

## SENATE BILL NO. 373

INTRODUCED BY D. BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING SELECTIVE SALES AND USE TAXES; REVISING  
5 DEFINITIONS UNDER THE LODGING FACILITY USE TAX AND CHANGING THE BASIS OF THE AMOUNT  
6 TAXED FROM THE AMOUNT COLLECTED BY THE FACILITY TO THE AMOUNT PAID BY THE USER OF  
7 ACCOMMODATIONS; REVISING THE DISTRIBUTION OF THE TAX PROCEEDS; AMENDING SECTIONS  
8 15-65-101, 15-65-111, 15-65-112, 15-65-113, 15-65-114, 15-65-115, 15-65-121, 15-68-401, AND 76-8-103,  
9 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

12  
13 **Section 1.** Section 15-65-101, MCA, is amended to read:

14 **"15-65-101. Definitions.** For purposes of this part, the following definitions apply:

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

18 (1) (a) "Accommodations" means a building or structure containing individual sleeping rooms or suites  
19 that provide overnight lodging for periods of less than 30 days to the general public for compensation.

20 (b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort,  
21 short-term rental, vacation rental, house, home, apartment, loft, dwelling, dormitory, condominium, inn, dude  
22 ranch, guest ranch, hostel, public lodginghouse, or bed and breakfast facility.

23 (c) The term does not include a health care facility, as defined in 50-5-101, any facility owned by a  
24 corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under 18 years of age for  
25 camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average  
26 daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under  
27 2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented  
28 solely on a monthly basis or for a period of 30 days or more.

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

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

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

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

9 ~~\_\_\_\_\_ (b) The term does not include any health care facility, as defined in 50-5-101, or any facility owned by~~  
 10 ~~a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years~~  
 11 ~~for camping purposes, any hotel, motel, hostel, public lodginghouse, or bed and breakfast facility whose average~~  
 12 ~~daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under~~  
 13 ~~2-18-501 for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented~~  
 14 ~~solely on a monthly basis or for a period of 30 days or more.~~

15 ~~(5)(4)~~ "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under  
 16 Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area,  
 17 or resort area district in which the bureau is located.

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

20 ~~(6)~~ "Purchaser" means a person to whom a sale of accommodations is made or to whom a service is  
 21 furnished.

22 ~~(6)(7)~~ "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana  
 23 law and recognized by the council as the entity for promoting tourism within one of several regions established  
 24 by executive order of the governor.

25 ~~(7)(8)~~ "Resort area" means an area established pursuant to 7-6-1508.

26 ~~(8)(9)~~ "Resort area district" has the meaning provided in 7-6-1501.

27 ~~(10) (a)~~ "Sales price" applies to the measure subject to tax and means the total amount of consideration,  
 28 including cash, credit, property, and services, for which personal property or services are sold, leased, or rented  
 29 or valued in money, whether received in money or otherwise, without any deduction for the following:

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

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

3 (b) The term does not include discounts, including cash, term, or coupons that are not reimbursed by  
 4 a third party that are allowed by a seller and taken by a purchaser on a sale.

5 (11) "Seller" means any person engaged in presenting, offering, or selling use of accommodations,  
 6 including but not limited to an owner, operator, agency, third-party online reservation seller, broker, service  
 7 provider, or other intermediary.

8 (12) "Third-party online reservation seller" means any person that sells goods or services with respect  
 9 to accommodations in a transaction and is not affiliated with the accommodations."

10

11 **Section 2.** Section 15-65-111, MCA, is amended to read:

12 **"15-65-111. Tax rate.** (1) There is imposed on the user of a facility accommodations a tax at a rate equal  
 13 to 4% of the accommodation charge collected by the facility sales price paid by the purchaser.

14 (2) ~~Accommodation charges do~~ The sales price does not include charges for rooms or facilities when  
 15 the rooms or facilities are used for purposes other than lodging individual sleeping rooms or suites intended for  
 16 sleeping."

17

18 **Section 3.** Section 15-65-112, MCA, is amended to read:

19 **"15-65-112. Collection and reporting.** (1) The ~~owner or operator~~ seller of a facility accommodations  
 20 shall collect the tax imposed by 15-65-111.

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

26 (3) The amount of tax required to be reported and paid by a third-party online reservation seller is the  
 27 tax on that portion of the sales price paid by the user that is retained by the third-party online reservation seller."

28

29 **Section 4.** Section 15-65-113, MCA, is amended to read:

30 **"15-65-113. Audits -- records.** (1) The department of revenue may audit the books and records of any

1 ~~owner or operator~~ seller to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An  
 2 audit may be done on the premises of the ~~owner or operator of a facility~~ seller or at any other convenient location.

