

SENATE BILL NO. 301  
INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A REALTY TRANSFER TAX ON CERTAIN TRANSFERS OF REAL PROPERTY; PROVIDING FOR EXEMPTIONS FROM THE REALTY TRANSFER TAX; PROVIDING FOR ADMINISTRATION OF THE REALTY TRANSFER TAX; PROVIDING FOR APPEALS RELATING TO THE REALTY TRANSFER TAX; ALLOCATING TAX PROCEEDS; REQUIRING THAT A PORTION OF TAX PROCEEDS BE USED FOR AFFORDABLE HOUSING; PROVIDING THAT DOCUMENTS TRANSFERRING TITLE TO REAL PROPERTY MAY NOT BE RECORDED UNTIL THE TAX IS PAID; PROVIDING FOR PENALTIES AND INTEREST FOR NONCOMPLIANCE; AMENDING SECTION 90-6-133, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7] may be cited as the "Realty Transfer Tax Act".

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

(1) "Person" includes an individual, corporation, partnership, other business organization, trust, fiduciary, agent, or any other party presenting a document for recordation.

(2) "Real property" includes:

(a) land;

(b) growing timber;

(c) buildings, structures, fixtures, fences, and improvements affixed to land.

(3) "Transfer" means an act of the parties or of the law by which the title to real property is conveyed from one person to another.

(4) (a) "Value" means:

(i) in the case of a transfer of interest in real property, other than a nonarm's-length transfer with nominal consideration or a transfer without stated consideration, the amount of the full actual consideration paid or to be paid, including the amount of any lien or liens on the real property, as declared in the certificate required in

15-7-305; or

(ii) in the case of a nonarm's-length transfer or a transfer in which the value declared in the certificate required in 15-7-305 is different from market value, market value as described in 15-8-111.

(b) The term does not include the consideration paid for any property that is exempt under [section 4] or that is not real property.

**NEW SECTION. Section 3. Realty transfer tax -- rate -- collection -- value of real property.** (1) A realty transfer tax of 1% is imposed on the value of real property that is not exempt under [section 4]. The tax is due upon the filing of a transfer of title on real property. The county treasurer of the county in which the transfer of title is filed shall collect the tax.

(2) The tax is payable by the transferee and must be paid by the transferee or by the person seeking to record the transfer of title to the real property.

(3) (a) If the person seeking to record the transfer of title claims an exemption to the tax provided in [section 4], the county treasurer shall presume the claim of exemption is valid and shall notify the department of the exemption claimed. Upon receiving the notification, the department shall determine if the property transfer is exempt from the tax.

(b) If the department determines that the property transfer is exempt, no other action is necessary.

(c) If the department determines that the property transfer is not exempt, the department shall:

(i) notify the taxpayer, pursuant to 15-1-211, that the department has determined that the property transfer is not exempt and inform the taxpayer of the amount of the tax due; and

(ii) direct the taxpayer to remit the amount of the tax due to the county treasurer.

(d) The department shall provide a copy of the notice required in subsection (3)(c) to the county treasurer in the county where the transfer of title occurred.

(4) (a) If the value declared in the certificate required under 15-7-305 is known or believed by the person seeking to file the transfer of title to be something other than the market value of the real property on which the tax is imposed, the person shall declare the market value of the property for the purpose of determining the correct amount of the tax.

(b) If a declaration is made under subsection (4)(a) to a market value different from the value reported on the certificate required under 15-7-305, the county treasurer shall use the market value declared under subsection (4)(a) to calculate the tax and shall notify the department. Upon receipt of the notice, the department shall determine the market value as described in 15-8-111.

(c) If the department determines that the market value declared under subsection (4)(a) is the market value of the property, no other action is required.

