

1 HB BILL NO. 202
 2 INTRODUCED BY Bradley West, Jim South
 3 Lanning Vincent, Robbin Boege
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE INHERITANCE
 5 LAWS TO ALLOW AGRICULTURAL LAND TRANSFERRED TO FAMILY
 6 MEMBERS TO BE VALUED AT PRODUCTIVE CAPACITY, PROVIDING
 7 CERTAIN CONDITIONS ARE MET; AMENDING SECTION 91-4407, R.C.M.
 8 1947."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 Section 1. Section 91-4407, R.C.M. 1947, is amended to
 12 read as follows:
 13 "91-4407. Tax on clear market value -- exceptions --
 14 deductions. The tax so imposed shall be is upon: (1) the
 15 clear market value of each property, except as provided in
 16 subsection (2), passing by any such transfer to each
 17 person, institution, association, corporation, or body
 18 politic, at the rates as provided in 91-4409 hereinafter
 19 ~~prescribed and only~~ upon the excess of the exemption
 20 hereinafter granted to ~~each~~ the person, institution,
 21 association, corporation, or body politic, ~~and is in~~ in
 22 determining the clear market value of the property ~~and~~
 23 passing by any such transfer the following deductions, and
 24 no other shall be allowed:
 25 (a) debts of the decedent owing at the date of death;

1 (b) expenses of funeral and last illness;
 2 (c) all Montana state, county, municipal, and federal
 3 taxes, including all penalties and interest thereon, owing
 4 by decedent at the date of death;
 5 (d) the ordinary expenses of administration, including
 6 the commissions and fees of executors and administrators and
 7 their attorneys actually allowed and paid, including
 8 attorneys' fees;
 9 (e) filing fees, necessary expenses, and closing costs
 10 incident to proceedings to terminate joint tenancies,
 11 termination of life estates, and transfers in contemplation
 12 of death; and
 13 (f) any and all other proceedings instituted for the
 14 determination of inheritance tax, and federal estate taxes
 15 due or paid;
 16 (2) the productive capacity of agricultural land
 17 meeting the qualifications of [section 2 of this act]."
 18 Section 2. Eligibility for valuation at productive
 19 capacity -- election and agreement. To be valued at
 20 productive capacity for inheritance tax purposes,
 21 agricultural land must meet the following qualifications:
 22 (1) be devoted to agricultural use at the time of the
 23 decedent's death;
 24 (2) be transferred to a qualified heir or heirs;
 25 (3) have been devoted to agricultural use, with the

1 material participation of the decedent or a member of the
2 decedent's immediate family during at least 5 of the 8 years
3 preceding the decedent's death; and

4 (4) constitute at least 25% of the market value of the
5 decedent's estate after the deductions allowed in 91-4407.

6 Section 3. Definitions. As used in this act, the
7 following definitions apply:

8 (1) "Agricultural land" means land meeting the
9 qualifications of 84-437.21.

10 (2) "Agricultural use" means the uses described in
11 84-437.21.

12 (3) "Qualified agricultural land" means land meeting
13 the qualifications imposed in [section 2 of this act].

14 (4) "Qualified heir" means the decedent's spouse,
15 brother or sister, lineal issue, or any child adopted in
16 conformity with the law or for whom the decedent stood in
17 the mutually acknowledged relation of parent for at least 10
18 years before the decedent's death, beginning before or at
19 the child's 15th birthday.

20 (5) "Decedent's immediate family" means the decedent's
21 spouse, brother or sister, lineal issue, or adopted child.

22 (6) "Adjusted tax difference" means the difference
23 between the tax on the transfer of the agricultural land if
24 it had been valued at market value and the tax actually paid
25 by the heir on the qualified agricultural land transferred

1 to him, as calculated by the method provided in [section 5
2 of this act].

3 (7) "Material participation" means active involvement
4 in the management and cultivation of the land and excludes
5 leasing of the land.

