

CHAPTER NO. 705

SENATE BILL NO. 508

INTRODUCED BY MANLEY

IN THE SENATE

February 14, 1979	Introduced and referred to Committee on Taxation.
February 15, 1979	Fiscal note requested.
February 21, 1979	Fiscal note returned.
March 10, 1979	Committee recommend bill do pass as amended. Report adopted.
March 12, 1979	Printed and placed on members' desks.
March 13, 1979	Second reading, do pass.
March 15, 1979	Considered correctly engrossed.
March 16, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

March 17, 1979	Introduced and referred to Committee on Taxation. Committee recommend bill be concurred in as amended. Report adopted.
April 18, 1979	Second reading, concurred in as amended. Third reading, concurred in as amended.

IN THE SENATE

April 19, 1979	Returned from second house. Concurred in as amended.
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April 19, 1979

On motion rules suspended.
Bill referred to second
reading for consideration
this day.

Second reading, amendments
adopted.

On motion rules suspended.
Bill placed on Calendar for
third reading this day.

Third reading, amendments
adopted.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *508*
 2 INTRODUCED BY *Conley*
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
 5 RELATING TO THE DETERMINATION AND PAYMENT OF THE MONTANA
 6 INHERITANCE TAX; PROVIDING THAT CERTAIN FARM AND OTHER REAL
 7 PROPERTY MAY BE VALUED ON THE BASIS OF ITS USE AT THE TIME
 8 OF THE DECEDENT'S DEATH; PROVIDING AN ELECTION FOR A 15-YEAR
 9 INSTALLMENT PAYMENT METHOD FOR THE TRANSFER OF CERTAIN FARM
 10 OR CLOSELY HELD BUSINESS INTERESTS; AMENDING SECTION
 11 72-16-308, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

14 NEW SECTION. Section 1. Definitions. As used in
 15 [sections 1 through 12], the following definitions apply:

- 16 (1) "Adjusted gross value" means:
 17 (a) in the case of an estate, the gross value of all
 18 transfers subject to the tax imposed by this part,
 19 determined without regard to [sections 1 through 12],
 20 reduced by the amount of unpaid mortgages and indebtedness;
 21 (b) in the case of real or personal property, the
 22 value of the property for the purposes of this part,
 23 determined without regard to [sections 1 through 12],
 24 reduced by the amount of unpaid mortgages and indebtedness.
 25 (2) "Agreement" means a written agreement signed by

1 each person in being who has an interest, whether or not he
 2 is in possession, in any property designated in such
 3 agreement consenting to the application of [section 7] with
 4 respect to such property.

- 5 (3) "Department" means the department of revenue.
 6 (4) "Farm" means truck farms, ranches, nurseries,
 7 ranges, greenhouses, orchards, woodlands, or structures used
 8 primarily for raising agricultural or horticultural
 9 commodities. The term includes stock, dairy animals,
 10 poultry, fur-bearing animals, and fruit.

11 (5) "Farming purposes" means:
 12 (a) cultivating the soil or raising or harvesting any
 13 agricultural or horticultural commodity including the
 14 raising, shearing, feeding, caring for, training, and
 15 managing of animals on a farm;

16 (b) handling, drying, packing, grading, or storing on
 17 a farm any agricultural or horticultural commodity in its
 18 unmanufactured state, but only if the owner, tenant, or
 19 operator of the farm regularly produces more than one-half
 20 of the commodity so treated; or

21 (c) (i) planting, cultivating, caring for, or cutting
 22 trees; or

23 (ii) preparing, other than milling, trees for market.

24 (6) "Internal Revenue Code" means the Internal Revenue
 25 Code of 1954. A reference to a specific section of that code

1 is a reference to that section as it may be labeled or
2 amended.

3 (7) "Involuntary conversion" means a compulsory or
4 involuntary conversion within the meaning of section 1033 of
5 the Internal Revenue Code.

6 (8) "Material participation" is determined in a manner
7 similar to the manner used for the purposes of section
8 1402(a)(1) of the Internal Revenue Code.

9 (9) "Member of the family" means, with respect to any
10 individual, only the individual's ancestor or lineal
11 descendant, a lineal descendant of a grandparent of the
12 individual, the spouse of the individual, or the spouse of
13 any such descendant. For purposes of the preceding sentence,
14 a legally adopted child of an individual is treated as a
15 child of the individual by blood.

16 (10) "Qualified heir" means, with respect to any
17 property, a member of the decedent's family who acquired the
18 property or to whom the property passed from the decedent.
19 If a qualified heir disposes of any interest in qualified
20 real property to any member of his family, such member shall
21 thereafter be treated as the qualified heir with respect to
22 such interest.

23 (11) "Qualified real property" means real property
24 located in this state that on the date of the decedent's
25 death was being used for a qualified use, but only if:

1 (a) 50% or more of the adjusted value of the gross
2 estate consists of the adjusted value of real or personal
3 property that:

4 (i) on the date of the decedent's death was being used
5 for a qualified use; and

6 (ii) was acquired from or passed from the decedent to a
7 qualified heir of the decedent;

8 (b) 25% or more of the adjusted value of the gross
9 estate consists of the adjusted value of real property that
10 meets the requirements of (a)(ii) and (c) of this
11 subsection;

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

15 (i) the real property was owned by the decedent or a
16 member of the decedent's family and used for a qualified
17 use; and

18 (ii) there was material participation by the decedent
19 or a member of the decedent's family in the operation of the
20 farm or other business; and

21 (d) the real property is designated in the agreement
22 referred to in [subsection (2) of section 1].

23 (12) (a) "Qualified replacement property" means:

24 (i) in the case of an involuntary conversion as
25 described in section 1033(a)(1) of the Internal Revenue

1 Code, any real property into which the real property is
2 converted;

3 (ii) in the case of an involuntary conversion as
4 described in section 1033(a)(2) of the Internal Revenue
5 Code, any real property purchased by the qualified heir
6 during the period specified in section 1033(a)(2)(B) of the
7 Internal Revenue Code for the purpose of replacing the
8 qualified real property.

9 (b) "Qualified real property" only includes property
10 that is to be used for the qualified use set forth in (a) or
11 (b) of subsection (13) of this section under which the
12 qualified real property qualified under [section 2].

13 (13) (a) "Qualified use" means devotion to any of the
14 following:

15 (i) use as a farm for farming purposes; or

16 (ii) use in a trade or business other than the trade or
17 business of farming.

18 (b) In the case of real property that meets the
19 requirements of subsection (11)(c), residential buildings
20 and related improvements on the real property occupied on a
21 regular basis by the owner or lessee of the real property or
22 by persons employed by the owner or lessee for the purpose
23 of operating or maintaining the real property, and roads,
24 buildings, and other structures and improvements
25 functionally related to the qualified use shall be treated

1 as real property devoted to the qualified use.

2 NEW SECTION. Section 2. Valuation of certain farm and
3 real property -- limitation. (1) If the decedent was at the
4 time of his death a resident of this state and the personal
5 representative elects to have [sections 1 through 12] apply
6 and files an agreement with the department, the value of
7 qualified real property for the purposes of the tax imposed
8 by this part is its value for the use under which it
9 qualifies under [subsection (11) of section 1] as qualified
10 real property.

11 (2) The aggregate decrease in the value of qualified
12 real property taken into account for the purposes of the
13 Montana inheritance tax that results from the application of
14 (1) of this section may not exceed \$500,000.

15 NEW SECTION. Section 3. Election for valuation. An
16 election for valuation under [sections 1 through 12] must be
17 made within 18 months of the date of the decedent's death
18 and must be made in such manner as the department may
19 prescribe.

20 NEW SECTION. Section 4. Valuation of farms. (1)
21 Except as provided in (2) of this section, the value of a
22 farm for farming purposes is determined by dividing the
23 excess of the average annual gross cash rental for
24 comparable land used for farming purposes and located in the
25 locality of the farm over the average annual state and local

1 real estate taxes for comparable land by the average annual
2 effective interest rate for all new federal land bank loans.
3 For purposes of the preceding sentence, each average annual
4 computation must be made on the basis of the 5 most recent
5 calendar years ending before the date of the decedent's
6 death.

7 (2) The formula in (1) of this section may not be
8 used:

9 (a) if it is established that there is no comparable
10 land from which the average annual gross cash rental may be
11 determined; or

12 (b) if the personal representative elects to have the
13 value of the farm for farming purposes determined under
14 [section 5].

15 NEW SECTION. Section 5. Valuation of closely held
16 business interests. If [section 4] does not apply, the
17 following factors apply in determining the value of any
18 qualified real property:

19 (1) The capitalization of income that the property can
20 be expected to yield for farming or closely held business
21 purposes over a reasonable period of time under prudent
22 management using traditional cropping patterns for the area,
23 taking into account soil capacity, terrain configuration,
24 and similar factors;

25 (2) the capitalization of the fair rental value of the

1 land for farmland or closely held business purposes;

2 (3) assessed land values;

3 (4) comparable sales of other farm or closely held
4 business land in the same geographical area far enough
5 removed from a metropolitan or resort area so that
6 nonagricultural use is not a significant factor in the sales
7 price; and

8 (5) any other factor that fairly values the farm or
9 closely held business value of the property.

10 NEW SECTION. Section 6. Time limitations. (1) If
11 qualified real property is disposed of or ceases to be used
12 for a qualified use, the statutory period for the assessment
13 of any additional tax under [section 7] attributable to
14 disposition or cessation may not expire until 3 years after
15 the date the department is notified, in a manner to be
16 prescribed by the department, of the disposition or
17 cessation.

18 (2) The additional tax may be assessed before the
19 expiration of the 3-year period referred to in (1) of this
20 section, notwithstanding the provisions of any other law or
21 rule of law that would otherwise prevent such assessment.

22 NEW SECTION. Section 7. Disposition or failure to use
23 for qualified use. (1) There is hereby imposed an additional
24 inheritance tax if within 15 years after the decedent's
25 death and before the death of the qualified heir:

1 (a) the qualified heir disposes of any interest in
2 qualified real property other than by a disposition to a
3 member of his family; or

4 (b) the qualified heir ceases to use for the qualified
5 use the qualified real property which was acquired or passed
6 from the decedent.

7 (2) The amount of additional tax imposed by (1) of
8 this section with respect to any interest is the amount
9 equal to the lesser of:

10 (a) the adjusted tax difference attributable to such
11 interest; or

12 (b) the excess of the amount realized with respect to
13 the interest or in any case other than a sale or exchange at
14 arm's length, the fair market value of the interest over the
15 value of the interest determined under [section 2].

16 (3) For the purposes of (2) of this section, the
17 adjusted tax difference attributable to an interest is the
18 amount that bears the same ratio to the adjusted tax
19 difference with respect to the estate as determined under

20 (4) of this section as the excess of the value of such
21 interest for purposes of the Montana inheritance tax,
22 determined without regard to [sections 1 through 12], over
23 the value of such interest determined under [section 2]
24 bears to a similar excess determined for all qualified real
25 property.

1 (4) For the purposes of (3) of this section, "adjusted
2 tax difference with respect to the estate" means the excess
3 of what would have been the tax liability but for [section
4 2] over the tax liability. For the purposes of this
5 subsection, "tax liability" means the tax imposed by Title
6 72, chapter 16.

7 (5) For the purposes of this section, if the qualified
8 heir disposes of a portion of the interest acquired by or
9 passing to such heir or a predecessor qualified heir, or
10 there is a cessation of use of such a portion, the value
11 determined under [section 2] taken into account under (2)(b)
12 of this section with respect to such portion shall be its
13 pro rata share of the value of the interest and the adjusted
14 tax difference attributable to the interest taken into
15 account with respect to the transaction involving the second
16 or any succeeding portion shall be reduced by the amount of
17 the tax imposed by this section with respect to all prior
18 transactions involving portions of the interest.

19 (6) If the date of the disposition or cessation occurs
20 more than 120 months and less than 180 months after the date
21 of the death of the decedent, the amount of the tax imposed
22 by this section shall be reduced, but not below zero, by an
23 amount determined by multiplying the amount of the tax
24 determined without regard to this subsection, by a fraction
25 in which the numerator is the number of full months after

1 the death in excess of 120 and the denominator is 60.

2 (7) In the case of an interest acquired from or
3 passing from any decedent, if (a) or (b) of subsection (1)
4 of this section applies to any portion of an interest, (b)
5 or (a) of subsection (1) of this section, as the case may
6 be, does not apply with respect to the same portion of the
7 interest.

8 (8) The additional tax imposed by this section is due
9 on the day that is 6 months after the date of the
10 disposition or cessation.

11 (9) The qualified heir is personally liable for the
12 additional tax with respect to his interest unless the heir
13 has furnished bond that meets the requirements of [section
14 10].

15 **NEW SECTION.** Section 8. Cessation of qualified use.
16 For the purposes of [section 7], real property ceases to be
17 used for the qualified use if:

18 (1) the property ceases to be used for the qualified
19 use set forth in [section 1] under which the property
20 qualified under [section 1]; or

21 (2) during any period of 8 years ending after the date
22 of the decedent's death and before the date of the death of
23 the qualified heir, there had been periods aggregating 3
24 years or more during which:

25 (a) in the case of periods during which the property

1 was held by the decedent, there was no material
2 participation by the decedent or any member of his family in
3 the operation of the farm or other business; and

4 (b) in the case of periods during which the property
5 was held by any qualified heir, there was no material
6 participation by such qualified heir or any member of his
7 family in the operation of the farm or other business.

8 **NEW SECTION.** Section 9. Property acquired from
9 decedent. Property is considered to have been acquired from
10 the decedent if the property:

11 (1) is so considered under section 1014(b) of the
12 Internal Revenue Code;

13 (2) is acquired by any person from the estate in
14 satisfaction of the right of such person to a pecuniary
15 request; or

16 (3) is acquired by any person from a trust in
17 satisfaction of a right, which such person has by reason of
18 the death of the decedent, to receive from the trust a
19 specific dollar amount that is the equivalent of a pecuniary
20 request.

21 **NEW SECTION.** Section 10. Bond in lieu of personal
22 liability. (1) If the qualified heir makes written
23 application to the department for the determination of the
24 additional tax that may be imposed by [section 7] with
25 respect to the qualified heir's interest, the department

1 must, as soon as possible and in any event within 1 year
2 after the making of the application, notify the heir of the
3 maximum amount.

4 (2) The qualified heir, on furnishing a bond in such
5 amount and for such period as may be required, is discharged
6 from personal liability for any additional tax imposed by
7 [section 7] and is entitled to a receipt or writing showing
8 such discharge.

9 NEW SECTION. Section 11. Application to interests in
10 partnerships, corporations, and trusts. The department shall
11 prescribe regulations setting forth the application of
12 [sections 1 through 12] in the case of an interest in a
13 partnership, corporation, or trust that, with respect to the
14 decedent, is an interest in a closely held business within
15 the meaning of [section 15].

16 NEW SECTION. Section 12. Involuntary conversion of
17 qualified real property. (1) If there is an involuntary
18 conversion of an interest in qualified real property and the
19 qualified heir makes an election under this section, no tax
20 is imposed by [section 7] on the conversion if the cost of
21 the qualified replacement property equals or exceeds the
22 amount realized on the conversion.

23 (2) If (1) of this section does not apply, the tax
24 imposed by [section 7], with respect to any involuntary
25 conversion, is the amount of tax that, but for this

1 subsection, would have been imposed on the conversion
2 reduced by an amount that bears the same ratio to such tax
3 as the cost of the qualified replacement property bears to
4 the amount realized on the conversion.

5 (3) (a) For the purposes of [section 7], any qualified
6 replacement property shall be treated in the same manner as
7 if it were a portion of the interest in qualified real
8 property that was involuntarily converted, except that with
9 respect to such qualified replacement property:

10 (i) the 15-year period under [section 7] shall be
11 extended by any period, beyond the 2-year period referred to
12 in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
13 during which the qualified heir was allowed to replace the
14 qualified real property; and

15 (ii) the phaseout period under [subsection (6) of
16 section 7] shall be appropriately adjusted to take into
17 account the extension referred to in (a)(i) of this section.

18 (b) Any tax imposed by [section 7] on the involuntary
19 conversion shall be treated as a tax imposed on a partial
20 disposition. The provisions of [section 8] shall be applied
21 by not taking into account periods after the involuntary
22 conversion and before the acquisition of the qualified
23 replacement property and by treating material participation
24 with respect to the converted property as material
25 participation with respect to the qualified replacement

1 property.

2 (4) The rules of the last sentence of section
3 1033(a)(2)(B) of the Internal Revenue Code apply for the
4 purposes of [subsection (12)(a)(ii) of section 1].

5 (5) An election under this section may be made at such
6 time and in such manner as prescribed by the department.

7 NEW SECTION. Section 13. Definitions. As used in
8 [sections 13 through 27], the following definitions apply:

9 (1) "Adjusted gross estate" means the clear market
10 value of the property passing by reason of a decedent's
11 death determined under Title 72, chapter 16. The sum must be
12 determined on the basis of the facts and circumstances in
13 existence on the date on which the tax imposed by Title 72,
14 chapter 16, is determined, but in no event later than a date
15 18 months after the date of the death of the decedent.

16 (2) "Closely held business amount" means the value of
17 the interest in a closely held business that qualifies under
18 [subsection (1) of section 14].

19 (3) "Internal Revenue Code" means the Internal Revenue
20 Code of 1954. A reference to a specific section of that code
21 is a reference to that section as it may be labeled or
22 amended.

23 (4) "Value" means value determined for the purposes of
24 the Montana inheritance tax.

25 NEW SECTION. Section 14. Extension of time for

1 transfer of closely held business interest. (1) If the value
2 of an interest in a closely held business that is included
3 in the gross estate for federal estate tax purposes of a
4 decedent who was at the time of death a resident of this
5 state exceeds 65% of the adjusted gross estate, the personal
6 representative may elect to pay all or part of the tax
7 imposed by Title 72, chapter 16, part 3, in 2 or more but
8 less than 11 equal installments.

9 (2) The maximum amount of tax that may be paid in
10 installments is an amount that bears the same ratio to the
11 tax imposed by Title 72, chapter 16, part 3, as the closely
12 held business amount bears to the amount of the adjusted
13 gross estate.

14 (3) If an election is made under (1) of this section,
15 the first installment must be paid on or before a date
16 selected by the personal representative that is not more
17 than 5 years after the date prescribed by 72-16-441 for the
18 payment of tax without interest. Each succeeding installment
19 must be paid on or before the date that is 1 year after the
20 date of the preceding installment.

21 (4) The person entitled to pay the tax in installments
22 is the person to whom an interest in a closely held business
23 passes.

24 NEW SECTION. Section 15. Closely held business. (1)
25 For the purposes of [section 14], the term "interest in a

1 closely held business" means:

2 (a) an interest as a proprietor in a trade or business
3 carried on as a proprietorship;

4 (b) an interest as a partner in a partnership carrying
5 on a trade or business if:

6 (i) 20% or more of the total capital interest in the
7 partnership is included in determining the gross estate of
8 the decedent for federal estate tax purposes; or

9 (ii) the partnership had 15 or fewer partners;

10 (c) stock in a corporation carrying on a trade or
11 business if:

12 (i) 20% or more in value of the voting stock of the
13 corporation is included in determining the gross estate of
14 the decedent for federal estate tax purposes; or

15 (ii) the corporation had 15 or fewer shareholders.

