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House BILL NO. *465*

INTRODUCED BY *Minahan*

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FULL DEDUCTIBILITY OF THE TAX ON CERTAIN ACCOMMODATIONS OR "BED TAX" IN COMPUTING NET INCOME FOR THE PURPOSES OF DETERMINING INDIVIDUAL INCOMETAX, CORPORATION LICENSE TAX, OR CORPORATION INCOME TAX; INCREASING THE RATE OF THE "BED TAX"; INCREASING THE RATE OF REIMBURSEMENT TO THE STATE GENERAL FUND FOR "BED TAX" PAID BY STATE EMPLOYEES AND OFFICIALS; ALLOCATING REVENUE COLLECTED FROM THE "BED TAX"; AMENDING SECTIONS 15-30-121, 15-31-114, 15-65-111, AND 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

~~(1)(a)~~ the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

- ~~(a)~~(i) items provided for in 15-30-123;
- ~~(b)~~(ii) state income tax paid;
- ~~(c)~~(iii) one-half of premium payments for medical care as provided in subsection ~~(9)~~ (2);
- ~~(2)~~(b) federal income tax paid within the tax year;
- ~~(3)~~(c) expenses of household and dependent care services as outlined in subsections ~~(3)(a) through (3)(e)~~ and ~~(9)~~ (1)(c)(i) through (1)(c)(iii) and (3) and subject to the limitations and rules as set out in subsections ~~(3)(d) through (3)(f)~~ (1)(c)(iv) through (1)(c)(vi), as follows:

~~(a)~~(i) expenses for household and dependent care services necessary for gainful employment incurred for:

- ~~(1)~~(A) a dependent under 15 years of age for whom an exemption can be claimed;
- ~~(2)~~(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross

1 income do not apply, who is unable to provide self-care because of physical or mental illness; and

2 ~~(iii)(C)~~ a spouse who is unable to provide self-care because of physical or mental illness;

3 ~~(b)(ii)~~ employment-related expenses incurred for the following services, but only if the expenses are

4 incurred to enable the taxpayer to be gainfully employed:

5 ~~(i)(A)~~ household services that are attributable to the care of the qualifying individual; and

6 ~~(iii)(B)~~ care of an individual who qualifies under subsection ~~(3)(a)~~ (1)(c)(i);

7 ~~(e)(iii)~~ expenses incurred in maintaining a household if over half of the cost of maintaining the

8 household is furnished by an individual or, if the individual is married during the applicable period, is

9 furnished by the individual and the individual's spouse;

10 ~~(d)(iv)~~ the amounts deductible in subsections ~~(3)(a) through (3)(e)~~ (1)(c)(i) through (1)(c)(iii), subject

11 to the following limitations:

12 ~~(i)(A)~~ a deduction is allowed under subsection ~~(3)(a)~~ (1)(c)(i) for employment-related expenses

13 incurred during the year only to the extent that the expenses do not exceed \$4,800;

14 ~~(iii)(B)~~ expenses for services in the household are deductible under subsection ~~(3)(a)~~ (1)(c)(i) for

15 employment-related expenses only if they are incurred for services in the taxpayer's household, except that

16 employment-related expenses incurred for services outside the taxpayer's household are deductible, but

17 only if incurred for the care of a qualifying individual described in subsection ~~(3)(a)(i)~~ (1)(c)(i)(A) and only

18 to the extent that the expenses incurred during the year do not exceed:

19 ~~(A)(I)~~ \$2,400 in the case of one qualifying individual;

20 ~~(B)(II)~~ \$3,600 in the case of two qualifying individuals; and

21 ~~(C)(III)~~ \$4,800 in the case of three or more qualifying individuals;

22 ~~(e)(v)~~ if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year

23 during which the expenses are incurred, the amount of the employment-related expenses incurred, to be

24 reduced by one-half of the excess of the combined adjusted gross income over \$18,000;

25 ~~(i)(vi)~~ for purposes of this subsection ~~(3)~~ (1)(c):

26 ~~(i)(A)~~ married couples shall file a joint return or file separately on the same form;

