

HOUSE BILL NO. 799
INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A REAL ESTATE TRANSACTION TAX ON THE SALE OF REAL ESTATE TO BE PAID BY THE PURCHASER; PROVIDING THAT THE FIRST \$500,000 OF THE SALES PRICE IS EXEMPT FROM TAXATION; ALLOCATING THE REVENUE FROM THE TAX TO K-12 EDUCATION AND THE MONTANA UNIVERSITY SYSTEM TO BE USED FOR CAPITAL EXPENDITURES AND TEACHER BONUSES; PROVIDING FOR THE ADMINISTRATION OF THE TAX BY THE DEPARTMENT OF REVENUE WITH COLLECTION BY COUNTY TREASURERS; PROVIDING THAT UNPAID TAXES ARE A LIEN UPON THE REAL PROPERTY; ESTABLISHING PENALTIES, INTEREST, AND FEES; REQUIRING REPORTS TO THE DEPARTMENT OF REVENUE WHEN THERE IS A CHANGE IN CONTROL OF SPECIFIED BUSINESS ENTITIES THAT OWN REAL PROPERTY; AND PROVIDING 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 10], the following definitions apply:

(1) "Controlling interest" means:

(a) for a corporation, either 50% or more of the total combined voting power of all classes of stock of the corporation entitled to vote or 50% of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) for a partnership, association, trust, or other entity, 50% or more of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(2) "Real estate" or "real property" means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that itself owns land or anything affixed to land. The term includes mobile homes that are considered improvements to real property under 15-1-116 and improvements constructed upon leased land.

(3) (a) "Sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or to any estate or interest in real property for a valuable consideration and includes any contract for the conveyance, grant, assignment, quitclaim, or transfer of real property and any lease with an option to purchase real property, including standing timber, or

any estate or interest in real property or other contract under which possession of the property is given to the purchaser or any other person at the purchaser's direction when title to the property is retained by the vendor as security for the payment of the purchase price.

(b) The term also includes:

(i) the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land;
(ii) the transfer or acquisition within any 12-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(c) The term does not include:

- (i) a transfer by gift, devise, or inheritance;
(ii) a transfer between a parent and child or between siblings;
(iii) a transfer of any leasehold interest other than of the type provided in subsection (3)(a);
(iv) a cancellation or forfeiture of a purchaser's interest in a contract for the sale of real property, whether or not the contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage;
(v) the partition of property by tenants in common by agreement or as the result of a court decree;
(vi) the assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of dissolution of marriage or in fulfillment of a property settlement agreement;
(vii) the assignment or other transfer of a seller's interest in a contract for the sale of real property, even though accompanied by a conveyance of the seller's interest in the real property involved;
(viii) transfers by appropriation or decree in condemnation proceedings brought by the United States, the state, any political subdivision of the state, or a municipal corporation;
(ix) a mortgage or other transfer of an interest in real property merely to secure a debt or the assignment of a debt;
(x) any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment or deed in lieu of foreclosure to satisfy a mortgage or deed of trust;
(xi) a conveyance to the federal housing administration or department of veterans affairs by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or department of veterans affairs;
(xii) a transfer in compliance with the terms of any lease or contract upon which the real estate transfer tax as imposed by [sections 1 through 10] has been paid or when the lease or contract was entered into prior to [the effective date of sections 1 through 10];

(xiii) the sale of any grave or lot in an established cemetery;

(xiv) a sale by the United States, the state, any political subdivision of the state, a county, a municipality, a school district, or a unit of the university system; and

(xv) a transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity and there is no change in the beneficial ownership, including transfers to a corporation or partnership that is wholly owned by the transferor, the transferor's spouse, the transferor's children, or any of them.

(4) "Seller", unless otherwise indicated by the context, means an individual, person, or entity, whether operated for profit or not for profit, but it does not include the United States or the state of Montana.

(5) "Selling price" means the value or price determined under [section 2].

(6) (a) "Total consideration paid or contracted to be paid" includes money or anything of value that is paid, delivered, or contracted to be paid or delivered in return for the sale and includes the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price or any part of the purchase price or remaining unpaid on such property at the time of sale.

