

SENATE BILL 396

Introduced by Eck

2/15	Introduced
2/15	First Reading
2/15	Referred to Taxation
2/15	Fiscal Note Requested
2/19	Fiscal Note Printed
2/21	Fiscal Note Received
3/15	Hearing
3/22	Tabled in Committee

1 *Senate* BILL NO. *396*
 2 INTRODUCED BY *Eck*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON THE
 5 RENTAL OF A VIDEOTAPE; ESTABLISHING THE RATE OF TAX AT 5
 6 PERCENT; PROVIDING PENALTIES FOR FAILURE TO PAY THE TAX;
 7 REQUIRING THAT RECEIPTS FROM THE TAX AND PENALTIES AND
 8 INTEREST BE DEPOSITED IN THE CHILDREN'S TRUST FUND ACCOUNT;
 9 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
 10 APPLICABILITY DATE."

11
 12 STATEMENT OF INTENT

13 A statement of intent is required for this bill because
 14 [section 2] requires the department of revenue to adopt
 15 rules to implement the tax imposed on the rental of
 16 videotapes. It is the intent of the legislature that the
 17 rules promulgated by the department should address, at a
 18 minimum, the following:

- 19 (1) forms and procedures for registering with the
- 20 department as a videotape rental agent;
- 21 (2) forms and procedures for filing the tax imposed by
- 22 [section 3]; and
- 23 (3) other matters that the department considers
- 24 necessary for the effective and efficient implementation and
- 25 enforcement of [sections 1 through 7].



1
 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

3 NEW SECTION. **Section 1.** Definitions. As used in
 4 [sections 1 through 7], the following definitions apply:

- 5 (1) "Charge" means the fee imposed by a videotape
- 6 rental agent for the use of a videotape or disk owned by or
- 7 otherwise under the control of the videotape rental agent.
- 8 (2) "Department" means the department of revenue
- 9 provided for in 2-15-1301.
- 10 (3) "Videotape" means a magnetic tape, disk, or other
- 11 device on which images and sounds have been recorded for
- 12 viewing on a video cassette. A videotape includes but is not
- 13 limited to:
- 14 (a) movies;
- 15 (b) television programs;
- 16 (c) cartoons;
- 17 (d) physical exercise programs; and
- 18 (e) instructional programs.
- 19 (4) "Videotape rental agent" means a person who, by
- 20 lease, rental, or other arrangement but not by the transfer
- 21 of ownership of the videotape, provides a videotape to
- 22 another person for a charge.

23 NEW SECTION. **Section 2.** Rulemaking authority. The
 24 department shall adopt rules necessary to implement and
 25 administer [sections 1 through 7].

INTRODUCED BILL
 SB 396

1 NEW SECTION. Section 3. Tax rate. There is imposed on
2 the user of a videotape provided by a videotape rental agent
3 a tax at a rate equal to 5% of the charge collected by the
4 videotape rental agent.

5 NEW SECTION. Section 4. Collection -- reporting --
6 deposit into children's trust fund account. (1) The
7 videotape rental agent shall collect the tax imposed by
8 [section 3].

9 (2) The videotape rental agent shall report to the
10 department at the end of each calendar quarter the gross
11 receipts collected during that quarter attributable to
12 videotape charges. The report is due within 30 days
13 following the end of the calendar quarter and must be
14 accompanied by a payment in an amount equal to the tax
15 required to be collected under subsection (1).

16 (3) All receipts collected by the department under this
17 section must be deposited in the children's trust fund
18 account established in 41-3-702.

19 NEW SECTION. Section 5. Audits -- records. (1) The
20 department may audit the books and records of any videotape
21 rental agent to ensure that the proper amount of tax imposed
22 by [section 3] has been collected. An audit may be done on
23 the premises of the videotape rental agent or at any other
24 convenient location.

25 (2) The department may request that the videotape

1 rental agent provide the department with books, ledgers,
2 registers, or other documents necessary to verify the
3 correct amount of tax.

4 (3) The videotape rental agent shall maintain and must
5 have available for inspection by the department books,
6 ledgers, registers, or other documents showing the
7 collection of charges for the preceding 5 years.

8 (4) Except in the case of a videotape rental agent who,
9 with intent to evade the tax, purposely or knowingly files a
10 false or fraudulent return violating the provisions of
11 [sections 1 through 7], the amount of tax due under any
12 return must be determined by the department within 5 years
13 after the return is made, and the department thereafter is
14 barred from revising a return or recomputing the tax due. A
15 proceeding in court for the collection of the tax may not be
16 instituted unless notice of any additional tax is provided
17 within the 5-year period.

18 (5) An application for revision may be filed with the
19 department by a videotape rental agent within 5 years from
20 the original due date of the return.

21 (6) All penalties and interest imposed and collected by
22 the department under [section 7] must be deposited in the
23 children's trust fund account established in 41-3-702.

24 NEW SECTION. Section 6. Registration number --
25 application to department. (1) A videotape rental agent

1 shall apply to the department for a registration number.

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

4 (3) Upon receipt of the completed application, the
5 department shall assign a registration number to the
6 videotape rental agent.

