

1 *House* BILL NO. *374* *Vincent*
 2 INTRODUCED BY *Halvorson* *Meloy* *Kenneth*
 3 *Harper*

4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN ADDITIONAL
 5 TAX ON THE CAPITAL GAIN REALIZED IN THE SPECULATIVE SALE OF
 6 LAND; PRESCRIBING PENALTIES FOR THE EVASION OF SUCH TAX; AND
 7 PROVIDING AN EFFECTIVE DATE."
 8

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

10 Section 1. Tax imposed. There is imposed, in addition
 11 to all other taxes imposed by this title, a tax on the gains
 12 from the sale or exchange of land in Montana.

13 Section 2. Land defined. Land, as used in this act,
 14 means all land, improved or unimproved, other than such
 15 land, not exceeding five (5) acres, as is necessary for the
 16 accommodation of a dwelling used by the taxpayer as his
 17 principal residence. Buildings and other structures are not
 18 included in this definition of land.

19 Section 3. Rate of tax. The tax imposed by section
 20 [1] shall be based upon the years held at the following
 21 rates on the gain, as gain is determined under section [5].

22	Years land held by	Gain, as a percentage
23	transferor	of basis (tax cost)
24		<u>FIRST</u> <u>NEXT</u> <u>GAIN OVER</u>
25		<u>20-99%</u> <u>100-199%</u> <u>199%</u>

1	Less than 1 year	30%	45%	60%
2	1 year, but less than 2	25%	37.5%	50%
3	2 years, but less than 3	20%	30%	40%
4	3 years, but less than 4	15%	22.5%	30%
5	4 years, but less than 5	10%	15%	20%
6	5 years, but less than 6	5%	7.5%	10%

7 The taxes imposed by this section shall be paid at the
 8 rate stated in the first column for so much of the gain as
 9 is equal to from twenty percent (20%) to ninety-nine percent
 10 (99)% of the basis, at the rate stated in the second column
 11 for so much of the gain as is in excess of ninety-nine
 12 percent (99%) of the basis but no more than one hundred
 13 ninety-nine percent (199%) of the basis, and at the rate
 14 stated in the third column for so much of the gain as is in
 15 excess of one hundred ninety-nine percent (199%) of the
 16 basis.

17 Section 4. Sale or exchange. (1) As used in this act
 18 "sale or exchange of land" means any transfer of title to
 19 land for a consideration. As used in this act "transfer"
 20 means a grant, assignment, conveyance, or any other means of
 21 transferring title to property to, or vesting title to
 22 property in any person. The transfer of an option for the
 23 sale or exchange of land shall be considered a transfer of
 24 title to land for the purposes of this act.

25 (2) Contracts for the sale of land constitute sales or

1 exchanges of land for all purposes of this act. However,
 2 contracts shall not constitute sales or exchanges until some
 3 consideration has passed thereunder to or for the benefit of
 4 the seller or exchanger. The sale or exchange is considered
 5 to take place at the time any consideration whatsoever, of
 6 whatever nature, first passes under the contract. A mere
 7 promise to purchase, and amounts paid as earnest money, or
 8 amounts paid in deposit or amounts paid in escrow to which
 9 the seller has no immediate right, do not constitute the
 10 passing of consideration for the purposes of this act.

11 (3) Any sale or exchange of shares in a corporation or
 12 other entity, or of comparable rights or property interests
 13 in any other form of organization or legal entity, which
 14 effectively entitles the purchaser to the use or occupancy
 15 of land constitutes a sale or exchange of land.

16 (4) The department of revenue shall determine in
 17 particular cases whether the transaction involved is a sale
 18 or exchange of land within the intended coverage of this
 19 act.

20 (5) This act shall not apply to involuntary
 21 conversions of land, as defined by the Internal Revenue Code
 22 of 1954, as amended.

23 Section 5. Basis, gain and holding period. (1) The
 24 provisions of the Internal Revenue Code of 1954, as amended,
 25 shall determine the basis (tax cost) of land sold or

1 exchanged.

2 (2) The amount realized from the sale or exchange
 3 shall be the full actual consideration therefor, paid or to
 4 be paid, including the amount of any liens or encumbrances
 5 on the land existing before the sale or exchange and not
 6 removed thereby. The amount realized from the sale or
 7 exchange shall be the gross amount thereof, reduced by any
 8 expenses of sale and commissions. In the event that a sale
 9 includes land and buildings or other structures, the gain
 10 realized shall be allocated between the land and the
 11 buildings or other structures on the basis of fair market
 12 value.

13 (3) The taxable gain from the sale or exchange is the
 14 amount realized minus the basis (tax cost) of the land as
 15 determined under subsection (1) of this section. No gain
 16 shall be recognized in cases where gain is not recognized
 17 under the Internal Revenue Code of 1954, as amended, in
 18 relation to the sale or exchange of capital assets.

19 (4) The land sold or exchanged shall be deemed to have
 20 been held as determined under the Federal Internal Revenue
 21 Code, for the same length of time that the seller or
 22 exchanger thereof has had actual and recorded title thereto
 23 in his own name, and shall include the time the land was so
 24 held prior to the effective date of this act. If land is
 25 held in joint tenancy or by tenancy in common, the holding

1 period for each joint tenant or tenant in common is the time
 2 during which his interest has been actual and recorded in
 3 his own name and each joint tenant or tenant in common shall
 4 be taxed on the gain he has realized from the sale of his
 5 interest in the land at a rate determined by the length of
 6 time he has held such interest, as provided in section [3]
 7 of this act. If a husband and wife are joint tenants or
 8 tenants in common there may be added to the holding period
 9 the amount of time the land was held by one spouse alone
 10 before that spouse created the joint tenancy or tenancy in
 11 common. In the case of a gift, the holding period of the
 12 donee shall include the time that actual and recorded title
 13 was held by the donor. In the case of an inheritance or
 14 devise, the holding period of the heir or devisee shall
 15 include the time that actual and recorded title was held by
 16 the decedent. In the case of land acquired by the seller in
 17 a tax-free exchange, the holding period shall include the
 18 time in which the previous owner held actual and recorded
 19 title. In the case of land acquired by involuntary
 20 conversion, the holding period shall include the time in
 21 which the owner held any previous land traded therefor.

22 (5) The taxable gain under this act from the sale or
 23 exchange of land shall not be reduced by any losses incurred
 24 in other transactions.

25 Section 6. Liability for tax. The person liable for

1 the tax is the transferor (which includes the owner, seller,
 2 or other exchanger) of the land sold or exchanged.

