

HOUSE BILL NO. 855

INTRODUCED BY RAMIREZ, SPAETH

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Judiciary.
February 21, 1983	Committee recommend bill do pass. Report adopted.
February 22, 1983	Bill printed and placed on members' desks. Second reading, do pass.
February 23, 1983	Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 19, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 22, 1983	Second reading, concurred in.
March 24, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 24, 1983	Returned to House with amendments.
March 31, 1983	Second reading, amendments concurred in.

April 1, 1983

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *855*
2 INTRODUCED BY *Lawrence Speech*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
5 PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION; TO
6 REVISE THE ALTERNATE VALUATION FOR INHERITANCE AND ESTATE
7 TAXES; TO REVISE THE STATUTES RELATING TO DEFERRED PAYMENT
8 OF INHERITANCE AND ESTATE TAXES; AND TO REVISE THE
9 APPORTIONMENT OF ESTATE AND INHERITANCE TAXES; AMENDING
10 SECTIONS 72-2-101, 72-16-331 THROUGH 72-16-335, 72-16-337
11 THROUGH 72-16-339, 72-16-341, 72-16-342, 72-16-452,
12 72-16-456, 72-16-463, 72-16-464, 72-16-491, AND 72-16-603,
13 MCA; AND PROVIDING AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 72-2-101, MCA, is amended to read:
17 "72-2-101. Renunciation of succession. (1) A person or
18 his personal representative or the representative of an
19 incapacitated or protected person who is an heir, devisee,
20 person succeeding to a renounced interest, ~~donee, appointee,~~
21 ~~grantee, recipient, or~~ beneficiary under a testamentary
22 ~~instrument or appointee under a power of appointment~~
23 ~~exercised by a testamentary instrument trust or other~~
24 ~~nontestamentary instrument or under a power of appointment~~
25 ~~exercised by a testamentary or nontestamentary instrument.~~

1 ~~surviving joint owner or surviving joint tenant, or~~
2 ~~beneficiary or owner of an insurance contract or any~~
3 ~~incident of ownership therein~~ may renounce, in whole or in
4 part, the right of succession to any property or interest
5 therein, including a future interest, by filing a written
6 renunciation under this section. The instrument shall:

- 7 (a) describe the property or interest renounced;
- 8 (b) be signed by the person renouncing; and
- 9 (c) declare the renunciation and the extent thereof.

10 ~~(2) An instrument renouncing a present interest~~
11 ~~shall be filed within 9 months after the death of the~~
12 ~~decedent or the donee of the power.~~

13 ~~(b) An instrument renouncing a future interest may be~~
14 ~~filed not later than 9 months after the event determining~~
15 ~~that the taker of the property or interest is finally~~
16 ~~ascertained and his interest is indefeasibly vested.~~

17 ~~(c) The renunciation must be filed in the court of the~~
18 ~~county in which proceedings have been commenced for the~~
19 ~~administration of the estate of the deceased owner or~~
20 ~~deceased donee of the power or if they have not been~~
21 ~~commenced, in which they could be commenced. A copy of the~~
22 ~~renunciation shall be delivered in person or mailed by~~
23 ~~registered or certified mail to any person or representative~~
24 ~~or other fiduciary of the decedent or donee of the power, if~~
25 ~~real property or an interest therein is renounced, a copy of~~

1 the renunciation may be recorded in the office of the county
2 clerk of the county in which the real estate is situated.

3 (2) The court may direct or permit a trustee under a
4 testamentary or nontestamentary instrument to renounce,
5 modify, amend, or otherwise deviate from any restriction on
6 or power of administration, management, or allocation of
7 benefit upon finding that such restriction on the exercise
8 of the power may defeat or impair the accomplishment of the
9 purposes of the trust, whether by the imposition of taxes, the
10 allocation of beneficial interest inconsistent with such
11 purposes, or by other reason. Such authority shall be
12 exercised after hearing and upon notice to all known
13 persons beneficially interested in such trust, in the manner
14 directed by the court.

15 (3) The instrument of renunciation must be received by
16 the transferor of the interest, his legal representative,
17 the personal representative of a deceased transferor, the
18 trustee of any trust in which the interest being renounced
19 exists, or the holder of the legal title to the property to
20 which the interest relates. To be effective for purposes of
21 determining inheritance and estate taxes, the instrument
22 must be received not later than the date which is 9 months
23 after the later of the date on which the transfer creating
24 the interest in a person is made or the date on which the
25 person attains 18 years of age. If the circumstances that

1 establish the right of a person to renounce an interest
2 arise as a result of the death of an individual, the
3 instrument must also be filed in the court of the county
4 where proceedings concerning the decedent's estate are
5 pending or where they would be pending if commenced. If real
6 property or an interest therein is renounced, a copy of the
7 renunciation may be recorded in the office of the county
8 clerk and recorder of the county in which the real estate is
9 situated. No person entitled to a copy of the instrument is
10 liable for any proper distribution or disposition made
11 without actual notice of the renunciation, and no person
12 making a proper distribution or disposition in reliance upon
13 the renunciation is liable for any such distribution or
14 disposition in the absence of actual notice that an action
15 has been instituted contesting the validity of the
16 renunciation.

17 (3)(4) Unless the decedent or donee of the power
18 transferor of the interest has otherwise provided, the
19 property or interest renounced devolves as though the person
20 renouncing had predeceased the decedent or, if the
21 appointment was exercised by a testamentary instrument, as
22 though the person renouncing had predeceased the donee of
23 the power. A future interest that takes effect in possession
24 or enjoyment after the termination of the estate or interest
25 renounced takes effect as though the person renouncing had

1 predeceased the decedent or the donee of the power. A
2 renunciation relates back for all purposes to the date of
3 the death of the decedent or the donee of the power.

4 ~~(4)~~⁽⁵⁾ (a) The right to renounce property or an
5 interest therein is barred by:

6 (i) an assignment, conveyance, encumbrance, pledge, or
7 transfer of property or interest, or a contract therefor;

8 (ii) a written waiver of the right to renounce;

9 (iii) an acceptance of the property or interest or
10 benefit thereunder; or

11 (iv) a sale of the property or interest under judicial
12 sale made before the renunciation is effected.

13 (b) The right to renounce exists notwithstanding any
14 limitation on the interest of the person renouncing in the
15 nature of a spendthrift provision or similar restriction.

16 (c) A renunciation or a written waiver of the right to
17 renounce is binding upon the person renouncing or person
18 waiving and all persons claiming through or under him.

19 ~~(5)~~⁽⁶⁾ This section does not abridge the right of a
20 person to waive, release, disclaim, or renounce property or
21 an interest therein under any other statute.

22 ~~(6) An interest in property which exists on July 1,~~
23 ~~1975, as to which, if a present interest, the time for~~
24 ~~fitting a renunciation under the Uniform Probate Code has not~~
25 ~~expired, or if a future interest, the interest has not~~

1 ~~become indefeasibly vested or the taker finally ascertained~~
2 ~~may be renounced within 9 months after July 1, 1975.~~

3 ~~(7) Within 30 days of receipt of a written instrument~~
4 ~~of renunciation by the transferor of the interest, the~~
5 ~~renouncer, his legal representative, the personal~~
6 ~~representative of the decedent, the trustee of any trust in~~
7 ~~which the interest being renounced exists, or the holder of~~
8 ~~the legal title to the property to which the interest~~
9 ~~relates, as the case may be, shall attempt to notify in~~
10 ~~writing those persons who are known or ascertainable with~~
11 ~~reasonable diligence who are recipients or potential~~
12 ~~recipients of the renounced interest of the renunciation and~~
13 ~~the interest or potential interest such recipient will~~
14 ~~receive as a result of the renunciation.~~

15 ~~(8) Any interest in property which exists on July 1,~~
16 ~~1983, may be renounced after July 1, 1983, as provided in~~
17 ~~this section. An interest that has arisen prior to July 1,~~
18 ~~1983, in any person other than the person renouncing is not~~
19 ~~destroyed or diminished by any action of the person~~
20 ~~renouncing taken under this section."~~

21 Section 2. Section 72-16-331, MCA, is amended to read:
22 "72-16-331. Definitions for alternate valuation
23 purposes. As used in 72-16-331 through 72-16-342 and
24 [sections 17 through 23], the following definitions apply:

25 (1) "Active management" means the making of management

1 ~~decisions of a business, other than the daily operating~~
2 ~~decisions.~~

3 ~~(2)~~ "Adjusted value" means:

4 (a) in the case of a gross estate, the gross value of
5 all transfers subject to the tax imposed by this part,
6 determined without regard to 72-16-331 through 72-16-342 ~~and~~
7 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
8 mortgages and indebtedness;

9 (b) in the case of real or personal property, the
10 value of the property for the purposes of this part,
11 determined without regard to 72-16-331 through 72-16-342 ~~and~~
12 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
13 mortgages and indebtedness.

14 ~~(3)~~ "Agreement" means a written agreement signed by
15 each person in being who has an interest, whether or not he
16 is in possession, in any property designated in such
17 agreement consenting to the application of 72-16-333 with
18 respect to such property.

19 ~~(4)~~ "Department" means the department of revenue.

20 ~~(5)~~ "Disabled" means an individual who has a mental or
21 physical impairment that renders him unable to materially
22 participate in the operation of a farm or other business.

23 ~~(6)~~ "Eligible qualified heir" means a qualified heir
24 who:

25 ~~(a) is the surviving spouse of the decedent;~~

1 ~~(b) has not attained 21 years of age;~~

2 ~~(c) is disabled; or~~

3 ~~(d) is a student.~~

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

9 ~~(8)~~ "Farming purposes" means:

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

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

19 (c) (i) planting, cultivating, caring for, or cutting
20 trees; or

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

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

1 ~~(10)~~ "Involuntary conversion" means a compulsory or
 2 involuntary conversion within the meaning of section 1033 of
 3 the Internal Revenue Code.

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

7 ~~(12)~~ (a) "Member of the family" means, with respect
 8 to any individual, only the individual's:

9 (i) ancestor or:

10 (ii) spouse and the lineal descendants of the
 11 individual's spouse;

12 (iii) lineal descendant;

13 (iv) lineal descendants of the individual's parents.

14 (b) Member of the family also includes a spouse of:

15 (i) the individual's lineal descendants;

16 (ii) the lineal descendants of the individual's spouse;

17 or

18 (iii) the lineal descendants of the individual's
 19 parents.

20 (c) ~~a--nearest--descendant--of--a--grandparent--of--the~~
 21 ~~individual,--the--spouse--of--the--individual,--or--the--spouse--of~~
 22 ~~any--such--descendant.~~ For purposes of the preceding sentence
 23 this subsection (12), a legally adopted child of an
 24 individual is treated as a child of the individual by blood.

25 (13) "Net share rental" means the excess of:

1 (a) the value of the produce received by a lessor of
 2 land on which such produce is grown;

3 (b) divided by the cash operating expenses of growing
 4 such produce which, under the lease, are paid by the lessor.

5 (14) "Qualified exchange property" means real property
 6 that is to be used for the qualified use set forth in
 7 subsection (18).

8 ~~(15)~~ "Qualified heir" means, with respect to any
 9 property, a member of the decedent's family who acquired the
 10 property or to whom the property passed from the decedent.
 11 If a qualified heir disposes of any interest in qualified
 12 real property to any member of his family, such member shall
 13 thereafter be treated as the qualified heir with respect to
 14 such interest.

15 ~~(16)~~ "Qualified real property" means real property
 16 located in this state that was acquired from or passed from
 17 the decedent to a qualified heir of the decedent and that on
 18 the date of the decedent's death was being used for a
 19 qualified use by the decedent or a member of the decedent's
 20 family, but only if:

21 (a) 50% or more of the adjusted value of the gross
 22 estate consists of the adjusted value of real or personal
 23 property that:

24 (i) on the date of the decedent's death was being used
 25 for a qualified use by the decedent or a member of the

1 ~~decedent's family;~~ and

2 (ii) was acquired from or passed from the decedent to a

3 qualified heir of the decedent;

4 (b) 25% or more of the adjusted value of the gross

5 estate consists of the adjusted value of real property that

6 meets the requirements of (a)(ii) and (c) of this

7 subsection;

8 (c) during the 8-year period ending on the date of the

9 decedent's death there have been periods aggregating 5 years

10 or more during which:

11 (i) the real property was owned by the decedent or a

12 member of the decedent's family and used for a qualified use

13 ~~by the decedent or a member of the decedent's family;~~ and

14 (ii) there was material participation by the decedent

15 or a member of the decedent's family in the operation of the

16 farm or other business; and

17 (d) the real property is designated in the agreement

18 referred to in subsection ~~(2)~~ (3) of this section; and

19 ~~1e1. If an election is made with respect to qualified~~

20 ~~woodlands, trees growing on such woodland may not be treated~~

21 ~~as a CRDP.~~

22 ~~(12)(171) (a) "Qualified replacement property" means:~~

23 (i) in the case of an involuntary conversion as

24 described in section 1033(a)(1) of the Internal Revenue

25 Code, any real property into which the real property is

1 converted;

2 (ii) in the case of an involuntary conversion as

3 described in section 1033(a)(2) of the Internal Revenue

4 Code, any real property purchased by the qualified heir

5 during the period specified in section 1033(a)(2)~~(b)(1A)~~ of

6 the Internal Revenue Code for the purpose of replacing the

7 qualified real property.

8 (b) "Qualified replacement property" only includes

9 property that is to be used for the qualified use set forth

10 in (a) or (b) of subsection ~~(12)~~ (171) of this section under

11 which the qualified real property qualified under 72-16-333.

12 ~~(12)(181) (a) "Qualified use" means devotion of the~~

13 property to any of the following:

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

15 (ii) use in a trade or business other than the trade or

16 business of farming.

17 (b) In the case of real property that meets the

18 requirements of subsection ~~(12)~~ (161)(c), residential

19 buildings and related improvements on the real property

20 occupied on a regular basis by the owner or lessee of the

21 real property or by persons employed by the owner or lessee

22 for the purpose of operating or maintaining the real

23 property, and roads, buildings, and other structures and

24 improvements functionally related to the qualified use shall

25 be treated as real property devoted to the qualified use.

1 (19) "Qualified woodland" means any real property that:
2 (a) is used in timber operations; and
3 (b) is an identifiable area of land, such as an acre
4 or other area, for which records are normally maintained in
5 conducting timber operations.

6 (20) "Student" means an individual as defined by
7 section 151(e)(4) of the Internal Revenue Code.

8 (21) "Timber operations" means:

9 (a) the planting, cultivating, caring for, or cutting
10 of trees; or

11 (b) the preparation, other than milling, of trees for
12 markets."

13 Section 3. Section 72-16-332, MCA, is amended to read:
14 "72-16-332. Property acquired from decedent defined.
15 Property is considered to have been acquired from the
16 decedent if the property:

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

19 (2) is acquired by any person from the estate in
20 satisfaction--of--the--right--of--such--person--to--a--pecuniary
21 request; or

22 (3) is acquired by any person from a trust in
23 satisfaction--of--a--right--which--such--person--has--by--reason--of
24 the--death--of--the--decedent--to--receive--from--the--trust--a
25 specific-dollar-amount-that-is-the-equivalent-of-a-pecuniary

1 request to the extent the property is includable in the
2 gross estate of the decedent."

