

## Chapter 3

# RESORT TAX

### 3-3-1: DEFINITIONS:

LUXURIES, MEDICAL SUPPLIES AND MEDICINE: Defined as set forth in Montana code 7-6-1501, and further in section [3-3-3](#) of this chapter.

RESORT TAX AND TAX: The resort tax passed by the electorate of the city and as enacted by this chapter. (Ord. 95-15, 12-18-1995)

### 3-3-2: RESORT TAX IMPOSED:

A. Tax Imposed: Pursuant to the elections held on November 7, 1995, November 2, 2004, and April 28, 2015, there is imposed a resort tax on the retail value of all goods and services sold, except for goods and services sold for resale, within the city by the following establishments:

1. Hotels, motels and other lodging or camping facilities;
2. Restaurants, fast food stores and other food service establishments;
3. Taverns, bars, nightclubs, lounges and other public establishments that serve beer, wine, liquor or other alcoholic beverages by the drink;
4. Destination ski resorts and other destination recreational facilities;
5. Establishments that sell luxuries shall collect a tax on such luxuries.

B. Rate Of Tax:

1. The exact rate of the resort tax is three percent (3%).
2. The duration of the resort tax is twenty nine (29) years from its effective date, said effective date being February 1, 1996, and will expire January 31, 2025.

C. Duty To Collect: It is the duty of each operator of any of the establishments mentioned in this chapter to collect, upon sale, the tax herein imposed. (Ord. 15-08, 5-18-2015, eff. 7-1-2015)

### 3-3-3: LUXURIES TAX:

Each business subject to the tax shall collect the same on the retail value of all goods and services sold, except goods and services sold for resale, within the city by the establishments set forth in subsection [3-3-2A](#) of this chapter. All luxuries shall be taxed, and "luxuries" shall mean any gift item, luxury item or other item normally sold to the public or to transient visitors or tourists; but the term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools or any necessities of life. The term luxuries shall be defined to include, but shall not be limited to:

Destination Ski Resorts And Other Destination Recreational Facilities:

- All goods and services
- Ski lift packages

Hotels, Motels And Other Lodging Or Camping Facilities:

- All goods and services sold
- Conference, convention or event room or space rentals
- Lodging based on rental periods of less than thirty (30) days
- Lodging for which the state bed tax is payable:
  - Bed and breakfasts
  - Campgrounds and RV parks
  - Condominium rentals
  - Hotels and motels

Luxuries:

Attractions:

- Arcades
- Bowling alleys
- Concerts

Golf courses:

- Cart rentals
- Green fees
- Memberships
- Merchandise sales
- Movie and live theaters
- Rodeos

Rentals:

- Automobiles, trucks, trailers, RVs, etc.
- Conference, convention or event room or space rentals
- Golf, ski and sports equipment
- Motorcycles, bicycles, ATVs, etc.
- Movie videos and games
- Snowmobiles, boats, jet skis, etc.

Retail sales of goods (excluding sales for resale) of:

Books, including used books other than as sold at garage sales  
Cameras and supplies  
Candles  
Clothing  
Curios, decorative boxes, decorative vases  
Cut flowers and floral arrangements, both living and nonliving  
Fake trees and plants  
Finished craft items, including those sold at arts and crafts fairs, other than those that are household furnishings  
Fireworks  
Gifts, gift tags, gift boxes, and wrapping paper  
Jewelry and art including decorative dishes and dishwares not used for meals  
Mail order and catalog sales  
Motorcycles, snowmobiles, jet skis, etc.  
Pets, pet supplies, and pet food  
Pictures and picture frames, posters, prints, handcrafted cards  
Records, tapes, CDs, videos, DVDs  
Secondhand stores and antiques  
Souvenir, imprinted and gift items

Sporting goods including sold as used or on consignment, except when sold at a garage sale:

Bicycles except stationary fitness or exercise bicycles

Supermarket nonfood items:

Batteries and film  
Magazines and greeting cards including boxes of cards  
Makeup and makeup bags, lint brushes, cosmetics, tanning lotions  
Perfume, cologne  
Tobacco and tobacco products; matches, lighters, lighter fluid  
Toys

Services:

