

SENATE BILL NO. 277
INTRODUCED BY C. KAUFMANN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A GROSS RECEIPTS TAX ON RETAIL SALES OF CONSUMER GOODS EQUAL TO OR IN EXCESS OF \$25 MILLION AT AN INDIVIDUAL LOCATION; ESTABLISHING THRESHOLDS FOR COMPENSATION AND PERCENTAGE OF FULL-TIME EMPLOYEES THAT CAUSE THE ESTABLISHMENT TO BE SUBJECT TO THE GROSS RECEIPTS TAX; PROVIDING FOR TAX RATES; DEPOSITING THE TAX PROCEEDS IN THE STATE GENERAL FUND AND THE STATE SPECIAL REVENUE FUND FOR HEALTH INSURANCE BENEFITS; PROVIDING FOR THE REPORTING, ADMINISTRATION, AND COLLECTION OF THE TAX; AMENDING SECTION 53-6-1201, MCA; 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) (a) "Consumer goods" has the meaning provided in 30-9A-102.
- (b) The term does not include farm implements, gasoline, electricity, or vehicles.
- (2) "Employee compensation package" means the annual total cost to an employer for:
 - (a) an employee's wages or salary;
 - (b) an employee's leave time, including vacation and sick leave;
 - (c) an employee's insurance, including employer contributions for health, life, and dental insurance;
 - (d) an employee's retirement plan, employer contributions required by the Federal Insurance Contributions Act, and employer contributions to employee savings, flexible spending, and similar plans; and
 - (e) similar employee benefits identified by the department by rule.
- (3) "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.
- (4) (a) "Gross receipts" means all receipts from retail sales from each taxable establishment within the state, whether in the form of money, credits, or other valuable consideration, received as a result of engaging in or conducting retail sales, 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 taxable 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 taxable establishment.

(5) "Retail sale" means any transfer of consumer goods for consideration for any purpose other than for resale, sublease, subrent, or use in a manufacturing process.

(6) "Taxable establishment" means a premises in which retail sales of consumer goods are offered to the general public and in which the retail sales are conducted by an employer:

(a) that provides each nonmanagement or nonprofessional, entry-level employee with an employee compensation package that is equivalent to less than \$23,000 a year for a full-time employee or a proportional reduction of that amount for a part-time employee; or

(b) with more than 50% of its employees, other than employees hired for a period of 90 days or less, scheduled to work less than 2,000 hours a year, which includes any paid annual leave, sick leave, medical leave, vacations, and holidays.

(7) "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 61-3-321, 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 consumer goods from a single taxable establishment that are equal to or greater than \$25 million each calendar year.

(2) The rate of tax on gross receipts that are equal to or greater than \$25 million is as follows:

(a) \$25 million to \$35 million, 1%;

(b) amounts in excess of \$35 million up to and including \$45 million, 1.5%; and

(c) amounts in excess of \$45 million, 2%.

NEW SECTION. Section 3. Returns -- payment -- authority of department. (1) Each person engaged in or conducting retail sales of consumer goods at a taxable establishment within this state that is subject to tax under [sections 1 through 10] shall file a return. Taxable establishments 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) For the purposes of reporting or paying the gross receipts tax, the taxable establishment and any agent of the taxable establishment 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 taxable establishment 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 who is authorized in writing to file the return.

(d) Pursuant to rules adopted 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 adopted 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) issue a warrant of distraint under 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 receipts tax proceeds must be

deposited, pursuant to 17-2-124, as follows:

- (1) 50% in the state general fund; and
- (2) 50% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201.

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 violation. 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 taxpayer 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 of 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 15-1-216.

(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.

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].

Section 11. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund -- health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(1)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); ~~and~~

(c) money from taxes on gross receipts deposited under [section 4(2)]; and

~~(e)(d)~~ any interest and income earned on the account.

(3) This Subject to subsection (4)(a), this account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits;

(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

(4) (a) ~~Except for \$1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that \$25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier~~ The money referred to in subsection (2)(c) must be used exclusively for the purposes described in subsections (3)(e) and (3)(f).

(b) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~— (c) Until the programs or credits described in subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).~~

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

NEW SECTION. Section 12. 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 13. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 14. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to retail sales after December 31, 2008.

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