

HOUSE BILL 814

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Taxation.
March 24, 1979	Committee recommend bill, as amended, do not pass. Printed and placed on members' desks.
March 26, 1979	Second reading, pass consider- ation.
March 27, 1979	Second reading, do not pass.

1 *House* BILL NO. *814*
 2 INTRODUCED BY *Liam Roth* ERNST, *Blington*
 3 *Burr* *Knapp* *C. Smith* *Ward*
 4 *Wynick* *Wynick* *Underdal* *Thompson* *Davis*
 A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE MONTANA

5 INHERITANCE AND ESTATE TAX FOR DECEDENTS WHO DIE AFTER
 6 DECEMBER 31, 1978; AMENDING SECTIONS 72-3-607, 72-3-609,
 7 72-3-1006, 72-4-303, 72-4-304, 72-4-306, 72-16-218,
 8 72-16-301 THROUGH 72-16-303, 72-16-401, 72-16-702,
 9 72-16-805, 72-16-904, AND 72-16-906, MCA; PROVIDING AN
 10 IMMEDIATE EFFECTIVE DATE."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. Section 1. Purpose. The purpose of [this
 14 act] is to abolish the Montana inheritance and estate tax
 15 for decedents who die after December 31, 1978. [This act]
 16 does not affect the taxation of a transfer of property by
 17 reason of the death of a decedent before January 1, 1979.

18 Section 2. Section 72-16-301, MCA, is amended to read:

19 "72-16-301. Taxable transfers generally --
 20 contemplation of death -- tax abolished for decedents who
 21 die after December 31, 1978. (1) A tax shall be and is
 22 hereby imposed upon any transfer of property, real,
 23 personal, or mixed or any interest therein or income
 24 therefrom in trust or otherwise to any person, association,
 25 or corporation in the following cases, except as hereinafter

1 provided:

2 ~~(1)~~ when the transfer is by will or by intestate
 3 laws of this state from any person dying possessed of the
 4 property while a resident of the state;

5 ~~(2)~~ when a transfer is by will or intestate law of
 6 property within the state or within its jurisdiction and the
 7 decedent was a nonresident of the state at the time of his
 8 death;

9 ~~(3)~~ when the transfer is of property made by a
 10 resident or by a nonresident when such nonresident's
 11 property is within the state or within its jurisdiction by
 12 deed, grant, bargain, sale, or gift made in contemplation of
 13 the death of the grantor, vendor, or donor or intended to
 14 take effect in possession or enjoyment at or after such
 15 death. Every transfer by deed, grant, bargain, sale, or gift
 16 made within 3 years prior to the death of the grantor,
 17 vendor, or donor of a material part of his estate or in the
 18 nature of a final disposition or distribution thereof and
 19 without a fair consideration in money or money's worth
 20 shall, unless shown to the contrary, be deemed to have been
 21 made in contemplation of death within the meaning of this
 22 section, but no such transfer by deed, grant, bargain, sale,
 23 or gift made before such 3-year period shall be treated as
 24 having been made in contemplation of death. However,
 25 nothing herein contained shall be deemed to have modified,

1 amended, or repealed the provisions of 72-16-306.

2 "(2) This section does not apply to transfers described
 3 in (1) of this section of a decedent who dies after December
 4 31, 1978."

5 Section 3. Section 72-16-302, MCA, is amended to read:

6 "72-16-302. Transfer under power of appointment.
 7 Whenever any person or corporation shall exercise a power of
 8 appointment derived from any disposition of property made
 9 either before ~~or after March 5, 1923~~ January 1, 1979, such
 10 appointment when made shall be deemed a transfer taxable
 11 under the provisions of parts 1 through 8, in the same
 12 manner as though the property to which such appointment
 13 relates belonged absolutely to the donee of such power and
 14 had been bequeathed or devised by such donee by will.
 15 Whenever any person or corporation possessing such a power
 16 of appointment so derived shall omit or fail to exercise the
 17 same within the time provided therefor, in whole or in part,
 18 a transfer taxable under the provisions of parts 1 through 8
 19 shall be deemed to take place to the extent of such omission
 20 or failure, in the same manner as though the persons or
 21 corporations thereby becoming entitled to the possession or
 22 enjoyment of the property to which such power related had
 23 succeeded thereto by a will of the donee of the power
 24 failing to exercise such power, taking effect at the time of
 25 such omission or failure."

1 Section 4. Section 72-16-303, MCA, is amended to read:

2 "72-16-303. Joint estates -- transfer by right of
 3 survivorship taxable for pre-1979 decedents. (1) Whenever
 4 Except as provided in subsection (4), whenever any property,
 5 however acquired, real or personal, tangible or intangible,
 6 including government bonds of the United States, is
 7 inscribed in co-ownership form, held by two or more persons
 8 in joint tenancy or as tenants by the entirety, or is
 9 deposited in any bank or other depository in the joint names
 10 of two or more persons and payable to the survivor or
 11 survivors of them upon the death of one of them, the right
 12 of the survivor or survivors to the immediate possession or
 13 ownership is a taxable transfer.

