

SENATE BILL NO. 510

INTRODUCED BY ESP

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING COUNTY PROPERTY TAX RELIEF BY AUTHORIZING
5 THE ELECTORATE OF A COUNTY TO IMPOSE A LOCAL OPTION REALTY TRANSFER TAX ON
6 TRANSFERS OF RESIDENTIAL, COMMERCIAL, AND AGRICULTURAL REAL PROPERTY; PROVIDING FOR
7 THE IMPOSITION OF THE TAX; PROVIDING FOR EXEMPTIONS FROM THE REALTY TRANSFER TAX;
8 PROVIDING THAT THE FIRST \$300,000 OF VALUE IS NOT TAXED; PROVIDING FOR ADMINISTRATION
9 OF THE REALTY TRANSFER TAX; PROVIDING FOR APPEALS RELATING TO THE REALTY TRANSFER
10 TAX; PROVIDING THAT DOCUMENTS TRANSFERRING TITLE TO REAL PROPERTY MAY NOT BE
11 RECORDED UNTIL THE TAX IS PAID; PROVIDING FOR PENALTIES AND INTEREST FOR
12 NONCOMPLIANCE; PROVIDING THAT THE PROCEEDS OF THE TAX ARE HELD IN A COUNTY FUND TO
13 BE USED TO OFFSET COUNTYWIDE PROPERTY TAXES FOR COUNTY PURPOSES; AMENDING
14 SECTIONS 7-6-4034, 15-7-302, ~~AND 15-7-307, AND 15-7-308~~, MCA; AND PROVIDING AN IMMEDIATE
15 EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 7], the following definitions
20 apply:

- 21 (1) "Department" means the department of revenue provided for in 2-15-1301.
22 (2) (a) "Market value" means:
23 (i) in the case of a transfer of interest in real property, other than a nonarm's-length transfer with nominal
24 consideration, a transfer without stated consideration, or a like-kind exchange, the amount of the full actual
25 consideration paid or to be paid, including the amount of any lien or liens on the real property, as declared in the
26 certificate required in 15-7-305; or
27 (ii) in the case of a nonarm's-length transfer, a like-kind exchange, or a transfer in which the value
28 declared in the certificate required in 15-7-305 is different from market value, the value at which real property
29 would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or
30 to sell and both having reasonable knowledge of relevant facts, and that must be determined by a licensed or

1 certified real estate appraiser.

2 (b) The term does not include the consideration paid for any real property that is exempt under [section
3 ~~3~~ 4] OR FOR PERSONAL OR INTANGIBLE PROPERTY.

4 (3) "Person" includes an individual, corporation, partnership, other business organization, trust, fiduciary,
5 agent, or any other party presenting a document for recordation.

6 (4) "Real property" means land classified as agricultural land in 15-6-133 and residential and
7 commercial property described in 15-6-134 and includes:

8 (a) land; AND

9 ~~(b) growing timber; and~~

10 ~~(c)(B)~~ buildings, structures, fixtures, fences, and improvements affixed to land.

11 (5) "Transfer" means an act of the parties or of the law by which the title to real property is conveyed,
12 legally or equitably, from one person to another and includes transfers subject to a contract for deed and
13 transfers of individual interests in real property.

14

15 NEW SECTION. Section 2. County realty transfer tax -- adoption. (1) A realty transfer tax may be
16 imposed or repealed within a county:

17 (a) by the people of the county by initiative; or

18 (b) by the board of county commissioners by adoption of a resolution and referral to the people.

19 (2) The initiative or referendum must specify the number of years, not to exceed 20, that the realty
20 transfer tax may be imposed by the county.

21

22 NEW SECTION. Section 3. County realty transfer tax -- rate -- collection -- value of real property.

23 (1) (a) In a county that has adopted a realty transfer tax under [section 2], a tax of 1% is imposed, at the time
24 that a transfer of ownership is recorded, on the current market value in excess of \$300,000 of property located
25 within the county.

26 (b) The tax is due upon the recording of a transfer of title on real property. The county treasurer of the
27 county in which the transfer of title is recorded shall collect the tax.

28 (2) The tax is payable by the transferee and must be paid by the transferee or by the person seeking
29 to record the transfer of title to the real property.

30 (3) (a) If the person seeking to record the transfer of title claims an exemption to the tax provided for

1 in [section 4], the county treasurer shall presume that the claim of exemption is valid.

2 (b) If the county treasurer determines that the real property transfer is exempt, the treasurer shall issue
3 a certificate of exemption, and no other action is necessary.

