

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF REVENUE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA REAL ESTATE BACKUP
7 WITHHOLDING ACT; PROVIDING DEFINITIONS; REQUIRING WITHHOLDING FOR INCOME TAX
8 PURPOSES ON THE GAIN FROM THE SALE OR EXCHANGE OF CERTAIN MONTANA REAL ESTATE;
9 ESTABLISHING A WITHHOLDING TAX RATE; PROVIDING EXCEPTIONS TO WITHHOLDING;
10 ESTABLISHING REPORTING AND REMITTANCE REQUIREMENTS; REQUIRING THAT CERTAIN
11 INFORMATION BE SUBMITTED WITH THE REALTY TRANSFER CERTIFICATE; PROHIBITING THE
12 RECORDING OF A TRANSFER OF MONTANA REAL ESTATE OR A CHANGE IN OWNERSHIP RECORDS
13 OF MONTANA REAL ESTATE FOR PROPERTY TAX PURPOSES IF THE REQUIRED INFORMATION IS NOT
14 PROVIDED; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT OF REVENUE; AND
15 PROVIDING AN APPLICABILITY DATE."

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

18
19 NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Real
20 Estate Backup Withholding Act."

21
22 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], the following definitions
23 apply:

24 (1) "Certified calculated gain" means the gain the transferor certifies in writing to the department, under
25 penalty of false swearing as provided in 45-7-202, that the transferor will realize on a disposition of Montana real
26 estate.

27 (2) "Improvements" has the meaning provided in 15-1-101.

28 (3) "Montana real estate" means real estate or improvements located in Montana.

29 (4) "Principal residence" means a principal residence within the meaning of section 121 of the Internal
30 Revenue Code, 26 U.S.C. 121.



1 (5) "Real estate" has the meaning provided in 15-1-101.

2 (6) "Sales price" means the total consideration for the transfer of Montana real estate, including the
3 market value of any property transferred to the transferor, and any liability assumed or taken subject to the sales
4 price.

5 (7) "Transferor" means any person or entity disposing of Montana real estate.

6
7 **NEW SECTION. Section 3. Withholding required on sale or exchange of Montana real estate --**
8 **rate.** Except as provided in [section 4], there must be withheld from the proceeds from a sale or exchange of
9 Montana real estate an amount equal to the lesser of:

- 10 (1) 2.5% of the sales price of the Montana real estate conveyed; or
- 11 (2) the amount of the transferor's certified calculated gain multiplied by the highest rate of tax provided
12 for in 15-30-103.

13
14 **NEW SECTION. Section 4. Withholding -- application not required.** Withholding is not required on
15 the transfer of Montana real estate under the provisions of [section 3] if:

- 16 (1) the sales price of the Montana real estate conveyed is less than \$100,000;
- 17 (2) the transfer occurs:
 - 18 (a) pursuant to a power of sale under a mortgage or deed of trust;
 - 19 (b) as the result of a decree of foreclosure; or
 - 20 (c) by deed in lieu of foreclosure; or
- 21 (3) the transferor establishes that:
 - 22 (a) the transferor is an individual who is a Montana resident;
 - 23 (b) the Montana real estate being transferred is the principal residence of the transferor or was the
24 principal residence of a decedent;
 - 25 (c) the last use of the property being transferred was by the transferor as the transferor's principal
26 residence;
 - 27 (d) the Montana real estate has been compulsorily or involuntarily converted within the meaning of
28 section 1033 of the Internal Revenue Code, 26 U.S.C. 1033, and the transferor intends to acquire property similar
29 or related in service or use so that the gain is not recognized under the provisions of section 1033 of the Internal
30 Revenue Code, 26 U.S.C. 1033;

1 (e) the Montana real estate is being relinquished in an exchange in which gain and loss is not recognized
2 pursuant to section 1031 of the Internal Revenue Code, 26 U.S.C. 1031; or

3 (f) the transferor is a corporation, a pass-through entity, or a disregarded entity incorporated or organized
4 under the laws of the state of Montana.

5
6 **NEW SECTION. Section 5. Reporting and remittance.** (1) The transferor shall report to the
7 department under oath, on a form prescribed by the department, all information necessary to compute the amount
8 withheld pursuant to [section 3] or to establish that the transferor is not required to withhold pursuant to [section
9 4].

10 (2) Within 5 business days of closing on the sale or exchange of Montana real estate, the transferor shall
11 file the report and remit the amount withheld, if any, to the department.

12 (3) A copy of the report and a copy of the payment, if any, for withholding must be attached to the realty
13 transfer certificate required by 15-7-305. The county clerk and recorder may not record any deed or other
14 instrument transferring title to Montana real estate if the copies required by this section are not provided.

15 (4) The department may not change any ownership records used for the assessment or taxation of
16 Montana real estate unless the copies required by subsection (3) are attached to the realty transfer certificate.

17 (5) Any amount required to be paid pursuant to [section 3] and remitted to the department pursuant to
18 this section is considered a payment on the account of the transferor for the purposes of individual income tax
19 under Title 15, chapter 30, or for the purposes of the corporation license tax or corporation income tax under Title
20 15, chapter 31. If the transferor is a pass-through entity, the payment is considered a payment on the account
21 of the pass-through entity's shareholders, partners, or members, as applicable.

22
23 **NEW SECTION. Section 6. Rulemaking authority.** The department shall adopt rules to implement and
24 administer [sections 1 through 6].

25
26 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified
27 as an integral part of Title 15, chapter 30, part, 2, and the provisions of Title 15, chapter 30, part 2, apply to
28 [sections 1 through 6].

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30 **NEW SECTION. Section 8. Applicability.** [This act] applies to transfers of Montana real estate

1 occurring after September 30, 2007.

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