3 Section 7. Payment of taxes. (1) Taxes imposed by
 4 this act shall be paid in the following manner. Each
 5 transferor subject to taxation under this act shall file a
 6 return with the department of revenue when he files his
 7 income tax return for the year in which the transfer took
 8 place or on April 15 next following the year in which the
 9 transfer took place, whichever occurs first. The return
 10 shall be filed on forms furnished by the department and
 11 shall state the amount of tax due and such other pertinent
 12 information as the department shall require for the
 13 administration of this act. The tax money due shall
 14 accompany the return filed pursuant to this section.

15 (2) Failure to pay taxes owing pursuant to this act
 16 subjects the transferor to the penalties and procedures of
 17 sections 84-4924 through 84-4929, for failure to pay income
 18 taxes.

19 Section 8. Installment sales. (1) For the purpose of
 20 this section "installment sale" means sale or exchange of
 21 land as defined in section [4] for which the total tax due
 22 under this chapter is greater than two thousand dollars
 23 (\$2,000) and in which the parties agree in advance that
 24 payments shall be received by the seller or transferor in
 25 more than one installment on a date or dates other than the

1 date of closing. A sale financed by a mortgage, deed of
 2 trust, or other financing arrangement in which the seller or
 3 transferor is paid in full on the date of the sale or
 4 exchange shall not be considered an installment sale. A
 5 lease-purchase agreement under which any part of the rental
 6 payments constitute a portion of the purchase price of the
 7 land shall be considered an installment sale, and for the
 8 purposes of this act the end of the holding period with
 9 respect to the sale or exchange shall be determined as of
 10 the date of the agreement.

11 (2) Notwithstanding any other provisions of this act,
 12 the tax return required by this act and the tax due under
 13 this act on any installment sale shall be filed and paid
 14 annually at the time of payment of the transferor's income
 15 tax or at the date prescribed in section 84-4919, for the
 16 filing of income tax returns for so much of the purchase
 17 price as the transferor has received in the taxable year for
 18 which the return is filed.

19 (3) In an installment sale, the total amount of taxes
 20 due under this chapter shall be the amount that would have
 21 been due had the total purchase price been paid on the date
 22 the sale or exchange took place. The amount of taxes due on
 23 each separate installment, including the first installment,
 24 shall bear the same proportion to the total amount of taxes
 25 due as the amount of that installment bears to the total

1 consideration.

2 Section 9. This act shall not apply to the sale, lease
 3 or agreement to buy and sell land classified and assessed as
 4 agricultural where the parties to the transaction enter into
 5 a covenant running with the land and revocable only after a
 6 period of at least six (6) years that the land will be used
 7 exclusively for agricultural purposes as defined in section
 8 84-437.2. If the land is converted to nonagricultural use
 9 during the six (6) year period and the roll-back tax is
 10 assessed under section 84-437.4, the transferor's gain shall
 11 be recognized under this act and the tax on the gain paid by
 12 the transferee.

13 Section 10. Criminal penalties. (1) Any person who
 14 willfully defeats or evades or attempts to defeat or evade
 15 the tax imposed by this act shall be imprisoned not more
 16 than one (1) year or fined not more than ten thousand
 17 dollars (\$10,000) or five (5) times the amount of the tax
 18 defeated or evaded or attempted to be defeated or evaded,
 19 whichever is larger, or may be both thus imprisoned and
 20 fined. A corporation or other taxable entity not being a
 21 natural person shall be subject to the fine provided by this
 22 section.

23 (2) Any officer, employee, director, trustee or other
 24 responsible person of a corporation or other taxable entity,
 25 and any other person, who counsels, aids, abets,

1 participates in, or conceals the defeat or evasion of tax,
2 or the attempt thereat, shall be subject to the penalties of
3 subsection (1) of this section.

4 (3) The form for the payment of the tax under this
5 chapter shall set forth in large type the penalties provided
6 by this section.

7 Section 11. Taxes paid into general fund. All taxes
8 received by the department of revenue pursuant to this act
9 shall be paid into the general fund.

10 Section 12. Department to make regulations. The
11 department of revenue shall promulgate such rules and
12 regulations as it shall deem necessary to enforce the
13 provisions of this act.

14 Section 13. This act is effective thirty (30) days
15 after its passage and approval.

-End-

HB 374

STATE OF MONTANA

REQUEST NO. 119-75

FISCAL NOTE

Form BD-15

In compliance with a written request received 1-29, 19 75, there is hereby submitted a Fiscal Note for House Bill 374 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

A proposal to impose an additional tax on the capital gain realized in the speculative sale of land. The tax is applied to the gain as a percentage of cost and decreases with the length of time the land was held by the seller.

FISCAL IMPACT:

An estimation of the revenue impact of House Bill 325 would require a projection of sales volume of realty transfers. It is not appropriate to base projections on existing data since the response of land developers, speculators and realty companies to the tax would most likely alter historical patterns. In addition, it is not possible to estimate the gain realized from future land transfers nor to estimate the number of years such land would have been held by the seller. Thus, no quantifiable estimate of the effect of this proposal can be made.

Michael Stallings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/1/75

Approved by Committee
on Taxation

HOUSE BILL NO. 374

INTRODUCED BY HALVORSON, MELOY, HUENNEKENS,

VINCENT, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN ADDITIONAL TAX ON THE CAPITAL GAIN REALIZED IN THE SPECULATIVE SALE OF LAND; PRESCRIBING PENALTIES FOR THE EVASION OF SUCH TAX; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Tax imposed. There is imposed, in addition to all other taxes imposed by this title, a tax on the gains from the sale or exchange of land in Montana.

Section 2. Land defined. (1) Land, as used in this act, means all land, improved or unimproved, other than such land, not exceeding five (5) acres, as is necessary for the accommodation of a dwelling used by the taxpayer as his principal residence. Buildings and other structures are not included in this definition of land.

(2) ALSO EXCLUDED FROM THE DEFINITION OF LAND IS THE LAND, NOT EXCEEDING FIVE (5) ACRES, NECESSARY FOR THE USE OF A DWELLING WHICH IS TO BE USED AS THE PURCHASER'S PRINCIPAL RESIDENCE. AS USED IN THIS ACT, "PURCHASER'S PRINCIPAL RESIDENCE" MEANS THE PRINCIPAL DWELLING OF A PERSON WHOSE DOMICILE IS OR WILL BE ESTABLISHED IN THE STATE OF MONTANA.