Guides and outfitters:  
Hunting, fishing, rafting, horseback rides, etc.  
Recreational services and labor

Restaurants, Fast Food And Other Food Service Establishments:

All goods and services sold, including delivery charges, but not tips  
Chips, nuts, and seeds, granola bars, jerky  
Foodstuffs intended for immediate human consumption  
Fraternal organizations which provide food and beverages or rent their facilities to the public and nonmembers  
Soda pop, gum and candy, including individual, bulk, and packaged candy quantities  
Vending machines

Taverns, Bars, Nightclubs, Lounges And Other Public Establishments Serving Beer, Wine, Liquor Or Other Alcoholic Beverages By The Drink:

All alcoholic beverages, including beer and wine, sold by the drink or at retail  
All goods and services sold  
Private liquor stores  
(Ord. 11-13, 7-18-2011)

### **3-3-4: EXEMPTIONS TO TAX:**

Notwithstanding section [3-3-3](#) of this chapter, sale or rental of the following goods and services shall be exempt from the tax:

#### Appliances:

- Computers and computer supplies including webcams
- Electronic communication and entertainment devices
- Kitchen counter devices (mixers, toasters, etc.)
- Stoves, refrigerators, freezers, washers, dryers, dishwashers, trash compactors
- Telephone equipment
- Vacuum cleaners

#### Food Purchased Unprepared Or Unserved:

- Food items eligible for purchase with food stamps (except soda pop or candy)
- Food items not purchased for immediate consumption; including a loaf of bread, noncarbonated drinks, fitness drinks for later consumption
- Vitamins

#### Hardware Supplies And Tools:

- Implements and supplies used in the construction, improvement, maintenance or repair of buildings and their furnishings
- Lawn and garden equipment and supplies

#### Hotels, Motels And Other Lodging Or Camping Facilities:

- Lodging based on rental periods in excess of thirty (30) days

#### Medicine, Medical Supplies And Services:

- Doctors, dentists, chiropractors, opticians
- Medical supplies, items sold to be used for curative, prosthetic or medical maintenance purposes including exercise or fitness bicycles, fitness balls
- Medicine, substances sold for curative or remedial properties, including nonprescription drugs
- Psychologists, counselors, social workers
- Therapeutic massage

## Necessities Of Life:

Funeral directors

Supermarket nonfood items:

Baby and child care products:

Disposable diapers, powder, lotion, etc.

Cleaning supplies

Deodorant

Laundry detergent and bleach

Paper products

Personal hygiene:

Combs, brushes, sunblock, lip balm

Dietary supplements

Feminine hygiene: Kotex, tampax, douche

Soap and shampoo, lotions

Toilet paper

Toothpaste and mouthwash

Vitamins

## Utilities:

Cable television

Montana Power

North Valley Refuse

PTI Communications

Pacific Power

Propane and heating oil

## Other Items And Services:

Auto mechanical parts

Automotive accessories

Building contractors and tradesmen:

Plumbers, electricians, carpenters, roofers, drywallers, painters, masons, pest control, paving, excavating, HVAC, well drillers

Charcoal

Contractor and homeowner equipment including vacuums and floor cleaners

Craft items and supplies including posterboard

Dishes and dishwares used for meals or cooking

Furniture and home furnishings including lawn and patio furniture and used furniture

Gambling revenues

Gasoline

Housewares and sundries

Lawn, garden and landscaping supplies including flower plants with roots, compost

Light bulbs

Motor oil

New and used car and truck sales

Newspapers

Nonprofit and charitable events:

Fraternal organizations which provide food and services only to members

Nonprofit fundraisers

School sports events

Other business and professional services:

Amtrak  
 Appliance repair  
 Auto repair and related services  
 Bank charges and interest  
 Car wash, towing  
 Hair salons and barbers  
 Health clubs  
 House cleaning and janitorial services  
 Insurance agents:  
 Health, life, auto, bonds  
 Interior decorators  
 Landscaping, snow removal and lawn care  
 Laundry, drycleaning and laundromats  
 Movers and ministorage units  
 Photo developing  
 Preschools and childcare  
 Printers and publishers

Professional services:

