

HOUSE BILL NO. 79
INTRODUCED BY D. MCALPIN
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PERSONS WHO COLLECT AND REMIT TO THE DEPARTMENT OF REVENUE CERTAIN RETAIL EXCISE TAXES OR FEES TO REFUND TO THE CUSTOMERS FROM WHOM THE TAX OR FEE WAS COLLECTED THE AMOUNT OF OVERPAYMENTS REFUNDED BY THE DEPARTMENT; PROVIDING THAT REFUNDS OWED BY THE TAXPAYER TO CUSTOMERS MAY BE TREATED AS ABANDONED PROPERTY; AMENDING SECTIONS 10-4-205, 10-4-206, 10-4-207, 15-53-146, 15-53-150, 15-65-116, 15-68-513, AND 15-68-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 10-4-205, MCA, is amended to read:

"10-4-205. Refund to provider for excess payment of fee -- refund owed to customer. (1) ~~Subject to subsection (2), if the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest on the excess payment at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund as provided in 10-4-206.~~ A refund may not be made to a provider who fails to claim the refund within 5 years after the due date for filing of the return with respect to which the claim for refund relates.

(2) A refund made to the provider under this section must be refunded by the provider to the person from whom the fee was collected, as provided in 10-4-206(1)(b), or must be treated by the provider as provided in 10-4-206(4)."

Section 2. Section 10-4-206, MCA, is amended to read:

"10-4-206. Credit Refund for overpayment -- refund owed to customer -- interest on overpayment -- limitations. (1) ~~(a) Subject to subsection (1)(b), if the department of revenue determines that the amount of fee, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or the taxpayer's successor through reorganization, merger, or consolidation or to the taxpayer's shareholders~~

upon dissolution.

(b) Subject to subsection (4), the taxpayer or the taxpayer's successor or shareholders upon dissolution shall refund to the person or persons from whom the fee was collected the amount of the overpayment, including interest, if any, refunded by the department of revenue.

(2) Except as provided in subsection (3), interest ~~is allowed~~ paid by the department of revenue on overpayments must be at the same interest rate as is charged on deficiency assessments under 10-4-211 from the due date of the return or from the date of overpayment, whichever date is later, to the date the department of revenue ~~approves refunding or crediting of refunds~~ the overpayment to the taxpayer.

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

(b) ~~Interest~~ The department of revenue is not allowed required to pay interest if:

(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 tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

(4) The provisions of 70-9-803 related to money or credits owed to a customer as a result of a retail business transaction apply to a refund owed by the taxpayer to a person from whom the fee was collected. If the refund owed the person is presumed to be abandoned property, the refund is subject to the provisions of Title 70, chapter 9, part 8."

Section 3. Section 10-4-207, MCA, is amended to read:

"10-4-207. Statute of limitations. (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the fee, consents in writing to an assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund ~~or credit may~~ is not be allowed or paid with respect to the year for which a return is filed after

5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the taxpayer files a claim or the department of revenue determines the existence of the overpayment and approves the refund ~~or credit~~. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of revenue may propose an additional assessment, the period within which a claim for refund ~~or credit~~ may be filed or a ~~credit or~~ refund allowed if no claim is filed is automatically extended.

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

Section 4. Section 15-53-146, MCA, is amended to read:

"15-53-146. ~~Credit for Refund of overpayment -- refund owed to customer -- interest on overpayment -- limitations.~~ (1) ~~(a) If~~ Subject to subsection (1)(b), if the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of overpayment must be ~~credited against any tax, penalty, or interest then due from the taxpayer, with the balance being~~ refunded to the taxpayer or ~~its~~ to the taxpayer's successor through reorganization, merger, or consolidation; or ~~its~~ to the taxpayer's shareholders upon dissolution.

~~(b) Subject to subsection (4), the taxpayer or the taxpayer's successor or shareholders upon dissolution shall refund to the person or persons from whom the tax was collected the amount of the overpayment, including interest, if any, refunded by the department.~~

(2) Except as provided in subsection (3), interest ~~must be allowed~~ paid by the department on overpayments must be at the same rate as is charged on deficiency assessments under 15-1-216 due from the date of the return or from the date of overpayment, whichever date is later, to the date on which the department ~~approves crediting or refunding~~ refunds the payment to the taxpayer.