27 ~~(iii)(B)~~ if the taxpayer is married during any period of the tax year, employment-related expenses

28 incurred are deductible only if:

29 ~~(A)(I)~~ both spouses are gainfully employed, in which case the expenses are deductible only to the

30 extent that they are a direct result of the employment; or

- 1 ~~(B)~~(II) the spouse is a qualifying individual described in subsection ~~(3)(a)(iii)~~ (1)(c)(i)(C);
- 2 ~~(iii)~~(C) an individual legally separated from the individual's spouse under a decree of divorce or of
3 separate maintenance may not be considered as married;
- 4 ~~(iv)~~(D) the deduction for employment-related expenses must be divided equally between the
5 spouses when filing separately on the same form;
- 6 ~~(v)~~(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the
7 tax year and payments made to an individual with respect to whom a deduction is allowable under
8 15-30-112(5) are not deductible as employment-related expenses;
- 9 ~~(4)~~(d) in the case of an individual, political contributions determined in accordance with the
10 provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for
11 the tax year ended December 31, 1978;
- 12 ~~(5)~~(e) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 that
13 was not otherwise deducted in computing taxable income;
- 14 ~~(6)~~(f) contributions to the child abuse and neglect prevention program provided for in 41-3-701,
15 subject to the conditions set forth in 15-30-156;
- 16 ~~(7)~~(g) one-half of premium payments, except premiums deducted in determining Montana adjusted
17 gross income, for:
- 18 ~~(a)~~(i) insurance for medical care made directly by the taxpayer; and
- 19 ~~(b)~~(ii) long-term care insurance with benefits that meet or exceed the minimum standards as
20 established by the state insurance commissioner; ~~and~~
- 21 ~~(8)~~(h) contributions to the Montana drug abuse resistance education program provided for in
22 44-2-702, subject to the conditions set forth in 15-30-159; and
- 23 (i) all taxes paid pursuant to 15-65-111 during the tax year.
- 24 ~~(9)~~(2) For the purpose of subsection ~~(7)(a)~~ (1)(g)(i), deductible medical insurance premiums are
25 those premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).
- 26 ~~(10)~~(3) (a) Subject to the conditions of subsection ~~(3)~~ (1)(c), a taxpayer who operates a family
27 day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the
28 taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct
29 employment-related expenses considered to have been paid for the care of the child.
- 30 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is

1 equal to the amount that the taxpayer charges for the care of a child of the same age for the same number
 2 of hours of care. The employment-related expenses apply regardless of whether any expenses actually have
 3 been paid. Employment-related expenses may not exceed the amounts specified in subsection ~~(3)(d)(ii)~~
 4 (1)(c)(iv)(B).

5 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the
 6 deduction under this subsection ~~(4)~~ (3). (Subsection ~~(8)~~ (1)(h) terminates on occurrence of
 7 contingency--sec. 12, Ch. 808, L. 1991.)"

8

9 **Section 2.** Section 15-31-114, MCA, is amended to read:

10 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
 11 following deductions are allowed from the gross income received by the corporation within the year from
 12 all sources:

13 (a) all the ordinary and necessary expenses paid or incurred during the taxable year in the
 14 maintenance and operation of its business and properties, including reasonable allowance for salaries for
 15 personal services actually rendered, subject to the limitation contained in this section, and rentals or other
 16 payments required to be made as a condition to the continued use or possession of property to which the
 17 corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for
 18 salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic
 19 corporations are taxed on income derived from outside the state, salaries of officers paid in connection with
 20 securing the income are deductible.

21 (b) (i) all losses actually sustained and charged off within the year and not compensated by
 22 insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of
 23 property used in the trade or business. The allowance is determined according to the provisions of section
 24 167 of the Internal Revenue Code in effect with respect to the taxable year. All elections for depreciation
 25 must be the same as the elections made for federal income tax purposes. A deduction is not allowed for
 26 any amount paid out for any buildings, permanent improvements, or betterments made to increase the value
 27 of any property or estate, and a deduction may not be made for any amount of expense of restoring
 28 property or making good the exhaustion of property for which an allowance is or has been made. A
 29 depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

30 (ii) ~~There~~ there is allowed as a deduction for the taxable period a net operating loss deduction

1 determined according to the provisions of 15-31-119;

2 (c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable
3 allowance for depletion and for depreciation of improvements. The reasonable allowance must be
4 determined according to the provisions of the Internal Revenue Code in effect for the taxable year. All
5 elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and
6 development costs and intangible drilling expenses for corporation license tax purposes must be the same
7 as the elections made for federal income tax purposes.