6 Section 4. Procedure for filing election for valuation
7 at productive capacity. An heir, or his personal
8 representative if the heir is a minor, who elects to apply
9 for valuation at productive capacity shall file with the
10 department of revenue when he files the information required
11 in 91-4468:

12 (1) notice of his election on forms as prescribed by
13 the department;

14 (2) a written statement in a form prescribed by the
15 department agreeing to personal liability for additional
16 taxes under the conditions of [section 7 of this act] and a
17 special lien on the qualified agricultural land as required
18 in [section 9 of this act];

19 (3) a statement of the market value of the qualified
20 agricultural land on the date of the decedent's death;

21 (4) a calculation of the adjusted tax difference
22 resulting from valuation at productive capacity.

23 Section 5. Determination of adjusted tax difference.
24 The adjusted tax difference on the transfer of qualified
25 agricultural land is calculated as follows:

1 (1) The tax on the market value of the qualified
2 agricultural land is determined as if the agricultural land
3 constituted an heir's entire distributive share.

4 (2) The tax on the value at productive capacity of the
5 qualified agricultural land is determined as if the
6 agricultural land constituted an heir's entire distributive
7 share.

8 (3) The difference between (1) and (2) is the adjusted
9 tax difference on the transfer of qualified agricultural
10 land.

11 Section 6. Method of valuing qualified agricultural
12 land. The value of qualified agricultural land for
13 inheritance tax purposes is its assessed value as shown on
14 the county assessor's rolls.

15 Section 7. Imposition of additional tax. (1) The
16 heir to agricultural land valued at productive capacity for
17 inheritance tax purposes shall be liable to the department
18 for part or all of the adjusted tax difference when the
19 agricultural land ceases to be qualified as a result of one
20 or more of the following occurrences:

21 (a) During the 8 years after the decedent's death,
22 there are periods totaling 3 years or more in which there is
23 no material participation by the qualified heir, his
24 immediate family, or members of the decedent's immediate
25 family.

1 (b) Within 15 years after the decedent's death, the
2 qualified heir disposes of any interest in the qualified
3 real property, other than by a disposition to a member of
4 his immediate family.

5 (c) Within 15 years after the decedent's death, the
6 qualified agricultural land ceases to be devoted to
7 agricultural use as defined in 84-437.2.

8 (2) The additional tax is due within 6 months of the
9 date on which the land ceases to be qualified.

10 (3) The liability for additional taxes is cancelled at
11 the death of the qualified heir.

12 Section 8. Additional tax on partial disposition or
13 cessation of agricultural use.

14 (1) If an heir disposes of a portion of his interest
15 in qualified agricultural land or a portion of the qualified
16 land ceases to be devoted to agricultural use, the heir is
17 liable for a portion of the adjusted tax difference.

18 (2) The amount due is the percentage of the adjusted
19 tax difference that the value of the land that is no longer
20 qualified bears to the value of the qualified agricultural
21 land originally contained in the heir's distributive share.
22 The assessed value of the land, contained in the county
23 assessor's rolls, shall be used in this calculation.

24 (3) The additional tax is due within 6 months of the
25 date of disposition or cessation of agricultural use of the

1 land.

2 (4) The amount of the lien against the qualified land
3 shall be reduced by the amount of additional tax paid.

4 Section 9. Special lien on qualified agricultural
5 land. A lien for the amount of the adjusted tax difference
6 shall be imposed on an heir's qualified agricultural land
7 for 15 years after the death of the decedent or until the
8 entire amount of the adjusted tax difference has been paid
9 as provided in [section 7 of this act].

-End-

STATE OF MONTANA

REQUEST NO. 99-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 19, 19 77, there is hereby submitted a Fiscal Note for House Bill 207 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

This bill revises inheritance laws to allow agricultural land transferred to family members to be valued at productive capacity, providing certain conditions are met.