16 (2) Determination for qualification under (1) of this
17 section must be made as of the time immediately before the
18 decedent's death.

19 (3) Stock or a partnership interest held by a husband
20 and wife as joint tenants or tenants in common is treated as
21 owned by one shareholder or one partner, as the case may be.

22 (4) Property owned directly or indirectly by or for a
23 corporation, partnership, estate, or trust is considered as
24 being owned proportionately by or for its shareholders,
25 partners, or beneficiaries. For the purposes of this

1 subsection, a person is a beneficiary of a trust only if he
2 has a present interest in the trust.

3 (5) All stock and all partnership interests held by
4 the decedent or by any member of his family within the
5 meaning of section 267(c)(4) of the Internal Revenue Code is
6 treated as being owned by the decedent.

7 NEW SECTION. Section 16. Farmhouses and other
8 structures taken into account. For the purposes of the 65%
9 requirement of [section 14], an interest in a closely held
10 business that is the business of farming includes an
11 interest in residential buildings and related improvements
12 on the farm which are occupied on a regular basis by the
13 owner or lessee of the farm or by persons employed by the
14 owner or lessee for purposes of operating or maintaining the
15 farm.

16 NEW SECTION. Section 17. Partnership interests and
17 stock not readily tradable. (1) If the personal
18 representative elects the benefits of this section, at such
19 time and in such manner as the department may prescribe:

20 (a) for the purposes of subsection (1)(b)(i) or
21 (1)(c)(i) of [section 15], whichever is appropriate, and for
22 the purposes of [section 18], any capital investment in a
23 partnership and any non-readily tradable stock, which after
24 the application of subsections (2) and (3) of [section 15]
25 is treated as owned by the decedent, shall be treated as

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1 included in determining the value of the decedent's gross
2 estate for federal estate tax purposes;

3 (b) the personal representative shall be treated as
4 having selected under [subsection (3) of section 14] the
5 date prescribed by 72-16-441 for the payment of the tax
6 without interest; and

7 (c) [section 27] does not apply.

8 (2) For the purposes of this section, "non-readily
9 tradable stock" means stock for which at the time of the
10 decedent's death there was no market on the stock exchange
11 or in an over-the-counter market.

12 NEW SECTION. Section 18. Interests in more than one
13 closely held business. (1) Interests in two or more closely
14 held businesses, with respect to which there is included in
15 determining the value of the decedent's gross estate for
16 federal estate tax purposes more than 20% of the total value
17 of each business, shall be treated as an interest in a
18 single closely held business.

19 (2) For the purposes of the 20% requirement of (1) of
20 this section, an interest in a closely held business that
21 represents the surviving spouse's interest in property held
22 by the decedent and the surviving spouse as joint tenants or
23 tenants in common shall be treated as having been included
24 in determining the value of the decedent's gross estate for
25 federal estate tax purposes.

1 NEW SECTION. Section 19. Election. An election under
2 [section 14] must be made not later than 18 months after the
3 death of the decedent and must be made in such manner as the
4 department prescribes.

5 NEW SECTION. Section 20. Proration of additional tax.
6 (1) If an election is made under [section 14] to pay any
7 part of the tax imposed by Title 72, chapter 16, part 3, in
8 installments and an additional tax is determined, the
9 additional tax, subject to the limitation provided by
10 [subsection (2) of section 14], shall be prorated to the
11 installments payable under [section 14].

12 (2) (a) The part of the additional tax so prorated to
13 any installment, the date for payment of which has not
14 arrived, shall be collected at the same time as and as part
15 of the installment.

16 (b) The part of the additional tax so prorated to any
17 installment already paid shall be paid on notice and demand
18 from the department.

19 (3) This section does not apply if the additional tax
20 is due to negligence, intentional disregard of rules, or
21 fraud with intent to evade tax.

22 NEW SECTION. Section 21. Interest. (1) If the time
23 for payment of any amount of tax has been extended under
24 [sections 13 through 27], interest payable under [section
25 27] on any unpaid portion of such amount:

1 (a) attributable to the first 5 years after the date
2 prescribed by 72-16-441 for the payment of the tax without
3 interest shall be paid annually;

4 (b) attributable to any period after the 5-year period
5 referred to in (1)(a) of this section shall be paid annually
6 at the same time as and as part of each installment payment
7 of the tax.

8 (2) In the case of an additional tax to which [section
9 20] applies that is determined after the close of the 5-year
10 period referred to in (1)(a) of this section, interest
11 attributable to such 5-year period and interest assigned to
12 any installment the date for which has arrived on or before
13 the date of the assessment of the additional tax must be
14 paid on notice and demand from the department.

15 (3) If the personal representative has selected a
16 period shorter than 5 years, the shorter period shall be
17 substituted for 5 years in (1) and (2) of this section.

18 NEW SECTION. Section 22. Acceleration of payment. (1)
19 The extension of time for payment of tax provided in
20 [section 14] shall cease to apply and any unpaid portion of
21 the tax payable must be paid upon notice and demand of the
22 department if:

23 (a) one-third or more in value of an interest in a
24 closely held business that qualifies under [section 14] is
25 distributed, sold, exchanged, or otherwise disposed of; or

1 (b) aggregate withdrawals of money and other property
2 from the trade or business, an interest in which qualifies
3 under [section 14], made with respect to such interest,
4 equal or exceed one-third of the value of such trade or
5 business.

6 (2) In the case of a distribution in redemption of
7 stock to which section 303 of the Internal Revenue Code or
8 so much of section 304 of the Internal Revenue Code as
9 relates to section 303 applies:

10 (a) subsection (1)(a) of this section does not apply
11 with respect to the stock redeemed and, for the purposes of
12 subsection (1)(a), the interest in the closely held business
13 shall be considered to be such interest reduced by the value
14 of the stock redeemed; and

15 (b) subsection (1)(b) of this section does not apply
16 with respect to withdrawals of money and other property
17 distributed and, for the purposes of subsection (1)(b), the
18 value of the trade or business shall be considered to be
19 such value reduced by the amount of money and other property
20 distributed.

21 (3) Subsection (1)(a) of this section does not apply
22 to an exchange of stock pursuant to a plan of reorganization
23 described in (D), (E), or (F) of section 368(a)(1) of the
24 Internal Revenue Code or to an exchange to which section 355
25 of the Internal Revenue Code or so much of section 356 of

1 the Internal Revenue Code applies to section 355, but any
2 stock received in such an exchange shall be treated for
3 purposes of subsection (1)(a) as an interest qualifying
4 under [section 14].

5 (4) Subsection (1)(a) of this section does not apply
6 to a transfer of property of the decedent to a person
7 entitled by reason of the decedent's death to receive such
8 property under the decedent's will, intestate succession, or
9 a trust created by the decedent.

10 NEW SECTION. Section 23. Failure to pay installment.
11 If any installment under [sections 13 through 27] is not
12 paid on or before the date fixed for its payment, including
13 any extension of time for the payment of the installment,
14 the unpaid portion of the tax payable in installments must
15 be paid on notice and demand from the department.

16 NEW SECTION. Section 24. Election in the case of
17 additional tax. (1) If an additional tax is determined under
18 Title 72, chapter 16, part 3, and the estate qualifies under
19 [section 14] and the personal representative has not made an
20 election under [section 14], the personal representative may
21 elect to pay the additional tax in installments.

22 (2) An election under this section must be made not
23 later than 60 days after notice and demand for payment of
24 the additional tax has been given by the department and must
25 be made in the manner prescribed by the department.

1 (3) If an election is made under this section, the
2 additional tax shall, subject to the limitation in
3 [subsection (2) of section 14], be prorated to the
4 installments that would have been due if an election had
5 been timely made under [section 14]. The part of the
6 additional tax so prorated to any installment the date for
7 payment of which would have arrived shall be paid at the
8 time of the making of the election under this section. The
9 portion of the additional tax prorated to installments, the
10 date for payment of which would not have so arrived, shall
11 be paid at the time such installments would have been due if
12 such an election had been made.

13 NEW SECTION. Section 25. Security. If the time for
14 payment of any amount of tax has been extended under
15 [section 24], the department may require the taxpayer to
16 furnish a bond in an amount not exceeding double the amount
17 with respect to which the extension is granted conditioned
18 upon the payment of the amount extended in accordance with
19 the terms of the extension.

20 NEW SECTION. Section 26. Extensions of time for
21 payment of tax. The running of the period of limitations for
22 collection of any tax imposed by Title 72, chapter 16, part
23 3, is suspended for the period of any extension of time for
24 payment granted under [section 14].

25 NEW SECTION. Section 27. Interest rate. (1) If the

1 time for payment of an amount of tax imposed by Title 72,
 2 chapter 16, part 3, is extended as provided in [section 14]
 3 interest on the 4% portion of such amount shall, in lieu of
 4 the annual rate provided by 72-16-441, be paid at the rate
 5 of 4%. For the purposes of this section, the amount of any
 6 additional tax that is prorated to installments payable
 7 under [section 24] shall be treated as an amount of tax
 8 payable in installments under that section.

9 (2) For the purposes of this section, "4% portion"
 10 means the lesser of:

11 (a) \$345,800; or

12 (b) the amount of the tax imposed by Title 72, chapter
 13 16, part 3, which is extended as provided in [section 14].

14 (3) If the amount of tax imposed by Title 72, chapter
 15 16, part 3, that is extended exceeds the 4% portion, any
 16 payment of a portion of such amount shall, for the purpose
 17 of computing interest for periods after such payment, be
 18 treated as reducing the 4% portion by an amount that bears
 19 the same ratio to the amount of such payment as the amount
 20 of the 4% portion, determined without regard to this
 21 section, bears to the amount of tax that is extended as
 22 provided in [section 14].

23 NEW SECTION. Section 28. Definitions. As used in
 24 [sections 28 through 39], the following definitions apply:

25 (1) "Deferral period" means the period for which the

1 payment of tax is deferred under [section 14].

2 (2) "Deferred amount" means the aggregate amount
 3 deferred under [section 14] determined as of the date
 4 prescribed by 72-16-441 for payment without interest of the
 5 tax imposed by Title 72, chapter 16, part 3.

6 (3) "Lien property" means interests in real and other
 7 property to the extent such interests can be expected to
 8 survive the deferral period and are designated in the
 9 agreement referred to in [section 32].

10 (4) "Required interest amount" means the aggregate
 11 amount of interest that will be payable over the first 4
 12 years of the deferral period with respect to the deferred
 13 amount determined as of the date prescribed for payment
 14 without interest of the tax imposed by Title 72, chapter 16,
 15 part 3.

16 NEW SECTION. Section 29. Lien for tax deferred. In
 17 the case of any estate with respect to which an election has
 18 been made under [section 14], if the personal representative
 19 makes an election under this section at such time and in
 20 such manner as the department may prescribe and files the
 21 agreement referred to in [section 32] the deferred amount,
 22 plus any interest or additional amount shall be a lien in
 23 favor of the state on the lien property.

24 NEW SECTION. Section 30. Maximum value. (1) The
 25 maximum value of the property that the department may

1 require as lien property with respect to any estate is a
2 value that is not greater than the sum of the deferred
3 amount and the required interest amount.

4 (2) For the purposes of (1) of this section, the value
5 of any property is determined as of the date prescribed by
6 72-16-441 for payment of the tax without interest and is
7 determined by taking into account any encumbrances.

8 **NEW SECTION.** Section 31. Partial substitution of bond
9 for lien. If the value required as lien property exceeds the
10 value of the interests in property covered by the agreement
11 referred to in [section 32], the department may accept a
12 bond in an amount equal to such excess conditioned on the
13 payment of the amount extended in accordance with the terms
14 of the extension.

15 **NEW SECTION.** Section 32. Agreement. The agreement is
16 a written agreement signed by each person in being who has
17 an interest, whether or not in possession, in any property
18 designated in the agreement:

19 (1) consenting to the creation of the lien under
20 [section 29] with respect to the property; and

21 (2) designating a responsible person to be agent for
22 the beneficiaries of the estate and for persons who have
23 consented to the creation of the lien in dealings with the
24 department on matters arising under [section 14] or [section
25 29].

1 **NEW SECTION.** Section 33. Filing of lien. The lien
2 imposed by [section 29] is not valid against a purchaser,
3 holder of a security interest, mechanic's lien, or judgment
4 lien creditor until notice that meets the requirements of
5 71-3-204 has been filed by the department.

6 **NEW SECTION.** Section 34. Period of lien. The lien
7 imposed by [section 29] arises at the time notice is filed
8 under [section 33] and continues until liability for the
9 deferred amount is satisfied or becomes unenforceable by
10 reason of lapse of time.

11 **NEW SECTION.** Section 35. Priorities. (1) A lien filed
12 under [section 29] is not valid:

13 (a) as against real property tax and special
14 assessment liens;

15 (b) in the case of real property subject to a lien for
16 repair or improvement, as against a mechanic's lien; or

17 (c) as against a security interest set forth in
18 paragraph 3 of section 6323(c) of the Internal Revenue Code,
19 whether the security interest came into effect before or
20 after the tax lien filing.

21 (2) Subsections (1)(b) and (1)(c) of this section do
22 not apply to any security interest that came into existence
23 after the date on which the department filed notice that
24 payment of the deferred amount has been accelerated under
25 [section 22].

1 NEW SECTION. Section 36. Lien in lieu of other tax
2 liens. If there is a lien on property under [section 29],
3 the lien under 72-16-432 does not apply to the property with
4 respect to the same estate.

5 NEW SECTION. Section 37. Additional lien property.
6 (1) If at any time the value of the property covered by the
7 agreement is less than the unpaid portion of the deferred
8 amount and the required interest amount, the department may
9 require the addition of property to the agreement. The
10 department may not require that the value of the property
11 covered by the agreement exceed the unpaid portion.

12 (2) If property having the required value is not added
13 to the property covered by the agreement or if other
14 security equal to the required value is not furnished within
15 90 days after notice and demand by the department, the
16 failure to comply shall be treated as an act accelerating
17 payment of the installments under [section 22].

18 NEW SECTION. Section 38. Lien in lieu of bond. The
19 department may not require the furnishing of any bond for
20 the payment of tax to which an agreement that meets the
21 requirements of [section 32] applies.

22 NEW SECTION. Section 39. Application of definitions
23 to additional tax. In the case of an additional tax, a
24 separate deferral period, deferred amount, and required
25 interest amount shall be determined as of the due date of

1 the first installment after the additional tax is prorated
2 to installments under [section 14].

3 NEW SECTION. Section 40. Lien for additional tax
4 attributable to farm and closely held business property. (1)
5 In the case of any interest in qualified real property
6 within the meaning of [subsection (11) of section 1], an
7 amount equal to the adjusted tax difference attributable to
8 such interest within the meaning of [subsection (3) of
9 section 7] is a lien in favor of the state on the property
10 in which such interest exists.

11 (2) The lien imposed by this section shall arise at
12 the time an election is filed under [section 2] and
13 continues with respect to any interest in the qualified real
14 property until:

15 (a) the liability for tax under [section 7] with
16 respect to such interest has been satisfied or has become
17 unenforceable by reason of lapse of time; or

18 (b) until it is established to the satisfaction of the
19 department that no further tax liability may arise under
20 [section 7] with respect to such interest.

21 (3) [Sections 33, 35, and 36] apply with respect to a
22 lien imposed by [section 40].

23 NEW SECTION. Section 41. Substitution of security for
24 lien. The department may provide by rule for the
25 substitution of security for the lien imposed by [section

1 40].

2 NEW SECTION. Section 42. Subordination of liens. The
3 department may consent to the subordination of a lien
4 imposed by [section 29 or 40] upon any part of the property
5 subject to the lien if the state will be adequately secured
6 after the subordination.

7 Section 43. Section 72-16-308, MCA, is amended to
8 read:

9 *72-16-308. Tax to be on clear market value --
10 deductions allowed in determining value -- valuation of
11 certain farm and business property. (1) The tax so imposed
12 shall be upon the clear market value of such property
13 passing by any such transfer to each person, institution,
14 association, corporation, or body politic at the rates
15 hereinafter prescribed and only upon the excess of the
16 exemption hereinafter granted to such person, institution,
17 association, corporation, or body politic.

18 (2) In determining the clear market value of the
19 property so passing by any such transfer, the following
20 deductions and no other shall be allowed:

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

1 (d) the ordinary expenses of administration,
2 including:

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

6 (ii) attorneys' fees, filing fees, necessary expenses,
7 and closing costs incident to proceedings to terminate joint
8 tenancies, termination of life estates and transfers in
9 contemplation of death, and any and all other proceedings
10 instituted for the determination of inheritance tax; and

11 (e) federal estate taxes due or paid.

12 (3) In determining clear market value, the valuation
13 of certain farm and other real property may be made under
14 [sections 1 through 12]."

15 Section 44. Codification. Sections 1 through 12 of
16 this act are intended to be codified as an integral part of
17 Title 72, chapter 16, part 3.

18 Section 45. Effective date. This act is effective on
19 passage and approval and applies to estates of decedents who
20 died after December 31, 1978.

-End-

STATE OF MONTANA

REQUEST NO. 390-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 16, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 508 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 proposed bill revises the laws relating to the determination and payment of the Montana Inheritance Tax; providing that certain farm and other real property may be valued on the basis of its use at the time of the decedent's death; providing an election for a 15-year installment payment method for the transfer of certain farm or closely held business interests.

FISCAL IMPACT

There are no data available to estimate the fiscal impact of this proposal.

TECHNICAL NOTE

This proposal mimics the Federal statutes pertaining to taxation of agricultural land for inheritance tax purposes. In conversation with Federal Internal Revenue Service field offices it was mentioned that they have yet to receive all the rules and regulations to implement this statute.

(Prepared by the Department of Revenue)

Richard L. Gray for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/21/79

Approved by Committee
on Taxation

1 SENATE BILL NO. 508
2 INTRODUCED BY MANLEY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
5 RELATING TO THE DETERMINATION AND PAYMENT OF THE MONTANA
6 INHERITANCE TAX; PROVIDING THAT CERTAIN FARM AND OTHER REAL
7 PROPERTY MAY BE VALUED ON THE BASIS OF ITS USE AT THE TIME
8 OF THE DECEDENT'S DEATH; PROVIDING AN ELECTION FOR A 15-YEAR
9 INSTALLMENT PAYMENT METHOD FOR THE TRANSFER OF CERTAIN FARM
10 OR CLOSELY HELD BUSINESS INTERESTS; AMENDING SECTION
11 72-16-308, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE."
12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14 NEW SECTION. Section 1. Definitions. As used in
15 [sections 1 through 12], the following definitions apply:
16 (1) "Adjusted gross value" means:
17 (a) in the case of an estate, the gross value of all
18 transfers subject to the tax imposed by this part,
19 determined without regard to [sections 1 through 12],
20 reduced by the amount of unpaid mortgages and indebtedness;
21 (b) in the case of real or personal property, the
22 value of the property for the purposes of this part,
23 determined without regard to [sections 1 through 12],
24 reduced by the amount of unpaid mortgages and indebtedness.
25 (2) "Agreement" means a written agreement signed by

1 each person in being who has an interest, whether or not he
2 is in possession, in any property designated in such
3 agreement consenting to the application of [section 7 2]
4 with respect to such property.
5 (3) "Department" means the department of revenue.
6 (4) "Farm" means truck farms, ranches, nurseries,
7 ranges, greenhouses, orchards, woodlands, or structures used
8 primarily for raising agricultural or horticultural
9 commodities. The term includes stock, dairy animals,
10 poultry, fur-bearing animals, and fruit.
11 (5) "Farming purposes" means:
12 (a) cultivating the soil or raising or harvesting any
13 agricultural or horticultural commodity including the
14 raising, shearing, feeding, caring for, training, and
15 managing of animals on a farm;
16 (b) handling, drying, packing, grading, or storing on
17 a farm any agricultural or horticultural commodity in its
18 unmanufactured state, but only if the owner, tenant, or
19 operator of the farm regularly produces more than one-half
20 of the commodity so treated; or
21 (c) (i) planting, cultivating, caring for, or cutting
22 trees; or
23 (ii) preparing, other than milling, trees for market.
24 (6) "Internal Revenue Code" means the Internal Revenue
25 Code of 1954. A reference to a specific section of that code

1 is a reference to that section as it may be labeled or
2 amended.

