

HOUSE BILL 47

Introduced by Harrington

7/11	Introduced
7/11	Referred to Taxation
7/11	Fiscal Note Requested
7/11	First Reading
7/14	Hearing
7/15	Fiscal Note Received
	Died in Committee

1 HOUSE BILL NO. 47  
2 INTRODUCED BY Hamington  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A CREDIT  
5 CARD USE TAX; ESTABLISHING A 4 PERCENT TAX ON ALL CREDIT  
6 CARD FINANCIAL TRANSACTIONS; PROVIDING EXEMPTIONS FOR  
7 GOVERNMENTAL AGENCIES THAT USE CREDIT CARDS; REQUIRING  
8 PERMITS FOR VENDORS WHO CONDUCT BUSINESS WITH CREDIT CARDS;  
9 REQUIRING REGISTRATION OF CREDIT CARD ISSUERS; PROVIDING FOR  
10 THE ADMINISTRATION OF THE TAX; GRANTING A TAX CREDIT FOR  
11 INDIVIDUAL INCOME TAX LIABILITY AND CORPORATE LICENSE AND  
12 INCOME TAX LIABILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE  
13 DATE AND AN APPLICABILITY DATE."  
14

15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because  
17 the department of revenue is granted authority to adopt  
18 rules for the administration and enforcement of the credit  
19 card use tax. The rules are intended to provide for an  
20 efficient process for the collection of the tax, with  
21 minimum expense to the credit card user, the vendor  
22 accepting a credit card, and the state.

23 The legislature contemplates that rules adopted by the  
24 department should, at a minimum, address the following:

25 (1) the definition of terms and establishment of

1 procedures as appropriate for efficient administration of  
2 the credit card use tax;

3 (2) the registration of credit card issuers and the  
4 issuance of permits to vendors who use credit cards for  
5 financial transactions; and

6 (3) the reporting form for vendors to use in the  
7 payment of the taxes that were paid by credit card users and  
8 the requirements for the retention of the necessary tax  
9 records.  
10

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

12 NEW SECTION. **Section 1. Definitions.** As used in  
13 [sections 1 through 21], the following definitions apply:

14 (1) "Buyer" means a person who purchases goods or  
15 services or otherwise enters into a financial transaction  
16 with a seller by means of a credit card.

17 (2) "Credit card" means any card, plate, or other  
18 credit device that is requested and received by a cardholder  
19 and is used for making financial transactions on credit  
20 under a plan in which the credit card issuer:

21 (a) reasonably contemplates repeated transactions;

22 (b) prescribes the terms of the transactions;

23 (c) provides for a finance charge that may be computed  
24 from time to time on the outstanding balance.

25 (3) "Credit card transaction" means the use of a credit

1 card to purchase goods or services or to enter into a  
2 financial transaction.

3 (4) "Department" means the department of revenue as  
4 provided for in 2-15-1301.

5 (5) (a) "Financial transaction" means the purchase of  
6 goods or services by use of a credit card and operations  
7 other than a purchase, such as bailment, damage or payment  
8 deposits, donations, and similar transactions, in which the  
9 use of the credit card serves as a replacement for currency.

10 (b) The term does not include the transfer of money  
11 from one person to another or a transfer, such as an  
12 electronic funds transfer, from a financial institution to a  
13 person.

14 (6) "Vendor" means a person who sells goods or services  
15 or provides other financial transactions to a buyer by means  
16 of a credit card.

17 NEW SECTION. Section 2. Imposition and rate of credit  
18 card use tax. A credit card use tax of 4% of the amount  
19 charged in each credit card transaction is imposed on buyers  
20 in all credit card transactions for the privilege of  
21 transacting financial operations with a credit card.

22 NEW SECTION. Section 3. Agents for collection of  
23 credit card use tax. A vendor who conducts credit card  
24 transactions in this state shall collect the credit card use  
25 tax from the buyer and pay the tax collected to the

1 department.

2 NEW SECTION. Section 4. Exemption -- government  
3 agencies -- utilities. All credit card transactions in which  
4 the buyer is the United States or any agency or  
5 instrumentality of the United States or of this state or any  
6 political subdivision of this state are exempt from the  
7 credit card use tax.

8 NEW SECTION. Section 5. Permit application --  
9 requirements -- place of business -- form. (1) (a) A vendor  
10 desiring to engage in financial transactions with credit  
11 cards in Montana shall file with the department an  
12 application for a permit. If the vendor has more than one  
13 place of business, an application must be filed for each  
14 place of business.

15 (b) Each vendor obligated to file a return under  
16 [sections 1 through 21] is required to file an application  
17 for a permit.