(d) If the department determines that the market value declared under subsection (4)(a) is different from the market value determined by the department under subsection (4)(b), the department shall:

(i) report the market value determined under subsection (4)(b) to the county treasurer from whom the department received the notice; and

(ii) (A) if the market value determined by the department under subsection (4)(b) is lower than the market value declared under subsection (4)(a), the department shall make a refund of the excess to the taxpayer; or

(B) if the market value determined by the department under subsection (4)(b) is higher than the market value declared under subsection (4)(a), the department shall notify the taxpayer, pursuant to 15-1-211, of the amount of the deficiency and direct the taxpayer to remit the amount of the deficiency to the county treasurer.

(e) If a refund of excess realty transfer tax is made more than 6 months after the department received the notification required under subsection (4)(b), the refund must include interest at the rate of 1% a month or portion of a month from the date on which the department received the notice.

(5) (a) Whenever property subject to the tax is located in more than one county, the treasurer of the county in which the transfer of title is sought to be registered shall collect the total amount of tax due, notify the department, and forward the total amount collected to the department. The department shall hold the amount received in trust, pending distribution as provided in this subsection (5).

(b) Upon receiving notification, the department shall determine the portion of value and tax allocable to each of the counties in which the property is located. After determining the appropriate allocations, the department shall allocate and deposit the taxes as provided for in [section 7].

**NEW SECTION. Section 4. Exempt transactions.** (1) Except as provided in subsection (2), the tax imposed in [section 3] does not apply to:

(a) an instrument recorded prior to [the effective date of this act];

(b) a transfer of real property that is or will be the transferee's primary residence, as defined in 1-1-215, within 270 days after the transfer;

(c) the sale of agricultural land if the land is used for agricultural purposes;

(d) a transfer solely to provide or release security for a debt or obligation;

(e) the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;

- (f) an instrument that, without added consideration, confirms, corrects, modifies, or supplements a previously recorded instrument;
- (g) a transfer pursuant to a court decree of partition;
- (h) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;
- (i) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;
- (j) a transfer of decedents' estates;
- (k) a transfer of a gift;
- (l) a transfer between husband and wife;
- (m) a transfer between parent and child and only when the actual consideration for the transfer is nominal;
- (n) an instrument the effect of which is to transfer the property to the same party or parties;
- (o) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage foreclosure; or
- (p) a transfer made in contemplation of death.

(2) (a) A husband and wife may claim and are entitled to an exemption under subsection (1)(l) only one time. Each transfer of property between a husband and wife subsequent to an exemption having been claimed is subject to the tax imposed under [section 3].

(b) (i) A transfer under subsection (1)(m) between a parent and child may be claimed by the transferee only one time. Each transfer of property between a parent and the same child subsequent to an exemption having been claimed is subject to the tax imposed under [section 3].

(ii) For the purposes of subsection (1)(m) and this subsection (2)(b), nominal consideration means consideration that, in total, is less than 50% of the market value of the property transferred.

**NEW SECTION. Section 5. Collection of tax -- appeals -- interest and penalty -- statute of limitations -- lien on transferred property.** (1) Before a deed or instrument evidencing a transfer of title subject to the tax imposed by [section 3] may be recorded, the treasurer of the county where the real property or any portion of the real property is located shall collect the amount of tax due as provided in [section 3].

(2) (a) If the taxpayer contests the tax assessment or the department's denial of an exemption from the tax, the taxpayer may appeal to the department, as provided in 15-1-211, the tax assessment or the denial of the

exemption.

(b) If the taxpayer requests the transfer of title to be recorded pending the outcome of an appeal made under this subsection (2), the transfer of title must be recorded, subject to the provisions of subsection (7).

(3) (a) If the department determines that the amount of tax due is greater than the amount collected, the department shall mail a notice to the taxpayer, pursuant to 15-1-211, of the additional realty transfer tax proposed to be assessed and demand that the additional tax be paid to the county treasurer. The department shall mail a copy of the notice and demand for payment to the treasurer of the county in which the title transfer was recorded.