3 (7) "Involuntary conversion" means a compulsory or
4 involuntary conversion within the meaning of section 1033 of
5 the Internal Revenue Code.

6 (8) "Material participation" is determined in a manner
7 similar to the manner used for the purposes of section
8 1402(a)(1) of the Internal Revenue Code.

9 (9) "Member of the family" means, with respect to any
10 individual, only the individual's ancestor or lineal
11 descendant, a lineal descendant of a grandparent of the
12 individual, the spouse of the individual, or the spouse of
13 any such descendant. For purposes of the preceding sentence,
14 a legally adopted child of an individual is treated as a
15 child of the individual by blood.

16 (10) "Qualified heir" means, with respect to any
17 property, a member of the decedent's family who acquired the
18 property or to whom the property passed from the decedent.
19 If a qualified heir disposes of any interest in qualified
20 real property to any member of his family, such member shall
21 thereafter be treated as the qualified heir with respect to
22 such interest.

23 (11) "Qualified real property" means real property
24 located in this state that on the date of the decedent's
25 death was being used for a qualified use, but only if:

1 (a) 50% or more of the adjusted value of the gross
2 estate consists of the adjusted value of real or personal
3 property that:

4 (i) on the date of the decedent's death was being used
5 for a qualified use; and

6 (ii) was acquired from or passed from the decedent to a
7 qualified heir of the decedent;

8 (b) 25% or more of the adjusted value of the gross
9 estate consists of the adjusted value of real property that
10 meets the requirements of (a)(ii) and (c) of this
11 subsection;

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

15 (i) the real property was owned by the decedent or a
16 member of the decedent's family and used for a qualified
17 use; and

18 (ii) there was material participation by the decedent
19 or a member of the decedent's family in the operation of the
20 farm or other business; and

21 (d) the real property is designated in the agreement
22 referred to in [subsection (2) of section 1].

23 (12) (a) "Qualified replacement property" means:

24 (i) in the case of an involuntary conversion as
25 described in section 1033(a)(1) of the Internal Revenue

1 Code, any real property into which the real property is
2 converted;

3 (ii) in the case of an involuntary conversion as
4 described in section 1033(a)(2) of the Internal Revenue
5 Code, any real property purchased by the qualified heir
6 during the period specified in section 1033(a)(2)(B) of the
7 Internal Revenue Code for the purpose of replacing the
8 qualified real property.

9 (b) "Qualified real property" only includes property
10 that is to be used for the qualified use set forth in (a) or
11 (b) of subsection (13) of this section under which the
12 qualified real property qualified under [section 2].

13 (13) (a) "Qualified use" means devotion to any of the
14 following:

- 15 (i) use as a farm for farming purposes; or
- 16 (ii) use in a trade or business other than the trade or
17 business of farming.

18 (b) In the case of real property that meets the
19 requirements of subsection (11)(c), residential buildings
20 and related improvements on the real property occupied on a
21 regular basis by the owner or lessee of the real property or
22 by persons employed by the owner or lessee for the purpose
23 of operating or maintaining the real property, and roads,
24 buildings, and other structures and improvements
25 functionally related to the qualified use shall be treated

1 as real property devoted to the qualified use.

2 ~~NEW SECTION.~~ Section 2. Valuation of certain farm and
3 real property -- limitation. (1) If the decedent was at the
4 time of his death a resident of this state and the personal
5 representative elects to have [sections 1 through 12] apply
6 and files an agreement with the department, the value of
7 qualified real property for the purposes of the tax imposed
8 by this part is its value for the use under which it
9 qualifies under [subsection (11) of section 1] as qualified
10 real property.

11 (2) The aggregate decrease in the value of qualified
12 real property taken into account for the purposes of the
13 Montana inheritance tax that results from the application of
14 (1) of this section may not exceed \$500,000.

15 ~~NEW SECTION.~~ Section 3. Election for valuation. An
16 election for valuation under [sections 1 through 12] must be
17 made within 18 months of the date of the decedent's death
18 and must be made in such manner as the department may
19 prescribe.

20 ~~NEW SECTION.~~ Section 4. Valuation of farms. (1)
21 Except as provided in (2) of this section, the value of a
22 farm for farming purposes is determined by dividing the
23 excess of the average annual gross cash rental for
24 comparable land used for farming purposes and located in the
25 locality of the farm over the average annual state and local

1 real estate taxes for comparable land by the average annual
 2 effective interest rate for all new federal land bank loans.
 3 For purposes of the preceding sentence, each average annual
 4 computation must be made on the basis of the 5 most recent
 5 calendar years ending before the date of the decedent's
 6 death.

7 (2) The formula in (1) of this section may not be
 8 used:

9 (a) if it is established that there is no comparable
 10 land from which the average annual gross cash rental may be
 11 determined; or

12 (b) if the personal representative elects to have the
 13 value of the farm for farming purposes determined under
 14 [section 5].

15 **NEW SECTION.** Section 5. Valuation of closely held
 16 business interests. If [section 4] does not apply, the
 17 following factors apply in determining the value of any
 18 qualified real property:

19 (1) The capitalization of income that the property can
 20 be expected to yield for farming or closely held business
 21 purposes over a reasonable period of time under prudent
 22 management using traditional cropping patterns for the area,
 23 taking into account soil capacity, terrain configuration,
 24 and similar factors;

25 (2) the capitalization of the fair rental value of the

1 land for farmland or closely held business purposes;

2 (3) assessed land values;

3 (4) comparable sales of other farm or closely held
 4 business land in the same geographical area far enough
 5 removed from a metropolitan or resort area so that
 6 nonagricultural use is not a significant factor in the sales
 7 price; and

8 (5) any other factor that fairly values the farm or
 9 closely held business value of the property.

10 **NEW SECTION.** Section 6. Time limitations. (1) If
 11 qualified real property is disposed of or ceases to be used
 12 for a qualified use, the statutory period for the assessment
 13 of any additional tax under [section 7] attributable to
 14 disposition or cessation may not expire until 3 years after
 15 the date the department is notified, in a manner to be
 16 prescribed by the department, of the disposition or
 17 cessation.

18 (2) The additional tax may be assessed before the
 19 expiration of the 3-year period referred to in (1) of this
 20 section, notwithstanding the provisions of any other law or
 21 rule of law that would otherwise prevent such assessment.

22 **NEW SECTION.** Section 7. Disposition or failure to use
 23 for qualified use. (1) There is hereby imposed an additional
 24 inheritance tax if within 15 years after the decedent's
 25 death and before the death of the qualified heir:

1 (a) the qualified heir disposes of any interest in
2 qualified real property other than by a disposition to a
3 member of his family; or

4 (b) the qualified heir ceases to use for the qualified
5 use the qualified real property which was acquired or passed
6 from the decedent.

7 (2) The amount of additional tax imposed by (1) of
8 this section with respect to any interest is the amount
9 equal to the lesser of:

10 (a) the adjusted tax difference attributable to such
11 interest; or

12 (b) the excess of the amount realized with respect to
13 the interest or in any case other than a sale or exchange at
14 arm's length, the fair market value of the interest over the
15 value of the interest determined under [section 2].

16 (3) For the purposes of (2) of this section, the
17 adjusted tax difference attributable to an interest is the
18 amount that bears the same ratio to the adjusted tax
19 difference with respect to the estate as determined under
20 (4) of this section as the excess of the value of such
21 interest for purposes of the Montana inheritance tax,
22 determined without regard to [sections 1 through 12], over
23 the value of such interest determined under [section 2]
24 bears to a similar excess determined for all qualified real
25 property.

1 (4) For the purposes of (3) of this section, "adjusted
2 tax difference with respect to the estate" means the excess
3 of what would have been the tax liability but for [section
4 2] over the tax liability. For the purposes of this
5 subsection, "tax liability" means the tax imposed by Title
6 72, chapter 16.

7 (5) For the purposes of this section, if the qualified
8 heir disposes of a portion of the interest acquired by or
9 passing to such heir or a predecessor qualified heir, or
10 there is a cessation of use of such a portion, the value
11 determined under [section 2] taken into account under (2)(b)
12 of this section with respect to such portion shall be its
13 pro rata share of the value of the interest and the adjusted
14 tax difference attributable to the interest taken into
15 account with respect to the transaction involving the second
16 or any succeeding portion shall be reduced by the amount of
17 the tax imposed by this section with respect to all prior
18 transactions involving portions of the interest.

19 (6) If the date of the disposition or cessation occurs
20 more than 120 months and less than 180 months after the date
21 of the death of the decedent, the amount of the tax imposed
22 by this section shall be reduced, but not below zero, by an
23 amount determined by multiplying the amount of the tax
24 determined without regard to this subsection, by a fraction
25 in which the numerator is the number of full months after

1 the death in excess of 120 and the denominator is 60.

2 (7) In the case of an interest acquired from or
3 passing from any decedent, if (a) or (b) of subsection (1)
4 of this section applies to any portion of an interest, (b)
5 or (a) of subsection (1) of this section, as the case may
6 be, does not apply with respect to the same portion of the
7 interest.

8 (8) The additional tax imposed by this section is due
9 on the day that is 6 months after the date of the
10 disposition or cessation.

11 (9) The qualified heir is personally liable for the
12 additional tax with respect to his interest unless the heir
13 has furnished bond that meets the requirements of [section
14 10].

15 NEW SECTION. Section 8. Cessation of qualified use.
16 For the purposes of [section 7], real property ceases to be
17 used for the qualified use if:

18 (1) the property ceases to be used for the qualified
19 use set forth in [section 1] under which the property
20 qualified under [section 1]; or

21 (2) during any period of 8 years ending after the date
22 of the decedent's death and before the date of the death of
23 the qualified heir, there had been periods aggregating 3
24 years or more during which:

25 (a) in the case of periods during which the property

1 was held by the decedent, there was no material
2 participation by the decedent or any member of his family in
3 the operation of the farm or other business; and

4 (b) in the case of periods during which the property
5 was held by any qualified heir, there was no material
6 participation by such qualified heir or any member of his
7 family in the operation of the farm or other business.

8 NEW SECTION. Section 9. Property acquired from
9 decedent. Property is considered to have been acquired from
10 the decedent if the property:

11 (1) is so considered under section 1014(b) of the
12 Internal Revenue Code;

13 (2) is acquired by any person from the estate in
14 satisfaction of the right of such person to a pecuniary
15 request; or

16 (3) is acquired by any person from a trust in
17 satisfaction of a right, which such person has by reason of
18 the death of the decedent, to receive from the trust a
19 specific dollar amount that is the equivalent of a pecuniary
20 request.

21 NEW SECTION. Section 10. Bond in lieu of personal
22 liability. (1) If the qualified heir makes written
23 application to the department for the determination of the
24 additional tax that may be imposed by [section 7] with
25 respect to the qualified heir's interest, the department

1 must, as soon as possible and in any event within 1 year
2 after the making of the application, notify the heir of the
3 maximum amount.

4 (2) The qualified heir, on furnishing a bond in such
5 amount and for such period as may be required, is discharged
6 from personal liability for any additional tax imposed by
7 [section 7] and is entitled to a receipt or writing showing
8 such discharge.

9 NEW SECTION. Section 11. Application to interests in
10 partnerships, corporations, and trusts. The department shall
11 prescribe regulations setting forth the application of
12 [sections 1 through 12] in the case of an interest in a
13 partnership, corporation, or trust that, with respect to the
14 decedent, is an interest in a closely held business within
15 the meaning of [section 15].

16 NEW SECTION. Section 12. Involuntary conversion of
17 qualified real property. (1) If there is an involuntary
18 conversion of an interest in qualified real property and the
19 qualified heir makes an election under this section, no tax
20 is imposed by [section 7] on the conversion if the cost of
21 the qualified replacement property equals or exceeds the
22 amount realized on the conversion.

23 (2) If (1) of this section does not apply, the tax
24 imposed by [section 7], with respect to any involuntary
25 conversion, is the amount of tax that, but for this

1 subsection, would have been imposed on the conversion
2 reduced by an amount that bears the same ratio to such tax
3 as the cost of the qualified replacement property bears to
4 the amount realized on the conversion.

5 (3) (a) For the purposes of [section 7], any qualified
6 replacement property shall be treated in the same manner as
7 if it were a portion of the interest in qualified real
8 property that was involuntarily converted, except that with
9 respect to such qualified replacement property:

10 (i) the 15-year period under [section 7] shall be
11 extended by any period, beyond the 2-year period referred to
12 in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
13 during which the qualified heir was allowed to replace the
14 qualified real property; and

15 (ii) the phaseout period under [subsection (6) of
16 section 7] shall be appropriately adjusted to take into
17 account the extension referred to in (a)(i) of this section
18 SUBSECTION.

19 (b) Any tax imposed by [section 7] on the involuntary
20 conversion shall be treated as a tax imposed on a partial
21 disposition. The provisions of [section 8] shall be applied
22 by not taking into account periods after the involuntary
23 conversion and before the acquisition of the qualified
24 replacement property and by treating material participation
25 with respect to the converted property as material

1 participation with respect to the qualified replacement
2 property.

3 (4) The rules of the last sentence of section
4 1033(a)(2)(B) of the Internal Revenue Code apply for the
5 purposes of [subsection (12)(a)(ii) of section 1].

6 (5) An election under this section may be made at such
7 time and in such manner as prescribed by the department.

8 **NEW SECTION.** Section 13. Definitions. As used in
9 [sections 13 through 27], the following definitions apply:

10 (1) "Adjusted gross estate" means the clear market
11 value of the property passing by reason of a decedent's
12 death determined under Title 72, chapter 16. The sum must be
13 determined on the basis of the facts and circumstances in
14 existence on the date on which the tax imposed by Title 72,
15 chapter 16, is determined, but in no event later than a date
16 18 months after the date of the death of the decedent.

17 (2) "Closely held business amount" means the value of
18 the interest in a closely held business that qualifies under
19 [subsection (1) of section 14].

20 (3) "Internal Revenue Code" means the Internal Revenue
21 Code of 1954. A reference to a specific section of that code
22 is a reference to that section as it may be labeled or
23 amended.

24 (4) "Value" means value determined for the purposes of
25 the Montana inheritance tax.

1 **NEW SECTION.** Section 14. Extension of time for
2 transfer of closely held business interest. (1) If the value
3 of an interest in a closely held business that is included
4 in the gross estate for federal estate tax purposes of a
5 decedent who was at the time of death a resident of this
6 state exceeds 65% of the adjusted gross estate, the personal
7 representative may elect to pay all or part of the tax
8 imposed by Title 72, chapter 16, part 3, in 2 or more but
9 less than 11 equal installments.

10 (2) The maximum amount of tax that may be paid in
11 installments is an amount that bears the same ratio to the
12 tax imposed by Title 72, chapter 16, part 3, as the closely
13 held business amount bears to the amount of the adjusted
14 gross estate.

15 (3) If an election is made under (1) of this section,
16 the first installment must be paid on or before a date
17 selected by the personal representative that is not more
18 than 5 years after the date prescribed by 72-16-441 for the
19 payment of tax without interest. IF, HOWEVER, A CREDIT IS
20 CLAIMED ON THE FEDERAL ESTATE TAX RETURN FOR STATE DEATH
21 TAXES ON THE ESTATE UNDER THE PROVISIONS OF SECTION 2011(A)
22 OF THE INTERNAL REVENUE CODE, AS AMENDED, AN AMOUNT OF
23 INHERITANCE TAX DUE EQUAL TO THE FEDERAL CREDIT MUST BE PAID
24 WITHIN THE PERIOD ESTABLISHED IN SECTION 2011(C) OF THE
25 INTERNAL REVENUE CODE, AS AMENDED. Each succeeding

1 installment must be paid on or before the date that is 1
2 year after the date of the preceding installment.

3 ~~(4) IF AN ELECTION IS MADE UNDER (1) OF THIS SECTION,~~
4 ~~THE TAX DUE MAY NOT BE FURTHER DEFERRED UNDER THE PROVISIONS~~
5 ~~OF 72-16-1438.~~

6 ~~(4)(5)~~ The person entitled to pay the tax in
7 installments is the person to whom an interest in a closely
8 held business passes.

9 NEW SECTION. Section 15. Closely held business. (1)
10 For the purposes of [section 14], the term "interest in a
11 closely held business" means:

12 (a) an interest as a proprietor in a trade or business
13 carried on as a proprietorship;

14 (b) an interest as a partner in a partnership carrying
15 on a trade or business if:

16 (i) 20% or more of the total capital interest in the
17 partnership is included in determining the gross estate of
18 the decedent for federal estate tax purposes; or

19 (ii) the partnership had 15 or fewer partners;

20 (c) stock in a corporation carrying on a trade or
21 business if:

22 (i) 20% or more in value of the voting stock of the
23 corporation is included in determining the gross estate of
24 the decedent for federal estate tax purposes; or

25 (ii) the corporation had 15 or fewer shareholders.

1 (2) Determination for qualification under (1) of this
2 section must be made as of the time immediately before the
3 decedent's death.

4 (3) Stock or a partnership interest held by a husband
5 and wife as joint tenants or tenants in common is treated as
6 owned by one shareholder or one partner, as the case may be.

7 (4) Property owned directly or indirectly by or for a
8 corporation, partnership, estate, or trust is considered as
9 being owned proportionately by or for its shareholders,
10 partners, or beneficiaries. For the purposes of this
11 subsection, a person is a beneficiary of a trust only if he
12 has a present interest in the trust.

13 (5) All stock and all partnership interests held by
14 the decedent or by any member of his family within the
15 meaning of section 267(c)(4) of the Internal Revenue Code is
16 treated as being owned by the decedent.

17 NEW SECTION. Section 16. Farmhouses and other
18 structures taken into account. For the purposes of the 65%
19 requirement of [section 14], an interest in a closely held
20 business that is the business of farming includes an
21 interest in residential buildings and related improvements
22 on the farm which are occupied on a regular basis by the
23 owner or lessee of the farm or by persons employed by the
24 owner or lessee for purposes of operating or maintaining the
25 farm.

