

HOUSE BILL 779

Introduced by Moore, et al.

3/15	Introduced
3/16	Referred to Taxation
3/16	Fiscal Note Requested
3/21	Hearing
3/21	Fiscal Note Received
3/23	Tabled in Committee
4/19	Sponsor Fiscal Note Printed

1 *HOUSE* BILL NO. *779*
 2 INTRODUCED BY *Janet Moore Ellison*
 3 *Refe Ennis Ream* *deaks* *deaks*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A RETAIL
 5 LUXURY SURCHARGE AND USE TAX ON CERTAIN LUXURY GOODS AND
 6 SERVICES; ALLOCATING THE PROCEEDS FROM THE RETAIL LUXURY
 7 SURCHARGE AND USE TAX TO THE STATE GENERAL FUND; AND
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY
 9 DATE, AND A CONTINGENT TERMINATION DATE."

11 STATEMENT OF INTENT

12 A statement of intent is required for [this act]
 13 because the department of revenue is granted authority to
 14 adopt rules for the administration and enforcement of the
 15 retail luxury surcharge and use tax. The rules are intended
 16 to provide for an efficient process for the collection of
 17 the taxes, with minimum expense to both the taxpayer and the
 18 state.

19 The legislature intends that rules adopted by the
 20 department should, at a minimum, address the following:

21 (1) the development of a comprehensive list of luxury
 22 goods and services taxable under [this act];

23 (2) the registration and issuance of a registration
 24 number to persons engaging in the sale of retail luxury
 25 goods and services;

1 (3) the reporting form for the payment of the taxes,
 2 along with the requirements for the retention by the
 3 taxpayers of the necessary records;
 4 (4) the required procedures for the payment of taxes;
 5 (5) the use of the nontaxable transaction certificates
 6 and clarification of any exemption from or deduction of the
 7 taxes; and
 8 (6) the definition of terms and establishment of
 9 procedures as appropriate for efficient administration of
 10 the retail luxury surcharge and use tax.

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

12 NEW SECTION. **Section 1. Definitions.** As used in [this
 13 act], the following definitions apply:

14 (1) "Department" means the department of revenue
 15 provided for in 2-15-1301.

16 (2) (a) "Entertainment performance" means a motion
 17 picture, stage production, music or vocal concert, lecture,
 18 dance presentation, or other demonstration of the performing
 19 arts.

20 (b) The term does not include scholastic or collegiate
 21 activities that are conducted by accredited educational
 22 institutions or by associations of those institutions under
 23 their music or performing arts curricula and that are not
 24 intended for private profit.
 25

1 (3) "Gross receipts" means the total sale price
2 received by sellers as consideration for sales of luxury
3 goods or services.

4 (4) "Lease" or "leasing" means an arrangement in
5 which, for consideration, a luxury good is used for or by a
6 person other than the owner of the luxury good.

7 (5) "Luxury good" includes and for the purposes of
8 [this act] is limited to:

9 (a) alcoholic beverages consumed on the premises of
10 the retailer;

11 (b) camping equipment;

12 (c) electronic games used in conjunction with a
13 computer or television set;

14 (d) jewelry;

15 (e) watches with a list price of \$200 or more;

16 (f) new and used motor vehicles, including passenger
17 cars, trucks, and vans with a rated capacity of 1 ton or
18 less and with a list price of \$15,000 or more;

19 (g) recreational vehicles and boats, including:

20 (i) campers as defined in 61-1-129;

21 (ii) canoes and rubber rafts;

22 (iii) motorboats as defined in 23-2-502;

23 (iv) motor homes as defined in 61-1-130;

24 (v) off-highway vehicles as defined in 23-2-801;

25 (vi) snowmobiles as defined in 23-2-601; and

1 (vii) travel trailers as defined in 61-1-131;

2 (h) sporting goods. Sporting goods do not include
3 firearms, ammunition, gunpowder, shell casings, primers,
4 wadding or any other item used to make ammunition, or
5 cleaning solvents specifically designed for firearms.

6 (i) souvenirs and novelty items.