THIS EXCLUSION FROM THE DEFINITION OF LAND DOES NOT APPLY UNLESS THE PURCHASER FIRST EXECUTES, UPON A FORM SUPPLIED BY THE DEPARTMENT OF REVENUE, A CERTIFICATION THAT HE IS DOMICILED IN MONTANA OR WILL BE WITHIN SIXTY (60) DAYS, THAT THE DWELLING TO BE PURCHASED WILL BE USED AS HIS PRINCIPAL RESIDENCE, AND THAT HE UNDERSTANDS THAT AS A MONTANA DOMICILIARY ALL OF HIS INCOME IS SUBJECT TO THE JURISDICTION OF MONTANA INCOME TAX LAWS.

(3) ADDITIONALLY, WHERE THERE IS NOT ON THE LAND A DWELLING COMPLETED AND FIT FOR OCCUPANCY AS THE PURCHASER'S PRINCIPAL RESIDENCE AT THE TIME OF THE TRANSFER OF TITLE TO THE LAND SO EXCLUDED FROM THE DEFINITION OF LAND:

(A) THE PURCHASER SHALL CERTIFY THAT THE CONSTRUCTION OF THE DWELLING WILL BE COMMENCED WITHIN ONE (1) YEAR OF THE DATE OF TRANSFER OF THE LAND AND THAT THE DWELLING WILL BE COMPLETED AND OCCUPIED WITHIN TWO (2) YEARS OF THE DATE OF SUCH TRANSFER.

(B) THE DEED, CONTRACT FOR DEED, OR OTHER TRANSFER INSTRUMENT SHALL STATE THAT THE AMOUNT OF THE TAX OF WHICH THE TRANSFEROR HAS BEEN RELIEVED BY VIRTUE OF THE PURCHASER'S CERTIFICATIONS IS A LIEN RUNNING WITH THE LAND IN FAVOR OF THE STATE OF MONTANA UNTIL EITHER THE AMOUNT OF SUCH TAX HAS BEEN PAID OR THE PURCHASER HAS FILED WITH THE DEPARTMENT OF REVENUE A STATEMENT UNDER THE PENALTIES OF PERJURY THAT THE DWELLING WAS CONSTRUCTED AND OCCUPIED

1 WITHIN THE TERMS AND CONDITIONS PREVIOUSLY CERTIFIED.

2 (4) IN CASES WHERE THE DEPARTMENT OF REVENUE
 3 DETERMINES THAT ANY CERTIFICATIONS MADE PURSUANT TO THIS ACT
 4 WERE UNTRUE, IT SHALL COLLECT FROM THE BUYER THE TAX UPON
 5 THE PROFIT ALLOCABLE TO THE WRONGFULLY EXCLUDED LAND.

6 (5) IF ZONING OR SIMILAR LAWS OR REGULATIONS REQUIRE A
 7 MINIMUM OF MORE THAN FIVE (5) ACRES FOR RESIDENTIAL
 8 PROPERTY, THAT NUMBER OF ACRES INSTEAD OF FIVE (5) ACRES,
 9 SHALL BE EXCLUDED FROM THE DEFINITION OF LAND UNDER
 10 SUBSECTION (1) OF THIS SECTION EXCEPT THAT NOT MORE THAN TEN
 11 (10) ACRES SHALL BE SO EXCLUDED.

12 Section 3. Rate of tax. The tax imposed by section
 13 [1] shall be based upon the years held at the following
 14 rates on the gain, as gain is determined under section [5].

Years land held by transferor	Gain, as a percentage of basis (tax cost)		
	FIRST	NEXT	GAIN OVER
	20-99%	100-199%	199%
19 Less than 1 year	30%	45%	60%
20 1 year, but less than 2	25%	37.5%	50%
21 2 years, but less than 3	20%	30%	40%
22 3 years, but less than 4	15%	22.5%	30%
23 4 years, but less than 5	10%	15%	20%
24 5 years, but less than 6	5%	7.5%	10%

25 The taxes imposed by this section shall be paid at the

1 rate stated in the first column for so much of the gain as
 2 is equal to from twenty percent (20%) to ninety-nine percent
 3 (99%) of the basis, at the rate stated in the second column
 4 for so much of the gain as is in excess of ninety-nine
 5 percent (99%) of the basis but no more than one hundred
 6 ninety-nine percent (199%) of the basis, and at the rate
 7 stated in the third column for so much of the gain as is in
 8 excess of one hundred ninety-nine percent (199%) of the
 9 basis.

10 Section 4. Sale or exchange. (1) As used in this act
 11 "sale or exchange of land" means any transfer of title to
 12 land for a consideration. As used in this act "transfer"
 13 means a grant, assignment, conveyance, or any other means of
 14 transferring title to property to, or vesting title to
 15 property in any person. The transfer BY A HOLDER of an
 16 option for the sale or exchange of land shall be considered
 17 a transfer of title to land for the purposes of this act.

18 (2) Contracts for the sale of land constitute sales or
 19 exchanges of land for all purposes of this act. However,
 20 contracts shall not constitute sales or exchanges until some
 21 consideration has passed thereunder to or for the benefit of
 22 the seller or exchanger. The sale or exchange is considered
 23 to take place at the time any consideration whatsoever, of
 24 whatever nature, first passes under the contract. A mere
 25 promise to purchase, and amounts paid as earnest money, or

1 amounts paid in deposit or amounts paid in escrow to which
 2 the seller has no immediate right, do not constitute the
 3 passing of consideration for the purposes of this act.

4 (3) Any sale or exchange of shares in a corporation or
 5 other entity, or of comparable rights or property interests
 6 in any other form of organization or legal entity, which
 7 effectively entitles the purchaser to the use or occupancy
 8 of land constitutes a sale or exchange of land.

9 (4) The department of revenue shall determine in
 10 particular cases whether the transaction involved is a sale
 11 or exchange of land within the intended coverage of this
 12 act.

13 (5) This act shall not apply to involuntary
 14 conversions of land, as defined by the Internal Revenue Code
 15 of 1954, as amended.

16 Section 5. Basis, gain and holding period. (1) The
 17 provisions of the Internal Revenue Code of 1954, as amended,
 18 shall determine the basis (tax cost) of land sold or
 19 exchanged.

20 (2) The amount realized from the sale or exchange
 21 shall be the full actual consideration therefor, paid or to
 22 be paid, including the amount of any liens or encumbrances
 23 on the land existing before the sale or exchange and not
 24 removed thereby. The amount realized from the sale or
 25 exchange shall be the gross amount thereof, reduced by any

1 expenses of sale and commissions. In the event that a sale
 2 includes land and buildings or other structures, the gain
 3 realized shall be allocated between the land and the
 4 buildings or other structures on the basis of fair market
 5 value.

