

SENATE BILL NO. 364

INTRODUCED BY A. OLSZEWSKI

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TAX-EXEMPT STATUS REQUIREMENTS AND OBLIGATIONS FOR CERTAIN NONPROFIT PHARMACY OPERATIONS; ELIMINATING A PROPERTY TAX EXEMPTION FOR CERTAIN PROPERTY AND IMPOSING A FINE IN LIEU OF TAX FOR CERTAIN NONPROFIT PHARMACIES THAT DO NOT CONTRACT WITH OTHER PHARMACIES UNDER THE FEDERAL 340B DRUG DISCOUNT PROGRAM; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-201 AND 15-31-102, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, the federal 340B drug discount program was designed by Congress to help safety net providers improve access to prescription medicines for uninsured, vulnerable patients in the outpatient hospital setting; and

WHEREAS, patients who live far away from a hospital that sells discounted drugs under the federal 340B drug discount program are unable to benefit from the program without traveling a great distance; and

WHEREAS, federal law allows pharmacies that receive discounted drugs under the federal 340B drug discount program to contract with a pharmacy for the purpose of selling 340B discounted drugs to patients; and

WHEREAS, hospitals that receive federal 340B discounted drugs and state property tax and income tax exemptions have patients that should be allowed to receive discounted prescriptions at a local or regional pharmacy of their choice; and

WHEREAS, it is time for not-for-profit pharmacies that utilize the federal 340B drug discount program to provide optimal patient care to their patients; and

WHEREAS, not-for-profit pharmacies that utilize the federal 340B drug discount program are unique and separate entities that must be classified differently for purposes of taxation than other not-for-profit entities that provide charity care; and

WHEREAS, Article VIII, section 5, of the Montana Constitution provides the Legislature with the power to amend current statutory exemptions from taxation.

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

1 **NEW SECTION. Section 1. Nonprofit pharmacies -- revocation of exemption for failure to provide**
2 **discounted drugs to other pharmacies.** (1) If a covered entity refuses to offer a contract on reasonable terms
3 to a regional pharmacy that is eligible to become a contract pharmacy under federal law, the department shall:
4 (a) revoke the property tax exemption on any portion of real or personal property that is used in
5 conducting pharmacy sales by the covered entity; and
6 (b) assess a fine calculated under the provisions of [section 2].
7 (2) A covered entity shall submit to the department a description of the medically underserved area or
8 medically underserved population that it used to qualify as a covered entity, and the department shall provide this
9 information to the public upon request.
10 (3) The department shall:
11 (a) administer the provisions of this section by requiring covered entities and a regional pharmacy that
12 has attempted to contract with a covered entity to submit any information considered necessary by the
13 department for the purpose of making a determination of continued eligibility for tax-exempt status; and
14 (b) adopt rules to administer the provisions of this section.
15 (4) (a) Subject to subsection (4)(b), the revocation of a property tax exemption under this section is equal
16 to 3 tax years.
17 (b) A property tax exemption that is revoked under subsection (4)(a) may not be reinstated if a covered
18 entity fails to offer a contract on reasonable terms to a regional pharmacy that is eligible to become a contract
19 pharmacy of the covered entity.
20 (5) As used in [section 2] and this section, the following definitions apply:
21 (a) "340B program" means a federal discount drug program that is administered under section 340B of
22 the Public Health Service Act, 42 U.S.C. 256B.
23 (b) "Contract pharmacy" means an outpatient pharmacy that contracts with a covered entity to provide
24 pharmacy services to the covered entity's patients, including the service of dispensing the 340B drugs of a
25 covered entity.
26 (c) (i) "Covered entity" means a Montana nonprofit corporation or an institution of purely public charity
27 that is registered with the federal health resources and services administration and purchases discount-priced
28 drugs pursuant to a 340B program.
29 (ii) The term does not include a pharmacy program operated by a government entity listed in
30 15-6-201(1)(a)(ii).

1 (d) "Pharmacy" means an established location in the state that is licensed by the board of pharmacy
2 pursuant to Title 37, chapter 7.

3 (e) "Reasonable terms" means contract requirements and suggested provisions provided by the U.S.
4 department of health and human services.

5 (f) "Regional pharmacy" means:

6 (i) a pharmacy that is located in the medically underserved area or serves the medically underserved
7 population that an existing covered entity used to qualify as a covered entity; or

8 (ii) if the provisions of subsection (5)(f)(i) do not apply, a pharmacy that is located less than 75 miles from
9 a covered entity.