1 **NEW SECTION.** Section 17. Partnership interests and
 2 stock not readily tradable. (1) If the personal
 3 representative elects the benefits of this section, at such
 4 time and in such manner as the department may prescribe:

5 (a) for the purposes of subsection (1)(b)(i) or
 6 (1)(c)(i) of [section 15], whichever is appropriate, and for
 7 the purposes of [section 18], any capital investment in a
 8 partnership and any non-readily tradable stock, which after
 9 the application of subsections (2) and (3) of [section 15]
 10 is treated as owned by the decedent, shall be treated as
 11 included in determining the value of the decedent's gross
 12 estate for federal estate tax purposes;

13 (b) the personal representative shall be treated as
 14 having selected under [subsection (3) of section 14] the
 15 date prescribed by 72-16-441 for the payment of the tax
 16 without interest; and

17 (c) [section 27] does not apply.

18 (2) For the purposes of this section, "non-readily
 19 tradable stock" means stock for which at the time of the
 20 decedent's death there was no market on the stock exchange
 21 or in an over-the-counter market.

22 **NEW SECTION.** Section 18. Interests in more than one
 23 closely held business. (1) Interests in two or more closely
 24 held businesses, with respect to which there is included in
 25 determining the value of the decedent's gross estate for

1 federal estate tax purposes more than 20% of the total value
 2 of each business, shall be treated as an interest in a
 3 single closely held business.

4 (2) For the purposes of the 20% requirement of (1) of
 5 this section, an interest in a closely held business that
 6 represents the surviving spouse's interest in property held
 7 by the decedent and the surviving spouse as joint tenants or
 8 tenants in common shall be treated as having been included
 9 in determining the value of the decedent's gross estate for
 10 federal estate tax purposes.

11 **NEW SECTION.** Section 19. Election. An election under
 12 [section 14] must be made not later than 18 months after the
 13 death of the decedent and must be made in such manner as the
 14 department prescribes.

15 **NEW SECTION.** Section 20. Proration of additional tax.
 16 (1) If an election is made under [section 14] to pay any
 17 part of the tax imposed by Title 72, chapter 16, part 3, in
 18 installments and an additional tax is determined, the
 19 additional tax, subject to the limitation provided by
 20 [subsection (2) of section 14], shall be prorated to the
 21 installments payable under [section 14].

22 (2) (a) The part of the additional tax so prorated to
 23 any installment, the date for payment of which has not
 24 arrived, shall be collected at the same time as and as part
 25 of the installment.

1 (b) The part of the additional tax so prorated to any
2 installment already paid shall be paid on notice and demand
3 from the department.

4 (3) This section does not apply if the additional tax
5 is due to negligence, intentional disregard of rules, or
6 fraud with intent to evade tax.

7 NEW SECTION. Section 21. Interest. (1) If the time
8 for payment of any amount of tax has been extended under
9 [sections 13 through 27], interest payable under [section
10 27] on any unpaid portion of such amount:

11 (a) attributable to the first 5 years after the date
12 prescribed by 72-16-441 for the payment of the tax without
13 interest shall be paid annually;

14 (b) attributable to any period after the 5-year period
15 referred to in (1)(a) of this section shall be paid annually
16 at the same time as and as part of each installment payment
17 of the tax.

18 (2) In the case of an additional tax to which [section
19 20] applies that is determined after the close of the 5-year
20 period referred to in (1)(a) of this section, interest
21 attributable to such 5-year period and interest assigned to
22 any installment the date for which has arrived on or before
23 the date of the assessment of the additional tax must be
24 paid on notice and demand from the department.

25 (3) If the personal representative has selected a

1 period shorter than 5 years, the shorter period shall be
2 substituted for 5 years in (1) and (2) of this section.

3 NEW SECTION. Section 22. Acceleration of payment. (1)
4 The extension of time for payment of tax provided in
5 [section 14] shall cease to apply and any unpaid portion of
6 the tax payable must be paid upon notice and demand of the
7 department if:

8 (a) one-third or more in value of an interest in a
9 closely held business that qualifies under [section 14] is
10 distributed, sold, exchanged, or otherwise disposed of; or

11 (b) aggregate withdrawals of money and other property
12 from the trade or business, an interest in which qualifies
13 under [section 14], made with respect to such interest,
14 equal or exceed one-third of the value of such trade or
15 business.

16 (2) In the case of a distribution in redemption of
17 stock to which section 303 of the Internal Revenue Code or
18 so much of section 304 of the Internal Revenue Code as
19 relates to section 303 applies:

20 (a) subsection (1)(a) of this section does not apply
21 with respect to the stock redeemed and, for the purposes of
22 subsection (1)(a), the interest in the closely held business
23 shall be considered to be such interest reduced by the value
24 of the stock redeemed; and

25 (b) subsection (1)(b) of this section does not apply

1 with respect to withdrawals of money and other property
 2 distributed and, for the purposes of subsection (1)(b), the
 3 value of the trade or business shall be considered to be
 4 such value reduced by the amount of money and other property
 5 distributed.

6 (3) Subsection (1)(a) of this section does not apply
 7 to an exchange of stock pursuant to a plan of reorganization
 8 described in (D), (E), or (F) of section 368(a)(1) of the
 9 Internal Revenue Code or to an exchange to which section 355
 10 of the Internal Revenue Code or so much of section 356 of
 11 the Internal Revenue Code applies to section 355, but any
 12 stock received in such an exchange shall be treated for
 13 purposes of subsection (1)(a) as an interest qualifying
 14 under [section 14].

15 (4) Subsection (1)(a) of this section does not apply
 16 to a transfer of property of the decedent to a person
 17 entitled by reason of the decedent's death to receive such
 18 property under the decedent's will, intestate succession, or
 19 a trust created by the decedent.

20 NEW SECTION. Section 23. Failure to pay installment.
 21 If any installment under [sections 13 through 27] is not
 22 paid on or before the date fixed for its payment, including
 23 any extension of time for the payment of the installment,
 24 the unpaid portion of the tax payable in installments must
 25 be paid on notice and demand from the department.

1 NEW SECTION. Section 24. Election in the case of
 2 additional tax. (1) If an additional tax is determined under
 3 Title 72, chapter 16, part 3, and the estate qualifies under
 4 [section 14] and the personal representative has not made an
 5 election under [section 14], the personal representative may
 6 elect to pay the additional tax in installments.

7 (2) An election under this section must be made not
 8 later than 60 days after notice and demand for payment of
 9 the additional tax has been given by the department and must
 10 be made in the manner prescribed by the department.

11 (3) If an election is made under this section, the
 12 additional tax shall, subject to the limitation in
 13 [subsection (2) of section 14], be prorated to the
 14 installments that would have been due if an election had
 15 been timely made under [section 14]. The part of the
 16 additional tax so prorated to any installment the date for
 17 payment of which would have arrived shall be paid at the
 18 time of the making of the election under this section. The
 19 portion of the additional tax prorated to installments, the
 20 date for payment of which would not have so arrived, shall
 21 be paid at the time such installments would have been due if
 22 such an election had been made.

23 NEW SECTION. Section 25. Security. If the time for
 24 payment of any amount of tax has been extended under
 25 [section 24], the department may require the taxpayer to

1 furnish a bond in an amount not exceeding double the amount
2 with respect to which the extension is granted conditioned
3 upon the payment of the amount extended in accordance with
4 the terms of the extension.

5 NEW SECTION. Section 26. Extensions of time for
6 payment of tax. The running of the period of limitations for
7 collection of any tax imposed by Title 72, chapter 16, part
8 3, is suspended for the period of any extension of time for
9 payment granted under [section 14].

10 NEW SECTION. Section 27. Interest rate. (1) If the
11 time for payment of an amount of tax imposed by Title 72,
12 chapter 16, part 3, is extended as provided in [section 14]
13 interest on the 4% portion of such amount shall, in lieu of
14 the annual rate provided by 72-16-441, be paid at the rate
15 of 4%. For the purposes of this section, the amount of any
16 additional tax that is prorated to installments payable
17 under [section 24] shall be treated as an amount of tax
18 payable in installments under that section.

19 (2) For the purposes of this section, "4% portion"
20 means the lesser of:

- 21 (a) \$345,800; or
22 (b) the amount of the tax imposed by Title 72, chapter
23 16, part 3, which is extended as provided in [section 14].
24 (3) If the amount of tax imposed by Title 72, chapter
25 16, part 3, that is extended exceeds the 4% portion, any

1 payment of a portion of such amount shall, for the purpose
2 of computing interest for periods after such payment, be
3 treated as reducing the 4% portion by an amount that bears
4 the same ratio to the amount of such payment as the amount
5 of the 4% portion, determined without regard to this
6 section, bears to the amount of tax that is extended as
7 provided in [section 14].

8 NEW SECTION. Section 28. Definitions. As used in
9 [sections 28 through 39], the following definitions apply:

10 (1) "Deferral period" means the period for which the
11 payment of tax is deferred under [section 14].

12 (2) "Deferred amount" means the aggregate amount
13 deferred under [section 14] determined as of the date
14 prescribed by 72-16-441 for payment without interest of the
15 tax imposed by Title 72, chapter 16, part 3.

16 (3) "Lien property" means interests in real and other
17 property to the extent such interests can be expected to
18 survive the deferral period and are designated in the
19 agreement referred to in [section 32].

20 (4) "Required interest amount" means the aggregate
21 amount of interest that will be payable over the first 4
22 years of the deferral period with respect to the deferred
23 amount determined as of the date prescribed for payment
24 without interest of the tax imposed by Title 72, chapter 16,
25 part 3.

1 NEW SECTION. Section 29. Lien for tax deferred. In
 2 the case of any estate with respect to which an election has
 3 been made under [section 14], if the personal representative
 4 makes an election under this section at such time and in
 5 such manner as the department may prescribe and files the
 6 agreement referred to in [section 32] the deferred amount,
 7 plus any interest or additional amount shall be a lien in
 8 favor of the state on the lien property.

9 NEW SECTION. Section 30. Maximum value. (1) The
 10 maximum value of the property that the department may
 11 require as lien property with respect to any estate is a
 12 value that is not greater than the sum of the deferred
 13 amount and the required interest amount.

14 (2) For the purposes of (1) of this section, the value
 15 of any property is determined as of the date prescribed by
 16 72-16-441 for payment of the tax without interest and is
 17 determined by taking into account any encumbrances.

18 NEW SECTION. Section 31. Partial substitution of bond
 19 for lien. If the value required as lien property exceeds the
 20 value of the interests in property covered by the agreement
 21 referred to in [section 32], the department may accept a
 22 bond in an amount equal to such excess conditioned on the
 23 payment of the amount extended in accordance with the terms
 24 of the extension.

25 NEW SECTION. Section 32. Agreement. The agreement is

1 a written agreement signed by each person in being who has
 2 an interest, whether or not in possession, in any property
 3 designated in the agreement:

4 (1) consenting to the creation of the lien under
 5 [section 29] with respect to the property; and

6 (2) designating a responsible person to be agent for
 7 the beneficiaries of the estate and for persons who have
 8 consented to the creation of the lien in dealings with the
 9 department on matters arising under [section 14] or [section
 10 29].

11 NEW SECTION. Section 33. Filing of lien. The lien
 12 imposed by [section 29] is not valid against a purchaser,
 13 holder of a security interest, mechanic's lien, or judgment
 14 lien creditor until notice that meets the requirements of
 15 71-3-204 has been filed by the department.

16 NEW SECTION. Section 34. Period of lien. The lien
 17 imposed by [section 29] arises at the time notice is filed
 18 under [section 33] and continues until liability for the
 19 deferred amount is satisfied or becomes unenforceable by
 20 reason of lapse of time.

21 NEW SECTION. Section 35. Priorities. (1) A lien filed
 22 under [section 29] is not valid:

23 (a) as against real property tax and special
 24 assessment liens;

25 (b) in the case of real property subject to a lien for

1 repair or improvement, as against a mechanic's lienor; or
 2 (c) as against a security interest set forth in
 3 paragraph 3 of section 6323(c) of the Internal Revenue Code,
 4 whether the security interest came into effect before or
 5 after the tax lien filing.

6 (2) Subsections (1)(b) and (1)(c) of this section do
 7 not apply to any security interest that came into existence
 8 after the date on which the department filed notice that
 9 payment of the deferred amount has been accelerated under
 10 [section 22].

11 NEW_SECTION. Section 36. Lien in lieu of other tax
 12 liens. If there is a lien on property under [section 29],
 13 the lien under 72-16-432 does not apply to the property with
 14 respect to the same estate.

15 NEW_SECTION. Section 37. Additional lien property.
 16 (1) If at any time the value of the property covered by the
 17 agreement is less than the unpaid portion of the deferred
 18 amount and the required interest amount, the department may
 19 require the addition of property to the agreement. The
 20 department may not require that the value of the property
 21 covered by the agreement exceed the unpaid portion.

22 (2) If property having the required value is not added
 23 to the property covered by the agreement or if other
 24 security equal to the required value is not furnished within
 25 90 days after notice and demand by the department, the

1 failure to comply shall be treated as an act accelerating
 2 payment of the installments under [section 22].

3 NEW_SECTION. Section 38. Lien in lieu of bond. The
 4 department may not require the furnishing of any bond for
 5 the payment of tax to which an agreement that meets the
 6 requirements of [section 32] applies.

7 NEW_SECTION. Section 39. Application of definitions
 8 to additional tax. In the case of an additional tax, a
 9 separate deferral period, deferred amount, and required
 10 interest amount shall be determined as of the due date of
 11 the first installment after the additional tax is prorated
 12 to installments under [section 14].

13 NEW_SECTION. Section 40. Lien for additional tax
 14 attributable to farm and closely held business property. (1)
 15 In the case of any interest in qualified real property
 16 within the meaning of [subsection (11) of section 1], an
 17 amount equal to the adjusted tax difference attributable to
 18 such interest within the meaning of [subsection (3) of
 19 section 7] is a lien in favor of the state on the property
 20 in which such interest exists.

21 (2) The lien imposed by this section shall arise at
 22 the time an election is filed under [section 2] and
 23 continues with respect to any interest in the qualified real
 24 property until:

25 (a) the liability for tax under [section 7] with

1 respect to such interest has been satisfied or has become
2 unenforceable by reason of lapse of time; or

3 (b) until it is established to the satisfaction of the
4 department that no further tax liability may arise under
5 [section 7] with respect to such interest.

6 (3) [Sections 33, 35, and 36] apply with respect to a
7 lien imposed by [section 40].

8 NEW SECTION. Section 41. Substitution of security for
9 lien. The department may provide by rule for the
10 substitution of security for the lien imposed by [section
11 40].

12 NEW SECTION. Section 42. Subordination of liens. The
13 department may consent to the subordination of a lien
14 imposed by [section 29 or 40] upon any part of the property
15 subject to the lien if the state will be adequately secured
16 after the subordination.

17 Section 43. Section 72-16-308, MCA, is amended to
18 read:

19 "72-16-308. Tax to be on clear market value --
20 deductions allowed in determining value -- valuation of
21 certain farm and business property. (1) The tax so imposed
22 shall be upon the clear market value of such property
23 passing by any such transfer to each person, institution,
24 association, corporation, or body politic at the rates
25 hereinafter prescribed and only upon the excess of the

1 exemption hereinafter granted to such person, institution,
2 association, corporation, or body politic.

3 (2) In determining the clear market value of the
4 property so passing by any such transfer, the following
5 deductions and no other shall be allowed:

6 (a) debts of the decedent owing at the date of death;

7 (b) expenses of funeral and last illness;

8 (c) all Montana state, county, municipal, and federal
9 taxes, including all penalties and interest thereon, owing
10 by decedent at the date of death;

11 (d) the ordinary expenses of administration,
12 including:

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

16 (ii) attorneys' fees, filing fees, necessary expenses,
17 and closing costs incident to proceedings to terminate joint
18 tenancies, termination of life estates and transfers in
19 contemplation of death, and any and all other proceedings
20 instituted for the determination of inheritance tax; and

21 (e) federal estate taxes due or paid.

22 (3) In determining clear market value, the valuation
23 of certain farm and other real property may be made under
24 [sections 1 through 12]."

25 Section 44. Codification. Sections 1 through 12 of

1 this act are intended to be codified as an integral part of
2 Title 72, chapter 16, part 3.

3 Section 45. Effective date. This act is effective on
4 passage and approval and applies to estates of decedents who
5 died after December 31, 1978.

-End-

1 SENATE BILL NO. 508

2 INTRODUCED BY MANLEY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
5 RELATING TO THE DETERMINATION AND PAYMENT OF THE MONTANA
6 INHERITANCE TAX; PROVIDING THAT CERTAIN FARM AND OTHER REAL
7 PROPERTY MAY BE VALUED ON THE BASIS OF ITS USE AT THE TIME
8 OF THE DECEDENT'S DEATH; PROVIDING AN ELECTION FOR A 15-YEAR
9 INSTALLMENT PAYMENT METHOD FOR THE TRANSFER OF CERTAIN FARM
10 OR CLOSELY HELD BUSINESS INTERESTS; AMENDING SECTION
11 72-16-308, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

14 NEW SECTION. Section 1. Definitions. As used in
15 [sections 1 through 12], the following definitions apply:

16 (1) "Adjusted gross value" means:

17 (a) in the case of an estate, the gross value of all
18 transfers subject to the tax imposed by this part,
19 determined without regard to [sections 1 through 12],
20 reduced by the amount of unpaid mortgages and indebtedness;

21 (b) in the case of real or personal property, the
22 value of the property for the purposes of this part,
23 determined without regard to [sections 1 through 12],
24 reduced by the amount of unpaid mortgages and indebtedness.

25 (2) "Agreement" means a written agreement signed by

1 each person in being who has an interest, whether or not he
2 is in possession, in any property designated in such
3 agreement consenting to the application of [section 7 2]
4 with respect to such property.

5 (3) "Department" means the department of revenue.

6 (4) "Farm" means truck farms, ranches, nurseries,
7 ranges, greenhouses, orchards, woodlands, or structures used
8 primarily for raising agricultural or horticultural
9 commodities. The term includes stock, dairy animals,
10 poultry, fur-bearing animals, and fruit.

11 (5) "Farming purposes" means:

12 (a) cultivating the soil or raising or harvesting any
13 agricultural or horticultural commodity including the
14 raising, shearing, feeding, caring for, training, and
15 managing of animals on a farm;

16 (b) handling, drying, packing, grading, or storing on
17 a farm any agricultural or horticultural commodity in its
18 unmanufactured state, but only if the owner, tenant, or
19 operator of the farm regularly produces more than one-half
20 of the commodity so treated; or

21 (c) (i) planting, cultivating, caring for, or cutting
22 trees; or

23 (ii) preparing, other than milling, trees for market.

24 (6) "Internal Revenue Code" means the Internal Revenue
25 Code of 1954. A reference to a specific section of that code

1 is a reference to that section as it may be labeled or
2 amended.

3 (7) "Involuntary conversion" means a compulsory or
4 involuntary conversion within the meaning of section 1033 of
5 the Internal Revenue Code.

6 (8) "Material participation" is determined in a manner
7 similar to the manner used for the purposes of section
8 1402(a)(1) of the Internal Revenue Code.

9 (9) "Member of the family" means, with respect to any
10 individual, only the individual's ancestor or lineal
11 descendant, a lineal descendant of a grandparent of the
12 individual, the spouse of the individual, or the spouse of
13 any such descendant. For purposes of the preceding sentence,
14 a legally adopted child of an individual is treated as a
15 child of the individual by blood.