6 (3) The taxable gain from the sale or exchange is the
 7 amount realized minus the basis (tax cost) of the land as
 8 determined under subsection (1) of this section. No gain
 9 shall be recognized in cases where gain is not recognized
 10 under the Internal Revenue Code of 1954, as amended, in
 11 relation to the sale or exchange of capital assets.

12 (4) The land sold or exchanged shall be deemed to have
 13 been held as determined under the Federal Internal Revenue
 14 Code, for the same length of time that the seller or
 15 exchanger thereof has had actual and recorded title thereto
 16 in his own name, and shall include the time the land was so
 17 held prior to the effective date of this act. IF THE SELLER
 18 OR EXCHANGER HAS ACQUIRED THE INTEREST IN THE PROPERTY UNDER
 19 A CONTRACT BY THE TERMS OF WHICH HE RECEIVED OR IS TO
 20 RECEIVE TITLE TO THE PROPERTY WHEN A SERIES OF INSTALLMENT
 21 PAYMENTS ARE COMPLETED, THE HOLDING PERIOD BEGINS TO RUN
 22 WHEN THE SELLER OR EXCHANGER FILES, AND THE COUNTY CLERK AND
 23 RECORDER RECORDS, AN ABSTRACT OF THE CONTRACT MEETING THE
 24 REQUIREMENTS OF SECTION 73-101.1. If land is held in joint
 25 tenancy or by tenancy in common, the holding period for each

1 joint tenant or tenant in common is the time during which
 2 his interest has been actual and recorded in his own name
 3 and each joint tenant or tenant in common shall be taxed on
 4 the gain he has realized from the sale of his interest in
 5 the land at a rate determined by the length of time he has
 6 held such interest, as provided in section [3] of this act.
 7 If a husband and wife are joint tenants or tenants in common
 8 there may be added to the holding period the amount of time
 9 the land was held by one spouse alone before that spouse
 10 created the joint tenancy or tenancy in common. In the case
 11 of a gift, ~~the holding period of the donee shall include the~~
 12 ~~time that actual and recorded title was held by the donor,~~
 13 ~~in the case of an inheritance or devise, the holding period~~
 14 ~~of the heir or devisee shall include the time that actual~~
 15 ~~and recorded title was held by the decedent; in the case of~~
 16 ~~land acquired by the seller in a tax-free exchange, the~~
 17 ~~holding period shall include the time in which the previous~~
 18 ~~owner held actual and recorded title-~~ INHERITANCE OR DEVISE,
 19 OR LAND ACQUIRED BY THE SELLER IN A TAX-FREE EXCHANGE, THE
 20 HOLDING PERIOD OF THE GRANTEE, HEIR OR DEVISEE, OR SELLER
 21 SHALL BEGIN TO RUN WHEN THE PREVIOUS OWNER'S HOLDING PERIOD
 22 BEGAN TO RUN UNDER THIS SECTION. In the case of land
 23 acquired by involuntary conversion, the holding period shall
 24 include the time in which the owner held any previous land
 25 traded therefor.

1 (5) The taxable gain under this act from the sale or
 2 exchange of land shall not be reduced by any losses incurred
 3 in other transactions.

4 Section 6. Liability for tax. The person liable for
 5 the tax is the transferor (which includes the owner, seller,
 6 or other exchanger) of the land sold or exchanged.

7 ~~Section 7. Payment of taxes. (1) Taxes imposed by~~
 8 ~~this act shall be paid in the following manner. Each~~
 9 ~~transferor subject to taxation under this act shall file a~~
 10 ~~return with the department of revenue when he files his~~
 11 ~~income tax return for the year in which the transfer took~~
 12 ~~place or on April 15 next following the year in which the~~
 13 ~~transfer took place, whichever occurs first. The return~~
 14 ~~shall be filed on forms furnished by the department and~~
 15 ~~shall state the amount of tax due and such other pertinent~~
 16 ~~information as the department shall require for the~~
 17 ~~administration of this act. The tax money due shall~~
 18 ~~accompany the return filed pursuant to this section.~~

19 ~~(2) Failure to pay taxes owing pursuant to this act~~
 20 ~~subjects the transferor to the penalties and procedures of~~
 21 ~~sections 84-4924 through 84-4929, for failure to pay income~~
 22 ~~taxes.~~

23 SECTION 7. WITHHOLDING AT SOURCE -- PAYMENT. (1) THE
 24 BUYER OR TRANSFEREE OF ANY LAND, HELD BY THE SELLER OR
 25 TRANSFEROR FOR LESS THAN SIX (6) YEARS, SHALL WITHHOLD TEN

1 PERCENT (10%) OF ALL CONSIDERATION PAID TO THE SELLER OR
 2 TRANSFEROR FOR SUCH LAND, INCLUDING TEN PERCENT (10%) OF ALL
 3 PARTIAL PAYMENTS MADE PURSUANT TO INSTALLMENT SALES. AT THE
 4 TIME ANY PAYMENT IS MADE TO THE SELLER OR TRANSFEROR, THE
 5 AMOUNTS WITHHELD SHALL BE REMITTED TO THE DEPARTMENT OF
 6 REVENUE.

7 (2) WITHIN THIRTY (30) DAYS OF THE SALE OR EXCHANGE OF
 8 LAND, FOR WHICH WITHHOLDING IS REQUIRED UNDER THIS SECTION,
 9 THE SELLER OR TRANSFEROR SHALL FILE A RETURN WITH THE
 10 DEPARTMENT OF REVENUE SETTING FORTH THE AMOUNT OF THE TAX
 11 DUE UNDER THIS ACT AND THE AMOUNT WITHHELD BY THE BUYER OR
 12 TRANSFeree PURSUANT TO THIS SECTION. THE SELLER SHALL
 13 EITHER REMIT WITH THE RETURN THE BALANCE OF THE TAX DUE OR
 14 MAKE CLAIM FOR A REFUND. ANY REFUND NOT MADE BY THE
 15 DEPARTMENT WITHIN FIFTEEN (15) DAYS OF ITS RECEIPT OF A
 16 VALID CLAIM SHALL ACCRUE INTEREST AT THE RATE OF ONE-HALF OF
 17 ONE PERCENT (1/2%) PER MONTH. FOR GOOD CAUSE SHOWN AND UPON
 18 CONDITIONS SET BY IT, THE DEPARTMENT MAY EXTEND THE TIME FOR
 19 FILING THE RETURN AND PAYING THE TAX REQUIRED BY THIS ACT.