7 (6) "Luxury service" means and for the purposes of
8 [this act] is limited to:

9 (a) admission to:

10 (i) an entertainment performance;

11 (ii) a sporting event; or

12 (iii) any other recreation or entertainment activity
13 held for profit;

14 (b) subscription charges for cable television premium
15 channels not included in the basic cable television
16 subscription rate. These charges do not include the basic
17 rate or installation fees or charges.

18 (c) rentals of motion picture video cassettes.

19 (7) "Person" means an individual, estate, trust,
20 receiver, cooperative association, club, corporation,
21 company, firm, partnership, joint venture, syndicate, or
22 other entity.

23 (8) "Retail luxury surcharge" and "use tax" mean the
24 applicable taxes imposed by [section 2].

25 (9) "Retail sale" means:

1 (a) the sale, lease, or rental of a luxury good as
2 defined in this section, for consideration other than resale
3 in the regular course of business; or

4 (b) the performance of a luxury service, as defined in
5 this section for consideration.

6 (10) (a) "Sale price" means the total amount paid by
7 the buyer to a seller for a retail sale, including the
8 amount paid for any services that are part of the sale.

9 (b) The term does not include cash discounts allowed
10 and taken or the value of a trade-in.

11 (11) "Service" means an activity that is performed for
12 another person for consideration and that is distinguished
13 from the sale or lease of property.

14 (12) (a) "Sporting event" means any athletic contest
15 or recreational endeavor for which spectators are required
16 to pay an admission fee, in which boats, vehicles, machines,
17 aircraft, animals, or humans, including individuals or
18 teams, compete in tests of skill, speed, strength, or
19 agility or engage in games conducted under formal rules to
20 determine a winner.

21 (b) The term does not include:

22 (i) interscholastic or intercollegiate activities that
23 are conducted by accredited educational institutions or by
24 associations of those institutions and that are not intended
25 for private profit; or

1 (ii) competition between teams or individuals
2 sponsored by charitable organizations, the proceeds of which
3 are dedicated to education, research, or medical care.

4 (13) "Use" or "using" means use, consumption, or
5 storage, other than use or storage for resale or for use
6 solely outside this state, in the ordinary course of
7 business.

8 NEW SECTION. **Section 2. Imposition and rate of retail**
9 **luxury surcharge and use taxes.** (1) A retail luxury
10 surcharge of 4% is imposed on the sale price of all luxury
11 goods and services, as defined in [section 1], bought in
12 this state.

13 (2) For the privilege of using a luxury good in this
14 state there is imposed on the person using the luxury good a
15 use tax equal to 4% of the value of the property that was:

16 (a) acquired outside this state as the result of a
17 transaction that would have been subject to the retail
18 luxury surcharge had it occurred within this state; or

19 (b) acquired as the result of a transaction that was
20 not initially subject to the retail luxury surcharge imposed
21 by subsection (1) or the use tax imposed by subsection
22 (2)(a) but which transaction, because of the buyer's
23 subsequent use of the property, is subject to the retail
24 luxury surcharge or use tax.

25 (3) For the privilege of using a retail luxury service

rendered in this state there is imposed on the person using the service a use tax equal to 4% of the value of the service at the time at which it was rendered. A service taxable under this section must have been rendered as the result of a transaction that was not initially subject to the retail luxury surcharge or use tax but that, because of the buyer's subsequent use of the service, is subject to the retail luxury surcharge or use tax.

(4) For purposes of this section, the value of a luxury good must be determined as of the time of acquisition, introduction into this state, or conversion to use, whichever is later.

NEW SECTION. Section 3. Liability of user for payment of use tax. (1) A person in this state who uses a luxury good is liable to the state for payment of the use tax if the tax is payable on the value of the property but has not been paid.

(2) The liability imposed by this section is discharged if the buyer has paid the use tax to the seller for payment to the department.

NEW SECTION. Section 4. Agents for collection of retail luxury surcharge and use tax -- severability. (1) A person who performs or attempts to perform an activity within this state that attempts to exploit this state's markets, who sells luxury goods or services for use in this

state, and who is not subject to the retail luxury surcharge or use tax from these sales shall collect the retail luxury surcharge or use tax from the buyer and pay the amount collected to the department.

