

HOUSE BILL NO. 607

INTRODUCED BY B. SMITH

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A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN EXCISE TAX ON SOFT DRINKS TO BE PAID BY BOTTLERS AND IMPORTERS; PROVIDING FOR THE ADMINISTRATION OF THE TAX; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; ALLOCATING REVENUE TO STATE PARKS, AQUATIC INVASIVE SPECIES PROGRAMS, AND ADMINISTRATION OF VIRGINIA CITY AND NEVADA CITY; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

WHEREAS, Montana's 55 state parks are a valuable resource, providing quality educational and outdoor recreational opportunities for more than 2 million Montanans and visitors each year; and

WHEREAS, Montana state parks preserve and protect invaluable natural, cultural, and historic resources, enhance communities, and contribute \$289 million to Montana's outdoor recreation industry and help sustain 1,600 jobs annually; and

WHEREAS, Montana state parks have a proud heritage and are deeply committed to serving Montana's outdoor recreation needs and to providing significant, relevant, and accessible places for generations to enjoy well into the future; and

WHEREAS, a recent survey found that Montana has the smallest state parks budget of seven surrounding states, except North Dakota, which has only 13 parks, and staffing levels for Montana's state parks are at only 68% of the staffing levels in those surrounding states; and

WHEREAS, visitation at Montana's state parks increased by 41% in the past 6 years and the parks system cannot keep up with the demands for clean and efficient service at all 55 parks with its existing funding sources; and

WHEREAS, a facility condition inventory conducted in 2015 identified more than \$22 million in maintenance and infrastructure needs at 33 state parks, including road surfacing, trail repair, lighting, electrical repairs, septic maintenance, drain fields, waste disposal, handicap accessibility, building upkeep, well pumps, roofs, ventilation, storage, and maintenance equipment.

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

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

3 (1) "Bottler" means a person who manufactures soft drinks in the state. The term does not include a
 4 person who makes soft drinks for home consumption.

5 (2) "Importer" means a person who imports soft drinks into the state for domestic consumption.

6 (3) (a) "Soft drink" means a nonalcoholic beverage that contains natural or artificial sweeteners.

7 (b) The term does not include a beverage that contains milk or milk products or soy, rice, or similar milk
 8 substitutes or that contains greater than 50% vegetable or fruit juice by volume.

9 (4) "Unit of soft drink" means:

10 (a) one container, such as a can or bottle, sealed by a bottler, that contains soft drink; or

11 (b) the amount of concentrate needed to produce 12 fluid ounces of soft drink from a soft drink fountain.

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13 **NEW SECTION. Section 2. Rulemaking authority.** The department may adopt rules necessary to
 14 implement and administer this part.

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16 **NEW SECTION. Section 3. Soft drink tax -- rate -- report.** (1) Each bottler or importer shall pay to the
 17 department an excise tax of 5 cents for each unit of soft drink manufactured or imported by the bottler or importer.

18 (2) A bottler or importer shall report to the department at the end of each calendar quarter the number
 19 of units of soft drink bottled or imported during the quarter. A bottler or importer may deduct from the number of
 20 units of soft drink bottled or imported the number of units that the bottler or importer exported from the state and
 21 the number of units that were unsalable and destroyed or returned to the bottler or importer. The report is due
 22 within 30 days following the end of the calendar quarter and must be accompanied by a payment in an amount
 23 equal to the tax required to be collected under this section.

24 (3) The first \$10 million in revenue collected pursuant to this section each year must be deposited in the
 25 state special revenue fund established in 23-1-105. After that, 30% of the rest of the revenue collected each year
 26 must be deposited in the state special revenue fund established in 23-1-105, 60% must be deposited in the
 27 invasive species account established in 80-7-1004, and 10% must be deposited in the Montana heritage
 28 preservation and development account established in 22-3-1004.

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30 **NEW SECTION. Section 4. Bottler and importer registration.** A person may not manufacture soft

1 drink in the state or import soft drink into the state for the purposes of consumption of the soft drink in the state
2 unless the person has registered with the department as a soft drink bottler or importer. The registration must be
3 made on forms supplied by the department at no charge. The registration must be renewed annually by a date
4 established by the department.

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6 **NEW SECTION. Section 5. Failure to pay or file -- penalty and interest.** (1) A bottler or importer who
7 fails to report, fails to make a payment, or both, as required in [section 3], must be assessed a penalty as provided
8 in 15-1-216. The department may waive any penalty as provided in 15-1-206.

9 (2) (a) If a bottler or importer fails to file the report required in [section 3] or if the department determines
10 that the report understates the amount of tax due, the department may determine the amount of the tax due and
11 assess that amount against the bottler or importer. The provisions of 15-1-211 apply to an assessment by the
12 department. The taxpayer may seek review of the assessment pursuant to 15-1-211.

13 (b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and
14 demand for payment to the bottler or importer. Penalty and interest must be added to the deficiency assessment
15 as provided in 15-1-216.

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17 **NEW SECTION. Section 6. Audits -- records -- penalty and interest.** (1) The department may audit
18 the books and records of any bottler or importer to ensure that the proper amount of tax imposed by [section 3]
19 has been collected. The audit may be done on the premises of the bottler or importer or at any other convenient
20 location.

21 (2) The department may request that the bottler or importer provide the department with books, ledgers,
22 registers, or other documents necessary to verify the correct amount of tax.

23 (3) The bottler or importer shall maintain, and make available for inspection by the department on
24 request, books, ledgers, registers, or other documents showing collection of the tax required in [section 3] for the
25 preceding 5 years.

26 (4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false
27 or fraudulent return violating the provisions of this part, the amount of tax due under a return must be determined
28 by the department within 5 years after the return is made, and the department thereafter may not revise the return
29 or recompute the tax due on the return, and no proceeding in court for collecting the tax may be instituted unless
30 notice of additional tax is provided within the same period.

1 (5) An application for revision may be filed with the department by a bottler or importer within 5 years
2 from the original due date of the return.

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4 **NEW SECTION. Section 7. Credit for overpayment -- interest.** (1) If the department determines that
5 the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the
6 overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance
7 must be refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation,
8 or to the taxpayer's shareholders upon dissolution.

9 (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as
10 charged on unpaid taxes, as provided in 15-1-216, from the due date of the return or from the date of
11 overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

12 (3) (a) Interest does not accrue during a period in which the processing of a claim for refund is delayed
13 more than 30 days because the taxpayer failed to furnish information requested by the department in order to
14 verify the amount of the overpayment.

15 (b) Interest is not allowed:

16 (i) if the overpayment is refunded within 6 months after the date the return is due or after the date the
17 return is filed, whichever is later; or

18 (ii) if the amount of interest is less than \$1.

19 (c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one
20 reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest
21 is allowable.

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23 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 7] are intended to be codified
24 as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

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26 **NEW SECTION. Section 9. Effective date.** [This act] is effective January 1, 2018.

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28 **NEW SECTION. Section 10. Applicability.** [This act] applies to soft drink bottled in or imported into
29 the state after December 31, 2017.

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