3 Section 4. Section 72-16-333, MCA, is amended to read:

4 "72-16-333. Alternate valuation of certain farm or
5 business real property -- limitation. (1) If the decedent
6 was at the time of his death a resident of this state and
7 the personal representative elects to have 72-16-331 through
8 72-16-342 and [sections 17 through 23] apply and files an
9 agreement with the department, the value of qualified real
10 property for the purposes of the tax imposed by this part is
11 its value for the use under which it qualifies under
12 72-16-331~~(1)~~ as qualified real property.

13 (2) The aggregate decrease in the value of qualified
14 real property taken into account for the purposes of the
15 Montana inheritance tax that results from the application of
16 (1) of this section may not exceed \$500,000 in the case of a
17 decedent dying prior to January 1, 1983, and may not exceed
18 \$750,000 for decedents dying thereafter."

19 Section 5. Section 72-16-334, MCA, is amended to read:

20 "72-16-334. Election of alternate valuation. An
21 election for valuation under 72-16-331 through 72-16-342 and
22 [sections 17 through 23] must be made within 18 months of
23 the date of the decedent's death and must be made in such
24 manner as the department may prescribe. The election, once
25 made, is irrevocable."

1 Section 6. Section 72-16-335, MCA, is amended to read:

2 "72-16-335. Valuation of farms. (1) Except as provided
3 in ~~(2)~~ (1) of this section, the value of a farm for farming
4 purposes is determined by dividing the excess of the average
5 annual gross cash rental for comparable land used for
6 farming purposes and located in the locality of the farm
7 over the average annual state and local real estate taxes
8 for comparable land by the average annual effective interest
9 rate for all new federal land bank loans. For purposes of
10 the preceding sentence, each average annual computation must
11 be made on the basis of the 5 most recent calendar years
12 ending before the date of the decedent's death.

13 ~~(2) If there is no comparable land from which the~~
14 ~~annual average gross cash rental may be determined but there~~
15 ~~is comparable land from which the average net share rental~~
16 ~~may be determined, when subsection (1) is applied, "average~~
17 ~~annual net share rental" must be substituted for "average~~
18 ~~annual gross cash rental".~~

19 ~~(2)(3)~~ The formula in (1) and ~~(2)~~ of this section may
20 not be used:

21 (a) if it is established that there is no comparable
22 land from which the average annual gross cash rental may be
23 determined ~~and that there is no comparable land from which~~
24 ~~the average net share rental may be determined;~~ or

25 (b) if the personal representative elects to have the

1 value of the farm for farming purposes determined under
2 72-16-336."

3 Section 7. Section 72-16-337, MCA, is amended to read:

4 "72-16-337. Application to certain business interests
5 -- department rules. ~~(1)~~ The department shall prescribe
6 regulations setting forth the application of 72-16-331
7 through 72-16-342 ~~and [sections 17 through 23]~~ in the case
8 of an interest in a partnership, corporation, or trust that,
9 with respect to the decedent, is an interest in a closely
10 held business within the meaning of 72-16-453.

11 ~~(2) For the purposes of the preceding sentence, an~~
12 ~~interest in a discretionary trust all the beneficiaries of~~
13 ~~which are qualified heirs must be treated as a present~~
14 ~~interest."~~

15 Section 8. Section 72-16-338, MCA, is amended to read:

16 "72-16-338. Disposition or failure to use for
17 qualified use -- additional tax. (1) There is hereby imposed
18 an additional inheritance tax if within ~~15~~ 10 years after
19 the decedent's death and before the death of the qualified
20 heir:

21 (a) the qualified heir disposes of any interest in
22 qualified real property other than by a disposition to a
23 member of his family; or

24 (b) the qualified heir ceases to use for the qualified
25 use the qualified real property which was acquired or passed

1 from the decedent.

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

5 (a) the adjusted tax difference attributable to such
6 interest; or

7 (b) the excess of the amount realized with respect to
8 the interest or in any case other than a sale or exchange at
9 arm's length, the fair market value of the interest over the
10 value of the interest determined under 72-16-333.

11 (3) For the purposes of (2) of this section, the
12 adjusted tax difference attributable to an interest is the
13 amount that bears the same ratio to the adjusted tax
14 difference with respect to the estate as determined under
15 (4) of this section as the excess of the value of such
16 interest for purposes of the Montana inheritance tax,
17 determined without regard to 72-16-331 through 72-16-342 and
18 [sections 17 through 23], over the value of such interest
19 determined under 72-16-333 bears to a similar excess
20 determined for all qualified real property.

21 (4) For the purposes of (3) of this section, "adjusted
22 tax difference with respect to the estate" means the excess
23 of what would have been the tax liability but for 72-16-333
24 over the tax liability. For the purposes of this subsection,
25 "tax liability" means the tax imposed by Title 72, chapter

1 16.

2 (5) For the purposes of this section, if the qualified
3 heir disposes of a portion of the interest acquired by or
4 passing to such heir or a predecessor qualified heir, or
5 there is a cessation of use of such a portion, the value
6 determined under 72-16-333 taken into account under (2)(b)
7 of this section with respect to such portion shall be its
8 pro rata share of the value of the interest and the adjusted
9 tax difference attributable to the interest taken into
10 account with respect to the transaction involving the second
11 or any succeeding portion shall be reduced by the amount of
12 the tax imposed by this section with respect to all prior
13 transactions involving portions of the interest.

14 ~~(6) If the date of the disposition or cessation occurs~~
15 ~~more than 120 months and less than 180 months after the date~~
16 ~~of the death of the decedent, the amount of the tax imposed~~
17 ~~by this section shall be reduced, but not below zero, by an~~
18 ~~amount determined by multiplying the amount of the tax~~
19 ~~determined without regard to this subsection by a fraction~~
20 ~~in which the numerator is the number of full months after~~
21 ~~the death in excess of 120 and the denominator is 60.~~

22 (7)(a) In the case of an interest acquired from or
23 passing from any decedent, if (a) or (b) of subsection (1)
24 of this section applies to any portion of an interest, (b)
25 or (a) of subsection (1) of this section, as the case may

1 be, does not apply with respect to the same portion of the
2 interest.

3 ~~(9)(1)~~ The additional tax imposed by this section is
4 due on the day that is 6 months after the date of the
5 disposition or cessation.

6 ~~(9)(8)~~ The qualified heir is personally liable for the
7 additional tax with respect to his interest unless the heir
8 has furnished bond that meets the requirements of
9 72-16-340."

10 Section 9. Section 72-16-339, MCA, is amended to read:

11 "72-16-339. When cessation of qualified use occurs.
12 For the purposes of 72-16-338, real property ceases to be
13 used for the qualified use if:

14 (1) the property ceases to be used for the qualified
15 use set forth in 72-16-331 under which the property
16 qualified under 72-16-331; or

17 (2) during any period of 3 years ending after the date
18 of the decedent's death and before the date of the death of
19 the qualified heir, there had been periods aggregating ~~more~~
20 ~~than~~ 3 years or more during which:

21 (a) in the case of periods during which the property
22 was held by the decedent, there was no material
23 participation by the decedent or any member of his family in
24 the operation of the farm or other business; and

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

1 was held by any qualified heir, there was no material
2 participation by such qualified heir or any member of his
3 family in the operation of the farm or other business."

4 Section 10. Section 72-16-341, MCA, is amended to
5 read:

6 "72-16-341. Involuntary conversion of qualified real
7 property. (1) If there is an involuntary conversion of an
8 interest in qualified real property ~~and the qualified heir~~
9 ~~makes an election under this section~~, no tax is imposed by
10 72-16-338 on the conversion if the cost of the qualified
11 replacement property equals or exceeds the amount realized
12 on the conversion.

13 (2) If (1) of this section does not apply, the tax
14 imposed by 72-16-338, with respect to any involuntary
15 conversion, is the amount of tax that, but for this
16 subsection, would have been imposed on the conversion
17 reduced by an amount that bears the same ratio to such tax
18 as the cost of the qualified replacement property bears to
19 the amount realized on the conversion.

20 (3) (a) For the purposes of 72-16-338, any qualified
21 replacement property shall be treated in the same manner as
22 if it were a portion of the interest in qualified real
23 property that was involuntarily converted, except that with
24 respect to such qualified replacement property:

25 ~~(i)~~ the ~~15-year~~ 10-year period under 72-16-338 shall

1 be extended by any period, beyond the 2-year period referred
2 to in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
3 during which the qualified heir was allowed to replace the
4 qualified real property, and

5 ~~{1} the phaseout period under 72-16-338(6) shall be~~
6 ~~appropriately adjusted to take into account the extension~~
7 ~~referred to in (a){1} of this subsection.~~

8 (b) Any tax imposed by 72-16-338 on the involuntary
9 conversion shall be treated as a tax imposed on a partial
10 disposition. The provisions of 72-16-339 shall be applied by
11 not taking into account periods after the involuntary
12 conversion and before the acquisition of the qualified
13 replacement property and by treating material participation
14 with respect to the converted property as material
15 participation with respect to the qualified replacement
16 property.

17 (4) The rules of the last sentence of section
18 1033(a)(2)(B) of the Internal Revenue Code apply for the
19 purposes of 72-16-331~~(2)~~⁽¹⁾(a)(1).

20 ~~{5} An election under this section may be made at such~~
21 ~~time and in such manner as prescribed by the department."~~

22 Section 11. Section 72-16-342, MCA, is amended to
23 read:

24 "72-16-342. Time limitations on assessment of
25 additional tax. (1) If qualified real property is disposed

1 of or ceases to be used for a qualified use, the statutory
2 period for the assessment of any additional tax under
3 72-16-338 attributable to disposition or cessation may not
4 expire until 3 years after the date the department is
5 notified, in a manner to be prescribed by the department, of
6 the disposition or cessation or, in the case of an
7 involuntary conversion or exchange in which 72-16-341 or
8 (section 22) applies, 3 years from the date the department
9 is notified of the replacement of the converted property or
10 of an intention to replace or exchange the property.

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

15 Section 12. Section 72-16-452, MCA, is amended to
16 read:

17 "72-16-452. Deferred payment for transfer of closely
18 held business interest. (1) If the value of an interest in a
19 closely held business that is taxable under Title 72,
20 chapter 16, part 3, as a transfer from a decedent who was at
21 the time of death a resident of this state exceeds ~~65%~~ ^{35%}
22 of the adjusted gross estate, the personal representative
23 may elect to pay all or part of the tax imposed by Title 72,
24 chapter 16, part 3, in 2 or more but less than 11 equal
25 installments.

1 (2) The maximum amount of tax that may be paid in
 2 installments by each beneficiary is an amount that bears the
 3 same ratio to the tax imposed by Title 72, chapter 16, part
 4 3, as the closely held business amount passing to the
 5 beneficiary bears to the clear market value of all property
 6 passing to the beneficiary, without reduction for the
 7 federal estate tax due or paid.

8 (3) If an election is made under (1) of this section,
 9 the first installment must be paid on or before a date
 10 selected by the personal representative that is not more
 11 than 5 years after the date prescribed by 72-16-441 for the
 12 payment of tax without interest. If, however, a credit is
 13 claimed on the federal estate tax return for state death
 14 taxes on the estate under the provisions of section 2011(a)
 15 of the Internal Revenue Code, as amended, an amount of
 16 inheritance tax due equal to the federal credit must be paid
 17 within the period established in section 2011(c) of the
 18 Internal Revenue Code, as amended. Each succeeding
 19 installment must be paid on or before the date that is 1
 20 year after the date of the preceding installment. The
 21 department may for reasonable cause extend the time for
 22 payment of any installment under this section, including any
 23 part of an additional tax prorated to any installment, for a
 24 reasonable period but not beyond the date that is 12 months
 25 after the due date for the last installment.

1 (4) If an election is made under (1) of this section,
 2 the tax due may not be further deferred under the provisions
 3 of 72-16-438."

4 Section 13. Section 72-16-456, MCA, is amended to
 5 read:

6 "72-16-456. Interests in more than one closely held
 7 business. (1) Interests in two or more closely held
 8 businesses, with respect to which there is taxable under
 9 Title 72, chapter 16, part 3, as a transfer from the
 10 decedent ~~more than 20% or more~~ of the total value of each
 11 business, shall be treated as an interest in a single
 12 closely held business.

13 (2) For the purposes of the 20% requirement of (1) of
 14 this section, an interest in a closely held business that
 15 represents the surviving spouse's interest in property held
 16 by the decedent and the surviving spouse as joint tenants or
 17 tenants in common shall be treated as taxable under Title
 18 72, chapter 16, part 3, in determining the value of a
 19 transfer from the decedent."

20 Section 14. Section 72-16-463, MCA, is amended to
 21 read:

22 "72-16-463. Failure to pay installment -- acceleration
 23 of payment. ~~If (1) Except as provided in subsection (2), any~~
 24 installment of principal or interest under 72-16-451 through
 25 72-16-465 is not paid on or before the date fixed for its

1 payment, including any extension of time for the payment of
2 the installment, the unpaid portion of the tax payable in
3 installments must be paid on notice and demand from the
4 department.

5 ~~(2) If any installment of principal or interest under~~
6 ~~72-16-451 through 72-16-465 is not paid on or before the~~
7 ~~date determined under subsection (1) but is paid within 6~~
8 ~~months of the date, the provisions of subsection (1) do not~~
9 ~~apply with respect to such payment; the provisions of~~
10 ~~72-16-461 may not apply with respect to the determination of~~
11 ~~interest on such payment, and there is imposed a penalty in~~
12 ~~an amount equal to the product of 5% of the amount of such~~
13 ~~payments, multiplied by the number of months or fractions~~
14 ~~thereof after such date and before payment is made."~~

15 Section 15. Section 72-16-464, MCA, is amended to
16 read:

17 "72-16-464. Acceleration of payment -- other grounds.

18 (1) The extension of time for payment of tax provided in
19 72-16-452 shall cease to apply and any unpaid portion of the
20 tax payable must be paid upon notice and demand of the
21 department if:

22 ~~(a) one-third or more in value any portion of an~~
23 ~~interest in a closely held business that qualifies under~~
24 ~~72-16-452 is distributed, sold, exchanged, or otherwise~~
25 ~~disposed of; or~~

1 ~~(b) aggregate withdrawals of~~ if money and other
2 ~~property attributable to such an interest is withdrawn~~ from
3 ~~the trade or business on interest in which qualifies under~~
4 ~~72-16-452, made with respect to such interest, equal or~~
5 ~~exceed one-third of the value of such trade or business and~~
6 ~~the aggregate of such distributions, sales, exchanges, or~~
7 ~~other dispositions and withdrawals equals or exceeds 50% of~~
8 ~~the value of such interest.~~

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

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

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

24 (3) Subsection (1)~~(a)~~ of this section does not apply
25 to an exchange of stock pursuant to a plan of reorganization

1 described in (D), (E), or (F) of section 368(a)(1) of the
 2 Internal Revenue Code or to an exchange to which section 355
 3 of the Internal Revenue Code or so much of section 356 of
 4 the Internal Revenue Code applies to section 355, but any
 5 stock received in such an exchange shall be treated for
 6 purposes of subsection (1)~~(e)~~ as an interest qualifying
 7 under 72-16-452.