4 (c) If within 30 days the county treasurer determines that the real property transfer is not exempt, the
5 county treasurer shall:

6 (i) notify the taxpayer that the county treasurer has determined that the real property transfer is not
7 exempt and inform the taxpayer of the amount of the tax due; and

8 (ii) direct the taxpayer to remit the amount of the tax due to the county treasurer.

9 (4) If the value declared in the certificate required under 15-7-305 is known or believed by the person
10 seeking to file the transfer of title or by the county treasurer to be something other than the market value of the
11 real property on which the tax is imposed, INCLUDING ANY VALUE OF NONTAXABLE PROPERTY, the market value must
12 be set by a certified or licensed real estate appraiser. THE VALUE MAY BE ESTABLISHED BY AN APPRAISAL CONDUCTED
13 FOR THE PURPOSES OF THE SALE, OR IF NONE IS AVAILABLE, IT MAY BE DONE BY AN APPRAISER chosen by the county,
14 who must be paid from the proceeds of the tax. If the taxpayer is dissatisfied with the valuation, the taxpayer
15 may pay to have a second valuation done by a certified or licensed real estate appraiser of the taxpayer's choice.
16 If the county and the taxpayer are dissatisfied with the second valuation, the two real estate appraisers shall
17 choose an independent appraiser, to be paid one-half from the tax proceeds and one-half by the taxpayer, to
18 review the previous valuations and establish a taxable valuation.

19 (5) Whenever real property subject to the tax is located in more than one county, the treasurer of the
20 county in which the transfer of title is sought to be registered shall collect the amount of tax due on property
21 located within the county. If the value is not ascertainable, the value of the whole property must be apportioned
22 between the counties in the same ratio of taxable value of the property within each county as shown by
23 department records.

24
25 **NEW SECTION. Section 4. Exempt transactions.** (1) Except as provided in subsection (2), the tax
26 imposed in [section 3] does not apply to:

27 (a) an instrument recorded prior to [the effective date of this act];

28 (b) a transfer solely to provide or release security for a debt or obligation;

29 (c) a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the United
30 States or this state;

- 1 (d) an instrument that, without added consideration, confirms, corrects, modifies, or supplements a
2 previously recorded instrument;
- 3 (e) a transfer pursuant to a court decree of partition;
- 4 (f) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or
5 other business entities and includes a transfer by co-owners to a business entity solely owned by them;
- 6 (g) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole
7 consideration of the cancellation or surrender of subsidiary stock;
- 8 (h) a transfer of decedents' estates;
- 9 (i) a transfer of a gift;
- 10 (j) a transfer between husband and wife;
- 11 (k) a transfer between parent and child;
- 12 (l) an instrument the effect of which is to transfer the real property to the same party or parties;
- 13 (m) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage
14 foreclosure; or
- 15 (n) a transfer made in contemplation of death.
- 16 (2) (a) A transfer of real property made under the exemption in subsection (1)(f) by co-owners to a
17 business entity, subsection (1)(j) between a husband and wife, or subsection (1)(k) between a parent and child
18 is subject to the tax imposed under [section 3] if the real property is subsequently transferred within 3 years to
19 another person or entity. The tax, plus interest from the date of the exempt transaction, is payable by the
20 transferor at the time of payment of the tax on the second transfer.
- 21 (b) The county clerk and recorder in a county that imposes a realty transfer tax shall establish a system
22 to track transactions described in subsection (2)(a).
- 23

24 **NEW SECTION. Section 5. Collection of realty transfer tax -- appeals -- penalty and interest --**
25 **statute of limitations -- lien on transferred real property.** (1) Before a deed or instrument evidencing a
26 transfer of title subject to the tax imposed by [section 3] may be recorded, the treasurer of the county where the
27 real property or any portion of the real property is located shall, unless a certificate of exemption is presented,
28 collect the amount of tax due as provided in [section 3].

29 (2) If the taxpayer contests the tax assessment or the denial of an exemption from the tax, the taxpayer
30 may, before payment of any tax, appeal to district court the tax assessment or the denial of the exemption.

1 (3) (a) If the district court determines that the amount of tax due is greater than the amount collected,
 2 the county treasurer shall mail a notice to the taxpayer of the additional tax proposed to be assessed and
 3 demand that the additional tax be paid to the county treasurer.

