

HOUSE BILL NO. 147  
INTRODUCED BY M. JOPEK  
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING CERTAIN PROVISIONS OF THE RESORT TAX, LODGING FACILITY USE TAX, AND THE SALES AND USE TAX; REVISING THE DEFINITION OF "FACILITY" FOR THE LODGING FACILITY USE TAX AND THE DEFINITION OF "ACCOMMODATIONS" FOR THE SALES AND USE TAX; CLARIFYING THE DETERMINATION OF ACCOMMODATION CHARGES THAT ARE SUBJECT TO THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX; CLARIFYING THE DETERMINATION OF THE BASE RENTAL CHARGES THAT ARE SUBJECT TO THE SALES AND USE TAX; PROVIDING THAT THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX ON ACCOMMODATION CHARGES AND BASE RENTAL CHARGES APPLY TO CERTAIN CHARGES IMPOSED BY INTERMEDIARIES; REQUIRING THAT THE LODGING FACILITY USE TAX AND THE SALES AND USE TAX BE INTERPRETED AND ADMINISTERED TOGETHER; PROHIBITING RESORT COMMUNITIES, RESORT AREAS, AND RESORT AREA DISTRICTS FROM REQUIRING AN INTERMEDIARY TO COLLECT THE RESORT TAX; AMENDING SECTIONS 7-6-1502, 7-6-1505, 15-65-101, 15-65-102, 15-65-111, 15-65-112, 15-65-113, 15-65-114, 15-65-115, 15-68-101, 15-68-110, 15-68-210, 15-68-402, 15-68-501, 15-68-502, 15-68-510, 15-68-512, AND 15-68-516, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 7-6-1502, MCA, is amended to read:

**"7-6-1502. Resort community taxing authority -- specific delegation -- limitation.** (1) As required by 7-1-112 and subject to subsection (2), 7-6-1501 through 7-6-1507 specifically delegate to the electors of each respective resort community the power to authorize their municipality to impose a resort tax within the corporate boundary of the municipality as provided in 7-6-1501 through 7-6-1507.

(2) The power delegated in subsection (1) does not include the power to require an intermediary, as defined in 15-65-101 or 15-68-101, to collect or remit the resort tax."

**Section 2.** Section 7-6-1505, MCA, is amended to read:

**"7-6-1505. Resort tax administration -- intermediary not required to collect tax.** (1) In this section, "governing body" means:

(a) the governing body of a resort community;

(b) if the resort tax has been approved by the electors of a resort area, the board of county commissioners; or

(c) if the electors of the resort area establish a resort area district, the district board of directors.

(2) Not less than 30 days prior to the date that the resort tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the resort taxes. This administrative ordinance may be amended at any time as may be necessary to effectively administer the resort tax.

(3) The administrative ordinance must specify:

(a) the times that taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the resort tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of resort taxes and the methods and procedures to be used in enforcing the collection of resort taxes due; and

(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of \$1,000 or 6 months' imprisonment, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of resort taxes, not to exceed 50% of the resort taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of goods and services that are subject to the resort tax consistent with 7-6-1503;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the resort taxes collected to defray their costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the resort tax payment received from them by the governing body 10 days prior to the collection due date established by the administrative ordinance.

(c) other administrative details necessary for the efficient and effective administration of the tax.

(5) The governing body of a resort area or the board of county commissioners on behalf of a resort district may not require an intermediary, as defined in 15-65-101 or 15-68-101, to collect or remit the resort area tax."

**Section 3.** Section 15-65-101, MCA, is amended to read:

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

(1) ~~(a)~~ "Accommodation charge" means the fee charged ~~by the owner or operator of a facility to the user~~ for use of ~~the a~~ facility located in the state for lodging;

(b) Accommodation charge includes amounts charged to the user for reserving use of the facility, processing the reservation, or providing any other service, including bath house facilities, in connection with a user's use of the facility for lodging.

