

HOUSE BILL NO. 25

INTRODUCED BY S. ESSMANN

BY REQUEST OF THE REVENUE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING EXEMPT ENTITIES TO REPORT BENEFICIAL USE OF PROPERTY TO THE DEPARTMENT OF REVENUE; PROVIDING FOR A REVISED ASSESSMENT WHEN BENEFICIAL USE IS NOT PROPERLY REPORTED; AND AMENDING SECTION 15-6-201, MCA."

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

NEW SECTION. Section 1. Beneficial use of exempt property -- reporting -- revision. (1) Except as provided for in 15-24-1203, property owned by an entity listed in 15-6-201(1)(a) and leased for the beneficial use of a nonexempt entity is subject to taxation under Title 15, chapter 6.

(2) An entity granted an exemption under Title 15, chapter 6, part 2, that leases property for the beneficial use of a nonexempt entity or for a nonexempt use shall report annually to the department. The report must include a description of the leased property and a copy of the lease agreement.

(3) Property for which the beneficial use is not properly reported as required in subsection (2) is subject to the provisions of 15-8-601.

Section 2. Section 15-6-201, MCA, is amended to read:

"15-6-201. Governmental, charitable, and educational categories -- exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in [section 1] and 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

- (iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;
- (iv) municipal corporations;
- (v) public libraries;
- (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;
- (vii) special districts created pursuant to Title 7, chapter 11, part 10; and
- (viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is used exclusively by the tribe for essential government services. Essential government services are tribal government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public transit, and public parks and recreational facilities.
- (b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;
- (c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used exclusively for religious purposes;
- (d) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;
- (e) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:
- (i) is not operated for gain or profit;
- (ii) has an attendance policy; and

1 (iii) has a definable curriculum with systematic instruction;

2 (f) property, of any acreage, owned by a tribal corporation created for the sole purpose of
3 establishing schools, colleges, and universities if the property meets the requirements of subsection (1)(e);

4 (g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by
5 the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care
6 facility that is not licensed by the department of public health and human services and organized under Title 35,
7 chapter 2 or 3, is not exempt.

8 (h) property that is:

9 (i) (A) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20,
10 or 21; or

11 (B) owned by a federally recognized Indian tribe within the state and set aside by tribal resolution;
12 and

13 (ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent
14 care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

15 (iii) not maintained and not operated for gain or profit;

16 (i) subject to subsection (2), property that is owned or property that is leased from a federal, state,
17 or local governmental entity by institutions of purely public charity if the property is directly used for purely
18 public charitable purposes;

19 (j) evidence of debt secured by mortgages of record upon real or personal property in the state of
20 Montana;

21 (k) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

22 (l) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association
23 or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the
24 irrigation of agricultural land;

25 (m) the right of entry that is a property right reserved in land or received by mesne conveyance
26 (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another
27 to explore, prospect, or dig for oil, gas, coal, or minerals;

28 (n) (i) property that is owned and used by a corporation or association organized and operated

1 exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with
2 physical or mental impairments that constitute or result in substantial impediments to employment and that is
3 not operated for gain or profit; and

4 (ii) subject to subsection (2)(e), property that is owned and used by an organization owning and
5 operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or
6 profit;

7 (o) property owned by a nonprofit corporation that is organized to provide facilities primarily for
8 training and practice for or competition in international sports and athletic events and that is not held or used for
9 private or corporate gain or profit. For purposes of this subsection (1)(o), "nonprofit corporation" means an
10 organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated
11 and admitted under the Montana Nonprofit Corporation Act.

12 (p) property rented or leased to a municipality or taxing unit for less than \$100 a year and that is
13 used for public park, recreation, or landscape beautification purposes. For the purposes of this subsection
14 (1)(p), "property" includes land but does not include buildings. The exemption must be applied for by the
15 municipality or taxing unit, and not more than 10 acres within the municipality or taxing unit may be exempted.

16 (2) (a) (i) For the purposes of tribal property under subsection (1)(a)(viii), the property subject to
17 exemption may not be:

18 (A) operated for gain or profit;

19 (B) held under contract to operate, lease, or sell by a taxable individual;

20 (C) used or possessed exclusively by a taxable individual or entity; or

21 (D) held by a tribal corporation except for educational purposes as provided in subsection (1)(f).

22 (ii) For the purposes of parks and recreational facilities under subsection (1)(a)(viii), the property
23 must be:

24 (A) set aside by tribal resolution and designated as park land, not to exceed 640 acres, or be
25 designated as a recreational facility; and

26 (B) open to the general public.

27 (b) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the
28 federal Internal Revenue Code:

1 (i) an ordained minister, priest, or rabbi;

2 (ii) a commissioned or licensed minister of a church or church denomination that ordains ministers
3 if the person has the authority to perform substantially all the religious duties of the church or denomination;

4 (iii) a member of a religious order who has taken a vow of poverty; or

5 (iv) a Christian Science practitioner.

6 (c) For the purposes of subsection (1)(i):

7 (i) the term "institutions of purely public charity" includes any organization that meets the following
8 requirements:

9 (A) The organization offers its charitable goods or services to persons without regard to race,
10 religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3),
11 Internal Revenue Code, as amended.

12 (B) The organization accomplishes its activities through absolute gratuity or grants. However, the
13 organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public
14 performances or entertainment or by other similar types of fundraising activities.

15 (ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is
16 used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the
17 Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file
18 annually with the department a copy of its federal tax return reporting any unrelated business taxable income
19 received by the charity during the tax year, together with a statement indicating whether the exempt property
20 was used to generate any unrelated business taxable income.

21 (iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase
22 even if the property must be improved before it can directly be used for its intended charitable purpose. If the
23 property is not directly used for the charitable purpose within 8 years of receiving an exemption under this
24 section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked
25 and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the
26 owner of the property shall pay an amount equal to the amount of the tax due that year times the number of
27 years that the property was tax-exempt under this section. The amount due is a lien upon the property and
28 when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax

1 collected on the property is distributed. At the time the exemption is granted, the department shall file a notice
2 with the clerk and recorder in the county in which the property is located. The notice must indicate that an
3 exemption pursuant to this section has been granted. The notice must describe the penalty for default under
4 this section and must specify that a default under this section will create a lien on the property by operation of
5 law. The notice must be on a form prescribed by the department.

6 (iv) not more than 160 acres may be exempted by a purely public charity under any exemption
7 originally applied for after December 31, 2004. An application for exemption under this section must contain a
8 legal description of the property for which the exemption is requested.

9 (d) For the purposes of subsection (1)(k), the term "public museums, art galleries, zoos, and
10 observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold
11 property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property
12 includes all real and personal property owned by the public museum, art gallery, zoo, or observatory that is
13 reasonably necessary for use in connection with the public display or observatory use. Unless the property is
14 leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization,
15 real and personal property owned by other persons is exempt if it is:

16 (i) actually used by the governmental entity or nonprofit organization as a part of its public display;

17 (ii) held for future display; or

18 (iii) used to house or store a public display.

19 (e) For the purposes of facilities for the care of the retired, aged, or chronically ill under subsection
20 (1)(n)(ii), the terms "retired" and "aged" mean an individual who satisfies the age and gross household income
21 limitations of 15-30-2338. The property owner shall verify age and gross household income requirements on a
22 form prescribed by the department. Applicants are subject to the false swearing penalties established in 45-7-
23 202."

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25 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
26 integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

27 - END -