14 (2) The tax is upon the transfer of decedent's
 15 interest, one-half or other proper fraction, as evidenced by
 16 the written instrument creating the same, as though
 17 property to which the transfer relates belonged to the joint
 18 tenants, tenants by the entirety, joint depositors, holders
 19 in co-ownership form, or persons, as tenants in common and
 20 had been, for inheritance tax purposes, bequeathed or
 21 devised to the survivor or survivors by will, except such
 22 part thereof as may be shown to have originally belonged to
 23 the survivor and never to have belonged to the decedent when
 24 the surviving joint tenant is a spouse of the decedent. In
 25 all other cases the full value of the property shall be

1 taxable, except such portion thereof that originally
2 belonged to the survivor and as to which the decedent had
3 made no contribution; if the decedent had made a
4 contribution to the ownership of such property, the amount
5 of such contribution shall be taxable.

6 (3) This section shall not be construed to repeal or
7 modify the provisions of 12-16-301(3).

8 ~~(4) This section does not apply to a transfer by right~~
9 ~~of survivorship of the interest of a decedent who dies after~~
10 ~~December 31, 1978."~~

11 Section 5. Section 72-3-607, MCA, is amended to read:

12 "72-3-607. Inventory -- appraisal -- copy to
13 department of revenue. (1) Within 3 months after his
14 appointment, a personal representative, who is not a special
15 administrator or a successor to another representative who
16 has previously discharged this duty, shall prepare and file
17 or mail an inventory, which inventory shall include listing
18 of all property which:

19 (a) the decedent owned, had an interest in or control
20 over, individually, in common, or jointly, or otherwise had
21 at the time of his death;

22 (b) the decedent had possessory or dispositive rights
23 over at the time of his death or had disposed of for less
24 than its fair market value within 3 years of his death; or

25 (c) was affected by the decedent's death for the

1 purpose of inheritance or estate taxes.

2 (2) The inventory shall include a statement of the
3 full and true value of the decedent's interest in every item
4 listed in such inventory. In this connection the personal
5 representative shall appoint one or more qualified and
6 disinterested persons to assist him in ascertaining the fair
7 market value as of the date of the decedent's death of all
8 assets included in the estate. Different persons may be
9 employed to appraise different kinds of assets included in
10 the estate. The names and addresses of any appraiser shall
11 be indicated on the inventory with the item or items he
12 appraised.

13 (3) The personal representative shall send a copy of
14 the inventory to interested persons who request it, or he
15 may file the original of the inventory with the court. In
16 any event, a copy of the inventory and statement of value
17 shall ~~must~~ be mailed to the department of revenue for any
18 decedent who died before January 1, 1979."

19 Section 6. Section 72-3-609, MCA, is amended to read:

20 "72-3-609. Supplementary inventory -- copy to
21 department of revenue. If any property not included in the
22 original inventory comes to the knowledge of a personal
23 representative or if the personal representative learns that
24 the value or description indicated in the original inventory
25 for any item is erroneous or misleading, he shall make a

1 supplementary inventory or appraisal showing the market
 2 value as of the date of the decedent's death of the new item
 3 or the revised market value or descriptions and the
 4 appraisers or other data relied upon, if any, and file it
 5 with the court if the original inventory was filed or
 6 furnish copies thereof or information thereof to persons
 7 interested in the new information, ~~and in any case shall if~~
 8 ~~the decedent died before January 1, 1979, the personal~~
 9 ~~representative must~~ mail a copy of ~~it~~ any supplementary
 10 inventory to the department of revenue."

11 Section 7. Section 72-3-1006, MCA, is amended to read:
 12 "72-3-1006. Certificate or receipt showing taxes paid
 13 required to close estate ~~of pre-1979 decedents.~~ (1) In all
 14 probate proceedings under this code ~~involving a decedent who~~
 15 ~~died before January 1, 1979,~~ before final distribution to
 16 successors is made and before any petition is granted under
 17 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, there shall
 18 have been filed with the clerk a certificate from the
 19 department of revenue or a receipt from the county treasurer
 20 stating that any inheritance tax due on the assets of the
 21 estate has been paid.

22 (2) This section shall not prohibit such partial
 23 distribution as may become necessary in the course of
 24 administration."

25 Section 8. Section 72-4-303, MCA, is amended to read:

1 "72-4-303. Filing of letters, bond, inventory, and
 2 affidavit -- copy to department of revenue. (1) The
 3 domiciliary foreign personal representative of the estate of
 4 a nonresident decedent, who wishes to receive payment and
 5 delivery as described in 72-4-306 or to exercise the powers
 6 over assets described in 72-4-301, shall file in duplicate
 7 with a district court in this state in a county in which
 8 property belonging to the decedent is located authenticated
 9 copies of his appointment and of any official bond he has
 10 given, an inventory and appraisal of the property of the
 11 nonresident decedent located in this state, which inventory
 12 shall contain the information prescribed in 72-3-607, and an
 13 affidavit stating:

14 (a) the date of death of the nonresident decedent; and
 15 (b) that no local administration or application or
 16 petition therefor is pending in this state.

17 (2) Upon receiving the information required by
 18 subsection (1), the clerk of court shall issue a certificate
 19 to the domiciliary foreign personal representative
 20 identifying him as having registered with the district court
 21 and stating the name and date of death of the decedent.

22 (3) ~~the~~ if the decedent died before January 1, 1979,
 23 the clerk shall also immediately forward a copy of the
 24 appointment, affidavit, and inventory and appraisal required
 25 by subsection (1) to the department of revenue."

