

**ENFORCEMENT PROCEDURES
BIG SKY AREA RESORT TAX DISTRICT**

I. GENERAL INFORMATION

The District Board adopted ordinances for the enforcement and collection of the Big Sky Resort Tax. Ordinance No. 98-01, as amended, is the District’s Administrative Ordinance or AO. Ordinance No. 2008-01, as amended, is the Compliance Ordinance or CO. Both ordinances are to be referenced and followed when the District engages in enforcement actions against delinquent taxpayers within the District’s boundaries.

II. COMMENCEMENT OF ENFORCEMENT PROCEDURE

Taxes collected within the District are reported and remitted either on a monthly or quarterly basis. For those businesses reporting on a monthly basis, the required remittance form and all resort taxes collected in a month must be remitted to the District by the last day of the month immediately following the collection month. For those businesses reporting on a quarterly basis, the required remittance form and all resort taxes collected in a quarter must be remitted by the last day of the month immediately following the end of the collection quarter. Each of these dates are referred to in this Enforcement Procedure as “the deadline.”

If a business fails to timely submit the required remittance form or the resort taxes owed by the deadline, the business shall be deemed delinquent. In such an event, the following enforcement procedure commences:

1. The day after the deadline, MUNIREvs will auto-send a first courtesy reminder email to the delinquent business.
2. Every Tuesday following the deadline, if the business is still delinquent, MUNIREvs will auto-send a courtesy reminder email to the delinquent business.
3. 30 days after the deadline, if the business is still delinquent, the District will send a first notice of nonpayment via email and mail to the delinquent business.
4. 60 days after the deadline, if the business is still delinquent, the District will send a second notice of nonpayment via email and certified mail to the delinquent business.
5. 80 days after the deadline, if the business is still delinquent, the District will attempt to contact the business by phone and will send a summary via email of communications to date as well as a copy of these Procedures for reference.

Interest. After 30 days of tax payment delinquency, and for each subsequent month of payment delinquency, taxes due shall bear interest at the rate of one percent (1%) per each calendar month (for a total of 12% per annum). Interest is calculated automatically and added to the delinquent business’ MUNIREvs account. Section 17(3) of the AO allows this automatic accrual of interest on delinquent accounts without further notice to the delinquent business.

Late Fees. If a business fails to timely submit its remittance form or monthly taxes owed when due, the business will be charged a Late Fee. The Late Fee will continue to accrue and will escalate over time until paid. See Section IX below for the Late Fee Schedule and procedure. Late fees

are calculated automatically and added to the delinquent business' MUNIREvs account. Section 17(4) of the AO allows this automatic accrual of late fees on delinquent accounts without further notice to the delinquent business. The amount charged for the late fee may be changed from time to time pursuant to Section 7.I. of the Compliance Ordinance.

III. 90 DAYS DELINQUENT

If the business remains delinquent 90 days after the deadline, BSRAD will notify the District's attorneys, who will prepare a 90-day letter to be sent to the delinquent business via email and certified mail. If the 90-day letter is not delivered via mail and there is no response to the copy sent via certified mail, the District's attorneys will have the business served with the letter. If the certified letter is returned as unclaimed, the District's attorneys shall hire a process server to formally serve the letter on the business. If service fails for more than 30 days, the District's attorneys will contact the District to determine next steps.

90-day letters will be sent by the District's attorneys to each delinquent business within seven (7) days after receiving notification from the District that the business is still delinquent, allowing the business the remaining period in that month to remit the delinquent taxes.

If a business contacts the District and states it is not able to make payment for the delinquent months, reference the Payment Plan Procedure at the end of this document.

If at any point during the compliance timeline a business responds and the District's attorneys are engaged in discussion with the business owner, either payment must be made in full or a settlement agreement signed within fifteen (15) days, or the District will cease all further settlement negotiation and resume its collections efforts.