20 (3) NOTWITHSTANDING EITHER SUBSECTION (1) OR (2) OF
 21 THIS SECTION, THE SELLER OR TRANSFEROR MAY, IN ADVANCE OF
 22 THE SALE OR EXCHANGE, PAY THE TAX IMPOSED BY THIS ACT OR
 23 OBTAIN A WRITTEN RULING FROM THE DEPARTMENT THAT NO TAX IS
 24 DUE UNDER THIS ACT. IN EITHER CASE THE DEPARTMENT SHALL
 25 CERTIFY TO THE SELLER OR TRANSFEROR THAT SUCH PAYMENT HAS

1 BEEN MADE OR THAT NO TAX IS DUE. UPON RECEIPT BY THE BUYER
 2 OR TRANSFEREE OF SUCH CERTIFICATION FROM THE SELLER OR
 3 TRANSFEROR, THE BUYER OR TRANSFEREE SHALL NOT BE REQUIRED TO
 4 WITHHOLD UNDER SUBSECTION (1) OF THIS SECTION.

5 (4) ALL TAXES REQUIRED TO BE PAID OR WITHHELD UNDER
 6 THIS ACT SHALL CONSTITUTE A PERSONAL DEBT OF THE PERSON
 7 LIABLE TO PAY OR WITHHOLD THE SAME TO THE STATE OF MONTANA
 8 TO BE RECOVERED IN AN ACTION ON THIS STATUTE.

9 (5) AN ACTION MAY BE BROUGHT TO RECOVER THE AMOUNT OF
 10 THE TAXES TO BE PAID OR WITHHELD IN THE MANNER PRESCRIBED
 11 FOR RECOVERING AMOUNTS OWED FOR TAXES UNDER SECTION 84-4301.
 12 THE AMOUNT OF TAXES TO BE PAID OR WITHHELD SHALL BE A LIEN
 13 IN FAVOR OF THE STATE OF MONTANA UPON ALL PROPERTY AND
 14 RIGHTS TO PROPERTY, WHETHER REAL OR PERSONAL, BELONGING TO
 15 THE PERSON LIABLE FOR THE TAX OR FOR THE WITHHOLDING. THE
 16 LIEN SHALL BE ENFORCED IN THE MANNER PRESCRIBED BY SECTION
 17 84-3808.

18 Section 8. Installment sales. (1) For the purpose of
 19 this section "installment sale" means sale or exchange of
 20 land as defined in section [4] for which the total tax due
 21 under this chapter is greater than two thousand dollars
 22 (\$2,000) and in which the parties agree in advance that
 23 payments shall be received by the seller or transferor in
 24 more than one installment on a date or dates other than the
 25 date of closing. A sale financed by a mortgage, deed of

1 trust, or other financing arrangement in which the seller or
 2 transferor is paid in full on the date of the sale or
 3 exchange shall not be considered an installment sale. A
 4 lease-purchase agreement under which any part of the rental
 5 payments constitute a portion of the purchase price of the
 6 land shall be considered an installment sale, and for the
 7 purposes of this act the end of the holding period with
 8 respect to the sale or exchange shall be determined as of
 9 the date of the agreement.

10 (2) Notwithstanding any other provisions of this act,
 11 the tax return required by this act and the tax due under
 12 this act on any installment sale shall be filed and paid
 13 annually at the time of payment of the transferor's income
 14 tax or at the date prescribed in section 84-4919, for the
 15 filing of income tax returns for so much of the purchase
 16 price as the transferor has received in the taxable year for
 17 which the return is filed.

18 (3) In an installment sale, the total amount of taxes
 19 due under this chapter shall be the amount that would have
 20 been due had the total purchase price been paid on the date
 21 the sale or exchange took place. The amount of taxes due on
 22 each separate installment, including the first installment,
 23 shall bear the same proportion to the total amount of taxes
 24 due as the amount of that installment bears to the total
 25 consideration.

1 Section 9. This act shall not apply to the sale, lease
 2 or agreement to buy and sell land classified and assessed as
 3 agricultural where the parties to the transaction enter into
 4 a covenant running with the land and revocable only after a
 5 period of at least six (6) years that the land will be used
 6 exclusively for agricultural purposes as defined in section
 7 84-437.2. If the land is converted to nonagricultural use
 8 during the six (6) year period and the roll-back tax is
 9 assessed under section 84-437.4, the transferor's gain shall
 10 be recognized under this act and the tax on the gain paid by
 11 the transferee.

12 Section 10. Criminal penalties. (1) Any person who
 13 willfully defeats or evades or attempts to defeat or evade
 14 the tax imposed by this act shall be imprisoned not more
 15 than one (1) year or fined not more than ten thousand
 16 dollars (\$10,000) or five (5) times the amount of the tax
 17 defeated or evaded or attempted to be defeated or evaded,
 18 whichever is larger, or may be both thus imprisoned and
 19 fined. A corporation or other taxable entity not being a
 20 natural person shall be subject to the fine provided by this
 21 section.

22 (2) Any officer, employee, director, trustee or other
 23 responsible person of a corporation or other taxable entity,
 24 and any other person, who counsels, aids, abets,
 25 participates in, or conceals the defeat or evasion of tax,

1 or the attempt thereat, shall be subject to the penalties of
2 subsection (1) of this section.

3 (3) The form for the payment of the tax under this
4 chapter shall set forth in large type the penalties provided
5 by this section.

6 Section 11. Taxes paid into general fund. All taxes
7 received by the department of revenue pursuant to this act
8 shall be paid into the general fund.

9 Section 12. Department to make regulations. The
10 department of revenue shall promulgate such rules and
11 regulations as it shall deem necessary to enforce the
12 provisions of this act.

13 Section 13. This act is effective thirty (30) days
14 after its passage and approval.

-End-

1 HOUSE BILL NO. 374

2 INTRODUCED BY HALVORSON, MELOY, HUENNEKENS,

3 VINCENT, HARPER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING AN ADDITIONAL
6 TAX ON THE CAPITAL GAIN REALIZED IN THE SPECULATIVE SALE OF
7 LAND; PRESCRIBING PENALTIES FOR THE EVASION OF SUCH TAX; AND
8 PROVIDING AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Tax imposed. There is imposed, in addition
12 to all other taxes imposed by this title, a tax on the gains
13 from the sale or exchange of land in Montana.

14 Section 2. Land defined. (1) Land, as used in this
15 act, means all land, improved or unimproved, other than such
16 land, not exceeding five (5) acres, as is necessary for the
17 accommodation of a dwelling used by the taxpayer as his
18 principal residence. Buildings and other structures are not
19 included in this definition of land.