7 NEW SECTION. Section 7. Failure to pay or file --
8 penalty -- interest. (1) A videotape rental agent who fails
9 to file the report required under [section 4] must be
10 assessed a penalty of 2% of the tax that should have been
11 collected during the calendar quarter. Upon a showing of
12 good cause, the department may waive the penalty.

13 (2) A videotape rental agent who fails to make payment
14 or fails to report and make payment as required under
15 [section 4] must be assessed a penalty of 2% of the amount
16 that was not paid. Upon a showing of good cause, the
17 department may waive the penalty.

18 (3) If a videotape rental agent fails to file the
19 report required under [section 4] or if the department
20 determines that the report understates the amount of tax
21 due, the department may determine the amount of the tax due
22 and assess that amount against the videotape rental agent.

23 (4) The amount required to be paid under [section 4]
24 accrues interest at the rate of 1% a month or part of a
25 month from delinquency until paid.

1 NEW SECTION. Section 8. Codification instruction.

2 [Sections 1 through 7] are intended to be codified as an
3 integral part of Title 15, and the provisions of Title 15
4 apply to [sections 1 through 7].

5 NEW SECTION. Section 9. Effective date --
6 applicability. [This act] is effective on passage and
7 approval and applies to all charges collected on or after
8 July 1, 1991, regardless of when the charges were invoiced
9 by or due to a videotape rental agent.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0396, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a tax on the rental of a videotape, establishing the rate of tax at 5 percent, providing penalties for failure to pay the tax, and requiring that receipts from the tax and penalties and interest be deposited in the children's trust fund account.

ASSUMPTIONS:

Department of Revenue:


1. Gross receipts from Montana video tape rental establishments that had a payroll were \$11,099,000 in calendar year (CY) 1987 (1987 Census of Service Industries, U.S. Bureau of the Census).
2. Gross receipts are minimal for Montana video tape rental establishments that do not have a payroll (i.e., do not employ even a part-time person).
3. For revenue estimating purposes, all video tape rentals are assumed to be through establishments whose primary activity is the rental of video tapes, i.e., rental receipts from gas stations, grocery stores, etc. are assumed to be minimal. The resulting revenue estimate is more conservative because of this assumption.
4. Video tape rental receipts will increase at the same rate of increase as for the Consumers' Price Index (CPI) for calendar years 1988 through 1993, namely 4.13%, 4.73%, 5.40%, 5.05%, 4.22%, and 5.59% respectively.
5. The estimated video tape rental receipts are \$13,401,934 for CY 1991, \$13,967,496 for CY 1992, and \$14,748,279 for CY 1993.
6. Since the proposed tax applies to receipts received on or after July 1, 1991, and since quarterly submission of tax collections would be within 30 days following the end of a quarter, then the last two quarters receipts for CY 1991 and the first quarter CY 1992 would be received in FY92 and the remaining three quarters of tax receipts for CY 1992 plus the first quarter for CY 1993 would be received in FY93.
7. The proposed legislation specifies a 5% tax rate on video tape receipts.
8. No penalties and interest are collected in FY92 and FY93.
9. Per the proposed legislation, all tax receipts would be deposited in the children's trust fund account of the state special revenue fund.
10. In FY92, 1.05 FTE staff would be required during the development stage; for FY93 and beyond, 0.25 FTE will be needed. A portion of the FY92 costs would need to be allocated to FY91 for start-up in order to be ready to begin processing tax receipts in October 1991 from the first quarter of FY92.
11. General fund will be used for administrative costs because the bill makes no other provisions.

Department of Family Services:

12. Administrative costs will be 7.5%. Remaining increases in the children's trust fund will be available for grants.
13. The FY91 projected trust fund balance of \$50,000 will be spent down under the current level recommendation.
14. Current law figures in the DFS portion of this fiscal note reflect the executive budget recommendation.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

DOROTHY ECK, PRIMARY SPONSOR DATE

Fiscal Note for SB0396, as introduced

SB 396

FISCAL IMPACT:

Department of Revenue:

	FY '92			FY '93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures</u>						
FTE	0.00	1.05	1.05	0.00	0.25	0.25
Personal Services	0	34,513	34,513	0	4,873	4,873
Operating Expenses	0	2,305	2,305	0	1,995	1,995
Equipment	0	4,430	4,430	0	0	0
Total	0	41,248	41,248	0	6,868	6,868
<u>Funding</u>						
General Fund	0	41,248	41,248	0	6,868	6,868

Department of Family Services:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating Costs	9,903	41,206	31,303	9,908	56,206	46,298
Grants	61,420	508,214	446,794	61,420	693,214	631,794
Total	71,323	549,420	478,097	71,328	749,420	678,092
<u>Funding:</u>						
Children's Trust (02)	71,323	549,420	478,097	71,328	749,420	678,092
<u>Revenues:</u>						
State Special Revenue Fund (02)						
Children's Trust Fund Account	49,420	559,062	509,642	49,420	757,555	708,135
General Fund Impact			(41,248)			(6,868)

TECHNICAL NOTES:

In order to be consistent with other Department of Revenue due dates, lines 12-13 of page 3 of the bill after the word due should be amended to read "on or before the last day of the month following the close of the quarter".