(2) "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following in this state:

(a) maintaining an office or other place of business that solicits orders through employees or independent contractors;

(b) canvassing;

(c) demonstrating;

(d) collecting money;

(e) warehousing or storing merchandise; and

(f) delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers.

NEW SECTION. Section 5. Nontaxable transaction certificate -- requirements. (1) A nontaxable transaction certificate executed by a buyer or lessee must be in the possession of the seller or lessor at the time a nontaxable transaction occurs.

(2) If the seller or lessor is not in possession of a nontaxable transaction certificate within 60 days from the date notice of the requirement for possession of a

1 nontaxable transaction certificate is given to him by the
2 department, all deductions claimed by him that require
3 delivery of a nontaxable transaction certificate are
4 disallowed.

5 (3) A nontaxable transaction certificate must contain
6 the information and be in the form prescribed by the
7 department.

8 (4) Only a buyer or lessee who has registered with the
9 department may be allowed to execute a nontaxable
10 transaction certificate.

11 (5) If the seller or lessor accepts a nontaxable
12 transaction certificate within the required time and
13 believes in good faith that the buyer or lessee will employ
14 the property or service transferred in a nontaxable manner,
15 the properly executed nontaxable transaction certificate is
16 considered conclusive evidence that the proceeds from the
17 transaction are deductible from the seller's or lessor's
18 gross receipts.

19 NEW SECTION. Section 6. Exemption -- sales to
20 government agencies. Sales to the United States or any
21 agency or instrumentality of the United States or to this
22 state or any political subdivision of this state are exempt
23 from the retail luxury surcharge and use tax.

24 NEW SECTION. Section 7. Exemption -- isolated
25 occasional sale or lease of luxury goods or services. The

1 isolated or occasional sale or lease of a luxury good or a
2 luxury service by a person who is not regularly engaged in
3 or who does not represent himself as engaged in the business
4 of selling or leasing the same or a similar good or service
5 is exempt from the retail luxury surcharge and use tax.

6 NEW SECTION. Section 8. Exemption -- charities. Sales
7 to purely charitable institutions are exempt from the retail
8 luxury surcharge and use tax.

9 NEW SECTION. Section 9. Exemption -- personal
10 effects. The use by an individual of personal or household
11 effects brought into the state for the establishment by him
12 of an initial residence in this state and the use of
13 property brought into the state by a nonresident for his own
14 nonbusiness use while temporarily within this state are
15 exempt from the use tax.

16 NEW SECTION. Section 10. Deduction -- sale of luxury
17 goods for resale. Receipts from the sale of luxury goods may
18 be deducted from gross receipts if:

19 (1) the sale is made to a buyer who delivers a
20 nontaxable transaction certificate to the seller; and

21 (2) the buyer resells or plans to resell the luxury
22 goods in the ordinary course of business and the property
23 will subsequently be subject to the retail luxury surcharge.

24 NEW SECTION. Section 11. Deduction -- sale of luxury
25 service for resale. A receipt from the sale of a luxury

service for resale may be deducted from gross receipts if:

(1) the sale is made to a person who delivers a nontaxable transaction certificate;

(2) the buyer separately states the value of the service purchased in his charge for the service on its resale; and

(3) the resale is in the ordinary course of business and is subject to the use tax.

NEW SECTION. Section 12. Credit -- out-of-state taxes. If a gross receipts, sales, use, or similar tax has been levied by another state or a political subdivision of another state on a luxury good bought outside this state but that will be used or consumed in this state and the tax has been paid, the amount of tax paid may be credited against any use tax due this state on the same luxury good.

NEW SECTION. Section 13. Nontaxable transaction certificate -- form. (1) The department shall provide for a uniform nontaxable transaction certificate. In order to obtain a deduction under [this act], a purchaser shall use the certificate when purchasing goods or services for resale.

(2) At a minimum, the certificate must provide:

(a) the registration number issued to the purchaser as provided in [section 18];

(b) the general character of the luxury good or

service sold by the purchaser in the regular course of business;

(c) the luxury good or service purchased for resale;

(d) the name and address of the purchaser; and

(e) a signature line for the purchaser.