20 (2) ALSO EXCLUDED FROM THE DEFINITION OF LAND IS THE
21 LAND, NOT EXCEEDING FIVE (5) ACRES, NECESSARY FOR THE USE OF
22 A DWELLING WHICH IS TO BE USED AS THE PURCHASER'S PRINCIPAL
23 RESIDENCE. AS USED IN THIS ACT, "PURCHASER'S PRINCIPAL
24 RESIDENCE" MEANS THE PRINCIPAL DWELLING OF A PERSON WHOSE
25 DOMICILE IS OR WILL BE ESTABLISHED IN THE STATE OF MONTANA.

1 THIS EXCLUSION FROM THE DEFINITION OF LAND DOES NOT APPLY
2 UNLESS THE PURCHASER FIRST EXECUTES, UPON A FORM SUPPLIED BY
3 THE DEPARTMENT OF REVENUE, A CERTIFICATION THAT HE IS
4 DOMICILED IN MONTANA OR WILL BE WITHIN SIXTY (60) DAYS, THAT
5 THE DWELLING TO BE PURCHASED WILL BE USED AS HIS PRINCIPAL
6 RESIDENCE, AND THAT HE UNDERSTANDS THAT AS A MONTANA
7 DOMICILIARY ALL OF HIS INCOME IS SUBJECT TO THE JURISDICTION
8 OF MONTANA INCOME TAX LAWS.

9 (3) ADDITIONALLY, WHERE THERE IS NOT ON THE LAND A
10 DWELLING COMPLETED AND FIT FOR OCCUPANCY AS THE PURCHASER'S
11 PRINCIPAL RESIDENCE AT THE TIME OF THE TRANSFER OF TITLE TO
12 THE LAND SO EXCLUDED FROM THE DEFINITION OF LAND:

13 (A) THE PURCHASER SHALL CERTIFY THAT THE CONSTRUCTION
14 OF THE DWELLING WILL BE COMMENCED WITHIN ONE (1) YEAR OF THE
15 DATE OF TRANSFER OF THE LAND AND THAT THE DWELLING WILL BE
16 COMPLETED AND OCCUPIED WITHIN TWO (2) YEARS OF THE DATE OF
17 SUCH TRANSFER.

18 (B) THE DEED, CONTRACT FOR DEED, OR OTHER TRANSFER
19 INSTRUMENT SHALL STATE THAT THE AMOUNT OF THE TAX OF WHICH
20 THE TRANSFEROR HAS BEEN RELIEVED BY VIRTUE OF THE
21 PURCHASER'S CERTIFICATIONS IS A LIEN RUNNING WITH THE LAND
22 IN FAVOR OF THE STATE OF MONTANA UNTIL EITHER THE AMOUNT OF
23 SUCH TAX HAS BEEN PAID OR THE PURCHASER HAS FILED WITH THE
24 DEPARTMENT OF REVENUE A STATEMENT UNDER THE PENALTIES OF
25 PERJURY THAT THE DWELLING WAS CONSTRUCTED AND OCCUPIED

THIRD READING

1 WITHIN THE TERMS AND CONDITIONS PREVIOUSLY CERTIFIED.

2 (4) IN CASES WHERE THE DEPARTMENT OF REVENUE
3 DETERMINES THAT ANY CERTIFICATIONS MADE PURSUANT TO THIS ACT
4 WERE UNTRUE, IT SHALL COLLECT FROM THE BUYER THE TAX UPON
5 THE PROFIT ALLOCABLE TO THE WRONGFULLY EXCLUDED LAND.

6 (5) IF ZONING OR SIMILAR LAWS OR REGULATIONS REQUIRE A
7 MINIMUM OF MORE THAN FIVE (5) ACRES FOR RESIDENTIAL
8 PROPERTY, THAT NUMBER OF ACRES INSTEAD OF FIVE (5) ACRES,
9 SHALL BE EXCLUDED FROM THE DEFINITION OF LAND UNDER
10 SUBSECTION (1) OF THIS SECTION EXCEPT THAT NOT MORE THAN TEN
11 (10) ACRES SHALL BE SO EXCLUDED.

12 Section 3. Rate of tax. The tax imposed by section
13 [1] shall be based upon the years held at the following
14 rates on the gain, as gain is determined under section [5].

15 Years land held by	16 Gain, as a percentage		
17 transferor	18 of basis (tax cost)		
	FIRST	NEXT	GAIN OVER
	20-99%	100-199%	199%
19 Less than 1 year	30%	45%	60%
20 1 year, but less than 2	25%	37.5%	50%
21 2 years, but less than 3	20%	30%	40%
22 3 years, but less than 4	15%	22.5%	30%
23 4 years, but less than 5	10%	15%	20%
24 5 years, but less than 6	5%	7.5%	10%

25 The taxes imposed by this section shall be paid at the

1 rate stated in the first column for so much of the gain as
2 is equal to from twenty percent (20%) to ninety-nine percent
3 (99%) of the basis, at the rate stated in the second column
4 for so much of the gain as is in excess of ninety-nine
5 percent (99%) of the basis but no more than one hundred
6 ninety-nine percent (99%) of the basis, and at the rate
7 stated in the third column for so much of the gain as is in
8 excess of one hundred ninety-nine percent (99%) of the
9 basis.

10 Section 4. Sale or exchange. (1) As used in this act
11 "sale or exchange of land" means any transfer of title to
12 land for a consideration. As used in this act "transfer"
13 means a grant, assignment, conveyance, or any other means of
14 transferring title to property to, or vesting title to
15 property in any person. The transfer BY A HOLDER of an
16 option for the sale or exchange of land shall be considered
17 a transfer of title to land for the purposes of this act.

18 (2) Contracts for the sale of land constitute sales or
19 exchanges of land for all purposes of this act. However,
20 contracts shall not constitute sales or exchanges until some
21 consideration has passed thereunder to or for the benefit of
22 the seller or exchanger. The sale or exchange is considered
23 to take place at the time any consideration whatsoever, of
24 whatever nature, first passes under the contract. A mere
25 promise to purchase, and amounts paid as earnest money, or

1 amounts paid in deposit or amounts paid in escrow to which
2 the seller has no immediate right, do not constitute the
3 passing of consideration for the purposes of this act.

4 (3) Any sale or exchange of shares in a corporation or
5 other entity, or of comparable rights or property interests
6 in any other form of organization or legal entity, which
7 effectively entitles the purchaser to the use or occupancy
8 of land constitutes a sale or exchange of land.