(3) (a) Interest ~~may~~ does not accrue during any period of processing a claim for a refund delayed more than 30 days by reason of failure of the taxpayer to provide information requested by the department for the purposes of verifying the amount of the overpayment.

(b) ~~Interest~~ The department is not allowed required to pay interest if:

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

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

(4) The provisions of 70-9-803 related to money or credits owed to a customer as a result of a retail business transaction apply to a refund owed by the taxpayer to a person from whom the tax was collected. If the refund owed the person is presumed to be abandoned property, the refund is subject to the provisions of Title 70, chapter 9, part 8."

Section 5. Section 15-53-150, MCA, is amended to read:

"15-53-150. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless a notice of additional tax proposed to be assessed is mailed within 5 years from the date on which the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered filed on the last day. If the taxpayer, before the expiration of the period prescribed for the assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund ~~or credit may~~ is not be allowed ~~or paid~~ with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period, the taxpayer files a claim for refund or the department has determined the existence of the overpayment and has approved the refund ~~or credit~~ of the overpayment. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund ~~or credit~~ may be filed or a refund ~~or credit~~ allowed if a claim is not filed is automatically extended.

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

Section 6. Section 15-65-116, MCA, is amended to read:

"15-65-116. ~~Credit for Refund of overpayment -- refund owed to customer -- interest on overpayment -- limitations.~~ (1) ~~(a) If Subject to subsection (1)(b), if~~ the department determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's

shareholders upon dissolution.

(b) Subject to subsection (4), the taxpayer or the taxpayer's successor or shareholders upon dissolution shall refund to the person or persons from whom the tax was collected the amount of the overpayment, including interest, if any, refunded by the department.

(2) Except as provided in subsection (3), interest ~~is allowed~~ paid by the department on overpayments must be at the same rate as 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 the department ~~approves refunding or crediting of refunds~~ the overpayment to the taxpayer.

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

(b) ~~Interest~~ The department is not allowed required to pay interest if:

(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 tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

(4) The provisions of 70-9-803 related to money or credits owed to a customer as a result of a retail business transaction apply to a refund owed by the taxpayer to a person from whom the tax was collected. If the refund owed the person is presumed to be abandoned property, then the refund is subject to the provisions of Title 70, chapter 9, part 8."

Section 7. Section 15-68-513, MCA, is amended to read:

"15-68-513. Examination of return -- adjustments -- penalty and interest -- refunds -- refund owed to purchaser -- 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 15-68-502 constitutes the tax to be paid.

(2) (a) 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 unless the taxpayer files a timely objection as provided in 15-1-211.

(b) Penalty and interest must be added to any deficiency assessment as provided in 15-1-216.

(3) ~~(a) If Subject to subsection (3)(b), 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. Interest on the refund must be paid as provided in 15-68-525.

(b) Subject to subsection (6), the taxpayer or the taxpayer's successor shall refund to the person or persons from whom the tax was collected the amount of the excess determined in subsection (3)(a), including interest, if any, refunded by the department, exclusive of the allowance authorized to be retained by the vendor as provided in 15-68-510.

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

(5) 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.

(6) The provisions of 70-9-803 related to money or credits owed to a customer as a result of a retail business transaction apply to a refund owed by the taxpayer to a person from whom the tax was collected. If the refund owed the person is presumed to be abandoned property, the refund is subject to the provisions of Title 70, chapter 9, part 8."

Section 8. Section 15-68-525, MCA, is amended to read:

"15-68-525. Refunds -- interest -- limitations -- refund owed to purchaser. (1) A claim for a refund ~~or credit~~ as a result of overpayment of taxes collected under this chapter 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 paid by the department on an overpayment must be paid ~~or credited~~ at the same rate as the rate charged on delinquent taxes under 15-1-216.

(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.

(3) A refund made to the taxpayer under this section, exclusive of the allowance authorized to be

retained by the vendor as provided in 15-68-510, must be refunded by the taxpayer to the person from whom the tax was collected, as provided in 15-68-513(3), or must be treated by the taxpayer as provided in 15-68-513(6)."

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 10. Applicability.** [This act] applies to refunds paid by the department of revenue after [the effective date of this act].

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