~~(c) but excluding~~ The term does not include separately stated charges for meals, transportation, entertainment, or any other similar charges unrelated to a user's use of the facility for lodging or charges for rooms used for purposes other than lodging.

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

(4) (a) "Facility" means a building or structure containing one or more individual sleeping rooms or suites; ~~providing that provides~~ overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) The term includes a facility or accommodations represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, timeshare available for rental, vacation home rental, or bed and breakfast facility.

(c) For the purposes of administering the tax on accommodation charges imposed under Title 15, chapter 68, and the tax imposed on accommodation charges under this part, facility has the same meaning as accommodations, as defined in 15-68-101.

~~(b)(d)~~ The term does not include:

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

(ii) 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;

(iii) 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

(iv) any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Intermediary" means a person, other than the owner or operator of the facility, who collects an accommodation charge from a user.

~~(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.

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

**Section 4.** Section 15-65-102, MCA, is amended to read:

**"15-65-102. Rulemaking authority.** The department of revenue shall adopt such rules as that may be necessary to implement and administer this part. Unless otherwise specifically provided by law, the provisions of Title 15, chapter 68, and this part must be interpreted and administered together. The department shall adopt rules and provide a single form for reporting taxes imposed under Title 15, chapter 68, and this part."

**Section 5.** Section 15-65-111, MCA, is amended to read:

**"15-65-111. Tax rate -- no advertising to absorb or refund tax.** (1) There is imposed on the user of a facility a tax at a rate equal to 4% of the accommodation charge collected from the user by the owner or operator of the facility or by an intermediary.

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging. A person may not advertise, hold out, or state to the public or to any user that the tax imposed under this section

will be absorbed or refunded."

**Section 6.** Section 15-65-112, MCA, is amended to read:

**"15-65-112. Collection and reporting.** (1) ~~The owner or operator of a facility~~ Except as provided in subsection (2), a person who collects an accommodation charge from a user shall:

(a) collect the ~~tax~~ taxes imposed by 15-65-111 and 15-68-102-; and

(b) on or before the end of the calendar month following the end of each calendar quarter:

~~(2) The owner or operator shall~~

(i) report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that the 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) and any additional information that the department requires; and

(ii) remit to the department with the report described in subsection (1)(b)(i) the taxes collected on accommodation charges during the calendar quarter.

(2) (a) Except as provided in subsection (2)(b), a report is not required for a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility described in 15-65-101(4)(d)(iii).

(b) The owner or operator of a facility described under subsection (2)(a) shall annually report, at a time prescribed by the department, the information that the department requests to verify the average daily accommodation charge."

**Section 7.** Section 15-65-113, MCA, is amended to read:

**"15-65-113. Audits -- records -- revision of return.** (1) ~~The department of revenue~~ may audit the books and records of ~~any an~~ an owner or operator of a facility or an intermediary 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<sub>1</sub> or operator<sub>1</sub> of ~~a facility or intermediary~~ or at any other convenient location.

(2) The department may request the owner or operator of a facility or an intermediary to provide the department with books, ~~ledgers, registers papers, records, memoranda,~~ or other documents ~~necessary to verify the correct amount of tax as provided in 15-68-502(4).~~

(3) ~~The~~ Each owner or operator of a facility or intermediary shall maintain and have available for inspection by the department books, ~~ledgers, registers papers, records, memoranda,~~ or other documents showing

the collection of accommodation charges 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~~ After the 5-year period, the department may not revise the return or recomputing ~~recompute~~ the tax due ~~thereon, on the return, and no~~ A proceeding in court for the collection of the tax may not be instituted unless notice of any additional tax is provided within ~~such~~ the 5-year period.

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

**Section 8.** Section 15-65-114, MCA, is amended to read:

**"15-65-114. Registration number -- application to department.** (1) ~~The owner or operator of a facility~~ Each person that collects an accommodation charge from a user shall apply to the department of revenue for a registration number obtain a permit as provided in 15-68-402.