(b) In addition to the unpaid tax, there is imposed:

(i) a penalty of 10% of the unpaid tax; and

(ii) interest on the unpaid tax, until paid in full, at the rate of 1% a month or fraction of a month, computed from the date on which the transfer was recorded.

(4) The taxpayer may seek a review of the determination by the department pursuant to 15-1-211.

(5) (a) Except as provided in subsection (5)(b), the unpaid tax deficiency may not be assessed unless notice of the additional tax proposed to be assessed is mailed within 5 years from the date on which the transfer was recorded.

(b) If the certificate filed pursuant to 15-7-305 is fraudulent, the 5-year period does not begin until discovery of the fraud.

(6) The treasurer may collect, pursuant to 15-16-102, any additional tax, penalty, and interest due under this section.

(7) The additional tax, penalty, and interest are a lien against the real property that was transferred and may be collected and enforced in the same manner that other tax liens on real property are enforced. The use of one method of collection does not preclude the use of an alternative method of collection.

**NEW SECTION. Section 6. Penalty for falsifying value.** A person who seeks to file a transfer of title to real property subject to taxation under [sections 1 through 7] is guilty of unsworn falsification to authorities, under 45-7-203, if:

(1) the person at the time of initially seeking to file a transfer of title knew or had reason to believe that the value declared in the certificate required under 15-7-305 or as provided in [section 3(3)(a)] is less than the market value of the property; and

(2) the value declared on the certificate or as provided in [section 3(4)(a)] is used to determine the

amount of realty transfer tax due under [section 3].

**NEW SECTION. Section 7. Distribution of tax proceeds.** On or before the 25th of each month, the county treasurer shall distribute the taxes and any penalties and interest collected under [sections 1 through 7] in the preceding month in the following manner:

- (1) 20% to the account described in 2-15-3322 for the Montana agricultural heritage program;
- (2) 60% to the state treasurer to be deposited in the affordable housing revolving loan account provided for in 90-6-133; and
- (3) 20% to the state treasurer to be deposited in the state general fund.

**Section 8.** Section 90-6-133, MCA, is amended to read:

**"90-6-133. Revolving loan account -- administration.** (1) There is an affordable housing revolving loan account in the state special revenue fund in the state treasury. The money in the loan account is allocated to the board for the purpose of providing loans to eligible applicants.

(2) (a) Except as provided in subsection (2)(b), funds deposited in the loan account must be used for the program authorized in 90-6-134 and may not be used to pay the expenses of any other program or service administered by the board.

(b) Money transferred to the loan account pursuant to section 2, Chapter 502, Laws of 2001, may be used only for the purposes authorized by the temporary assistance for needy families block grant pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq.

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of 90-6-131 through 90-6-136.

(4) ~~The~~ In addition to deposits made into the loan account under [section 7(2)], the board may accept contributions, gifts, and grants for deposit into the loan account. The money in the loan account must be used in accordance with the provisions of 90-6-134.

(5) The costs incurred by the board in administering the loan fund must be paid from the loan account.

(6) Interest and principal on loans from the fund must be repaid to the loan fund.

(7) Interest income generated by investment of the principal of the loan fund is retained in the loan fund account."

**NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified

as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 7].

**NEW SECTION. Section 10. Coordination instruction.** If Senate Bill No. 242, which makes the Montana agricultural heritage program permanent, or other legislation under consideration by the 58th legislature that either extends the termination date of the Montana agricultural heritage program or makes the Montana agricultural heritage program permanent is not passed and approved, then [section 7(1) of this act] must read as follows: "(1) 20% to the treasurer of the county government in which transfer of title to the real property is filed, to be distributed in equal shares to the county and any incorporated municipalities within the county for activities conducted pursuant to Title 76, chapters 1, 2, and 6;".

**NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. Section 12. Applicability.** [This act] applies to any transfer of title to real property subject to the tax imposed in [sections 1 through 7] that is sought to be filed after June 30, 2003, regardless of when the transfer occurred.

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