

1 *Senate* BILL NO. *423*
 2 INTRODUCED BY *Sen. Matthew Brown Roskie*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REPLACE THE MONTANA
 5 INHERITANCE TAX WITH AN ESTATE TAX BASED ON A PERCENTAGE OF
 6 THE FEDERAL ESTATE TAX; AMENDING SECTIONS 9-822, 23-3030,
 7 69-4403, 84-723, 84-725, 84-726, 84-1901, 91-509, 91-4321.1,
 8 91-4419, 91A-2-405, 91A-3-706, 91A-3-719, 91A-3-805,
 9 91A-3-1004, 91A-3-1010, 91A-3-1204, AND 91A-4-202, R.C.M.
 10 1947; ALSO AMENDING SEVERAL SECTIONS IN TITLE 91, CHAPTER
 11 44, R.C.M. 1947; REPEALING SECTIONS 91-4401 THROUGH
 12 91-4418, 91-4414.1, 91-4420, 91-4422, 91-4427 THROUGH
 13 91-4430, 91-4432 THROUGH 91-4439, 91-4444, 91-4453, 91-4454,
 14 91-4456 THROUGH 91-4458, AND 91A-3-1205, R.C.M. 1947."

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

17 Section 1. Short title. This act may be cited as "The
 18 Montana Estate Tax Act".

19 Section 2. Purpose. The purpose of this act is to
 20 simplify Montana's death taxes for both taxpayers and the
 21 department of revenue by replacing the Montana inheritance
 22 tax with an estate tax based on a percentage of the federal
 23 estate tax.

24 Section 3. Definitions. Unless the context requires
 25 otherwise, the following definitions apply in this act:

1 (1) "Beneficiary" means any person receiving an
 2 interest in property of a decedent that is subject to
 3 inclusion in the decedent's federal gross estate and which
 4 had a situs in Montana at the time of the decedent's death.

5 (2) "Department" means the Montana department of
 6 revenue.

7 (3) "Director" means the director of the department of
 8 revenue.

9 (4) "Federal gross estate" means the gross estate of a
 10 decedent as determined for federal estate tax purposes under
 11 provisions of the United States Internal Revenue Code of
 12 1954.

13 (5) "Federal taxable estate" means the taxable estate
 14 of a decedent as determined for federal estate tax purposes
 15 under provisions of the United States Internal Revenue Code
 16 of 1954.

17 (6) "Montana taxable estate" means the taxable estate
 18 provided for in [sections 6 and 7 of this act].

19 (7) "Nonresident decedent" means an individual who at
 20 the time of death was not a resident of this state.

21 (8) "Personal representative" means a personal
 22 representative as defined by 91A-1-201(31) or, if there is
 23 no personal representative within this state, any person in
 24 actual or constructive possession of any property having a
 25 situs in this state that is included in the federal gross

1 estate of the decedent.

2 (9) "Resident decedent" means an individual whose
3 residence at the time of death was in Montana according to
4 83-303.

5 (10) "Situs of property" means:

6 (a) as to real property, the state or country in which
7 it was situated at the time of the decedent's death;

8 (b) as to tangible personal property, the state or
9 country in which it was normally kept or located at the time
10 of the decedent's death;

11 (c) as to intangible personal property, the state or
12 country in which the decedent was a resident at death; and

13 (d) as to property having a situs in Montana, the
14 county in which the property has its situs as determined in
15 accordance with this subsection (10).

16 (11) "United States Internal Revenue Code of 1954"
17 means the United States Internal Revenue Code of 1954, as
18 amended.

19 Section 4. Tax on transfer of estates. An estate tax
20 is imposed upon the transfer of the estate of any decedent
21 which includes property having a situs in Montana.

22 Section 5. Amount of tax. (1) For purposes of this
23 section, "FTE" means the federal taxable estate, "MTE" means
24 the Montana taxable estate, and "PET" means the federal
25 estate tax.

1 (2) The Montana estate tax due on the transfer of an
2 estate is given by:

3 $.35 \times (MTE) / (FTE) \times PET.$

4 Section 6. Determination of Montana taxable estate.
5 The Montana taxable estate of a decedent is determined as
6 follows:

7 (1) When all of the property included in the federal
8 gross estate of a decedent has a situs in Montana, the
9 Montana taxable estate is the federal taxable estate less
10 the federal estate taxes paid on the transfer thereof.

11 (2) When only a part of the property included in the
12 federal gross estate of a decedent has a situs in Montana,
13 the Montana taxable estate is the amount obtained by
14 subtracting from the federal taxable estate the federal
15 estate taxes paid on the transfer thereof and then
16 multiplying the difference by a fraction the numerator of
17 which is the value of that portion of the federal gross
18 estate having a situs in Montana and the denominator of
19 which is the value of the total federal gross estate.

20 Section 7. Application of tax to intangible property
21 of nonresidents. For the purpose of determining the Montana
22 taxable estate under [section 6 of this act], intangible
23 property of a nonresident decedent which was located in this
24 state at the time of the decedent's death shall not be
25 considered to have a situs in Montana if the laws of the

1 state or territory of residence of the decedent at the time
2 of the decedent's death contained a reciprocal provision
3 allowing a similar exemption to residents of this state.

4 Section 8. Valuation of property. The value of all
5 property included in the Montana taxable estate is the same
6 as its value for federal estate tax purposes.

7 Section 9. Deductions, exemptions, and credits. All
8 deductions, exemptions, and credits allowed in calculating
9 the federal estate tax, and only such deductions,
10 exemptions, and credits, may be used in determining the
11 Montana estate tax, except as provided in Title 91A, chapter
12 2, part 4.

13 Section 10. When tax due — interest — extensions.
14 The tax imposed by this act is due at the death of the
15 decedent and, if not paid within 15 months after the date of
16 death, bears interest at the rate of 12% a year to be
17 computed from the expiration of 15 months after death until
18 paid. The department may grant a reasonable extension of
19 time for payment of the estate tax. However, it may not
20 extend the time for more than 10 years.

21 Section 11. Who liable for tax. (1) A personal
22 representative is liable up to the amount of the estate
23 within his control for all taxes payable on the estate with
24 interest as provided in this act until they have been paid.

25 (2) The beneficiaries are personally liable for their

1 respective shares of the tax imposed by [section 4 of this
2 act]. When the personal representative pays the tax, he may
3 recover it from the beneficiaries in accordance with the
4 provisions of 91A-3-916.

5 Section 12. Filing requirements. When the estate of a
6 decedent is liable for payment of federal estate taxes, the
7 personal representative or, if the personal representative
8 fails to do so, any interested person shall file with the
9 district court of the county in which the estate is being
10 administered and with the department of revenue the
11 following:

12 (1) a duplicate of the federal estate tax return;

13 (2) a certificate or other evidence from the United
14 States internal revenue service or its successor indicating
15 the amount of the federal estate tax due as computed by that
16 agency; and

17 (3) any other pertinent information necessary to
18 establish the amount of the Montana estate tax.

19 Section 13. Determination of tax due — supervised
20 administration. When an estate is under supervised
21 administration, the district court shall hear all parties
22 desiring to be heard concerning the amount of the state
23 estate tax due and shall enter an order determining such
24 amount.