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

~~(3)~~(2) Upon completion of ~~the application~~ and delivery of the permit application to the department, the department ~~must~~ shall assign a registration number to the owner, operator, ~~or~~ facility, or intermediary, as appropriate."

**Section 9.** Section 15-65-115, MCA, is amended to read:

**"15-65-115. Failure to pay or file -- penalty and interest -- review -- interest application of sales and use tax provisions.** (1) ~~An owner or operator of a facility 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 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 or an intermediary 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 or the intermediary. The

provisions of ~~15-1-211~~ 15-68-513, 15-68-514, and 15-68-516 apply to any assessment and collection of delinquent taxes by the department and to taxpayer objections and rights. ~~The taxpayer may seek review of the assessment pursuant to 15-1-211.~~

~~(b)(2)~~ 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 or intermediary. ~~Penalty and interest must be added to any deficiency assessment as provided in 15-1-216."~~

**Section 10.** 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 one or more individual sleeping rooms or suites that provides overnight lodging facilities for periods of less than 30 days to the general public for compensation.

(b) Accommodations includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodginghouse, timeshare available for rental, vacation home rental, or bed and breakfast facility.

(c) For the purposes of administering the tax imposed on accommodation charges under Title 15, chapter 65, and the tax imposed on accommodation charges under this chapter, accommodations has the same meaning as facility, as defined in 15-65-101.

~~(e)(d)~~ 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, that is used primarily by persons under 18 years of age for camping purposes;

(iii) 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

(iv) any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(2) "Accommodation charge" has the meaning provided in 15-65-101.

~~(2)(3)~~ (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)~~(4) (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
- (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) rental charges or other charges or fees imposed on the ~~rental vehicle~~ owner or operator of the rental vehicle business for the privilege of operating as a concessionaire at an airport terminal building;
- (iii) motor fuel;
- (iv) intercity rental vehicle drop charges; or
- (v) taxes imposed by the federal government or by state or local governments.

~~(4)~~(5) (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~~ has the meaning provided in 15-65-101.

~~(5)~~(6) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of receiving direct or indirect benefit.

(7) "Intermediary" means any person, other than the owner or operator of the accommodations or the owner or operator of a rental vehicle business, who collects an accommodation charge from a user or base rental charge from a purchaser, or both.

~~(6)~~(8) (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)~~(9) (a) "Motor vehicle" means a light vehicle as defined in 61-1-101, a motorcycle as defined in 61-1-101, a motor-driven cycle as defined in 61-1-101, a quadricycle as defined in 61-1-101, a motorboat or a sailboat as defined in 23-2-502, or an off-highway vehicle as defined in 23-2-801 that:

- (i) is rented for a period of not more than 30 days;
- (ii) is rented without a driver, pilot, or operator; and
- (iii) 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.

~~(8)~~(10) "Permit" or "seller's permit" means a seller's permit as described in 15-68-401.

~~(9)~~(11) "Person" means an individual, estate, trust, fiduciary, corporation, partnership, limited liability company, limited liability partnership, or any other legal entity.

~~(10)~~(12) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

~~(11)~~(13) "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)~~(14) "Retail sale" means any sale, lease, or rental for any purpose other than for resale, sublease,

or subrent. The term includes an intermediary's collection of an accommodation charge from a user and an intermediary's collection of a base rental charge from a purchaser.

~~(13)~~(15) "Sale" or "selling" means the transfer of property for consideration or the performance of a service for consideration.

~~(14)~~(16) (a) "Sales price" applies to the measure subject to sales tax and, except as provided in subsections (16)(c) and (16)(d), means the total amount or consideration, including cash, credit, property, and services, for which personal property or services are 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;
  - (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)~~ (16)(a)(iii) through ~~(14)(a)(vii)~~ (16)(a)(vii) are excluded from the sales price if they are separately stated on the invoice, billing, or similar document given to the purchaser.