Lawyers, architects, accountants, appraisers, engineers, tax services, surveyors  
 Real estate commissions  
 School bus services  
 Security brokers and financial managers  
 Shipping agents (UPS)  
 Taxidermist  
 Taxis  
 Travel agent fees  
 Upholstery shops  
 Veterinarians  
 Safe deposit boxes  
 School supplies  
 Stationery and office supplies  
 Street legal motorcycles  
 Tires  
 Wholesale merchandise purchased for resale at retail  
 (Ord. 11-13, 7-18-2011)

### **3-3-5: PAYMENT OF TAX:**

A. Remittance:

1. The taxes collected by businesses in any month are to be remitted to the city on or before the twentieth day of the following month, or if such day falls on a Saturday, Sunday or holiday, then on the next business day.
2. For good cause shown in a written request of a taxpayer who would pay less than five dollars (\$5.00) a month, the city manager may extend the time for making returns and paying tax due. (Ord. 11-01, 2-22-2011)

## B. Collection Duties And Responsibilities:

1. The officers responsible for receiving and accounting for the resort tax receipts are the city clerk and finance director.
2. The city manager and his agents shall be responsible for enforcing the collection of the resort tax and shall be responsible for overseeing the methods and procedures to be used in enforcing the collection of the resort tax. The city manager shall be entitled to use all lawful methods and procedures in enforcing the collection of resort taxes, including, but not limited to, random audits, correspondence demanding prompt payment, civil suits, initiating criminal prosecution and revocation of city business licenses.

C. Administrative Fee: Each collecting merchant shall be entitled to withhold five percent (5%) of the resort tax collected to defray its cost for the administration of the tax collection. The administration fee may be withheld by the business at the time of remitting the tax to the city. Failure to withhold the fee shall constitute the waiver and forfeiture of the same. (Ord. 95-15, 12-18-1995)

## **3-3-6: RECORDS AND TAX FORMS:**

A. Forms; Confidentiality: The city shall provide each business in the city responsible for tax collection with the proper forms for reporting and remittance to the city. Remittance to the city of the resort tax shall be tabulated and accounted for on forms prescribed and furnished to the business by the city. The records and forms held by the city shall be confidential, and shall not be open to inspection by the public unless so ordered by the city council or a court of competent jurisdiction.

B. Preservation Of Records: Every business required to collect and remit the resort tax shall keep and preserve for a period of not less than three (3) years all records necessary to determine the verity of the taxes remitted and shall make the same available for audit or inspection at all reasonable times. (Ord. 95-15, 12-18-1995)

## **3-3-7: AUDITS:**

Periodic random audits shall be conducted under the direction of the city manager or his designated representative and all business operators shall cooperate in all respects in the conduct of the audits. Failure to cooperate shall constitute a violation of the provisions of this chapter. (Ord. 95-15, 12-18-1995)

## **3-3-8: USE OF TAX MONIES:**

The tax monies derived from the resort tax may be appropriated by the city council only for those activities, in those proportions, set forth below:

- A. Property tax reduction for taxpayers residing in the city in an amount equal to twenty five percent (25%) of the three percent (3%) resort tax revenues derived during the preceding fiscal year;
- B. Provision for the repair and improvement of existing streets, storm sewers, all underground utilities, sidewalks, curbs and gutters, in an amount equal to sixty five percent (65%) of the two percent (2%) resort tax revenues derived during the preceding fiscal year;
- C. Bicycle paths and other park capital improvements in an amount equal to five percent (5%) of the two percent (2%) resort tax revenues derived during the preceding fiscal year;
- D. Repayment of a loan or a bond to finance a portion of the costs of, or to otherwise pay for, the acquisition of the conservation easement or other interests, in and around Haskill Basin in order to protect and preserve water quality and quantity, including the source drinking water supply for the municipal water system of the city of Whitefish, in an amount equal to seventy percent (70%) of the one percent (1%) resort tax revenues to be received in a fiscal year, except that if such portion of resort tax revenues received in a fiscal year is more than is needed in that fiscal year for such loan or bond, the excess will be applied to additional property tax relief in the next fiscal year;
- E. Cost of administering the resort tax in an amount equal to five percent (5%) of the three percent (3%) resort tax per year (as provided in subsection [3-3-5C](#) of this chapter).
- F. Subsection [3-3-5C](#) of this chapter allows vendors to withhold the five percent (5%) administration fee described above and in section [3-3-5](#) of this chapter. Therefore, given that the city receives revenue for only ninety five percent (95%) of the resort tax based on vendors' retail value of all applicable goods and services sold, the following distribution formulas apply to the city's receipt and use of tax monies:
  1. Property tax reduction of twenty five percent (25%): 26.32 percent of ninety five percent (95%) of resort taxes collected.
  2. Repair and improvement of streets, etc.: Was 68.42 percent of the ninety five percent (95%) of the two percent (2%) resort tax, therefore, effective for resort taxes paid for July 2015, and thereafter, 45.61 percent of the three percent (3%) resort tax collections will equal the same as the sixty five percent (65%) of the prior two percent (2%) resort tax collections.
  3. Bicycle paths and other park capital improvements: Was 5.26 percent of the ninety five percent (95%) of the two percent (2%) resort tax, therefore, effective for resort taxes paid for July 2015, and thereafter, 3.51 percent of the three percent (3%) resort tax collections will equal the same as the five percent (5%) of the prior two percent (2%) resort tax collections.

