Montana Department of Revenue

Dan Bucks
Director

Brian Schweitzer
Governor

MEMORANDUM

SENATE TAXATION
EXHIBIT NO. 4
DATE 2-2-05
BILL NO. NA

To: Chairman Jim Elliot, Senate Taxation Committee

From: Jim McKeon, Income Tax Specialist

Date: January 26, 2005

Re: SB 250 –Determining the Individual Income Tax Capital Gains Credit

---

In response to the questions that was asked during the Senate Taxation Committee hearing held Tuesday, January 25, 2005, the following is provided:

Question by Senator Story. Are the amounts of capital gains reported on individual income tax returns and the 27% of such gain attributable to the sale of common stock of publicly traded companies based on the Department of Revenue's study conducted approximately 6 years ago?

Answer: Yes, the 27% assumption of all capital gains reported in 2005 represent the sale of common stock of a publicly traded company is based on a study of all capital gains reported in Montana for tax year 2000.

Question by Senator Toole. If stock is gifted to an individual is than individual's basis in the stock valued at the fair market value of the stock at the time of the gift?

Answer: In response to this question during the hearing, I inadvertently referenced Internal Revenue Code Section 1014 instead of Section 1015.

When property is acquired as a gift, the basis to the individual receiving the gift is the same as it would be as if the property remained in the name of the donor. Therefore, in using the example discussed during the hearing, when a student sells stock that was gifted to him or her, the capital gain is determined using the original basis of the donor instead of a step-up basis at the time of the gift. (Reference 26 U.S.C. 1015).

Whereas in 26 U.S.C. 1014, when property is acquired from a decedent, the basis of such property acquired from the decedent is its fair market value at the date of the decedent's death.