is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency assessment must be computed as provided in 15-1-216.

NEW SECTION. Section 11. Overpayment and underpayment. (1) If the department determines that the amount of surcharge, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any surcharge, penalty, or interest then due from the rental vehicle owner

or operator and the balance must be refunded to the owner or operator, to the owner's or operator's successor through reorganization, merger, or consolidation, or to the owner's or operator's shareholders upon dissolution.

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

(3) (a) Interest does not accrue during a period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the rental vehicle owner or operator to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

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

(c) Only a payment made incident to a bona fide and orderly discharge of actual surcharge liability or one reasonably assumed to be imposed by [sections 6 through 11] is considered an overpayment with respect to which interest is allowable.

Section 12. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~48~~ 70 cents on each package containing 20 cigarettes, ~~and, when~~ Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a ~~credit or refund~~ or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Section 13. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

- (1) ~~6%~~ 1.66% for the first 2,580 cartons or portion ~~thereof~~ of 2,580 cartons purchased in any calendar month;
- (2) ~~4%~~ 1.11% for the next 2,580 cartons or portion ~~thereof~~ of 2,580 cartons purchased in any calendar month; and
- (3) ~~3%~~ 0.83% for purchases in excess of 5,160 cartons in any calendar month."

Section 14. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes. Cigarette taxes collected under the provisions of 16-11-111 must be ~~allocated~~ deposited as follows:

- (1) The amount of ~~11.11%~~ 4.07% of the cigarette tax collected on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of public health and human services

for the operation and maintenance of state veterans' nursing homes.

(2) The amount of ~~73.04%~~ 93.08% must, in accordance with the provisions of 15-1-501, be deposited in the state general fund.

(3) The amount of ~~45.85%~~ 2.85% must, in accordance with the provisions of 15-1-501, be deposited in the long-range building program account provided for in 17-7-205."

Section 15. Section 16-11-202, MCA, is amended to read:

"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of tax. (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. Any person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of ~~42-1/2%~~ 25% of the wholesale price of all tobacco products to the wholesaler. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax."

Section 16. Section 16-11-206, MCA, is amended to read:

"16-11-206. Wholesaler's discount -- disposition of taxes. (1) The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a ~~5%~~ 2.5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable.

(2) Up to \$4 million of the taxes deposited in the general fund under this section during the biennium beginning July 1, 2003, must be used for direct state aid for K-12 education."

NEW SECTION. Section 17. Definitions. As used in [sections 17 through 26], 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.

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

(4) "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.

(5) (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.

(6) "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 18. 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 \$20 million each calendar year.

(2) The rate of tax on gross receipts in excess of \$10 million is as follows:

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

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

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

NEW SECTION. Section 19. 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 17 through 26] 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 17 through 26] shall keep records, render statements, make returns, and comply with the provisions of [sections 17 through 26] 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 17 through 26], 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 20. Allocation of proceeds. (1) Retail sales gross receipts tax proceeds must be allocated, pursuant to 15-1-501, to the state general fund.

(2) The retail sales gross receipts tax proceeds allocated to the state general fund, for the biennium beginning July 1, 2003, must be further allocated as follows:

- (a) up to \$22 million must be allocated to K-12 education to be distributed [as provided in section 1 of House Bill No. 193];
- (b) up to \$7 million must be used for direct state aid to K-12 education; and
- (c) up to \$37 million must be allocated to the department of public health and human services to be used for health and human services programs.

NEW SECTION. Section 21. 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 22. Penalties and interest for violations. The provisions of 15-1-216 apply

to returns, reports, and failure to pay the tax required under [sections 17 through 26].

NEW SECTION. Section 23. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 17 through 26].

(b) If a tax imposed by [sections 17 through 26] 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 24. 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 17 through 26], 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 25. Refunds -- interest-- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 17 through 26] 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 26. Administration -- rules. The department shall:

- (1) administer and enforce the provisions of [sections 17 through 26];
- (2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 17 through 26]; and
- (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 17 through 26].

Section 27. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing transfer of money for payment of claims. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

- (a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;
- (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and
- (c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

- (a) the total cost of future benefits remaining to be paid;
- (b) the cost of administering the claims; and
- (c) an additional amount equal to 10% of the total of the amounts in subsections (4)(a) and (4)(b).

(5) Based on audited financial statements adjusted for unrealized gains and losses for the fiscal year ending June 30, ~~2002~~ 2003, funds in excess of the adequate funding amount established in subsection (4) must be transferred as follows:

- (a) Prior to June 30, ~~2003~~ 2004,

(i) the amount of ~~\$1.9~~ \$7 million must be transferred to the general fund ~~to be transferred to the state library equipment account and appropriated to the university system and the department of public health and human services; and~~

~~_____ (ii) the amount of \$2.1 million must be transferred to the school flexibility fund, provided for in 20-9-543. The money transferred to the general fund must be allocated to the university system to be used for research and commercialization projects.~~

(b) In the fiscal year ending June 30, ~~2003~~ 2004, the remaining amount, and in subsequent fiscal years, an amount of funds in excess of the adequate funding amount established in subsection (4) must be transferred to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990. The total amount of funds transferred under this subsection may not exceed \$63.8 million.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."