(c) When an intermediary collects an accommodation charge from a user, sales price means the accommodation charge.

(d) When an intermediary collects a base rental charge from a purchaser, sales price means the base rental charge.

~~(e)~~(e) 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)~~(f) 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)~~(g) 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.

~~(15)~~(17) "Sales tax" and "use tax" mean the applicable tax imposed by 15-68-102 and, in the case of accommodations, the tax imposed by 15-65-111.

~~(16)~~(18) "Seller" means a person that makes sales, leases, or rentals of personal property or services. The term includes an intermediary that collects an accommodation charge from a user or a base rental charge from a purchaser, or both.

~~(17)~~(19) (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. Service includes activities performed by a person for its members or shareholders.

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

~~(18)~~(20) "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.

(21) "User" means a purchaser to whom the use of accommodations is provided."

**Section 11.** Section 15-68-110, MCA, is amended to read:

**"15-68-110. Collection of sales tax and use tax -- listing of business locations and agents -- severability.** (1) A person engaging in the business of selling property or services subject to taxation under this chapter shall collect the sales tax from the purchaser and pay the sales tax collected to the department.

(2) A person engaging in business within this state shall, before making any sales subject to this chapter, obtain a seller's permit, as provided in 15-68-401, and at the time of making a sale, whether within or outside the state, collect the sales tax imposed by 15-68-102 from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the sales tax paid.

(3) The department may authorize the collection of the sales tax imposed by 15-68-102 by any ~~retailer~~ person who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law. When authorized, the person shall collect the use tax upon all property and services that, to the person's knowledge, are for use within this state and subject to taxation under this chapter.

(4) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under this chapter constitute a debt owed to this state by the person required to collect the sales tax and use tax.

(5) A person engaging in business within this state that is subject to this chapter shall provide to the department:

- (a) the names and addresses of all of the person's agents operating within this state; and
- (b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of business within this state.

(6) If any application of this section is held invalid, the application to other situations or persons is not affected."

**Section 12.** Section 15-68-210, MCA, is amended to read:

**"15-68-210. Nontaxability -- lease for subsequent lease.** (1) Except as provided in subsection (2), the lease of property is nontaxable if:

- ~~(1)~~(a) the lease is made to a lessee who delivers a nontaxable transaction certificate; and
- ~~(2)~~(b) the lessee does not use the property in any manner other than for subsequent lease in the ordinary course of business.

(2) An intermediary's collection of an accommodation charge from a user or a base rental charge from a purchaser is taxable."

**Section 13.** Section 15-68-402, MCA, is amended to read:

**"15-68-402. Permit application -- requirements -- place of business -- form.** (1) (a) A person that wishes to engage in the business of making retail sales or providing services in Montana, collecting accommodation charges for accommodations located in Montana, or collecting base rental charges for vehicles located in Montana that are subject to this chapter shall file with the department an application for a permit. If the person has more than one location in which the person maintains an office or other place of business, an application may include multiple locations.

(b) ~~An~~ Except as provided in subsection (1)(c), an applicant who does not maintain an office or other place of business ~~and in the state or~~ who moves from place to place is considered to have only one place of business and shall attach the permit to the applicant's cart, stand, truck, or other merchandising device.

(c) An intermediary who does not maintain an office or other place of business in the state shall provide a copy of the permit on request of the department or any user or purchaser.

(2) Each person or class of persons required to file a return under Title 15, chapter 65, or this chapter 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 owner if the owner is a natural person or by a person authorized to sign the application if the owner is a corporation, partnership, limited liability company, or some other business entity."