1 Section 9. Section 72-4-304, MCA, is amended to read:
 2 "72-4-304. Determination of inheritance tax for
 3 pre-1979 decedents -- certificate of department of revenue
 4 showing tax paid, waived, or bond posted. (1) ~~The~~ if the
 5 decedent died before January 1, 1979, the department of
 6 revenue shall determine what inheritance tax, if any, is
 7 owing on the property of the nonresident decedent located in
 8 this state and shall send notice of the tax owing to the
 9 domiciliary foreign personal representative and to the clerk
 10 of court.

11 (2) Upon payment of the inheritance tax due or if no
 12 tax is owing, the department of revenue shall issue a
 13 certificate to the domiciliary foreign personal
 14 representative indicating that inheritance taxes either are
 15 not owing or have been paid and shall send a copy of the
 16 certificate to the clerk of court.

17 (3) The department may issue an order waiving
 18 inheritance taxes on a particular item of property under
 19 such terms and circumstances as the department shall
 20 determine.

21 (4) Upon the posting by the domiciliary foreign
 22 personal representative of satisfactory bond, the department
 23 may issue a certificate indicating that bond has been posted
 24 sufficient to secure any inheritance tax due on the in-state
 25 property of the nonresident decedent. This certificate may

1 be issued at any time after the filing of the inventory with
 2 the clerk of court."

3 Section 10. Section 72-4-306, MCA, is amended to read:
 4 "72-4-306. Payment of debt and delivery of property to
 5 foreign representative. At any time after the expiration of
 6 60 days from the death of a nonresident decedent, any person
 7 indebted to the estate of the nonresident decedent or having
 8 possession or control of personal property or of an
 9 instrument evidencing a debt, obligation, stock, or chose in
 10 action belonging to the estate of the nonresident decedent
 11 may pay the debt, deliver the personal property, or the
 12 instrument evidencing the debt, obligation, stock, or chose
 13 in action to the domiciliary foreign personal representative
 14 of the nonresident decedent upon being presented with a
 15 certificate from the clerk of the court for the county where
 16 the domiciliary foreign personal representative has filed
 17 his affidavit, as described in 72-4-303, and if the decedent
 18 died before January 1, 1979, a certificate from the
 19 department of revenue, as described in 72-4-304."

20 Section 11. Section 72-16-218, MCA, is amended to
 21 read:

22 "72-16-218. County clerk to check records against list
 23 -- report to department. (1) The county clerk, upon the
 24 receipt of the list of deaths provided for in 72-16-217,
 25 shall immediately check the records of his county to

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1 determine whether any of the deceased persons whose names
2 appear upon such list ~~and who died before January 1, 1979,~~
3 may have made any transfer of property or of property rights
4 within such county during the 3 years preceding the death of
5 such person or whether such deceased person may have been
6 possessed of any property in such county at the time of his
7 death.

8 (2) If he shall find that any such deceased person may
9 have made any such transfers of property or of property
10 rights or have died possessed of such, he shall immediately
11 transmit such information to the department of revenue."

12 Section 12. Section 72-16-401, MCA, is amended to
13 read:

14 "72-16-401. Application for determination of tax by
15 department ~~for pre-1979 decedents~~ -- information, documents
16 to be furnished to department. (1) ~~The~~ For a decedent who
17 died before January 1, 1979, the personal representative or,
18 should the personal representative fail to do so, any
19 interested person shall make application to the department
20 of revenue for determination of any tax due upon the estate
21 of a decedent.

22 (2) The applicant shall furnish to the department the
23 inventory and appraisal required by 72-3-607 and any
24 supplemental inventory under 72-3-609, together with a
25 statement under oath or affirmation of any property owned by

1 the decedent at the time of his death situated outside of
2 this state and without its jurisdiction. The applicant
3 shall, upon request of the department, furnish the
4 department with the final accounting of such personal
5 representative. If the decedent died testate, the personal
6 representative shall likewise furnish the department with a
7 certified copy of the last will of the decedent. If the
8 decedent died intestate, the personal representative shall
9 provide the department with a sworn statement setting forth
10 the names, ages, and residences of the heirs at law of
11 decedent. In all cases, the personal representative shall
12 set forth the proportion of the entire estate inherited by
13 or devised to each of said persons and the relation, if any,
14 which each devisee, heir, or transferee sustained to the
15 decedent or person from whom the transfer was made.

16 (3) The information so provided shall not be binding
17 upon the department in case it believes the same to be
18 erroneous or untrue."

19 Section 13. Section 72-16-702, MCA, is amended to
20 read:

21 "72-16-702. Duties of holder of securities or assets
22 of ~~pre-1979~~ nonresident decedent -- prerequisites to
23 transfer -- exception. (1) No safe deposit company, bank, or
24 other institution or person or persons holding securities or
25 assets of a nonresident decedent who died before January 1,

1 1979, or any corporation organized under the laws of this
 2 state in which a nonresident decedent who died before
 3 January 1, 1979, held stock, bonds, mortgages, or other
 4 securities at his decease shall deliver or transfer the same
 5 to the executors, administrators, or legal representatives
 6 of said decedent or upon their order or request unless
 7 notice of the time and place of such intended transfer be
 8 served upon the department of revenue at least 10 days prior
 9 to the transfer; nor shall any such safe deposit company,
 10 bank, or other institution or person or persons or any
 11 corporation deliver or transfer any securities or assets of
 12 the estate of a nonresident decedent without retaining a
 13 sufficient portion or amount thereof to pay any tax which
 14 may thereafter be assessed on account of the transfer of
 15 such securities or assets under the provisions of the
 16 inheritance tax laws, without an order from the proper court
 17 authorizing such transfer; and it shall be lawful for the
 18 department, personally or by representative, to examine said
 19 securities or assets at any time before such delivery or
 20 transfer.

