GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2015 Biennium

Bill #	SB0157		**Title:**	Provide withholding of taxes on gain from sales of real estate by nonresidents
Primary Sponsor:	Barrett, Dick		**Status:**	As Introduced

- [ ] Significant Local Gov Impact
- [x] Needs to be included in HB 2
- [ ] Technical Concerns
- [ ] Included in the Executive Budget
- [ ] Significant Long-Term Impacts
- [ ] Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2014 Difference	FY 2015 Difference	FY 2016 Difference	FY 2017 Difference
Expenditures:				
General Fund	$402,000	$0	$0	$0
Revenue:				
General Fund	$277,500	$555,000	$555,000	$555,000
Net Impact-General Fund Balance:	($124,500)	$555,000	$555,000	$555,000

Description of fiscal impact: This bill would require withholding of income tax on real estate sales where the sales price is at least $250,000. Withholding would not be required if the seller is a resident individual or Montana business, if any gain is not taxable because the property was a principle residence, if federal law allows deferred recognition of the gain in a property exchange or involuntary conversion, or if the transfer results from a foreclosure. This would result in annual collections of $555,000 of income tax revenue that is owed but not collected under current law.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. Gains on the sale of real estate are income subject to either the individual income tax or the corporation license tax. Under current law, none of the proceeds of a sale are withheld to cover tax on the gain.
2. Most non-resident individuals who sell real estate in Montana are not aware that they may be required to file a Montana tax return or pay income tax they owe on their gains from these sales. Multi-state businesses that sell property in Montana generally pay applicable taxes with greater frequency because most are required to file a return because they do business in the state. Currently, the Department of Revenue attempts to contact non-filers using information on the realty transfer certificate and explain the tax laws and taxes owed.

3. This bill would require withholding of 2.5% of the sales price of real estate transfers unless at least one of the following is true:
    a. The sales price is less than $250,000;
    b. The seller is a resident individual or a Montana corporation, limited partnership, or limited liability company;
    c. The property was either the seller's or a decedent's principle residence;
    d. The property is being transferred because of foreclosure or similar circumstances; or
    e. The property is being exchanged or involuntarily converted in a tax-deferred transaction under section 1031 or 1033 of the Internal Revenue Code.
4. This bill would allow taxpayers who have more tax withheld than they owe to apply for a refund before their next return is due.
5. Over the last three years, the department's active compliance efforts have identified real estate sales for which tax should have been paid, and made assessments averaging $555,000. About half that amount has been collected. If taxes were withheld on these sales, the full amount would be collected.
6. Compliance staff currently assigned to identifying and contacting non-residents who have gains on Montana real estate sales would be assigned to other compliance projects and would continue to collect approximately the same amount of revenue. Thus, general fund revenue would increase by the amount of assessments currently being made on non-compliant real estate sales. For tax allocation purposes, this fiscal note assumes that the preponderance of these collections would be reported on individual income tax forms.
7. This bill would apply to real estate sales beginning in calendar year 2014. It would be in effect for half of FY 2014, so half a year's additional revenue would be collected in FY 2014.
8. The department would need to develop a new form for withholding and to claim refunds, and make corresponding changes to its data capture and processing systems. Forms development would cost $2,000, and system changes would cost $400,000, all in FY 2014.

Fiscal Impact:	**FY 2014 Difference**	**FY 2015 Difference**	**FY 2016 Difference**	**FY 2017 Difference**
Department of Revenue				
Expenditures:				
Operating Expenses	$402,000	$0	$0	$0
TOTAL Expenditures	$402,000	$0	$0	$0
Funding of Expenditures:				
General Fund (01)	$402,000	$0	$0	$0
TOTAL Funding of Exp.	$402,000	$0	$0	$0
Revenues:				
General Fund (01)	$277,500	$555,000	$555,000	$555,000
TOTAL Revenues	$277,500	$555,000	$555,000	$555,000
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($124,500)	$555,000	$555,000	$555,000

Sponsor's Initials *Date* *Budget Director's Initials* *Date*