(b) The term does not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, a county, a municipality, or a district for taxes, special assessments, or fees.

NEW SECTION. Section 2. Determination of selling price. (1) (a) The selling price is market value if real property has been conveyed in an arm's-length transaction between unrelated persons for a valuable consideration. A rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor or to another for the transferor's benefit.

(b) If the sale is a transfer of a controlling interest in an entity with an interest in real property located in this state, the selling price is the market value of the real property owned by the entity and located in this state.

(c) If the market value of the real property cannot reasonably be determined, the market value must be determined by a certified real estate appraiser.

(2) The department shall provide by rule for the determination of the selling price in the case of leases with option to purchase. The rules must provide that when inequity will otherwise result, the real estate transfer tax is not payable until and unless the option is exercised and accepted.

(3) The department shall provide by rule for cases in which the selling price is not separately stated or is not ascertainable at the time of sale. The real estate transfer tax is due when the selling price is ascertained, but a suitable security may be required for payment of the real estate transfer tax. The rules may also provide

for the determination of the selling price by an appraisal done by a certified real estate appraiser.

(4) (a) A conditional sale of mining property in which the buyer has the right to terminate the contract at any time and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time are taxable at the time of execution only on the consideration received by the seller or lessor for execution of the contract. Any additional consideration paid by the buyer and received by the seller is subject to the real estate transfer tax and must be paid to the county treasurer at the earliest occurrence of the following:

(i) at the time of termination;

(ii) at the time that all of the consideration due to the seller has been paid and the transaction is completed except for the delivery of the deed to the buyer; or

(iii) at the time when the buyer unequivocally exercises an option to purchase the property.

(b) (i) For the purposes of this subsection (4), the term "mining property" means property containing or believed to contain coal or metallic minerals and sold or leased under terms that require the purchaser or lessor to conduct exploration or mining work on the property and for no other use.

(ii) The term "metallic minerals" does not include clays, sand and gravel, peat, gypsite, or stone, including limestone.

NEW SECTION. Section 3. Real estate transfer tax on sale of property -- allocation. (1) There is imposed a real estate transfer tax upon the purchaser of each sale of real property at the rate of 1% of the selling price in excess of \$500,000.

(2) (a) Two-thirds of the revenue from the real estate transfer tax and any penalties and fees collected under [sections 1 through 10] must be allocated to K-12 education, and one-third must be allocated to the Montana university system. Of the amounts allocated, one-half must be used for the construction, reconstruction, maintenance, and repair of physical plants and one-half must be paid to teaching personnel as annual bonuses based on formulas prescribed by the board of public education and the board of regents of higher education for their respective teaching personnel.

(b) The board of public education and the board of regents of higher education shall each, prior to November 15 of each even-numbered year, report 10 recommendations to the legislature to make the education delivery system under their supervision more efficient and economical.

(3) For purposes of [section 1(3)(b)], all acquisitions by persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The

department shall adopt standards by rule to determine when persons are acting in concert. In adopting rules for this purpose, the department shall consider the following:

(a) persons must be treated as acting in concert when they have a relationship with each other under which one person influences or controls the actions of another through common ownership; and

(b) when persons are not commonly owned or controlled, they may be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions must be considered separate acquisitions.

NEW SECTION. Section 4. Real estate transfer tax as lien on property -- enforcement. The real estate transfer tax and any interest or penalties are a lien on each piece of real property sold from the time of sale until the real estate transfer tax has been paid. The lien may be enforced in the manner prescribed for the foreclosure of mortgages.

NEW SECTION. Section 5. Real estate transfer tax on purchaser -- choice of remedies. The real estate transfer tax levied under [sections 1 through 10] is the obligation of the purchaser, and the department may enforce the obligation through a debt action against the purchaser or may proceed in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other.