9 (4) The department of revenue shall determine in
10 particular cases whether the transaction involved is a sale
11 or exchange of land within the intended coverage of this
12 act.

13 (5) This act shall not apply to involuntary
14 conversions of land, as defined by the Internal Revenue Code
15 of 1954, as amended.

16 Section 5. Basis, gain and holding period. (1) The
17 provisions of the Internal Revenue Code of 1954, as amended,
18 shall determine the basis (tax cost) of land sold or
19 exchanged.

20 (2) The amount realized from the sale or exchange
21 shall be the full actual consideration therefor, paid or to
22 be paid, including the amount of any liens or encumbrances
23 on the land existing before the sale or exchange and not
24 removed thereby. The amount realized from the sale or
25 exchange shall be the gross amount thereof, reduced by any

1 expenses of sale and commissions. In the event that a sale
2 includes land and buildings or other structures, the gain
3 realized shall be allocated between the land and the
4 buildings or other structures on the basis of fair market
5 value.

6 (3) The taxable gain from the sale or exchange is the
7 amount realized minus the basis (tax cost) of the land as
8 determined under subsection (1) of this section. No gain
9 shall be recognized in cases where gain is not recognized
10 under the Internal Revenue Code of 1954, as amended, in
11 relation to the sale or exchange of capital assets.

12 (4) The land sold or exchanged shall be deemed to have
13 been held as determined under the Federal Internal Revenue
14 Code, for the same length of time that the seller or
15 exchanger thereof has had actual and recorded title thereto
16 in his own name, and shall include the time the land was so
17 held prior to the effective date of this act. IF THE SELLER
18 OR EXCHANGER HAS ACQUIRED THE INTEREST IN THE PROPERTY UNDER
19 A CONTRACT BY THE TERMS OF WHICH HE RECEIVED OR IS TO
20 RECEIVE TITLE TO THE PROPERTY WHEN A SERIES OF INSTALLMENT
21 PAYMENTS ARE COMPLETED, THE HOLDING PERIOD BEGINS TO RUN
22 WHEN THE SELLER OR EXCHANGER FILES, AND THE COUNTY CLERK AND
23 RECORDER RECORDS, AN ABSTRACT OF THE CONTRACT MEETING THE
24 REQUIREMENTS OF SECTION 73-101.1. If land is held in joint
25 tenancy or by tenancy in common, the holding period for each

1 joint tenant or tenant in common is the time during which
 2 his interest has been actual and recorded in his own name
 3 and each joint tenant or tenant in common shall be taxed on
 4 the gain he has realized from the sale of his interest in
 5 the land at a rate determined by the length of time he has
 6 held such interest, as provided in section [3] of this act.
 7 If a husband and wife are joint tenants or tenants in common
 8 there may be added to the holding period the amount of time
 9 the land was held by one spouse alone before that spouse
 10 created the joint tenancy or tenancy in common. In the case
 11 of a gift, ~~the holding period of the donee shall include the~~
 12 ~~time that actual and recorded title was held by the donor~~
 13 ~~in the case of an inheritance or devise, the holding period~~
 14 ~~of the heir or devisee shall include the time that actual~~
 15 ~~and recorded title was held by the decedent. In the case of~~
 16 ~~land acquired by the seller in a tax-free exchange, the~~
 17 ~~holding period shall include the time in which the previous~~
 18 ~~owner held actual and recorded title.~~ INHERITANCE OR DEVISE,
 19 OR LAND ACQUIRED BY THE SELLER IN A TAX-FREE EXCHANGE, THE
 20 HOLDING PERIOD OF THE GRANTEE, HEIR OR DEVISEE, OR SELLER
 21 SHALL BEGIN TO RUN WHEN THE PREVIOUS OWNER'S HOLDING PERIOD
 22 BEGAN TO RUN UNDER THIS SECTION. In the case of land
 23 acquired by involuntary conversion, the holding period shall
 24 include the time in which the owner held any previous land
 25 traded therefor.

1 (5) The taxable gain under this act from the sale or
 2 exchange of land shall not be reduced by any losses incurred
 3 in other transactions.

4 Section 6. Liability for tax. The person liable for
 5 the tax is the transferor (which includes the owner, seller,
 6 or other exchanger) of the land sold or exchanged.

7 ~~Section 7. Payment of taxes. (1) Taxes imposed by~~
 8 ~~this act shall be paid in the following manner. Each~~
 9 ~~transferor subject to taxation under this act shall file a~~
 10 ~~return with the department of revenue when he files his~~
 11 ~~income tax return for the year in which the transfer took~~
 12 ~~place or on April 15 next following the year in which the~~
 13 ~~transfer took place, whichever occurs first. The return~~
 14 ~~shall be filed on forms furnished by the department and~~
 15 ~~shall state the amount of tax due and such other pertinent~~
 16 ~~information as the department shall require for the~~
 17 ~~administration of this act. The tax money due shall~~
 18 ~~accompany the return filed pursuant to this section.~~

19 ~~(2) Failure to pay taxes owing pursuant to this act~~
 20 ~~subjects the transferor to the penalties and procedures of~~
 21 ~~sections 84-4924 through 84-4929 for failure to pay income~~
 22 ~~taxes.~~

23 SECTION 7. WITHHOLDING AT SOURCE -- PAYMENT. (1) THE
 24 BUYER OR TRANSFEREE OF ANY LAND, HELD BY THE SELLER OR
 25 TRANSFEROR FOR LESS THAN SIX (6) YEARS, SHALL WITHHOLD TEN

1 PERCENT (10%) OF ALL CONSIDERATION PAID TO THE SELLER OR
 2 TRANSFEROR FOR SUCH LAND, INCLUDING TEN PERCENT (10%) OF ALL
 3 PARTIAL PAYMENTS MADE PURSUANT TO INSTALLMENT SALES. AT THE
 4 TIME ANY PAYMENT IS MADE TO THE SELLER OR TRANSFEROR, THE
 5 AMOUNTS WITHHELD SHALL BE REMITTED TO THE DEPARTMENT OF
 6 REVENUE.