18 (2) Each application for a permit must be on a form  
19 prescribed by the department and must set forth the name  
20 under which the applicant intends to transact business, the  
21 location of the applicant's place or places of business, the  
22 names of the credit cards with which the vendor intends to  
23 conduct financial transactions, and other information that  
24 the department may require. The application must be filed by  
25 the owner if the owner is a natural person, by a member or

1 partner if the owner is an association or partnership, or by  
2 a person authorized to sign the application if the owner is  
3 a corporation.

4 NEW SECTION. Section 6. Credit card issuers --  
5 registration required -- listing of participating vendors.  
6 Financial institutions that issue credit cards and other  
7 issuers of credit cards that have vendors in Montana  
8 authorized to conduct financial transactions with credit  
9 cards shall register annually with the department. The  
10 registration must be on a form prescribed by the department  
11 and must set forth the name under which the issuer conducts  
12 business, the names of the credit cards it issues, the  
13 address of the issuer, a list of vendors authorized to  
14 conduct financial transactions using the issuer's credit  
15 card, and other information that the department requires.

16 NEW SECTION. Section 7. Liability for payment of tax.  
17 Liability for the payment of the credit card use tax is not  
18 extinguished until the tax has been paid to the department.

19 NEW SECTION. Section 8. Application for permission to  
20 report on accrual basis. (1) A vendor who has a permit  
21 issued pursuant to [section 5] may apply to the department  
22 for permission to report and pay the credit card use tax on  
23 an accrual basis.

24 (2) The application must be made on a form prescribed  
25 by the department and contain information that the

1 department requires.

2 (3) A vendor may not report or pay the credit card use  
3 tax on an accrual basis unless the person has received  
4 written permission from the department.

5 NEW SECTION. Section 9. Returns -- payment --  
6 authority of department. (1) Except as provided in  
7 subsection (2), on or before the 25th day of each month in  
8 which the tax imposed by [sections 1 through 21] is payable,  
9 a return, on a form provided by the department, and payment  
10 of the tax collected by the vendor, less the vendor  
11 allowance provided for in subsection (5), for the preceding  
12 month must be filed with the department. Each return must  
13 contain a confession of judgment for the amount of the tax  
14 shown due, to the extent not timely paid. A vendor engaged  
15 in credit card transactions at two or more places of  
16 business may file a consolidated return, subject to rules  
17 prescribed by the department.

18 (2) A vendor who has tax collections that average less  
19 than \$100 per month and who has been granted the authority  
20 to report and pay the tax imposed by [sections 1 through 21]  
21 on a quarterly basis shall file a return with payment on or  
22 before the 25th day of the month following the end of the  
23 quarter.

24 (3) (a) For the purposes of the credit card use tax, a  
25 return must be filed by the vendor who accepted payment by

1 credit card.

2 (b) Each return must be signed by the vendor filing the  
3 return or by the vendor's agent duly authorized in writing.

4 (4) (a) A vendor liable for payment of the taxes paid  
5 by buyers under [sections 1 through 21] shall keep records,  
6 render statements, make returns, and comply with the  
7 provisions of [sections 1 through 21] and the rules  
8 prescribed by the department. Each return or statement must  
9 include the information required by the rules of the  
10 department.

11 (b) For the purpose of determining compliance with the  
12 provisions of this section, the department is authorized to  
13 examine or cause to be examined any books, papers, records,  
14 or memoranda relevant to making a determination of the  
15 amount of tax due, whether the books, papers, records, or  
16 memoranda are the property of or in the possession of the  
17 vendor filing the return or another person. The department  
18 may also:

19 (i) require the attendance of a person having knowledge  
20 or information relevant to a return;

21 (ii) compel the production of books, papers, records, or  
22 memoranda by the person required to attend;

23 (iii) take testimony on matters material to the  
24 determination; and

25 (iv) administer oaths or affirmations.

1 (5) A vendor filing a return under this section may  
2 annually deduct from the amount of tax to be remitted to the  
3 state a vendor allowance of 4% of the tax determined to be  
4 payable to the state or \$1,200, whichever is less. The  
5 annual deduction allowed under this subsection applies on a  
6 calendar year basis.

7 (6) Pursuant to rules established by the department,  
8 returns may be computer generated.

9 NEW SECTION. **Section 10. Extensions.** (1) The  
10 department may extend the time for filing a return and  
11 remittance of tax, deficiencies, and penalties for a period  
12 not to exceed 60 days from the date a return was due and may  
13 require both an estimated return at the time fixed for  
14 filing the regularly required return and the payment of tax  
15 on the basis of the estimated return.

16 (2) If an extension of time for payment has been  
17 granted under this section, interest at the rate provided in  
18 [section 12 (1)(b)] is payable from the date on which  
19 payment was first due without extension until the tax is  
20 paid.

