

1 INTRODUCED BY H BILL NO. 492
 2 Dusard, Miklar, Kelly
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 DETERMINATION OF INHERITANCE TAX AND TERMINATION OF INTEREST
 6 IN LIFE ESTATES, JOINT TENANCIES, AND OTHER INTERESTS;
 7 REPEALING SECTIONS 91-4321.1, 91-4469, AND 91A-3-1205,
 8 R.C.M. 1947."
 9

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

11 Section 1. Determination of inheritance tax — no
 12 personal representative. (1) For the purposes of this
 13 section, a decedent is one who dies leaving no property
 14 which requires the appointment of a personal representative
 15 and:

- 16 (a) was the owner of a life estate which terminated at
 17 his death;
- 18 (b) was the owner with another or others as a joint
 19 tenant with right of survivorship and not as a tenant in
 20 common; or
- 21 (c) was the owner of any other interest in property
 22 requiring the determination of inheritance tax because of
 23 his death.
- 24 (2) Upon the death of a decedent, a remainderman,
 25 surviving joint tenant, or other interested party shall file

- 1 with the department of revenue:
- 2 (a) a copy of the death certificate;
- 3 (b) a verified application in a form prescribed by the
 4 department containing:
- 5 (i) name, address, and interest of applicant;
- 6 (ii) name, date of death, age, and domicile of decedent
 7 at death;
- 8 (iii) a list of the property requiring determination of
 9 inheritance tax, including:
- 10 (A) a description of the property;
- 11 (B) the fair market value of decedent's interest in
 12 the property at date of death;
- 13 (C) evidence of the instruments which created the life
 14 estate, joint tenancy, or other interest requiring
 15 determination of inheritance tax;
- 16 (d) an appraisal or other proof of fair market value,
 17 if required by the department;
- 18 (e) a list of each remainderman, surviving joint
 19 tenant, or possessor and his address, age, and relationship
 20 to the decedent;
- 21 (f) a statement that the decedent died leaving no
 22 property requiring appointment of a personal representative;
- 23 (g) a statement of inheritance tax due; and
- 24 (h) any other information required by the department.
- 25 (3) Upon receipt of the application the department

INTRODUCED BILL

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1 shall:

2 (a) stamp the filing date upon the application;
3 (b) issue a certificate showing the inheritance tax
4 due, if any;

5 (c) affix the certificate to a certified copy of the
6 application and return the same to the applicant or his
7 attorney; and

8 (d) affix a copy of the certificate to the original
9 application and keep it on file with the department.

10 (4) The applicant shall pay the inheritance tax
11 determined to the county treasurer for transmittal to the
12 state treasurer. The county treasurer shall issue a receipt
13 for the payment of the tax.

14 (5) If disputes arise as to tax computation, they
15 shall be resolved as provided under the laws applicable to
16 the determination of inheritance taxes in estates.

17 Section 2. Termination of interest in property. (1) If
18 an interest in real property is involved under [section 1]
19 the applicant may transfer the same by filing with the clerk
20 and recorder of each county in which the real property or
21 any part thereof is located:

22 (a) a certified copy of the application referred to in
23 subsection (2) (b) of [section 1];

24 (b) the certificate from the department of revenue
25 determining inheritance tax, if any;

1 (c) the receipt from the county treasurer showing the
2 inheritance tax has been paid.

3 (2) The clerk and recorder shall terminate the joint
4 tenancy or otherwise transfer the ownership.

5 (3) The filing of the documents under subsection (1)
6 constitutes release of any lien for inheritance taxes and
7 prima facie evidence of termination of the joint tenancy or
8 other transfer of ownership.

9 Section 3. Determination of inheritance tax on
10 transfer of certain interests in estate with personal
11 representative. (1) If a decedent dies leaving property
12 which requires the appointment of a personal representative
13 and was also an owner of property as described in subsection
14 (1) (a), (1) (b), or (1) (c) of [section 1] the remainderman,
15 surviving joint tenant, personal representative, or other
16 interested party may have the inheritance tax determined and
17 the joint tenancy terminated or ownership transferred as
18 provided in [sections 1 and 2 of this act] by filing with
19 the department:

20 (a) the information listed in [section 1(2) except
21 (2) (f)]; and

22 (b) the name of the county of administration or
23 probate and the court file number.

24 Section 4. Attorney's fee. If a decedent as defined in
25 [sections 1 or 2 of this act] leaves a surviving spouse, the

1 surviving spouse is not required to hire an attorney to
2 transfer title to the property involved. If an attorney is
3 hired by the surviving spouse, the attorney's fee for
4 services required in terminating a joint tenancy or
5 transferring other types of ownership listed in [section 1
6 of this act] may not exceed 2% of the value of the interest
7 passing to the spouse.