8 (4) Subsection (1)~~(e)~~ of this section does not apply
 9 to a transfer of property of the decedent to a person
 10 entitled by reason of the decedent's death to receive such
 11 property under the decedent's will, intestate succession, or
 12 a trust created by the decedent; nor does it apply to a
 13 series of subsequent transfers of the property by reason of
 14 death of the transferor, so long as each transfer is to a
 15 member of the family within the meaning of section 267(c)(4)
 16 of the Internal Revenue Code."

17 Section 14. Section 72-16-603, MCA, is amended to
 18 read:

19 "72-16-603. Tax -- how apportioned. (1) Unless Except
 20 as provided in subsection (3) and unless the will otherwise
 21 provides, the tax shall be apportioned among all persons
 22 interested in the estate. The apportionment is to be made in
 23 the proportion that the value of the interest of each person
 24 interested in the estate bears to the total value of the
 25 interests of all persons interested in the estate. The

1 values used in determining the tax are to be used for that
 2 purpose.

3 (2) If the decedent's will directs a method of
 4 apportionment of tax different from the method described in
 5 this part, the method described in the will controls.

6 (3) If the liabilities of persons interested in the
 7 estate as described in this part differ from those which
 8 result under the federal estate tax law, the liabilities
 9 imposed by the federal law control and the balance of this
 10 part applies as if the resulting liabilities had been
 11 prescribed in this part."

12 NEW SECTION. Section 17. Special rules for surviving
 13 spouses. (1) If property is qualified real property with
 14 respect to a decedent, hereinafter in this subsection
 15 referred to as the "first decedent", and the property was
 16 acquired from or passed from the first decedent to the
 17 surviving spouse of the first decedent, for purposes of
 18 applying this section and 72-16-339 in the case of the
 19 estate of such surviving spouse, active management of a farm
 20 or other business by the surviving spouse must be treated as
 21 material participation by the surviving spouse in the
 22 operation of the farm or business.

23 (2) For the purposes of subsection (1), the
 24 determination of whether property is qualified real property
 25 with respect to the first decedent must be made without

1 regard to whether an election under 72-16-334 was made.

2 **NEW SECTION.** Section 18. Decedents who are retired or
3 disabled. (1) If on the date of the decedent's death, the
4 requirements of 72-16-331(16)(c)(ii) with respect to the
5 decedent for any property are not met and the decedent
6 either was receiving old-age benefits under Title II of the
7 Social Security Act for a continuous period ending on the
8 date of death or was disabled for a continuous period ending
9 on the date of death, then 72-16-331(16)(c) must be applied
10 with respect to such property by substituting "the date on
11 which the longer of the continuous periods described in
12 [section 18(1)] began" for "the date of the decedent's
13 death" in 72-16-331(16)(c).

14 (2) For purposes of 72-16-339(2)(a), if the
15 requirements of 72-16-331(16)(c)(ii) are met with respect to
16 any decedent by reason of subsection (1), the period ending
17 on the date on which the continuous period taken into
18 account under subsection (1) began must be treated as the
19 period immediately before the decedent's death.

20 **NEW SECTION.** Section 19. Active management by
21 eligible qualified heir treated as material participation.
22 (1) For purposes of 72-16-339, the active management of a
23 farm or other business by an eligible qualified heir or a
24 fiduciary of an eligible qualified heir must be treated as a
25 material participation by the eligible qualified heir in the

1 operation of the farm or business.

2 (2) In the case of an eligible qualified heir,
3 subsection (1) applies only during periods during which the
4 heir continues to be an eligible qualified heir.

5 **NEW SECTION.** Section 20. No tax if use begins within
6 two years. If the date on which the qualified heir begins to
7 use the qualified real property, hereinafter referred to as
8 the commencement date, is before the date 2 years after the
9 decedent's death:

10 (1) no tax may be imposed under 72-16-338 by reason of
11 the failure by the qualified heir to so use such property
12 before the commencement date; and

13 (2) the 10-year period under 72-16-338 must be
14 extended by the period between the decedent's death and the
15 commencement date.

16 **NEW SECTION.** Section 21. Special rule for disposition
17 of timber. In the case of qualified woodland to which an
18 election under 72-16-334 applies, if the qualified heir
19 disposes of or severs any standing timber on the qualified
20 woodland:

21 (1) the disposition or severance is treated as a
22 disposition of a portion of the interest of the qualified
23 heir in the property; and

24 (2) the additional tax imposed by 72-16-338 with
25 respect to the disposition is an amount equal to the lesser

1 of:

2 (a) the amount realized on the disposition or, in any
3 case other than a sale or exchange at arm's length, the fair
4 market value of the portion of the interest disposed or
5 severed; or

6 (b) the amount of additional tax determined under this
7 section, without regard to this subsection (2)(b), if the
8 entire interest of the qualified heir in the qualified
9 woodland had been disposed of, less the sum of the amount of
10 the additional tax imposed with respect to all prior
11 transactions involving the woodland to which subsection (2)
12 applied.

13 (3) For purposes of subsection (2), the disposition of
14 a right to sever is treated as the disposition of the
15 standing timber. The amount of additional tax imposed under
16 72-16-338 in a case in which a qualified heir disposes of
17 his entire interest in the qualified woodland must be
18 reduced by any amount determined under this section with
19 respect to such woodland.

20 NEW SECTION. Section 22. Exchanges of qualified real
21 property. (1) If an interest in qualified real property is
22 exchanged solely for an interest in qualified exchange
23 property in a transaction that qualifies under section 1031
24 of the Internal Revenue Code, no tax may be imposed by
25 72-16-338 by reason of the exchange.

1 (2) If an interest in qualified real property is
2 exchanged for an interest in qualified exchange property and
3 other property in a transaction that qualifies under section
4 1031 of the Internal Revenue Code, the amount of the tax
5 imposed by 72-16-338 by reason of the exchange must be the
6 amount of tax that would have been imposed on the exchange
7 under 72-16-338, without regard to this section, reduced by
8 an amount which bears the same ratio to such tax as the fair
9 market value of the other property bears to the fair market
10 value of the qualified real property exchanged. Fair market
11 value must be determined as of the time of the exchange.

12 (3) For purposes of 72-16-338:

13 (a) any interest in qualified exchange property must
14 be treated in the same manner as if it were a portion of the
15 interest in qualified real property that was exchanged;

16 (b) any tax imposed by 72-16-338 by reason of the
17 exchange must be treated as a tax imposed on a partial
18 disposition; and

19 (c) 72-16-338 must be applied by treating material
20 participation with respect to the exchanged property as
21 material participation with respect to the qualified
22 exchange property.

23 NEW SECTION. Section 23. Treatment of replacement
24 property acquired in transactions under section 1031 or 1033
25 of the Internal Revenue Code. (1) Except as provided in

1 subsection (2) in the case of any qualified replacement
2 property, any period during which there was ownership,
3 qualified use, or material participation with respect to the
4 replaced property by the decedent or any member of his
5 family must be treated as a period during which there was
6 such ownership, use, or material participation with respect
7 to the qualified replacement property.

8 (2) Subsection (1) does not apply to the extent that
9 the fair market value of the qualified replacement property,
10 as of the date of its acquisition, exceeds the fair market
11 value of the replaced property, as of the date of its
12 disposition.

13 (3) For purposes of this section:

14 (a) the term "qualified replacement property" means
15 any real property:

16 (i) that is acquired in an exchange which qualifies
17 under section 1031 of the Internal Revenue Code;

18 (ii) the acquisition of which results in the
19 nonrecognition of gain under section 1033 of the Internal
20 Revenue Code; or

21 (iii) that is used for the same qualified use as the
22 replaced property was being used before the exchange;

23 (b) the term "replaced property" means:

24 (i) the property transferred in the exchange that
25 qualifies under section 1031 of the Internal Revenue Code;

1 or

2 (ii) the property compulsorily or involuntarily
3 converted within the meaning of section 1033 of the Internal
4 Revenue Code.

5 Section 24. Section 72-16-491, MCA, is amended to
6 read:

7 "72-16-491. Lien for additional tax attributable to
8 farm and closely held business property. (1) In the case of
9 any interest in qualified real property within the meaning
10 of 72-16-331~~(1)~~(1), an amount equal to the adjusted tax
11 difference attributable to such interest within the meaning
12 of 72-16-338(3) is a lien in favor of the state on the
13 property in which such interest exists.

14 (2) The lien imposed by this section shall arise at
15 the time an election is filed under 72-16-333 and continues
16 with respect to any interest in the qualified real property
17 until:

18 (a) the liability for tax under 72-16-338 with respect
19 to such interest has been satisfied or has become
20 unenforceable by reason of lapse of time; or

21 (b) until it is established to the satisfaction of the
22 department that no further tax liability may arise under
23 72-16-338 with respect to such interest.

24 (3) Sections 72-16-477, 72-16-479, and 72-16-480 apply
25 with respect to a lien imposed by 72-16-491."

1 NEW SECTION. Section 25. Codification instruction.
2 Sections 17 through 23 are intended to be codified as an
3 integral part of Title 72, chapter 16, part 3, and the
4 provisions of Title 72, chapter 16, part 3, apply to
5 sections 17 through 23.

6 NEW SECTION. Section 26. Applicability date. This act
7 applies to estates of persons dying after October 1, 1983.

-End-

Approved by Committee
on Judiciary

1 *House* BILL NO. *855*
2 INTRODUCED BY *Lamson* *Spaeth*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
5 PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION; TO
6 REVISE THE ALTERNATE VALUATION FOR INHERITANCE AND ESTATE
7 TAXES; TO REVISE THE STATUTES RELATING TO DEFERRED PAYMENT
8 OF INHERITANCE AND ESTATE TAXES; AND TO REVISE THE
9 APPORTIONMENT OF ESTATE AND INHERITANCE TAXES; AMENDING
10 SECTIONS 72-2-101, 72-16-331 THROUGH 72-16-335, 72-16-337
11 THROUGH 72-16-339, 72-16-341, 72-16-342, 72-16-452,
12 72-16-456, 72-16-463, 72-16-464, 72-16-491, AND 72-16-603,
13 MCA; AND PROVIDING AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 72-2-101, MCA, is amended to read:

17 "72-2-101. Renunciation of succession. (1) A person or
18 his personal representative or the representative of an
19 incapacitated or protected person who is an heir, devisee,
20 person succeeding to a renounced interest, ~~donee, appointee,~~
21 ~~grantee, recipient, or~~ beneficiary under a testamentary
22 instrument, ~~or appointee under a power of appointment~~
23 ~~exercised by a testamentary instrument~~ trust or other
24 ~~non-testamentary instrument or under a power of appointment~~
25 ~~exercised by a testamentary or non-testamentary instrument,~~

1 ~~surviving joint owner or surviving joint tenant, or~~
2 ~~beneficiary or owner of an insurance contract or any~~
3 ~~incident of ownership therein~~ may renounce, in whole or in
4 part, the right of succession to any property or interest
5 therein, including a future interest, by filing a written
6 renunciation under this section. The instrument shall:

7 (a) describe the property or interest renounced;
8 (b) be signed by the person renouncing; and
9 (c) declare the renunciation and the extent thereof.

10 ~~(2) (a) An instrument renouncing a present interest~~
11 ~~shall be filed within 9 months after the death of the~~
12 ~~decedent or the donee of the power.~~

13 ~~(b) An instrument renouncing a future interest may be~~
14 ~~filed not later than 9 months after the event determining~~
15 ~~that the taker of the property or interest is finally~~
16 ~~ascertained and his interest is indefeasibly vested.~~

17 ~~(c) The renunciation must be filed in the court of the~~
18 ~~county in which proceedings have been commenced for the~~
19 ~~administration of the estate of the deceased owner or~~
20 ~~deceased donee of the power or, if they have not been~~
21 ~~commenced, in which they could be commenced. A copy of the~~
22 ~~renunciation shall be delivered in person or mailed by~~
23 ~~registered or certified mail to any person or representative~~
24 ~~or other fiduciary of the decedent or donee of the power, if~~
25 ~~real property or an interest therein is renounced, a copy of~~

1 the renunciation may be recorded in the office of the county
2 clerk of the county in which the real estate is situated.

3 (2) The court may direct or permit a trustee under a
4 testamentary or nontestamentary instrument to renounce,
5 modify, amend, or otherwise deviate from any restriction on
6 or power of administration, management, or allocation of
7 benefit upon finding that such restriction on the exercise
8 of the power may defeat or impair the accomplishment of the
9 purposes of the trust, whether by the imposition of tax, the
10 allocation of beneficial interest inconsistent with such
11 purposes, or by other reason. Such authority shall be
12 exercised after hearing and upon notice to all known
13 persons beneficially interested in such trust, in the manner
14 directed by the court.

15 (3) The instrument of renunciation must be received by
16 the transferor of the interest, his legal representative,
17 the personal representative of a deceased transferor, the
18 trustee of any trust in which the interest being renounced
19 exists, or the holder of the legal title to the property to
20 which the interest relates. To be effective for purposes of
21 determining inheritance and estate taxes, the instrument
22 must be received not later than the date which is 9 months
23 after the later of the date on which the transfer creating
24 the interest in a person is made or the date on which the
25 person attains 18 years of age. If the circumstances that

1 establish the right of a person to renounce an interest
2 arise as a result of the death of an individual, the
3 instrument must also be filed in the court of the county
4 where proceedings concerning the decedent's estate are
5 pending or where they would be pending if commenced. If real
6 property or an interest therein is renounced, a copy of the
7 renunciation may be recorded in the office of the county
8 clerk and recorder of the county in which the real estate is
9 situated. No person entitled to a copy of the instrument is
10 liable for any proper distribution or disposition made
11 without actual notice of the renunciation, and no person
12 making a proper distribution or disposition in reliance upon
13 the renunciation is liable for any such distribution or
14 disposition in the absence of actual notice that an action
15 has been instituted contesting the validity of the
16 renunciation.

17 (3)(4) Unless the decedent or donee of the power
18 transferor of the interest has otherwise provided, the
19 property or interest renounced devolves as though the person
20 renouncing had predeceased the decedent or, if the
21 appointment was exercised by a testamentary instrument, as
22 though the person renouncing had predeceased the donee of
23 the power. A future interest that takes effect in possession
24 or enjoyment after the termination of the estate or interest
25 renounced takes effect as though the person renouncing had

1 predeceased the decedent or the donee of the power. A
2 renunciation relates back for all purposes to the date of
3 the death of the decedent or the donee of the power.

4 ~~(4)~~(5) (a) The right to renounce property or an
5 interest therein is barred by:

6 (i) an assignment, conveyance, encumbrance, pledge, or
7 transfer of property or interest, or a contract therefor;

8 (ii) a written waiver of the right to renounce;

9 (iii) an acceptance of the property or interest or
10 benefit thereunder; or

11 (iv) a sale of the property or interest under judicial
12 sale made before the renunciation is effected.

