

G. ANDREW ADAMEK
CHAD E. ADAMS
DANIEL J. AUERBACH
KIMBERLY A. BEATTY
TROY L. BENTSON
SARA S. BERG
LEO BERRY
LAURA K. BUCHHOLTZ
CARLO J. CANTY
ABBIE N. CZIOK
MARK D. ETCHART
STEVE J. FITZPATRICK
HALLEE FRANDSEN
OLIVER H. GOE
THOMAS E. HATTERSLEY, III



**BROWNING KALECZYC
BERRY & HOVEN P.C.**
ATTORNEYS AT LAW
Bozeman ♦ Great Falls ♦ Helena ♦ Missoula

J. DANIEL HOVEN
JUDD M. JENSEN
CATHERINE A. LAUGHNER
CHRISTY SURR MCCANN
EMILY MCCULLOCH
MICHAEL L. RAUSCH
BRIAN P. THOMPSON
EVAN M. THOMPSON
W. JOHN TIETZ
STEVEN T. WADE
LEO S. WARD
MORGAN M. WEBER
R. STEPHEN BROWNING (1940-2018)
STANLEY T. KALECZYC - OF COUNSEL

Mailing Address	Street Address
POST OFFICE BOX 1697 HELENA, MONTANA 59624-1697 TELEPHONE (406) 443-6820 bkbh@bkbh.com	800 N. LAST CHANCE GULCH, #101 HELENA, MONTANA 59601-3351 TELEFAX (406) 443-6883 www.bkbh.com

MEMORANDUM

TO: Big Sky Resort Area District

FROM: Hallee C. Frandsen

DATE: September 1, 2022

RE: FAQs for Business Registrations

Authority to Require Business Registrations Within the Boundaries of the District

In general, a city or town council may levy and collect taxes for general and special public or governmental purposes on all property within the city or town subject to taxation under the laws of the state. Mont. Code Ann. § 7-6-4401. More specifically, a resort area district has the authority to “*do all acts necessary for the full exercise of its powers,*” including collecting taxes from business operating within the boundaries of the District. Mont. Code Ann. § 7-6-1541. To collect taxes, the District can create a system where businesses register with the District—doing “all acts necessary for the full exercise of its powers.” *See* Mont. Code Ann. § 7-6-1541.

A District can then further outline its responsibilities and authorities, which then become operating documents for the District’s taxing and registration authorities. The District’s authorities are encapsulated in Ordinance No. 98-1, Section 9 and Ordinance No. 2008-1, Part 5.

Regarding business registrations, the District outlines that: “All establishments, businesses, and vendors operating within the District and providing or selling Good and Services and/or Luxuries must register with the District per established procedures.”

An interesting example exists in Ohio’s resort area districts. Ohio’s code, R.C. 5739.103 provides:

[N]o person shall exercise the privilege of engaging in business in the resort area or Tourism Development District without first registering with the tax commissioner. All persons that make sales in the resort area or TDD whether they have a permanent location or not and all persons that come into the resort area or TDD to perform a taxable service must register for the Resort Area Gross Receipt Excise Tax or TDD. Businesses engaged in any of the taxable business activities are required to register with the tax commissioner by completing an application for registration. Each business location must have a separate registration. Businesses not engaged in any taxable business activities may be asked to provide the tax commissioner with a signed statement attesting to this fact.

While this example is from Ohio, and not Montana, it does demonstrate a resort area district’s ability to require businesses which are subject to the resort tax to register if conducting business within the boundaries of the district. As such, this example would be considered persuasive (but not mandatory) authority for BSRAD’s action requiring businesses that either conduct business or perform taxable services within the boundaries of the District to register.

To further clarify BSRAD’s intent that all business conducting business within the District (whether or not the services provided or sold are subject to the tax), we recommend a revision to the ordinance to include businesses providing or selling Goods and Services, Luxuries, and Necessities of Life (even though Necessities of Life are ultimately not taxable transactions).

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FAQs for the District

Based on the authorities provided in Mont. Code Ann. and in the District's governing documents, possible FAQs relating to business registrations are:

Q: Do you have a business location within the District boundaries, whether temporary or permanent? If so, you must register your business with the District.

Authority is provided for in Mont. Code. Ann. §§ 7-6-1502 and -1541 and Ordinance No. 98-01.

Q: Do you have any employees or contractors entering the District to perform taxable services? If so, you must register your business with the District.

Authority is provided for in Mont. Code. Ann. §§ 7-6-1502 and -1541 and Ordinance No. 98-01.

Q: Do you have contracts for business conducted within the boundaries of the District? If so, you must register your business with the District.

Authority is provided for in Mont. Code. Ann. §§ 7-6-1502 and -1541 and Ordinance No. 98-01.

Q: Do you meet with clients or customers to conduct business with them within the boundaries of the District? If so, you must register your business with the District.

Authority is provided for in Mont. Code. Ann. §§ 7-6-1502 and -1541 and Ordinance No. 98-01.

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Q: Do you have a steady and significant revenue stream generating from taxable activities or services within the boundaries of the District? If so, you must register your business with the District.

Authority is provided for in Mont. Code. Ann. §§ 7-6-1502 and -1541 and Ordinance No. 98-01. You might want to consider changing this question to remove the language “steady and significant” as those adjectives are subjective and open to interpretation or argument.

Q: Do you provide or sell “Luxuries” as defined by Ordinance No. 98-01 within the boundaries of the District? If so, you must register your business with the District and are required to collect and remit resort tax.

Authority is provided for in Ordinance No. 98-01.

Q: Do you provide or sell “Goods or Services” as defined by Ordinance No. 98-01 within the boundaries of the District? If so, you must register your business with the District and are required to collect and remit resort tax.

Authority is provided for in Ordinance No. 98-01.

Q: Are you an “Enumerated Establishment” as defined by Ordinance No. 98-01 operating within the boundaries of the District? If so, you must register your business with the District and are required to collect and remit resort tax.

Authority is provided for in Ordinance No. 98-01.

Q: Do you provide “Necessities of Life” as defined in Ordinance No. 98-01 within the boundaries of the District? If so, you must register your business with the District, but may not be obligated to collect and remit resort tax.

If so, while the good or service itself is nontaxable, the business is will still be required to register with the District if the proposed amendment to Ordinance 98-01 is adopted.