3 (2) The department may request the ~~owner or operator of a facility~~ seller to provide the department with  
 4 books, ledgers, registers, or other documents necessary to verify the correct amount of tax.

5 (3) The ~~owner or operator of a facility~~ seller shall maintain and have available for inspection by the  
 6 department books, ledgers, registers, or other documents showing the ~~collection of accommodation charges~~ sales  
 7 price and tax collections for the preceding 5 years.

8 (4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false  
 9 or fraudulent return violating the provisions of this part, the amount of tax due under any return must be  
 10 determined by the department within 5 years after the return is made, and the department ~~thereafter~~ is barred  
 11 after that time from revising any such return or recomputing the tax due ~~thereon~~, and no proceeding in court for  
 12 the collection of the tax may be instituted unless notice of any additional tax is provided within ~~such~~ the period.

13 (5) An application for revision may be filed with the department by ~~an owner or operator of a facility a~~  
 14 seller within 5 years from the original due date of the return."

15

16 **Section 5.** Section 15-65-114, MCA, is amended to read:

17 "**15-65-114. ~~Registration number~~ Seller's permit -- application to department.** ~~(1) The owner or~~  
 18 ~~operator of a facility shall apply to the department of revenue for a registration number~~ seller of accommodations  
 19 shall obtain a seller's permit before engaging in business within the state, in accordance with 15-68-401.

20 ~~(2) The application must be made on a form provided by the department.~~

21 ~~————(3) Upon completion of the application and delivery of the application to the department, the department~~  
 22 ~~must assign a registration number to the owner, operator, or facility, as appropriate."~~

23

24 **Section 6.** Section 15-65-115, MCA, is amended to read:

25 "**15-65-115. Failure to pay or file -- penalty and interest -- review -- interest.** (1) ~~An owner or operator~~  
 26 ~~of a facility~~ A seller who fails to file the report as required by 15-65-112 must be assessed a penalty as provided  
 27 in 15-1-216. The department may waive any penalty as provided in 15-1-206.

28 (2) ~~An owner or operator of a facility~~ A seller who fails to make payment or fails to report and make  
 29 payment as required by 15-65-112 must be assessed penalty and interest as provided in 15-1-216. The  
 30 department may waive any penalty pursuant to 15-1-206.

1           (3) (a) If ~~an owner or operator of a facility~~ a seller fails to file the report required by 15-65-112 or if the  
 2 department determines that the report understates the amount of tax due, the department may determine the  
 3 amount of the tax due and assess that amount against the ~~owner or operator~~ seller. The provisions of 15-1-211  
 4 apply to any assessment by the department. The ~~taxpayer~~ seller may seek review of the assessment pursuant  
 5 to 15-1-211.

6           (b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and  
 7 demand for payment to the ~~owner or operator~~ seller. Penalty and interest must be added to any deficiency  
 8 assessment as provided in 15-1-216."

9

10           **Section 7.** Section 15-65-121, MCA, is amended to read:

11           "**15-65-121. Distribution of tax proceeds.** (1) The proceeds of the tax imposed by 15-65-111 and  
 12 collected from a seller who operates accommodations in Montana ~~must~~, in accordance with the provisions of  
 13 17-2-124, must be deposited in an account in the state special revenue fund to the credit of the department. The  
 14 department may spend from that account in accordance with an expenditure appropriation by the legislature  
 15 based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the  
 16 balance of the tax proceeds in accordance with the provisions of 17-2-124 and as provided in subsections ~~(2)(a)~~  
 17 (3)(a) through ~~(2)(f)~~ (3)(f) of this section, the department shall determine the expenditures by state agencies for  
 18 in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each  
 19 reporting period. The department shall distribute the portion of the 4% that was paid with federal funds to the  
 20 agency that made the in-state lodging expenditure and deposit 30% of the amount deducted less the portion paid  
 21 with federal funds in the state general fund. The amount of \$400,000 each year must be deposited in the Montana  
 22 heritage preservation and development account provided for in 22-3-1004.

23           (2) The proceeds of the tax imposed by 15-65-111 collected and remitted by a third-party online  
 24 reservation seller must be deposited into the state general fund.

25           ~~(2)(3)~~ (3) The balance of the tax proceeds received each reporting period and not deducted pursuant to the  
 26 expenditure appropriation, deposited in the state general fund, distributed to agencies that paid the tax with  
 27 federal funds, or deposited in the heritage preservation and development account must be transferred to an  
 28 account in the state special revenue fund to the credit of the department of commerce for tourism promotion and  
 29 promotion of the state as a location for the production of motion pictures and television commercials, to the  
 30 Montana historical interpretation state special revenue account, to the Montana historical society, to the university

1 system, and to the department of fish, wildlife, and parks, as follows:

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

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

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

8 (d) 64.9% to be used directly by the department of commerce;

9 (e) (i) except as provided in subsection ~~(2)(e)(ii)~~ (3)(e)(ii), 22.5% to be distributed by the department to  
10 regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total  
11 proceeds collected statewide; and

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

17 (f) 2.6% to the Montana historical interpretation state special revenue account established in 22-3-115.