21 NEW SECTION. **Section 11. Examination of return --**  
22 **adjustments -- delivery of notices and demands.** (1) The  
23 department may examine a return and make an investigation or  
24 examination of the records and accounts of a vendor making  
25 the return if the department considers it necessary to

1 determine the accuracy of the return.

2 (2) To determine the accuracy of a return, the  
3 department may examine the records and accounts, using  
4 statistical or other sampling techniques consistent with  
5 generally accepted accounting principles.

6 (3) If the department determines that the amount of tax  
7 due is different from the amount reported, the amount of tax  
8 computed on the basis of the examination conducted pursuant  
9 to subsections (1) and (2) constitutes the tax to be paid.

10 (4) If the tax due exceeds the amount of tax reported  
11 as due on the vendor's return, the excess must be paid to  
12 the department within 60 days after notice of the amount and  
13 demand for payment is mailed or delivered to the vendor  
14 making the return. If the amount of the tax found due by the  
15 department is less than that reported as due on the return  
16 and has been paid, the excess must be refunded to the vendor  
17 making the return in the manner provided in 15-1-503.

18 (5) The notice and demand provided for in this section  
19 must contain a statement of the computation of the tax and  
20 must be:

21 (a) sent by mail to the vendor at the address given in  
22 the vendor's return, if any, or to the vendor's last-known  
23 address; or

24 (b) served personally upon the vendor.

25 NEW SECTION. **Section 12.** Penalties and interest for

1 violation. (1) (a) If a vendor, without purposely or  
2 knowingly violating any requirement imposed by [sections 1  
3 through 21], fails to file a return and pay the tax on or  
4 before the due date, there must be imposed a penalty of 5%  
5 of any balance of debt unpaid with respect to such a return  
6 as of the date due, but in no event may the penalty for  
7 failure to file a return by its due date be less than \$5.  
8 The department may abate the penalty if the vendor  
9 establishes that the failure to file on time was due to  
10 reasonable cause and was not due to neglect by the vendor.

11 (b) If a vendor, without purposely or knowingly  
12 violating any requirement imposed by [sections 1 through  
13 21], fails to pay a debt on or before its due date, there  
14 must be added to the debt a penalty of 10% of the debt, but  
15 not less than \$5. Interest must accrue on the debt at a rate  
16 of 12% per annum for the entire period it remains unpaid.  
17 The department may abate the penalty if the vendor  
18 establishes that the failure to pay was due to reasonable  
19 cause and was not due to neglect by the vendor.

20 (2) If a vendor purposely or knowingly violates any  
21 requirements imposed by [sections 1 through 21] by failing  
22 to timely file a return or pay a debt under the provisions  
23 of [section 9], there must be added to the debt an  
24 additional amount equal to 25% of the debt, but not less  
25 than \$25, and interest at 1% for each month or fraction of a

1 month during which the debt remains unpaid.

2 NEW SECTION. Section 13. Warrant for distraint. If a  
3 tax imposed by [sections 1 through 21] or any portion of the  
4 tax is not paid when due, the department may issue a warrant  
5 for distraint, as provided in Title 15, chapter 1, part 7.

6 NEW SECTION. Section 14. Authority to collect  
7 delinquent taxes. (1) The department shall collect a tax  
8 that is delinquent as determined under [sections 1 through  
9 21].

10 (2) To collect a delinquent tax after the time for  
11 appeal has expired, the department may direct the offset of  
12 tax refunds or other funds due the vendor from the state,  
13 except wages subject to the provisions of 25-13-614 and  
14 retirement benefits.

15 (3) The vendor has the right to a review under 15-1-211  
16 on the tax liability prior to any offset by the department.

17 (4) The department may file a claim for state funds on  
18 behalf of the vendor if a claim is required before funds are  
19 available for offset.

20 (5) The department shall provide the vendor with  
21 written notice of the right to request a review under  
22 15-1-211 on the matter of the offset action or the  
23 department's intent to file a claim on behalf of the vendor.  
24 The vendor shall make a written request for a review, and  
25 the review must be held in accordance with the procedures

1 set forth in 15-1-211.

2 NEW SECTION. Section 15. Penalty for deficiency.

3 (1) (a) If the payment of a tax deficiency is not made  
4 within 60 days after it is due and payable and if the  
5 deficiency is due to negligence on the part of the vendor  
6 but without fraud, there must be added to the amount of the  
7 deficiency a penalty of 10% of the tax.

8 (b) Interest accrues on the unpaid tax at the rate of  
9 1% for each month or part of the month during which the tax  
10 remains unpaid. The interest must be computed from the date  
11 the return and tax were originally due.

12 (c) In no event may the penalty imposed under  
13 subsection (1)(a) exceed 25% of the total tax due.