25 Section 14. Collection of tax. The department shall

1 collect the tax imposed by [section 4 of this act] and, at
2 the end of each calendar month, deposit it in the general
3 fund. The department shall issue a receipt showing payment
4 of the tax.

5 Section 15. Powers and duties of department —
6 assistance of other departments. (1) The department has
7 complete supervision of the collection of all Montana estate
8 taxes and shall make such rules as it considers necessary
9 for the interpretation and enforcement of this act. The
10 department may call upon other departments of the state
11 government for cooperation and assistance in the collection
12 of the taxes and may employ such attorneys, examiners,
13 special agents, and other personnel as may be necessary to
14 carry out the purposes of this act.

15 (2) The department shall prescribe those forms,
16 application blanks, and printed matter necessary for the
17 administration of this act. It also shall keep records
18 necessary to provide statistical information to the
19 legislature.

20 (3) The department shall investigate any estate which
21 might require legal action by the attorney general. No
22 information so acquired may, in advance of legal action, be
23 disclosed to anyone except proper officials and persons
24 interested in the estate.

25 Section 16. Applicability of federal estate tax rules.

1 The federal estate tax rules promulgated by the United
2 States internal revenue service apply to this act insofar as
3 they are not inconsistent with any specific provision of
4 this act or are not inconsistent with any department rule.

5 Section 17. Lien for taxes — liens under prior law.
6 (1) A tax imposed by this act is and remains a lien upon the
7 property transferred and upon all estate property acquired
8 by the personal representative for a period of 10 years from
9 the date of the death of the decedent or until the tax is
10 paid or a bond is given for its payment, whichever comes
11 first. However, the lien does not affect any tangible or
12 intangible personal property after it has passed to a bona
13 fide purchaser.

14 (2) The lien charged upon the real property in the
15 estate or a separate parcel thereof may be discharged by:

16 (a) the payment of all taxes due or to become due on
17 the real property or separate parcel;

18 (b) the filing and acceptance of a bond for their
19 payment; or

20 (c) an order of the director transferring the lien to
21 other real property owned by the person to whom the real
22 property or any separate parcel thereof passes.

23 (3) A lien which attached to real property under the
24 inheritance tax laws or estate tax laws that were in effect
25 prior to the enactment of this act shall terminate in

1 accordance with the provisions of law that were in effect at
2 the time the lien attached.

3 Section 18. Refund and adjustment. (1) If, after
4 payment of the Montana estate tax, the federal estate tax
5 return is revised and the credit for Montana estate taxes is
6 decreased, the department shall, upon examination of the
7 revised federal return, cause warrants to be issued to the
8 persons who paid the Montana estate tax in the proper
9 proportionate shares to repay the difference between the
10 Montana estate tax previously paid and that actually due.

11 (2) If, after payment of the Montana estate tax, the
12 federal estate tax return is revised and the credit for
13 Montana estate taxes is increased, the liability for the
14 additional Montana estate tax shall be determined in the
15 same manner as under federal law, including the provisions
16 relating to any additional tax imposed as a result of
17 cessation of qualified use as prescribed in the Internal
18 Revenue Code, 26USC2032A, as amended.

19 Section 19. Section 9-822, R.C.M. 1947, is amended to
20 read as follows:

21 "9-822. Exemption from ~~inheritance~~ Montana estate tax.
22 Mausoleum or columbarium property passing to an individual
23 by reason of the death of the owner is exempt from all
24 ~~inheritance~~ Montana estate taxes."

25 Section 20. Section 23-3030, R.C.M. 1947, is amended

1 to read as follows:

2 "23-3030. Cancellation of deceased electors. Each
3 county clerk shall immediately cancel all registrations of
4 individuals reported as deceased by the department of health
5 and environmental sciences in the department's reports
6 submitted to the county under ~~section 91-4458, R.C.M., 1947~~
7 69-4403(5)."

8 Section 21. Section 69-4403, B.C.M. 1947, is amended
9 to read as follows:

10 "69-4403. Functions, powers and duties of department.

11 The department shall:

12 (1) divide the state into registration districts and
13 change districts as necessary;

14 (2) gather, record, use, and preserve vital
15 statistics;

16 (3) enforce rules adopted by the department for
17 gathering, recording, using and preserving vital statistics;

18 (4) give instructions and prescribe forms for
19 gathering, recording, preserving, and using vital
20 statistics.

21 (5) prepare, on or before January 5, April 5, July 5,
22 and October 5 of each year, a list of all deaths with the
23 date of each death reported during the preceding 3 months
24 and send the list to the county clerk of each county in the
25 state."

1 Section 22. Section 84-723, R.C.M. 1947, is amended to
2 read as follows:

3 "84-723. Collection of ~~nonresident inheritance taxes,~~
4 gross earnings ~~taxes~~ on freight lines, and license taxes
5 imposed by state department of revenue. The duty of
6 collecting ~~the nonresident inheritance taxes,~~ all gross
7 earning taxes on freight lines, and the following license
8 taxes, to wit: The corporation license tax, taxes on express
9 companies and sleeping car companies, coal mines, and
10 dealers license taxes, metalliferous mines license tax,
11 cement producers and dealers license taxes, the gasoline
12 distributors and dealers license tax, the oil producer's
13 license tax and all other license taxes determined by the
14 state department of revenue, the responsibility for
15 collection of which has heretofore been imposed upon the
16 state treasurer are hereby transferred from the state
17 treasurer to the state department of revenue; such
18 collections to be turned over to the state treasurer on the
19 10th and 25th day of each and every month, and it is further
20 provided that all duties heretofore imposed by law upon the
21 state treasurer, with reference to the collection and
22 issuance of receipts for any of the above named license
23 taxes, or other taxes above enumerated, are hereby imposed
24 upon the state department of revenue."

25 Section 23. Section 84-725, R.C.M. 1947, is amended to

1 read as follows:

2 "84-725. Suspense account for receipts and refunds.
3 The state department of revenue shall establish a suspense
4 account in the state treasury for the purpose of
5 conveniently processing receipts and for paying refunds for
6 overpayments of ~~inheritance~~ Montana estate taxes collected
7 by county treasurers and all other taxes collected by the
8 department. All moneys received by the department shall be
9 temporarily credited by the state treasurer to the
10 department's suspense account. Each month the department
11 shall send to the treasurer and to the controller a
12 distribution sheet designating the amount to be deposited in
13 each treasury fund and in each account."

14 Section 24. Section 84-726, R.C.M. 1947, is amended to
15 read as follows:

16 "84-726. Refund of overpayments — time of filing
17 claims for refund — procedure. (1) When there has been an
18 overpayment of the ~~inheritance~~ Montana estate tax collected
19 by county treasurers or any other tax collected by the state
20 department of revenue, and there is no law providing for a
21 refund, the department shall refund the amount of the
22 overpayment to the taxpayer, plus any interest and penalty
23 due the taxpayer, as provided in subsection (2) of this
24 section.