8 (d) ~~The~~ the amount of interest paid within the year on its indebtedness incurred in the operation
9 of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an
10 indebtedness created for the purchase, maintenance, or improvement of property or for the conduct
11 of business unless the income from the property or business would be taxable under this part.

12 (e) (i) taxes paid within the year, except the following:

13 (A) taxes imposed by this part;

14 (B) taxes assessed against local benefits of a kind tending to increase the value of the property
15 assessed;

16 (C) taxes on or according to or measured by net income or profits imposed by authority of the
17 government of the United States;

18 (D) taxes imposed by any other state or country upon or measured by net income or profits;

19 (ii) ~~Taxes~~ taxes deductible under this part must be construed to include taxes imposed by any
20 county, school district, or municipality of this state;

21 (f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

22 (g) (i) except as provided in subsection (1)(g)(ii), charitable contributions and gifts that qualify for
23 deduction under section 170 of the Internal Revenue Code, as amended;

24 (ii) ~~The~~ the public service commission may not allow in the rate base of a regulated corporation the
25 inclusion of contributions made under this subsection; and

26 (h) all taxes paid pursuant to 15-65-111 during the tax year.

27 (2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair
28 market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
29 technological equipment or apparatus intended for use with the computer donated to an elementary,
30 secondary, or accredited postsecondary school located in Montana if:

1 (a) the contribution is made no later than 5 years after the manufacture of the donated property
2 is substantially completed;

3 (b) the property is not transferred by the donee in exchange for money, other property, or services;
4 and

5 (c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
6 the property and representing that the use and disposition of the property will be in accordance with the
7 provisions of subsection (2)(b).

8 (3) In the case of a regulated investment company or a fund of a regulated investment company,
9 as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
10 amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
11 Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
12 for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
13 under this chapter when earned by the regulated investment company. For the purposes of computing the
14 deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
15 of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is not
16 allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue
17 Code of 1986, as those sections may be amended or renumbered."

18 .

19 **Section 3.** Section 15-65-111, MCA, is amended to read:

20 "**15-65-111. Tax rate.** (1) There is imposed on the user of a facility a tax at a rate equal to ~~4%~~
21 10% of the accommodation charge collected by the facility.

22 (2) Accommodation charges do not include charges for rooms used for purposes other than
23 lodging."

24

25 **Section 4.** Section 15-65-121, MCA, is amended to read:

26 "**15-65-121. Distribution of tax proceeds -- general fund loan authority.** (1) The proceeds of the
27 tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an
28 account in the state special revenue fund to the credit of the department of revenue. The department may
29 spend from that account in accordance with an expenditure appropriation by the legislature based on an
30 estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of

1 the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a)
2 through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state
3 lodging for each reporting period and deduct ~~4%~~ 10% of that amount from the tax proceeds received each
4 reporting period. The amount deducted must be deposited in the general fund. The balance of the tax
5 proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or
6 deposited in the general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred
7 to an account in the state special revenue fund to the credit of the department of commerce for tourism
8 promotion and promotion of the state as a location for the production of motion pictures and television
9 commercials, to the Montana historical society, to the university system, and to the department of fish,
10 wildlife, and parks, as follows:

11 (a) 1% to the Montana historical society to be used for the installation or maintenance of roadside
12 historical signs and historic sites;

13 (b) 2.5% to the university system for the establishment and maintenance of a Montana travel
14 research program;

15 (c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state
16 parks that have both resident and nonresident use;

17 (d) 67.5% to be used directly by the department of commerce; and

18 (e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to
19 regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the
20 total proceeds collected statewide; and

21 (ii) if 22.5% of the proceeds collected annually within the limits of a city or consolidated city-county
22 exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation
23 in the region where the city or consolidated city-county is located, to be distributed to the nonprofit
24 convention and visitors bureau in that city or consolidated city-county.

