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Standardize Individual Liability for Trust Taxes no 65
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*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act Standardizing Individual Liability for Reporting and Payment of Trust Taxes; Requiring Individual Liability for Corporate Shareholders, Directors, And Officers, Managers and Members of Limited Liability Companies, Limited Liability Partnerships Partners; Making Uniform Penalty And Interest Provisions for Companies or Responsible Individuals Who Fail to Report or Pay Taxes; amending section 15-53-130, MCA; providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-53-130, MCA, is amended to read:

"15-53-130. (Temporary) Imposition of retail telecommunications excise tax -- rate. An excise tax of 3.75% is imposed on the sales price of retail telecommunications services. Subject to 15-53-131 and 15-

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53-132, the tax is imposed on the purchaser and must be collected by the telecommunications services provider for remittance to the department of revenue." (Terminates on occurrence of contingency--sec. 8, Ch. 515, L. 2003.)

15-53-130. (Effective on occurrence of contingency)

Imposition of retail telecommunications excise tax -- rate.

An excise tax of 3.75% is imposed on the sales price of retail telecommunications services. The tax is imposed on the purchaser and must be collected by the telecommunications services provider for remittance to the department of revenue."

{Internal References to 15-53-130: None }

NEW SECTION. **Section 2. ____.** **Tax as debt -- individual liability -- penalty and interest -- review.** (1) The retail telecommunications excise tax required to be collected pursuant to 15-53-130 by any person under this chapter constitutes a debt owed to this state by the person required to collect the tax. An owner, operator, or employer providing retail telecommunications services who fails to collect the tax imposed by 15-53-130 or fails to file a return to the department of revenue as required by 15-53-139, is individually liable for payment of the amount

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equal to the tax and for a penalty and interest pursuant to 15-1-216.

(2) An officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the state the amounts taxed under this chapter is liable to the state for the amounts to be paid the state and the penalty and interest due on the amounts.

(3) (a) Each officer of the corporation who has access to the requisite records is individually liable along with the corporation for filing a return and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file the return and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of the return or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file the return required by this part or pay taxes due as required by this part.

(b) In determining which corporate officer is liable, the department is not limited to considering the elements

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set forth in subsection (3) (a) to establish individual liability and may consider any other available information.

(4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any returns and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) For the purpose of determining liability for the filing of a return and the tax, penalties, and interest owed under this part:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any returns, taxes, penalties, and interest due while a partner;

(b) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any returns, taxes, penalties, and interest due while a member;

(c) the member of a member-managed limited liability company that fails to file statements or make payment to

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the state in an amount equal to the tax is jointly and severally liable, along with the limited liability company, for any returns, taxes, penalties, and interest due while a member; and

(d) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any returns, taxes, penalties, and interest due while a manager.

(6) (a) If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of 15-1-211 apply to any assessment by the department. The taxpayer may seek review of the assessment pursuant to 15-1-211.

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

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NEW SECTION. **Section 3. {standard} Codification.**

[Section 2] is intended to be codified as an integral part of Title 15, chapter 53, and the provisions of Title 15, chapter 53, apply to [section 2].

NEW SECTION. **Section 4. {standard} Saving clause.**

[This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 5. {standard} Effective date.**

[This act] is effective on passage and approval.

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