21 (2) Failure to serve such notice or to allow such
 22 examination or to retain a sufficient portion or amount to
 23 pay such tax as herein provided shall render said safe
 24 deposit company, trust company, bank, or other institution
 25 or person or persons or such corporation liable to the

1 payment of the tax due upon said securities or assets in
 2 pursuance of the provisions of the inheritance tax laws.

3 (3) The department may issue a certificate authorizing
 4 the transfer of any such stock, securities, or assets
 5 whenever it appears to the satisfaction of the department
 6 that no tax is due thereon.

7 (4) The foregoing provisions shall not apply to shares
 8 of stock in any Montana corporation held by a nonresident of
 9 Montana at the time of his death whose death occurred on or
 10 after January 30, 1945 and who was at the time of his death
 11 domiciled in any other district or state of the United
 12 States, provided reciprocal rights are granted by such
 13 district or state of domicile similar to 72-16-801, and in
 14 such event this section shall not apply to the transfer of
 15 stocks, bonds, mortgages, or other securities exempt from
 16 taxation under the provisions of 72-16-801, and a Montana
 17 corporation or its agent may transfer stocks, bonds,
 18 mortgages, and other securities without any liability for
 19 the tax imposed under the provisions of the inheritance tax
 20 laws where there are reciprocal rights as set forth in
 21 72-16-801, and in such event no application for consent to
 22 transfer such stock need be made to the department, and the
 23 corporation or its duly authorized transfer agent may
 24 transfer such shares of stock upon its books without any
 25 such application or consent to transfer."

1 Section 14. Section 72-16-805, MCA, is amended to
2 read:

3 "72-16-805. Procedure of department when application
4 not made. (1) Whenever any nonresident decedent ~~who died~~
5 ~~before January 1, 1979,~~ leaving no estate requiring
6 administration in this state ~~shall leave left~~ any stocks,
7 bonds, mortgages, or other securities or other personal
8 property within the state or within the jurisdiction thereof
9 and no personal representative, trustee, heir, devisee, or
10 legatee of such nonresident decedent has made application to
11 the department of revenue for the determination as to
12 whether there is any tax due for the transfer thereof and
13 the amount of such tax, if any, the department, upon such
14 matter being called to its attention, shall make an order
15 and cause a copy thereof to be served upon the personal
16 representative, trustee, heirs, devisees, or legatees of
17 such nonresident decedent ordering and directing that a
18 statement and returns, under oath, containing the statements
19 and information prescribed in 72-16-802 be filed with such
20 department within 60 days from the date of such order or
21 within such further time as the department may grant
22 therefor.

23 (2) If such statement is not filed with the department
24 within such time, the department may then procure such
25 information in any manner it may deem advisable.

1 (3) Upon the filing of such statement or the procurin
2 of such information by the department in the event of a
3 failure to file the same in compliance with such order, the
4 department shall proceed in the same manner as prescribed by
5 72-16-803 and all provisions of 72-16-804 with reference to
6 hearings and appeals shall be applicable thereto."

7 Section 15. Section 72-16-904, MCA, is amended to
8 read:

9 "72-16-904. Estate tax imposed. (1) In addition to the
10 inheritance taxes hereinabove imposed, an estate tax is
11 hereby imposed upon the transfer of the estate of every
12 decedent leaving an estate which is subject to the federal
13 estate tax imposed by the United States of America under the
14 applicable provisions of the Internal Revenue Code and which
15 has, in whole or in part, a taxable situs in this state.

16 ~~(2) This section does not apply to the transfer of an~~
17 ~~estate of a decedent who dies after December 31, 1978."~~

18 Section 16. Section 72-16-906, MCA, is amended to
19 read:

20 "72-16-906. Required filings. It shall be the duty of
21 the personal representative of the estate of any decedent
22 ~~who died before January 1, 1979, and~~ whose estate may be
23 subject to the payment of a United States estate tax to file
24 duplicates of the United States estate tax returns with the
25 district court of the county in which such estate is being

1 probated and with the department of revenue. He shall also
2 file with such court and with the department a certificate
3 or other evidence from the bureau of internal revenue
4 showing the amount of the United States estate tax as
5 computed by that department."

6 Section 17. Effective date. This act is effective on
7 passage and approval.

-End-

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Committee on Taxation

Objection Raised to
Adverse Committee Report

HOUSE BILL NO. 814

INTRODUCED BY LIEN, ROTH, ERNST, BENGTSON,
BURNETT, KROPP, C. SMITH, WOOD, MYRICK,
STAIGMILLER, UNDERDAL, GRAHAM, DOVER

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE MONTANA
INHERITANCE AND--ESTATE TAX FOR DECEDENTS WHO DIE AFTER
DECEMBER 31, 1978 1980; AMENDING SECTIONS 72-3-607,
72-3-609, 72-3-1006, 72-4-303, 72-4-304, 72-4-306,
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72-16-702, AND 72-16-805--72-16-904--AND-72-16-906, MCA;
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Purpose. The purpose of [this
act] is to abolish the Montana inheritance and estate tax
for decedents who die after December 31, 1978 1980. [This
act] does not affect the taxation of a transfer of property
by reason of the death of a decedent before January 1, 1979
1981.