25 (2) No refund or payment shall be allowed unless a

1 claim is filed by the taxpayer ~~before the expiration of five~~
 2 within 45 years ~~from~~ after the time the tax was paid or, in
 3 the case of the estate tax, such longer time as allowed by
 4 federal law. Within six (6) months after the claim is filed
 5 the state department of revenue shall examine the claim and
 6 either approve or disapprove it. If the claim is approved
 7 the credit or refund shall be made to the taxpayer within
 8 sixty (60) days after the claim is approved; if the claim is
 9 disallowed, the state department of revenue shall so notify
 10 the taxpayer and shall grant a hearing on the claim. If the
 11 department disapproves a claim after holding a hearing, the
 12 determination of the department may be reviewed as provided
 13 by section 84-4923.1."

14 Section 25. Section 84-1901, R.C.M. 1947, is amended
 15 to read as follows:

16 "84-1901. Disposition of moneys from certain
 17 designated license and other taxes. (1) The state treasurer
 18 shall deposit to the credit of the state general fund all
 19 moneys received by him from the collection of:

20 (a) ~~automobile~~ Automobile drivers' license fees under
 21 section 31-135;

22 (b) ~~electric~~ Electric energy producers' license taxes
 23 under sections 84-1601 to 84-1609, inclusive;

24 (c) ~~metalliferous~~ Metalliferous mines license taxes
 25 under sections 84-2001 to 84-2016, inclusive;

1 (d) ~~telegraph~~ Telegraph license taxes under sections
 2 84-2501 to 84-2508, inclusive;

3 (e) ~~oil~~ Oil producers' license taxes under sections
 4 84-2201 to 84-2211, inclusive;

5 (f) ~~natural~~ Natural gas distributors' license taxes
 6 under sections 84-2101 to 84-2110, inclusive;

7 (g) ~~liquor~~ Liquor license taxes under Title 4 ;

8 (h) ~~telephone~~ Telephone license taxes under sections
 9 84-2601 to 84-2608, inclusive; and

10 (i) ~~inheritance and Montana~~ Montana estate taxes under Title
 11 91, chapter 44, and [this act].

12 (2) Seventy-five percent (75%) of all moneys received
 13 from the collection of income taxes under Title 84, chapter
 14 49, corporation license taxes under Title 84, chapter 15,
 15 and corporation income tax, Title 84, chapter 61, shall be
 16 deposited in the general fund subject to the prior pledge
 17 and appropriation of such income tax and corporation license
 18 tax collections for the payment of long-range building
 19 program bonds. The remaining twenty-five percent (25%) of
 20 the proceeds of the corporation license tax, corporation
 21 income tax, and income tax shall be deposited to the credit
 22 of the earmarked revenue fund for state equalization aid to
 23 the public schools of Montana.

24 (3) The state treasurer shall also deposit to the
 25 credit of the state general fund all moneys received by him

1 from the collection of license taxes, fees and from all
 2 other sources under the operation of the Montana Beer Act,
 3 sections 4-301 to 4-356, inclusive, and all net revenues and
 4 receipts received by him from and under the operation of the
 5 State Liquor Control Act, sections 4-101 to 4-237, inclusive
 6 or as those sections may be renumbered or amended."

7 Section 26. Section 91-509, R.C.M. 1947, is amended to
 8 read as follows:

9 "91-509. Court action by claimant of property in hands
 10 of state treasurer — limitation of action — judgment. Any
 11 persons claiming property in the hands of the state
 12 treasurer must bring an action in the district court of
 13 Lewis and Clark county, Montana, against the state
 14 treasurer. In such action one copy of the complaint and
 15 summons must be served upon the state treasurer, one must be
 16 served upon the attorney general and one must be served upon
 17 the director of revenue.

18 Such action shall be prosecuted subject to all of the
 19 provisions of the statutes of this state in relation to
 20 civil actions generally, including the right of either party
 21 to appeal to the supreme court of the state of Montana. Such
 22 action must be brought within two (2) years from the date on
 23 which the money or property is received by the state
 24 treasurer, saving, however, to infants and persons of
 25 unsound mind, or citizens of the United States beyond the

1 limits of the United States, the right to commence their
 2 action at any time within the time limited or two (2) years
 3 after their respective disabilities cease.

4 The ~~judgment of the~~ court in such action shall, upon
 5 examination of the federal estate tax return filed in
 6 respect to the property, determine ~~and fix~~ the amount of
 7 ~~inheritance~~ the Montana estate tax, if any, which is due
 8 from said claimant to the state of Montana upon the money or
 9 property claimed and none of said money or property shall be
 10 turned over to said claimant until said ~~inheritance~~ Montana
 11 estate tax is paid. The state department of revenue shall
 12 issue its interlocutory certificate showing the amount of
 13 ~~said inheritance~~ the Montana estate tax due, if any, and
 14 shall have the right to file objections and be heard upon
 15 the final determination of said tax."

16 Section 27. Section 91-4321.1, R.C.M. 1947, is amended
 17 to read as follows:

18 "91-4321.1. Joint tenancy property — transfer to
 19 surviving spouse. (1) Title to property held in joint
 20 tenancy by a husband and wife with the right of survivorship
 21 shall, upon the death of one of the spouses, vest in the
 22 surviving spouse provided the requirements of this section
 23 have been complied with.

24 (2) Proof of death of one of the spouses may be made
 25 by filing a copy of the death certificate with the

1 department of revenue.

2 (3) The surviving spouse shall file an affidavit in
3 form prescribed by the department of revenue with the
4 department of revenue listing all interests in real and
5 personal property held in joint tenancy with the deceased
6 spouse.

7 (4) The surviving spouse shall send a list of all
8 properties or interest therein (and the value thereof as of
9 the date of the deceased spouse's death) held in joint
10 tenancy with the deceased spouse to the department of
11 revenue.

12 (5) Joint tenancies in real property with right of
13 survivorship may be created by spouses by deed or by filing
14 a form with the county clerk and recorder signed by both
15 spouses and attested to by an officer authorized to
16 administer oaths. Proof of creation of joint tenancies in
17 personal property may be made by submitting to the
18 department of revenue copies, or other evidence, of any
19 documents which created such joint tenancies.

20 (6) Upon submission of copies of the documents
21 required in subsections (2), (3), (4), and (5) of this
22 section the department of revenue shall determine the
23 ~~inheritance~~ Montana estate tax due and send a certificate of
24 tax due to the surviving spouse. If there is no tax due the
25 certificate shall be filed with the county clerk and

1 recorder who shall then issue a transfer of title for any
2 real property involved to the surviving spouse. If there
3 is tax due, upon its payment to the county treasurer and
4 filing the receipt therefor with the county clerk and
5 recorder, the clerk and recorder shall transfer title in the
6 real property to the surviving spouse. The certificate of no
7 tax due from the department of revenue or the receipt from
8 the county treasurer for taxes paid is sufficient for the
9 surviving spouse to transfer title to any personal property
10 involved.

11 (7) No surviving spouse is required to hire an
12 attorney to transfer title in the joint tenancy property.
13 If an attorney is hired by the surviving spouse the
14 attorney's fees, including expenses, shall not exceed two
15 percent (2%) of the value of the interest passing to the
16 surviving spouse."