IV. 120 DAYS DELINQUENT

If the business remains delinquent at 120 days following the deadline, the District's attorneys will file a complaint with the District Court to initiate collections proceedings. The complaint will be filed within two weeks from the 120-day delinquency mark. If an account is paid in full and settled to the satisfaction of the District, the complaint will be dismissed within 14. The District's attorneys will confirm the dismissal of the complaint with the District within 7 days after filing the dismissal. If the account is not paid in full or settled, the District's attorneys shall continue to pursue the collection effort.

The District may also consider taking the following additional actions against the delinquent business:

- (a) seek a criminal penalty, not to exceed a fine of \$1,000.00 or six-months imprisonment, or both in accordance with MCA 7-6-1505;

- (b) seek a civil penalty if the District 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 and attorney fees incurred by the District in the enforcement action.

V. 150 DAYS DELINQUENT OR FAILURE TO ANSWER COMPLAINT

If the District’s attorneys have initiated collections proceedings in District Court, but the delinquent business fails to timely answer the Complaint, the District’s attorneys will immediately file motion for default.

If the business remains delinquent at 150 days, the District will also declare a forfeiture of the delinquent business’ right to withhold an administrative fee from the collected, but unremitted, taxes as provided in Section 11 of the AO by taking the following action:

- (1) The District will check the “admin fee removed” box in the delinquent business’ MUNIREvs account;
- (2) Notice will be posted to the delinquent business’ MUNIREvs account that permission to withhold the administrative fee from collections has been withdrawn.

The business shall not be entitled to withhold the administrative fee from collections until the business is current in its collection, reporting, and remittance obligations to the District, and remains current for a period of 12 consecutive months.

VI. 180 DAYS DELINQUENT OR CONTINUED COURT PROCESS

Within 30 days from either (1) the date the delinquent business files an Answer to the District’s Complaint, or (2) the date the Court issues the default, the District’s attorneys will schedule a deposition or serve notice of default judgement (if sales have been reported). The District’s attorneys will provide copies of the Notice of Deposition or Notice of Default Judgement to the District when issued. If a writ of execution is granted and funds are being garnished, the District's attorneys will provide a status update to the District once per month.

If the business remains delinquent at 180 days after the deadline, the District will audit of the delinquent business. Audits may also be required under other circumstances as determined by the District. Pursuant to Section 14 of the AO, the cost of the audit will be at the expense of the delinquent business being audited. Should the delinquent business fail to cooperate with the audit, the District’s attorneys shall, within fourteen (14) days following notice from the District, file appropriate motions with the Court seeking an order forcing compliance with the audit.

In addition, if the business has a license required for its operations (such as liquor, food services, or public accommodations), the District will consider whether or not to recommend revocation of the license as permitted by the CO; see policy explanation listed below. If such action is recommended to and accepted by the District, the District’s attorneys will contact the applicable licensing authorities within fourteen (14) days following direction from the District, and request the licensing authority take appropriate revocation, suspension, or disciplinary actions.

VII. 210 DAYS DELINQUENT OR CONTINUED COURT PROCESS

If a delinquent business fails to appear for its scheduled deposition, the District's attorneys shall within fourteen (14) days of the deposition date: (a) file a motion seeking contempt of court and (b) refer the delinquent business to the proper county law enforcement agency for criminal prosecution per Section 11 of the CO.

In addition, if the business remains delinquent (1) at 210 days, or (2) if the business is delinquent for 30 or more days within a 12-month period of a previous 120-day delinquency, then the business shall also be listed in the District's published Public Notice of Non-Compliance. This list shall be published monthly in regional publications (Explore Big Sky, The Madisonian, and The Bozeman Daily Chronicle). A business shall remain on this published list until the business submits all reporting forms, pays all taxes, interest, fees and penalties assessed, and brings its account current.

Sample Language of the Public Notice of Non-Compliance:

Non-compliant/Delinquent Establishments as of xx/xx/xxxx (date ad is submitted for publication):

PUBLIC NOTICE IS HEREBY GIVEN that _____ has failed to remit Resort Tax to the Big Sky Resort Area District for ___ days.