18 ~~(3)(4)~~ If a city, consolidated city-county, resort area, or resort area district qualifies under this section for  
19 funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an  
20 annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit  
21 tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is  
22 located.

23 ~~(4)(5)~~ If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing  
24 plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation  
25 may be used by the department of commerce for tourism promotion and promotion of the state as a location for  
26 the production of motion pictures and television commercials.

27 ~~(5)(6)~~ The tax proceeds received that are transferred to a state special revenue account pursuant to  
28 subsections ~~(2)(a)~~ (3)(a) through ~~(2)(e)~~ (3)(e) are statutorily appropriated to the entities as provided in 17-7-502.

29 (6) The tax proceeds received that are transferred to the Montana historical interpretation state special  
30 revenue account pursuant to subsection ~~(2)(f)~~ (3)(f) are subject to appropriation by the legislature."

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2           **Section 8.** Section 15-68-401, MCA, is amended to read:

3           "**15-68-401. Seller's permit.** (1) A person that wishes to engage in business within this state that is  
4 subject to ~~this chapter~~ Title 15, chapter 65 or 68, shall obtain a seller's permit before engaging in business within  
5 this state.

6           (2) Upon an applicant's compliance with ~~this chapter~~ Title 15, chapter 65 or 68, the department shall  
7 issue to the applicant a separate, numbered seller's permit for each location in which the applicant maintains an  
8 office or other place of business within Montana. A permit is valid until revoked or suspended but is not  
9 assignable. A permit is valid only for the person in whose name it is issued and for the transaction of business  
10 at the place designated. The permit must be conspicuously displayed at all times at the place for which it is  
11 issued.

12           (3) The department shall adopt rules to provide procedures for application for and provision of a seller's  
13 permit to a person engaging in business within this state that is subject to this chapter for renting  
14 accommodations and campgrounds ~~prior to June 1, 2003, and renting vehicles prior to July 1, 2003.~~ The rules  
15 adopted by the department must ensure that each person engaging in business within this state for renting  
16 accommodations and campgrounds ~~prior to June 1, 2003, and renting vehicles prior to July 1, 2003,~~ is issued  
17 a seller's permit for renting accommodations and campgrounds ~~prior to June 1, 2003, and renting vehicles prior~~  
18 ~~to July 1, 2003.~~ The department may adopt rules providing for seasonal permits."

19

20           **Section 9.** Section 76-8-103, MCA, is amended to read:

21           "**76-8-103. Buildings for lease or rent -- exemptions.** (1) A building created for lease or rent on a  
22 single tract is exempt from the provisions of this part if:

23           (a) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76,  
24 chapter 2, parts 1 through 3, provided that the zoning contains the elements of 76-8-107; or

25           (b) when applicable zoning regulations are not in effect:

26           (i) the building was in existence or under construction before September 1, 2013;

27           (ii) the building ~~is a facility~~ provides accommodations as defined in 15-65-101 that is subject to the lodging  
28 facility use tax under Title 15, chapter 65, except for recreational camping vehicles or mobile home parks;

29           (iii) the building is created for lease or rent for farming or agricultural purposes;

30           (iv) the building is not served by water and wastewater and will not be leased or rented;

1 (v) the building is served by water and wastewater and the landowner records a notarized declaration  
 2 with the clerk and recorder of the county in which the property is located stating that the proposed building will  
 3 not be leased or rented. The declaration recorded pursuant to this subsection (1)(b)(v) runs with the land and is  
 4 binding on the landowner and all subsequent landowners and successors in interest to the property. The  
 5 declaration must include but is not limited to:

- 6 (A) the name and address of the landowner;
- 7 (B) a legal description of the tract upon which the proposed building will be located; and
- 8 (C) a specific description of the building on the tract of record.

9 (2) Any building that is exempt under subsection (1) from the provisions of this part and that is or will be  
 10 served by water or wastewater must be in compliance with the provisions of 76-8-106.

11 (3) The exemption provided in subsection (1)(b)(i) is limited to the first three buildings created for lease  
 12 or rent on a single tract."

13

14 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

15

16 NEW SECTION. **Section 11. Applicability.** [This act] applies to the accommodations sales price paid  
 17 by a purchaser or user to a seller or third-party online reservation seller after May 31, 2017.

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- END -