25 (2) If a city or consolidated city-county qualifies under this section for funds but fails to either
26 recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing
27 plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism
28 corporation in the region in which the city or consolidated city-county is located.

29 (3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual
30 marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit

1 tourism corporation may be used by the department of commerce for tourism promotion and promotion of
2 the state as a location for the production of motion pictures and television commercials."

3

4 **NEW SECTION. Section 5. Applicability.** (1) [Sections 1 and 2] apply to tax years beginning after
5 December 31, 1997.

6 (2) [This act] applies to all tax revenue received under the provisions of Title 15, chapter 65,
7 recorded on or after [the effective date of this act] regardless of when the tax obligation accrued.

8

9 **NEW SECTION. Section 6. Effective date.** [This act] is effective July 1, 1997.

10

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0465, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act allowing full deductibility of the tax on certain accommodations or "Bed Tax" in computing net income for the purposes of determining Individual Income Tax, Corporation License Tax, or Corporation Income Tax; increasing the rate of the "Bed Tax"; increasing the rate of reimbursement to the state general fund for "Bed Tax" paid by state employees and officials; allocating revenue collected from the "Bed Tax"; and providing an effective date and an applicability date.

ASSUMPTIONS:

1. Lodging Facility Use Tax collections before allocating state employee travel reimbursements are \$10,311,000 and \$10,916,000 in FY98 and FY99, respectively (OBPP).
2. State employee travel accounts for 1.34% of lodging facility charges (MDOR).
3. Dept. of Revenue collection expenses are \$102,000 in each of FY98 and FY99 (MDOR).
4. Nonresidents account for 60% of accommodations expenditures (MDOR).
5. Residents account for 40% of accommodations expenditures (MDOR).
6. Resident business taxpayers account for 40% of the Lodging Facility Use Tax liability of all residents (MDOR).
7. Resident non-business taxpayers account for 60% of the Lodging Facility Use Tax liability of all residents (MDOR).
8. Of resident non-business individual income taxpayers, 80% of income tax liability is attributable to taxpayers who itemize and 20% is attributable to taxpayers who claim the standard deduction (MDOR).
9. The average of individual and corporate income tax marginal effective tax rates is 6.0% (MDOR).
10. The applicability date of the proposed legislation for Lodging Facility Use Tax purposes is July 1, 1997 (MDOR).
11. The applicability date of the proposed legislation for income tax deductibility purposes is January 1, 1998 (MDOR).

FISCAL IMPACT:

Expenditures:

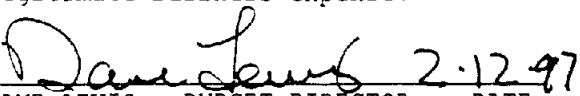
Under the proposed legislation the Department of Revenue will incur additional administrative expenses in the amount of \$14,672 during FY99 associated with adding a line to the existing itemized deductions on tax forms.

Net Impact:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Lodging Facility Use Tax	\$15,259,000	\$16,139,328
Corporation/Individual Income Tax	0	(452,000)
<u>Distribution:</u>		
MT Historical Society (02)	152,000	161,000
University System (02)	381,000	404,000
Fish, Wildlife & Parks (02)	991,000	1,050,000
Dept. Of Commerce (02)	10,300,000	10,904,000
Regional/City Tourism Corps (02)	3,435,000	3,635,000
DOR administrative impact (02)	0	(14,672)
<u>General Fund</u>	<u>0</u>	<u>(452,000)</u>
Total	\$15,259,000	\$15,687,328

TECHNICAL NOTE:

The amount of resident Lodging Facility Use Tax payments made by individuals and corporations is not known. Therefore, the impacts to the individual and corporate income taxes are shown together. It should also be noted that business taxpayers (both corporate and individual) can already deduct Lodging Facility Use Tax which are paid as a legitimate business expense.


 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 WILLIAM MENAHAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0465, as introduced

HB 465