

HOUSE BILL NO. 222

INTRODUCED BY DICK BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA REAL ESTATE BACKUP
5 WITHHOLDING ACT; REQUIRING WITHHOLDING FOR INCOME TAX PURPOSES ON THE GAIN FROM THE
6 SALE OR EXCHANGE OF CERTAIN MONTANA REAL ESTATE; ESTABLISHING A WITHHOLDING TAX
7 RATE; PROVIDING EXCEPTIONS TO WITHHOLDING; ESTABLISHING REPORTING AND REMITTANCE
8 REQUIREMENTS; REQUIRING THAT CERTAIN INFORMATION BE SUBMITTED WITH THE REALTY
9 TRANSFER CERTIFICATE; PROHIBITING THE RECORDING OF A TRANSFER OF MONTANA REAL ESTATE
10 OR A CHANGE IN OWNERSHIP RECORDS OF MONTANA REAL ESTATE FOR PROPERTY TAX PURPOSES
11 IF THE REQUIRED INFORMATION IS NOT PROVIDED; ALLOWING A TRANSFEROR TO APPLY FOR A
12 REFUND OF WITHHOLDING UNDER CERTAIN CONDITIONS; PROVIDING RULEMAKING AUTHORITY TO
13 THE DEPARTMENT OF REVENUE; CLARIFYING THE LIABILITY OF CLERKS AND RECORDERS;
14 AMENDING SECTION 7-4-2623, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

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18 NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Montana Real
19 Estate Backup Withholding Act".

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21 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 7], the following definitions
22 apply:

- 23 (1) "Improvements" has the meaning provided in 15-1-101.
- 24 (2) "Montana real estate" means real estate or improvements located in Montana.
- 25 (3) "Principal residence" means a principal residence within the meaning of 26 U.S.C. 121.
- 26 (4) "Real estate" has the meaning provided in 15-1-101.
- 27 (5) "Sales price" means the total consideration for the transfer of Montana real estate, including the
28 market value of any property transferred to the transferor, and any liability assumed or taken subject to the sales
29 price.
- 30 (6) "Transferor" means any person or entity disposing of Montana real estate.

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2 **NEW SECTION. Section 3. Withholding required on sale or exchange of Montana real estate --**
3 **rate.** Except as provided in [section 4], there must be withheld from the proceeds from a sale or exchange of
4 Montana real estate an amount equal to 2.5% of the sales price of the Montana real estate conveyed.

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6 **NEW SECTION. Section 4. Withholding -- application not required.** (1) Withholding is not required
7 on the transfer of Montana real estate under the provisions of [section 3] if:

8 (a) the sales price of the Montana real estate conveyed is less than \$250,000;

9 (b) the transfer occurs:

10 (i) pursuant to a power of sale under a mortgage or deed of trust;

11 (ii) as the result of a decree of foreclosure; or

12 (iii) by deed in lieu of foreclosure; or

13 (c) the transferor establishes that:

14 (i) the transferor is an individual who is a Montana resident;

15 (ii) the Montana real estate being transferred is the principal residence of the transferor or was the
16 principal residence of a decedent;

17 (iii) the last use of the property being transferred was by the transferor as the transferor's principal
18 residence;

19 (iv) the Montana real estate has been compulsorily or involuntarily converted within the meaning of 26
20 U.S.C. 1033 and the transferor intends to acquire property similar or related in service or use so that the gain is
21 not recognized under the provisions of 26 U.S.C. 1033;

22 (v) the Montana real estate is being relinquished in an exchange in which gain or loss is not recognized
23 pursuant to 26 U.S.C. 1031; or

24 (vi) the transferor is:

25 (A) a corporation incorporated under the laws of Montana;

26 (B) a limited partnership formed under the laws of Montana; or

27 (C) subject to subsection (2), a limited liability company organized under the laws of the state of
28 Montana.

29 (2) If a single-member limited liability company has not elected to be taxed as a corporation, the
30 single-member limited liability company is disregarded and subsection (1)(c) is applied as if the single member

1 is the transferor.

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

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

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

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

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

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20 **NEW SECTION.** **Section 6. Refund.** A transferor may apply to the department for a refund of
21 withholding taxes paid under [sections 1 through 7] before the due date of the transferor's tax return to the extent
22 that the amount withheld will exceed the transferor's tax liability.

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24 **NEW SECTION.** **Section 7. Rulemaking.** (1) The department shall adopt rules to implement and
25 administer [sections 1 through 7].

26 (2) The rules must include a procedure for allowing a transferor to apply for a refund before the due date
27 of the transferor's tax return to the extent that the amount withheld will exceed the transferor's tax liability.

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29 **Section 8.** Section 7-4-2623, MCA, is amended to read:

30 **"7-4-2623. Liability of clerk relating to duties as recorder.** A county clerk is liable to the party

1 aggrieved for three times the amount of the damages that may result and is punishable as provided in this code
2 if the county clerk to whom an instrument is delivered for record:

3 (1) neglects or refuses to record the instrument within a reasonable time after receipt except when the
4 information required by law to record the instrument is not provided;

5 (2) falsely records an instrument or records an instrument in any other manner than as directed in this
6 part;

7 (3) neglects or refuses to keep in the clerk's office indexes that are required by this part or to make the
8 proper entries in the indexes; or

9 (4) alters, changes, or obliterates any records deposited in the clerk's office or inserts any new matter
10 in the records."
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12 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified
13 as an integral part of Title 15, chapter 30, part 25, and the provisions of Title 15, chapter 30, part 25, apply to
14 [sections 1 through 7].
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16 **NEW SECTION. Section 10. Applicability.** [This act] applies to transfers of Montana real estate
17 occurring after December 31, 2011.
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