

HOUSE BILL NO. 675

INTRODUCED BY T. WINTER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A TAX ON SECONDARY HOUSING WITH
5 PROPERTY TAX RELIEF FOR OWNERS OF HOMESTEADS; PROVIDING THAT THE SECONDARY
6 HOUSING TAX IS IMPOSED BASED ON A GRADUATED RATE OF MARKET VALUE; PROVIDING FOR
7 ADMINISTRATION, ASSESSMENT, AND COLLECTION OF THE TAX ON SECONDARY HOUSING;
8 PROVIDING FOR A PROPERTY TAX CREDIT FOR RESIDENTIAL PROPERTY TAXPAYERS THAT LIVE IN
9 A HOMESTEAD; PROVIDING THAT THE HOMESTEAD PROPERTY TAX CREDIT IS BASED ON THE
10 AMOUNT OF REVENUE DEPOSITED IN THE STATE GENERAL FUND FROM A TAX ON SECONDARY
11 HOUSING; PROVIDING LIMITATIONS ON THE AMOUNT OF THE PROPERTY TAX CREDIT; PROVIDING
12 DEFINITIONS; PROVIDING A STATUTORY APPROPRIATION TO THE DEPARTMENT OF REVENUE;
13 PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 17-7-502, MCA; AND PROVIDING A
14 DELAYED EFFECTIVE DATE AND APPLICABILITY DATES."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 11], the following definitions
19 apply:

- 20 (1) "Department" means the department of revenue provided for in 2-15-1301.
21 (2) "Homestead" means a class four residential dwelling that is a single-family dwelling unit, unit of a
22 multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not
23 exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that is occupied by the owner for at
24 least 7 months during the tax year.
25 (3) "Market value" means the value used for the assessment of property taxes on class four residential
26 property under 15-6-134.
27 (4) "Owner" means an individual or entity that owns a dwelling subject to taxation as class four residential
28 property as defined in 15-6-134.
29 (5) "Owns" includes but is not limited to purchasing under a contract for deed, owning 20% or more of
30 the shares or other membership interests of an entity that owns a residence, and being the grantor or grantors



1 under a trust indenture.

2 (6) (a) "Secondary housing" means a class four residential dwelling that is a single-family dwelling unit,
3 unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land,
4 not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that is occupied by the owner for
5 less than 7 months during the tax year.

6 (b) The term does not include:

7 (i) vacant residential lots;

8 (ii) rental dwelling units that are not owner-occupied during the tax year; or

9 (iii) commercial or industrial property, as defined in 15-1-101, including the property defined in
10 15-6-134(1)(e)(i) through (1)(e)(iv).

11
12 **NEW SECTION. Section 2. Tax on secondary housing.** (1) A tax is levied every year against an
13 owner of secondary housing based on the market value of the secondary housing as follows:

14 (a) on the first \$1 million of market value, 0.25%;

15 (b) on the next \$1 million of market value, 0.5%;

16 (c) on the next \$1 million of market value or any part of that market value, 0.75%;

17 (d) on the next \$1 million of market value or any part of that market value, 1%;

18 (e) on the next \$1 million of market value or any part of that market value, 1.25%;

19 (f) on the next \$1 million of market value or any part of that market value, 1.5%;

20 (g) on the next \$1 million of market value or any part of that market value, 2%;

21 (h) on the next \$3 million of market value or any part of that market value, 3%;

22 (i) on any market value in excess of \$10 million or any part of that market value, 4%.

23 (2) The tax imposed by this section and related interest and penalties are a personal debt of the owner
24 of secondary housing who is required to file a return from the time that the liability arises, regardless of when the
25 time for payment of the liability occurs. The tax imposed by this section is not a property tax, and the lien and levy
26 provisions in Title 15, chapters 16 through 18, do not apply. The proceeds of the tax must be deposited in the
27 state general fund.

28 (3) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties,
29 and interest owed under [sections 3 through 6] and this section:

30 (a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state the

1 taxes provided for in [sections 3 through 6] and this section and who fails to pay the taxes is liable to the state
2 for the taxes and the penalty and interest due on the amounts;

3 (b) each partner of a partnership is jointly and severally liable, along with the partnership, for any
4 statements, taxes, penalties, and interest due while a partner;

5 (c) each member of a limited liability company that is treated as a partnership or as a corporation for
6 income tax purposes is jointly and severally liable, along with the limited liability company, for any statements,
7 taxes, penalties, and interest due while a member;

8 (d) the member of a single-member limited liability company that is disregarded for income tax purposes
9 is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and
10 interest due while a member; and

11 (e) each manager of a manager-managed limited liability company is jointly and severally liable, along
12 with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

13 (4) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of
14 penalty and interest against the corporation. The individual remains liable for any statements and the amount of
15 taxes, penalties, and interest unpaid by the entity.

16
17 **NEW SECTION. Section 3. Returns -- payment -- recordkeeping -- authority of department.** (1)
18 Each owner of secondary housing shall file a return, on a form provided by the department, and pay the tax due
19 as provided in [section 2] no later than October 15 of each year using the market value for the year in which the
20 return is due.