VIII. LIENS

The District will take the following additional enforcement actions under the circumstances described in the enforcement actions below:

Any Business that is delinquent for 90 days or more twice within 24 months will be required to post a bond effective for two years. The District will notify its counsel if a delinquent business qualifies for posting a bond and counsel shall take immediate action to obtain the bond within thirty (30) days' notice from the District. Prior to requiring a delinquent business to post a bond, the District will provide the delinquent business with a Notice of Violation and opportunity to cure the delinquency (which cure period must be at least 10 days).

See attached Bond Process and Schedule.

Any Business that is delinquent for 90 days of more three times within 24 months will be subjected to the District filing a general or specific lien to secure performance of the delinquent business' obligations under the District's Ordinances and policies. The District will notify its counsel if a delinquent business triggers this enforcement action and the District's attorneys shall take immediate action to obtain the lien withing thirty (30) days' notice from the District.

PROCESS – JUDGMENT LIEN

- (1) If violation is not timely cured, the District’s attorneys will be directed to pursue appropriate civil actions and secure a judgment for amount owed.
- (2) Judgment, when entered by the Court, attaches as a general lien against all real property owned by the judgment creditor in the County where judgment is entered.

PROCESS – CONSENTUAL LIEN

- (1) If violation is not timely cured, pursue settlement with the delinquent business.
- (2) As a term of settlement, the delinquent business may be required to agree to a general or specific lien against its property for resort tax obligations.
- (3) If the lien is against the delinquent business’ personal property, prepare for signing a security agreement and appropriate UCC financing statement for filing with the County and/or State of Montana.
- (4) In addition to (4) above, if the lien is against the delinquent business’ vehicles, obtain the title for the vehicle(s) and complete secured party section for filing with Department of Motor Vehicles.
- (5) If the lien is against the delinquent business’ real property, prepare and file a Montana Trust Indenture with the County clerk and recorder’s office.

IX. LATE FEES

Any Business that is delinquent in reporting or remitting Resort Taxes shall be assessed a Late Fee. The Late Fee will be assessed each time the business is delinquent with reporting or remitting Resort Taxes. Therefore, by way of example, if a business is late in reporting or remitting its January Resort Taxes, it will be assessed a Late Fee and those fees will continue to accrue and increase until such time as that month’s outstanding reports are made and taxes and fees are paid in full; if that same business is late in reporting or remitting Resort Taxes for the month of February, that new month’s delinquency will also be assessed a new Late Fee which will continue to accrue and increase until such time as that month’s outstanding reports are made and taxes and fees are paid in full. The Late Fees schedule is as follows:

Days/Months Late	Fee Charged
0-5 days	\$0.00
1 month late	\$30.00
2 months late	\$60.00
3 months late	\$90.00
4 months late	\$120.00
5 months late	\$150.00

X. DEBT COLLECTION

If a delinquent business is uncooperative and unresponsive to the District, the District may, in its sole discretion, seek out and begin a formal debt collection process or refer the debt to a debt collector, to recoup of any costs, liens, taxes, and/or any judgments owed to the District.

XI. PAYMENT PLANS

If a business is delinquent in reporting or remitting taxes for more than thirty (30) days, the District may consent to a payment plan with the delinquent business pursuant to the Payment Plan Procedures described in Attachment B. The District may propose such payment plan in the form of a settlement agreement to the delinquent business. The District has the authority to create and enter into such agreements for the purpose of recouping on any costs and amounts owed to it due to a delinquent businesses failure to register, remit taxes, or satisfy a judgment against it.

XII. REPORTS TO LICENSING AUTHORITIES

If a business is delinquent in reporting or remitting taxes for 150 days or more, the District may, in its discretion, report such delinquency to any and all licensing agencies (Federal, State, or Local) regulating the delinquent business and the District may seek disciplinary action against the delinquent business (whether restriction, suspension, or revocation of the license) by the licensing agency.