4 (b) In addition to the unpaid tax, there is imposed:

5 (i) a penalty of 10% of the unpaid tax IF NOT PAID WITHIN 10 DAYS OF THE PAYMENT DATE SET BY THE COURT;

6 and

7 (ii) interest on the unpaid tax, until paid in full, at the rate of 1% a month or fraction of a month, computed
 8 from the date on which the transfer was recorded.

9 ~~(4) (a) Except as provided in subsection (4)(b), the unpaid tax deficiency may not be assessed unless~~
 10 ~~notice of the additional tax proposed to be assessed is mailed within 2 years from the date on which the transfer~~
 11 ~~was recorded.~~

12 ~~—— (b) If the certificate filed pursuant to 15-7-305 is fraudulent, the 2-year period does not begin until~~
 13 ~~discovery of the fraud.~~

14 ~~(5)(4)~~ The treasurer may collect, pursuant to 15-16-102, any additional tax, penalty, and interest due
 15 under this section.

16 ~~(6)(5)~~ The additional tax, penalty, and interest are a lien against the real property that was transferred
 17 and may be collected and enforced in the same manner that other tax liens on real property are enforced. The
 18 use of one method of collection does not preclude the use of an alternative method of collection.

19 (6) (A) IT IS UNLAWFUL FOR A COUNTY TREASURER OR EMPLOYEE OF THE COUNTY TREASURER OR ANY OTHER
 20 PUBLIC OFFICIAL OR PUBLIC EMPLOYEE TO DIVULGE OR OTHERWISE MAKE KNOWN TAXPAYER INFORMATION THAT IS
 21 DISCLOSED UNDER [SECTIONS 1 THROUGH 7] OR INFORMATION THAT CONCERNS THE AFFAIRS OF THE PERSON AND THAT
 22 IS ACQUIRED FROM THE PERSON'S RECORDS, OFFICERS, OR EMPLOYEES IN AN EXAMINATION OR AUDIT.

23 (B) THIS SUBSECTION (6) DOES NOT PROHIBIT THE COUNTY TREASURER FROM PUBLISHING STATISTICS IF THEY
 24 ARE CLASSIFIED IN A WAY THAT DOES NOT DISCLOSE THE IDENTITY AND CONTENT OF ANY PARTICULAR PERSON.

25

26 **NEW SECTION. Section 6. Penalty for falsifying value -- evasion.** (1) A person who seeks to record
 27 a transfer of title to real property subject to taxation under [sections 1 through 7] is guilty of unsworn falsification
 28 to authorities, under 45-7-203, if:

29 (a) the person at the time of initially seeking to file a transfer of title knew or had reason to believe that
 30 the value declared in the certificate required under 15-7-305 is less than the market value of the real property;

1 and

2 (b) the value declared on the certificate is used to determine the amount of tax due under [section 3].

3 (2) A person who uses multiple sales, unsupportable asset allocation, or other transactions for the
4 purpose of evading [sections 1 through 7] is, upon a finding by a district court that the evasive transactions
5 constitute a taxable transfer under [sections 1 through 7], subject to the penalty and interest provisions of
6 [section 5(3)(b)].

7
8 **NEW SECTION. Section 7. Deposit of realty transfer tax proceeds.** The county treasurer shall
9 deposit the taxes and any penalties and interest collected under [sections 1 through 7] in the county realty
10 transfer tax holding account established in [section 8].

11
12 **NEW SECTION. Section 8. Realty transfer tax holding account -- permissible uses.** (1) A county
13 shall deposit collections of the realty transfer tax collected under [sections 1 through 7] in the county realty
14 transfer tax holding account. Any interest or income earnings on the account must be deposited in the account.

15 TO PROTECT THE PRIVACY OF TAXPAYERS, THE RUNNING BALANCE OF THE ACCOUNT AND DEPOSITS TO THE ACCOUNT MAY
16 NOT BE DISCLOSED. THE YEAREND BALANCE OF THE ACCOUNT MUST BE DISCLOSED.

17 (2) Funds in the account may be used only to offset property tax revenue for county purposes, but not
18 school or education purposes, funded by countywide property tax levies in the county fiscal year following the
19 fiscal year of collection, or if funds remain in the account after totally offsetting all countywide tax levies, the
20 funds must be used for those purposes in succeeding fiscal years.

21 (3) A levy offset made pursuant to this section does not reduce the maximum number of mills that the
22 county may levy, and the levy authority may be carried forward and imposed in a subsequent year as provided
23 in 15-10-420(1)(b).