Section 2. Section 72-16-301, MCA, is amended to read:
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hereby imposed upon any transfer of property, real,

personal, or mixed or any interest therein or income
therefrom in trust or otherwise to any person, association,
or corporation in the following cases, except as hereinafter
provided:

~~(1)(a)~~ when the transfer is by will or by intestate
laws of this state from any person dying possessed of the
property while a resident of the state;

~~(2)(b)~~ when a transfer is by will or intestate law of
property within the state or within its jurisdiction and the
decedent was a nonresident of the state at the time of his
death;

~~(3)(c)~~ when the transfer is of property made by a
resident or by a nonresident when such nonresident's
property is within the state or within its jurisdiction by
deed, grant, bargain, sale, or gift made in contemplation of
the death of the grantor, vendor, or donor or intended to
take effect in possession or enjoyment at or after such
death. Every transfer by deed, grant, bargain, sale, or gift
made within 3 years prior to the death of the grantor,
vendor, or donor of a material part of his estate or in the
nature of a final disposition or distribution thereof and
without a fair consideration in money or money's worth
shall, unless shown to the contrary, be deemed to have been
made in contemplation of death within the meaning of this
section, but no such transfer by deed, grant, bargain, sale,

1 or gift made before such 3-year period shall be treated as
 2 having been made in contemplation of death. However,
 3 nothing herein contained shall be deemed to have modified,
 4 amended, or repealed the provisions of 72-16-306.

5 ~~(2) This section does not apply to transfers described~~
 6 ~~in (1) of this section of a decedent who dies after December~~
 7 ~~31, 1978 1980."~~

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9 "72-16-302. Transfer under power of appointment.
 10 Whenever any person or corporation shall exercise a power of
 11 appointment derived from any disposition of property made
 12 either before or after March 5, 1923 ~~January 1, 1979~~ 1981,
 13 such appointment when made shall be deemed a transfer
 14 taxable under the provisions of parts 1 through 8, in the
 15 same manner as though the property to which such appointment
 16 relates belonged absolutely to the donee of such power and
 17 had been bequeathed or devised by such donee by will.
 18 Whenever any person or corporation possessing such a power
 19 of appointment so derived shall omit or fail to exercise the
 20 same within the time provided therefor, in whole or in part,
 21 a transfer taxable under the provisions of parts 1 through 8
 22 shall be deemed to take place to the extent of such omission
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 24 corporations thereby becoming entitled to the possession or
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 3 such omission or failure."

4 Section 4. Section 72-16-303, MCA, is amended to read:

5 "72-16-303. Joint estates -- transfer by right of
 6 survivorship taxable ~~for pre-1979 PRE-1981~~ decedents. (1)
 7 Whenever ~~Except as provided in subsection (4), whenever~~ any
 8 property, however acquired, real or personal, tangible or
 9 intangible, including government bonds of the United States,
 10 is inscribed in co-ownership form, held by two or more
 11 persons in joint tenancy or as tenants by the entirety, or
 12 is deposited in any bank or other depository in the joint
 13 names of two or more persons and payable to the survivor or
 14 survivors of them upon the death of one of them, the right
 15 of the survivor or survivors to the immediate possession or
 16 ownership is a taxable transfer.

17 (2) The tax is upon the transfer of decedent's
 18 interest, one-half or other proper fraction, as evidenced by
 19 the written instrument creating the same, as though the
 20 property to which the transfer relates belonged to the joint
 21 tenants, tenants by the entirety, joint depositors, holders
 22 in co-ownership form, or persons, as tenants in common and
 23 had been, for inheritance tax purposes, bequeathed or
 24 devised to the survivor or survivors by will, except such
 25 part thereof as may be shown to have originally belonged to

1 the survivor and never to have belonged to the decedent when
 2 the surviving joint tenant is a spouse of the decedent. In
 3 all other cases the full value of the property shall be
 4 taxable, except such portion thereof that originally
 5 belonged to the survivor and as to which the decedent had
 6 made no contribution; if the decedent had made a
 7 contribution to the ownership of such property, the amount
 8 of such contribution shall be taxable.

9 (3) This section shall not be construed to repeal or
 10 modify the provisions of 72-16-301(3).

11 ~~(4) This section does not apply to a transfer by right~~
 12 ~~of survivorship of the interest of a decedent who dies after~~
 13 ~~December 31, 1979 1980."~~

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15 "72-3-607. Inventory -- appraisal -- copy to
 16 department of revenue. (1) Within 3 months after his
 17 appointment, a personal representative, who is not a special
 18 administrator or a successor to another representative who
 19 has previously discharged this duty, shall prepare and file
 20 or mail an inventory, which inventory shall include listing
 21 of all property which:

22 (a) the decedent owned, had an interest in or control
 23 over, individually, in common, or jointly, or otherwise had
 24 at the time of his death;

25 (b) the decedent had possessory or dispository rights

1 over at the time of his death or had disposed of for less
 2 than its fair market value within 3 years of his death; or
 3 (c) was affected by the decedent's death for the
 4 purpose of inheritance or estate taxes.

