



MONTANA ASSOCIATION
OF REALTORS®

REALTOR® *The Voice for Real Estate™* in Montana

EXHIBIT 6
DATE 4.19.05
SB 513

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Dear House Taxation Committee Members:

The Montana Association of Realtors® agrees with the basic premise of Sections 10, 11 and 12 (referred to as the Real Estate Backup Withholding Act) of S.B. 513. Out of state sellers *should* pay capital gains tax to Montana when they sell Montana property. It may even be true that a withholding at the time of the sale is the best way to make sure that happens.

However, as is usually the case, the devil is in the details. Exactly how do you do this withholding? In the short period of time we have had to research this problem we have found three models that other states are using. There may be other models out there that we haven't discovered yet. The models are:

I. The California Model:

California has the escrow agent (similar to a closing agent in Montana) withhold the money, keep the records and send the money to the state.

The advantages are:

1. You have a professional closer handling the withholding and the accounting.
2. In California, all transactions must be closed by an escrow officer, so the same profession is responsible for the withholding in all closings.

The disadvantages are:

1. Montana does not have escrow agents. In Montana, transactions are closed by the title companies, banks, attorneys, real estate brokers and the buyer and seller themselves.
2. You are relying on a civilian, hired by the seller and buyer, to collect taxes owed to the state.

II. The Maryland Model:

Maryland's withholding requires money to be withheld or an affidavit filed saying no money is owed before the deed can be recorded. This is similar to Montana's present requirement that you have to file a Realty Transfer Certificate with all deeds.

The advantages are:

1. In Montana the one common denominator of all sales is the recording of the deed. If you can't record the deed, you don't have a sale. Therefore, this model guarantees withholding or an affidavit on all sales.
2. A professional hired by the government (the clerk and recorder) is responsible.

The disadvantages are:

1. A professional hired by the government (the clerk and recorder) is responsible. We don't completely understand why the Department of Revenue thinks this is bad so instead of taking the chance of misquoting them, we will let them explain why this is a disadvantage.



III. The South Carolina Model:
This buyer is responsible for the withholding.

The advantages are:

1. All transactions have a buyer and a seller. You can't trust the seller, so you make the buyer responsible and liable.

The disadvantages are:

1. A nonprofessional with little or no knowledge of what should be done is responsible.
2. In Montana the buyer is not in a position to do withholding or know for sure it has happened. In a typical transaction the buyer writes a check for the down payment to the closing agent. The bank writes a check to the closing agent or closes the transaction themselves. The closing agent (title company, bank, attorney or real estate broker) pays all of the closing costs, liens, etc., records the deed and writes a check to the seller for the balance. The buyers often never meet the sellers, don't see the seller's closing statement and would have no way of knowing if an affidavit or withholding has taken place. But, the buyer would be liable.

Basically, the South Carolina model is the one used in S.B. 513. We don't think it is advisable to put that kind of liability and responsibility on every innocent buyer in the state. We fully understand that it is very hard to vote against a bill to "stop out of state tax cheats", but we also believe that it should be very hard to vote for making innocent Montana buyers responsible for taxes owed by out of state tax cheats.

We believe the solution is the Maryland model. The Maryland model would take buyers out of the loop. It tells the seller that if he wants to sell his property he must have money withheld or file an affidavit with the clerk and recorder. It is very simple. If the seller wants his money, he must follow the law. It doesn't try to make Montana buyers liable for tax owed by the out of state tax cheats. It makes the out of state tax cheats responsible. All the clerk and recorder has to do is refuse to file the deed if the proper withholding funds or affidavit is not filed with the deed.

Given time I am sure we can work with the Department of Revenue, the banks, the title companies, the attorneys and the clerk and recorders to develop a Montana model that will stop out of state tax cheats without victimizing innocent Montana buyers. Unfortunately time is short and a solution acceptable to all has not yet surfaced in our conversations with the Department of Revenue.

Please vote no on S.B. 513. Thank you for your time and consideration.

Sincerely,

Collin Bangs
Legislative Working Group Chairman