NEW SECTION. Section 14. Improper use of subject of purchase obtained with nontaxable transaction certificate -- penalty. (1) If a purchaser who uses a nontaxable transaction certificate uses the subject of the purchase for a purpose other than one allowed as a deduction under [this act], the use is considered a taxable sale by the purchaser as of the time of first use by him and the sale price he receives is considered the gross receipts from the sale. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in his gross receipts the amount of the rental charged. Upon resale of the luxury good, the seller shall include the entire amount of gross receipts received from the resale, without deduction of amounts previously received as rentals.

(2) A person who uses a nontaxable transaction certificate for purchasing property that will be used for a purpose other than the purpose claimed is subject to a penalty, payable to the department, of \$100 for each transaction in which an improper use of an exemption certificate has occurred.

(3) Upon a showing of good cause, the department may abate or waive the penalty or a portion of the penalty.

NEW SECTION. Section 15. Commingling nontaxable certificate goods. If a purchaser uses a nontaxable transaction certificate with respect to the purchase of fungible goods and thereafter commingles the goods with fungible goods not so purchased but of such similarity that the identity of the goods in the commingled mass cannot be determined, sales from the mass of commingled goods are considered to be sales of the goods purchased with the certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the certificate.

NEW SECTION. Section 16. Collection and reporting.

(1) The surcharge (and use tax, when applicable) imposed by [section 2] must be collected by the owner or operator of each establishment offering to the public a luxury good or service.

(2) At the end of each calendar quarter, the owner or operator shall report to the department, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to the sale of luxury goods or services taxable under [section 2]. The report is due within 30 days 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).

NEW SECTION. Section 17. Audits -- records. (1) The department may audit the books and records of any owner or operator to ensure that the proper amount of retail luxury surcharge or use tax imposed by [section 2] has been collected. An audit may be done on the premises of the owner or operator or at any other convenient location.

(2) The department may request the owner or operator to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of the retail luxury surcharge or use tax.

(3) The owner or operator shall maintain and have available for inspection by the department books, ledgers, rental records, or other documents showing the collection of the surcharge imposed under [section 2] for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the retail luxury surcharge or use tax, purposely or knowingly files a false or fraudulent return in violation of the provisions of this part, the amount of surcharge or use 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 return or recomputing the surcharge or use tax due on a return. No proceeding in court for the collection of the retail luxury

1 surcharge or use tax may be instituted unless notice of any
2 additional surcharge or use tax due is provided within 5
3 years after the return is made.

4 (5) An application for revision may be filed with the
5 department by an owner or operator within 5 years from the
6 original due date of the return.

7 NEW SECTION. Section 18. Registration number --
8 application to department. (1) The owner or operator shall
9 apply to the department of revenue for a registration
10 number.

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

13 (3) Upon completion of the application and delivery of
14 the application to the department, the department shall
15 assign a registration number to the owner, operator, or
16 establishment, as appropriate.

17 NEW SECTION. Section 19. Failure to pay or file --
18 penalty -- interest. (1) An owner or operator who fails to
19 file a report required by [section 16] must be assessed a
20 penalty of 2% of the tax that should have been collected
21 during the calendar quarter. Upon a showing of good cause,
22 the department of revenue may waive the penalty.

23 (2) An owner or operator who fails to make payment or
24 fails to report and make payment as required by [section 16]
25 must be assessed a penalty of 2% of the amount that was not

1 paid. Upon a showing of good cause, the department may waive
2 the penalty.

3 (3) If an owner or operator fails to file a report
4 required by [section 16] or if the department determines
5 that a report understates the amount of tax due, the
6 department may determine the amount of the tax due and
7 assess that amount against the owner or operator.

8 (4) The amount required to be paid under [section 16]
9 accrues interest at the rate of 1% a month or any part of a
10 month from delinquency until paid.

11 NEW SECTION. Section 20. Refunds. A claim for a
12 refund made for taxes collected under [this act] must be in
13 accordance with the procedure and time limits provided in
14 15-1-503.

