

DEPARTMENT OF REVENUE

CHAPTER 14

INCOME TAX

LODGING FACILITY USE TAX

Sub-Chapter 1

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and

(b) offer hunting, fishing, or recreational services in conjunction with the services of an outfitter.

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(9) "Owner or operator of a facility" means any person or organization who rents a lodging facility to the public and is ultimately responsible for the financial affairs of the facility. Such person may be an individual, corporation, partnership, estate, trust, association, joint venture or other unincorporated group or entity. Owner or operator also includes all religious, education, charitable, and social organizations or societies which are not excluded by the provisions of Title 15, chapter 65, MCA, and all governmental entities at the federal, state and local levels.

(10) "Public" or "general public" are synonymous. If a facility is charging for lodging facilities and other services, it is presumed to serve the general public unless proven otherwise.

(11) "Rental agreement" is an agreement between an owner or operator and a user. Such an agreement provides lodging to the user for a specified period of time in exchange for a specified payment amount.

(12) "User" means the person(s) renting and paying for the lodging facilities. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-101, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2000 MAR p. 3561, Eff. 12/22/00; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

42.14.102 WHO MUST COLLECT THE TAX AND FILE RETURNS

(1) Every owner or operator of a facility operating in Montana must collect the lodging facility use tax, rounded to the nearest penny, from the users of facilities and file returns with the department as required in ARM 42.14.107.

(2) To determine taxability of a facility, the owner or operator should consider the type of operation.

If the operation is a:

Use Step:

- | | | |
|---|-----|-----|
| (b) Hotel, motel, hostel, public lodginghouse | (a) | and |
| or bed and breakfast facility | | |
| Resort, condominium inn, dude ranch, | (c) | |
| guest ranch facility, outfitting facility | | |
| Campground | (d) | |
| Dormitory | (e) | |

(a) Compute the average daily accommodation charge (ADAC). If the ADAC is less than 60% of the allowable state reimbursement for the standard cost of in-state lodging, and the facility is a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility, no further step is required. The owner or operator of the facility is not required to collect the tax. The exemption applies only to a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility.

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(b) If the ADAC is more than 60% of the allowable state reimbursement for the standard cost of in-state lodging, and the facility is a hotel, motel, hostel, public lodginghouse or bed and breakfast facility, the second step is to look to the length of the rental period of the lodging facilities.

(i) If it is rented for 30 days or more the lodging facilities are not taxable.

(ii) If it is rented for less than 30 days the lodging facilities are taxable unless specifically exempted by ARM 42.14.103.

(c) If the facility is a resort, condominium inn, dude ranch, guest ranch, or outfitting facility, look at the length of the rental period of the lodging facilities as stated in (2)(b)(i) and (ii).

(d) If the facility is owned or operated by a non-profit or religious organization and the lodging facilities are rented primarily to youth under 18 years of ages for camping, no further step is needed. The facility is exempt from the tax. If not, look at the length of the rental period as stated in (2)(b)(i) and (ii).

(e) If the facility is a dormitory and the lodging facilities are rented to users enrolled in a regular academic program or a program of continuing education, no further step is needed. Charges for the lodging facilities are exempt. See ARM 42.14.103. If not, the tax must be collected on the accommodations charges.

Examples:

Taxable

Health facility	No
Religious camps - primarily for youth	No
- occasionally for youth	Yes
Youth hostel	Yes
Federal campground	Yes
Campground - overnight trade	Yes
- permanent space	No
Rooms rented to government employees	Yes
Dormitory - lodging facilities rental	

(5) An owner or operator of a youth camp primarily used by youth (under the age of 18) for camping shall not collect the tax.

(6) An accommodation charge for lodging furnished federal government entities is exempt from the tax if and only if the accommodation charge is billed and directly paid by the governmental entity.

(7) Enrolled members of a federally recognized Indian tribe, who stay in a facility located within the exterior boundaries of the enrolled member's Indian reservation, are exempt from the tax. The owner or operator must record the individual's enrollment number on the record of the accommodation charge.

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(8) Foreign diplomats, entitled under international law or a bilateral treaty, are exempt from the lodging facility tax upon showing of a tax-exempt card issued by the U.S. state department as follows:

(a) a blue stripe at the bottom indicates the bearer is entitled to full tax exemption; and

(b) a yellow stripe indicates there is some type of restriction on the full tax exemption, which will be indicated in the yellow stripe area.

(9) An owner or operator of a camping area which is temporarily located pursuant to a permit issued by an agency of the U.S. government is not required to collect the tax. (History: Sec. 15-65-102, MCA; IMP, Sec. 2-18-501, 15-65-101, and 15-65-111, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1998 MAR p. 182, Eff. 1/16/98; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2000 MAR p. 3561, Eff. 12/22/00; AMD, 2003 MAR p. 671, Eff. 4/11/03.)

42.14.104 MULTIPURPOSE FACILITIES (1) A lodging facility room used for a purpose other than lodging (such as meeting rooms) is not subject to the tax.

(2) A lodging facility room used for lodging and another purpose is subject to the tax.

(3) Rooms supplied with beds are presumed to be rented for purpose of lodging unless the contrary is conclusively established by the owner or operator. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-111, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

42.14.105 COMBINED CHARGE FOR SERVICES (1) When lodging facility use taxes are combined with food, beverage, recreation, or other charges which are a substantial portion

of the charge, the owner or operator may allocate the lodging facility use tax using one of the following:

(a) a flat rate of the allowable state reimbursement for the standard cost of in-state lodging each day for each person;

(b) 25% of all charges each day for each person; or

(c) a charge justified by reasonable documentation.