5 (2) 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 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 (3) The personal representative shall send a copy of
 17 the inventory to interested persons who request it, or he
 18 may file the original of the inventory with the court. In
 19 any--event--a & copy of the inventory and statement of value
 20 shall ~~must~~ be mailed to the department of revenue ~~for any~~
 21 ~~decedent who died before January 1, 1979 1981."~~

22 Section 6. Section 72-3-609, MCA, is amended to read:

23 "72-3-609. Supplementary inventory -- copy to
 24 department of revenue. If any property not included in the
 25 original inventory comes to the knowledge of a personal

1 representative or if the personal representative learns that
 2 the value or description indicated in the original inventory
 3 for any item is erroneous or misleading, he shall make a
 4 supplementary inventory or appraisal showing the market
 5 value as of the date of the decedent's death of the new item
 6 or the revised market value or descriptions and the
 7 appraisers or other data relied upon, if any, and file it
 8 with the court if the original inventory was filed or
 9 furnish copies thereof or information thereof to persons
 10 interested in the new information, ~~and in any case shall~~ if
 11 the decedent died before January 1, 1979 1981, the personal
 12 representative must mail a copy of ~~it~~ any supplementary
 13 inventory to the department of revenue."

14 Section 7. Section 72-3-1006, MCA, is amended to read:
 15 "72-3-1006. Certificate or receipt showing taxes paid
 16 required to close estate ~~of pre-1979 PRE-1981 decedents.~~ (1)
 17 In all probate proceedings under this code involving a
 18 decedent who died before January 1, 1979 1981, before final
 19 distribution to successors is made and before any petition
 20 is granted under 72-3-1001, 72-3-1002, 72-3-1003, or
 21 72-3-1004, there shall have been filed with the clerk a
 22 certificate from the department of revenue or a receipt from
 23 the county treasurer stating that any inheritance tax due on
 24 the assets of the estate has been paid.

25 (2) This section shall not prohibit such partial

1 distribution as may become necessary in the course of
 2 administration."

3 Section 8. Section 72-4-303, MCA, is amended to read:
 4 "72-4-303. Filing of letters, bond, inventory, and
 5 affidavit -- copy to department of revenue. (1) The
 6 domiciliary foreign personal representative of the estate of
 7 a nonresident decedent, who wishes to receive payment and
 8 delivery as described in 72-4-306 or to exercise the powers
 9 over assets described in 72-4-301, shall file in duplicate
 10 with a district court in this state in a county in which
 11 property belonging to the decedent is located authenticated
 12 copies of his appointment and of any official bond he has
 13 given, an inventory and appraisal of the property of the
 14 nonresident decedent located in this state, which inventory
 15 shall contain the information prescribed in 72-3-607, and an
 16 affidavit stating:

17 (a) the date of death of the nonresident decedent; and
 18 (b) that no local administration or application or
 19 petition therefor is pending in this state.

20 (2) Upon receiving the information required by
 21 subsection (1), the clerk of court shall issue a certificate
 22 to the domiciliary foreign personal representative
 23 identifying him as having registered with the district court
 24 and stating the name and date of death of the decedent.

25 (3) ~~The~~ if the decedent died before January 1, 1979

1 ~~1981, the~~ clerk shall also immediately forward a copy of the
 2 appointment, affidavit, and inventory and appraisal required
 3 by subsection (1) to the department of revenue."

4 Section 9. Section 72-4-304, MCA, is amended to read:

5 "72-4-304. Determination of inheritance tax ~~for~~
 6 ~~pre-1979 PRE-1981 decedents~~ -- certificate of department of
 7 revenue showing tax paid, waived, or bond posted. (1) ~~The~~ If
 8 the decedent died before January 1, 1979 1981, the
 9 department of revenue shall determine what inheritance tax,
 10 if any, is owing on the property of the nonresident decedent
 11 located in this state and shall send notice of the tax owing
 12 to the domiciliary foreign personal representative and to
 13 the clerk of court.

14 (2) Upon payment of the inheritance tax due or if no
 15 tax is owing, the department of revenue shall issue a
 16 certificate to the domiciliary foreign personal
 17 representative indicating that inheritance taxes either are
 18 not owing or have been paid and shall send a copy of the
 19 certificate to the clerk of court.

20 (3) The department may issue an order waiving
 21 inheritance taxes on a particular item of property under
 22 such terms and circumstances as the department shall
 23 determine.

24 (4) Upon the posting by the domiciliary foreign
 25 personal representative of satisfactory bond, the department

1 may issue a certificate indicating that bond has been posted
 2 sufficient to secure any inheritance tax due on the in-state
 3 property of the nonresident decedent. This certificate may
 4 be issued at any time after the filing of the inventory with
 5 the clerk of court."