8 Section 5. Repealer. Sections 91-4321.1, 91-4469, and
9 91A-3-1205, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 230-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 26, 19 77, there is hereby submitted a Fiscal Note for House Bill 492 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 provides for the determination of inheritance tax and termination of interest in life estates, joint tenancies, and other interests.

ASSUMPTIONS

This bill merely resolves legal conflicts between two sections of law; therefore, there is no fiscal impact.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. Zimmerman

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-77

Approved by Committee on Judiciary

1 INTRODUCTION BY H BILL NO. 492
2 Daniel N. H. Kelly
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
5 DETERMINATION OF INHERITANCE TAX AND TERMINATION OF INTEREST
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12 personal representative. (1) For the purposes of this
13 section, a decedent is one who dies leaving no property
14 which requires the appointment of a personal representative
15 and:

16 (a) was the owner of a life estate which terminated at
17 his death;

18 (b) was the owner with another or others as a joint
19 tenant with right of survivorship and not as a tenant in
20 common; or

21 (c) was the owner of any other interest in property
22 requiring the determination of inheritance tax because of
23 his death.

24 (2) Upon the death of a decedent, a remainderman,
25 surviving joint tenant, or other interested party shall file

- 1 with the department of revenue:
- 2 (a) a copy of the death certificate;
- 3 (b) a verified application in a form prescribed by the
4 department containing:
 - 5 (i) name, address, and interest of applicant;
 - 6 (ii) name, date of death, age, and domicile of decedent
7 at death;
 - 8 (iii) a list of the property requiring determination of
9 inheritance tax, including:
 - 10 (A) a description of the property;
 - 11 (B) the fair market value of decedent's interest in
12 the property at date of death;
 - 13 (c) evidence of the instruments which created the life
14 estate, joint tenancy, or other interest requiring
15 determination of inheritance tax;
 - 16 (d) an appraisal or other proof of fair market value,
17 if required by the department;
 - 18 (e) a list of each remainderman, surviving joint
19 tenant, or possessor and his address, age, and relationship
20 to the decedent;
 - 21 (f) a statement that the decedent died leaving no
22 property requiring appointment of a personal representative;
 - 23 (g) a statement of inheritance tax due; and
 - 24 (h) any other information required by the department.
 - 25 (3) Upon receipt of the application the department

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1 shall:

- 2 (a) stamp the filing date upon the application;
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- 4 due, if any;
- 5 (c) affix the certificate to a certified copy of the
- 6 application and return the same to the applicant or his
- 7 attorney; and
- 8 (d) affix a copy of the certificate to the original
- 9 application and keep it on file with the department.

10 (4) The applicant shall pay the inheritance tax
11 determined to the county treasurer for transmittal to the
12 state treasurer. The county treasurer shall issue a receipt
13 for the payment of the tax.

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15 shall be resolved as provided under the laws applicable to
16 the determination of inheritance taxes in estates.

17 Section 2. Termination of interest in property. (1) If
18 an interest in real property is involved under [section 1]
19 the applicant may transfer the same by filing with the clerk
20 and recorder of each county in which the real property or
21 any part thereof is located:

- 22 (a) a certified copy of the application referred to in
- 23 subsection (2) (b) of [section 1];
- 24 (b) the certificate from the department of revenue
- 25 determining inheritance tax, if any;

1 (c) the receipt from the county treasurer showing the
2 inheritance tax has been paid.

3 (2) The clerk and recorder shall terminate the joint
4 tenancy or otherwise transfer the ownership.

5 (3) The filing of the documents under subsection (1)
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8 other transfer of ownership.

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11 representative. (1) If a decedent dies leaving property
12 which requires the appointment of a personal representative
13 and was also an owner of property as described in subsection
14 (1) (a), (1) (b), or (1) (c) of [section 1] the remainderman,
15 surviving joint tenant, personal representative, or other
16 interested party may have the inheritance tax determined and
17 the joint tenancy terminated or ownership transferred as
18 provided in [sections 1 and 2 of this act] by filing with
19 the department:

- 20 (a) the information listed in [section 1(2) except
- 21 (2) (f)]; and
- 22 (b) the name of the county of administration or
- 23 probate and the court file number.