13 (b) The right to renounce exists notwithstanding any
14 limitation on the interest of the person renouncing in the
15 nature of a spendthrift provision or similar restriction.

16 (c) A renunciation or a written waiver of the right to
17 renounce is binding upon the person renouncing or person
18 waiving and all persons claiming through or under him.

19 ~~(5)~~(6) This section does not abridge the right of a
20 person to waive, release, disclaim, or renounce property or
21 an interest therein under any other statute.

22 ~~(b)--An--interest--in--property--which--exists--on--July--1--~~
23 ~~1975,--as--to--which,--if--a--present--interest,--the--time--for~~
24 ~~fitting--a--renunciation--under--the--Uniform--Probate--Code--has--not~~
25 ~~expired,--or--if--a--future--interest,--the--interest--has--not~~

1 ~~become--indefeasibly--vested--or--the--taker--finally--ascertained,~~
2 ~~may--be--renounced--within--9--months--after--July--1,--1975.~~

3 ~~(7) Within 30 days of receipt of a written instrument~~
4 ~~of renunciation by the transferor of the interest, the~~
5 ~~renouncer, his legal representative, the personal~~
6 ~~representative of the decedent, the trustee of any trust in~~
7 ~~which the interest being renounced exists, or the holder of~~
8 ~~the legal title to the property to which the interest~~
9 ~~relates, as the case may be, shall attempt to notify in~~
10 ~~writing those persons who are known or ascertainable with~~
11 ~~reasonable diligence who are recipients or potential~~
12 ~~recipients of the renounced interest of the renunciation and~~
13 ~~the interest or potential interest, such recipient will~~
14 ~~receive as a result of the renunciation.~~

15 ~~(8) Any interest in property which exists on July 1,~~
16 ~~1983, may be renounced after July 1, 1983, as provided in~~
17 ~~this section. An interest that has arisen prior to July 1,~~
18 ~~1983, in any person other than the person renouncing is not~~
19 ~~destroyed or diminished by any action of the person~~
20 ~~renouncing taken under this section."~~

21 Section 2. Section 72-16-331, MCA, is amended to read:
22 "72-16-331. Definitions for alternate valuation
23 purposes. As used in 72-16-331 through 72-16-342 and
24 [sections 17 through 23], the following definitions apply:

25 (1) "Active management" means the making of management

1 ~~decisions of a business, other than the daily operating~~
2 ~~decisions.~~

3 ~~(1)~~(2) "Adjusted value" means:

4 (a) in the case of a gross estate, the gross value of
5 all transfers subject to the tax imposed by this part,
6 determined without regard to 72-16-331 through 72-16-342 ~~and~~
7 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
8 mortgages and indebtedness;

9 (b) in the case of real or personal property, the
10 value of the property for the purposes of this part,
11 determined without regard to 72-16-331 through 72-16-342 ~~and~~
12 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
13 mortgages and indebtedness.

14 ~~(2)~~(3) "Agreement" means a written agreement signed by
15 each person in being who has an interest, whether or not he
16 is in possession, in any property designated in such
17 agreement consenting to the application of 72-16-333 with
18 respect to such property.

19 ~~(3)~~(4) "Department" means the department of revenue.

20 ~~(5)~~ "Disabled" means an individual who has a mental or
21 physical impairment that renders him unable to materially
22 participate in the operation of a farm or other business.

23 ~~(6)~~ "Eligible qualified heir" means a qualified heir
24 who:

25 ~~(a) is the surviving spouse of the decedent;~~

1 ~~(b) has not attained 21 years of age;~~

2 ~~(c) is disabled; or~~

3 ~~(d) is a student.~~

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

9 ~~(5)~~(8) "Farming purposes" means:

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

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

19 (c) (i) planting, cultivating, caring for, or cutting
20 trees; or

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

22 ~~(6)~~(9) "Internal Revenue Code" means the Internal
23 Revenue Code of 1954. A reference to a specific section of
24 that code is a reference to that section as it may be
25 labeled or amended.

1 ~~(7)~~(10) "Involuntary conversion" means a compulsory or
2 involuntary conversion within the meaning of section 1033 of
3 the Internal Revenue Code.

4 ~~(8)~~(11) "Material participation" is determined in a
5 manner similar to the manner used for the purposes of
6 section 1402(a)(1) of the Internal Revenue Code.

7 ~~(9)~~(12) (a) "Member of the family" means, with respect
8 to any individual, only the individual's:

9 (i) ancestor or

10 (ii) ~~spouse and the lineal descendants of the~~
11 ~~individual's spouse;~~

12 (iii) lineal descendant;

13 (iv) ~~lineal descendants of the individual's parents;~~

14 (b) ~~Member of the family also includes a spouse of:~~

15 (i) ~~the individual's lineal descendants;~~

16 (ii) ~~the lineal descendants of the individual's spouse;~~

17 or

18 (iii) ~~the lineal descendants of the individual's~~
19 ~~parents;~~

20 (c) ~~a--nearest--descendant--of--a--grandparent--of--the~~
21 ~~individual,--the--spouse--of--the--individual,--or--the--spouse--of~~
22 ~~any--such--descendant.~~ For purposes of the preceding sentence

23 ~~this subsection (12),~~ a legally adopted child of an
24 individual is treated as a child of the individual by blood.

25 (13) "Net share rental" means the excess of:

1 (a) ~~the value of the produce received by a lessor of~~
2 ~~land on which such produce is grown;~~

3 (b) ~~divided by the cash operating expenses of growing~~
4 ~~such produce which, under the lease, are paid by the lessor.~~

5 (14) "Qualified exchange property" means real property
6 ~~that is to be used for the qualified use set forth in~~
7 ~~subsection (18).~~

8 ~~(10)~~(15) "Qualified heir" means, with respect to any
9 property, a member of the decedent's family who acquired the
10 property or to whom the property passed from the decedent.
11 If a qualified heir disposes of any interest in qualified
12 real property to any member of his family, such member shall
13 thereafter be treated as the qualified heir with respect to
14 such interest.

15 ~~(11)~~(16) "Qualified real property" means real property
16 located in this state that was acquired from or passed from
17 the decedent to a qualified heir of the decedent and that on
18 the date of the decedent's death was being used for a
19 qualified use ~~by the decedent or a member of the decedent's~~
20 ~~family, but only if:~~

21 (a) 50% or more of the adjusted value of the gross
22 estate consists of the adjusted value of real or personal
23 property that:

24 (i) on the date of the decedent's death was being used
25 for a qualified use ~~by the decedent or a member of the~~

1 ~~decedent's family;~~ and

2 (ii) was acquired from or passed from the decedent to a

3 qualified heir of the decedent;

4 (b) 25% or more of the adjusted value of the gross

5 estate consists of the adjusted value of real property that

6 meets the requirements of (a)(ii) and (c) of this

7 subsection;

8 (c) during the 8-year period ending on the date of the

9 decedent's death there have been periods aggregating 5 years

10 or more during which:

11 (i) the real property was owned by the decedent or a

12 member of the decedent's family and used for a qualified use

13 ~~by the decedent or a member of the decedent's family;~~ and

14 (ii) there was material participation by the decedent

15 or a member of the decedent's family in the operation of the

16 farm or other business; and

17 (d) the real property is designated in the agreement

18 referred to in subsection ~~(2)~~ (3) of this section; and

19 ~~(e) if an election is made with respect to qualified~~

20 ~~woodland, trees growing on such woodland may not be treated~~

21 ~~as a crop.~~

22 ~~(17)~~ (a) "Qualified replacement property" means:

23 (i) in the case of an involuntary conversion as

24 described in section 1033(a)(1) of the Internal Revenue

25 Code, any real property into which the real property is

1 converted;

2 (ii) in the case of an involuntary conversion as

3 described in section 1033(a)(2) of the Internal Revenue

4 Code, any real property purchased by the qualified heir

5 during the period specified in section 1033(a)(2)~~(b)(A)~~ of

6 the Internal Revenue Code for the purpose of replacing the

7 qualified real property.

8 (b) "Qualified replacement property" only includes

9 property that is to be used for the qualified use set forth

10 in (a) or (b) of subsection ~~(13)~~ (14) of this section under

11 which the qualified real property qualified under 72-16-333.

12 ~~(18)~~ (a) "Qualified use" means devotion of the

13 property to any of the following:

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

15 (ii) use in a trade or business other than the trade or

16 business of farming.

17 (b) In the case of real property that meets the

18 requirements of subsection ~~(16)~~ (17)(c), residential

19 buildings and related improvements on the real property

20 occupied on a regular basis by the owner or lessee of the

21 real property or by persons employed by the owner or lessee

22 for the purpose of operating or maintaining the real

23 property, and roads, buildings, and other structures and

24 improvements functionally related to the qualified use shall

25 be treated as real property devoted to the qualified use.

1 (19) "Qualified woodland" means any real property that:

2 (a) is used in timber operations; and

3 (b) is an identifiable area of land, such as an acre
4 or other area, for which records are normally maintained in
5 conducting timber operations.

6 (20) "Student" means an individual as defined by
7 section 151(e)(4) of the Internal Revenue Code.

8 (21) "Timber operations" means:

9 (a) the planting, cultivating, caring for, or cutting
10 of trees; or

11 (b) the preparations other than milling of trees for
12 markets.

13 Section 3. Section 72-16-332, MCA, is amended to read:

14 "72-16-332. Property acquired from decedent defined.

15 Property is considered to have been acquired from the
16 decedent if the property:

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

19 (2) is acquired by any person from the estate ~~in~~
20 ~~satisfaction of the right of such person to a pecuniary~~
21 ~~request; or~~

22 (3) is acquired by any person from a trust ~~in~~
23 ~~satisfaction of a right which such person has by reason of~~
24 ~~the death of the decedent to receive from the trust a~~
25 ~~specific dollar amount that is the equivalent of a pecuniary~~

1 request to the extent the property is includable in the
2 gross estate of the decedent."

3 Section 4. Section 72-16-333, MCA, is amended to read:

4 "72-16-333. Alternate valuation of certain farm or
5 business real property -- limitation. (1) If the decedent
6 was at the time of his death a resident of this state and
7 the personal representative elects to have 72-16-331 through
8 72-16-342 and [sections 17 through 23] apply and files an
9 agreement with the department, the value of qualified real
10 property for the purposes of the tax imposed by this part is
11 its value for the use under which it qualifies under
12 72-16-331 ~~and~~ [16] as qualified real property.

13 (2) The aggregate decrease in the value of qualified
14 real property taken into account for the purposes of the
15 Montana inheritance tax that results from the application of
16 (1) of this section may not exceed \$500,000 ~~in the case of a~~
17 ~~decedent dying prior to January 1, 1983, and may not exceed~~
18 ~~\$750,000 for decedents dying thereafter."~~

19 Section 5. Section 72-16-334, MCA, is amended to read:

20 "72-16-334. Election of alternate valuation. An
21 election for valuation under 72-16-331 through 72-16-342 ~~and~~
22 ~~[sections 17 through 23]~~ must be made within 18 months of
23 the date of the decedent's death and must be made in such
24 manner as the department may prescribe. ~~The election, once~~
25 ~~made, is irrevocable."~~

1 Section 6. Section 72-16-335, MCA, is amended to read:
 2 "72-16-335. Valuation of farms. (1) Except as provided
 3 in ~~(2)~~ (3) of this section, the value of a farm for farming
 4 purposes is determined by dividing the excess of the average
 5 annual gross cash rental for comparable land used for
 6 farming purposes and located in the locality of the farm
 7 over the average annual state and local real estate taxes
 8 for comparable land by the average annual effective interest
 9 rate for all new federal land bank loans. For purposes of
 10 the preceding sentence, each average annual computation must
 11 be made on the basis of the 5 most recent calendar years
 12 ending before the date of the decedent's death.

13 ~~(2) If there is no comparable land from which the~~
 14 ~~annual average gross cash rental may be determined but there~~
 15 ~~is comparable land from which the average net share rental~~
 16 ~~may be determined, when subsection (1) is applied, "average~~
 17 ~~annual net share rental" must be substituted for "average~~
 18 ~~annual gross cash rental".~~

19 ~~(2)(3)~~ The formula in (1) and ~~(2)~~ of this section may
 20 not be used:

21 (a) if it is established that there is no comparable
 22 land from which the average annual gross cash rental may be
 23 determined ~~and that there is no comparable land from which~~
 24 ~~the average net share rental may be determined;~~ or

25 (b) if the personal representative elects to have the

1 value of the farm for farming purposes determined under
 2 72-16-336."

3 Section 7. Section 72-16-337, MCA, is amended to read:
 4 "72-16-337. Application to certain business interests
 5 -- department rules. (1) The department shall prescribe
 6 regulations setting forth the application of 72-16-331
 7 through 72-16-342 and ~~[sections 17 through 23]~~ in the case
 8 of an interest in a partnership, corporation, or trust that,
 9 with respect to the decedent, is an interest in a closely
 10 held business within the meaning of 72-16-453.

11 ~~(2) For the purposes of the preceding sentence, an~~
 12 ~~interest in a discretionary trust all the beneficiaries of~~
 13 ~~which are qualified heirs must be treated as a present~~
 14 ~~interest."~~

15 Section 8. Section 72-16-338, MCA, is amended to read:
 16 "72-16-338. Disposition or failure to use for
 17 qualified use -- additional tax. (1) There is hereby imposed
 18 an additional inheritance tax if within ~~15~~ 10 years after
 19 the decedent's death and before the death of the qualified
 20 heir:

21 (a) the qualified heir disposes of any interest in
 22 qualified real property other than by a disposition to a
 23 member of his family; or

24 (b) the qualified heir ceases to use for the qualified
 25 use the qualified real property which was acquired or passed

1 from the decedent.

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

5 (a) the adjusted tax difference attributable to such
6 interest; or

7 (b) the excess of the amount realized with respect to
8 the interest or in any case other than a sale or exchange at
9 arm's length, the fair market value of the interest over the
10 value of the interest determined under 72-16-333.

11 (3) For the purposes of (2) of this section, the
12 adjusted tax difference attributable to an interest is the
13 amount that bears the same ratio to the adjusted tax
14 difference with respect to the estate as determined under
15 (4) of this section as the excess of the value of such
16 interest for purposes of the Montana inheritance tax,
17 determined without regard to 72-16-331 through 72-16-342 and
18 [sections 17 through 23], over the value of such interest
19 determined under 72-16-333 bears to a similar excess
20 determined for all qualified real property.

21 (4) For the purposes of (3) of this section, "adjusted
22 tax difference with respect to the estate" means the excess
23 of what would have been the tax liability but for 72-16-333
24 over the tax liability. For the purposes of this subsection,
25 "tax liability" means the tax imposed by Title 72, chapter

1 16.

2 (5) For the purposes of this section, if the qualified
3 heir disposes of a portion of the interest acquired by or
4 passing to such heir or a predecessor qualified heir, or
5 there is a cessation of use of such a portion, the value
6 determined under 72-16-333 taken into account under (2)(b)
7 of this section with respect to such portion shall be its
8 pro rata share of the value of the interest and the adjusted
9 tax difference attributable to the interest taken into
10 account with respect to the transaction involving the second
11 or any succeeding portion shall be reduced by the amount of
12 the tax imposed by this section with respect to all prior
13 transactions involving portions of the interest.