16 (10) "Qualified heir" means, with respect to any
17 property, a member of the decedent's family who acquired the
18 property or to whom the property passed from the decedent.
19 If a qualified heir disposes of any interest in qualified
20 real property to any member of his family, such member shall
21 thereafter be treated as the qualified heir with respect to
22 such interest.

23 (11) "Qualified real property" means real property
24 located in this state that on the date of the decedent's
25 death was being used for a qualified use, but only if:

1 (a) 50% or more of the adjusted value of the gross
2 estate consists of the adjusted value of real or personal
3 property that:

4 (i) on the date of the decedent's death was being used
5 for a qualified use; and

6 (ii) was acquired from or passed from the decedent to a
7 qualified heir of the decedent;

8 (b) 25% or more of the adjusted value of the gross
9 estate consists of the adjusted value of real property that
10 meets the requirements of (a)(i) and (c) of this
11 subsection;

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

15 (i) the real property was owned by the decedent or a
16 member of the decedent's family and used for a qualified
17 use; and

18 (ii) there was material participation by the decedent
19 or a member of the decedent's family in the operation of the
20 farm or other business; and

21 (d) the real property is designated in the agreement
22 referred to in [subsection (2) of section 1].

23 (12) (a) "Qualified replacement property" means:

24 (i) in the case of an involuntary conversion as
25 described in section 1033(a)(1) of the Internal Revenue

1 Code, any real property into which the real property is
2 converted;

3 (ii) in the case of an involuntary conversion as
4 described in section 1033(a)(2) of the Internal Revenue
5 Code, any real property purchased by the qualified heir
6 during the period specified in section 1033(a)(2)(B) of the
7 Internal Revenue Code for the purpose of replacing the
8 qualified real property.

9 (b) "Qualified real property" only includes property
10 that is to be used for the qualified use set forth in (a) or
11 (b) of subsection (13) of this section under which the
12 qualified real property qualified under [section 2].

13 (13) (a) "Qualified use" means devotion to any of the
14 following:

15 (i) use as a farm for farming purposes; or

16 (ii) use in a trade or business other than the trade or
17 business of farming.

18 (b) In the case of real property that meets the
19 requirements of subsection (11)(c), residential buildings
20 and related improvements on the real property occupied on a
21 regular basis by the owner or lessee of the real property or
22 by persons employed by the owner or lessee for the purpose
23 of operating or maintaining the real property, and roads,
24 buildings, and other structures and improvements
25 functionally related to the qualified use shall be treated

1 as real property devoted to the qualified use.

2 NEW SECTION. Section 2. Valuation of certain farm and
3 real property -- limitation. (1) If the decedent was at the
4 time of his death a resident of this state and the personal
5 representative elects to have [sections 1 through 12] apply
6 and files an agreement with the department, the value of
7 qualified real property for the purposes of the tax imposed
8 by this part is its value for the use under which it
9 qualifies under [subsection (11) of section 1] as qualified
10 real property.

11 (2) The aggregate decrease in the value of qualified
12 real property taken into account for the purposes of the
13 Montana inheritance tax that results from the application of
14 (1) of this section may not exceed \$500,000.

15 NEW SECTION. Section 3. Election for valuation. An
16 election for valuation under [sections 1 through 12] must be
17 made within 18 months of the date of the decedent's death
18 and must be made in such manner as the department may
19 prescribe.

20 NEW SECTION. Section 4. Valuation of farms. (1)
21 Except as provided in (2) of this section, the value of a
22 farm for farming purposes is determined by dividing the
23 excess of the average annual gross cash rental for
24 comparable land used for farming purposes and located in the
25 locality of the farm over the average annual state and local

1 real estate taxes for comparable land by the average annual
 2 effective interest rate for all new federal land bank loans.
 3 For purposes of the preceding sentence, each average annual
 4 computation must be made on the basis of the 5 most recent
 5 calendar years ending before the date of the decedent's
 6 death.

7 (2) The formula in (1) of this section may not be
 8 used:

9 (a) if it is established that there is no comparable
 10 land from which the average annual gross cash rental may be
 11 determined; or

12 (b) if the personal representative elects to have the
 13 value of the farm for farming purposes determined under
 14 [section 5].

15 NEW SECTION. Section 5. Valuation of closely held
 16 business interests. If [section 4] does not apply, the
 17 following factors apply in determining the value of any
 18 qualified real property:

19 (1) The capitalization of income that the property can
 20 be expected to yield for farming or closely held business
 21 purposes over a reasonable period of time under prudent
 22 management using traditional cropping patterns for the area,
 23 taking into account soil capacity, terrain configuration,
 24 and similar factors;

25 (2) the capitalization of the fair rental value of the

1 land for farmland or closely held business purposes;

2 (3) assessed land values;

3 (4) comparable sales of other farm or closely held
 4 business land in the same geographical area far enough
 5 removed from a metropolitan or resort area so that
 6 nonagricultural use is not a significant factor in the sales
 7 price; and

8 (5) any other factor that fairly values the farm or
 9 closely held business value of the property.

10 NEW SECTION. Section 6. Time limitations. (1) If
 11 qualified real property is disposed of or ceases to be used
 12 for a qualified use, the statutory period for the assessment
 13 of any additional tax under [section 7] attributable to
 14 disposition or cessation may not expire until 3 years after
 15 the date the department is notified, in a manner to be
 16 prescribed by the department, of the disposition or
 17 cessation.

18 (2) The additional tax may be assessed before the
 19 expiration of the 3-year period referred to in (1) of this
 20 section, notwithstanding the provisions of any other law or
 21 rule of law that would otherwise prevent such assessment.

22 NEW SECTION. Section 7. Disposition or failure to use
 23 for qualified use. (1) There is hereby imposed an additional
 24 inheritance tax if within 15 years after the decedent's
 25 death and before the death of the qualified heir:

1 (a) the qualified heir disposes of any interest in
2 qualified real property other than by a disposition to a
3 member of his family; or

4 (b) the qualified heir ceases to use for the qualified
5 use the qualified real property which was acquired or passed
6 from the decedent.

7 (2) The amount of additional tax imposed by (1) of
8 this section with respect to any interest is the amount
9 equal to the lesser of:

10 (a) the adjusted tax difference attributable to such
11 interest; or

12 (b) the excess of the amount realized with respect to
13 the interest or in any case other than a sale or exchange at
14 arm's length, the fair market value of the interest over the
15 value of the interest determined under [section 2].

16 (3) For the purposes of (2) of this section, the
17 adjusted tax difference attributable to an interest is the
18 amount that bears the same ratio to the adjusted tax
19 difference with respect to the estate as determined under
20 (4) of this section as the excess of the value of such
21 interest for purposes of the Montana inheritance tax,
22 determined without regard to [sections 1 through 12], over
23 the value of such interest determined under [section 2]
24 bears to a similar excess determined for all qualified real
25 property.

1 (4) For the purposes of (3) of this section, "adjusted
2 tax difference with respect to the estate" means the excess
3 of what would have been the tax liability but for [section
4 2] over the tax liability. For the purposes of this
5 subsection, "tax liability" means the tax imposed by Title
6 72, chapter 16.

7 (5) For the purposes of this section, if the qualified
8 heir disposes of a portion of the interest acquired by or
9 passing to such heir or a predecessor qualified heir, or
10 there is a cessation of use of such a portion, the value
11 determined under [section 2] taken into account under (2)(b)
12 of this section with respect to such portion shall be its
13 pro rata share of the value of the interest and the adjusted
14 tax difference attributable to the interest taken into
15 account with respect to the transaction involving the second
16 or any succeeding portion shall be reduced by the amount of
17 the tax imposed by this section with respect to all prior
18 transactions involving portions of the interest.

19 (6) If the date of the disposition or cessation occurs
20 more than 120 months and less than 180 months after the date
21 of the death of the decedent, the amount of the tax imposed
22 by this section shall be reduced, but not below zero, by an
23 amount determined by multiplying the amount of the tax
24 determined without regard to this subsection, by a fraction
25 in which the numerator is the number of full months after

1 the death in excess of 120 and the denominator is 60.

2 (7) In the case of an interest acquired from or
3 passing from any decedent, if (a) or (b) of subsection (1)
4 of this section applies to any portion of an interest, (b)
5 or (a) of subsection (1) of this section, as the case may
6 be, does not apply with respect to the same portion of the
7 interest.

8 (8) The additional tax imposed by this section is due
9 on the day that is 6 months after the date of the
10 disposition or cessation.

11 (9) The qualified heir is personally liable for the
12 additional tax with respect to his interest unless the heir
13 has furnished bond that meets the requirements of [section
14 10].

15 **NEW_SECTION.** Section 8. Cessation of qualified use.
16 For the purposes of [section 7], real property ceases to be
17 used for the qualified use if:

18 (1) the property ceases to be used for the qualified
19 use set forth in [section 1] under which the property
20 qualified under [section 1]; or

21 (2) during any period of 8 years ending after the date
22 of the decedent's death and before the date of the death of
23 the qualified heir, there had been periods aggregating 3
24 years or more during which:

25 (a) in the case of periods during which the property

1 was held by the decedent, there was no material
2 participation by the decedent or any member of his family in
3 the operation of the farm or other business; and

4 (b) in the case of periods during which the property
5 was held by any qualified heir, there was no material
6 participation by such qualified heir or any member of his
7 family in the operation of the farm or other business.

8 **NEW_SECTION.** Section 9. Property acquired from
9 decedent. Property is considered to have been acquired from
10 the decedent if the property:

11 (1) is so considered under section 1014(b) of the
12 Internal Revenue Code;

13 (2) is acquired by any person from the estate in
14 satisfaction of the right of such person to a pecuniary
15 request; or

16 (3) is acquired by any person from a trust in
17 satisfaction of a right, which such person has by reason of
18 the death of the decedent, to receive from the trust a
19 specific dollar amount that is the equivalent of a pecuniary
20 request.

21 **NEW_SECTION.** Section 10. Bond in lieu of personal
22 liability. (1) If the qualified heir makes written
23 application to the department for the determination of the
24 additional tax that may be imposed by [section 7] with
25 respect to the qualified heir's interest, the department

1 must, as soon as possible and in any event within 1 year
2 after the making of the application, notify the heir of the
3 maximum amount.

4 (2) The qualified heir, on furnishing a bond in such
5 amount and for such period as may be required, is discharged
6 from personal liability for any additional tax imposed by
7 [section 7] and is entitled to a receipt or writing showing
8 such discharge.

9 NEW SECTION. Section 11. Application to interests in
10 partnerships, corporations, and trusts. The department shall
11 prescribe regulations setting forth the application of
12 [sections 1 through 12] in the case of an interest in a
13 partnership, corporation, or trust that, with respect to the
14 decedent, is an interest in a closely held business within
15 the meaning of [section 15].

16 NEW SECTION. Section 12. Involuntary conversion of
17 qualified real property. (1) If there is an involuntary
18 conversion of an interest in qualified real property and the
19 qualified heir makes an election under this section, no tax
20 is imposed by [section 7] on the conversion if the cost of
21 the qualified replacement property equals or exceeds the
22 amount realized on the conversion.

23 (2) If (1) of this section does not apply, the tax
24 imposed by [section 7], with respect to any involuntary
25 conversion, is the amount of tax that, but for this

1 subsection, would have been imposed on the conversion
2 reduced by an amount that bears the same ratio to such tax
3 as the cost of the qualified replacement property bears to
4 the amount realized on the conversion.

5 (3) (a) For the purposes of [section 7], any qualified
6 replacement property shall be treated in the same manner as
7 if it were a portion of the interest in qualified real
8 property that was involuntarily converted, except that with
9 respect to such qualified replacement property:

10 (i) the 15-year period under [section 7] shall be
11 extended by any period, beyond the 2-year period referred to
12 in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
13 during which the qualified heir was allowed to replace the
14 qualified real property; and

15 (ii) the phaseout period under [subsection (6) of
16 section 7] shall be appropriately adjusted to take into
17 account the extension referred to in (a)(i) of this section
18 SUBSECTION.

19 (b) Any tax imposed by [section 7] on the involuntary
20 conversion shall be treated as a tax imposed on a partial
21 disposition. The provisions of [section 8] shall be applied
22 by not taking into account periods after the involuntary
23 conversion and before the acquisition of the qualified
24 replacement property and by treating material participation
25 with respect to the converted property as material

1 participation with respect to the qualified replacement
2 property.

3 (4) The rules of the last sentence of section
4 1033(a)(2)(B) of the Internal Revenue Code apply for the
5 purposes of [subsection (12)(a)(ii) of section 1].

6 (5) An election under this section may be made at such
7 time and in such manner as prescribed by the department.

8 NEW SECTION. Section 13. Definitions. As used in
9 [sections 13 through 27], the following definitions apply:

10 (1) "Adjusted gross estate" means the clear market
11 value of the property passing by reason of a decedent's
12 death determined under Title 72, chapter 16. The sum must be
13 determined on the basis of the facts and circumstances in
14 existence on the date on which the tax imposed by Title 72,
15 chapter 16, is determined, but in no event later than a date
16 18 months after the date of the death of the decedent.

17 (2) "Closely held business amount" means the value of
18 the interest in a closely held business that qualifies under
19 [subsection (1) of section 14].

20 (3) "Internal Revenue Code" means the Internal Revenue
21 Code of 1954. A reference to a specific section of that code
22 is a reference to that section as it may be labeled or
23 amended.

24 (4) "Value" means value determined for the purposes of
25 the Montana inheritance tax.

1 NEW SECTION. Section 14. Extension of time for
2 transfer of closely held business interest. (1) If the value
3 of an interest in a closely held business that is included
4 in the gross estate for federal estate tax purposes of a
5 decedent who was at the time of death a resident of this
6 state exceeds 65% of the adjusted gross estate, the personal
7 representative may elect to pay all or part of the tax
8 imposed by Title 72, chapter 16, part 3, in 2 or more but
9 less than 11 equal installments.

10 (2) The maximum amount of tax that may be paid in
11 installments is an amount that bears the same ratio to the
12 tax imposed by Title 72, chapter 16, part 3, as the closely
13 held business amount bears to the amount of the adjusted
14 gross estate.

15 (3) If an election is made under (1) of this section,
16 the first installment must be paid on or before a date
17 selected by the personal representative that is not more
18 than 5 years after the date prescribed by 72-16-441 for the
19 payment of tax without interest. IF, HOWEVER, A CREDIT IS
20 CLAIMED ON THE FEDERAL ESTATE TAX RETURN FOR STATE DEATH
21 TAXES ON THE ESTATE UNDER THE PROVISIONS OF SECTION 2011(A)
22 OF THE INTERNAL REVENUE CODE, AS AMENDED, AN AMOUNT OF
23 INHERITANCE TAX DUE EQUAL TO THE FEDERAL CREDIT MUST BE PAID
24 WITHIN THE PERIOD ESTABLISHED IN SECTION 2011(C) OF THE
25 INTERNAL REVENUE CODE, AS AMENDED. Each succeeding

1 installment must be paid on or before the date that is 1
2 year after the date of the preceding installment.

3 ~~(4) IF AN ELECTION IS MADE UNDER (1) OF THIS SECTION,~~
4 ~~THE TAX DUE MAY NOT BE FURTHER DEFERRED UNDER THE PROVISIONS~~
5 ~~OF 72-16-1438.~~

6 ~~(4)(5) The person entitled to pay the tax in~~
7 ~~installments is the person to whom an interest in a closely~~
8 ~~held business passes.~~

9 NEW SECTION. Section 15. Closely held business. (1)
10 For the purposes of [section 14], the term "interest in a
11 closely held business" means:

12 (a) an interest as a proprietor in a trade or business
13 carried on as a proprietorship;

14 (b) an interest as a partner in a partnership carrying
15 on a trade or business if:

16 (i) 20% or more of the total capital interest in the
17 partnership is included in determining the gross estate of
18 the decedent for federal estate tax purposes; or

19 (ii) the partnership had 15 or fewer partners;

20 (c) stock in a corporation carrying on a trade or
21 business if:

22 (i) 20% or more in value of the voting stock of the
23 corporation is included in determining the gross estate of
24 the decedent for federal estate tax purposes; or

25 (ii) the corporation had 15 or fewer shareholders.

1 (2) Determination for qualification under (1) of this
2 section must be made as of the time immediately before the
3 decedent's death.

4 (3) Stock or a partnership interest held by a husband
5 and wife as joint tenants or tenants in common is treated as
6 owned by one shareholder or one partner, as the case may be.

7 (4) Property owned directly or indirectly by or for a
8 corporation, partnership, estate, or trust is considered as
9 being owned proportionately by or for its shareholders,
10 partners, or beneficiaries. For the purposes of this
11 subsection, a person is a beneficiary of a trust only if he
12 has a present interest in the trust.

13 (5) All stock and all partnership interests held by
14 the decedent or by any member of his family within the
15 meaning of section 267(c)(4) of the Internal Revenue Code is
16 treated as being owned by the decedent.

17 NEW SECTION. Section 16. Farmhouses and other
18 structures taken into account. For the purposes of the 65%
19 requirement of [section 14], an interest in a closely held
20 business that is the business of farming includes an
21 interest in residential buildings and related improvements
22 on the farm which are occupied on a regular basis by the
23 owner or lessee of the farm or by persons employed by the
24 owner or lessee for purposes of operating or maintaining the
25 farm.

1 NEW SECTION. Section 17. Partnership interests and
 2 stock not readily tradable. (1) If the personal
 3 representative elects the benefits of this section, at such
 4 time and in such manner as the department may prescribe:

5 (a) for the purposes of subsection (1)(b)(i) or
 6 (1)(c)(i) of [section 15], whichever is appropriate, and for
 7 the purposes of [section 18], any capital investment in a
 8 partnership and any non-readily tradable stock, which after
 9 the application of subsections (2) and (3) of [section 15]
 10 is treated as owned by the decedent, shall be treated as
 11 included in determining the value of the decedent's gross
 12 estate for federal estate tax purposes;

13 (b) the personal representative shall be treated as
 14 having selected under [subsection (3) of section 14] the
 15 date prescribed by 72-16-441 for the payment of the tax
 16 without interest; and

17 (c) [section 27] does not apply.

18 (2) For the purposes of this section, "non-readily
 19 tradable stock" means stock for which at the time of the
 20 decedent's death there was no market on the stock exchange
 21 or in an over-the-counter market.

22 NEW SECTION. Section 18. Interests in more than one
 23 closely held business. (1) Interests in two or more closely
 24 held businesses, with respect to which there is included in
 25 determining the value of the decedent's gross estate for

1 federal estate tax purposes more than 20% of the total value
 2 of each business, shall be treated as an interest in a
 3 single closely held business.

4 (2) For the purposes of the 20% requirement of (1) of
 5 this section, an interest in a closely held business that
 6 represents the surviving spouse's interest in property held
 7 by the decedent and the surviving spouse as joint tenants or
 8 tenants in common shall be treated as having been included
 9 in determining the value of the decedent's gross estate for
 10 federal estate tax purposes.

11 NEW SECTION. Section 19. Election. An election under
 12 [section 14] must be made not later than 18 months after the
 13 death of the decedent and must be made in such manner as the
 14 department prescribes.

