

SENATE BILL 462

Introduced by Eck, et al.

3/03	Introduced
3/03	Referred to Taxation
3/04	Fiscal Note Requested
3/09	Fiscal Note Received
3/11	Fiscal Note Printed
3/15	Hearing
	Died in Committee

1 *Senate* BILL NO. *462*
2 INTRODUCED BY *Eck Ream*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN EXCISE TAX
5 ON RESTAURANT MEALS, BEVERAGES, ADMISSIONS TO ENTERTAINMENT
6 PERFORMANCES AND SPORTING EVENTS, RENTALS OF MOTOR VEHICLES,
7 AND RENTALS OF MOTION PICTURE VIDEO CASSETTES; ALLOCATING
8 THE PROCEEDS OF THE EXCISE TAX EQUALLY BETWEEN THE
9 UNIVERSITY SYSTEM AND LOCAL GOVERNMENTS; PROVIDING FOR
10 DISTRIBUTION OF THE LOCAL GOVERNMENTS' SHARE OF THE
11 PROCEEDS; STATUTORILY APPROPRIATING CERTAIN AMOUNTS;
12 AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE, AN APPLICABILITY DATE, AND A CONTINGENT
14 TERMINATION DATE."

15
16 STATEMENT OF INTENT

17 A statement of intent is required for this bill because
18 [section 2] gives the department of revenue authority to
19 make rules necessary to implement and administer the excise
20 tax on restaurant meals, beverages, admissions to
21 entertainment performances and sporting events, and rentals
22 of motor vehicles and motion picture video cassettes. The
23 legislature intends that the rules adopted by the department
24 conform with the applicable laws and with other department
25 rules. The legislature further intends that the department,

1 in prescribing the forms required under [section 6] and in
2 all other reporting requirements under [this act], impose no
3 greater burden upon the private sector than is necessary to
4 achieve the objectives of this bill.
5

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

7 NEW SECTION. Section 1. Definitions. For the purposes
8 of [this act], the following definitions apply:

9 (1) "Beverage" means any drink sold for on-premises
10 consumption.

11 (2) (a) "Entertainment performance" means a motion
12 picture, stage production, music or vocal concert, lecture,
13 dance presentation, or other demonstration of the performing
14 arts.

15 (b) The term does not include scholastic or collegiate
16 activities that are conducted by accredited educational
17 institutions or associations of those institutions under
18 their music or performing arts curricula and that are not
19 intended for private profit.

20 (3) "Restaurant meal" means:

21 (a) any food products served as a meal on or off the
22 premises of the retailer;

23 (b) milk or cream sold as beverages commonly referred
24 to as milkshakes, malted milks, or any similar beverages;

25 (c) food products furnished, prepared, or served for

1 consumption at tables, chairs, or counters or from trays,
2 glasses, dishes, or other tableware, whether provided by the
3 retailer or by a person with whom the retailer contracts to
4 furnish, prepare, or serve food products to others;

5 (d) food products sold for immediate consumption on or
6 near a location at which parking facilities are provided
7 primarily for the convenience of patrons in consuming the
8 products purchased at the location, even though the products
9 are sold on a "takeout", "to go", or "U-bake" order and are
10 actually packaged or wrapped and taken from the premises of
11 the retailer;

12 (e) food products sold for consumption within a place
13 that charges an admission fee; or

14 (f) food or drink vended by or through machines on
15 behalf of a vendor.

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

23 (b) The term does not include:

24 (i) interscholastic or intercollegiate activities that
25 are conducted by accredited educational institutions or

1 associations of those institutions and that are not intended
2 for private profit; or

3 (ii) postseason competitions of teams of selected
4 individuals sponsored by charitable organizations, the
5 proceeds of which are dedicated to education, research, or
6 medical care.

7 NEW SECTION. Section 2. Rulemaking authority. The
8 department of revenue shall adopt rules that may be
9 necessary to implement and administer [this act].