14 ~~(6) If the date of the disposition or cessation occurs~~
15 ~~more than 120 months and less than 180 months after the date~~
16 ~~of the death of the decedent, the amount of the tax imposed~~
17 ~~by this section shall be reduced, but not below zero, by an~~
18 ~~amount determined by multiplying the amount of the tax~~
19 ~~determined without regard to this subsection, by a fraction~~
20 ~~in which the numerator is the number of full months after~~
21 ~~the death in excess of 120 and the denominator is 60.~~

22 (7)(d) In the case of an interest acquired from or
23 passing from any decedent, if (a) or (b) of subsection (1)
24 of this section applies to any portion of an interest, (b)
25 or (a) of subsection (1) of this section, as the case may

1 be, does not apply with respect to the same portion of the
2 interest.

3 ~~(9)(7)~~ The additional tax imposed by this section is
4 due on the day that is 6 months after the date of the
5 disposition or cessation.

6 ~~(9)(8)~~ The qualified heir is personally liable for the
7 additional tax with respect to his interest unless the heir
8 has furnished bond that meets the requirements of
9 72-16-340."

10 Section 9. Section 72-16-339, MCA, is amended to read:

11 "72-16-339. When cessation of qualified use occurs.
12 For the purposes of 72-16-338, real property ceases to be
13 used for the qualified use if:

14 (1) the property ceases to be used for the qualified
15 use set forth in 72-16-331 under which the property
16 qualified under 72-16-331; or

17 (2) during any period of 8 years ending after the date
18 of the decedent's death and before the date of the death of
19 the qualified heir, there had been periods aggregating ~~more~~
20 ~~than~~ 3 years or more during which:

21 (a) in the case of periods during which the property
22 was held by the decedent, there was no material
23 participation by the decedent or any member of his family in
24 the operation of the farm or other business; and

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

1 was held by any qualified heir, there was no material
2 participation by such qualified heir or any member of his
3 family in the operation of the farm or other business."

4 Section 10. Section 72-16-341, MCA, is amended to
5 read:

6 "72-16-341. Involuntary conversion of qualified real
7 property. (1) If there is an involuntary conversion of an
8 interest in qualified real property ~~and the qualified heir~~
9 ~~makes an election under this section~~, no tax is imposed by
10 72-16-338 on the conversion if the cost of the qualified
11 replacement property equals or exceeds the amount realized
12 on the conversion.

13 (2) If (1) of this section does not apply, the tax
14 imposed by 72-16-338, with respect to any involuntary
15 conversion, is the amount of tax that, but for this
16 subsection, would have been imposed on the conversion
17 reduced by an amount that bears the same ratio to such tax
18 as the cost of the qualified replacement property bears to
19 the amount realized on the conversion.

20 (3) (a) For the purposes of 72-16-338, any qualified
21 replacement property shall be treated in the same manner as
22 if it were a portion of the interest in qualified real
23 property that was involuntarily converted, except that with
24 respect to such qualified replacement property*₁

25 ~~(1)~~ the ~~15-year~~ 10-year period under 72-16-338 shall

1 be extended by any period, beyond the 2-year period referred
2 to in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
3 during which the qualified heir was allowed to replace the
4 qualified real property, and

5 ~~{ii} the phaseout period under 72-16-338(6) shall be~~
6 ~~appropriately adjusted to take into account the extension~~
7 ~~referred to in (a)(i) of this subsection.~~

8 (b) Any tax imposed by 72-16-338 on the involuntary
9 conversion shall be treated as a tax imposed on a partial
10 disposition. The provisions of 72-16-339 shall be applied by
11 not taking into account periods after the involuntary
12 conversion and before the acquisition of the qualified
13 replacement property and by treating material participation
14 with respect to the converted property as material
15 participation with respect to the qualified replacement
16 property.

17 (4) The rules of the last sentence of section
18 1033(a)(2)(B) of the Internal Revenue Code apply for the
19 purposes of 72-16-331~~(2)~~(1)(a)(ii).

20 ~~{5} An election under this section may be made at such~~
21 ~~time and in such manner as prescribed by the department.~~

22 Section 11. Section 72-16-342, MCA, is amended to
23 read:

24 "72-16-342. Time limitations on assessment of
25 additional tax. (1) If qualified real property is disposed

1 of or ceases to be used for a qualified use, the statutory
2 period for the assessment of any additional tax under
3 72-16-338 attributable to disposition or cessation may not
4 expire until 3 years after the date the department is
5 notified, in a manner to be prescribed by the department, of
6 the disposition or cessation or, in the case of an
7 involuntary conversion or exchange in which 72-16-341 or
8 [section 22] applies, 3 years from the date the department
9 is notified of the replacement of the converted property or
10 of an intention to replace or exchange the property.

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

15 Section 12. Section 72-16-452, MCA, is amended to
16 read:

17 "72-16-452. Deferred payment for transfer of closely
18 held business interest. (1) If the value of an interest in a
19 closely held business that is taxable under Title 72,
20 chapter 16, part 3, as a transfer from a decedent who was at
21 the time of death a resident of this state exceeds 65% 35%
22 of the adjusted gross estate, the personal representative
23 may elect to pay all or part of the tax imposed by Title 72,
24 chapter 16, part 3, in 2 or more but less than 11 equal
25 installments.

1 (2) The maximum amount of tax that may be paid in
 2 installments by each beneficiary is an amount that bears the
 3 same ratio to the tax imposed by Title 72, chapter 16, part
 4 3, as the closely held business amount passing to the
 5 beneficiary bears to the clear market value of all property
 6 passing to the beneficiary, without reduction for the
 7 federal estate tax due or paid.

8 (3) If an election is made under (1) of this section,
 9 the first installment must be paid on or before a date
 10 selected by the personal representative that is not more
 11 than 5 years after the date prescribed by 72-16-441 for the
 12 payment of tax without interest. If, however, a credit is
 13 claimed on the federal estate tax return for state death
 14 taxes on the estate under the provisions of section 2011(a)
 15 of the Internal Revenue Code, as amended, an amount of
 16 inheritance tax due equal to the federal credit must be paid
 17 within the period established in section 2011(c) of the
 18 Internal Revenue Code, as amended. Each succeeding
 19 installment must be paid on or before the date that is 1
 20 year after the date of the preceding installment. The
 21 department may for reasonable cause extend the time for
 22 payment of any installment under this section, including any
 23 part of an additional tax prorated to any installment, for a
 24 reasonable period but not beyond the date that is 12 months
 25 after the due date for the last installment.

1 (4) If an election is made under (1) of this section,
 2 the tax due may not be further deferred under the provisions
 3 of 72-16-438."

4 Section 13. Section 72-16-456, MCA, is amended to
 5 read:

6 "72-16-456. Interests in more than one closely held
 7 business. (1) Interests in two or more closely held
 8 businesses, with respect to which there is taxable under
 9 Title 72, chapter 16, part 3, as a transfer from the
 10 decedent ~~more than 20% or more~~ of the total value of each
 11 business, shall be treated as an interest in a single
 12 closely held business.

13 (2) For the purposes of the 20% requirement of (1) of
 14 this section, an interest in a closely held business that
 15 represents the surviving spouse's interest in property held
 16 by the decedent and the surviving spouse as joint tenants or
 17 tenants in common shall be treated as taxable under Title
 18 72, chapter 16, part 3, in determining the value of a
 19 transfer from the decedent."

20 Section 14. Section 72-16-463, MCA, is amended to
 21 read:

22 "72-16-463. Failure to pay installment -- acceleration
 23 of payment. ~~If (1) Except as provided in subsection (2),~~ any
 24 installment of principal or interest under 72-16-451 through
 25 72-16-465 is not paid on or before the date fixed for its

1 payment, including any extension of time for the payment of
2 the installment, the unpaid portion of the tax payable in
3 installments must be paid on notice and demand from the
4 department.

5 ~~(2) If any installment of principal or interest under~~
6 ~~72-16-451 through 72-16-465 is not paid on or before the~~
7 ~~date determined under subsection (1) but is paid within 6~~
8 ~~months of the date, the provisions of subsection (1) do not~~
9 ~~apply with respect to such payment, the provisions of~~
10 ~~72-16-461 may not apply with respect to the determination of~~
11 ~~interest on such payment, and there is imposed a penalty in~~
12 ~~an amount equal to the product of 5% of the amount of such~~
13 ~~payments, multiplied by the number of months or fractions~~
14 ~~thereof after such date and before payment is made."~~

15 Section 15. Section 72-16-464, MCA, is amended to
16 read:

17 "72-16-464. Acceleration of payment -- other grounds.

18 (1) The extension of time for payment of tax provided in
19 72-16-452 shall cease to apply and any unpaid portion of the
20 tax payable must be paid upon notice and demand of the
21 department if:

22 ~~(a) one-third or more in value any portion of an~~
23 ~~interest in a closely held business that qualifies under~~
24 ~~72-16-452 is distributed, sold, exchanged, or otherwise~~
25 ~~disposed of or~~

1 ~~(b) aggregate withdrawals of~~ if money and other
2 ~~property attributable to such an interest is withdrawn~~ from
3 ~~the trade or business on interest in which qualifies under~~
4 ~~72-16-452, made with respect to such interest, equal or~~
5 ~~exceed one-third of the value of such trade or business and~~
6 ~~the aggregate of such distributions, sales, exchanges, or~~
7 ~~other dispositions and withdrawals equals or exceeds 50% of~~
8 ~~the value of such interest.~~

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

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

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

24 (3) Subsection (1)~~(a)~~ of this section does not apply
25 to an exchange of stock pursuant to a plan of reorganization

1 described in (D), (E), or (F) of section 368(a)(1) of the
 2 Internal Revenue Code or to an exchange to which section 355
 3 of the Internal Revenue Code or so much of section 356 of
 4 the Internal Revenue Code applies to section 355, but any
 5 stock received in such an exchange shall be treated for
 6 purposes of subsection (1)~~(e)~~ as an interest qualifying
 7 under 72-16-452.

8 (4) Subsection (1)~~(e)~~ of this section does not apply
 9 to a transfer of property of the decedent to a person
 10 entitled by reason of the decedent's death to receive such
 11 property under the decedent's will, intestate succession, or
 12 a trust created by the decedent; nor does it apply to a
 13 series of subsequent transfers of the property by reason of
 14 death of the transferor, so long as each transfer is to a
 15 member of the family within the meaning of section 267(c)(4)
 16 of the Internal Revenue Code."

17 Section 16. Section 72-16-603, MCA, is amended to
 18 read:

19 "72-16-603. Tax -- how apportioned. (1) Unless Except
 20 as provided in subsection (3) and unless the will otherwise
 21 provides, the tax shall be apportioned among all persons
 22 interested in the estate. The apportionment is to be made in
 23 the proportion that the value of the interest of each person
 24 interested in the estate bears to the total value of the
 25 interests of all persons interested in the estate. The

1 values used in determining the tax are to be used for that
 2 purpose.

3 (2) If the decedent's will directs a method of
 4 apportionment of tax different from the method described in
 5 this part, the method described in the will controls.

6 ~~(3) If the liabilities of persons interested in the~~
 7 ~~estate as described in this part differ from those which~~
 8 ~~result under the federal estate tax laws, the liabilities~~
 9 ~~imposed by the federal law control and the balance of this~~
 10 ~~part applies as if the resulting liabilities had been~~
 11 ~~prescribed in this part."~~

12 NEW SECTION. Section 17. Special rules for surviving
 13 spouses. (1) If property is qualified real property with
 14 respect to a decedent, hereinafter in this subsection
 15 referred to as the "first decedent", and the property was
 16 acquired from or passed from the first decedent to the
 17 surviving spouse of the first decedent, for purposes of
 18 applying this section and 72-16-339 in the case of the
 19 estate of such surviving spouse, active management of a farm
 20 or other business by the surviving spouse must be treated as
 21 material participation by the surviving spouse in the
 22 operation of the farm or business.

23 (2) For the purposes of subsection (1), the
 24 determination of whether property is qualified real property
 25 with respect to the first decedent must be made without

1 regard to whether an election under 72-16-334 was made.

2 NEW SECTION. Section 18. Decedents who are retired or
3 disabled. (1) If on the date of the decedent's death, the
4 requirements of 72-16-331(16)(c)(ii) with respect to the
5 decedent for any property are not met and the decedent
6 either was receiving old-age benefits under Title II of the
7 Social Security Act for a continuous period ending on the
8 date of death or was disabled for a continuous period ending
9 on the date of death, then 72-16-331(16)(c) must be applied
10 with respect to such property by substituting "the date on
11 which the longer of the continuous periods described in
12 [section 18(1)] began" for "the date of the decedent's
13 death" in 72-16-331(16)(c).

14 (2) For purposes of 72-16-339(2)(a), if the
15 requirements of 72-16-331(16)(c)(ii) are met with respect to
16 any decedent by reason of subsection (1), the period ending
17 on the date on which the continuous period taken into
18 account under subsection (1) began must be treated as the
19 period immediately before the decedent's death.

20 NEW SECTION. Section 19. Active management by
21 eligible qualified heir treated as material participation.
22 (1) For purposes of 72-16-339, the active management of a
23 farm or other business by an eligible qualified heir or a
24 fiduciary of an eligible qualified heir must be treated as a
25 material participation by the eligible qualified heir in the

1 operation of the farm or business.

2 (2) In the case of an eligible qualified heir,
3 subsection (1) applies only during periods during which the
4 heir continues to be an eligible qualified heir.

5 NEW SECTION. Section 20. No tax if use begins within
6 two years. If the date on which the qualified heir begins to
7 use the qualified real property, hereinafter referred to as
8 the commencement date, is before the date 2 years after the
9 decedent's death:

10 (1) no tax may be imposed under 72-16-338 by reason of
11 the failure by the qualified heir to so use such property
12 before the commencement date; and

13 (2) the 10-year period under 72-16-338 must be
14 extended by the period between the decedent's death and the
15 commencement date.

16 NEW SECTION. Section 21. Special rule for disposition
17 of timber. In the case of qualified woodland to which an
18 election under 72-16-334 applies, if the qualified heir
19 disposes of or severs any standing timber on the qualified
20 woodland:

21 (1) the disposition or severance is treated as a
22 disposition of a portion of the interest of the qualified
23 heir in the property; and

24 (2) the additional tax imposed by 72-16-338 with
25 respect to the disposition is an amount equal to the lesser

1 of:

2 (a) the amount realized on the disposition or, in any
3 case other than a sale or exchange at arm's length, the fair
4 market value of the portion of the interest disposed or
5 severed; or

6 (b) the amount of additional tax determined under this
7 section, without regard to this subsection (2)(b), if the
8 entire interest of the qualified heir in the qualified
9 woodland had been disposed of, less the sum of the amount of
10 the additional tax imposed with respect to all prior
11 transactions involving the woodland to which subsection (2)
12 applied.

13 (3) For purposes of subsection (2), the disposition of
14 a right to sever is treated as the disposition of the
15 standing timber. The amount of additional tax imposed under
16 72-16-338 in a case in which a qualified heir disposes of
17 his entire interest in the qualified woodland must be
18 reduced by any amount determined under this section with
19 respect to such woodland.