(2) As required by 15-65-113, MCA, an owner or operator must maintain and have available for inspection, records to substantiate the items referred to in (1)(a) through (c). The department may request the owner or operator of a facility to substantiate and itemize each charge to verify the correct amount of tax.

(3) Lodging facility use taxes do not include separately stated service charges which are not an integral part of the use or occupancy of the room or campground space, such as:

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(a) separately stated telephone;

(b) television;

(c) food;

(d) beverage; or

(e) personal laundry charges.

(4) The department may disallow an owner or operator's method of allocating the lodging facility use tax under (1) if:

(a) the department has reasonable cause to believe that the method of allocation was chosen solely to qualify the facility for a tax exemption as provided in ARM 42.14.103; or

(b) a charge allocated under (1)(c) is not supported by reasonable documentation or itemization.

(5) Lodging facility use taxes include amounts charged for bathhouse facilities or temporary use of tangible personal property used in conjunction with the room, such as a charge for an extra bed.

(6) If campgrounds charge for water, electrical or sewer hookups, and bathhouse facilities, those charges are included in the amount that is subject to tax.

(7) If the facility charges for electricity as a separate or additional charge, this charge must be included in the amount that is subject to the tax. (History: Sec. 15-65-102, MCA; IMP, Sec. 2-18-501, 15-65-111, and 15-65-113, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1992 MAR p. 2776, Eff. 12/25/92; AMD, 1998 MAR p. 182, Eff. 1/16/98; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

42.14.106 FACILITY REGISTRATION (1) Every owner or operator required to impose the lodging facility use tax must register and file an application for a state identification number on the form provided by the department for each facility owned or operated in Montana.

(2) Any owner or operator who has acquired the business of another facility shall not use the predecessor's state identification number. The owner or operator must register before the due date of the first report. This applies to both new businesses and businesses which have been purchased.

(3) Each registration application must contain the federal entity identification number assigned by the internal revenue service. For sole proprietorships, this number is a social security number. Any entity change requiring a new federal identification number requires a new facility registration.

(4) No registration is considered complete unless the federal identification number appears on the application.

(5) Not being registered does not relieve an owner or operator from the collection and reporting requirements. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-114, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1992 MAR p. 2776, Eff. 12/25/92; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

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42.14.107 QUARTERLY REPORTS AND PAYMENTS - DUE DATES

(1) Every owner or operator is required to make, for each calendar quarter or portion of a quarter in operation, a report to the Department of Revenue, P.O. Box 5805, Helena, MT, 59604-5805. The report must include gross lodging facility use taxes.

(2) The owner or operator shall remit the amount of this tax with the quarterly report. The report will cover quarterly periods ending March 31, June 30, September 30, and December 31, and must be postmarked no later than the last day of the month following the close of the quarter. Reports must be made on forms supplied by the department.

(3) If a tax was not collected, the report should so state.

(4) The department may not grant an extension to remit the tax.

(5) If the due date for filing falls on a holiday or weekend, the due date for the return shall be the next business day following such holiday or weekend.

(6) The owner or operator must file a final quarterly report for the last quarter of operation and state the last date of business. Failure to do so will result in a liability to the owner or operator for an estimated tax, penalty, and interest. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-112, 15-65-114, and 15-65-115, MCA; TEMP, NEW,

1987 MAR p. 1637, Eff. 9/25/87; AMD, 1991 MAR p. 2637, Eff. 12/27/91; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

42.14.108 PENALTIES AND INTEREST (1) Upon request, the penalty may be waived pursuant to ARM 42.3.101 through 42.3.114, and 42.3.120. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-114 and 15-65-115, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1991 MAR p. 2637, Eff. 12/27/91; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

42.14.109 RECORDS REQUIRED - AUDIT (1) Each owner or operator of a facility shall maintain records necessary to document gross receipts for lodging facility use tax. An owner or operator may be required to substantiate gross receipts reported for a particular quarter. For audit purposes, the owner or operator may be required to reconstruct the reported gross receipts from the original lodging facility use tax receipts.

(2) Such records shall include specific documentation of exempt charges.

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(3) The owner or operator of a facility must notify the user of the 4% lodging facility use tax. Beginning June 30, 1988, the tax shall be separately stated on the receipt, invoice, or other document provided to the user to insure there is a record of the amount of tax charged.

(4) The records shall be maintained by the owner or operator of a facility for a period of five years and shall be subject to audit by the department for that period. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-113, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

42.14.110 FAILURE TO FURNISH REQUESTED INFORMATION

(1) The department, for the purpose of determining the correctness of any return, may request additional information to verify amounts or items on the return.

(2) If a return is not filed or information is not supplied, the department will estimate the tax from available information. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-115, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87.)

42.14.111 SUMMARY REPORT REQUIRED (1) The department shall provide the department of commerce a quarterly report, within 90 days of the close of a quarter, of the tax collected within:

(a) the city limits of cities and consolidated city-counties;

(b) the counties; and

(c) tourism regions.

(2) The department of commerce must notify the department of any tourism boundary change 30 days prior to the end of the quarter. (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-121, MCA; TEMP, NEW, 1987 MAR p. 1637, Eff. 9/25/87; AMD, 1999 MAR p. 2904, Eff. 12/17/99; AMD, 2003 MAR p. 311, Eff. 2/28/03.)

42.14.112 FORMULA (Is Hereby Repealed.) (History: Sec. 15-65-102, MCA; IMP, Sec. 15-65-121, MCA; NEW, 1989 MAR p. 1529, Eff. 9/29/89; REP, 1999 MAR p. 2904, Eff. 12/17/99.)