



AN ACT REVISING THE LODGING FACILITY USE TAX AND THE SALES TAX ON LODGING AND RENTAL CARS; ALIGNING DEFINITIONS FOR THE LODGING FACILITY USE TAX AND THE SALES TAX ON LODGING; REQUIRING REGISTRATION AND COLLECTION BY SHORT-TERM RENTAL MARKETPLACES; AND AMENDING SECTIONS 15-65-101, 15-65-111, 15-65-112, 15-65-113, 15-65-114, 15-65-115, 15-68-101, 15-68-502, AND 76-8-103, MCA; AND PROVIDING AN APPLICABILITY DATE.

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

Section 1. 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.~~

~~(1)~~ (1) "Accommodations" has the meaning provided in 15-68-101.

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

~~(4) (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, or any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the 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)(3)~~ "Indian tourism region" includes the area recognized as being historically associated with the seven federally recognized reservations in Montana and the Little Shell Chippewa tribe.

~~(6)(4)~~ "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.

(5) "Person" has the meaning provided in 15-68-101.

(6) "Purchaser" has the meaning provided in 15-68-101.

(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.

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

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

(10) "Sales price" has the meaning provided in 15-68-101.

(11) "Seller" has the meaning provided in 15-68-101.

(12) "Short-term rental marketplace" has the meaning provided in 15-68-101."

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

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

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

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

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

(2) The ~~owner or operator~~ seller 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 sales price paid by the purchaser. 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)~~ this section. "

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

"15-65-113. Audits -- records. (1) The department of revenue may audit the books and records of any ~~owner or operator~~ seller to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An audit may be done on the premises of the ~~owner or operator of a facility~~ seller or at any other convenient location.

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

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

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

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

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

"15-65-114. ~~Registration number~~ Seller's permit -- application to department -- collection by short-term rental marketplace. (1) ~~The owner or operator of a facility shall apply to the department of revenue for a registration number.~~

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

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

(1) Before engaging in business within the state, a seller of accommodations must obtain a seller's permit in accordance with 15-68-401.

(2) A short-term rental marketplace shall register with the department of revenue and collect the tax imposed by this chapter as provided in [section 8]."

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

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

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

(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 department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the ~~owner or operator~~ seller. The provisions of 15-1-211 apply to any assessment by the department. The ~~taxpayer~~ seller may seek review of the assessment pursuant to 15-1-211.

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

Section 7. Section 15-68-101, MCA, is amended to read:

"15-68-101. Definitions. For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Accommodations" means ~~a building or structure containing individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation~~ short-term rentals or individual sleeping rooms, suites, camping spaces, or other units offered for overnight lodging periods of less than 30 days to the general public for compensation.

(b) Accommodations ~~includes a facility~~ include units located in property 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,~~ vacation home, home, apartment, timeshare, room, or rooms rented by or on behalf of the owner or seller.

(c) The term does not include:

(i) a health care facility, as defined in 50-5-101;

(ii) any facility owned by a corporation organized under Title 35, chapter 2 or 3;

(iii) a facility that is used primarily by persons under 18 years of age for camping purposes; ~~or 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~~

(iv) rooms or spaces offered separately to the general public for nonlodging purposes, including meeting, conference, or banquet spaces.

(2) ~~(a) "Admission" means payment made for the privilege of being admitted to a facility, place, or event.~~

~~(b) The term does not include payment for admittance to a movie theater or to a sporting event sanctioned by a school district, college, or university.~~

~~(3)~~(2) (a) "Base rental charge" means the following:

(i) charges for time of use of the rental vehicle and mileage, if applicable;

(ii) charges accepted by the renter for ~~personal accident~~ insurance;

(iii) charges for additional drivers or underage drivers; ~~and~~ and

(iv) charges for child safety restraints, luggage racks, ski racks, or other accessory equipment for the rental vehicle.

(b) The term does not include:

~~(i) rental vehicle price discounts allowed and taken;~~

~~(ii)(i) rental vehicle price discounts allowed and taken;~~

~~(ii) rental charges or other charges or fees imposed on the rental vehicle owner or operator for the privilege of operating as a concessionaire at an airport terminal building;~~

~~(iii)(iii) motor fuel;~~

~~(iv)(iv) intercity rental vehicle drop charges; or~~

~~(v)(v) taxes imposed by the federal government or by state or local governments.~~

~~(4)(3) (a) "Campground" means a place 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.