20 NEW SECTION. Section 22. Exchanges of qualified real
21 property. (1) If an interest in qualified real property is
22 exchanged solely for an interest in qualified exchange
23 property in a transaction that qualifies under section 1031
24 of the Internal Revenue Code, no tax may be imposed by
25 72-16-338 by reason of the exchange.

1 (2) If an interest in qualified real property is
2 exchanged for an interest in qualified exchange property and
3 other property in a transaction that qualifies under section
4 1031 of the Internal Revenue Code, the amount of the tax
5 imposed by 72-16-338 by reason of the exchange must be the
6 amount of tax that would have been imposed on the exchange
7 under 72-16-338 without regard to this section, reduced by
8 an amount which bears the same ratio to such tax as the fair
9 market value of the other property bears to the fair market
10 value of the qualified real property exchanged. Fair market
11 value must be determined as of the time of the exchange.

12 (3) For purposes of 72-16-338:

13 (a) any interest in qualified exchange property must
14 be treated in the same manner as if it were a portion of the
15 interest in qualified real property that was exchanged;

16 (b) any tax imposed by 72-16-338 by reason of the
17 exchange must be treated as a tax imposed on a partial
18 disposition; and

19 (c) 72-16-338 must be applied by treating material
20 participation with respect to the exchanged property as
21 material participation with respect to the qualified
22 exchange property.

23 NEW SECTION. Section 23. Treatment of replacement
24 property acquired in transactions under section 1031 or 1033
25 of the Internal Revenue Code. (1) Except as provided in

1 subsection (2) in the case of any qualified replacement
 2 property, any period during which there was ownership,
 3 qualified use, or material participation with respect to the
 4 replaced property by the decedent or any member of his
 5 family must be treated as a period during which there was
 6 such ownership, use, or material participation with respect
 7 to the qualified replacement property.

8 (2) Subsection (1) does not apply to the extent that
 9 the fair market value of the qualified replacement property,
 10 as of the date of its acquisition, exceeds the fair market
 11 value of the replaced property, as of the date of its
 12 disposition.

13 (3) For purposes of this section:

14 (a) the term "qualified replacement property" means
 15 any real property:

16 (i) that is acquired in an exchange which qualifies
 17 under section 1031 of the Internal Revenue Code;

18 (ii) the acquisition of which results in the
 19 nonrecognition of gain under section 1033 of the Internal
 20 Revenue Code; or

21 (iii) that is used for the same qualified use as the
 22 replaced property was being used before the exchange;

23 (b) the term "replaced property" means:

24 (i) the property transferred in the exchange that
 25 qualifies under section 1031 of the Internal Revenue Code;

1 or

2 (ii) the property compulsorily or involuntarily
 3 converted within the meaning of section 1033 of the Internal
 4 Revenue Code.

5 Section 24. Section 72-16-491, MCA, is amended to
 6 read:

7 "72-16-491. Lien for additional tax attributable to
 8 farm and closely held business property. (1) In the case of
 9 any interest in qualified real property within the meaning
 10 of 72-16-331~~(1)~~(16), an amount equal to the adjusted tax
 11 difference attributable to such interest within the meaning
 12 of 72-16-338(3) is a lien in favor of the state on the
 13 property in which such interest exists.

14 (2) The lien imposed by this section shall arise at
 15 the time an election is filed under 72-16-333 and continues
 16 with respect to any interest in the qualified real property
 17 until:

18 (a) the liability for tax under 72-16-338 with respect
 19 to such interest has been satisfied or has become
 20 unenforceable by reason of lapse of time; or

21 (b) until it is established to the satisfaction of the
 22 department that no further tax liability may arise under
 23 72-16-338 with respect to such interest.

24 (3) Sections 72-16-477, 72-16-479, and 72-16-480 apply
 25 with respect to a lien imposed by 72-16-491."

1 NEW SECTION. Section 25. Codification instruction.
2 Sections 17 through 23 are intended to be codified as an
3 integral part of Title 72, chapter 16, part 3, and the
4 provisions of Title 72, chapter 16, part 3, apply to
5 sections 17 through 23.

6 NEW SECTION. Section 26. Applicability date. This act
7 applies to estates of persons dying after October 1, 1983.

-End-

1 House BILL NO. 855
2 INTRODUCED BY Lewis Spaeth

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S
5 PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION; TO
6 REVISE THE ALTERNATE VALUATION FOR INHERITANCE AND ESTATE
7 TAXES; TO REVISE THE STATUTES RELATING TO DEFERRED PAYMENT
8 OF INHERITANCE AND ESTATE TAXES; AND TO REVISE THE
9 APPORTIONMENT OF ESTATE AND INHERITANCE TAXES; AMENDING
10 SECTIONS 72-2-101, 72-16-331 THROUGH 72-16-335, 72-16-337
11 THROUGH 72-16-339, 72-16-341, 72-16-342, 72-16-452,
12 72-16-456, 72-16-463, 72-16-464, 72-16-491, AND 72-16-603,
13 MCA; AND PROVIDING AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 72-2-101, MCA, is amended to read:
17 "72-2-101. Renunciation of succession. (1) A person or
18 his personal representative or the representative of an
19 incapacitated or protected person who is an heir, devisee,
20 person succeeding to a renounced interest, ~~donee, appointee,~~
21 ~~grantee, recipient, or~~ beneficiary under a testamentary
22 ~~instrument, or appointee under a power of appointment~~
23 ~~exercised by a testamentary instrument~~ trust or other
24 nontestamentary instrument or under a power of appointment
25 exercised by a testamentary or nontestamentary instrument.

THIRD READING

There are no changes on HB 855 second reading (yellow) or Introduced (white) Please refer to either of these for complete text.

AB855

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 855 be amended as follows:

1. Page 6, line 16.

Strike: "July"

Insert: "October"

2. Page 14, line 17.

Strike: "January"

Insert: "October"

3. Page 24, line 23.

Following: (2),

Insert: "if"

HOUSE BILL NO. 855

INTRODUCED BY RAMIREZ, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE MONTANA'S PROBATE CODE WITH RESPECT TO RENUNCIATION OF SUCCESSION; TO REVISE THE ALTERNATE VALUATION FOR INHERITANCE AND ESTATE TAXES; TO REVISE THE STATUTES RELATING TO DEFERRED PAYMENT OF INHERITANCE AND ESTATE TAXES; AND TO REVISE THE APPORTIONMENT OF ESTATE AND INHERITANCE TAXES; AMENDING SECTIONS 72-2-101, 72-16-331 THROUGH 72-16-335, 72-16-337 THROUGH 72-16-339, 72-16-341, 72-16-342, 72-16-452, 72-16-456, 72-16-463, 72-16-464, 72-16-491, AND 72-16-603, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 72-2-101, MCA, is amended to read:

"72-2-101. Renunciation of succession. (1) A person or his personal representative or the representative of an incapacitated or protected person who is an heir, devisee, person succeeding to a renounced interest, donee, appointee, grantee, recipient, or beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument trust or other nontestamentary instrument or under a power of appointment exercised by a testamentary or nontestamentary instrument,

surviving joint owner or surviving joint tenant, or beneficiary or owner of an insurance contract or any incident of ownership therein may renounce, in whole or in part, the right of succession to any property or interest therein, including a future interest, by filing a written renunciation under this section. The instrument shall:

- (a) describe the property or interest renounced;
(b) be signed by the person renouncing; and
(c) declare the renunciation and the extent thereof.

(2) (a) An instrument renouncing a present interest shall be filed within 9 months after the death of the decedent or the donee of the power.

(b) An instrument renouncing a future interest may be filed not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested.

(c) The renunciation must be filed in the court of the county in which proceedings have been commenced for the administration of the estate of the deceased owner or deceased donee of the power or, if they have not been commenced, in which they could be commenced. A copy of the renunciation shall be delivered in person or mailed by registered or certified mail to any person or representative or other fiduciary of the decedent or donee of the power if real property or an interest therein is renounced. A copy of

1 the renunciation may be recorded in the office of the county
 2 clerk of the county in which the real estate is situated.

3 (2) The court may direct or permit a trustee under a
 4 testamentary or nontestamentary instrument to renounce,
 5 modify, amend, or otherwise deviate from any restriction on
 6 or power of administration, management, or allocation of
 7 benefit upon finding that such restriction on the exercise
 8 of the power may defeat or impair the accomplishment of the
 9 purposes of the trust, whether by the imposition of tax, the
 10 allocation of beneficial interest inconsistent with such
 11 purposes, or by other reason. Such authority shall be
 12 exercised after bearing and upon notice to all known
 13 persons beneficially interested in such trust, in the manner
 14 directed by the court.

15 (3) The instrument of renunciation must be received by
 16 the transferor of the interest, his legal representative,
 17 the personal representative of a deceased transferor, the
 18 trustee of any trust in which the interest being renounced
 19 exists, or the holder of the legal title to the property to
 20 which the interest relates. To be effective for purposes of
 21 determining inheritance and estate taxes, the instrument
 22 must be received not later than the date which is 9 months
 23 after the later of the date on which the transfer creating
 24 the interest in a person is made or the date on which the
 25 person attains 18 years of age. If the circumstances that

1 establish the right of a person to renounce an interest
 2 arise as a result of the death of an individual, the
 3 instrument must also be filed in the court of the county
 4 where proceedings concerning the decedent's estate are
 5 pending or where they would be pending if commenced. If real
 6 property or an interest therein is renounced, a copy of the
 7 renunciation may be recorded in the office of the county
 8 clerk and recorder of the county in which the real estate is
 9 situated. No person entitled to a copy of the instrument is
 10 liable for any proper distribution or disposition made
 11 without actual notice of the renunciation, and no person
 12 making a proper distribution or disposition in reliance upon
 13 the renunciation is liable for any such distribution or
 14 disposition in the absence of actual notice that an action
 15 has been instituted contesting the validity of the
 16 renunciation.

17 (3)(4) Unless the decedent or donee of the power
 18 transferor of the interest has otherwise provided, the
 19 property or interest renounced devolves as though the person
 20 renouncing had predeceased the decedent or, if the
 21 appointment was exercised by a testamentary instrument, as
 22 though the person renouncing had predeceased the donee of
 23 the power. A future interest that takes effect in possession
 24 or enjoyment after the termination of the estate or interest
 25 renounced takes effect as though the person renouncing had

1 predeceased the decedent or the donee of the power. A
2 renunciation relates back for all purposes to the date of
3 the death of the decedent or the donee of the power.

4 ~~(4)(5)~~ (a) The right to renounce property or an
5 interest therein is barred by:

6 (i) an assignment, conveyance, encumbrance, pledge, or
7 transfer of property or interest, or a contract therefor;

8 (ii) a written waiver of the right to renounce;

9 (iii) an acceptance of the property or interest or
10 benefit thereunder; or

11 (iv) a sale of the property or interest under judicial
12 sale made before the renunciation is effected.

13 (b) The right to renounce exists notwithstanding any
14 limitation on the interest of the person renouncing in the
15 nature of a spendthrift provision or similar restriction.

16 (c) A renunciation or a written waiver of the right to
17 renounce is binding upon the person renouncing or person
18 waiving and all persons claiming through or under him.

19 ~~(5)(4)~~ This section does not abridge the right of a
20 person to waive, release, disclaim, or renounce property or
21 an interest therein under any other statute.

22 ~~(6)--An--interest--in--property--which--exists--on--July--1--~~
23 ~~1975--as--to--which--if--a--present--interest--the--time--for~~
24 ~~fitting--a--renunciation--under--the--Uniform--Probate--Code--has--not~~
25 ~~expired--or--if--a--future--interest--the--interest--has--not~~

1 ~~become--indefeasibly--vested--or--the--taker--finally--ascertained~~
2 ~~may--be--renounced--within--9--months--after--July--1--1975.~~

3 ~~(7) Within 30 days of receipt of a written instrument~~
4 ~~of renunciation by the transferor of the interest, the~~
5 ~~renouncer, his legal representative, the personal~~
6 ~~representative of the decedent, the trustee of any trust in~~
7 ~~which the interest being renounced exists, or the holder of~~
8 ~~the legal title to the property to which the interest~~
9 ~~relates, as the case may be, shall attempt to notify in~~
10 ~~writing those persons who are known or ascertainable with~~
11 ~~reasonable diligence who are recipients or potential~~
12 ~~recipients of the renounced interest of the renunciation and~~
13 ~~the interest or potential interest such recipient will~~
14 ~~receive as a result of the renunciation.~~

15 ~~(8) Any interest in property which exists on July 1,~~
16 ~~1983, may be renounced after July OCTOBER 1, 1983, as~~
17 ~~provided in this section. An interest that has arisen prior~~
18 ~~to July 1, 1983, in any person other than the person~~
19 ~~renouncing is not destroyed or diminished by any action of~~
20 ~~the person renouncing taken under this section."~~

21 Section 2. Section 72-16-331, MCA, is amended to read:
22 "72-16-331. Definitions for alternate valuation
23 purposes. As used in 72-16-331 through 72-16-342 and
24 [sections 11 through 23], the following definitions apply:

25 (1) "Active management" means the making of management

1 ~~decisions of a business, other than the daily operating~~
2 ~~decisions.~~

3 ~~(1)(2)~~ "Adjusted value" means:

4 (a) in the case of a gross estate, the gross value of
5 all transfers subject to the tax imposed by this part,
6 determined without regard to 72-16-331 through 72-16-342 ~~and~~
7 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
8 mortgages and indebtedness;

9 (b) in the case of real or personal property, the
10 value of the property for the purposes of this part,
11 determined without regard to 72-16-331 through 72-16-342 ~~and~~
12 ~~[sections 17 through 23]~~, reduced by the amount of unpaid
13 mortgages and indebtedness.

14 ~~(2)(3)~~ "Agreement" means a written agreement signed by
15 each person in being who has an interest, whether or not he
16 is in possession, in any property designated in such
17 agreement consenting to the application of 72-16-333 with
18 respect to such property.

19 ~~(3)(4)~~ "Department" means the department of revenue.

20 ~~(5) "Disabled" means an individual who has a mental or~~
21 ~~physical impairment that renders him unable to materially~~
22 ~~participate in the operation of a farm or other business.~~

23 ~~(6) "Eligible qualified heir" means a qualified heir~~
24 ~~who:~~

25 ~~(a) is the surviving spouse of the decedent;~~

1 ~~(b) has not attained 21 years of age;~~

2 ~~(c) is disabled; or~~

3 ~~(d) is a student.~~

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

9 ~~(5)(8)~~ "Farming purposes" means:

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

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

19 (c) (i) planting, cultivating, caring for, or cutting
20 trees; or

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

22 ~~(6)(9)~~ "Internal Revenue Code" means the Internal
23 Revenue Code of 1954. A reference to a specific section of
24 that code is a reference to that section as it may be
25 labeled or amended.

1 ~~(77)~~(10) "Involuntary conversion" means a compulsory or
 2 involuntary conversion within the meaning of section 1033 of
 3 the Internal Revenue Code.

