HOUSE BILL 510

IN THE HOUSE

February 1, 1979

Introduced and referred to Committee on Taxation.

House BILL NO. 510

INTRODUCED BY Huennekens Sivertsen Vincent

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE INHERITANCE LAWS TO ALLOW AGRICULTURAL OR FAMILY BUSINESS REAL PROPERTY TRANSFERRED TO FAMILY MEMBERS TO BE VALUED AT PRODUCTIVE CAPACITY; PROVIDING CONDITIONS FOR QUALIFICATION; PROVIDING FOR AN ADDITIONAL TAX IF QUALIFIED REAL PROPERTY IS DISPOSED OF OR QUALIFIED USE CEASES WITHIN CERTAIN TIME LIMITS; AMENDING SECTION 72-16-308, MCA."

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

Section 1. Section 72-16-308, MCA, is amended to read:

"72-16-308. Tax to be on clear market value -- deductions allowed in determining value -- when productive capacity value used. (1) The tax so imposed shall be upon the clear market value of such property passing by any such transfer to each person, institution, association, corporation, or body politic at the rates hereinafter prescribed and only upon the excess of the exemption hereinafter granted to such person, institution, association, corporation, or body politic.

(2) 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:

(i) the commissions and fees of executors and administrators and their attorneys actually allowed and paid;

(ii) attorneys' fees, 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 any and all other proceedings instituted for the determination of inheritance tax; and

(e) federal estate taxes due or paid.

(3) The productive capacity value as determined by [section 6] for transfers of agricultural or family business real property meeting the qualifications of [section 2] is used in determining in subsection (2) the clear market value of the property passing by any such transfer."

NEW SECTION. Section 2. Qualification for valuation at productive capacity. (1) Real property is qualified real property valued at its productive capacity if it meets the qualifications of subsection (2) and if at least 25% of the



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adjusted value of the decedent's estate consists of the adjusted value of real property which meets the following tests:

(a) the real property was acquired from or passed from the decedent to a qualified heir of the decedent; and

(b) during the 8-year period ending on the date of the decedent's death, there have been periods aggregating 5 years or more during which:

(i) the real property was owned by the decedent or a member of the decedent's immediate family and devoted to an agricultural use or used in a trade or business; and

(ii) there was material participation by the decedent or a member of the decedent's immediate family in the operation of the farm or other business.

(2) For real property to be qualified for valuation at productive capacity, it must:

(a) be located in the United States;

(b) be devoted to an agricultural use or used in a trade or business at the time of the decedent's death;

(c) be acquired from or passed from the decedent to a qualified heir of the decedent; and

(d) be property for which an election was made under [section 4].

NEW SECTION. Section 3. Definitions. As used in [sections 2 through 9], the following definitions apply:





(1) "Adjusted value" means:

(a) in the case of the decedent's estate, the value of the gross estate for federal estate tax purposes determined without productive capacity valuation of real property; or

(b) in the case of real property, the fair market value.

(2) "Agricultural use" means any of the uses described in 15-7-202.

(3) "Decedent's immediate family" includes decedent's spouse, brother or sister, lineal descendant, ancestor, adopted child, or any child for whom the decedent stood in the mutually acknowledged relation of parent for at least 10 years before the decedent's death, beginning before or at the child's 15th birthday.

(4) "Material participation" means:

(a) in the case of real property devoted to agricultural purposes, active involvement in the management and cultivation of the land, excluding leasing of the land; or

(b) in the case of real property used in a trade or business other than the business of farming, active involvement in management and operation of the trade or business.

(5) "Qualified heir" means the decedent's spouse, brother or sister, lineal descendant, adopted child, or any

child for whom the decedent stood in the mutually acknowledged relation of parent for at least 10 years before the decedent's death, beginning before or at the child's 15th birthday.

NEW SECTION. Section 4. Procedure for filing election for valuation at productive capacity. An heir, or his personal representative if the heir is a minor, who elects to apply for valuation at productive capacity shall file with the department of revenue when he files the information required in 72-16-401:

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

(2) a written statement in a form prescribed by the department agreeing to personal liability for additional taxes under the conditions of [section 7] in the amount determined by [section 8], and a special lien on the qualified real property as required in [section 9];

(3) a statement of the market value of the qualified real property on the date of the decedent's death; and

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

NEW SECTION. Section 5. Determination of the adjusted tax difference. The adjusted tax difference is the excess of what would have been the heir's tax liability if the real property had not qualified for productive capacity valuation





over the heir's tax liability when the qualified real property is valued at productive capacity.

NEW SECTION. Section 6. Method of valuing qualified real property at productive capacity. (1) Qualified real property devoted to agricultural use is valued for inheritance tax purposes at its assessed value as shown on the county assessor's tax rolls.

(2) Qualified real property used in a trade or business other than the business of farming is valued for inheritance tax purposes taking the following factors into consideration:

(a) the capitalization of income which the real property can be expected to yield for family business purposes over a reasonable period of time;

(b) the capitalization of the fair rental value of the real property for family business purposes;

(c) comparable sales of closely held business real property in the same geographical area but far enough removed from a metropolitan or resort area so that nonclosely held business use is not a significant factor in the sales price; and

(d) any other factor which fairly values the family business value of the property.

NEW SECTION. Section 7. Imposition of additional tax. (1) The heir to real property valued at productive capacity



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for inheritance tax purposes is subject to an additional inheritance tax when an interest in the real property ceases to be qualified, upon the occurrence of one or more of the following before the death of the qualified heir:

(a) before the end of the 8-year period after the decedent's death, there are periods aggregating 3 years or more in which there is no material participation in the operation of the farm or other business by the qualified heir or his immediate family;

(b) within 15 years after the decedent's death, the qualified heir disposes of any interest in the qualified real property, other than by a disposition to a member of his immediate family; or

(c) within 15 years after the decedent's death, all or part of the qualified agricultural real property ceases to be devoted to agricultural use or all or part of the qualified family business real property ceases to be used in the qualifying trade or business.

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

NEW SECTION. Section 8. Amount of additional tax. (1) The amount of the additional tax due is the percentage of the adjusted tax difference that the value of the interest that is no longer qualified bears to the value of the qualified real property originally contained in the heir's





distributive share. The fair market value of the disqualified interest and the qualified real property on the date of the decedent's death is used in this calculation.

(2) The amount of the special lien against the qualified real property is reduced by the amount of additional tax paid.

NEW SECTION. Section 9. Special lien on qualified real property. In addition to the lien imposed in 72-16-432, a lien for the amount of the adjusted tax difference as reduced by previous payments is imposed on an heir's qualified real property until the first of the following events occurs:

(1) 15 years pass after the death of the decedent;

(2) the entire amount of the adjusted tax difference has been paid; or

(3) the qualified heir dies.

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STATE OF MONTANA

REQUEST NO. 207-79

FISCAL NOTE

*Form BD-15*

In compliance with a written request received ~~January~~ FEB 2, 1979, there is hereby submitted a Fiscal Note for House Bill 510 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 revises inheritance laws to allow agricultural or family business real property transferred to family members to be valued at productive capacity; providing conditions for qualification; providing for an additional tax if qualified real property is disposed of or qualified use ceases within certain time limits; amending section 72-16-308, MCA.

FISCAL IMPACT

There are 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 and would actually use the provisions of this proposal. Therefore, the fiscal impact is impossible to estimate.

(Prepared by the Department of Revenue)

Richard L. [illegible] for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/7/79