21 (2) Each return must be authenticated by the owner of secondary housing who is filing the return.

22 (3) For the purpose of determining compliance with the provisions of [sections 1 through 11], the
23 department is authorized to examine or cause to be examined any books, papers, records, or memoranda
24 relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda
25 are the property of or in the possession of the owner of secondary housing who is filing the return or another
26 owner. The department may also:

27 (a) require the attendance of a person having knowledge or information relevant to a return;

28 (b) compel the production of books, papers, records, or memoranda by the person required to attend;

29 (c) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or
30 may be jeopardized because of delay;

- 1 (d) take testimony on matters material to the determination; and
 2 (e) administer oaths or affirmations.

3
 4 **NEW SECTION. Section 4. Deficiency assessment -- penalty and interest -- statute of limitations.**

5 (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return,
 6 it shall mail to the owner of secondary housing a notice, pursuant to 15-1-211, of the additional tax proposed to
 7 be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be
 8 filed. The owner of secondary housing may seek review of the determination pursuant to 15-1-211.

9 (2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The
 10 department may waive any penalty pursuant to 15-1-206.

11 (3) The amount of tax due under any return may be determined by the department within 5 years after
 12 the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For
 13 purposes of this section, a return due under [sections 1 through 9] and filed before the last day prescribed by law
 14 or rule is considered to be filed on the last day prescribed for filing.

15
 16 **NEW SECTION. Section 5. Procedure to compute tax in absence of statement -- estimation of tax**

17 **-- failure to file -- penalty and interest.** (1) If the owner of secondary housing fails to file any return required by
 18 [section 3] within the time required, the department may, at any time, audit the owner of secondary housing or
 19 estimate the taxes due from information in its possession and, based on the audit or estimate, assess the owner
 20 for the taxes, penalties, and interest due the state.

21 (2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail
 22 to the owner of secondary housing a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to
 23 be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be
 24 filed. The owner of secondary housing may seek review of the determination pursuant to 15-1-211. The
 25 department may waive any penalty pursuant to 15-1-206.

26
 27 **NEW SECTION. Section 6. Authority to collect delinquent taxes.** (1) (a) The department shall collect

28 taxes that are delinquent as determined under [sections 1 through 11].

29 (b) If a tax imposed by [sections 2 through 6] or any portion of that tax is not paid when due, the
 30 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

1 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has
2 expired, the department may direct the offset of tax refunds or other funds due the owner of secondary housing
3 from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

4 (3) As provided in 15-1-705, the owner of secondary housing has the right to a review of the tax liability
5 prior to any offset by the department.

6 (4) The department may file a claim for state funds on behalf of the owner of secondary housing if a claim
7 is required before funds are available for offset.

8

9 **NEW SECTION. Section 7. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a
10 result of overpayment of taxes collected under [sections 1 through 11] must be filed within the later of 5 years
11 after the date that the return was due or 5 years after the date of a final decision of a tax appeal relating to the
12 market value, without regard to any extension of time for filing.

13 (2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as
14 the rate charged on delinquent taxes under 15-1-216.

15 (b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due
16 or the date of overpayment, whichever is later. Interest accrues during an appeal made as provided for in [section
17 9] but does not accrue during any period in which the processing of a claim is delayed more than 30 days
18 because the owner has not furnished necessary information.

19 (c) The department is not required to pay interest if:

20 (i) the claim does not relate to an appeal made pursuant to [section 9] and the overpayment is refunded
21 or credited within 6 months after the date that a claim was filed; or

22 (ii) the amount of overpayment and interest does not exceed \$1.

23

24 **NEW SECTION. Section 8. Information -- confidentiality.** (1) (a) Except as provided in subsections
25 (2) through (4), in accordance with 15-30-2618 and 15-31-511, it is unlawful for an employee of the department
26 or any other public official or public employee to disclose or otherwise make known information that is disclosed
27 in a return or report required to be filed under [sections 1 through 11] or information that concerns the affairs of
28 a person making the return and that is acquired from the person's records, officers, or employees in an
29 examination or audit.

30 (b) This section may not be construed to prohibit the department from publishing statistics if the statistics

1 are classified in a way that does not disclose the identity of a person making a return or the content of any
 2 particular report or return. A person who violates the provisions of this section is subject to the penalty provided
 3 for in 15-30-2618 or 15-31-511 for violating the confidentiality of individual income tax or corporate income tax
 4 information.

5 (2) To facilitate the processing of returns and payment of taxes required by [sections 1 through 11], the
 6 department may contract with vendors and may disclose data to the vendors. The data disclosed must be
 7 administered by the vendor in a manner consistent with this section.

8 (3) (a) The officers charged with the custody of the reports and returns may not be required to produce
 9 them or evidence of anything contained in them in an action or proceeding in a court, except:

10 (i) in an action or proceeding to which the department is a party under the provisions of [sections 1
 11 through 11] or any other taxing act; or

12 (ii) on behalf of a party to any action or proceedings under the provisions of [sections 1 through 11] or
 13 any other taxing act when the reports or facts shown by the reports are directly involved in the action or
 14 proceedings.