4 ~~(8)~~(11) "Material participation" is determined in a
 5 manner similar to the manner used for the purposes of
 6 section 1402(a)(1) of the Internal Revenue Code.

7 ~~(9)~~(12) (a) "Member of the family" means, with respect
 8 to any individual, only the individual's:

- 9 (i) ancestor or;
- 10 (ii) spouse and the lineal descendants of the
- 11 individual's spouse;
- 12 (iii) lineal descendant;
- 13 (iv) lineal descendants of the individual's parents.

14 (b) Member of the family also includes a spouse of:

- 15 (i) the individual's lineal descendants;
- 16 (ii) the lineal descendants of the individual's spouse;
- 17 or
- 18 (iii) the lineal descendants of the individual's
- 19 parents.

20 (c) ~~a lineal descendant of a grandparent of the~~
 21 ~~individual, the spouse of the individual, or the spouse of~~
 22 ~~any such descendant.~~ For purposes of the preceding sentence
 23 ~~this subsection (12),~~ a legally adopted child of an
 24 individual is treated as a child of the individual by blood.

25 (13) "Net share rental" means the excess of:

1 (a) the value of the produce received by a lessor of
 2 land on which such produce is grown;

3 (b) divided by the cash operating expenses of growing
 4 such produce which, under the lease, are paid by the lessor.

5 (14) "Qualified exchange property" means real property
 6 that is to be used for the qualified use set forth in
 7 subsection (18).

8 ~~(10)~~(15) "Qualified heir" means, with respect to any
 9 property, a member of the decedent's family who acquired the
 10 property or to whom the property passed from the decedent.
 11 If a qualified heir disposes of any interest in qualified
 12 real property to any member of his family, such member shall
 13 thereafter be treated as the qualified heir with respect to
 14 such interest.

15 ~~(11)~~(16) "Qualified real property" means real property
 16 located in this state that was acquired from or passed from
 17 the decedent to a qualified heir of the decedent and that on
 18 the date of the decedent's death was being used for a
 19 qualified use ~~by the decedent or a member of the decedent's~~
 20 family, but only if:

21 (a) 50% or more of the adjusted value of the gross
 22 estate consists of the adjusted value of real or personal
 23 property that:

24 (i) on the date of the decedent's death was being used
 25 for a qualified use ~~by the decedent or a member of the~~

1 ~~decedent's family;~~ and

2 (ii) was acquired from or passed from the decedent to a

3 qualified heir of the decedent;

4 (p) 25% or more of the adjusted value of the gross

5 estate consists of the adjusted value of real property that

6 meets the requirements of (a)(ii) and (c) of this

7 subsection;

8 (c) during the 8-year period ending on the date of the

9 decedent's death there have been periods aggregating 5 years

10 or more during which:

11 (i) the real property was owned by the decedent or a

12 member of the decedent's family and used for a qualified use

13 ~~by the decedent or a member of the decedent's family;~~ and

14 (ii) there was material participation by the decedent

15 or a member of the decedent's family in the operation of the

16 farm or other business; and

17 (d) the real property is designated in the agreement

18 referred to in subsection ~~(2)~~ (3) of this section ~~and~~

19 ~~(e) if an election is made with respect to qualified~~

20 ~~woodlands, trees growing on such woodland may not be treated~~

21 ~~as a crop.~~

22 ~~(12)(11) (a) "Qualified replacement property" means:~~

23 (i) in the case of an involuntary conversion as

24 described in section 1033(a)(1) of the Internal Revenue

25 Code, any real property into which the real property is

1 converted;

2 (ii) in the case of an involuntary conversion as

3 described in section 1033(a)(2) of the Internal Revenue

4 Code, any real property purchased by the qualified heir

5 during the period specified in section 1033(a)(2)~~(B)~~(A) of

6 the Internal Revenue Code for the purpose of replacing the

7 qualified real property.

8 (b) "Qualified replacement property" only includes

9 property that is to be used for the qualified use set forth

10 in (a) or (b) of subsection ~~(13)~~ (11) of this section under

11 which the qualified real property qualified under 72-16-333.

12 ~~(13)(11) (a) "Qualified use" means devotion of the~~

13 property to any of the following:

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

15 (ii) use in a trade or business other than the trade or

16 business of farming.

17 (b) In the case of real property that meets the

18 requirements of subsection ~~(11)~~(16)(c), residential

19 buildings and related improvements on the real property

20 occupied on a regular basis by the owner or lessee of the

21 real property or by persons employed by the owner or lessee

22 for the purpose of operating or maintaining the real

23 property, and roads, buildings, and other structures and

24 improvements functionally related to the qualified use shall

25 be treated as real property devoted to the qualified use.

1 (19) "Qualified woodland" means any real property that:
 2 (a) is used in timber operations; and
 3 (b) is an identifiable area of land, such as an acre
 4 or other area, for which records are normally maintained in
 5 conducting timber operations.

6 (20) "Student" means an individual as defined by
 7 section 1511a(4) of the Internal Revenue Code.

8 (21) "Timber operations" means:

9 (a) the planting, cultivating, caring for, or cutting
 10 of trees; or

11 (b) the preparation, other than milling, of trees for
 12 market."

13 Section 3. Section 72-16-332, MCA, is amended to read:

14 "72-16-332. Property acquired from decedent defined.
 15 Property is considered to have been acquired from the
 16 decedent if the property:

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

19 (2) is acquired by any person from the estate in
 20 satisfaction--of--the--right--of--such-person-to-a-pecuniary
 21 request; or

22 (3) is acquired by any person from a trust in
 23 satisfaction--of--a-right-which-such-person-has-by-reason-of
 24 the-death-of-the-decedent--to--receive--from--the--trust--a
 25 specific-dollar-amount-that-is-the-equivalent-of-a-pecuniary

1 request to the extent the property is includable in the
 2 gross estate of the decedent."

3 Section 4. Section 72-16-333, MCA, is amended to read:

4 "72-16-333. Alternate valuation of certain farm or
 5 business real property -- limitation. (1) If the decedent
 6 was at the time of his death a resident of this state and
 7 the personal representative elects to have 72-16-331 through
 8 72-16-342 and [sections 17 through 23] apply and files an
 9 agreement with the department, the value of qualified real
 10 property for the purposes of the tax imposed by this part is
 11 its value for the use under which it qualifies under
 12 72-16-331(1) as qualified real property.

13 (2) The aggregate decrease in the value of qualified
 14 real property taken into account for the purposes of the
 15 Montana inheritance tax that results from the application of
 16 (1) of this section may not exceed \$500,000 in the case of a
 17 decedent dying prior to January 1, 1983, and may not
 18 exceed \$750,000 for decedents dying thereafter."

19 Section 5. Section 72-16-334, MCA, is amended to read:

20 "72-16-334. Election of alternate valuation. An
 21 election for valuation under 72-16-331 through 72-16-342 and
 22 [sections 17 through 23] must be made within 18 months of
 23 the date of the decedent's death and must be made in such
 24 manner as the department may prescribe. The election, once
 25 made, is irrevocable."

1 Section 6. Section 72-16-335, MCA, is amended to read:
 2 "72-16-335. Valuation of farms. (1) Except as provided
 3 in ~~(2)~~ (3) of this section, the value of a farm for farming
 4 purposes is determined by dividing the excess of the average
 5 annual gross cash rental for comparable land used for
 6 farming purposes and located in the locality of the farm
 7 over the average annual state and local real estate taxes
 8 for comparable land by the average annual effective interest
 9 rate for all new federal land bank loans. For purposes of
 10 the preceding sentence, each average annual computation must
 11 be made on the basis of the 5 most recent calendar years
 12 ending before the date of the decedent's death.

13 ~~(2) If there is no comparable land from which the~~
 14 ~~annual average gross cash rental may be determined but there~~
 15 ~~is comparable land from which the average net share rental~~
 16 ~~may be determined, when subsection (1) is applied, "average~~
 17 ~~annual net share rental" must be substituted for "average~~
 18 ~~annual gross cash rental".~~

19 ~~(2)(3)~~ The formula in (1) and (2) of this section may
 20 not be used:

21 (a) if it is established that there is no comparable
 22 land from which the average annual gross cash rental may be
 23 determined ~~and that there is no comparable land from which~~
 24 ~~the average net share rental may be determined;~~ or

25 (b) if the personal representative elects to have the

1 value of the farm for farming purposes determined under
 2 72-16-336."

3 Section 7. Section 72-16-337, MCA, is amended to read:
 4 "72-16-337. Application to certain business interests
 5 -- department rules. (1) The department shall prescribe
 6 regulations setting forth the application of 72-16-331
 7 through 72-16-342 ~~and [sections 17 through 23]~~ in the case
 8 of an interest in a partnership, corporation, or trust that,
 9 with respect to the decedent, is an interest in a closely
 10 held business within the meaning of 72-16-453.

11 ~~(2) For the purposes of the preceding sentence, an~~
 12 ~~interest in a discretionary trust all the beneficiaries of~~
 13 ~~which are qualified heirs must be treated as a present~~
 14 ~~interest."~~

15 Section 8. Section 72-16-338, MCA, is amended to read:
 16 "72-16-338. Disposition or failure to use for
 17 qualified use -- additional tax. (1) There is hereby imposed
 18 an additional inheritance tax if within ~~15~~ 10 years after
 19 the decedent's death and before the death of the qualified
 20 heir:

21 (a) the qualified heir disposes of any interest in
 22 qualified real property other than by a disposition to a
 23 member of his family; or

24 (b) the qualified heir ceases to use for the qualified
 25 use the qualified real property which was acquired or passed

1 from the decedent.

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

5 (a) the adjusted tax difference attributable to such
 6 interest; or

7 (b) the excess of the amount realized with respect to
 8 the interest or in any case other than a sale or exchange at
 9 arm's length, the fair market value of the interest over the
 10 value of the interest determined under 72-16-333.

11 (3) For the purposes of (2) of this section, the
 12 adjusted tax difference attributable to an interest is the
 13 amount that bears the same ratio to the adjusted tax
 14 difference with respect to the estate as determined under
 15 (4) of this section as the excess of the value of such
 16 interest for purposes of the Montana inheritance tax,
 17 determined without regard to 72-16-331 through 72-16-342 and
 18 [Sections 17 through 23], over the value of such interest
 19 determined under 72-16-333 bears to a similar excess
 20 determined for all qualified real property.

21 (4) For the purposes of (3) of this section, "adjusted
 22 tax difference with respect to the estate" means the excess
 23 of what would have been the tax liability but for 72-16-333
 24 over the tax liability. For the purposes of this subsection,
 25 "tax liability" means the tax imposed by Title 72, chapter

1 16.

2 (5) For the purposes of this section, if the qualified
 3 heir disposes of a portion of the interest acquired by or
 4 passing to such heir or a predecessor qualified heir, or
 5 there is a cessation of use of such a portion, the value
 6 determined under 72-16-333 taken into account under (2)(b)
 7 of this section with respect to such portion shall be its
 8 pro rata share of the value of the interest and the adjusted
 9 tax difference attributable to the interest taken into
 10 account with respect to the transaction involving the second
 11 or any succeeding portion shall be reduced by the amount of
 12 the tax imposed by this section with respect to all prior
 13 transactions involving portions of the interest.

14 ~~(6) If the date of the disposition or cessation occurs~~
 15 ~~more than 120 months and less than 180 months after the date~~
 16 ~~of the death of the decedent, the amount of the tax imposed~~
 17 ~~by this section shall be reduced, but not below zero, by an~~
 18 ~~amount determined by multiplying the amount of the tax~~
 19 ~~determined without regard to this subsection, by a fraction~~
 20 ~~in which the numerator is the number of full months after~~
 21 ~~the death in excess of 120 and the denominator is 60.~~

22 (6) In the case of an interest acquired from or
 23 passing from any decedent, if (a) or (b) of subsection (1)
 24 of this section applies to any portion of an interest, (b)
 25 or (a) of subsection (1) of this section, as the case may

1 be, does not apply with respect to the same portion of the
2 interest.

3 ~~†0†(1)~~ The additional tax imposed by this section is
4 due on the day that is 6 months after the date of the
5 disposition or cessation.

6 ~~†9†(1)~~ The qualified heir is personally liable for the
7 additional tax with respect to his interest unless the heir
8 has furnished bond that meets the requirements of
9 72-16-340."

10 Section 9. Section 72-16-339, MCA, is amended to read:

11 "72-16-339. When cessation of qualified use occurs.

12 For the purposes of 72-16-338, real property ceases to be
13 used for the qualified use if:

14 (1) the property ceases to be used for the qualified
15 use set forth in 72-16-331 under which the property
16 qualified under 72-16-331; or

17 (2) during any period of 8 years ending after the date
18 of the decedent's death and before the date of the death of
19 the qualified heir, there had been periods aggregating ~~more~~
20 ~~than~~ 3 years or more during which:

21 (a) in the case of periods during which the property
22 was held by the decedent, there was no material
23 participation by the decedent or any member of his family in
24 the operation of the farm or other business; and

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

1 was held by any qualified heir, there was no material
2 participation by such qualified heir or any member of his
3 family in the operation of the farm or other business."

4 Section 10. Section 72-16-341, MCA, is amended to
5 read:

6 "72-16-341. Involuntary conversion of qualified real
7 property. (1) If there is an involuntary conversion of an
8 interest in qualified real property and the ~~qualified heir~~
9 ~~makes an election under this section~~, no tax is imposed by
10 72-16-338 on the conversion if the cost of the qualified
11 replacement property equals or exceeds the amount realized
12 on the conversion.

13 (2) If (1) of this section does not apply, the tax
14 imposed by 72-16-338, with respect to any involuntary
15 conversion, is the amount of tax that, but for this
16 subsection, would have been imposed on the conversion
17 reduced by an amount that bears the same ratio to such tax
18 as the cost of the qualified replacement property bears to
19 the amount realized on the conversion.

20 (3) (a) For the purposes of 72-16-338, any qualified
21 replacement property shall be treated in the same manner as
22 if it were a portion of the interest in qualified real
23 property that was involuntarily converted, except that with
24 respect to such qualified replacement property:

25 ~~††~~ the ~~15-year~~ ~~10-year~~ period under 72-16-338 shall

1 be extended by any period, beyond the 2-year period referred
2 to in section 1033(a)(2)(B)(i) of the Internal Revenue Code,
3 during which the qualified heir was allowed to replace the
4 qualified real property and

5 ~~(1) the phaseout period under 72-16-338(6) shall be~~
6 ~~appropriately adjusted to take into account the extension~~
7 ~~referred to in (a) of this subsection.~~

8 (b) Any tax imposed by 72-16-338 on the involuntary
9 conversion shall be treated as a tax imposed on a partial
10 disposition. The provisions of 72-16-339 shall be applied by
11 not taking into account periods after the involuntary
12 conversion and before the acquisition of the qualified
13 replacement property and by treating material participation
14 with respect to the converted property as material
15 participation with respect to the qualified replacement
16 property.

17 (4) The rules of the last sentence of section
18 1033(a)(2)(B) of the Internal Revenue Code apply for the
19 purposes of 72-16-331~~(2)~~ 111(a)(ii).