17 Section 28. Section 91-4419, R.C.M. 1947, is amended
18 to read as follows:

19 "91-4419. Bond for deferred payment of tax. Any
20 beneficiary of any property chargeable with a Montana estate
21 ~~tax under this act,~~ and any ~~executors, administrators and~~
22 ~~trustees thereof,~~ personal representative may elect, within
23 ~~eighteen 18~~ months from the date of the death of decedent,
24 ~~or transfer thereof as herein provided,~~ not to pay ~~such the~~
25 tax until the ~~person~~ ~~or~~ persons beneficially interested

1 ~~therein shall~~ in the property come into the actual
 2 possession or enjoyment thereof. The ~~person or~~ persons so
 3 electing shall give a bond to the state ~~is with~~ a penalty of
 4 three times the amount of ~~any such~~ the tax for nonpayment,
 5 with such sureties as the district court of the proper
 6 county or the state department of revenue, as the case may
 7 be, may approve, and conditioned for the payment of ~~such the~~
 8 tax and interest thereon, at such time ~~or period~~ as the
 9 ~~person or~~ persons beneficially interested ~~therein may in the~~
 10 property come into the actual possession or enjoyment of
 11 ~~such property, thereof, which~~ The bond shall be filed in the
 12 district court, or ~~in the office of the state treasurer with~~
 13 the department, as the case may be. ~~Such~~ The bond must be
 14 executed and filed ~~and a full return of such property upon~~
 15 ~~oath made to~~ with the district court within ~~eighteen~~ 18
 16 months from the date of ~~the~~ death of the decedent, ~~or~~
 17 ~~transfer as herein provided, and such~~ The bond must be
 18 renewed every ~~five~~ 5 years, ~~and said~~ The deferred tax shall
 19 ~~bear~~ bears interest at ~~six per cent~~ 6% per annum after ~~such~~
 20 ~~eighteen months commencing upon the expiration of the~~
 21 above-mentioned 18-month period."

22 Section 29. Section 91-4421, R.C.M. 1947, is amended
 23 to read as follows:

24 "91-4421. Payment of tax on transfer of securities by
 25 foreign representative — duty of holder of securities or

1 assets of nonresident decedent — apportionment of
 2 deductions — information to be given department of revenue
 3 — amount of tax to be retained on delivery of assets —
 4 penalties. (1) If a foreign executor, administrator, or
 5 trustee shall assign or transfer any stocks, bonds,
 6 mortgages, or other securities, in this state, or within the
 7 jurisdiction of this state, standing in the name of a
 8 decedent or in trust for a decedent, liable to any ~~such~~
 9 Montana estate tax, the tax shall be paid to the treasurer
 10 of the proper county or the state treasurer on the transfer
 11 thereof; otherwise the corporation permitting such transfer
 12 shall become liable to pay such tax.

13 (2) No safe deposit company, bank, or other
 14 institution, person or persons, holding securities or assets
 15 of a nonresident decedent, nor any corporation organized
 16 under the laws of this state, in which a nonresident
 17 decedent held stock, bonds, mortgages, or other securities,
 18 at his decease, shall deliver or transfer the same to the
 19 executors, administrators or legal representatives of said
 20 decedent, or upon their order or request, unless notice of
 21 the time and place of such intended transfer be served upon
 22 the state department of revenue at least ten (10) days prior
 23 to the said transfer; nor shall any such safe deposit
 24 company, bank, or other institution, person or persons, nor
 25 any corporation, deliver or transfer any securities or

1 assets of the estate of a nonresident decedent without
 2 retaining a sufficient portion or amount thereof to pay any
 3 tax which may thereafter be assessed on account of the
 4 transfer of such securities or assets under the provisions
 5 of the ~~inheritance~~ Montana estate tax laws, without an order
 6 from the proper court authorizing such transfer; and it
 7 shall be lawful for the state department of revenue,
 8 personally or by representative, to examine said securities
 9 or assets at any time before such delivery or transfer.
 10 Failure to serve such notice or to allow such examination or
 11 to retain a sufficient portion or amount to pay such tax as
 12 herein provided, shall render said safe deposit company,
 13 trust company, bank, or other institution, person or
 14 persons, or such corporation, liable to the payment of the
 15 tax due upon said securities or assets in pursuance of the
 16 provisions of the ~~inheritance~~ Montana estate tax laws. The
 17 state department of revenue may issue a certificate
 18 authorizing the transfer of any such stock, securities or
 19 assets whenever it appears to the satisfaction of the said
 20 board that no tax is due thereon; provided, however, that
 21 the foregoing provisions shall not apply to shares of stock
 22 in any Montana corporation held by a nonresident of Montana
 23 at the time of his death whose death occurred on or after
 24 January 30, 1945, and who was at the time of his death
 25 domiciled in any other ~~district territory~~ or state of the

1 United States, provided reciprocal rights are granted by
 2 such ~~district territory~~ or state of domicile similar to
 3 ~~section 91-4413~~ [section 7 of this act], and in such event
 4 this subsection (2) shall not apply to the transfer of
 5 stocks, bonds, mortgages or other securities exempt from
 6 taxation under ~~the provisions of section 91-4413~~ [section 7
 7 of this act], and a Montana corporation, or its agent, may
 8 transfer stocks, bonds, mortgages and other securities
 9 without any liability for ~~the Montana estate~~ tax ~~imposed~~
 10 ~~under the provisions of the inheritance tax laws~~ where there
 11 are reciprocal rights as set forth in ~~section 91-4413~~
 12 [section 7 of this act], and in such event no application
 13 for consent to transfer such stock need be made to the state
 14 department of revenue of the state of Montana, and the
 15 corporation, or its duly authorized transfer agent may
 16 transfer such shares of stock upon its books without any
 17 such application or consent to transfer.

18 ~~(3) Whenever a tax may be due from the estate, or the~~
 19 ~~beneficiaries therein, of any resident or nonresident~~
 20 ~~decedent upon the transfer of any property, when the~~
 21 ~~property or the estate left by such decedent is partly~~
 22 ~~within and partly without this state, or upon any stocks,~~
 23 ~~bonds, mortgages, or other securities representing property~~
 24 ~~or estate partly within and partly without this state, any~~
 25 ~~beneficiary of such estate shall be entitled to deduct only~~

~~his proper proportion of that portion of the total debts and expenses of administration which the gross estate in Montana or within its jurisdiction bears to the gross estate both within and without this state, but no deduction shall be made for any federal estate, inheritance, succession or transfer taxes paid to the United States. As to his Montana exemption, each beneficiary shall be entitled to deduct only that portion represented by the ratio between his interest in the property in this state or within its jurisdiction and his interest in the entire estate.~~

~~(4)~~ (3) The state department of revenue shall require such reports and information and shall make such orders, rules, and regulations as it may deem necessary to enable the department to secure the necessary information from domestic corporations, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of this act on account of such transfer, except upon order of the proper court or a certificate of consent of the state department of revenue.

~~(5)~~ (4) Any corporation or holding company violating

the provisions of this section shall be liable to the state for the amount of the tax together with a penalty of ten per centum (10%) thereof."

Section 30. Section 91-4423, R.C.M. 1947, is amended to read as follows:

"91-4423. Jurisdiction of district court. The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any Montana estate tax ~~under the inheritance tax laws~~, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the ~~inheritance~~ Montana estate tax laws, and to do any act in relation thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court."