24
25 **Section 9.** Section 7-6-4034, MCA, is amended to read:

26 **"7-6-4034. Determination of fund requirements -- property tax levy.** (1) After determining the final
27 budget, the governing body shall determine the property tax levy needed for each fund by:

28 (a) adding the total amount of the appropriations and authorized expenditures for the budget year;
29 (b) adding an additional amount, subject to the provisions of subsection (2), as a reserve to meet
30 expenditures made from the fund during the months of July to November of the next fiscal year;

- 1 (c) subtracting the working capital; ~~and~~
 2 (d) subtracting the total estimated revenue, other than the property tax levy, for the budget year; and
 3 (e) subtracting the amount in the county realty transfer tax holding account established in [section 8]
 4 in an amount necessary to offset countywide property tax levies.

5 (2) After deducting from the amount of the appropriations and authorized expenditures the total amount
 6 appropriated and authorized to be spent for election expenses and payment of emergency warrants, the amount
 7 that may be added as a reserve, as provided in subsection (1)(b), to:

8 (a) a county's fund may not exceed one-third of the total amount appropriated and authorized to be
 9 spent from the fund during the current fiscal year; and

10 (b) a city's or town's fund may not exceed one-half of the total amount appropriated and authorized to
 11 be spent from the fund during the current fiscal year."

12

13 **Section 10.** Section 15-7-302, MCA, is amended to read:

14 "**15-7-302. Purpose.** The purpose of this part is to obtain sales price data necessary to the
 15 determination of statewide levels and uniformity of real estate assessments by the most efficient, economical,
 16 and reliable method and to provide for the administration of the realty transfer tax provided for in [sections 1
 17 through 7]."

18

19 **Section 11.** Section 15-7-307, MCA, is amended to read:

20 "**15-7-307. Certificate -- exceptions.** The certificate required by this part applies to all transfers.
 21 However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid
 22 for the real estate transferred:

23 (1) an instrument recorded prior to July 1, 1975;

24 ~~(2) the sale of agricultural land when the land is used for agricultural purposes;~~

25 ~~(3)(2)~~ the sale of timberland when the land is used for producing timber;

26 ~~(4)(3)~~ a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the
 27 United States or this state;

28 ~~(5)(4)~~ an instrument that (without added consideration) confirms, corrects, modifies, or supplements
 29 a previously recorded instrument;

30 ~~(6)(5)~~ a transfer pursuant to a court decree;

1 ~~(7)~~(6) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships,
 2 or other business entities and includes a transfer by co-owners to a business entity solely owned by them;
 3 ~~(8)~~(7) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in
 4 sole consideration of the cancellation or surrender of subsidiary stock;
 5 ~~(9)~~(8) a transfer of decedents' estates;
 6 ~~(10)~~(9) a transfer of a gift;
 7 ~~(11)~~(10) a transfer between husband and wife or parent and child with only nominal actual consideration
 8 for the transfer;
 9 ~~(12)~~(11) an instrument the effect of which is to transfer the property to the same party or parties;
 10 ~~(13)~~(12) a sale for delinquent taxes or assessments, sheriff's sale, bankruptcy action, or mortgage
 11 foreclosure;
 12 ~~(14)~~(13) a transfer made in contemplation of death."

13
 14 **SECTION 12.** SECTION 15-7-308, MCA, IS AMENDED TO READ:

15 **"15-7-308. Disclosure of information restricted -- water right transfer certificate exception.** (1)
 16 Except as provided in subsection (2), the certificate required by this part and the information contained in the
 17 certificate is not a public record and must be held confidential by the county clerk and recorder, the county
 18 treasurer, and the department. This is because the legislature finds that the demands of individual privacy
 19 outweigh the merits of public disclosure. The confidentiality provisions do not apply to compilations from the
 20 certificates or to summaries, analyses, and evaluations based upon the compilations.

21 (2) The confidentiality provisions of this section do not apply to the information in the clerk and
 22 recorder's abbreviated copy of the realty transfer certificate or to the information contained in the water right
 23 transfer certificate prepared and filed with the department of natural resources and conservation pursuant to
 24 85-2-424 for purposes of maintaining a system of centralized water right records as mandated by Article IX,
 25 section 3(4), of the Montana constitution. A person may access water right transfer information through the
 26 department of natural resources and conservation pursuant to the department's implementation of the
 27 requirements of 85-2-112(3)."

28
 29 **NEW SECTION.** **Section 13. Codification instruction.** [Sections 1 through 8] are intended to be
 30 codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1

1 through 8].

2

3 NEW SECTION. **Section 14. Effective date.** [This act] is effective on passage and approval.

4 - END -