15 NEW SECTION. Section 20. Proration of additional tax.
 16 (1) If an election is made under [section 14] to pay any
 17 part of the tax imposed by Title 72, chapter 16, part 3, in
 18 installments and an additional tax is determined, the
 19 additional tax, subject to the limitation provided by
 20 [subsection (2) of section 14], shall be prorated to the
 21 installments payable under [section 14].

22 (2) (a) The part of the additional tax so prorated to
 23 any installment, the date for payment of which has not
 24 arrived, shall be collected at the same time as and as part
 25 of the installment.

1 (b) The part of the additional tax so prorated to any
2 installment already paid shall be paid on notice and demand
3 from the department.

4 (3) This section does not apply if the additional tax
5 is due to negligence, intentional disregard of rules, or
6 fraud with intent to evade tax.

7 NEW SECTION. Section 21. Interest. (1) If the time
8 for payment of any amount of tax has been extended under
9 [sections 13 through 27], interest payable under [section
10 27] on any unpaid portion of such amount:

11 (a) attributable to the first 5 years after the date
12 prescribed by 72-16-441 for the payment of the tax without
13 interest shall be paid annually;

14 (b) attributable to any period after the 5-year period
15 referred to in (1)(a) of this section shall be paid annually
16 at the same time as and as part of each installment payment
17 of the tax.

18 (2) In the case of an additional tax to which [section
19 20] applies that is determined after the close of the 5-year
20 period referred to in (1)(a) of this section, interest
21 attributable to such 5-year period and interest assigned to
22 any installment the date for which has arrived on or before
23 the date of the assessment of the additional tax must be
24 paid on notice and demand from the department.

25 (3) If the personal representative has selected a

1 period shorter than 5 years, the shorter period shall be
2 substituted for 5 years in (1) and (2) of this section.

3 NEW SECTION. Section 22. Acceleration of payment. (1)
4 The extension of time for payment of tax provided in
5 [section 14] shall cease to apply and any unpaid portion of
6 the tax payable must be paid upon notice and demand of the
7 department if:

8 (a) one-third or more in value of an interest in a
9 closely held business that qualifies under [section 14] is
10 distributed, sold, exchanged, or otherwise disposed of; or

11 (b) aggregate withdrawals of money and other property
12 from the trade or business, an interest in which qualifies
13 under [section 14], made with respect to such interest,
14 equal or exceed one-third of the value of such trade or
15 business.

16 (2) In the case of a distribution in redemption of
17 stock to which section 303 of the Internal Revenue Code or
18 so much of section 304 of the Internal Revenue Code as
19 relates to section 303 applies:

20 (a) subsection (1)(a) of this section does not apply
21 with respect to the stock redeemed and, for the purposes of
22 subsection (1)(a), the interest in the closely held business
23 shall be considered to be such interest reduced by the value
24 of the stock redeemed; and

25 (b) subsection (1)(b) of this section does not apply

1 with respect to withdrawals of money and other property
2 distributed and, for the purposes of subsection (1)(b), the
3 value of the trade or business shall be considered to be
4 such value reduced by the amount of money and other property
5 distributed.

6 (3) Subsection (1)(a) of this section does not apply
7 to an exchange of stock pursuant to a plan of reorganization
8 described in (D), (E), or (F) of section 368(a)(1) of the
9 Internal Revenue Code or to an exchange to which section 355
10 of the Internal Revenue Code or so much of section 356 of
11 the Internal Revenue Code applies to section 355, but any
12 stock received in such an exchange shall be treated for
13 purposes of subsection (1)(a) as an interest qualifying
14 under [section 14].

15 (4) Subsection (1)(a) of this section does not apply
16 to a transfer of property of the decedent to a person
17 entitled by reason of the decedent's death to receive such
18 property under the decedent's will, intestate succession, or
19 a trust created by the decedent.

20 NEW SECTION. Section 23. Failure to pay installment.
21 If any installment under [sections 13 through 27] is not
22 paid on or before the date fixed for its payment, including
23 any extension of time for the payment of the installment,
24 the unpaid portion of the tax payable in installments must
25 be paid on notice and demand from the department.

1 NEW SECTION. Section 24. Election in the case of
2 additional tax. (1) If an additional tax is determined under
3 Title 72, chapter 16, part 3, and the estate qualifies under
4 [section 14] and the personal representative has not made an
5 election under [section 14], the personal representative may
6 elect to pay the additional tax in installments.

7 (2) An election under this section must be made not
8 later than 60 days after notice and demand for payment of
9 the additional tax has been given by the department and must
10 be made in the manner prescribed by the department.

11 (3) If an election is made under this section, the
12 additional tax shall, subject to the limitation in
13 [subsection (2) of section 14], be prorated to the
14 installments that would have been due if an election had
15 been timely made under [section 14]. The part of the
16 additional tax so prorated to any installment the date for
17 payment of which would have arrived shall be paid at the
18 time of the making of the election under this section. The
19 portion of the additional tax prorated to installments, the
20 date for payment of which would not have so arrived, shall
21 be paid at the time such installments would have been due if
22 such an election had been made.

23 NEW SECTION. Section 25. Security. If the time for
24 payment of any amount of tax has been extended under
25 [section 24], the department may require the taxpayer to

1 furnish a bond in an amount not exceeding double the amount
 2 with respect to which the extension is granted conditioned
 3 upon the payment of the amount extended in accordance with
 4 the terms of the extension.

5 NEW SECTION. Section 26. Extensions of time for
 6 payment of tax. The running of the period of limitations for
 7 collection of any tax imposed by Title 72, chapter 16, part
 8 3, is suspended for the period of any extension of time for
 9 payment granted under [section 14].

10 NEW SECTION. Section 27. Interest rate. (1) If the
 11 time for payment of an amount of tax imposed by Title 72,
 12 chapter 16, part 3, is extended as provided in [section 14]
 13 interest on the 4% portion of such amount shall, in lieu of
 14 the annual rate provided by 72-16-441, be paid at the rate
 15 of 4%. For the purposes of this section, the amount of any
 16 additional tax that is prorated to installments payable
 17 under [section 24] shall be treated as an amount of tax
 18 payable in installments under that section.

19 (2) For the purposes of this section, "4% portion"
 20 means the lesser of:

- 21 (a) \$345,800; or
 22 (b) the amount of the tax imposed by Title 72, chapter
 23 16, part 3, which is extended as provided in [section 14].
 24 (3) If the amount of tax imposed by Title 72, chapter
 25 16, part 3, that is extended exceeds the 4% portion, any

1 payment of a portion of such amount shall, for the purpose
 2 of computing interest for periods after such payment, be
 3 treated as reducing the 4% portion by an amount that bears
 4 the same ratio to the amount of such payment as the amount
 5 of the 4% portion, determined without regard to this
 6 section, bears to the amount of tax that is extended as
 7 provided in [section 14].

8 NEW SECTION. Section 28. Definitions. As used in
 9 [sections 28 through 39], the following definitions apply:

10 (1) "Deferral period" means the period for which the
 11 payment of tax is deferred under [section 14].

12 (2) "Deferred amount" means the aggregate amount
 13 deferred under [section 14] determined as of the date
 14 prescribed by 72-16-441 for payment without interest of the
 15 tax imposed by Title 72, chapter 16, part 3.

16 (3) "Lien property" means interests in real and other
 17 property to the extent such interests can be expected to
 18 survive the deferral period and are designated in the
 19 agreement referred to in [section 32].

20 (4) "Required interest amount" means the aggregate
 21 amount of interest that will be payable over the first 4
 22 years of the deferral period with respect to the deferred
 23 amount determined as of the date prescribed for payment
 24 without interest of the tax imposed by Title 72, chapter 16,
 25 part 3.

1 **NEW SECTION.** Section 29. Lien for tax deferred. In
 2 the case of any estate with respect to which an election has
 3 been made under [section 14], if the personal representative
 4 makes an election under this section at such time and in
 5 such manner as the department may prescribe and files the
 6 agreement referred to in [section 32] the deferred amount,
 7 plus any interest or additional amount shall be a lien in
 8 favor of the state on the lien property.

9 **NEW SECTION.** Section 30. Maximum value. (1) The
 10 maximum value of the property that the department may
 11 require as lien property with respect to any estate is a
 12 value that is not greater than the sum of the deferred
 13 amount and the required interest amount.

14 (2) For the purposes of (1) of this section, the value
 15 of any property is determined as of the date prescribed by
 16 72-16-441 for payment of the tax without interest and is
 17 determined by taking into account any encumbrances.

18 **NEW SECTION.** Section 31. Partial substitution of bond
 19 for lien. If the value required as lien property exceeds the
 20 value of the interests in property covered by the agreement
 21 referred to in [section 32], the department may accept a
 22 bond in an amount equal to such excess conditioned on the
 23 payment of the amount extended in accordance with the terms
 24 of the extension.

25 **NEW SECTION.** Section 32. Agreement. The agreement is

1 a written agreement signed by each person in being who has
 2 an interest, whether or not in possession, in any property
 3 designated in the agreement:

4 (1) consenting to the creation of the lien under
 5 [section 29] with respect to the property; and

6 (2) designating a responsible person to be agent for
 7 the beneficiaries of the estate and for persons who have
 8 consented to the creation of the lien in dealings with the
 9 department on matters arising under [section 14] or [section
 10 29].

11 **NEW SECTION.** Section 33. Filing of lien. The lien
 12 imposed by [section 29] is not valid against a purchaser,
 13 holder of a security interest, mechanic's lien, or judgment
 14 lien creditor until notice that meets the requirements of
 15 71-3-204 has been filed by the department.

16 **NEW SECTION.** Section 34. Period of lien. The lien
 17 imposed by [section 29] arises at the time notice is filed
 18 under [section 33] and continues until liability for the
 19 deferred amount is satisfied or becomes unenforceable by
 20 reason of lapse of time.

21 **NEW SECTION.** Section 35. Priorities. (1) A lien filed
 22 under [section 29] is not valid:

23 (a) as against real property tax and special
 24 assessment liens;

25 (b) in the case of real property subject to a lien for

1 repair or improvement, as against a mechanic's lienor; or
 2 (c) as against a security interest set forth in
 3 paragraph 3 of section 6323(c) of the Internal Revenue Code,
 4 whether the security interest came into effect before or
 5 after the tax lien filing.

6 (2) Subsections (1)(b) and (1)(c) of this section do
 7 not apply to any security interest that came into existence
 8 after the date on which the department filed notice that
 9 payment of the deferred amount has been accelerated under
 10 [section 22].

11 NEW_SECTION. Section 36. Lien in lieu of other tax
 12 liens. If there is a lien on property under [section 29],
 13 the lien under 72-16-432 does not apply to the property with
 14 respect to the same estate.

15 NEW_SECTION. Section 37. Additional lien property.
 16 (1) If at any time the value of the property covered by the
 17 agreement is less than the unpaid portion of the deferred
 18 amount and the required interest amount, the department may
 19 require the addition of property to the agreement. The
 20 department may not require that the value of the property
 21 covered by the agreement exceed the unpaid portion.

22 (2) If property having the required value is not added
 23 to the property covered by the agreement or if other
 24 security equal to the required value is not furnished within
 25 90 days after notice and demand by the department, the

1 failure to comply shall be treated as an act accelerating
 2 payment of the installments under [section 22].

3 NEW_SECTION. Section 38. Lien in lieu of bond. The
 4 department may not require the furnishing of any bond for
 5 the payment of tax to which an agreement that meets the
 6 requirements of [section 32] applies.

7 NEW_SECTION. Section 39. Application of definitions
 8 to additional tax. In the case of an additional tax, a
 9 separate deferral period, deferred amount, and required
 10 interest amount shall be determined as of the due date of
 11 the first installment after the additional tax is prorated
 12 to installments under [section 14].

13 NEW_SECTION. Section 40. Lien for additional tax
 14 attributable to farm and closely held business property. (1)
 15 In the case of any interest in qualified real property
 16 within the meaning of [subsection (11) of section 1], an
 17 amount equal to the adjusted tax difference attributable to
 18 such interest within the meaning of [subsection (3) of
 19 section 7] is a lien in favor of the state on the property
 20 in which such interest exists.

21 (2) The lien imposed by this section shall arise at
 22 the time an election is filed under [section 2] and
 23 continues with respect to any interest in the qualified real
 24 property until:

25 (a) the liability for tax under [section 7] with

1 respect to such interest has been satisfied or has become
2 unenforceable by reason of lapse of time; or

3 (b) until it is established to the satisfaction of the
4 department that no further tax liability may arise under
5 [section 7] with respect to such interest.

6 (3) [Sections 33, 35, and 36] apply with respect to a
7 lien imposed by [section 40].

8 NEW SECTION. Section 41. Substitution of security for
9 lien. The department may provide by rule for the
10 substitution of security for the lien imposed by [section
11 40].

12 NEW SECTION. Section 42. Subordination of liens. The
13 department may consent to the subordination of a lien
14 imposed by [section 29 or 40] upon any part of the property
15 subject to the lien if the state will be adequately secured
16 after the subordination.

17 Section 43. Section 72-16-308, MCA, is amended to
18 read:

19 "72-16-308. Tax to be on clear market value --
20 deductions allowed in determining value == valuation of
21 certain farm and business property. (1) The tax so imposed
22 shall be upon the clear market value of such property
23 passing by any such transfer to each person, institution,
24 association, corporation, or body politic at the rates
25 hereinafter prescribed and only upon the excess of the

1 exemption hereinafter granted to such person, institution,
2 association, corporation, or body politic.

3 (2) In determining the clear market value of the
4 property so passing by any such transfer, the following
5 deductions and no other shall be allowed:

6 (a) debts of the decedent owing at the date of death;

7 (b) expenses of funeral and last illness;

8 (c) all Montana state, county, municipal, and federal
9 taxes, including all penalties and interest thereon, owing
10 by decedent at the date of death;

11 (d) the ordinary expenses of administration,
12 including:

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

16 (ii) attorneys' fees, filing fees, necessary expenses,
17 and closing costs incident to proceedings to terminate joint
18 tenancies, termination of life estates and transfers in
19 contemplation of death, and any and all other proceedings
20 instituted for the determination of inheritance tax; and

21 (e) federal estate taxes due or paid.

22 (3) In determining clear market value, the valuation
23 of certain farm and other real property may be made under
24 [sections 1 through 12]."

25 Section 44. Codification. Sections 1 through 12 of

SB 0508/02

1 this act are intended to be codified as an integral part of
2 Title 72, chapter 16, part 3.

3 Section 45. Effective date. This act is effective on
4 passage and approval and applies to estates of decedents who
5 died after December 31, 1978.

-End-

1 SENATE BILL NO. 508

2 INTRODUCED BY MANLEY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS
5 RELATING TO THE DETERMINATION AND PAYMENT OF THE MONTANA
6 INHERITANCE TAX; PROVIDING THAT CERTAIN FARM AND OTHER REAL
7 PROPERTY MAY BE VALUED ON THE BASIS OF ITS USE AT THE TIME
8 OF THE DECEDENT'S DEATH; PROVIDING AN ELECTION FOR A 15-YEAR
9 INSTALLMENT PAYMENT METHOD FOR THE TRANSFER OF CERTAIN FARM
10 OR CLOSELY HELD BUSINESS INTERESTS; AMENDING SECTION
11 72-16-308, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

14 NEW SECTION. Section 1. Definitions. As used in
15 [sections 1 through 12], the following definitions apply:

16 (1) "Adjusted gross value" means:

17 (a) in the case of an A GROSS estate, the gross value
18 of all transfers subject to the tax imposed by this part,
19 determined without regard to [sections 1 through 12],
20 reduced by the amount of unpaid mortgages and indebtedness;

21 (b) in the case of real or personal property, the
22 value of the property for the purposes of this part,
23 determined without regard to [sections 1 through 12],
24 reduced by the amount of unpaid mortgages and indebtedness.

25 (2) "Agreement" means a written agreement signed by

1 each person in being who has an interest, whether or not he
2 is in possession, in any property designated in such
3 agreement consenting to the application of [section 7 2 I]
4 with respect to such property.

5 (3) "Department" means the department of revenue.

6 (4) "Farm" means truck farms, ranches, nurseries,
7 ranges, greenhouses, orchards, woodlands, or structures used
8 primarily for raising agricultural or horticultural
9 commodities. The term includes stock, dairy animals,
10 poultry, fur-bearing animals, and fruit.

11 (5) "Farming purposes" means:

12 (a) cultivating the soil or raising or harvesting any
13 agricultural or horticultural commodity including the
14 raising, shearing, feeding, caring for, training, and
15 managing of animals on a farm;

16 (b) handling, drying, packing, grading, or storing on
17 a farm any agricultural or horticultural commodity in its
18 unmanufactured state, but only if the owner, tenant, or
19 operator of the farm regularly produces more than one-half
20 of the commodity so treated; or

21 (c) (i) planting, cultivating, caring for, or cutting
22 trees; or

23 (ii) preparing, other than milling, trees for market.

24 (6) "Internal Revenue Code" means the Internal Revenue
25 Code of 1954. A reference to a specific section of that code

1 is a reference to that section as it may be labeled or
2 amended.

3 (7) "Involuntary conversion" means a compulsory or
4 involuntary conversion within the meaning of section 1033 of
5 the Internal Revenue Code.

6 (8) "Material participation" is determined in a manner
7 similar to the manner used for the purposes of section
8 1402(a)(1) of the Internal Revenue Code.

9 (9) "Member of the family" means, with respect to any
10 individual, only the individual's ancestor or lineal
11 descendant, a lineal descendant of a grandparent of the
12 individual, the spouse of the individual, or the spouse of
13 any such descendant. For purposes of the preceding sentence,
14 a legally adopted child of an individual is treated as a
15 child of the individual by blood.

16 (10) "Qualified heir" means, with respect to any
17 property, a member of the decedent's family who acquired the
18 property or to whom the property passed from the decedent.
19 If a qualified heir disposes of any interest in qualified
20 real property to any member of his family, such member shall
21 thereafter be treated as the qualified heir with respect to
22 such interest.

23 (11) "Qualified real property" means real property
24 located in this state THAT WAS ACQUIRED FROM OR PASSED FROM
25 THE DECEDENT TO A QUALIFIED HEIR OF THE DECEDENT AND that on

1 the date of the decedent's death was being used for a
2 qualified use, but only if:

3 (a) 50% or more of the adjusted value of the gross
4 estate consists of the adjusted value of real or personal
5 property that:

6 (i) on the date of the decedent's death was being used
7 for a qualified use; and

8 (ii) was acquired from or passed from the decedent to a
9 qualified heir of the decedent;

10 (b) 25% or more of the adjusted value of the gross
11 estate consists of the adjusted value of real property that
12 meets the requirements of (a)(ii) and (c) of this
13 subsection;

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

17 (i) the real property was owned by the decedent or a
18 member of the decedent's family and used for a qualified
19 use; and

20 (ii) there was material participation by the decedent
21 or a member of the decedent's family in the operation of the
22 farm or other business; and

23 (d) the real property is designated in the agreement
24 referred to in [subsection (2) of section 1].