**Section 14.** Section 15-68-501, MCA, is amended to read:

**"15-68-501. Liability for payment of tax -- security for retailer person without place of business -- penalty.** (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A retailer person that does not maintain an office or other place of business within this state is liable for the sales tax or use tax in accordance with this chapter and may be required to furnish adequate security, as provided in 15-68-512, to ensure collection and payment of the taxes. When authorized and except as otherwise provided in this chapter, the retailer person is liable for the taxes upon all property sold and services provided in this state, accommodation charges collected for accommodations located in this state, and base rental charges for vehicles located in this state in the same manner as a retailer person who maintains an office or other place of business within this state. The seller's permit provided for in 15-68-401 may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer or intermediary doing business within this state may not sell, solicit orders for, or deliver any property or services within Montana, collect any accommodation charges for accommodations located within Montana, or collect any base rental charges for vehicles located in Montana unless the principal, employer, intermediary, or retailer possesses a seller's permit issued by the department. If an agent, canvasser, or employee violates the provisions of this chapter, the person is subject to a fine of not

more than \$100 for each separate transaction or event."

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

**"15-68-502. Returns -- payment -- electronic filing for intermediaries -- 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. Each person engaged in business within this state, ~~or~~ using property or services within this state that are subject to tax under this chapter, collecting an accommodation charge for an accommodation located in the state, or collecting a base rental charge for a vehicle located in the state shall file a return. ~~A~~ Except as provided in subsection (1)(b), a person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(b) An intermediary collecting accommodation charges for two or more accommodations within the state or accommodation charges and base rental charges shall file a single return on a form provided by the department. The department shall, subject to the availability of resources, provide intermediaries with an electronic filing option for the reporting and remittance of the lodging facility use tax imposed under Title 15, chapter 65, and the sales and use tax imposed by this chapter.

(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 or intermediary 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, or other documents~~ relevant to making a determination of the amount of tax due, whether the books, papers, records, ~~or memoranda, or other documents~~ 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, or other documents~~ 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 16.** Section 15-68-510, MCA, is amended to read:

**"15-68-510. Vendor allowance.** (1) A person filing a timely return under 15-68-502 may claim a quarterly vendor allowance for each permitted location in the amount of 5% of the tax determined to be payable to the state, not to exceed \$1,000 a quarter. An intermediary filing a timely return under 15-68-502 may claim a quarterly vendor allowance in the amount of 5% of the tax determined to be payable to the state, not to exceed \$1,000 a quarter. The vendor allowance does not apply to the lodging facility use tax collected under 15-65-112.

- (2) The allowance may be deducted on the return.
- (3) A person that files a return or payment after the due date for the return or payment may not claim a vendor allowance."

**Section 17.** Section 15-68-512, MCA, is amended to read:

**"15-68-512. Security -- limitations -- sale of security deposit at auction -- bond.** (1) The department may require a retailer or an intermediary to deposit, with the department, security in a form and amount that the department, by administrative rule, determines is appropriate. The deposit may not be more than twice the estimated average liability, including the average tax liability for the tax imposed under Title 15, chapter 65, for

the period for which the return is required to be filed. The amount of security may be increased or decreased by the department, subject to the limitations provided in this section.

(2) (a) If necessary, the department may sell, at public auction, property deposited as security to recover any sales tax or use tax amount required to be collected, including interest and penalties.

(b) Notice of the sale must be served personally upon or sent by certified mail to the person that deposited the security.

(c) After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person that deposited the security.

(3) In lieu of security, the department may require a retailer or an intermediary to file a bond, issued by a surety company authorized to transact business within this state, to guarantee solvency and responsibility.

(4) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under this chapter."

**Section 18.** Section 15-68-516, MCA, is amended to read:

**"15-68-516. Authority to collect delinquent taxes.** (1) (a) The department shall collect taxes that are delinquent as determined under 15-65-115 or this chapter, or both.

(b) If a tax imposed by 15-65-111 or this chapter, or both, 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 19. Effective date.** [This act] is effective July 1, 2007.

**NEW SECTION. Section 20. Applicability.** [This act] applies to accommodation charges and base rental charges occurring after June 30, 2007.

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