~~(5)(4) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.~~

~~(6) (a) "Lease", "leasing", or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.~~

~~(b) Lease or rental includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property, as defined in 26 U.S.C. 7701(h)(1).~~

~~(c) The term does not include:~~

~~(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;~~

~~(ii) a transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100~~

~~or 1% of the total required payments; or~~

~~(iii) providing tangible personal property with an operator if an operator is necessary for the equipment to perform as designed and not just to maintain, inspect, or set up the tangible personal property.~~

~~(d) This definition must be used for sales tax and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Montana Uniform Commercial Code, or other provisions of federal, state, or local law.~~

~~(e) This definition must be applied only prospectively from the date of adoption and has no retroactive impact on existing leases or rentals.~~

~~(7)(5)~~ (a) "Motor vehicle" means:

~~(i)~~ a light vehicle as defined in 61-1-101;_i

~~(ii)~~ a motorcycle as defined in 61-1-101;_i

~~(iii)~~ a motor-driven cycle as defined in 61-1-101;_i

~~(iv)~~ a quadricycle as defined in 61-1-101;_i

~~(v)~~ a motorboat or a sailboat as defined in 23-2-502;_i or

~~(vi)~~ an off-highway vehicle as defined in 23-2-801 that:

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

~~(ii)(B)~~ is rented without a driver, pilot, or operator; and

~~(iii)(C)~~ is designed to transport 15 or fewer passengers.

(b) Motor vehicle includes:

(i) a rental vehicle rented pursuant to a contract for insurance; and

(ii) a truck, trailer, or semitrailer that has a gross vehicle weight of less than 22,000 pounds, that is rented without a driver, and that is used in the transportation of personal property.

(c) The term does not include farm vehicles, machinery, or equipment.

(6) "Online hosting platform" means any person that provides an online application, software, website, or system through which a seller may advertise, rent, or furnish accommodations or rental vehicles, and through which a purchaser may arrange for use of those accommodations or the use or lease of rental vehicles. Online hosting platforms include any online travel company or third-party reservation intermediary that facilitates the sale or use of accommodations or rental vehicles.

~~(8) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.~~

~~(9)(7)~~ "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, online hosting platform, or any other legal entity.

~~(10)(8)~~ "Purchaser" means a person to whom a sale of personal property accommodations or a rental vehicle is made or to whom a service is furnished.

~~(11)(9)~~ "Rental vehicle" means a motor vehicle that is used for or by a person other than the owner of the motor vehicle through an arrangement and for consideration.

~~(12)(10)~~ "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

~~(13)(11)~~ "Sale" or "selling" means the ~~transfer~~ rental or use of property accommodations or rental vehicles for consideration or the performance of a service for consideration.

~~(14)(12)~~ (a) "Sales price" applies to the measure subject to ~~sales~~ the tax under Title 15, chapter 65, and this chapter and means the total amount ~~or paid by the purchaser in the form of~~ consideration, including cash, credit, property, and services, for which ~~personal property or sales of accommodations, rental vehicles, or~~ services are provided, sold, leased, or rented or valued in money, whether received in money or otherwise, without any deduction for the following:

- (i) the seller's cost of the property sold;
- (ii) the cost of materials used, labor or service costs, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (iii) charges by the seller for any services necessary to complete the sale, ~~other than delivery and installation charges;~~
- (iv) delivery charges; or
- (v) installation charges;
- ~~(vi) the value of exempt personal property given to the purchaser when taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and~~
- ~~(vii) credit for any trade-in.~~

(b) The amount received for charges listed in subsections ~~(14)(a)(iii)~~ (12)(a)(ii) through ~~(14)(a)(vii)~~ (12)(a)(v) are excluded from the sales price if they are separately stated on the invoice, billing, or similar

document given to the purchaser and the charge is not subject to subsection (12)(d).

~~(c) The term does not include:~~

~~(i) discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;~~

~~(ii) interest, financing, and carrying charges from credit extended on the sale of personal property or services if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or~~

~~(iii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.~~

~~(d) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.~~

~~(e) When the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.~~

(c) The term does not include:

(i) charges for meals, transportation, entertainment, or any other similar charges; or

(ii) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

~~(e)(d)~~ Unless specifically excluded, sales price includes any separate charge or fee that a purchaser must pay to facilitate the sale or rental of the accommodations or rental vehicle, including a fee or a service, commission, or other charge by an online hosting platform.

~~(15)(13)~~ "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102.

~~(16)(14)~~ "Seller" means a person that ~~makes sales, leases, or rentals of personal property or services~~ makes sales of accommodations or rental vehicles, including an online hosting platform.