15 (b) The court may require the production of and may admit in evidence only as much of the reports or
 16 the facts shown by the reports as is pertinent to the action or proceedings.

17 (4) This section may not be construed to limit the investigative authority of the legislative branch as
 18 provided in 5-11-106, 5-12-303, or 5-13-309.

19
 20 **NEW SECTION. Section 9. Pending appeal -- payment under protest.** In order to receive a refund
 21 from an overpayment, an owner of secondary housing with a pending property tax appeal before the department,
 22 the county tax appeal board, the state tax appeal board, or the court shall pay the tax imposed by [section 2]
 23 under protest in a manner prescribed by the department. An owner of secondary housing that receives a
 24 reduction in value is entitled to a refund under [section 7] based on any amount collected in excess of the amount
 25 of tax that should have been imposed, plus interest on the overpayment at the same rate as the rate charged on
 26 delinquent taxes under 15-1-216.

27
 28 **NEW SECTION. Section 10. Property tax refund on state mills -- manner of claiming -- limitations**
 29 **-- appropriation.** (1) A refund of Montana property taxes assessed to and paid under 20-9-331, 20-9-333, and
 30 20-9-360 by an owner or owners on a homestead during the prior tax year may be claimed as provided in

1 subsection (2), is payable in the amount calculated pursuant to subsection (3), and is subject to the limitations
2 provided in subsection (4).

3 (2) (a) Subject to subsection (2)(b), a claim for refund, in the form that the department prescribes, must
4 be executed by each owner under penalty of false swearing and must include the information that the department
5 requires.

6 (b) A personal representative of the estate of a deceased owner may execute and file the claim for refund
7 on behalf of a deceased owner who qualifies for the refund.

8 (3) (a) During the first week of January of each year, the department shall calculate the amount deposited
9 in the general fund for the prior calendar year from the tax imposed by [section 2]. The total amount of this
10 calculation minus the department's projected administrative costs for administering the credit is the amount of
11 general fund revenue available for property tax refunds associated with taxes imposed under 20-9-331, 20-9-333,
12 and 20-9-360 on a homestead.

13 (b) Subject to subsections (3)(c) and (4), the department shall distribute the total property tax refund
14 calculated pursuant to subsection (3)(a) in equal amounts to each owner of a homestead that files a timely claim
15 for property tax relief.

16 (c) The amount of the refund for each owner may not exceed the lesser of:

17 (i) the amount of property taxes imposed and paid on the owner's principal residence under 20-9-331,
18 20-9-333, and 20-9-360 on \$100,000 of market value; or

19 (ii) the amount of property taxes imposed and paid on the owner's principal residence under 20-9-331,
20 20-9-333, and 20-9-360.

21 (4) The claim for a refund is subject to the following limitations:

22 (a) The claim must be filed with the department of revenue on or before June 30 of each year for property
23 taxes that were assessed in the prior calendar year and collected before June 30 of the current calendar year,
24 unless the department, for good cause shown, grants a reasonable extension of time for filing.

25 (b) Only one claim may be made with respect to any property.

26 (c) The market value of the homestead may not exceed 150% of the median value of owner-occupied
27 housing units in Montana as reported by the most recent census as conducted by the United States bureau of
28 the census.

29 (5) The payment of property tax refunds under this section is statutorily appropriated, as provided in
30 17-7-502, from the general fund to the department of revenue for distribution to qualifying owners of a homestead.

1
2 **NEW SECTION. Section 11. Department to make rules.** The department of revenue shall prescribe
3 rules necessary to carry out the provisions of [sections 1 through 11].

4
5 **Section 12.** Section 17-7-502, MCA, is amended to read:

6 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
7 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
8 need for a biennial legislative appropriation or budget amendment.

9 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
10 of the following provisions:

11 (a) The law containing the statutory authority must be listed in subsection (3).

12 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
13 appropriation is made as provided in this section.

14 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
15 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310;
16 10-3-312; 10-3-314; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110;
17 15-65-121; 15-70-101; 15-70-130; 15-70-433; [section 10]; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212;
18 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702;
19 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534;
20 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306;
21 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 37-54-113; 39-71-503;
22 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113;
23 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214;
24 75-11-313; 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416;
25 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505;
26 [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

27 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
28 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
29 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
30 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state

1 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 2 appropriation authority for the payments.(In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 3 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
 4 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
 5 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
 6 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
 7 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion
 8 of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112
 9 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015,
 10 the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of
 11 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates
 12 June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of
 13 contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant
 14 to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec.
 15 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457,
 16 L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the
 17 inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304
 18 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates
 19 June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant
 20 to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023;
 21 pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2,
 22 Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; and pursuant to sec. 10,
 23 Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.)"

24
 25 **NEW SECTION. Section 13. Codification instruction.** [Sections 1 through 11] are intended to be
 26 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 11].

27
 28 **NEW SECTION. Section 14. Effective date.** [This act] is effective January 1, 2020.

29
 30 **NEW SECTION. Section 15. Applicability.** (1) Except as provided in subsection (2), [this act] applies

1 to tax years beginning after December 31, 2019.

2 (2) [Sections 10 and 12] apply to tax years beginning after December 31, 2020.

3 - END -