15 NEW SECTION. Section 21. Administration -- rules. The
16 department shall:

17 (1) administer and enforce the provisions of [this
18 act];

19 (2) cause to be prepared and distributed such forms
20 and information as may be necessary to administer the
21 provisions of [this act]; and

22 (3) promulgate rules appropriate to administer and
23 enforce the provisions of [this act].

24 NEW SECTION. Section 22. Retail luxury surcharge and
25 use tax account -- administration and enforcement account.

(1) There is within the state special revenue fund a retail luxury surcharge and use tax account.

(2) All money collected under [this act] must be paid by the department into the retail luxury surcharge and use tax account.

(3) (a) Except as provided in subsection (3)(b), 2.5% of the amount deposited in the retail luxury surcharge and use tax account must be retained as a retail luxury surcharge and use tax administration and enforcement account for the purposes of administration and enforcement of [this act].

(b) The amount deposited in the retail luxury surcharge and use tax administration and enforcement account may not exceed actual expenses incurred, encumbered, or anticipated in any fiscal year for the purposes of administration and enforcement of [this act] unless the additional amounts are otherwise appropriated by law.

(4) There must be retained in the retail luxury surcharge and use tax account the amounts necessary under [this act] to repay overpayment, pay any erroneous receipts illegally assessed or collected or that are excessive in amount, and pay other refunds as required.

NEW SECTION. Section 23. Disposition of retail luxury surcharge and use tax revenue. Retail luxury surcharge and use tax revenue remaining after allocation to the accounts

established in [section 22] is allocated to the general fund.

NEW SECTION. Section 24. Codification instruction. [Sections 1 through 23] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 23].

NEW SECTION. Section 25. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 26. Effective date -- applicability. (1) [This act] is effective on passage and approval.

(2) [This act] applies to taxable transactions occurring on or after January 1, 1990.

NEW SECTION. Section 27. Contingent termination date. If an act of the 51st legislature establishing a general sales tax is passed and approved, [this act] terminates on [the effective date of the act establishing the general sales tax] or, if that act is referred to the people, on [the effective date of that act after approval by the people].

-End-

SPONSOR'S FISCAL NOTE

Form BD-15S

There is hereby submitted a Sponsor's Fiscal Note for: HB-779, Version: 1

Description of Proposed Legislation:

A bill for an act entitled: "An act imposing a retail luxury surcharge and use tax on certain luxury goods and services; allocating the proceeds from the retail luxury surcharge and use tax to the state general fund; and providing for an immediate effective date, an applicability date, and a contingent termination date."

Assumptions:

1. The retail tax proposed is four (.04) percent. Two procedures used in estimating the revenue generated by this tax vary by 4.2 percent. The estimate listed below is an arithmetic mean of these two dollar amounts.
2. The rate of estimated growth in gross dollars collected by this tax in fiscal year 1991 is two (.02) percent over 1990 fiscal year estimates.
3. All estimates are based on year end dollars collected. Seasonal variations are expected, but not listed in this fiscal note.
4. The cost to the State of Montana in collecting this tax is estimated to be ten percent of one percent of the taxable base from which the tax is collected (or .001). This is a high estimate and is intended to be conservative.

Fiscal Impact:

Revenues to State of Montana

1. Estimated tax revenue for fiscal year 1990 (from 01 January 1990 to 30 June 1990) is \$22,380,000.
2. Estimated tax revenue for fiscal year 1991 is \$45,660,000.

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HB 779 - Sponsor

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Expenditures to State of Montana

3. For fiscal year 1990 - \$560,000
4. For fiscal year 1991 - \$1,141,000

Local Impact:

1. Regional and local impact is expected to be uniform.

Technical Notes:

1. No other state has a retail luxury surcharge as its only general retail sales tax. However, recent market trends of the past several years demonstrate that the items proposed to be taxed in H.B. 779 have continued to grow in total yearly gross receipts.
2. This fiscal note was prepared by Legislative Intern Charles Bickenheuser and the contents of this fiscal note are his responsibility alone.

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PRIMARY SPONSOR

DATE

Fiscal Note for: HB-779 Version: 1