10

11 **NEW SECTION. Section 2. Nonprofit pharmacies -- fine in lieu of tax for not providing discounted**
12 **drugs to other pharmacies -- recapture of prior tax benefits.** (1) Pursuant to [section 1], the department shall
13 assess a fine against a covered entity that refuses to offer a contract on reasonable terms to a regional pharmacy
14 that is eligible to become a contract pharmacy as provided in [section 1]. The fine is imposed at the rate specified
15 in 15-31-121(1) on the covered entity's net pharmacy revenue derived from sources in this state, and the net
16 revenue is treated in the same manner as income under the provisions of Title 15, chapter 31, as modified by
17 subsections (1)(a) through (1)(c) of this section. For the purpose of this subsection, net revenue:

18 (a) consists of revenue attributable to the pharmacy sales of the covered entity for any fiscal year that
19 a covered entity refuses to offer a contract on reasonable terms to a regional pharmacy that is eligible to become
20 a contract pharmacy;

21 (b) is calculated based on the nonprofit corporation or institution's fiscal year; and

22 (c) does not include donations or revenue that is not directly attributable to the pharmacy sales of the
23 covered entity.

24 (2) A covered entity that is subject to a fine in lieu of tax under this section shall submit a copy of its
25 federal exempt organization business income tax returns to the department for the fiscal year to which the
26 provisions of this section apply.

27 (3) All remedies available to the state for the administration, enforcement, and collection of taxes
28 imposed under this chapter are available and apply to the fine provided for in this section.

29 (4) The fine imposed by this section is limited to revenue attributable to the pharmacy sales of the
30 covered entity for the most recently completed fiscal year.

1 (5) Any money collected under this section must be deposited in the state general fund in consideration
2 of foregone tax revenue.

3

4 **Section 3.** Section 15-6-201, MCA, is amended to read:

5 **"15-6-201. Governmental, charitable, and educational categories -- exempt property.** (1) The
6 following categories of property are exempt from taxation:

7 (a) except as provided in 15-24-1203, the property of:

8 (i) the United States, except:

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

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

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

13 (iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

14 (iv) municipal corporations;

15 (v) public libraries;

16 (vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

17 (vii) special districts created pursuant to Title 7, chapter 11, part 10; and

18 (viii) subject to subsection (2), federally recognized Indian tribes in the state if the property is located
19 entirely within the exterior boundaries of the reservation of the tribe that owns the property and the property is
20 used exclusively by the tribe for essential government services. Essential government services are tribal
21 government administration, fire, police, public health, education, recreation, sewer, water, pollution control, public
22 transit, and public parks and recreational facilities.

23 (b) buildings and furnishings in the buildings that are owned by a church and used for actual religious
24 worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with
25 the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings,
26 which must be identified in the application, and all land and improvements used for educational or youth
27 recreational activities if the facilities are generally available for use by the general public but may not exceed 15
28 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes,
29 or subdivision requirements;

30 (c) land and improvements upon the land, not to exceed 15 acres, owned by a federally recognized

1 Indian tribe when the land has been set aside by tribal resolution and designated as sacred land to be used
2 exclusively for religious purposes;

3 (d) property owned and used exclusively for agricultural and horticultural societies not operated for gain
4 or profit;

5 (e) property, not to exceed 80 acres, which must be legally described in the application for the
6 exemption, used exclusively for educational purposes, including dormitories and food service buildings for the
7 use of students in attendance and other structures necessary for the operation and maintenance of an
8 educational institution that:

9 (i) is not operated for gain or profit;

10 (ii) has an attendance policy; and

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

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

14 (g) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the
15 department of public health and human services and organized under Title 35, chapter 2 or 3, subject to the
16 provisions of [sections 1 and 2]. A health care facility that is not licensed by the department of public health and
17 human services and organized under Title 35, chapter 2 or 3, is not exempt.

18 (h) property that is:

19 (i) (A) owned and held by an association or corporation organized under Title 35, chapter 2 or 3, subject
20 to the provisions of [sections 1 and 2], or Title 35, chapter 3, 20, or 21; or

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

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

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

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

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

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

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

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

7 (n) (i) property that is owned and used by a corporation or association organized and operated
8 exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with
9 physical or mental impairments that constitute or result in substantial impediments to employment and that is not
10 operated for gain or profit; and

11 (ii) property that is owned and used by an organization owning and operating facilities that are for the care
12 of the retired, aged, or chronically ill and that are not operated for gain or profit;

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

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

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

24 (A) operated for gain or profit;

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

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

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

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

30 (A) set aside by tribal resolution and designated as park land, not to exceed 640 acres, or be designated

1 as a recreational facility; and

2 (B) open to the general public.