The following are some examples of licenses which may be impacted. The following list is not intended to be exhaustive.

(1) Liquor Establishments

In Montana, the sale of alcoholic beverages is regulated and controlled by the Montana Department of Revenue (DOR).¹ DOR requires any distributor, producer or retailer of alcoholic beverages to obtain a license. There are 50+ establishments in Big Sky area with liquor licenses. The types of licenses include: (1) On-Premise All Beverage License; (2) On-Premise Beer/Wine License; (3) Off-Premises Beer and Wine License; (4) Domestic Brewery License; and (5) Wholesale Wine License. By statute² and regulation³, a licensee (including their agents and employees) must conduct their business in compliance with the rules of other state and local agencies and abide by all: (a) provisions of the laws of Montana and the United States related to alcoholic beverages; and (b) county and city or town ordinances related to alcoholic beverages. The regulations provide that proof of violation of such laws by a licensee or the licensee's agent or employee is sufficient grounds for revocation or suspension of the license and imposition of other sanctions provided by statute.⁴

¹ Section 16-1-103, MCA

² Section 16-4-401, MCA

³ Section 42.13.101, ARM

⁴ Section 16-4-406, MCA

Any person may initiate an investigation of a licensee by submitting a written verified complaint to the DOR, who, in turn, shall request that the Department of Justice (DOJ) investigate the alleged violation.⁵ If DOR has reasonable cause to believe that a licensee has violated any provision of the liquor statutes or regulations, after reviewing the results of the investigation and satisfying the hearing requirements under the Montana Administrative Procedure Act, it may, in its discretion and in addition to other penalties prescribed⁶:

- (a) reprimand a licensee or concessionaire or both;
- (b) proceed to revoke the license of the licensee or the concession agreement of the concessionaire or both;
- (c) suspend the license or the concession agreement or both for a period of not more than 3 months;
- (d) refuse to grant a renewal of the license or concession agreement or both after its expiration; or
- (e) impose a civil penalty not to exceed \$1,500.

(2) Retail Food Establishments—State

The Department of Public Health and Human Services (DPHHS) has licensing authority over Retail Food Establishments.⁷ A person operating a retail food establishment must procure annually a license from DPHHS.⁸ One regulation applicable to retail food establishment licensees states that a licensee who obtains a license is not relieved from satisfying applicable requirements from other federal, state, or local agencies.⁹ If brought to the attention of DPHHS that their licensee was not complying with the laws of the District, its possible DPHHS would take action against the licensee's license. DPHHS may act upon the complaint by referring the matter to the county attorney¹⁰ or initiating the process of cancelling the license.¹¹

(3) Retail Food Establishments—Gallatin County

The Gallatin City-County Board of Health (“GCCBH”) also issues licenses to retail food establishments. GCCBH has adopted certain regulations cited above in the “State” section as its own along with its own specific regulations. Under Section 1.14 of GCCBH’s regulations, the validation, registration or license of an establishment may be denied if such establishment does not comply with other agencies, districts, or governmental entity’s bylaws, ordinances, laws, rules or regulations.

(4) Recreational Marijuana Establishments

⁵ Section 16-4-406, MCA

⁶ Section 16-4-406, MCA

⁷ “Retail food establishment” defined under 50-50-102, MCA

⁸ Section 50-50-201, MCA

⁹ Section 37.110.238(12) Administrative Rule of Montana (ARM)

¹⁰ Section 50-50-107, MCA (county attorney to prosecute after receiving evidence from the regulatory authority being DPHHS or the local health board)

¹¹ Section 37.110.238, ARM

Under recently enacted statutes, the sale of recreational marijuana is regulated and controlled by the Montana Department of Revenue (DOR). Once DOR finishes the implementation of its new Cannabis Control Division, the District should analyze whether reporting delinquent recreational marijuana Establishments for disciplinary authority is appropriate.