10 NEW SECTION. Section 3. Tax rate. There is imposed a
11 tax at a rate equal to 4% of the price of:

- 12 (1) restaurant meals;
- 13 (2) beverages;
- 14 (3) admission to:
 - 15 (a) entertainment performances; or
 - 16 (b) sporting events; and
- 17 (4) rentals of:
 - 18 (a) motor vehicles; or
 - 19 (b) motion picture video cassettes.

20 NEW SECTION. Section 4. Collection and reporting. (1)
21 The tax imposed by [section 3] must be collected by the
22 owner or operator of every establishment offering to the
23 public:

- 24 (a) restaurant meals;
- 25 (b) beverages;

(c) entertainment performances;

(d) sporting events;

(e) rentals of motor vehicles; or

(f) rentals of motion picture video cassettes.

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to the activities taxable under [section 3]. 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 5. Audits -- records. (1) The department of revenue may audit the books and records of any owner or operator to ensure that the proper amount of tax imposed by [section 3] has been collected. An audit may be performed 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 tax.

(3) The owner or operator shall maintain and have available for inspection by the department books, ledgers, rental records, or other documents for the preceding 5

years, showing the collection of charges taxable under [section 3].

(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 return or recomputing the tax due on a return. No proceeding in court for the collection of the tax may be instituted unless notice of any additional tax is provided within 5 years after the return is made.

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

NEW SECTION. Section 6. Registration number -- application to department. (1) The owner or operator 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.

NEW SECTION. Section 7. Failure to pay or file --

penalty -- interest. (1) An owner or operator who fails to file a report as required by [section 4] must be assessed a penalty of 2% of the tax that should have been collected during the calendar quarter. Upon a showing of good cause, the department of revenue may waive the penalty.

(2) An owner or operator who fails to make payment or fails to report and make payment as required by [section 4] must be assessed a penalty of 2% of the amount that was not paid. Upon a showing of good cause, the department may waive the penalty.

(3) If an owner or operator fails to file a report as required by [section 4] or if the department of revenue 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.

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

NEW SECTION. Section 8. Distribution of tax proceeds.

The proceeds of the tax imposed by [section 3] must be deposited in an account in the state special revenue fund to the credit of the department of revenue. Each reporting period, 2% of that account is statutorily appropriated, as provided in 17-7-502, to the department for the cost of

collecting and disbursing the proceeds of the tax. The balance of the tax proceeds received each reporting period and not deducted pursuant to the statutory appropriation for collection and disbursement must be distributed each quarter as follows:

(1) 50% to the state special revenue fund for the support, maintenance, and improvement of the Montana university system, subject to the supervision of the board of regents; and

(2) 50% to the local government assistance account in the state special revenue fund.

NEW SECTION. Section 9. Local government assistance account created -- statutory appropriation -- distribution by county treasurer. (1) There is within the state special revenue fund a local government assistance account.

(2) Money in the local government assistance account is statutorily appropriated, as provided in 17-7-502, to be allocated by the state treasurer on each June 30 to each county and consolidated government according to the ratio that the population of the county or consolidated government bears to the total population of the state.

(3) For purposes of the distribution in subsection (2), the population of each county or consolidated government is the most recent population estimate available from the department of commerce.

(4) Upon receipt of the funds allocated in subsection (2), the county treasurer shall distribute the funds as follows:

(a) to each incorporated municipality in the county, a share, to be deposited in the general fund of the municipality, equal to the ratio that the population of the incorporated municipality bears to the total population of the county; and

(b) to the credit of the county general fund, the amount remaining after the distribution under subsection (4)(a).

(5) In a consolidated government, all funds received under subsection (2) must be credited to the general fund of the consolidated government.

Section 10. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987; [section 8]; and [section 9].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount

1 sufficient to pay the principal and interest as due on the
2 bonds or notes have statutory appropriation authority for
3 such payments. (In subsection (3): pursuant to sec. 15, Ch.
4 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
5 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
6 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
7 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
8 1987, terminates July 1, 1988.)"