7 (2) WITHIN THIRTY (30) DAYS OF THE SALE OR EXCHANGE OF
 8 LAND, FOR WHICH WITHHOLDING IS REQUIRED UNDER THIS SECTION,
 9 THE SELLER OR TRANSFEROR SHALL FILE A RETURN WITH THE
 10 DEPARTMENT OF REVENUE SETTING FORTH THE AMOUNT OF THE TAX
 11 DUE UNDER THIS ACT AND THE AMOUNT WITHHELD BY THE BUYER OR
 12 TRANSFeree PURSUANT TO THIS SECTION. THE SELLER SHALL
 13 EITHER REMIT WITH THE RETURN THE BALANCE OF THE TAX DUE OR
 14 MAKE CLAIM FOR A REFUND. ANY REFUND NOT MADE BY THE
 15 DEPARTMENT WITHIN FIFTEEN (15) DAYS OF ITS RECEIPT OF A
 16 VALID CLAIM SHALL ACCRUE INTEREST AT THE RATE OF ONE-HALF OF
 17 ONE PERCENT (1/2%) PER MONTH. FOR GOOD CAUSE SHOWN AND UPON
 18 CONDITIONS SET BY IT, THE DEPARTMENT MAY EXTEND THE TIME FOR
 19 FILING THE RETURN AND PAYING THE TAX REQUIRED BY THIS ACT.

20 (3) NOTWITHSTANDING EITHER SUBSECTION (1) OR (2) OF
 21 THIS SECTION, THE SELLER OR TRANSFEROR MAY, IN ADVANCE OF
 22 THE SALE OR EXCHANGE, PAY THE TAX IMPOSED BY THIS ACT OR
 23 OBTAIN A WRITTEN RULING FROM THE DEPARTMENT THAT NO TAX IS
 24 DUE UNDER THIS ACT. IN EITHER CASE THE DEPARTMENT SHALL
 25 CERTIFY TO THE SELLER OR TRANSFEROR THAT SUCH PAYMENT HAS

1 BEEN MADE OR THAT NO TAX IS DUE. UPON RECEIPT BY THE BUYER
 2 OR TRANSFeree OF SUCH CERTIFICATION FROM THE SELLER OR
 3 TRANSFEROR, THE BUYER OR TRANSFeree SHALL NOT BE REQUIRED TO
 4 WITHHOLD UNDER SUBSECTION (1) OF THIS SECTION.

5 (4) ALL TAXES REQUIRED TO BE PAID OR WITHHELD UNDER
 6 THIS ACT SHALL CONSTITUTE A PERSONAL DEBT OF THE PERSON
 7 LIABLE TO PAY OR WITHHOLD THE SAME TO THE STATE OF MONTANA
 8 TO BE RECOVERED IN AN ACTION ON THIS STATUTE.

9 (5) AN ACTION MAY BE BROUGHT TO RECOVER THE AMOUNT OF
 10 THE TAXES TO BE PAID OR WITHHELD IN THE MANNER PRESCRIBED
 11 FOR RECOVERING AMOUNTS OWED FOR TAXES UNDER SECTION 84-4301.
 12 THE AMOUNT OF TAXES TO BE PAID OR WITHHELD SHALL BE A LIEN
 13 IN FAVOR OF THE STATE OF MONTANA UPON ALL PROPERTY AND
 14 RIGHTS TO PROPERTY, WHETHER REAL OR PERSONAL, BELONGING TO
 15 THE PERSON LIABLE FOR THE TAX OR FOR THE WITHHOLDING. THE
 16 LIEN SHALL BE ENFORCED IN THE MANNER PRESCRIBED BY SECTION
 17 84-3808.

18 Section 8. Installment sales. (1) For the purpose of
 19 this section "installment sale" means sale or exchange of
 20 land as defined in section [4] for which the total tax due
 21 under this chapter is greater than two thousand dollars
 22 (\$2,000) and in which the parties agree in advance that
 23 payments shall be received by the seller or transferor in
 24 more than one installment on a date or dates other than the
 25 date of closing. A sale financed by a mortgage, deed of

1 trust, or other financing arrangement in which the seller or
 2 transferor is paid in full on the date of the sale or
 3 exchange shall not be considered an installment sale. A
 4 lease-purchase agreement under which any part of the rental
 5 payments constitute a portion of the purchase price of the
 6 land shall be considered an installment sale, and for the
 7 purposes of this act the end of the holding period with
 8 respect to the sale or exchange shall be determined as of
 9 the date of the agreement.

10 (2) Notwithstanding any other provisions of this act,
 11 the tax return required by this act and the tax due under
 12 this act on any installment sale shall be filed and paid
 13 annually at the time of payment of the transferor's income
 14 tax or at the date prescribed in section 84-4919, for the
 15 filing of income tax returns for so much of the purchase
 16 price as the transferor has received in the taxable year for
 17 which the return is filed.

18 (3) In an installment sale, the total amount of taxes
 19 due under this chapter shall be the amount that would have
 20 been due had the total purchase price been paid on the date
 21 the sale or exchange took place. The amount of taxes due on
 22 each separate installment, including the first installment,
 23 shall bear the same proportion to the total amount of taxes
 24 due as the amount of that installment bears to the total
 25 consideration.

1 Section 9. This act shall not apply to the sale, lease
 2 or agreement to buy and sell land classified and assessed as
 3 agricultural where the parties to the transaction enter into
 4 a covenant running with the land and revocable only after a
 5 period of at least six (6) years that the land will be used
 6 exclusively for agricultural purposes as defined in section
 7 84-437.2. If the land is converted to nonagricultural use
 8 during the six (6) year period and the roll-back tax is
 9 assessed under section 84-437.4, the transferor's gain shall
 10 be recognized under this act and the tax on the gain paid by
 11 the transferee.

12 Section 10. Criminal penalties. (1) Any person who
 13 willfully defeats or evades or attempts to defeat or evade
 14 the tax imposed by this act shall be imprisoned not more
 15 than one (1) year or fined not more than ten thousand
 16 dollars (\$10,000) or five (5) times the amount of the tax
 17 defeated or evaded or attempted to be defeated or evaded,
 18 whichever is larger, or may be both thus imprisoned and
 19 fined. A corporation or other taxable entity not being a
 20 natural person shall be subject to the fine provided by this
 21 section.

22 (2) Any officer, employee, director, trustee or other
 23 responsible person of a corporation or other taxable entity,
 24 and any other person, who counsels, aids, abets,
 25 participates in, or conceals the defeat or evasion of tax,

1 or the attempt thereat, shall be subject to the penalties of
2 subsection (1) of this section.

3 (3) The form for the payment of the tax under this
4 chapter shall set forth in large type the penalties provided
5 by this section.

6 Section 11. Taxes paid into general fund. All taxes
7 received by the department of revenue pursuant to this act
8 shall be paid into the general fund.

9 Section 12. Department to make regulations. The
10 department of revenue shall promulgate such rules and
11 regulations as it shall deem necessary to enforce the
12 provisions of this act.

13 Section 13. This act is effective thirty (30) days
14 after its passage and approval.

-End-