ASSUMPTIONS

There is no data available on the amount of agricultural land taxed under the current inheritance tax law. Also there is no way to anticipate how many individuals would be eligible to utilize the change contemplated by this bill. Therefore, the fiscal impact is impossible to estimate.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. ...
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-24-77

Approved by Committee
on Taxation

HOUSE BILL NO. 207

INTRODUCED BY BRADLEY, NATHE, LIEN,

SJUTH, DASSINGER, VINCENT, ROBBINS, FABREGA

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE INHERITANCE LAWS TO ALLOW AGRICULTURAL LAND TRANSFERRED TO FAMILY MEMBERS TO BE VALUED AT PRODUCTIVE CAPACITY, PROVIDING CERTAIN CONDITIONS ARE MET; AMENDING SECTION 91-4407, R.C.M. 1947."

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

Section 1. Section 91-4407, R.C.M. 1947, is amended to read as follows:

"91-4407. Tax on clear market value -- ~~exceptions --~~ deductions. The tax so imposed ~~shall be~~ is upon: (1) the clear market value of such property, except as provided in subsection (2), passing by any such transfer to each person, institution, association, corporation, or body politic, at the rates as provided in 91-4409 hereinafter ~~prescribed--and--only~~ upon the excess of the exemption hereinafter granted to ~~such the~~ person, institution, association, corporation, or body politic, ~~and--in~~ in determining the clear market value of the property ~~so~~ passing by any such transfer the following deductions, and no other shall be allowed:

(a) debts of the decedent owing at the date of death; (b) expenses of funeral and last illness; (c) all Montana state, county, municipal, and federal taxes, including all penalties and interest thereon, owing by decedent at the date of death;

(d) the ordinary expenses of administration, including the commissions and fees of executors and administrators and their attorneys actually allowed and paid, including attorneys' fees;

(e) filing fees, necessary expenses, and closing costs incident to proceedings to terminate joint tenancies, termination of life estates, and transfers in contemplation of death; and

(f) any and all other proceedings instituted for the determination of inheritance tax and federal estate taxes due or paid;

(2) the productive capacity of agricultural land meeting the qualifications of [section 2 of this act]."

Section 2. Eligibility for valuation at productive capacity -- election and agreement. To be valued at productive capacity for inheritance tax purposes, agricultural land must meet the following qualifications:

(1) be devoted to agricultural use at the time of the decedent's death;

(2) be transferred to a qualified heir or heirs;

SECOND READING

1 (3) have been devoted to agricultural use with the
 2 material participation of the decedent or a member of the
 3 decedent's immediate family during at least 5 of the 8 years
 4 preceding the decedent's death; and

5 (4) constitute at least 25% of the market value of the
 6 decedent's estate after the deductions allowed in 91-4407.

7 Section 3. Definitions. As used in this act, the
 8 following definitions apply:

9 (1) "Agricultural land" means land meeting the
 10 qualifications of 84-437.21.

11 (2) "Agricultural use" means the uses described in
 12 84-437.21.

13 (3) "Qualified agricultural land" means land meeting
 14 the qualifications imposed in [section 2 of this act].

15 (4) "Qualified heir" means the decedent's spouse,
 16 brother or sister, lineal issue, or any child adopted in
 17 conformity with the law or for whom the decedent stood in
 18 the mutually acknowledged relation of parent for at least 10
 19 years before the decedent's death, beginning before or at
 20 the child's 15th birthday.

21 (5) "Decedent's immediate family" means the decedent's
 22 spouse, brother or sister, lineal issue, or adopted child.

23 (6) "Adjusted tax difference" means the difference
 24 between the tax on the transfer of the agricultural land if
 25 it had been valued at market value and the tax actually paid

1 by the heir on the qualified agricultural land transferred
 2 to him, as calculated by the method provided in [section 5
 3 of this act].

4 (7) "Material participation" means active involvement
 5 in the management and cultivation of the land and excludes
 6 leasing of the land.

