

SENATE BILL NO. 475
INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A REALTY TRANSFER TAX ON TRANSFERS OF RESIDENTIAL AND AGRICULTURAL REAL PROPERTY; PROVIDING FOR EXEMPTIONS FROM THE REALTY TRANSFER TAX; PROVIDING THAT THE FIRST \$75,000 OF VALUE IS NOT TAXED; PROVIDING FOR ADMINISTRATION OF THE REALTY TRANSFER TAX; PROVIDING FOR APPEALS RELATING TO THE REALTY TRANSFER TAX; PROVIDING THAT DOCUMENTS TRANSFERRING TITLE TO REAL PROPERTY MAY NOT BE RECORDED UNTIL THE TAX IS PAID; PROVIDING FOR PENALTIES AND INTEREST FOR NONCOMPLIANCE; PROVIDING AN INDIVIDUAL INCOME TAX AND CORPORATION LICENSE TAX CREDIT FOR REALTY TRANSFER TAX PAYMENTS ON THE FIRST \$425,000 OF TAXABLE VALUE; AMENDING SECTIONS 15-7-302 AND 15-7-307, 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. Definitions.** As used in [sections 1 through 6], 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" means land classified as agricultural land in 15-6-133 and residential property described in 15-6-134 and includes:

- (a) land;
- (b) growing timber; and
- (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, a transfer without stated consideration, or a like-kind exchange, 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, a like-kind exchange, or a transfer in which the value declared in the certificate required in 15-7-305 is different from market value, market value, which is the value at which real property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts, and which must be used and must be determined by an appraiser approved by the department.

(b) The term does not include the consideration paid for any real property that is exempt under [section 3] or that is not real property.

NEW SECTION. Section 2. Realty transfer tax -- rate -- collection -- value of real property. (1) (a) A realty transfer tax of 1% is imposed on the value of real property in excess of \$75,000 of market value.

(b) 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 3], the county treasurer shall presume that 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 real property transfer is exempt from the tax.

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

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

(i) notify the taxpayer, pursuant to 15-1-211, that the department has determined that the real 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) 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 market value must be determined by an appraiser approved by the department.

(5) Whenever real 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.

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

- (a) an instrument recorded prior to [the effective date of this act];
- (b) a transfer solely to provide or release security for a debt or obligation;
- (c) the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;
- (d) an instrument that, without added consideration, confirms, corrects, modifies, or supplements a previously recorded instrument;
- (e) a transfer pursuant to a court decree of partition;
- (f) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;
- (g) 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;
- (h) a transfer of decedents' estates;
- (i) a transfer of a gift;
- (j) a transfer between husband and wife;
- (k) a transfer between parent and child;
- (l) an instrument the effect of which is to transfer the real property to the same party or parties;
- (m) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage foreclosure; or
- (n) a transfer made in contemplation of death.

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

(b) A transfer of real property made under the exemption of subsection (1)(j) between a husband and wife or under subsection (1)(k) between a parent and child is subject to the tax imposed under [section 2] if the real property is subsequently transferred within 3 years to another person or entity. The tax, plus interest from the date of the exempt transaction, is payable by the transferor at the time of payment of the tax on the second transfer.

NEW SECTION. Section 4. Collection of realty transfer tax -- appeals -- penalty and interest -- statute of limitations -- lien on transferred real property. (1) Before a deed or instrument evidencing a transfer of title subject to the tax imposed by [section 2] 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 2].

(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 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 2 years from the date on which the transfer was recorded.

(b) If the certificate filed pursuant to 15-7-305 is fraudulent, the 2-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 5. Penalty for falsifying value. A person who seeks to file a transfer of title

to real property subject to taxation under [sections 1 through 6] 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 is less than the market value of the real property; and
- (2) the value declared on the certificate is used to determine the amount of tax due under [section 2].

NEW SECTION. Section 6. Deposit of realty transfer tax proceeds. On or before the 25th day of each month, the county treasurer shall transmit the taxes and any penalties and interest collected under [sections 1 through 6] to the department for deposit in the state general fund.

NEW SECTION. Section 7. Tax credit for payments of realty transfer tax. (1) There is a credit against the tax imposed by 15-30-103 or 15-31-101 in an amount equal to the taxes paid under the realty transfer laws in [sections 1 through 6] on the first \$425,000 of taxable market value.

(2) The credit may not be claimed if the taxpayer has included the amount of the tax payment upon which the credit is computed as a deduction under 15-30-121, 15-30-136, or 15-31-114.

(3) If the credit claimed under this section is claimed by a small business corporation, partnership, or pass-through entity, the credit must be attributed to the shareholders or partners, using the same proportion to report the entity's income or loss for Montana income tax purposes.

(4) If the sum of credit carryovers, if any, and the amount of credit allowed by this section for the tax year exceeds the taxpayer's tax liability for the current tax year, the excess attributable to the current tax year's credit is a credit carryover to the 7 succeeding tax years. The entire amount of unused credit must be carried forward to the earliest of the succeeding years, and the oldest available unused credit must be used first.

Section 8. Section 15-7-302, MCA, is amended to read:

"15-7-302. Purpose. The purpose of this part is to obtain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method and to provide for the administration of the realty transfer tax provided for in [sections 1 through 6]."

Section 9. Section 15-7-307, MCA, is amended to read:

"15-7-307. Certificate -- exceptions. The certificate imposed by this part applies to all transfers.

However, the certificate filed for the following transfers need not disclose the consideration paid or to be paid for the real estate transferred:

- (1) an instrument recorded prior to July 1, 1975;
- ~~(2) the sale of agricultural land when the land is used for agricultural purposes;~~
- ~~(3)~~(2) the sale of timberland when the land is used for producing timber;
- ~~(4)~~(3) the United States of America, this state, or any instrumentality, agency, or subdivision thereof of the United States or this state;
- ~~(5)~~(4) an instrument ~~which~~ that (without added consideration) confirms, corrects, modifies, or supplements a previously recorded instrument;
- ~~(6)~~(5) a transfer pursuant to court decree;
- ~~(7)~~(6) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities;
- ~~(8)~~(7) 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;
- ~~(9)~~(8) a transfer of decedents' estates;
- ~~(10)~~(9) a transfer of a gift;
- ~~(11)~~(10) a transfer between husband and wife or parent and child with only nominal actual consideration ~~therefor~~ for the transfer;
- ~~(12)~~(11) an instrument the effect of which is to transfer the property to the same party or parties;
- ~~(13)~~(12) a sale for delinquent taxes or assessments, ~~sheriff~~ sheriff's sale, bankruptcy action, or mortgage foreclosure;
- ~~(14)~~(13) a transfer made in contemplation of death."

NEW SECTION. Section 10. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 7].

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 6] that is sought to be filed after June 30, 2003, regardless of when the transfer occurred.

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