Section 28. Section 61-3-315, MCA, is amended to read:

"61-3-315. Reregistration on anniversary date -- department to make rules. (1) A vehicle that has been registered for any of the periods designated in 61-3-314 must be reregistered for the same period on or before the anniversary date of the initial registration unless that period is changed as provided in subsections (2) and (4). The anniversary date for reregistration is the last day of the month for the designated registration period.

- (2) (a) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 and subject

to the registration fee, as provided in 61-3-560 and 61-3-561, may register the motor vehicle for a period not to exceed 24 months. The registration expires on the last day of the 24th month commencing from the date of the designated registration period under 61-3-314 for which the vehicle is registered.

(b) The owner of a motor vehicle 11 years old or older subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in 61-3-560 and 61-3-561, ~~may~~ shall permanently register the motor vehicle as provided in 61-3-562. The registration remains in effect until ownership of the vehicle is transferred to another person by the registered owner.

(3) The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles.

(4) The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register the vehicles."

Section 29. Section 61-3-561, MCA, is amended to read:

"61-3-561. Schedule of fees for light vehicles -- ~~limitation on fee~~ -- payment of fee required for operation. (1) The following schedule, based on vehicle age, is used to determine the annual registration fee imposed by 61-3-560:

Vehicle Age (in years)	Annual Fee
4 or less	\$195
5-10	65
11 or more	6

(2) A light vehicle subject to the registration fee imposed by 61-3-560 may not be operated unless the fee has been paid and the vehicle is licensed. A lien for fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees have been paid.

(3) For the purposes of this section, "vehicle age" means the age of the vehicle determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the registration fee is due."

Section 30. Section 61-3-562, MCA, is amended to read:

"61-3-562. Permanent registration -- transfer of vehicle ownership -- rules. (1) (a) The owner of a light vehicle 11 years old or older subject to ~~the registration fee~~, as provided in ~~61-3-561~~ 61-3-315(2)(b), ~~may~~ shall

permanently register the vehicle. For the calendar year commencing January 1, 2004, the registration fee is \$25, and for all succeeding years, the fee is upon payment of a \$50 registration fee. The owner of the vehicle shall also pay the applicable registration and license fees under 61-3-321; and ~~an amount equal to five times the applicable fees imposed for each of the following:~~

- (i) a \$2 junk vehicle disposal fees fee to be allocated under 15-1-122(3)(a);
- (ii) a \$3 weed control fees fee to be allocated under 15-1-122(3)(b);
- ~~(iii) the former county motor vehicle computer fees under 61-3-511;~~
- ~~(iv)~~(iii) the local option vehicle tax or flat fee on vehicles under 61-3-537 for the current calendar year;
- ~~(v)~~(iv) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;
- ~~(vi)~~(v) if applicable, the amateur radio operator license plate fee under 61-3-422;
- ~~(vii)~~(vi) if applicable, the annual scholarship donation fee under 61-3-465; and
- ~~(viii)~~(vii) a \$1 senior citizens and persons with disabilities transportation services fees fee to be deposited as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional \$2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the \$2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay ~~five~~ two times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under 61-3-561 or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) distribute the ~~\$50~~ applicable permanent registration fee collected under ~~this section~~ subsection (1)(a) and the local option vehicle tax fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the department of revenue the amounts collected under this section; ~~other than the local option vehicle tax or flat fee;~~ for the purposes of 61-3-321(3) and 61-10-201. ~~The county treasurer shall retain the local option vehicle tax or flat fee.~~

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new

owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303.

(6) Up to \$7 million of the fees deposited in the general fund under this section for the biennium beginning July 1, 2003, must be used for direct state aid for K-12 education. (Subsection (1)(b) terminates on occurrence of contingency--sec. 24, Ch. 191, L. 2001.)"

NEW SECTION. Section 31. Transition. All tobacco wholesalers, distributors, and retailers shall pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory subject to tax held by them on July 1, 2003, that exceeds all inventory subject to tax held by them on the last day of their most recently concluded income tax reporting year.

NEW SECTION. Section 32. Coordination instruction. If House Bill No. 193 is not passed and approved, then the bracketed language in [section 20] of [this act] is replaced with "to the school flexibility account, provided for in 20-9-542".

NEW SECTION. Section 33. Codification instruction. [Sections 6 through 11 and 17 through 26] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 6 through 11 and 17 through 26].

NEW SECTION. Section 34. Effective dates. (1) [Sections 17 through 26, 32, 33, 35, 36, and this section] are effective on passage and approval.

(2) [Sections 2 through 16, 27, and 31] are effective July 1, 2003.

(3) [Sections 1 and 28 through 30] are effective January 1, 2004.

NEW SECTION. Section 35. Applicability. (1) [Sections 2 through 11] apply to accommodation charges collected and rental vehicle receipts collected after June 30, 2003.

NEW SECTION. Section 36. Retroactive applicability. [Sections 17 through 26] apply retroactively, within the meaning of 1-2-109, to retail sales after December 31, 2002.

- END -