25 (12) (a) "Qualified replacement property" means:

1 (i) in the case of an involuntary conversion as
2 described in section 1033(a)(1) of the Internal Revenue
3 Code, any real property into which the real property is
4 converted;

5 (ii) in the case of an involuntary conversion as
6 described in section 1033(a)(2) of the Internal Revenue
7 Code, any real property purchased by the qualified heir
8 during the period specified in section 1033(a)(2)(B) of the
9 Internal Revenue Code for the purpose of replacing the
10 qualified real property.

11 (b) "Qualified real ~~real~~ REPLACEMENT property" only
12 includes property that is to be used for the qualified use
13 set forth in (a) or (b) of subsection (13) of this section
14 under which the qualified real property qualified under
15 [section 2].

16 (13) (a) "Qualified use" means devotion OF THE
17 PROPERTY to any of the following:

- 18 (i) use as a farm for farming purposes; or
19 (ii) use in a trade or business other than the trade or
20 business of farming.

21 (b) In the case of real property that meets the
22 requirements of subsection (11)(c), residential buildings
23 and related improvements on the real property occupied on a
24 regular basis by the owner or lessee of the real property or
25 by persons employed by the owner or lessee for the purpose

1 of operating or maintaining the real property, and roads,
2 buildings, and other structures and improvements
3 functionally related to the qualified use shall be treated
4 as real property devoted to the qualified use.

5 NEW SECTION. Section 2. Valuation of certain farm and
6 real property -- limitation. (1) If the decedent was at the
7 time of his death a resident of this state and the personal
8 representative elects to have [sections 1 through 12] apply
9 and files an agreement with the department, the value of
10 qualified real property for the purposes of the tax imposed
11 by this part is its value for the use under which it
12 qualifies under [subsection (11) of section 1] as qualified
13 real property.

14 (2) The aggregate decrease in the value of qualified
15 real property taken into account for the purposes of the
16 Montana inheritance tax that results from the application of
17 (1) of this section may not exceed \$500,000.

18 NEW SECTION. Section 3. Election for valuation. An
19 election for valuation under [sections 1 through 12] must be
20 made within 18 months of the date of the decedent's death
21 and must be made in such manner as the department may
22 prescribe.

23 NEW SECTION. Section 4. Valuation of farms. (1)
24 Except as provided in (2) of this section, the value of a
25 farm for farming purposes is determined by dividing the

1 excess of the average annual gross cash rental for
 2 comparable land used for farming purposes and located in the
 3 locality of the farm over the average annual state and local
 4 real estate taxes for comparable land by the average annual
 5 effective interest rate for all new federal land bank loans.
 6 For purposes of the preceding sentence, each average annual
 7 computation must be made on the basis of the 5 most recent
 8 calendar years ending before the date of the decedent's
 9 death.

10 (2) The formula in (1) of this section may not be
 11 used:

12 (a) if it is established that there is no comparable
 13 land from which the average annual gross cash rental may be
 14 determined; or

15 (b) if the personal representative elects to have the
 16 value of the farm for farming purposes determined under
 17 [section 5].

18 NEW SECTION. Section 5. Valuation of closely held
 19 business interests. If [section 4] does not apply, the
 20 following factors apply in determining the value of any
 21 qualified real property:

22 (1) The capitalization of income that the property can
 23 be expected to yield for farming or closely held business
 24 purposes over a reasonable period of time under prudent
 25 management using traditional cropping patterns for the area;

1 taking into account soil capacity, terrain configuration,
 2 and similar factors;

3 (2) the capitalization of the fair rental value of the
 4 land for farmland or closely held business purposes;

5 (3) assessed land values;

6 (4) comparable sales of other farm or closely held
 7 business land in the same geographical area far enough
 8 removed from a metropolitan or resort area so that
 9 nonagricultural use is not a significant factor in the sales
 10 price; and

11 (5) any other factor that fairly values the farm or
 12 closely held business value of the property.

13 NEW SECTION. Section 6. Time limitations. (1) If
 14 qualified real property is disposed of or ceases to be used
 15 for a qualified use, the statutory period for the assessment
 16 of any additional tax under [section 7] attributable to
 17 disposition or cessation may not expire until 3 years after
 18 the date the department is notified, in a manner to be
 19 prescribed by the department, of the disposition or
 20 cessation.

21 (2) The additional tax may be assessed before the
 22 expiration of the 3-year period referred to in (1) of this
 23 section, notwithstanding the provisions of any other law or
 24 rule of law that would otherwise prevent such assessment.

25 NEW SECTION. Section 7. Disposition or failure to use

1 for qualified use. (1) There is hereby imposed an additional
 2 inheritance tax if within 15 years after the decedent's
 3 death and before the death of the qualified heir:

4 (a) the qualified heir disposes of any interest in
 5 qualified real property other than by a disposition to a
 6 member of his family; or

7 (b) the qualified heir ceases to use for the qualified
 8 use the qualified real property which was acquired or passed
 9 from the decedent.

10 (2) The amount of additional tax imposed by (1) of
 11 this section with respect to any interest is the amount
 12 equal to the lesser of:

13 (a) the adjusted tax difference attributable to such
 14 interest; or

15 (b) the excess of the amount realized with respect to
 16 the interest or in any case other than a sale or exchange at
 17 arm's length, the fair market value of the interest over the
 18 value of the interest determined under [section 2].

19 (3) For the purposes of (2) of this section, the
 20 adjusted tax difference attributable to an interest is the
 21 amount that bears the same ratio to the adjusted tax
 22 difference with respect to the estate as determined under
 23 (4) of this section as the excess of the value of such
 24 interest for purposes of the Montana inheritance tax,
 25 determined without regard to [sections 1 through 12], over

1 the value of such interest determined under [section 2]
 2 bears to a similar excess determined for all qualified real
 3 property.

4 (4) For the purposes of (3) of this section, "adjusted
 5 tax difference with respect to the estate" means the excess
 6 of what would have been the tax liability but for [section
 7 2] over the tax liability. For the purposes of this
 8 subsection, "tax liability" means the tax imposed by Title
 9 72, chapter 16.

10 (5) For the purposes of this section, if the qualified
 11 heir disposes of a portion of the interest acquired by or
 12 passing to such heir or a predecessor qualified heir, or
 13 there is a cessation of use of such a portion, the value
 14 determined under [section 2] taken into account under (2)(b)
 15 of this section with respect to such portion shall be its
 16 pro rata share of the value of the interest and the adjusted
 17 tax difference attributable to the interest taken into
 18 account with respect to the transaction involving the second
 19 or any succeeding portion shall be reduced by the amount of
 20 the tax imposed by this section with respect to all prior
 21 transactions involving portions of the interest.

22 (6) If the date of the disposition or cessation occurs
 23 more than 120 months and less than 180 months after the date
 24 of the death of the decedent, the amount of the tax imposed
 25 by this section shall be reduced, but not below zero, by an

1 amount determined by multiplying the amount of the tax
2 determined without regard to this subsection, by a fraction
3 in which the numerator is the number of full months after
4 the death in excess of 120 and the denominator is 60.

5 (7) In the case of an interest acquired from or
6 passing from any decedent, if (a) or (b) of subsection (1)
7 of this section applies to any portion of an interest, (b)
8 or (a) of subsection (1) of this section, as the case may
9 be, does not apply with respect to the same portion of the
10 interest.

11 (8) The additional tax imposed by this section is due
12 on the day that is 6 months after the date of the
13 disposition or cessation.

14 (9) The qualified heir is personally liable for the
15 additional tax with respect to his interest unless the heir
16 has furnished bond that meets the requirements of [section
17 10].

18 NEW SECTION. Section 8. Cessation of qualified use.
19 For the purposes of [section 7], real property ceases to be
20 used for the qualified use if:

21 (1) the property ceases to be used for the qualified
22 use set forth in [section 1] under which the property
23 qualified under [section 1]; or

24 (2) during any period of 8 years ending after the date
25 of the decedent's death and before the date of the death of

1 the qualified heir, there had been periods aggregating 3
2 years or more during which:

3 (a) in the case of periods during which the property
4 was held by the decedent, there was no material
5 participation by the decedent or any member of his family in
6 the operation of the farm or other business; and

7 (b) in the case of periods during which the property
8 was held by any qualified heir, there was no material
9 participation by such qualified heir or any member of his
10 family in the operation of the farm or other business.

11 NEW SECTION. Section 9. Property acquired from
12 decedent. Property is considered to have been acquired from
13 the decedent if the property:

14 (1) is so considered under section 1014(b) of the
15 Internal Revenue Code;

16 (2) is acquired by any person from the estate in
17 satisfaction of the right of such person to a pecuniary
18 request; or

19 (3) is acquired by any person from a trust in
20 satisfaction of a right, which such person has by reason of
21 the death of the decedent, to receive from the trust a
22 specific dollar amount that is the equivalent of a pecuniary
23 request.

24 NEW SECTION. Section 10. Bond in lieu of personal
25 liability. (1) If the qualified heir makes written

1 application to the department for the determination of the
2 additional tax that may be imposed by [section 7] with
3 respect to the qualified heir's interest, the department
4 must, as soon as possible and in any event within 1 year
5 after the making of the application, notify the heir of the
6 maximum amount.

7 (2) The qualified heir, on furnishing a bond in such
8 amount and for such period as may be required, is discharged
9 from personal liability for any additional tax imposed by
10 [section 7] and is entitled to a receipt or writing showing
11 such discharge.

12 NEW SECTION. Section 11. Application to interests in
13 partnerships, corporations, and trusts. The department shall
14 prescribe regulations setting forth the application of
15 [sections 1 through 12] in the case of an interest in a
16 partnership, corporation, or trust that, with respect to the
17 decedent, is an interest in a closely held business within
18 the meaning of [section 15].

19 NEW SECTION. Section 12. Involuntary conversion of
20 qualified real property. (1) If there is an involuntary
21 conversion of an interest in qualified real property and the
22 qualified heir makes an election under this section, no tax
23 is imposed by [section 7] on the conversion if the cost of
24 the qualified replacement property equals or exceeds the
25 amount realized on the conversion.

1 (2) If (1) of this section does not apply, the tax
2 imposed by [section 7], with respect to any involuntary
3 conversion, is the amount of tax that, but for this
4 subsection, would have been imposed on the conversion
5 reduced by an amount that bears the same ratio to such tax
6 as the cost of the qualified replacement property bears to
7 the amount realized on the conversion.

8 (3) (a) For the purposes of [section 7], any qualified
9 replacement property shall be treated in the same manner as
10 if it were a portion of the interest in qualified real
11 property that was involuntarily converted, except that with
12 respect to such qualified replacement property:

13 (i) the 15-year period under [section 7] shall be
14 extended by any period, beyond the 2-year period referred to
15 in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
16 during which the qualified heir was allowed to replace the
17 qualified real property; and

18 (ii) the phaseout period under [subsection (6) of
19 section 7] shall be appropriately adjusted to take into
20 account the extension referred to in (a)(i) of this section
21 SUBSECTION.

22 (b) Any tax imposed by [section 7] on the involuntary
23 conversion shall be treated as a tax imposed on a partial
24 disposition. The provisions of [section 8] shall be applied
25 by not taking into account periods after the involuntary

1 conversion and before the acquisition of the qualified
2 replacement property and by treating material participation
3 with respect to the converted property as material
4 participation with respect to the qualified replacement
5 property.

6 (4) The rules of the last sentence of section
7 1033(a)(2)(B) of the Internal Revenue Code apply for the
8 purposes of [subsection (12)(a)(ii) of section 1].

9 (5) An election under this section may be made at such
10 time and in such manner as prescribed by the department.

11 NEW SECTION. Section 13. Definitions. As used in
12 [sections 13 through 27], the following definitions apply:

13 (1) "Adjusted gross estate" means the clear market
14 value of the property passing by reason of a decedent's
15 death determined under Title 72, chapter 16, WITHOUT
16 REDUCTION FOR THE FEDERAL ESTATE TAX DUE OR PAID. The sum
17 must be determined on the basis of the facts and
18 circumstances in existence on the date on which the tax
19 imposed by Title 72, chapter 16, is determined, but in no
20 event later than a date 18 months after the date of the
21 death of the decedent.

22 (2) "Closely held business amount" means the value of
23 the interest in a closely held business that qualifies under
24 [subsection (1) of section 14].

25 (3) "Internal Revenue Code" means the Internal Revenue

1 Code of 1954. A reference to a specific section of that code
2 is a reference to that section as it may be labeled or
3 amended.

4 (4) "Value" means value determined for the purposes of
5 the Montana inheritance tax.

6 NEW SECTION. Section 14. Extension of time for
7 transfer of closely held business interest. (1) If the value
8 of an interest in a closely held business that is included
9 ~~in the gross estate for federal estate tax purposes of~~
10 TAXABLE UNDER TITLE 72, CHAPTER 16, PART 3, AS A TRANSFER
11 FROM a decedent who was at the time of death a resident of
12 this state exceeds 65% of the adjusted gross estate, the
13 personal representative may elect to pay all or part of the
14 tax imposed by Title 72, chapter 16, part 3, in 2 or more
15 but less than 11 equal installments.

16 (2) The maximum amount of tax that may be paid in
17 installments BY EACH BENEFICIARY is an amount that bears the
18 same ratio to the tax imposed by Title 72, chapter 16, part
19 3, as the closely held business amount PASSING TO THE
20 BENEFICIARY bears to the ~~amount of the adjusted gross estate~~
21 CLEAR MARKET VALUE OF ALL PROPERTY PASSING TO THE
22 BENEFICIARY, WITHOUT REDUCTION FOR THE FEDERAL ESTATE TAX
23 DUE OR PAID.

24 (3) If an election is made under (1) of this section,
25 the first installment must be paid on or before a date

1 selected by the personal representative that is not more
 2 than 5 years after the date prescribed by 72-16-441 for the
 3 payment of tax without interest. ~~IF, HOWEVER, A CREDIT IS~~
 4 ~~CLAIMED ON THE FEDERAL ESTATE TAX RETURN FOR STATE DEATH~~
 5 ~~TAXES ON THE ESTATE UNDER THE PROVISIONS OF SECTION 2011(A)~~
 6 ~~OF THE INTERNAL REVENUE CODE, AS AMENDED, AN AMOUNT OF~~
 7 ~~INHERITANCE TAX DUE EQUAL TO THE FEDERAL CREDIT MUST BE PAID~~
 8 ~~WITHIN THE PERIOD ESTABLISHED IN SECTION 2011(C) OF THE~~
 9 ~~INTERNAL REVENUE CODE, AS AMENDED.~~ Each succeeding
 10 installment must be paid on or before the date that is 1
 11 year after the date of the preceding installment. ~~THE~~
 12 ~~DEPARTMENT MAY FOR REASONABLE CAUSE EXTEND THE TIME FOR~~
 13 ~~PAYMENT OF ANY INSTALLMENT UNDER THIS SECTION, INCLUDING ANY~~
 14 ~~PART OF AN ADDITIONAL TAX PRORATED TO ANY INSTALLMENT, FOR A~~
 15 ~~REASONABLE PERIOD BUT NOT BEYOND THE DATE THAT IS 12 MONTHS~~
 16 ~~AFTER THE DUE DATE FOR THE LAST INSTALLMENT.~~

17 ~~(4) IF AN ELECTION IS MADE UNDER (1) OF THIS SECTION,~~
 18 ~~THE TAX DUE MAY NOT BE FURTHER DEFERRED UNDER THE PROVISIONS~~
 19 ~~OF 72-16-1438.~~

20 ~~(4)(5) The person entitled to pay the tax in~~
 21 ~~installments is the person to whom an interest in a closely~~
 22 ~~held business passes.~~

23 NEW SECTION. Section 15. Closely held business. (1)
 24 For the purposes of [section 14], the term "interest in a
 25 closely held business" means:

1 (a) an interest as a proprietor in a trade or business
 2 carried on as a proprietorship;

3 (b) an interest as a partner in a partnership carrying
 4 on a trade or business if:

5 (i) 20% or more of the total capital interest in the
 6 partnership is ~~included in determining the gross estate of~~
 7 ~~the decedent for federal estate tax purposes~~ TAXABLE UNDER
 8 TITLE 72, CHAPTER 16, PART 3, AS A TRANSFER FROM THE
 9 DECEDENT; or

10 (ii) the partnership had 15 or fewer partners;

11 (c) stock in a corporation carrying on a trade or
 12 business if:

13 (i) 20% or more in value of the voting stock of the
 14 corporation is ~~included in determining the gross estate of~~
 15 ~~the decedent for federal estate tax purposes~~ TAXABLE UNDER
 16 TITLE 72, CHAPTER 16, PART 3, AS A TRANSFER FROM THE
 17 DECEDENT; or

18 (ii) the corporation had 15 or fewer shareholders.

19 (2) Determination for qualification under (1) of this
 20 section must be made as of the time immediately before the
 21 decedent's death.

22 (3) Stock or a partnership interest held by a husband
 23 and wife as joint tenants or tenants in common is treated as
 24 owned by one shareholder or one partner, as the case may be.

25 (4) Property owned directly or indirectly by or for a

1 corporation, partnership, estate, or trust is considered as
2 being owned proportionately by or for its shareholders,
3 partners, or beneficiaries. For the purposes of this
4 subsection, a person is a beneficiary of a trust only if he
5 has a present interest in the trust.

6 (5) All stock and all partnership interests held by
7 the decedent or by any member of his family within the
8 meaning of section 267(c)(4) of the Internal Revenue Code is
9 treated as being owned by the decedent.

10 NEW SECTION. Section 16. Farmhouses and other
11 structures taken into account. For the purposes of the 65%
12 requirement of [section 14], an interest in a closely held
13 business that is the business of farming includes an
14 interest in residential buildings and related improvements
15 on the farm which are occupied on a regular basis by the
16 owner or lessee of the farm or by persons employed by the
17 owner or lessee for purposes of operating or maintaining the
18 farm.

19 NEW SECTION. Section 17. Partnership interests and
20 stock not readily tradable. (1) If the personal
21 representative elects the benefits of this section, at such
22 time and in such manner as the department may prescribe:

23 (a) for the purposes of subsection (1)(b)(i) or
24 (1)(c)(i) of [section 15], whichever is appropriate, and for
25 the purposes of [section 18], any capital investment

1 INTEREST in a partnership and any non-readily tradable
2 stock, which after the application of subsections (2) and
3 (3) ~~THROUGH (5)~~ of [section 15] is treated as owned by the
4 decedent, shall be treated as ~~included~~ TAXABLE UNDER TITLE
5 72, CHAPTER 16, PART 3, in determining the value of the
6 ~~decedent's gross estate for federal estate tax purposes~~ A
7 TRANSFER FROM THE DECEDENT;

8 (b) the personal representative shall be treated as
9 having selected under [subsection (3) of section 14] the
10 date prescribed by 72-16-441 for the payment of the tax
11 without interest; and

12 (c) [section 27] does not apply.

13 (2) For the purposes of this section, "non-readily
14 tradable stock" means stock for which at the time of the
15 decedent's death there was no market on the stock exchange
16 or in an over-the-counter market.

17 NEW SECTION. Section 18. Interests in more than one
18 closely held business. (1) Interests in two or more closely
19 held businesses, with respect to which there is ~~included in~~
20 ~~determining the value of the decedent's gross estate for~~
21 ~~federal estate tax purposes~~ TAXABLE UNDER TITLE 72, CHAPTER
22 16, PART 3, AS A TRANSFER FROM THE DECEDENT more than 20% of
23 the total value of each business, shall be treated as an
24 interest in a single closely held business.