Section 31. Section 91-4425, R.C.M. 1947, is amended to read as follows:

"91-4425. Determination of tax due from estate of nonresident decedent — application — appeals. (1) Any

1 personal representative, trustee, heir, devisee or legatee
 2 of a nonresident decedent leaving no estate requiring
 3 administration in this state, desiring to transfer any
 4 stocks, bonds, mortgages or other securities, or other
 5 personal property in this state or within the jurisdiction
 6 of this state, may make application to the state department
 7 of revenue for the determination whether there is any tax
 8 due upon account of the transfer thereof, and the amount of
 9 any such tax, and such applicant shall furnish to the state
 10 department of revenue therewith, an affidavit setting forth
 11 a description and statement of the property owned by the
 12 decedent situated within this state, or within its
 13 jurisdiction at the time of his death, the true value of
 14 said property at the time of decedent's death, and a
 15 description and statement of the true value of all property
 16 owned by the decedent at the time of his death situated
 17 outside of this state, and without its jurisdiction, and
 18 ~~containing a schedule or statement of all valid claims~~
 19 ~~against the estate of the decedent, including the expenses~~
 20 ~~of his last illness, funeral expenses and expenses of~~
 21 ~~administering his estate. Such applicant shall also, at the~~
 22 ~~same time, furnish the state department of revenue with a~~
 23 ~~certified copy of the last will of the decedent, in case he~~
 24 ~~died testate, or an affidavit setting forth the names, ages~~
 25 ~~and residence of the heirs at law of decedent in case he~~

1 ~~died intestate, and the proportions of the entire estate of~~
 2 ~~said decedent inherited by each of said persons, and the~~
 3 ~~relation, if any, which each legatee, devisee, heir, or~~
 4 ~~transferee sustained to the decedent, or person from whom~~
 5 ~~the transfer was made.~~ Such affidavit shall be subscribed
 6 and sworn to by the personal representative of the decedent,
 7 or some other person having knowledge of the facts therein
 8 set forth. The person desiring to transfer the property
 9 shall also furnish the department of revenue with the
 10 information listed in [section 12 of this act].

11 (2) The statement contained in any affidavits,
 12 statements or schedules as to values, or otherwise, shall
 13 not be binding upon the state department of revenue in case
 14 they believe the same to be erroneous or untrue. From the
 15 information so furnished them and such other information as
 16 they may be able to obtain with reference thereto, the state
 17 department of revenue shall, with reasonable diligence,
 18 proceed to ascertain and determine the amount of the Montana
 19 estate tax, if any, due ~~under the provisions of this act~~,
 20 and notify the person making the application of the amount
 21 of the tax so ascertained and determined to be due; or in
 22 case there is no tax to be paid, the state department of
 23 revenue shall issue a consent to the transfer of the
 24 property so owned by the decedent.

25 (3) Any person aggrieved by the determination of the

1 state department of revenue in any matter herein provided
 2 for in this section may, within thirty (30) days thereafter,
 3 appeal to the district court of Lewis and Clark county, by
 4 serving on the state department of revenue a notice in
 5 writing setting forth his objections to such determination,
 6 and by filing such notice, after so serving the same, in the
 7 office of the clerk of such court, and thereupon, and within
 8 ten (10) days after the service of such notice on them the
 9 state department of revenue shall transmit full and complete
 10 copies of all original papers and records which have been
 11 filed with them in relation to such application, to the
 12 clerk of said district court, and thereupon the said
 13 district court shall have jurisdiction of such application
 14 and proceeding. Upon ten days' notice given by either
 15 applicant or the state department of revenue, the matter may
 16 be brought on for hearing and determination by said court,
 17 either in term time or in vacation, at a general or special
 18 term of court, or at chambers, as may be directed by the
 19 order of the court."

20 Section 32. Section 91-4441, R.C.M. 1947, is amended
 21 to read as follows:

22 "91-4441. Special administration to determine tax --
 23 compensation. When no application for administration of the
 24 estate of any deceased person is made within six months
 25 after the demise of such person, and such estate appears to

1 come under the provisions of the ~~inheritance~~ Montana estate
 2 tax laws, or when administration has been completed without
 3 determining the tax, the public administrator of the proper
 4 county, or any person interested in such estate, may make
 5 application for such special or general administration as
 6 may be necessary for the purpose of the adjustment and
 7 payment of such tax, if any, or if no tax is due, for an
 8 order determining that fact. In cases arising under this and
 9 the following section, the public administrator, if
 10 appointed such special administrator, shall be entitled in
 11 the discretion of the court to the fees allowed by law to
 12 administrators, or to other reasonable compensation, unless
 13 it be found that no tax is due."

14 Section 33. Section 91-4442, R.C.M. 1947, is amended
 15 to read as follows:

16 "91-4442. Special administration to determine tax
 17 where transfer made in contemplation of death. Where it
 18 appears that the estate of a deceased person subject to the
 19 ~~inheritance~~ Montana estate tax laws was transferred in
 20 contemplation of the death of the grantor without the
 21 adjustment and payment of the ~~inheritance~~ Montana estate
 22 taxes and no application for such adjustment is made within
 23 six months after the demise of such grantor, the public
 24 administrator of the proper county shall notify the state
 25 department of revenue and on its order make application for

1 and shall be entitled to such general or special
2 administration as may be necessary for the purpose of the
3 adjustment and payment of the ~~inheritance~~ Montana estate
4 taxes provided by law and shall administer such estate the
5 same as other estates are administered as though such estate
6 had not been transferred by the grantor."

7 Section 34. Section 91-4443, R.C.M. 1947, is amended
8 to read as follows:

9 "91-4443. Public administrator's duty to investigate
10 concerning tax — compensation. It shall be the duty of the
11 public administrator, under the general supervision of the
12 state department of revenue, and with the assistance of the
13 county attorney, when required by the department or district
14 judge, to investigate the estates of deceased persons within
15 his county and to appear for and act in behalf of the county
16 and state in the district court in such estates as the court
17 may in its discretion deem necessary, and for such services
18 the public administrator shall be entitled to five per cent
19 of the gross ~~inheritance~~ Montana estate tax as determined in
20 each such estate, to be paid by the county treasurer out of
21 the ~~inheritance~~ estate tax funds upon an order of the
22 district judge, provided that the minimum fee for each such
23 estate shall not be less than five dollars, and that it
24 shall not exceed twenty-five dollars; but in cases of
25 unusual difficulty, in estates of resident decedents, where

1 the tax exceeds five hundred dollars, the district judge may
2 allow the public administrator such additional compensation
3 as he may deem just and reasonable."

4 Section 35. Section 91-4445, R.C.M. 1947, is amended
5 to read as follows:

6 "~~91-4445. Powers and duties of the department~~
7 Investigative powers of department — reports to governor
8 and legislature. The state department of revenue in the
9 conduct of ~~inheritance~~ Montana estate tax affairs, shall
10 have the same and similar powers and authority for gathering
11 information and making investigations as is conferred by law
12 on the department in the performance of its other duties.
13 The department shall biennially report to the governor and
14 to the legislature at the opening of the sessions the
15 general result of its labors and investigations in
16 ~~inheritance~~ estate tax matters during the previous biennial
17 period, together with specific reports of the several
18 counties where the administration of the ~~inheritance~~ estate
19 tax laws has been lax and unsatisfactory, with such
20 recommendations for action thereon by the legislature as may
21 be deemed advisable and proper."