7 Section 4. Procedure for filing election for valuation
 8 at productive capacity. An heir, or his personal
 9 representative if the heir is a minor, who elects to apply
 10 for valuation at productive capacity shall file with the
 11 department of revenue when he files the information required
 12 in 91-4468:

13 (1) notice of his election on forms as prescribed by
 14 the department;

15 (2) a written statement in a form prescribed by the
 16 department agreeing to personal liability for additional
 17 taxes under the conditions of [section 7 of this act] and a
 18 special lien on the qualified agricultural land as required
 19 in [section 9 of this act];

20 (3) a statement of the market value of the qualified
 21 agricultural land on the date of the decedent's death;

22 (4) a calculation of the adjusted tax difference
 23 resulting from valuation at productive capacity.

24 section 5. Determination of adjusted tax difference.
 25 The adjusted tax difference on the transfer of qualified

1 agricultural land is calculated as follows:

2 (1) The tax on the market value of the qualified
3 agricultural land is determined as if the agricultural land
4 constituted an heir's entire distributive share.

5 (2) The tax on the value at productive capacity of the
6 qualified agricultural land is determined as if the
7 agricultural land constituted an heir's entire distributive
8 share.

9 (3) The difference between (1) and (2) is the adjusted
10 tax difference on the transfer of qualified agricultural
11 land.

12 Section 6. Method of valuing qualified agricultural
13 land. The value of qualified agricultural land for
14 inheritance tax purposes is its assessed value as shown on
15 the county assessor's rolls.

16 Section 7. Imposition of additional tax. (1) The
17 heir to agricultural land valued at productive capacity for
18 inheritance tax purposes shall be liable to the department
19 for part or all of the adjusted tax difference when the
20 agricultural land ceases to be qualified as a result of one
21 or more of the following occurrences:

22 (a) During the 8 years after the decedent's death,
23 there are periods totaling 3 years or more in which there is
24 no material participation by the qualified heir, his
25 immediate family, or members of the decedent's immediate

1 family.

2 (b) Within 15 years after the decedent's death, the
3 qualified heir disposes of any interest in the qualified
4 real property, other than by a disposition to a member of
5 his immediate family.

6 (c) Within 15 years after the decedent's death, the
7 qualified agricultural land ceases to be devoted to
8 agricultural use as defined in 84-437.2.

9 (2) The additional tax is due within 6 months of the
10 date on which the land ceases to be qualified.

11 (3) The liability for additional taxes is cancelled at
12 the death of the qualified heir.

13 Section 8. Additional tax on partial disposition or
14 cessation of agricultural use.

15 (1) If an heir disposes of a portion of his interest
16 in qualified agricultural land or a portion of the qualified
17 land ceases to be devoted to agricultural use, the heir is
18 liable for a portion of the adjusted tax difference.

19 (2) The amount due is the percentage of the adjusted
20 tax difference that the value of the land that is no longer
21 qualified bears to the value of the qualified agricultural
22 land originally contained in the heir's distributive share.
23 The assessed value of the land, contained in the county
24 assessor's rolls, shall be used in this calculation.

25 (3) The additional tax is due within 6 months of the

1 date of disposition or cessation of agricultural use of the
2 land.

3 (4) The amount of the lien against the qualified land
4 shall be reduced by the amount of additional tax paid.

5 section 9. Special lien on qualified agricultural
6 land. ~~* IN ADDITION TO THE LIEN IMPOSED IN 91A-3-1010 AND~~
7 ~~91-4415.~~ A lien for the amount of the adjusted tax
8 difference shall be imposed on an heir's qualified
9 agricultural land for 15 years after the death of the
10 decedent or until the entire amount of the adjusted tax
11 difference has been paid as provided in [section 7 of this
12 act].

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THIRD READING

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24 assessor's rolls, shall be used in this calculation.

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8 difference shall be imposed on an heir's qualified
9 agricultural land for 15 years after the death of the
10 decedent or until the entire amount of the adjusted tax
11 difference has been paid as provided in [section 7 of this
12 act].

-End-