NEW SECTION. Section 6. Payment of real estate transfer tax and fee -- sale of beneficial interest.
(1) The real estate transfer tax imposed by [sections 1 through 10] must be paid to and collected by the treasurer of the county in which the real property is situated. The county treasurer shall affix a stamp evidencing satisfaction of the lien to the instrument of sale or conveyance prior to its recording. A receipt issued by the county treasurer for the payment of the real estate transfer tax imposed under [sections 1 through 10] is evidence of the satisfaction of the lien imposed under [sections 1 through 10] and may be recorded in the manner prescribed for recording satisfactions of mortgages. An instrument of sale or conveyance evidencing a sale subject to the real estate transfer tax may not be accepted by the county clerk and recorder for recording until the real estate transfer tax has been paid and the stamp affixed to the instrument. If the tax is not due on the transfer, the instrument may not be accepted until suitable notation that a tax is not due has been made on the instrument by the county treasurer.

(2) For a sale of a beneficial interest in real property for which a real estate transfer tax is due under [sections 1 through 10] and for which no instrument is recorded in the official real property records of the county in which the property is situated, the sale must be reported to the department within 5 days from the date of the sale according to procedures that the department may prescribe. The report must be signed by both the transferor and the transferee and must be accompanied by payment of the tax due.

(3) A person who knowingly makes a false statement on any return or form required to be filed with the department under [sections 1 through 10] is guilty of false swearing as provided in 45-7-202.

NEW SECTION. Section 7. Real estate transfer tax payable at time of sale -- interest and penalties. (1) Payment of the real estate transfer tax imposed under [sections 1 through 10] is due and payable immediately at the time of sale and, if not paid within 1 month, bears interest from the time of sale until the date of payment as provided in 15-1-216.

(2) If the real estate transfer tax imposed under [sections 1 through 10] is not received by the due date, the purchaser is liable for payment of the tax, along with any interest as provided in subsection (1) unless:

(a) an instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located; or

(b) either the seller or purchaser notifies the department in writing of the occurrence of the sale within 30 days following the date of the sale.

(3) An assessment or refund may not be made by the department more than 4 years after the date of sale except upon a showing of:

(a) fraud or misrepresentation of a material fact by the purchaser;

(b) a failure by the purchaser to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) a failure of the transferor or transferee to report the sale under [section 6(2)].

NEW SECTION. Section 8. Rules -- administration. The department shall by rule provide for the effective administration of [sections 1 through 10]. The rules must prescribe and furnish a real estate transfer tax affidavit form to be verified by both the seller and the purchaser or their agents and to be used in the collection of the real estate transfer tax imposed by [sections 1 through 10].

NEW SECTION. Section 9. Collection of tax -- fee. (1) (a) For real estate transfer taxes collected by

the county under [sections 1 through 10], the county treasurer shall collect a \$5 fee on each transaction required by [sections 1 through 10] when the transaction does not require the payment of tax.

(b) The county treasurer shall retain 2% of the taxes collected by the county under [sections 1 through 10]. The amount retained and the \$5 treasurer's fee must be deposited in the county general fund to defray costs of collection. On the last day of each month, the county treasurer shall remit to the department the proceeds of the real estate transfer tax, penalties, and interest, less the amount retained by the county.

(2) Real estate transfer taxes, penalties, and fees collected by the department must be deposited in the general fund.

NEW SECTION. Section 10. Report of change in control of business entity -- interest in real property. (1) Any business entity that is required to file an annual report with the secretary of state under Title 35, chapter 1, 4, 5, 8, 9, 10, or 12, shall disclose any transfer of the controlling interest of the entity and any interest in real property held by the entity as provided under rules adopted by the department.

(2) The information tracking the transfer of the controlling interest in an entity must be used by the department to determine if the real estate transfer tax in [sections 1 through 10] may applicable to the transfer of the controlling interest in a business entity holding real estate.

(3) An organization that fails to report a transfer of the controlling interest in the entity to the department and is later determined to be subject to real estate transfer taxes because of the transfer, shall pay a penalty equal to 50% of the real estate transfer taxes due because of the transfer of controlling interest in addition to any interest or penalties that may be imposed under the provisions of 15-1-216.

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 10].

NEW SECTION. Section 12. Applicability. [This act] applies to sales of real property after December 31, 2008.

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