

## HOUSE BILL NO. 106

INTRODUCED BY ERICKSON

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS DEALING WITH THE DEPARTMENT OF REVENUE'S RELATIONSHIP TO PROBATE ADMINISTRATION; AMENDING SECTIONS 72-3-607, 72-3-609, 72-3-1006, 72-4-303, 72-4-305, AND 72-16-906, MCA; REPEALING SECTION 72-16-920, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 72-3-607, MCA, is amended to read:

**"72-3-607. Inventory -- appraisal -- copy to department of revenue.** (1) ~~If the estate must file a United States estate tax return, within the time required for the filing of the United States estate tax return plus any extensions granted by the internal revenue service, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory. The inventory must include a listing of all property that:~~

~~—— (a) the decedent owned, had an interest in or control over, individually, in common, or jointly, or otherwise had at the time of the decedent's death;~~

~~—— (b) the decedent had possessory or dispository rights over at the time of death or had disposed of for less than its fair market value within 3 years of the decedent's death; or~~

~~—— (c) was affected by the decedent's death for the purpose of estate taxes: Within 9 months after appointment, a personal representative who is not a special administrator or a successor to another representative who has previously discharged this duty shall prepare an inventory of property owned by the decedent at the time of the decedent's death, listing the inventory of property with reasonable detail and indicating for each listed item its fair market value as of the date of the decedent's death and the type and amount of any encumbrance that may exist with reference to the item.~~

(2) The inventory must include a statement of the full and true value of the decedent's interest in every item listed in the inventory. ~~In this connection, the~~ The personal representative ~~shall~~ MAY appoint one or more qualified and disinterested persons to assist the personal representative in ascertaining the fair market value

as of the date of the decedent's death of all assets included in the estate. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any ~~appraiser~~ appraisers must be indicated on the inventory with the item or items appraised.

(3) The personal representative shall:

(a) send a copy of the inventory to interested persons; or

(b) file the original of the inventory with the court and send a copy of the inventory to interested persons who request it, ~~or the personal representative may file the original of the inventory with the court. In any event, a copy of the inventory and statement of value must be mailed to the department of revenue."~~

**Section 2.** Section 72-3-609, MCA, is amended to read:

**"72-3-609. ~~Supplementary Supplemental~~ inventory -- ~~copy to department of revenue.~~** If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, ~~he~~ the personal representative shall make a ~~supplementary supplemental~~ inventory or ~~appraisal~~ appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions and the appraisers or other data relied upon, if any, ~~and~~ The personal representative shall file it the supplemental inventory with the court if the original inventory was filed or shall furnish copies ~~thereof~~ of the supplemental inventory or information ~~thereof~~ to persons interested in the new information ~~and in any case shall mail a copy of it to the department of revenue."~~

**Section 3.** Section 72-3-1006, MCA, is amended to read:

**"72-3-1006. ~~Certificate or receipt showing taxes paid required to close estate.~~** (1) In all probate proceedings under this code requiring the filing of a United States estate tax return, before a final distribution to successors ~~is~~ may not be made and ~~before any petition is~~ petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, ~~unless there must have been~~ has been filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid or that no tax is payable; or

(b) an agreement with the department of revenue for extension of time for payment of estate taxes; ~~or~~

~~—— (c) a receipt from the county treasurer stating that any estate tax due on the assets of the estate has been paid.~~

(2) This section does not prohibit a partial distribution that may become necessary in the course of administration."

**Section 4.** Section 72-4-303, MCA, is amended to read:

**"72-4-303. Filing of letters, bond, inventory, and affidavit -- copy to department of revenue.** (1)

The domiciliary foreign personal representative of the estate of a nonresident decedent, who wishes to receive payment and delivery as described in 72-4-306 or to exercise the powers over assets described in 72-4-310, shall file in duplicate with a district court in this state in a county in which property belonging to the decedent is located:

(a) authenticated copies of his the personal representative's appointment and of any official bond ~~he has given;~~

(b) an inventory ~~and appraisal~~ of the property of the nonresident decedent located in this state, which ~~inventory shall~~ must contain the information prescribed in 72-3-607; ~~and~~

(c) an affidavit stating:

(a)(i) the date of death of the nonresident decedent; ~~and~~ AND

(b)(ii) that no local administration or application or petition ~~therefor~~ for local administration is pending in this state; ~~and~~

~~—— (iii) a statement as to whether the estate is or is not required to file a United States estate tax return.~~

(2) Upon receiving the information required by subsection (1), the clerk of court shall issue a certificate to the domiciliary foreign personal representative identifying him the representative as having registered with the district court and stating the name and date of death of the decedent.

~~—— (3) The clerk shall also immediately forward a copy of the appointment, affidavit, and inventory and appraisal required by subsection (1) to the department of revenue for estates that are required to file a United States estate tax return."~~

**Section 5.** Section 72-4-305, MCA, is amended to read:

**"72-4-305. Right to inspect estate assets for inventory.** Any A person holding any property of a nonresident decedent, including any instrument evidencing a debt, obligation, stock, or chose in action, shall permit the domiciliary foreign personal representative of the nonresident decedent to inspect ~~and appraise~~ AND APPRAISE the property for purposes of completing the inventory ~~and appraisal~~ called for in 72-4-303(1) upon

1 being presented with proof of his the representative's appointment and an affidavit made by or on behalf of the  
2 representative stating:

3 (1) the date of death of the nonresident decedent;

4 (2) that no local administration or application or petition ~~therefor~~ for local administration is pending in  
5 this state; and

6 (3) that the domiciliary foreign personal representative is entitled to make ~~such~~ the inspection and  
7 appraisal."

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9 **Section 6.** Section 72-16-906, MCA, is amended to read:

10 **"72-16-906. Required filings filing of United States estate tax return.** The personal representative  
11 OR DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE of the estate of any decedent whose estate is ~~subject to the~~  
12 ~~payment of~~ required to file a United States estate tax return shall file a duplicate of the United States estate tax  
13 return with the department of revenue. ~~He shall also file with the department a certificate or other evidence from~~  
14 ~~the internal revenue service showing the amount of the United States estate tax as computed by the internal~~  
15 ~~revenue service."~~

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17 **NEW SECTION. Section 7. Repealer.** Section 72-16-920, MCA, is repealed.

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19 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

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21 **NEW SECTION. Section 9. Retroactive applicability.** [This act] applies retroactively, within the  
22 meaning of 1-2-109, to ~~dates of death~~ DEATHS OCCURRING after December 31, 2000, FOR WHICH THE PROBATE OF  
23 THE DECEDENTS' ESTATES CLOSES AFTER [THE EFFECTIVE DATE OF THIS ACT].

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