9 NEW SECTION. **Section 11.** Codification instruction.
10 [Sections 1 through 9] are intended to be codified as an
11 integral part of Title 15, and the provisions of Title 15
12 apply to [sections 1 through 9].

13 NEW SECTION. **Section 12.** Effective date --
14 applicability -- termination of statutory appropriation. (1)
15 [This act] is effective on passage and approval.

16 (2) [This act] applies to taxable transactions
17 occurring on or after July 1, 1989.

18 (3) The statutory appropriation to the department of
19 revenue in [section 8] for the purpose of paying the costs
20 of collecting and disbursing the proceeds of the tax
21 terminates on June 30, 1991. Effective July 1, 1991, the
22 second and third sentences of [section 8] are amended to
23 read: "The department may spend funds from that account in
24 accordance with an expenditure appropriation by the
25 legislature based on an estimate of the costs of collecting

1 and disbursing the proceeds of the tax. The balance of the
2 tax proceeds received each reporting period and not deducted
3 pursuant to the expenditure appropriation must be allocated
4 as follows:

5 (1) 50% to the state special revenue fund for the
6 support, maintenance, and improvement of the Montana
7 university system, subject to the supervision of the board
8 of regents; and

9 (2) 50% to the local government assistance account in
10 the state special revenue fund."

11 NEW SECTION. **Section 13.** Contingent termination date.
12 If an act of the 51st legislature establishing a general
13 sales tax is passed and approved, [this act] terminates on
14 [the effective date of the act establishing the general
15 sales tax] or, if that act is referred to the people, on
16 [the effective date of that act after approval by the
17 people].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB462, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing an excise tax on restaurant meals, beverages, admissions to entertainment performances and sporting events, rentals of motor vehicles, and rentals of motion picture video cassettes; allocating the proceeds of the excise tax equally between the university system and local governments; providing for distribution of the local governments' share of the proceeds; statutorily appropriating certain amounts; and providing an immediate effective date, an applicability date, and a contingent termination date.

ASSUMPTIONS:

1. The 4% tax provided for in this proposal is projected to produce annualized tax liabilities of \$25,364,000 in calendar year 1989; \$26,204,000 in calendar year 1990; and \$27,072,000 in calendar year 1991 (Legislative Council Sales Tax Simulator Model).
2. The effective date of July 1, 1989 and the required quarterly payment of the tax result in projected revenue of \$19,233,000 in FY90, and \$26,421,000 in FY91.
3. Expenses allocated to administration of the tax are \$384,660 in FY90, and \$528,420 in FY91 (2% of collections).

FISCAL IMPACT:

	FY90			FY91		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenue Impact:</u>						
Entertainment Tax	\$ 0	\$ 19,233,000	\$ 19,233,000	\$ 0	\$ 26,421,000	\$ 26,421,000
<u>Fund Information:</u>						
Administration	\$ 0	\$ 384,660	\$ 384,660	\$ 0	\$ 528,420	\$ 528,420
Universities	0	9,424,170	9,424,170	0	12,946,290	12,946,290
Local Governments	0	9,424,170	9,424,170	0	12,946,290	12,946,290
Total	\$ 0	\$ 19,233,000	\$ 19,233,000	\$ 0	\$ 26,421,000	\$ 26,421,000
<u>Expenditure Impact:</u>						
Personal Services	\$ 0	\$ 132,204	\$ 132,204	\$ 0	\$ 87,447	\$ 87,447
Operating Expense	0	84,539	84,539	0	58,397	58,397
Equipment	0	29,397	29,397	0	0	0
Total	\$ 0	\$ 246,140	\$ 246,140	\$ 0	\$ 145,844	\$ 145,844

Ray Shackelford DATE 3/10/89
 RAY SHACKLEFORD, BUDGET DIRECTOR
 Office of Budget and Program Planning

Dorothy Eck DATE 3/10/89
 DOROTHY ECK, PRIMARY SPONSOR

Fiscal Note for SB462, as introduced

SB 462