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

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

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

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

9 (iv) a Christian Science practitioner.

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

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

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

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

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

25 (iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even
26 if the property must be improved before it can directly be used for its intended charitable purpose. If the property
27 is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the
28 property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property
29 is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property
30 shall pay an amount equal to the amount of the tax due that year times the number of years that the property was

1 tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed
 2 by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed.
 3 At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county
 4 in which the property is located. The notice must indicate that an exemption pursuant to this section has been
 5 granted. The notice must describe the penalty for default under this section and must specify that a default under
 6 this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the
 7 department.

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

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

- 18 (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
 19 (ii) held for future display; or
 20 (iii) used to house or store a public display."

21
 22 **Section 4.** Section 15-31-102, MCA, is amended to read:

23 **"15-31-102. Organizations exempt from tax -- unrelated business income not exempt.** (1) Except
 24 as provided in subsection (3), there may not be taxed under this title any income received by any:

- 25 (a) labor, agricultural, or horticultural organization;
 26 (b) fraternal beneficiary, society, order, or association operating under the lodge system or for the
 27 exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the
 28 payment of life, sick, accident, or other benefits to the members of the society, order, or association or their
 29 dependents;
 30 (c) cemetery company owned and operated exclusively for the benefit of its members;

1 (d) except as provided in [sections 1 and 2], a corporation or association organized and operated
2 exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures
3 to the benefit of any private stockholder or individual;

4 (e) business league, chamber of commerce, or board of trade not organized for profit, no part of the net
5 income of which inures to the benefit of any private stockholder or individual;

6 (f) civic league or organization not organized for profit but operated exclusively for the promotion of social
7 welfare;

8 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes,
9 no part of the net income of which inures to the benefit of any private stockholder or members;

10 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company,
11 mutual or cooperative telephone company, or similar organization of a purely local character, the income of which
12 consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its
13 expenses;

14 (i) cooperative association or corporation engaged in the business of operating a rural electrification
15 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

16 (j) corporations or associations organized for the exclusive purpose of holding title to property, collecting
17 income from the property, and turning over the entire amount of the income, less expenses, to an organization
18 that itself is exempt from the tax imposed by this title;

19 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
20 organized to market association members' wool and sheep, the income of which consists solely of assessments,
21 dues, and fees collected from members for the sole purpose of meeting its expenses. Income, for this purpose,
22 does not include expenses and money distributed to members contributing wool and sheep.

23 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the provisions
24 of section 991, et seq., of the Internal Revenue Code, 26 U.S.C. 991, et seq., and that has in effect for the entire
25 taxable year a valid election under federal law to be treated as a DISC. If a corporation makes that election under
26 federal law, each person who at any time is a shareholder of the corporation is subject to taxation under Title 15,
27 chapter 30, on the earnings and profits of this DISC in the same manner as provided by federal law for all periods
28 for which the election is effective.

29 (m) farmers' market association not organized for profit, no part of the net income of which inures to the
30 benefit of any member, but that is organized for the sole purpose of providing for retail distribution of homegrown

1 vegetables, handicrafts, and other products either grown or manufactured by the seller;

2 (n) common trust fund as defined in section 584(a) of the Internal Revenue Code, 26 U.S.C. 584(a).

3 (2) In determining the corporate income tax imposed under this part, there may not be included any
4 earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise
5 of any governmental function.

6 (3) Any unrelated business taxable income, as defined by section 512 of the Internal Revenue Code,
7 26 U.S.C. 512, as amended, earned by any exempt corporation resulting in a federal unrelated business income
8 tax liability of more than \$100 must be taxed as other corporation income is taxed under this title. An exempt
9 corporation subject to taxation on unrelated business income under this section shall file a copy of its federal
10 exempt organization business income tax return on which it reports its unrelated business income with the
11 department."

12

13 **NEW SECTION. Section 5. Codification instruction.** (1) [Section 1] is intended to be codified as an
14 integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

15 (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the
16 provisions of Title 15, chapter 31, part 1, apply to [section 2].

17

18 **NEW SECTION. Section 6. Applicability.** [This act] applies to tax years beginning after December 31,
19 2017.

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- END -