22 Section 36. Section 91-4446, R.C.M. 1947, is amended
23 to read as follows:

24 "~~91-4446. Powers and duties in~~ Investigation of
25 nonresident estates. The state department of revenue shall

1 also gather information and make investigations and reports
 2 concerning the estates of nonresident decedents within the
 3 provisions of the ~~inheritance~~ Montana estate tax laws, and
 4 shall especially investigate the probate and other records
 5 for such probable estates without the state and report
 6 thereon from time to time to the legal department of the
 7 state and to the proper district court for appropriate legal
 8 action, but no information so acquired shall, in advance of
 9 legal action, be disclosed to anyone except proper
 10 officials, and persons interested in such estate."

11 Section 37. Section 91-4447, R.C.M. 1947, is amended
 12 to read as follows:

13 "91-4447. Duty of the legal department of state. It
 14 shall be the duty of the legal department of the state to
 15 carry out and enforce the recommendations and directions of
 16 the state department of revenue in all matters pertaining to
 17 the conduct of ~~inheritance~~ Montana estate tax affairs; and
 18 in every estate in which the amount of ~~inheritance~~ Montana
 19 estate tax collectible shall exceed or probably exceed the
 20 sum of one thousand dollars, there shall be no compounding,
 21 composition, or settlement of the taxes under the authority
 22 conferred by section 91-4451 or otherwise, until the state
 23 department of revenue shall have investigated such estate
 24 and made a report thereon, nor until the department consents
 25 to such compounding, compromise, or settlement."

1 Section 38. Section 91-4448, R.C.M. 1947, is amended
 2 to read as follows:

3 "91-4448. Forms and blanks for use of courts. The
 4 state department of revenue shall prescribe such forms and
 5 prepare such blanks as may be necessary in ~~inheritance~~
 6 Montana estate tax proceedings; and such blanks shall be
 7 printed at the expense of the state and furnished to each
 8 district court or the clerk thereof upon the request of the
 9 judge or clerk thereof."

10 Section 39. Section 91-4450, R.C.M. 1947, is amended
 11 to read as follows:

12 "91-4450. Monthly reports of county treasurer --
 13 payment of collections to state department of revenue --
 14 interest on unpaid amounts. On or before the fifth day of
 15 each month each county treasurer shall make a report under
 16 oath to the state department of revenue listing all payments
 17 received by him under the ~~inheritance~~ Montana estate tax
 18 laws, during the preceding month, and stating for what
 19 estate, by whom and when paid. The form of such report shall
 20 be prescribed by the state department of revenue. He shall
 21 at the same time pay the state department of revenue all the
 22 payments received by him under the ~~inheritance~~ Montana
 23 estate tax laws and not previously paid to the state
 24 department of revenue, and for all such payments collected
 25 by him and not paid to the state department of revenue

1 within five days from the time herein required, he shall pay
2 interest at the rate of ten per cent (10%) per annum."

3 Section 40. Section 91-4459, R.C.M. 1947, is amended
4 to read as follows:

5 "91-4459. Checking by county clerk of records and
6 transfers — report to department of revenue. The county
7 clerk, upon the receipt of the list of deaths provided for
8 in ~~section 91-4459~~ 69-4403(5), shall immediately check the
9 records of his county to determine whether any of the
10 deceased persons whose names appear upon such list may have
11 made any transfer of property or of property rights within
12 such county during the three years preceding the death of
13 such person or whether such deceased person may have been
14 possessed of any property in such county at the time of his
15 death.

16 If he shall find that any such deceased person may have
17 made any such transfers of property or of property rights,
18 or have died possessed of such, he shall immediately
19 transmit such information to the state department of
20 revenue."

21 Section 41. Section 91-4468, R.C.M. 1947, is amended
22 to read as follows:

23 "91-4468. ~~Personal representative to furnish~~
24 ~~information department~~ Department to determine tax —
25 appeal. ~~The personal representative, or should the personal~~

1 ~~representative fail to do so, any interested person, shall~~
2 ~~make application to the state department of revenue for~~
3 ~~determination of any tax due upon the estate of a decedent.~~
4 ~~The applicant shall furnish to the department of revenue the~~
5 ~~inventory and appraisal required by section 91-3-706 of~~
6 ~~this act and of any supplemental inventory under section~~
7 ~~91-3-707 of this act together with a statement, under oath~~
8 ~~or affirmation, of any property owned by the decedent at the~~
9 ~~time of his death situated outside of this state and without~~
10 ~~its jurisdiction. The applicant shall, upon request of the~~
11 ~~department, furnish the department with the final accounting~~
12 ~~of such personal representative. If the decedent died~~
13 ~~testate, the personal representative shall likewise furnish~~
14 ~~the department with a certified copy of the last will of the~~
15 ~~decedent. If the decedent died intestate, the personal~~
16 ~~representative shall provide the department with a sworn~~
17 ~~statement setting forth the names, ages, and residences of~~
18 ~~the heirs at law of decedent. In all cases, the personal~~
19 ~~representative shall set forth the proportion of the entire~~
20 ~~estate inherited by or devised to each of said persons, and~~
21 ~~the relation, if any, which each devisee, heir, or~~
22 ~~transferee sustained to the decedent or person from whom the~~
23 ~~transfer was made. The information so provided shall not be~~
24 ~~binding upon the department in case it believes the same to~~
25 ~~be erroneous or untrue. From the information so furnished,~~

1 the department under [section 12 of this act] and such other
 2 information as it may be able to obtain with reference
 3 thereto, the department shall, with reasonable diligence,
 4 proceed to ascertain and determine the amount of Montana
 5 estate tax, if any, ~~due under the provisions of the~~
 6 ~~inheritance tax laws of the state of Montana~~, and a copy of
 7 such determination shall be mailed to the personal
 8 representative and to the clerk of the appropriate district
 9 court. If no tax is due, the department shall likewise so
 10 inform the clerk of district court and the personal
 11 representative. Should the personal representative or any
 12 person affected by the determination of ~~inheritance~~ the tax
 13 feel aggrieved by the department's determination, he may,
 14 within sixty (60) days after the filing of the copy of such
 15 determination with the clerk of district court, appeal the
 16 determination to the appropriate district court, by serving
 17 upon the department his objections to such determination and
 18 by filing such notice, after so serving the same, in the
 19 office of the clerk of such court. The court shall set a day
 20 for hearing such appeal upon ten (10) days' notice to all
 21 interested parties, and at the time and place set shall hear
 22 the appeal, upon all papers and records which may be
 23 properly presented before it, and shall as soon as possible
 24 thereafter issue its order determining the amount of ~~such~~
 25 ~~inheritance~~ the tax, if it finds a tax to be due."