4. Bond or loan for Haskill Basin conservation easement: Effective for resort taxes paid for July 2015, and thereafter as provided above, 24.56 percent of the three percent (3%) resort tax collections will equal the same as the seventy percent (70%) of the one percent (1%) resort tax collections, provided that if such amount exceeds the amount needed in a fiscal year for such bond or loan, then the excess will be applied to additional property tax relief in the next fiscal year. (Ord. 15-08, 5-18-2015, eff. 7-1-2015)

### **3-3-9: PROPERTY TAX RELIEF FUND:**

In the event the city receives more resort tax revenues than had been included in the annual municipal budget, it shall establish a municipal property tax relief fund, and all resort tax revenues received in excess of the budget amount must be placed in the fund. The entire fund must be used to replace municipal property taxes in the ensuing fiscal year. (Ord. 95-15, 12-18-1995)

### **3-3-10: QUESTIONS AND INTERPRETATION:**

The city manager and his agents shall be responsible for answering questions regarding those goods and services that are subject to the resort tax, and for interpreting the terms of this chapter. In order to provide consistency, the city manager and his agents shall maintain a written file of all answers provided and interpretations rendered. The city manager, in his discretion, may seek advice and/or guidance from the city attorney or the city council. (Ord. 95-15, 12-18-1995)

### **3-3-11: APPEALS:**

Any business may appeal to the city council any assessment of penalty or interest; provided, that notice of appeal in writing is filed with the city clerk within thirty (30) days of the serving or mailing of the determination of the amount of penalty and interest due. The city council shall, at the next regular city council meeting, fix the time and place for hearing the appeal and the city clerk shall cause notice in writing to be personally served by a peace officer upon the operator. The findings and decision of the city council shall be final and conclusive and shall be served upon the appellant in the manner prescribed for service of notice of hearing or by certified mail directed to the business operator's last known address. Any amount found to be due shall be immediately payable upon service of the findings and decision. (Ord. 95-15, 12-18-1995)

### **3-3-12: VIOLATION; PENALTY:**

For the failure to report taxes due, failure to remit taxes due and other violations of this chapter, the following penalties may be imposed:

- A. A criminal penalty not to exceed a fine of one thousand dollars (\$1,000.00) or six (6) months' imprisonment, or both;
  
- B. The city may collect civil penalties if it prevails in a suit for the collection of resort taxes, not to exceed fifty percent (50%) of the resort taxes found due plus the costs (including any audit fees) and attorney fees incurred by the city in the action;
  
- C. A civil penalty imposed pursuant to section [1-4-4](#) of this code;
  
- D. A civil remedy of the revocation of the offender's city business license;
  
- E. Delinquent taxes shall bear interest at the rate of ten percent (10%) per annum.

For each separate incident, the city shall elect to treat the violation as either a misdemeanor pursuant to subsection A of this section, a suit for civil penalties pursuant to subsection B of this section, or a municipal infraction, pursuant to subsection C of this section. (Ord. 09-20, 10-19-2009)