(5) Other Licenses

There may be other types of licenses, such as business licenses, lodging and facility use licenses, and regulatory board licenses, that may be held by certain delinquent businesses in the District. Enforcement action against such a licensee should be analyzed on a case-by-case basis.

ATTACHMENT A: BOND PROCESS AND SCHEDULE

Pursuant to the Compliance Ordinance, the District may require a delinquent business to post a resort tax bond, cash bond or letter of credit bond with the District as follows:

- A. Existing delinquent businesses may be required to post a bond in an amount set by resolution of the District Board when they have had two or more delinquencies in reporting or remitting Resort Taxes during the last twenty-four (24) months. If the District Board requires a resort tax bond, such bond shall be executed by a surety company licensed to do business in Montana. In lieu of a surety bond, the delinquent business may submit a cash bond or irrevocable letter of credit of equal value payable to the District and issued by an FDIC insured financial institution for the same purpose.
- B. Any required bond must be approved by the District Board and must be conditioned upon the delinquent business' collection and remittance of Resort Taxes in accordance with all requirements of the Administrative Ordinance. Any resort tax bond, cash or letter of credit must remain effective for two (2) full calendar years after the date of issuance.
- C. When an existing delinquent business that is subject to a resort tax bond changes ownership, the new owner must provide a resort tax bond to the District in the same manner set forth above.
- D. If the delinquent business fails to collect, report, and remit Resort Taxes or otherwise violates the provisions of the Administrative Ordinance, the District may proceed to revoke the bond, cash or letter of credit to pay the entity's unpaid Resort Taxes, as well as interest, civil penalties and attorney's fees allowed by Ordinances of the District or state law.
- E. If a delinquent business violates this section and the District must pursue the bond, cash bond, or letter of credit for unpaid Resort Taxes, the bonding requirement under this section is extended for five (5) years for the offending delinquent business.

The amount of the bond shall be set in accordance with the following schedule:

Resort Tax History	Bond Amount
Establishment with no prior history of resort tax payments	Minimum Bond amount of \$2000
Establishment with less than 12 months prior history of resort tax payments	Bond amount equal to three times the largest amount of resort taxes paid in any prior month the Establishment reported and paid resort taxes
Establishment with 12 or more months prior history of resort tax payments	Bond amount equal to three times the average of the last 12 months the Establishment reported and paid resort taxes

If the delinquent business does not comply with the District’s demand to post a resort tax bond, the District may seek to enforce the obligation by civil action.

ATTACHMENT B: PAYMENT PLAN PROCEDURE

If a delinquent business is more than thirty (30) days delinquent, the District may consent to a payment plan for the delinquent business. However, if the business is delinquent for more than 120 days, and a court action has been filed, the District may rescind any previously consented to payment plan and the District has no further obligation to consent to additional payment plans for the delinquent business. Payment plans will not be entered into unless the delinquent amount is greater than \$2,000. A monthly report of all delinquent businesses who have payment plans will be made to the District's Board in the closed meeting consent agenda.

To initiate a payment plan, the delinquent business must have two-way communication with the District verifying intention of entering into a plan and complete the following steps:

STEP I: Submit the required remittance form and resort taxes due via MUNIREvs for the recently closed month or quarter to the District to show goodwill that the business intends to become and remain current. Visit <https://resorttax.org/collections/> for MUNIREvs information.

STEP II: Once the form and taxes for the recently closed month or quarter are submitted to the District, the business is to email the District its: (1) gross and taxable sales for the delinquent months or quarters; and (2) a statement requesting a six or twelve-month payment plan. Communications can be sent to kristin@resorttax.org.

Within one week of receiving the delinquent business' email, the District will review and evaluate if Steps I and II above have been fulfilled. If so, the District will prepare and email the delinquent business a payment plan.

This Letter of Agreement with the terms and conditions listed above is a legally binding agreement between the business and the Big Sky Resort Area District. If the business defaults and the balance in full is not paid within 30 days, a complaint will be filed by the District's attorneys within 14 days of the 30 day deadline.