1 Section 42. Section 91-4469, R.C.M. 1947, is amended
 2 to read as follows:

3 "91-4469. ~~Inheritance tax~~ joint Joint tenancies --
 4 and life estates -- absence of a personal representative.

5 (1) If a decedent dies, leaving no property which requires
 6 the appointment of a personal representative, but:

7 (a) was the owner of a life estate which terminated by
 8 reason of the death of such person; or

9 (b) was the owner with another or others as a joint
 10 tenant with right of survivorship, and not as a tenant in
 11 common; or

12 (c) was the owner of any other interest in property
 13 requiring the determination of ~~inheritance~~ Montana estate
 14 tax by reason of the death of such person; then any such
 15 remainderman, surviving joint tenant, or other interested
 16 party shall file with the department of revenue evidence of
 17 the instruments by which each such life estate, joint
 18 tenancy, or other interest was created requiring
 19 determination of ~~inheritance~~ estate tax, together with a
 20 verified application, in form prescribed by the department
 21 containing the following information:

22 (i) Name, address and interest of applicant.

23 (ii) Name, date of death, age, and domicile of decedent
 24 at death.

25 (iii) Description and fair market value of decedent's

1 interest at date of death in property requiring the
 2 determination of ~~inheritance~~ Montana estate tax including
 3 the name, address, age, and relationship to decedent of all
 4 remaindermen, surviving joint tenants, possessors, or such
 5 other information as shall be required for the determination
 6 of ~~inheritance~~ the tax by reason of decedent's death;
 7 including an appraisal or other proof of fair market value
 8 if required by the department of revenue.

9 (iv) Statement that decedent died leaving no property
 10 requiring appointment of a personal representative.

11 (v) A statement of ~~inheritance~~ the estate tax due to
 12 the state of Montana by reason of decedent's death.

13 (vi) The information prescribed in [section 12 of this
 14 act].

15 (2) Upon receipt of the original application, the
 16 department of revenue shall:

17 (a) endorse on each original the word "filed" and the
 18 month, day and year of the filing thereof;

19 (b) upon consideration of the application and
 20 determination of the ~~inheritance~~ tax by the department of
 21 revenue, issue a certificate showing the ~~inheritance~~ tax, if
 22 any, due the state of Montana by reason of the death of the
 23 decedent;

24 (c) affix one of the certificates to the original
 25 application on file with the department of revenue, and

1 affix one of such certificates to a certified copy of the
 2 original of the application and mail the same to the
 3 applicant or his attorney.

4 (3) The ~~inheritance~~ tax as determined shall be paid to
 5 the county treasurer for transmittal to the state treasurer
 6 as provided by law. Upon payment of the tax as determined,
 7 the county treasurer shall receipt therefor upon the
 8 certificate of the department of revenue and shall issue and
 9 distribute duplicates thereof as required by law.

10 (4) If an interest in real property is involved, a
 11 certified copy of the original application together with (a)
 12 the certificate referred to in subsection (2) (c) above, and
 13 (b), the receipt, if any, referred to in subsection (3)
 14 above, shall be filed with the clerk and recorder of the
 15 county in which the real property, or any part thereof, is
 16 situate. Additional copies of the application and
 17 attachments certified by the department of revenue shall be
 18 filed in each county within the state of Montana wherein
 19 real property involved is situate.

20 (5) The certificate with the receipt, if any, provided
 21 for in subsection (3) above, shall constitute a release of
 22 any lien, for ~~inheritance~~ estate taxes due the state of
 23 Montana by reason of the death of the decedent and shall
 24 constitute prima facie evidence of the termination of such
 25 joint tenancy or other transfer of ownership.

1 (6) If disputes exist as to tax computation, they
2 shall be resolved as provided under the laws applicable to
3 the determination of ~~inheritance~~ Montana estate taxes in
4 estates."

5 Section 43. Section 91A-2-405, R.C.M. 1947, is amended
6 to read as follows:

7 "91A-2-405. Allowances and exempt property included in
8 inheritance tax exemption. The allowances and exempt
9 property provided for in sections 91A-2-401 through
10 91A-2-403 are to be included in computing the exemptions
11 from ~~inheritance Montana estate tax provided for in section~~
12 ~~91-4444~~ and are not in addition to such ~~inheritance tax~~
13 exemptions."

14 Section 44. Section 91A-3-706, R.C.M. 1947, is amended
15 to read as follows:

16 "91A-3-706. Duty of personal representative;
17 supplementary inventory and appraisal; employment of
18 appraiser; copy to department of revenue. Within three (3)
19 months after his appointment, a personal representative, who
20 is not a special administrator or a successor to another
21 representative who has previously discharged this duty,
22 shall prepare and file or mail an inventory, which inventory
23 shall include listing of all property which the decedent
24 owned, had an interest in or control over, individually, in
25 common, or jointly, or otherwise had at the time of his

1 death; or had possessory or dispository rights over at the
2 time of his death or had disposed of for less than its fair
3 market value within three (3) years of his death; or which
4 was affected by his death for the purpose of ~~inheritance or~~
5 estate taxes. The inventory shall include a statement of the
6 full and true value of the decedent's interest in every item
7 listed in such inventory. In this connection the personal
8 representative shall appoint one (1) or more qualified and
9 disinterested persons to assist him in ascertaining the fair
10 market value as of the date of the decedent's death of all
11 assets included in the estate. Different persons may be
12 employed to appraise different kinds of assets included in
13 the estate. The names and addresses of any appraiser shall
14 be indicated on the inventory with the item or items he
15 appraised.

16 The personal representative shall send a copy of the
17 inventory to interested persons who request it, or he may
18 file the original of the inventory with the court. In any
19 event, a copy of the inventory and statement of value shall
20 be mailed to the department of revenue."

21 Section 45. Section 91A-3-719, R.C.M. 1947, is amended
22 to read as follows:

23 "91A-3-719. Compensation of personal representative.
24 (1) A personal representative is entitled to reasonable
25 compensation for his services. Such compensation shall not

1 exceed three percent (3%) of the first forty thousand
 2 dollars (\$40,000) of the value of the estate as reported for
 3 federal estate tax ~~or state inheritance tax~~ purposes,
 4 ~~whichever is larger~~ and two percent (2%) of the value of the
 5 estate in excess of forty thousand dollars (\$40,000) as
 6 reported for federal estate tax ~~or state inheritance tax~~
 7 purposes, ~~whichever is larger~~.

8 (2) In proceedings conducted for the termination of
 9 joint tenancies, the compensation of the personal
 10 representative shall not exceed two percent (2%) of the
 11 interest passing.

12 (3) In proceedings conducted for the termination of a
 13 life estate, the compensation allowed the personal
 14 representative shall not exceed two percent (2%) of the
 15 value of the life estate if it is terminated in connection
 16 with a probate or joint tenancy termination. If a life
 17 estate is terminated separately, the personal
 18 representative's compensation shall not exceed two percent
 19 (2%) of the value of the estate, except that it shall not be
 20 less than one hundred dollars (\$100).

21 (4) If there is more than one personal representative,
 22 only one compensation is allowed.

23 (5) The court may allow additional compensation for
 24 extraordinary services. Such additional compensation shall
 25 not be greater than the amount which is allowed for the

1 original compensation.