6 Section 10. Section 72-4-306, MCA, is amended to read:

7 "72-4-306. Payment of debt and delivery of property to
 8 foreign representative. At any time after the expiration of
 9 60 days from the death of a nonresident decedent, any person
 10 indebted to the estate of the nonresident decedent or having
 11 possession or control of personal property or of an
 12 instrument evidencing a debt, obligation, stock, or chose in
 13 action belonging to the estate of the nonresident decedent
 14 may pay the debt, deliver the personal property, or the
 15 instrument evidencing the debt, obligation, stock, or chose
 16 in action to the domiciliary foreign personal representative
 17 of the nonresident decedent upon being presented with a
 18 certificate from the clerk of the court for the county where
 19 the domiciliary foreign personal representative has filed
 20 his affidavit, as described in 72-4-303, and if the decedent
 21 died before January 1, 1979 1981, a certificate from the
 22 department of revenue, as described in 72-4-304."

23 Section 11. Section 72-16-218, MCA, is amended to
 24 read:

25 "72-16-218. County clerk to check records against list

1 -- report to department. (1) The county clerk, upon the
 2 receipt of the list of deaths provided for in 72-16-217,
 3 shall immediately check the records of his county to
 4 determine whether any of the deceased persons whose names
 5 appear upon such list ~~and who died before January 1, 1979~~
 6 ~~1981~~ may have made any transfer of property or of property
 7 rights within such county during the 3 years preceding the
 8 death of such person or whether such deceased person may
 9 have been possessed of any property in such county at the
 10 time of his death.

11 (2) If he shall find that any such deceased person may
 12 have made any such transfers of property or of property
 13 rights or have died possessed of such, he shall immediately
 14 transmit such information to the department of revenue."

15 Section 12. Section 72-16-401, MCA, is amended to
 16 read:

17 "72-16-401. Application for determination of tax by
 18 department ~~for pre-1979 PRE-1981 decedents~~ -- information,
 19 documents to be furnished to department. (1) ~~The~~ ~~For~~ ~~a~~
 20 ~~decedent who died before January 1, 1979~~ ~~1981~~, the personal
 21 representative or, should the personal representative fail
 22 to do so, any interested person shall make application to
 23 the department of revenue for determination of any tax due
 24 upon the estate of a decedent.

25 (2) The applicant shall furnish to the department the

1 inventory and appraisal required by 72-3-607 and any
 2 supplemental inventory under 72-3-609, together with a
 3 statement under oath or affirmation of any property owned by
 4 the decedent at the time of his death situated outside of
 5 this state and without its jurisdiction. The applicant
 6 shall, upon request of the department, furnish the
 7 department with the final accounting of such personal
 8 representative. If the decedent died testate, the personal
 9 representative shall likewise furnish the department with a
 10 certified copy of the last will of the decedent. If the
 11 decedent died intestate, the personal representative shall
 12 provide the department with a sworn statement setting forth
 13 the names, ages, and residences of the heirs at law of
 14 decedent. In all cases, the personal representative shall
 15 set forth the proportion of the entire estate inherited by
 16 or devised to each of said persons and the relation, if any,
 17 which each devisee, heir, or transferee sustained to the
 18 decedent or person from whom the transfer was made.

19 (3) The information so provided shall not be binding
 20 upon the department in case it believes the same to be
 21 erroneous or untrue."

22 Section 13. Section 72-16-702, MCA, is amended to
 23 read:

24 "72-16-702. Duties of holder of securities or assets
 25 of ~~pre-1979 PRE-1981~~ nonresident decedent -- prerequisites

1 to transfer -- exception. (1) No safe deposit company, bank,
 2 or other institution or person or persons holding securities
 3 or assets of a nonresident decedent who died before January
 4 1, 1979 1981 or any corporation organized under the laws of
 5 this state in which a nonresident decedent who died before
 6 January 1, 1979 1981 held stock, bonds, mortgages, or other
 7 securities at his decease shall deliver or transfer the same
 8 to the executors, administrators, or legal representatives
 9 of said decedent or upon their order or request unless
 10 notice of the time and place of such intended transfer be
 11 served upon the department of revenue at least 10 days prior
 12 to the transfer; nor shall any such safe deposit company,
 13 bank, or other institution or person or persons or any
 14 corporation deliver or transfer any securities or assets of
 15 the estate of a nonresident decedent without retaining a
 16 sufficient portion or amount thereof to pay any tax which
 17 may thereafter be assessed on account of the transfer of
 18 such securities or assets under the provisions of the
 19 inheritance tax laws, without an order from the proper court
 20 authorizing such transfer; and it shall be lawful for the
 21 department, personally or by representative, to examine said
 22 securities or assets at any time before such delivery or
 23 transfer.

24 (2) Failure to serve such notice or to allow such
 25 examination or to retain a sufficient portion or amount to

1 pay such tax as herein provided shall render said safe
 2 deposit company, trust company, bank, or other institution
 3 or person or persons or such corporation liable to the
 4 payment of the tax due upon said securities or assets in
 5 pursuance of the provisions of the inheritance tax laws.

6 (3) The department may issue a certificate authorizing
 7 the transfer of any such stock, securities, or assets
 8 whenever it appears to the satisfaction of the department
 9 that no tax is due thereon.