24 Section 4. Attorney's fee. If a decedent as defined in
25 [sections 1 or 2 of this act] leaves a surviving spouse, the

1 surviving spouse is not required to hire an attorney to
2 transfer title to the property involved. If an attorney is
3 hired by the surviving spouse, the attorney's fee for
4 services required in terminating a joint tenancy or
5 transferring other types of ownership listed in [section 1
6 of this act] may not exceed 2% of the value of the interest
7 passing to the spouse.

8 Section 5. Repealer. Sections 91-4321.1, 91-4469, and
9 91A-3-1205, R.C.M. 1947, are repealed.

-End-

1
2 INTRODUCTION BY H BILL NO. 492
Dusser, Nick R. Nely
3
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15 and:
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17 his death;
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20 common; or
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4 department containing:
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7 at death;
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9 inheritance tax, including:
10 (A) a description of the property;
11 (B) the fair market value of decedent's interest in
12 the property at date of death;
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14 estate, joint tenancy, or other interest requiring
15 determination of inheritance tax;
16 (d) an appraisal or other proof of fair market value,
17 if required by the department;
18 (e) a list of each remainderman, surviving joint
19 tenant, or possessor and his address, age, and relationship
20 to the decedent;
21 (f) a statement that the decedent died leaving no
22 property requiring appointment of a personal representative;
23 (g) a statement of inheritance tax due; and
24 (h) any other information required by the department.
25 (3) Upon receipt of the application the department

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5 (c) affix the certificate to a certified copy of the
6 application and return the same to the applicant or his
7 attorney; and

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11 determined to the county treasurer for transmittal to the
12 state treasurer. The county treasurer shall issue a receipt
13 for the payment of the tax.

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15 shall be resolved as provided under the laws applicable to
16 the determination of inheritance taxes in estates.

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18 an interest in real property is involved under [section 1]
19 the applicant may transfer the same by filing with the clerk
20 and recorder of each county in which the real property or
21 any part thereof is located:

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23 subsection (2) (b) of [section 1];

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25 determining inheritance tax, if any;

1 (c) the receipt from the county treasurer showing the
2 inheritance tax has been paid.

3 (2) The clerk and recorder shall terminate the joint
4 tenancy or otherwise transfer the ownership.

5 (3) The filing of the documents under subsection (1)
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7 prima facie evidence of termination of the joint tenancy or
8 other transfer of ownership.

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11 representative. (1) If a decedent dies leaving property
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13 and was also an owner of property as described in subsection
14 (1) (a), (1) (b), or (1) (c) of [section 1] the remainderman,
15 surviving joint tenant, personal representative, or other
16 interested party may have the inheritance tax determined and
17 the joint tenancy terminated or ownership transferred as
18 provided in [sections 1 and 2 of this act] by filing with
19 the department:

20 (a) the information listed in [section 1(2) except
21 (2) (f)]; and

22 (b) the name of the county of administration or
23 probate and the court file number.

24 Section 4. Attorney's fee. If a decedent as defined in
25 [sections 1 or 2 of this act] leaves a surviving spouse, the

1 surviving spouse is not required to hire an attorney to
2 transfer title to the property involved. If an attorney is
3 hired by the surviving spouse, the attorney's fee for
4 services required in terminating a joint tenancy or
5 transferring other types of ownership listed in [section 1
6 of this act] may not exceed 2% of the value of the interest
7 passing to the spouse.

8 Section 5. Repealer. Sections 91-4321.1, 91-4469, and
9 91A-3-1205, R.C.M. 1947, are repealed.

-End-

April 2, 1977

STANDING COMMITTEE REPORT
Senate Committee on Judiciary

That House Bill No. 492 be amended as follows:

1. Amend page 1, section 1, line 18.
Following: "owner"
Insert: "of property"
2. Amend page 2, section 1, line 4.
Following: "containing"
Insert: "such information as the department considers necessary"
3. Amend page 2, section 1, lines 4 through 12.
Following: "containing"
Strike: lines 4 through 12 in their entirety
Insert: "; and"
4. Amend page 2, section 1, lines 15 through 24.
Following: "tax" on line 15
Strike: lines 15 through 24 in their entirety
Insert: ", if required by the department."
5. Amend page 3, section 2, line 19.
Following: "applicant"
Strike: "may transfer the same by filing"
Insert: "shall file"
6. Amend page 4, section 2, lines 3 and 4.
Following: "(2)"
Strike: "The clerk and recorder shall terminate the joint tenancy or otherwise transfer the ownership"
Insert: "The interest of the decedent in property held in joint tenancy terminates upon his death"
7. Amend page 4, section 2, lines 6 through 8.
Following: "taxes"
Strike: "and prima facie evidence of termination of the joint tenancy or other transfer of ownership"
8. Amend page 4, section 4, line 25.
Following: line 24
Strike: "[sections 1 or 2"
Insert: "[section 1"

HOUSE BILL NO. 492

INTRODUCED BY DRISCOLL, MULAR, MELDY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE DETERMINATION OF INHERITANCE TAX AND TERMINATION OF INTEREST IN LIFE ESTATES, JOINT TENANCIES, AND OTHER INTERESTS; REPEALING SECTIONS 91-4321.1, 91-4469, AND 91A-3-1205, R.C.M. 1947."