~~(17)(15)~~ (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of ~~property~~ accommodations or rental vehicles. Service includes

activities performed by ~~a person for its members or shareholders~~ an online hosting platform.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(16) "Short-term rental" means any individually or collectively owned single-family house or dwelling unit or any unit or group of units in a condominium, cooperative, or timeshare, or owner-occupied residential home that is offered for a fee for 30 days or less.

(17) "Short-term rental marketplace" means a person that provides a platform through which a seller or the authorized agent of the seller offers a short-term rental to an occupant.

(18) "Timeshare" means any facility for which multiple parties or individuals own a right to use the facility, for lodging purposes, and these parties or individuals do not hold claim to ownership of the physical property.

~~(18) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business."~~

Section 8. Short-term rental marketplace registration -- collection of tax. (1) A short-term rental marketplace shall register with the department of revenue for collection, reporting, and payment of the tax provided for in Title 15, chapter 65, and this chapter on short-term rentals due from sellers on any sale facilitated by the short-term rental marketplace.

(2) A short-term rental marketplace shall collect, report, and pay taxes imposed by Title 15, chapter 65, and this chapter.

(3) The tax collected under Title 15, chapter 65, and this chapter, is on the sales price, as defined in 15-68-101.

(4) Unless approved to do otherwise by the department, a short-term rental marketplace selling accommodations at two or more short-term rentals shall file a separate return for each separate short-term rental if each separate short-term rental is in a different city, county, or tourism region.

Section 9. Section 15-68-502, MCA, is amended to read:

"15-68-502. Returns -- payment -- authority of department. (1) (a) Except as provided in

subsection (2), on or before the last day of the month following the calendar quarter in which the transaction subject to the tax imposed by this chapter occurred, a return, on a form provided by the department, and payment of the tax for the preceding quarter must be filed with the department.

(b) Each person engaged in business within this state or using property or services within this state that are subject to tax under this chapter shall file a return.

(c) A person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(2) A person who has been issued a seasonal seller's permit shall file a return and pay the tax on the date or dates set by the department.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a retailer required to collect the tax; and

(ii) a person that:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by this chapter shall keep records, render statements, make returns, and comply with the provisions of this chapter 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 this chapter, 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.
- (5) Pursuant to rules established by the department, returns may be computer-generated and electronically filed."

Section 10. Section 76-8-103, MCA, is amended to read:

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

- (a) the building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of 76-8-107; or
- (b) when applicable zoning regulations are not in effect:
 - (i) the building was in existence or under construction before September 1, 2013;
 - (ii) the building ~~is a facility~~ provides accommodations as defined in ~~45-65-104~~ 15-68-101 that ~~is~~ are subject to the lodging facility use tax under Title 15, chapter 65, except for recreational camping vehicles or mobile home parks;
 - (iii) the building is created for lease or rent for farming or agricultural purposes;
 - (iv) the building is not served by water and wastewater and will not be leased or rented;
 - (v) the building is served by water and wastewater and the landowner records a notarized declaration with the clerk and recorder of the county in which the property is located stating that the proposed building will not be leased or rented. The declaration recorded pursuant to this subsection (1)(b)(v) runs with the land and is binding on the landowner and all subsequent landowners and successors in interest to the property. The declaration must include but is not limited to:
 - (A) the name and address of the landowner;
 - (B) a legal description of the tract upon which the proposed building will be located; and
 - (C) a specific description of the building on the tract of record.

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

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

Section 11. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

Section 12. Codification instruction. [Section 8] is intended to be codified as an integral part of Title 15, chapter 68, and the provisions of Title 15, chapter 68, apply to [section 8].

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. Applicability. [This act] applies to sales made on or after October 1, 2021.

- END -

I hereby certify that the within bill,
SB 52, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2021.

Speaker of the House

Signed this _____ day
of _____, 2021.

SENATE BILL NO. 52

INTRODUCED BY J. ELLSWORTH

BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

AN ACT REVISING THE LODGING FACILITY USE TAX AND THE SALES TAX ON LODGING AND RENTAL CARS; ALIGNING DEFINITIONS FOR THE LODGING FACILITY USE TAX AND THE SALES TAX ON LODGING; REQUIRING REGISTRATION AND COLLECTION BY SHORT-TERM RENTAL MARKETPLACES; AND AMENDING SECTIONS 15-65-101, 15-65-111, 15-65-112, 15-65-113, 15-65-114, 15-65-115, 15-68-101, 15-68-502, AND 76-8-103, MCA; AND PROVIDING AN APPLICABILITY DATE.