2 (6) If the will provides for the compensation of the
 3 personal representative and there is no contract with the
 4 decedent regarding compensation, the personal representative
 5 may renounce the provision before qualifying and be entitled
 6 to compensation under the terms of this section. A personal
 7 representative also may renounce his right to all or any
 8 part of the compensation. A written renunciation of fee may
 9 be filed with the court."

10 Section 46. Section 91A-3-805, R.C.M. 1947, is amended
 11 to read as follows:

12 "91A-3-805. Classification of claims. (1) If the
 13 applicable assets of the estate are insufficient to pay all
 14 claims in full, the personal representative shall make
 15 payment in the following order:

- 16 (a) costs and expenses of administration;
- 17 (b) reasonable funeral expenses and reasonable and
 18 necessary medical and hospital expenses of the last illness
 19 of the decedent, including compensation of persons attending
 20 him;
- 21 (c) federal ~~estate~~ and Montana state estate ~~and~~
 22 ~~inheritance~~ taxes;
- 23 (d) debts with preference under federal and Montana
 24 law;
- 25 (e) other federal and Montana state taxes;

1 (f) all other claims.

2 (2) No preference shall be given in the payment of any
3 claim over any other claim of the same class, and a claim
4 due and payable shall not be entitled to a preference over
5 claims not due."

6 Section 47. Section 91A-3-1004, R.C.M. 1947, is
7 amended to read as follows:

8 "91A-3-1004. Department of revenue certificate showing
9 taxes paid or receipt of county treasurer -- prerequisite of
10 closing estate. In all probate proceedings under this code
11 before final distribution to successors is made and before
12 any petition is granted under sections 91A-3-1001,
13 91A-3-1002, or 91A-3-1003, there shall have been filed with
14 the clerk a certificate from the department of revenue or a
15 receipt from the county treasurer stating that any
16 ~~inheritance Montana estate~~ tax due on the assets of the
17 estate has been paid. This section shall not prohibit such
18 partial distribution as may become necessary in the course
19 of administration."

20 Section 48. Section 91A-3-1010, R.C.M. 1947, is
21 amended to read as follows:

22 "91A-3-1010. Lien of state on estate property for
23 unpaid ~~inheritance Montana estate~~ taxes. All property which
24 is affected by the death of the decedent and on which
25 ~~inheritance, estate or death~~ taxes are due under the laws of

1 this state is subject to the lien of the state of Montana
2 until such taxes have been paid. This lien follows all
3 property sold in the course of administration or distributed
4 under this code until such time as all ~~inheritance Montana~~
5 ~~estate~~ taxes have been paid and a receipt showing payment
6 thereof has been filed with the clerk of court, subject to
7 applicable statutes of limitations on state ~~inheritance~~ tax
8 liens. The department of revenue may issue a consent to
9 transfer any real or personal property in the estate of a
10 decedent free of the lien for unpaid ~~inheritance~~ taxes upon
11 proper application and under such rules and regulations as
12 the department shall prescribe."

13 Section 49. Section 91A-3-1204, R.C.M. 1947, is
14 amended to read as follows:

15 "91A-3-1204. Small estates; closing by sworn statement
16 of personal representative. (1) Unless prohibited by order
17 of the court and except for estates being administered by
18 supervised personal representatives, a personal
19 representative may close an estate administered under the
20 summary procedures of section 91A-3-1201 by filing with the
21 court, at any time after disbursement and distribution of
22 the estate, a verified statement stating that:

23 (a) to the best knowledge of the personal
24 representative, the value of the net distributable estate
25 did not exceed ~~one thousand five hundred dollars~~ ~~(\$1,500)~~;

1 ~~or the value of the entire estate, less liens and~~
 2 ~~encumbrances, did not exceed homestead allowance, exempt~~
 3 ~~property, family allowance, costs and expenses of~~
 4 ~~administration, reasonable funeral expenses, and reasonable,~~
 5 ~~necessary medical and hospital expenses of the last illness~~
 6 ~~of the decedent;~~

7 (b) the personal representative has fully administered
 8 the estate ~~by payment of inheritance taxes and~~ by disbursing
 9 and distributing it to the persons entitled thereto; and

10 (c) the personal representative has sent a copy of the
 11 closing statement to all distributees of the estate and to
 12 all creditors or other claimants of whom he is aware whose
 13 claims are neither paid nor barred and has furnished a full
 14 account in writing of his administration to the distributees
 15 whose interests are affected.

16 (2) If no actions or proceedings involving the
 17 personal representative are pending in the court one (1)
 18 year after the closing statement is filed, the appointment
 19 of the personal representative terminates.

20 (3) A closing statement filed under this section has
 21 the same effect as one filed under section 91A-3-1005."

22 Section 50. Section 91A-4-202, R.C.M. 1947, is amended
 23 to read as follows:

24 "91A-4-202. Determination of ~~inheritance~~ Montana
 25 estate taxes; certificate of department of revenue showing

1 taxes paid, waived or bond posted. (1) The department of
 2 revenue shall determine what ~~inheritance~~ Montana estate tax,
 3 if any, is owing on the property of the nonresident decedent
 4 located in this state and shall send notice of the tax owing
 5 to the domiciliary foreign personal representative and to
 6 the clerk of court.

7 (2) Upon payment of the ~~inheritance~~ Montana estate tax
 8 due, or if no tax is owing, the department of revenue shall
 9 issue a certificate to the domiciliary foreign personal
 10 representative indicating that ~~inheritance taxes~~ the Montana
 11 estate tax either ~~are~~ is not owing or ~~have~~ has been paid and
 12 shall send a copy of the certificate to the clerk of court.

13 (3) The department may issue an order waiving
 14 ~~inheritance~~ Montana estate taxes on a particular item of
 15 property under such terms and circumstances as the
 16 department shall determine.

17 (4) Upon the posting by the domiciliary foreign
 18 personal representative of satisfactory bond, the department
 19 may issue a certificate indicating that bond has been posted
 20 sufficient to secure any ~~inheritance~~ Montana estate tax due
 21 on the in-state property of the nonresident decedent. This
 22 certificate may be issued at any time after the filing of
 23 the inventory with the clerk of court."

24 Section 51. Repealer. Sections 91-4401 through
 25 91-4418, 91-4414.1, 91-4420, 91-4422, 91-4427 through

LC 0849/01

1 91-4430, 91-4432 through 91-4439, 91-4444, 91-4453, 91-4454,
2 91-4456 through 91-4458, and 91A-3-1205, R.C.H. 1947, are
3 repealed.

-End-

STATE OF MONTANA

REQUEST NO. 474-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 423 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

This bill replaces the Montana Inheritance Tax with an Estate Tax based on a percentage of the Federal Estate Tax.

ASSUMPTIONS

There is no way of estimating, with precision, what effect the new Federal Tax Reform Act will have on inheritance tax collections in Montana. It is felt, however, that the impact of this particular bill would be to reduce the inheritance tax collections in Montana by 50%. This would mean a reduction of approximately \$3.5 million in inheritance tax collections once the act is in effect. All of the inheritance tax collections go into the general fund.

PREPARED BY DEPARTMENT OF REVENUE

Richard L. Frey
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77