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

Section 1. Determination of inheritance tax -- no personal representative. (1) For the purposes of this section, a decedent is one who dies leaving no property which requires the appointment of a personal representative and:

(a) was the owner of a life estate which terminated at his death;

(b) was the owner OF PROPERTY with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of his death.

(2) Upon the death of a decedent, a remainderman, surviving joint tenant, or other interested party shall file

with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application in a form prescribed by the department containing SUCH INFORMATION AS THE DEPARTMENT CONSIDERS NECESSARY;

(i) name, address, and interest of applicant;

(ii) name, date of death, age, and domicile of decedent at death;

(iii) a list of the property requiring determination of inheritance tax, including:

(A) a description of the property;

(B) the fair market value of decedent's interest in the property at date of death; AND

(c) evidence of the instruments which created the life estate, joint tenancy, or other interest requiring determination of inheritance tax;

(d) an appraisal or other proof of fair market value, if required by the department;

(e) a list of each remainderman, surviving joint tenant, or possessor and his address, age, and relationship to the decedent;

(f) a statement that the decedent died leaving no property requiring appointment of a personal representative;

(g) a statement of inheritance tax due; and

(h) any other information required by the department.

1 IF REQUIRED BY THE DEPARTMENT.

2 (3) Upon receipt of the application the department
3 shall:

4 (a) stamp the filing date upon the application;

5 (b) issue a certificate showing the inheritance tax
6 due, if any;

7 (c) affix the certificate to a certified copy of the
8 application and return the same to the applicant or his
9 attorney; and

10 (d) affix a copy of the certificate to the original
11 application and keep it on file with the department.

12 (4) The applicant shall pay the inheritance tax
13 determined to the county treasurer for transmittal to the
14 state treasurer. The county treasurer shall issue a receipt
15 for the payment of the tax.

16 (5) If disputes arise as to tax computation, they
17 shall be resolved as provided under the laws applicable to
18 the determination of inheritance taxes in estates.

19 Section 2. Termination of interest in property. (1) If
20 an interest in real property is involved under [section 1]
21 the applicant ~~may transfer the same by filing~~ SHALL FILE
22 with the clerk and recorder of each county in which the real
23 property or any part thereof is located:

24 (a) a certified copy of the application referred to in
25 subsection (2)(b) of [section 1];

1 (b) the certificate from the department of revenue
2 determining inheritance tax, if any;

3 (c) the receipt from the county treasurer showing the
4 inheritance tax has been paid.

5 ~~(2) The clerk and recorder shall terminate the joint~~
6 ~~tenancy or otherwise transfer the ownership~~ THE INTEREST OF
7 THE DECEDENT IN PROPERTY HELD IN JOINT TENANCY TERMINATES
8 UPON HIS DEATH.

9 (3) The filing of the documents under subsection (1)
10 constitutes release of any lien for inheritance taxes and
11 ~~prima facie evidence of termination of the joint tenancy or~~
12 ~~other transfer of ownership.~~

13 Section 3. Determination of inheritance tax on
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20 interested party may have the inheritance tax determined and
21 the joint tenancy terminated or ownership transferred as
22 provided in [sections 1 and 2 of this act] by filing with
23 the department:

24 (a) the information listed in [section 1(2) except
25 (2)(f)]; and

1 (b) the name of the county of administration or
2 probate and the court file number.

3 Section 4. Attorney's fee. If a decedent as defined in
4 [~~sections--1--or--2~~ SECTION 1 of this act] leaves a surviving
5 spouse, the surviving spouse is not required to hire an
6 attorney to transfer title to the property involved. If an
7 attorney is hired by the surviving spouse, the attorney's
8 fee for services required in terminating a joint tenancy or
9 transferring other types of ownership listed in [section 1
10 of this act] may not exceed 2% of the value of the interest
11 passing to the spouse.

12 Section 5. Repealer. Sections 91-4321.1, 91-4469, and
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