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

22 Section 11. Section 72-16-342, MCA, is amended to
23 read:

24 "72-16-342. Time limitations on assessment of
25 additional tax. (1) If qualified real property is disposed

1 of or ceases to be used for a qualified use, the statutory
2 period for the assessment of any additional tax under
3 72-16-338 attributable to disposition or cessation may not
4 expire until 3 years after the date the department is
5 notified, in a manner to be prescribed by the department, of
6 the disposition or cessation or, in the case of an
7 involuntary conversion or exchange in which 72-16-341 or
8 (section 22) applies, 3 years from the date the department
9 is notified of the replacement of the converted property or
10 of an intention to replace or exchange the property.

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

15 Section 12. Section 72-16-452, MCA, is amended to
16 read:

17 "72-16-452. Deferred payment for transfer of closely
18 held business interest. (1) If the value of an interest in a
19 closely held business that is taxable under Title 72,
20 chapter 16, part 3, as a transfer from a decedent who was at
21 the time of death a resident of this state exceeds 65% ~~35%~~
22 of the adjusted gross estate, the personal representative
23 may elect to pay all or part of the tax imposed by Title 72,
24 chapter 16, part 3, in 2 or more but less than 11 equal
25 installments.

1 (2) The maximum amount of tax that may be paid in
 2 installments by each beneficiary is an amount that bears the
 3 same ratio to the tax imposed by Title 72, chapter 16, part
 4 3, as the closely held business amount passing to the
 5 beneficiary bears to the clear market value of all property
 6 passing to the beneficiary, without reduction for the
 7 federal estate tax due or paid.

8 (3) If an election is made under (1) of this section,
 9 the first installment must be paid on or before a date
 10 selected by the personal representative that is not more
 11 than 5 years after the date prescribed by 72-16-441 for the
 12 payment of tax without interest. If, however, a credit is
 13 claimed on the federal estate tax return for state death
 14 taxes on the estate under the provisions of section 2011(a)
 15 of the Internal Revenue Code, as amended, an amount of
 16 inheritance tax due equal to the federal credit must be paid
 17 within the period established in section 2011(c) of the
 18 Internal Revenue Code, as amended. Each succeeding
 19 installment must be paid on or before the date that is 1
 20 year after the date of the preceding installment. The
 21 department may for reasonable cause extend the time for
 22 payment of any installment under this section, including any
 23 part of an additional tax prorated to any installment, for a
 24 reasonable period but not beyond the date that is 12 months
 25 after the due date for the last installment.

1 (4) If an election is made under (1) of this section,
 2 the tax due may not be further deferred under the provisions
 3 of 72-16-438."

4 Section 13. Section 72-16-456, MCA, is amended to
 5 read:

6 "72-16-456. Interests in more than one closely held
 7 business. (1) Interests in two or more closely held
 8 businesses, with respect to which there is taxable under
 9 Title 72, chapter 16, part 3, as a transfer from the
 10 decedent ~~more--than~~ 20% or more of the total value of each
 11 business, shall be treated as an interest in a single
 12 closely held business.

13 (2) For the purposes of the 20% requirement of (1) of
 14 this section, an interest in a closely held business that
 15 represents the surviving spouse's interest in property held
 16 by the decedent and the surviving spouse as joint tenants or
 17 tenants in common shall be treated as taxable under Title
 18 72, chapter 16, part 3, in determining the value of a
 19 transfer from the decedent."

20 Section 14. Section 72-16-463, MCA, is amended to
 21 read:

22 "72-16-463. Failure to pay installment -- acceleration
 23 of payment. ~~If (1) Except as provided in subsection (2),~~ IF
 24 any installment of principal or interest under 72-16-451
 25 through 72-16-465 is not paid on or before the date fixed

1 for its payment, including any extension of time for the
2 payment of the installment, the unpaid portion of the tax
3 payable in installments must be paid on notice and demand
4 from the department.

5 ~~(2) If any installment of principal or interest under~~
6 ~~72-16-451 through 72-16-465 is not paid on or before the~~
7 ~~date determined under subsection (1) but is paid within 6~~
8 ~~months of the date, the provisions of subsection (1) do not~~
9 ~~apply with respect to such payment, the provisions of~~
10 ~~72-16-461 may not apply with respect to the determination of~~
11 ~~interest on such payment, and there is imposed a penalty in~~
12 ~~an amount equal to the product of 5% of the amount of such~~
13 ~~payments, multiplied by the number of months or fractions~~
14 ~~thereof after such date and before payment is made."~~

15 Section 15. Section 72-16-464, MCA, is amended to
16 read:

17 "72-16-464. Acceleration of payment -- other grounds.

18 (1) The extension of time for payment of tax provided in
19 72-16-452 shall cease to apply and any unpaid portion of the
20 tax payable must be paid upon notice and demand of the
21 department if:

22 ~~(a) one-third or more in value any portion of an~~
23 ~~interest in a closely held business that qualifies under~~
24 ~~72-16-452 is distributed, sold, exchanged, or otherwise~~
25 ~~disposed of; or~~

1 ~~(b) aggregate withdrawals of if money and other~~
2 ~~property attributable to such an interest is withdrawn from~~
3 ~~the trade or business on interest in which qualifies under~~
4 ~~72-16-452, made with respect to such interest equal or~~
5 ~~exceed one-third of the value of such trade or business and~~
6 ~~the aggregate of such distributions, sales, exchanges, or~~
7 ~~other dispositions and withdrawals equals or exceeds 50% of~~
8 ~~the value of such interest.~~

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

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

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

24 (3) Subsection (1)~~(a)~~ of this section does not apply
25 to an exchange of stock pursuant to a plan of reorganization

1 described in (D), (E), or (F) of section 368(a)(1) of the
 2 Internal Revenue Code or to an exchange to which section 355
 3 of the Internal Revenue Code or so much of section 356 of
 4 the Internal Revenue Code applies to section 355, but any
 5 stock received in such an exchange shall be treated for
 6 purposes of subsection (1)(e) as an interest qualifying
 7 under 72-16-452.

8 (4) Subsection (1)(e) of this section does not apply
 9 to a transfer of property of the decedent to a person
 10 entitled by reason of the decedent's death to receive such
 11 property under the decedent's will, intestate succession, or
 12 a trust created by the decedent; nor does it apply to a
 13 series of subsequent transfers of the property by reason of
 14 death of the transferor, so long as each transfer is to a
 15 member of the family within the meaning of section 267(c)(4)
 16 of the Internal Revenue Code."

17 Section 16. Section 72-16-603, MCA, is amended to
 18 read:

19 "72-16-603. Tax -- how apportioned. (1) ~~Unless Except~~
 20 as provided in subsection (3) and unless the will otherwise
 21 provides, the tax shall be apportioned among all persons
 22 interested in the estate. The apportionment is to be made in
 23 the proportion that the value of the interest of each person
 24 interested in the estate bears to the total value of the
 25 interests of all persons interested in the estate. The

1 values used in determining the tax are to be used for that
 2 purpose.

3 (2) If the decedent's will directs a method of
 4 apportionment of tax different from the method described in
 5 this part, the method described in the will controls.

6 ~~(3) If the liabilities of persons interested in the~~
 7 ~~estate as described in this part differ from those which~~
 8 ~~result under the federal estate tax law, the liabilities~~
 9 ~~imposed by the federal law control and the balance of this~~
 10 ~~part applies as if the resulting liabilities had been~~
 11 ~~prescribed in this part."~~

12 NEW SECTION. Section 17. Special rules for surviving
 13 spouses. (1) If property is qualified real property with
 14 respect to a decedent, hereinafter in this subsection
 15 referred to as the "first decedent", and the property was
 16 acquired from or passed from the first decedent to the
 17 surviving spouse of the first decedent, for purposes of
 18 applying this section and 72-16-339 in the case of the
 19 estate of such surviving spouse, active management of a farm
 20 or other business by the surviving spouse must be treated as
 21 material participation by the surviving spouse in the
 22 operation of the farm or business.

23 (2) For the purposes of subsection (1), the
 24 determination of whether property is qualified real property
 25 with respect to the first decedent must be made without

1 regard to whether an election under 72-16-334 was made.

2 **NEW SECTION.** Section 18. Decedents who are retired or
3 disabled. (1) If on the date of the decedent's death, the
4 requirements of 72-16-331(16)(c)(ii) with respect to the
5 decedent for any property are not met and the decedent
6 either was receiving old-age benefits under Title II of the
7 Social Security Act for a continuous period ending on the
8 date of death or was disabled for a continuous period ending
9 on the date of death, then 72-16-331(16)(c) must be applied
10 with respect to such property by substituting "the date on
11 which the longer of the continuous periods described in
12 [section 18(1)] began" for "the date of the decedent's
13 death" in 72-16-331(16)(c).

14 (2) For purposes of 72-16-339(2)(a), if the
15 requirements of 72-16-331(16)(c)(ii) are met with respect to
16 any decedent by reason of subsection (1), the period ending
17 on the date on which the continuous period taken into
18 account under subsection (1) began must be treated as the
19 period immediately before the decedent's death.

20 **NEW SECTION.** Section 19. Active management by
21 eligible qualified heir treated as material participation.
22 (1) For purposes of 72-16-339, the active management of a
23 farm or other business by an eligible qualified heir or a
24 fiduciary of an eligible qualified heir must be treated as a
25 material participation by the eligible qualified heir in the

1 operation of the farm or business.

2 (2) In the case of an eligible qualified heir,
3 subsection (1) applies only during periods during which the
4 heir continues to be an eligible qualified heir.

5 **NEW SECTION.** Section 20. No tax if use begins within
6 two years. If the date on which the qualified heir begins to
7 use the qualified real property, hereinafter referred to as
8 the commencement date, is before the date 2 years after the
9 decedent's death:

10 (1) no tax may be imposed under 72-16-338 by reason of
11 the failure by the qualified heir to so use such property
12 before the commencement date; and

13 (2) the 10-year period under 72-16-338 must be
14 extended by the period between the decedent's death and the
15 commencement date.

16 **NEW SECTION.** Section 21. Special rule for disposition
17 of timber. In the case of qualified woodland to which an
18 election under 72-16-334 applies, if the qualified heir
19 disposes of or severs any standing timber on the qualified
20 woodland:

21 (1) the disposition or severance is treated as a
22 disposition of a portion of the interest of the qualified
23 heir in the property; and

24 (2) the additional tax imposed by 72-16-338 with
25 respect to the disposition is an amount equal to the lesser

1 of:

2 (a) the amount realized on the disposition or, in any
3 case other than a sale or exchange at arm's length, the fair
4 market value of the portion of the interest disposed or
5 severed; or

6 (b) the amount of additional tax determined under this
7 section, without regard to this subsection (2)(b), if the
8 entire interest of the qualified heir in the qualified
9 woodland had been disposed of, less the sum of the amount of
10 the additional tax imposed with respect to all prior
11 transactions involving the woodland to which subsection (2)
12 applied.

13 (3) For purposes of subsection (2), the disposition of
14 a right to sever is treated as the disposition of the
15 standing timber. The amount of additional tax imposed under
16 72-16-338 in a case in which a qualified heir disposes of
17 his entire interest in the qualified woodland must be
18 reduced by any amount determined under this section with
19 respect to such woodland.

20 **NEW_SECTION.** Section 22. Exchanges of qualified real
21 property. (1) If an interest in qualified real property is
22 exchanged solely for an interest in qualified exchange
23 property in a transaction that qualifies under section 1031
24 of the Internal Revenue Code, no tax may be imposed by
25 72-16-338 by reason of the exchange.

1 (2) If an interest in qualified real property is
2 exchanged for an interest in qualified exchange property and
3 other property in a transaction that qualifies under section
4 1031 of the Internal Revenue Code, the amount of the tax
5 imposed by 72-16-338 by reason of the exchange must be the
6 amount of tax that would have been imposed on the exchange
7 under 72-16-338 without regard to this section, reduced by
8 an amount which bears the same ratio to such tax as the fair
9 market value of the other property bears to the fair market
10 value of the qualified real property exchanged. Fair market
11 value must be determined as of the time of the exchange.

12 (3) For purposes of 72-16-338:

13 (a) any interest in qualified exchange property must
14 be treated in the same manner as if it were a portion of the
15 interest in qualified real property that was exchanged;

16 (b) any tax imposed by 72-16-338 by reason of the
17 exchange must be treated as a tax imposed on a partial
18 disposition; and

19 (c) 72-16-338 must be applied by treating material
20 participation with respect to the exchanged property as
21 material participation with respect to the qualified
22 exchange property.

23 **NEW_SECTION.** Section 23. Treatment of replacement
24 property acquired in transactions under section 1031 or 1033
25 of the Internal Revenue Code. (1) Except as provided in

1 subsection (2) in the case of any qualified replacement
2 property, any period during which there was ownership,
3 qualified use, or material participation with respect to the
4 replaced property by the decedent or any member of his
5 family must be treated as a period during which there was
6 such ownership, use, or material participation with respect
7 to the qualified replacement property.

8 (2) Subsection (1) does not apply to the extent that
9 the fair market value of the qualified replacement property,
10 as of the date of its acquisition, exceeds the fair market
11 value of the replaced property, as of the date of its
12 disposition.

13 (3) For purposes of this section:

14 (a) the term "qualified replacement property" means
15 any real property:

16 (i) that is acquired in an exchange which qualifies
17 under section 1031 of the Internal Revenue Code;

18 (ii) the acquisition of which results in the
19 nonrecognition of gain under section 1033 of the Internal
20 Revenue Code; or

21 (iii) that is used for the same qualified use as the
22 replaced property was being used before the exchange;

23 (b) the term "replaced property" means:

24 (i) the property transferred in the exchange that
25 qualifies under section 1031 of the Internal Revenue Code;

1 or

2 (ii) the property compulsorily or involuntarily
3 converted within the meaning of section 1033 of the Internal
4 Revenue Code.

5 Section 24. Section 72-16-491, MCA, is amended to
6 read:

7 "72-16-491. Lien for additional tax attributable to
8 farm and closely held business property. (1) In the case of
9 any interest in qualified real property within the meaning
10 of 72-16-331~~(1)~~(16), an amount equal to the adjusted tax
11 difference attributable to such interest within the meaning
12 of 72-16-338(3) is a lien in favor of the state on the
13 property in which such interest exists.

14 (2) The lien imposed by this section shall arise at
15 the time an election is filed under 72-16-333 and continues
16 with respect to any interest in the qualified real property
17 until:

18 (a) the liability for tax under 72-16-338 with respect
19 to such interest has been satisfied or has become
20 unenforceable by reason of lapse of time; or

21 (b) until it is established to the satisfaction of the
22 department that no further tax liability may arise under
23 72-16-338 with respect to such interest.

24 (3) Sections 72-16-477, 72-16-479, and 72-16-480 apply
25 with respect to a lien imposed by 72-16-491."

1 NEW_SECTION. Section 25. Codification instruction.
2 Sections 17 through 23 are intended to be codified as an
3 integral part of Title 72, chapter 16, part 3, and the
4 provisions of Title 72, chapter 16, part 3, apply to
5 sections 17 through 23.

6 NEW_SECTION. Section 26. Applicability date. This act
7 applies to estates of persons dying after October 1, 1983.

-End-