25 (2) For the purposes of the 20% requirement of (1) of

1 this section, an interest in a closely held business that
 2 represents the surviving spouse's interest in property held
 3 by the decedent and the surviving spouse as joint tenants or
 4 tenants in common shall be treated as ~~having--been--included~~
 5 TAXABLE UNDER TITLE 72, CHAPTER 16, PART 3, in determining
 6 the value of ~~the decedent's gross estate for federal estate~~
 7 tax purposes A TRANSFER FROM THE DECEDENT.

8 NEW SECTION. Section 19. Election. An election under
 9 [section 14] must be made not later than 18 months after the
 10 death of the decedent and must be made in such manner as the
 11 department prescribes.

12 NEW SECTION. Section 20. Proration of additional tax.
 13 (1) If an election is made under [section 14] to pay any
 14 part of the tax imposed by Title 72, chapter 16, part 3, in
 15 installments and an additional tax is determined, the
 16 additional tax, subject to the limitation provided by
 17 [subsection (2) of section 14], shall be prorated to the
 18 installments payable under [section 14].

19 (2) (a) The part of the additional tax so prorated to
 20 any installment, the date for payment of which has not
 21 arrived, shall be collected at the same time as and as part
 22 of the installment.

23 (b) The part of the additional tax so prorated to any
 24 installment already paid shall be paid on notice and demand
 25 from the department.

1 (3) This section does not apply if the additional tax
 2 is due to negligence, intentional disregard of rules, or
 3 fraud with intent to evade tax.

4 NEW SECTION. Section 21. Interest. (1) If the time
 5 for payment of any amount of tax has been extended under
 6 [sections 13 through 27], interest payable under [section
 7 27] on any unpaid portion of such amount:

8 (a) attributable to the first 5 years after the date
 9 prescribed by 72-16-441 for the payment of the tax without
 10 interest shall be paid annually;

11 (b) attributable to any period after the 5-year period
 12 referred to in (1)(a) of this section shall be paid annually
 13 at the same time as and as part of each installment payment
 14 of the tax.

15 (2) In the case of an additional tax to which [section
 16 20] applies that is determined after the close of the 5-year
 17 period referred to in (1)(a) of this section, interest
 18 attributable to such 5-year period and interest assigned to
 19 any installment the date for which has arrived on or before
 20 the date of the assessment of the additional tax must be
 21 paid on notice and demand from the department.

22 (3) If the personal representative has selected a
 23 period shorter than 5 years, the shorter period shall be
 24 substituted for 5 years in (1) and (2) of this section.

25 NEW SECTION. Section 22. Acceleration of payment. (1)

1 The extension of time for payment of tax provided in
2 [section 14] shall cease to apply and any unpaid portion of
3 the tax payable must be paid upon notice and demand of the
4 department if:

5 (a) one-third or more in value of an interest in a
6 closely held business that qualifies under [section 14] is
7 distributed, sold, exchanged, or otherwise disposed of; or

8 (b) aggregate withdrawals of money and other property
9 from the trade or business, an interest in which qualifies
10 under [section 14], made with respect to such interest,
11 equal or exceed one-third of the value of such trade or
12 business.

13 (2) In the case of a distribution in redemption of
14 stock to which section 303 of the Internal Revenue Code or
15 so much of section 304 of the Internal Revenue Code as
16 relates to section 303 applies:

17 (a) subsection (1)(a) of this section does not apply
18 with respect to the stock redeemed and, for the purposes of
19 subsection (1)(a), the interest in the closely held business
20 shall be considered to be such interest reduced by the value
21 of the stock redeemed; and

22 (b) subsection (1)(b) of this section does not apply
23 with respect to withdrawals of money and other property
24 distributed and, for the purposes of subsection (1)(b), the
25 value of the trade or business shall be considered to be

1 such value reduced by the amount of money and other property
2 distributed.

3 (3) Subsection (1)(a) of this section does not apply
4 to an exchange of stock pursuant to a plan of reorganization
5 described in (D), (E), or (F) of section 368(a)(1) of the
6 Internal Revenue Code or to an exchange to which section 355
7 of the Internal Revenue Code or so much of section 356 of
8 the Internal Revenue Code applies to section 355, but any
9 stock received in such an exchange shall be treated for
10 purposes of subsection (1)(a) as an interest qualifying
11 under [section 14].

12 (4) Subsection (1)(a) of this section does not apply
13 to a transfer of property of the decedent to a person
14 entitled by reason of the decedent's death to receive such
15 property under the decedent's will, intestate succession, or
16 a trust created by the decedent.

17 NEW SECTION. Section 23. Failure to pay installment.
18 If any installment under [sections 13 through 27] is not
19 paid on or before the date fixed for its payment, including
20 any extension of time for the payment of the installment,
21 the unpaid portion of the tax payable in installments must
22 be paid on notice and demand from the department.

23 NEW SECTION. Section 24. Election in the case of
24 additional tax. (1) If an additional tax is determined under
25 Title 72, chapter 16, part 3, and the estate qualifies under

1 [section 14] and the personal representative has not made an
2 election under [section 14], the personal representative may
3 elect to pay the additional tax in installments.

4 (2) An election under this section must be made not
5 later than 60 days after notice and demand for payment of
6 the additional tax has been given by the department and must
7 be made in the manner prescribed by the department.

8 (3) If an election is made under this section, the
9 additional tax shall, subject to the limitation in
10 [subsection (2) of section 14], be prorated to the
11 installments that would have been due if an election had
12 been timely made under [section 14]. The part of the
13 additional tax so prorated to any installment the date for
14 payment of which would have arrived shall be paid at the
15 time of the making of the election under this section. The
16 portion of the additional tax prorated to installments, the
17 date for payment of which would not have so arrived, shall
18 be paid at the time such installments would have been due if
19 such an election had been made.

20 NEW SECTION. Section 25. Security. If the time for
21 payment of any amount of tax has been extended under
22 [section 24], the department may require the taxpayer to
23 furnish a bond in an amount not exceeding double the amount
24 with respect to which the extension is granted conditioned
25 upon the payment of the amount extended in accordance with

1 the terms of the extension.

2 NEW SECTION. Section 26. Extensions of time for
3 payment of tax. The running of the period of limitations for
4 collection of any tax imposed by Title 72, chapter 16, part
5 3, is suspended for the period of any extension of time for
6 payment granted under [section 14].

7 NEW SECTION. Section 27. Interest rate. (1) If the
8 time for payment of an amount of tax imposed by Title 72,
9 chapter 16, part 3, is extended as provided in [section 14]
10 interest on the ~~4% 00 53~~ portion of such amount shall, in
11 lieu of the annual rate provided by 72-16-441, be paid at
12 the rate of ~~4% 00 53~~. For the purposes of this section, the
13 amount of any additional tax that is prorated to
14 installments payable under [section 24] shall be treated as
15 an amount of tax payable in installments under that section.

16 (2) For the purposes of this section, "~~4% 00 53~~
17 portion" means the lesser of:

- 18 (a) \$345,800; or
19 (b) the amount of the tax imposed by Title 72, chapter
20 16, part 3, which is extended as provided in [section 14].

21 (3) If the amount of tax imposed by Title 72, chapter
22 16, part 3, that is extended exceeds the ~~4% 00 53~~ portion,
23 any payment of a portion of such amount shall, for the
24 purpose of computing interest for periods after such
25 payment, be treated as reducing the ~~4% 00 53~~ portion by an

1 amount that bears the same ratio to the amount of such
2 payment as the amount of the ~~40 25 25~~ portion, determined
3 without regard to this section, bears to the amount of tax
4 that is extended as provided in [section 14].

5 NEW SECTION. Section 28. Definitions. As used in
6 [sections 28 through 39], the following definitions apply:

7 (1) "Deferral period" means the period for which the
8 payment of tax is deferred under [section 14].

9 (2) "Deferred amount" means the aggregate amount
10 deferred under [section 14] determined as of the date
11 prescribed by 72-16-441 for payment without interest of the
12 tax imposed by Title 72, chapter 16, part 3.

13 (3) "Lien property" means interests in real and other
14 property to the extent such interests can be expected to
15 survive the deferral period and are designated in the
16 agreement referred to in [section 32].

17 (4) "Required interest amount" means the aggregate
18 amount of interest that will be payable over the first 4
19 years of the deferral period with respect to the deferred
20 amount determined as of the date prescribed for payment
21 without interest of the tax imposed by Title 72, chapter 16,
22 part 3.

23 NEW SECTION. Section 29. Lien for tax deferred. In
24 the case of any estate with respect to which an election has
25 been made under [section 14], if the personal representative

1 makes an election under this section at such time and in
2 such manner as the department may prescribe and files the
3 agreement referred to in [section 32] the deferred amount,
4 plus any interest or additional amount shall be a lien in
5 favor of the state on the lien property.

6 NEW SECTION. Section 30. Maximum value. (1) The
7 maximum value of the property that the department may
8 require as lien property with respect to any estate is a
9 value that is not greater than the sum of the deferred
10 amount and the required interest amount.

11 (2) For the purposes of (1) of this section, the value
12 of any property is determined as of the date prescribed by
13 72-16-441 for payment of the tax without interest and is
14 determined by taking into account any encumbrances.

15 NEW SECTION. Section 31. Partial substitution of bond
16 for lien. If the value required as lien property exceeds the
17 value of the interests in property covered by the agreement
18 referred to in [section 32], the department may accept a
19 bond in an amount equal to such excess conditioned on the
20 payment of the amount extended in accordance with the terms
21 of the extension.

22 NEW SECTION. Section 32. Agreement. The agreement is
23 a written agreement signed by each person in being who has
24 an interest, whether or not in possession, in any property
25 designated in the agreement:

1 (1) consenting to the creation of the lien under
2 [section 29] with respect to the property; and

3 (2) designating a responsible person to be agent for
4 the beneficiaries of the estate and for persons who have
5 consented to the creation of the lien in dealings with the
6 department on matters arising under [section 14] or [section
7 29].

8 NEW SECTION. Section 33. Filing of lien. The lien
9 imposed by [section 29] is not valid against a purchaser,
10 holder of a security interest, mechanic's lien, or judgment
11 lien creditor until notice that meets the requirements of
12 71-3-204 has been filed by the department.

13 NEW SECTION. Section 34. Period of lien. The lien
14 imposed by [section 29] arises at the time notice is filed
15 under [section 33] and continues until liability for the
16 deferred amount is satisfied or becomes unenforceable by
17 reason of lapse of time.

18 NEW SECTION. Section 35. Priorities. (1) A lien filed
19 under [section 29] is not valid:

20 (a) as against real property tax and special
21 assessment liens;

22 (b) in the case of real property subject to a lien for
23 repair or improvement, as against a mechanic's lienor; or

24 (c) as against a security interest set forth in
25 paragraph 3 of section 6323(c) of the Internal Revenue Code,

1 whether the security interest came into effect before or
2 after the tax lien filing.

3 (2) Subsections (1)(b) and (1)(c) of this section do
4 not apply to any security interest that came into existence
5 after the date on which the department filed notice that
6 payment of the deferred amount has been accelerated under
7 [section 22].

8 NEW SECTION. Section 36. Lien in lieu of other tax
9 liens. If there is a lien on property under [section 29],
10 the lien under 72-16-432 does not apply to the property with
11 respect to the same estate.

12 NEW SECTION. Section 37. Additional lien property.
13 (1) If at any time the value of the property covered by the
14 agreement is less than the unpaid portion of the deferred
15 amount and the required interest amount, the department may
16 require the addition of property to the agreement. The
17 department may not require that the value of the property
18 covered by the agreement exceed the unpaid portion.

19 (2) If property having the required value is not added
20 to the property covered by the agreement or if other
21 security equal to the required value is not furnished within
22 90 days after notice and demand by the department, the
23 failure to comply shall be treated as an act accelerating
24 payment of the installments under [section 22].

25 NEW SECTION. Section 38. Lien in lieu of bond. The

1 department may not require the furnishing of any bond for
2 the payment of tax to which an agreement that meets the
3 requirements of [section 32] applies.

4 NEW SECTION. Section 39. Application of definitions
5 to additional tax. In the case of an additional tax, a
6 separate deferral period, deferred amount, and required
7 interest amount shall be determined as of the due date of
8 the first installment after the additional tax is prorated
9 to installments under [section 14].

10 NEW SECTION. Section 40. Lien for additional tax
11 attributable to farm and closely held business property. (1)
12 In the case of any interest in qualified real property
13 within the meaning of [subsection (1)] of section 1], an
14 amount equal to the adjusted tax difference attributable to
15 such interest within the meaning of [subsection (3)] of
16 section 7] is a lien in favor of the state on the property
17 in which such interest exists.

18 (2) The lien imposed by this section shall arise at
19 the time an election is filed under [section 2] and
20 continues with respect to any interest in the qualified real
21 property until:

22 (a) the liability for tax under [section 7] with
23 respect to such interest has been satisfied or has become
24 unenforceable by reason of lapse of time; or

25 (b) until it is established to the satisfaction of the

1 department that no further tax liability may arise under
2 [section 7] with respect to such interest.

3 (3) [Sections 33, 35, and 36] apply with respect to a
4 lien imposed by [section 40].

5 NEW SECTION. Section 41. Substitution of security for
6 lien. The department may provide by rule for the
7 substitution of security for the lien imposed by [section
8 40].

9 NEW SECTION. Section 42. Subordination of liens. The
10 department may consent to the subordination of a lien
11 imposed by [section 29 or 40] upon any part of the property
12 subject to the lien if the state will be adequately secured
13 after the subordination.

14 Section 43. Section 72-16-308, MCA, is amended to
15 read:

16 *72-16-308. Tax to be on clear market value --
17 deductions allowed in determining value -- valuation of
18 certain farm and business property. (1) The tax so imposed
19 shall be upon the clear market value of such property
20 passing by any such transfer to each person, institution,
21 association, corporation, or body politic at the rates
22 hereinafter prescribed and only upon the excess of the
23 exemption hereinafter granted to such person, institution,
24 association, corporation, or body politic.

25 (2) In determining the clear market value of the

1 property so passing by any such transfer, the following
2 deductions and no other shall be allowed:

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

8 (d) the ordinary expenses of administration,
9 including:

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

13 (ii) attorneys' fees, filing fees, necessary expenses,
14 and closing costs incident to proceedings to terminate joint
15 tenancies, termination of life estates and transfers in
16 contemplation of death, and any and all other proceedings
17 instituted for the determination of inheritance tax; and

18 (e) federal estate taxes due or paid.

19 ~~(3) In determining clear market value, the valuation~~
20 ~~of certain farm and other real property may be made under~~
21 ~~[sections 1 through 12]."~~

22 Section 44. Codification. Sections 1 through 12 of
23 this act are intended to be codified as an integral part of
24 Title 72, chapter 16, part 3.

25 Section 45. Effective date. This act is effective on

1 passage and approval and applies to estates of decedents who
2 died after December 31, 1978.

-End-

HOUSE OF REPRESENTATIVES
April 16, 1979

Committee on Taxation Amendments to Senate Bill 508, 3rd reading copy,
as follows:

1. Page 1, line 16.
Following: "Adjusted"
Strike: "gross"

2. Page 1, line 17.
Following: "of"
Strike: "an"
Insert: "a gross"

3. Page 2, line 3.
Following: "7"
Strike: "2"
Insert: "7"

4. Page 3, line 24.
Following: "state"
Insert: "that was acquired from or passed from the decedent to a
~~qualified~~ qualified heir of the decedent and"

(Continued)

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Page 2

5. Page 5, line 9.
Following: "Qualified"
Strike: "real"
Insert: "replacement"

6. Page 5, line 13.
Following: "devotion"
Insert: "of the property"

7. Page 15, line 12.
Following: "16"
Insert: ",without reduction for the federal estate tax due or paid"

8. Page 16, lines 3 and 4.
Following: "is"
Strike: "included in the gross estate for federal estate tax purposes
of"
Insert: "taxable under Title 72, chapter 16, part 3,as a transfer fro

9. Page 16, line 11.
Following: "installments"
Insert: "by each beneficiary"

10. Page 16, line 13.
Following: "business amount"
Insert: "passing to the beneficiary"

11. Page 16, lines 13 and 14.
Following: "to the"
Strike: "amount of the adjusted gross estate"
Insert: "clear market value of all property passing to the beneficiary,
without reduction for the federal estate tax due or paid"

12. Page 17, line 2.
Following: "installment."
Insert: "The department may for reasonable cause extend the time
for payment of any installment under this section, including any
part of an additional tax prorated to any installment, for a reason-
able period but not beyond the date that is 12 months after the due
date for the last installment."

13. Page 17, lines 6 through 8.
Following: line 5
Strike: subsection 5 in its entirety

(Continued)

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Page 3

14. Page 17, lines 17 and 18.

Following: "is"

Strike: the remainder of line 17 through "purposes" on line 19
(in its entirety)

Insert: "taxable under Title 72, chapter 16, part 3, as a transfer
from the decedent"

15. Page 17, lines 23 and 24.

Following: "is"

Strike: the remainder of line 23 through "purposes" on line 24
(in its entirety)

Insert: "taxable under Title 72, chapter 16, part 3, as a transfer
from the decedent"

16. Page 19, line 7.

Following: "capital"

Strike: "investment"

Insert: "interest"

17. Page 19, line 9.

Following: "(2)"

Strike: "and (3)"

Insert: "through (5)"

18. Page 19, line 11.

Following: line 10

Strike: "included"

Insert: "taxable under Title 72, chapter 16, part 3,"

19. Page 19, lines 11 and 12.

Following: "of"

Strike: the remainder of line 11 through "purposes" on line 12 (in
its entirety)

Insert: "a transfer from the decedent"

20. Page 19, line 24 through line 1 on page 20.

Following: "is"

Strike: remainder of line 24 through "purposes" on line 1 of page 20

Insert: "taxable under Title 72, chapter 16, part 3, as a transfer
from the decedent"

21. Page 20, line 8.

Following: "as"

Strike: "having been included"

Insert: "taxable under Title 72, chapter 16, part 3,"

(Continued)

April 16, 19 79

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Page 4

22. Page 20, lines 9 and 10.

Following: "of"

Strike: "the decedent's gross estate for federal estate tax purposes"

Insert: "a transfer from the decedent"

23. Page 25, line 13.

Following: "the"

Strike: "4%"

Insert: "8%"

24. Page 25, line 15.

Following: "of"

Strike: "4%"

Insert: "8%"

25. Page 25, line 19.

Following: "section,"

Strike: "4%"

Insert: "8%"

26. Page 25, line 25.

Following: "the"

Strike: "4%"

Insert: "8%"

27. Page 26, line 3.

Following: "the"

Strike: "4%"

Insert: "8%"

28. Page 26, line 5.

Following: "the"

Strike: "4%"

Insert: "8%"

AND AS AMENDED BE CONCURRED IN

HOUSE OF REPRESENTATIVES
April 18, 1979

Committee of the Whole Amendment to Taxation Committee amendments
to SENATE BILL NO. 508, third reading copy.

1. Amendments 23 through 28.

Strike: Amendments 23 through 28 in their entirety

AND AS AMENDED
BE CONCURRED IN.