14 (2) If the time for filing a return is extended, the  
15 vendor shall pay, in addition to the tax due, interest on  
16 the tax at the rate of 1% for each month or part of the  
17 month from the date the return was originally required to be  
18 filed to the time of payment.

19 (3) The department may not assess a penalty until such  
20 time as the penalty equals \$10 or more for any one tax  
21 period or the period covered by any return or statement.

22 NEW SECTION. Section 16. Limitations. Except in the  
23 case of a vendor who, with intent to evade the tax,  
24 purposely or knowingly files a false or fraudulent return  
25 violating the provisions of [sections 1 through 21], the

1 amount of tax due under any return must be determined by the  
 2 department within 5 years after the return was made. The  
 3 department is barred from revising a return or recomputing  
 4 the tax due on the return, and no proceeding in court for  
 5 the collection of the tax may be instituted unless notice of  
 6 an additional tax was provided within the period described  
 7 in this section.

8 NEW SECTION. Section 17. Refunds. A claim for a  
 9 vendor's refund for taxes collected under [sections 1  
 10 through 21] must be made in accordance with the procedure  
 11 and time limits provided in 15-1-503.

12 NEW SECTION. Section 18. Administration -- rules. The  
 13 department shall:

14 (1) administer and enforce the provisions of [sections  
 15 1 through 21];

16 (2) cause to be prepared and distributed forms and  
 17 information as may be necessary to administer the provisions  
 18 of [sections 1 through 21]; and

19 (3) promulgate rules as may be appropriate to  
 20 administer and enforce the provisions of [sections 1 through  
 21 21].

22 NEW SECTION. Section 19. Information --  
 23 confidentiality -- agreements with another state. (1) (a)  
 24 Except as provided in subsections (1)(b) and (2), it is  
 25 unlawful for an employee of the department or any other

1 public official or public employee to divulge or otherwise  
 2 make known any information disclosed in a report or return  
 3 required to be filed under [sections 1 through 21] or any  
 4 information concerning the affairs of the vendor making the  
 5 return that is acquired from the vendor's records or from  
 6 officers or employees in an examination or audit.

7 (b) Subsection (1)(a) does not apply to information  
 8 obtained from the vendor making the report or return in  
 9 connection with a proceeding involving a tax due under  
 10 [sections 1 through 21] or to compliance with the provisions  
 11 of subsection (2).

12 (c) Nothing in this section may be construed to  
 13 prohibit the department from publishing statistics if they  
 14 are classified in a way that does not disclose the identity  
 15 and content of any particular return or report. A person  
 16 violating the provisions of this section is subject to the  
 17 penalty provided in 15-30-303 for violating the  
 18 confidentiality of individual income tax information.

19 (2) (a) The department may enter into an agreement with  
 20 the taxing officials of another state for the interpretation  
 21 and administration of the laws of their state that provide  
 22 for the collection of credit card use taxes in order to  
 23 promote fair and equitable administration of those laws and  
 24 to eliminate double taxation.

25 (b) The department, in order to implement the



1 provisions of [sections 1 through 21], may furnish  
2 information on a reciprocal basis to the taxing officials of  
3 another state.

4 NEW SECTION. **Section 20.** Credit card use tax account.

5 (1) There is within the state special revenue fund a credit  
6 card use tax account.

7 (2) All money collected under [sections 1 through 21]  
8 must be paid by the department into the credit card use tax  
9 account.

10 (3) There must be retained in the credit card use tax  
11 account the amounts necessary under [sections 1 through 21]  
12 to repay overpayments, pay any erroneous receipts illegally  
13 assessed or collected or that are excessive in amount, and  
14 pay any other vendor refunds otherwise required.

15 NEW SECTION. **Section 21.** Disposition of credit card  
16 use tax. Except as provided in [section 20(3)], credit card  
17 use tax revenue is allocated to the general fund.

18 NEW SECTION. **Section 22.** Credit for credit card use  
19 tax. (1) The amount of credit card use tax paid under  
20 [sections 1 through 21] by a taxpayer as a buyer during the  
21 tax year is allowed as a tax credit against taxes imposed by  
22 15-30-103 or 15-31-101.

23 (2) If the amount of credit allowed in this section is  
24 greater than the tax imposed by 15-30-103 or 15-31-101, it  
25 may be claimed as a carryback or carryforward.

1 NEW SECTION. **Section 23.** Codification instruction. (1)  
2 [Sections 1 through 21] 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 21].

5 (2) [Section 22] is intended to be codified as an  
6 integral part of Title 15, chapter 30, and the provisions of  
7 Title 15, chapter 30, apply to [section 22].

8 NEW SECTION. **Section 24.** Effective date. [This act] is  
9 effective on passage and approval and applies to all credit  
10 card transactions made after December 31, 1992.

-End-