10 (4) The foregoing provisions shall not apply to shares
 11 of stock in any Montana corporation held by a nonresident of
 12 Montana at the time of his death whose death occurred on or
 13 after January 30, 1945 and who was at the time of his death
 14 domiciled in any other district or state of the United
 15 States, provided reciprocal rights are granted by such
 16 district or state of domicile similar to 72-16-801, and in
 17 such event this section shall not apply to the transfer of
 18 stocks, bonds, mortgages, or other securities exempt from
 19 taxation under the provisions of 72-16-801, and a Montana
 20 corporation or its agent may transfer stocks, bonds,
 21 mortgages, and other securities without any liability for
 22 the tax imposed under the provisions of the inheritance tax
 23 laws where there are reciprocal rights as set forth in
 24 72-16-801, and in such event no application for consent to
 25 transfer such stock need be made to the department, and the

1 corporation or its duly authorized transfer agent may
 2 transfer such shares of stock upon its books without any
 3 such application or consent to transfer."

4 Section 14. Section 72-16-805, MCA, is amended to
 5 read:

6 "72-16-805. Procedure of department when application
 7 not made. (1) Whenever any nonresident decedent ~~who died~~
 8 ~~before January 1, 1979~~ 1981, leaving no estate requiring
 9 administration in this state ~~shall leave left~~ any stocks,
 10 bonds, mortgages, or other securities or other personal
 11 property within the state or within the jurisdiction thereof
 12 and no personal representative, trustee, heir, devisee, or
 13 legatee of such nonresident decedent has made application to
 14 the department of revenue for the determination as to
 15 whether there is any tax due for the transfer thereof and
 16 the amount of such tax, if any, the department, upon such
 17 matter being called to its attention, shall make an order
 18 and cause a copy thereof to be served upon the personal
 19 representative, trustee, heirs, devisees, or legatees of
 20 such nonresident decedent ordering and directing that a
 21 statement and return, under oath, containing the statements
 22 and information prescribed in 72-16-802 be filed with such
 23 department within 60 days from the date of such order or
 24 within such further time as the department may grant
 25 therefor.

1 (2) If such statement is not filed with the department
 2 within such time, the department may then procure such
 3 information in any manner it may deem advisable.

4 (3) Upon the filing of such statement or the procuring
 5 of such information by the department in the event of a
 6 failure to file the same in compliance with such order, the
 7 department shall proceed in the same manner as prescribed by
 8 72-16-803 and all provisions of 72-16-804 with reference to
 9 hearings and appeals shall be applicable thereto."

10 ~~Section 15. Section 72-16-904, MCA, is amended to~~
 11 ~~read:~~

12 ~~"72-16-904. Estate tax imposed, in addition to the~~
 13 ~~inheritance taxes hereinafter imposed, an estate tax is~~
 14 ~~hereby imposed upon the transfer of the estate of every~~
 15 ~~decedent leaving an estate which is subject to the federal~~
 16 ~~estate tax imposed by the United States of America under the~~
 17 ~~applicable provisions of the Internal Revenue Code and which~~
 18 ~~has, in whole or in part, a taxable situs in this state.~~

19 ~~(2) This section does not apply to the transfer of an~~
 20 ~~estate of a decedent who dies after December 31, 1978."~~

21 ~~Section 16. Section 72-16-906, MCA, is amended to~~
 22 ~~read:~~

23 ~~"72-16-906. Required filings. It shall be the duty of~~
 24 ~~the personal representative of the estate of any decedent~~
 25 ~~who died before January 1, 1979, and whose estate may be~~

1 subject-to-the-payment-of-a-United-States-estate-tax-to-file
2 duplicates-of-the-United-States-estate-tax-returns-with--the
3 district--court--of-the-county-in-which-such-estate-is-being
4 probated-and-with-the-department-of-revenues-He--shall--also
5 file--with--such-court-and-with-the-department-a-certificate
6 or-other--evidence--from--the--bureau--of--internal--revenue
7 showing--the--amount--of--the--United--States--estate-tax-as
8 computed-by-that-department."

9 Section 15. Effective date. This act is effective on
10 passage and approval.

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received , February 18, 1977, there is hereby submitted a Fiscal Note for House Bill 814 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:

An act to abolish the Montana Inheritance and Estate tax for decedents who die after December 31, 1978.

ASSUMPTIONS:

1. The Department of Revenue forecast of receipts from inheritance taxes for the 80-81 biennium is the basis for comparison.
2. Under continuation of the present law, expenditures for administration of the Inheritance Tax Division will be as specified in the Executive Budget.
3. Under the proposed law, savings in administrative expenditures would be about 1/3 of present law budget for FY 80, and about 2/3 of present law budget for FY 81.
4. There is an 18 month collection lag for inheritance taxes.

FISCAL IMPACT:

	<u>FY 80</u>	<u>FY 81</u>
Inheritance tax collections		
Under current law	\$6.167 M	\$6.333 M
Under proposed law	3.084 M	Negligible
Decrease in collections under proposed law	3.083 M	6.333 M
Less: Decrease in expenditures under proposed law	.050 M	.101 M
Net decrease in General Fund revenues under proposed law	<u>\$3.033 M</u>	<u>\$6.232 M</u>

TECHNICAL NOTE:

The Montana Estate Tax (included above in "Inheritance Taxes") is a "pickup tax" which insures that Montana gets the benefit of the full amount of a tax credit allowed under the federal Internal Revenue Code for state death taxes. This tax produces between \$1.5 million and \$2 million annually for the state's general fund; therefore, an additional effect of this proposal would be to transfer \$1.5 - 2 million from the state general fund to the federal treasury each year.

Richard L. Deary for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3/1/77