

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  
concurred 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~~

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 AL 855

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)~~<sup>(5)</sup> (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)~~<sup>(6)</sup> 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 ~~(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        ~~{++}{101}~~ "Involuntary conversion" means a compulsory or  
2 involuntary conversion within the meaning of section 1033 of  
3 the Internal Revenue Code.

4        ~~{+}{111}~~ "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        ~~{++}{121}~~ (a) "Member of the family" means, with respect  
8 to any individual, only the individual's:

9        (i) ancestor or;  
10        (iii) spouse and the lineal descendants of the  
11 individual's spouse;

12        (iiii) 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        ~~(iii) the lineal descendants of the individual's spouse;~~

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

20        ~~(c) a--first--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--(121), 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 (181).~~

8        ~~{+}{151}~~ "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        ~~{++}{161}~~ "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 ~~woodlands, trees growing on such woodland may not be treated~~

21 ~~as a crop;~~

22 ~~(12)(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)~~(10)(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 ~~(12)~~ (11) of this section under

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

12 ~~(12)(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 ~~(12)(11)~~ (11)(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 ~~and 72-16-342~~ 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."~~

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

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

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

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

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

(b) if the personal representative elects to have the

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

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

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

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

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

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

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

(b) the qualified heir ceases to use for the qualified 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)(2)~~ 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 ~~{11} the phaseout period under 72-16-338(6) shall be~~  
6 ~~appropriately adjusted to take into account the extension~~  
7 ~~referred to in (a){11} 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~~{11}~~(17)(a)(11).

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 payments, 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



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

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

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

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

operation of the farm or business.

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

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

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

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

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

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

(2) the additional tax imposed by 72-16-338 with 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 Spencer  
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)--(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~~

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

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

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

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

(3)(4) Unless the decedent--or--donee--of--the--power transferor of the interest has otherwise provided, the property or interest renounced devolves as though the person renouncing had predeceased the decedent or, if the appointment was exercised by a testamentary instrument, as though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest 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 (1) "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) "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) "Department" means the department of revenue.

20 (4) ~~"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 (5) ~~"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) "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) "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) "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}~~~~(101)~~ "Involuntary conversion" means a compulsory or  
 2 involuntary conversion within the meaning of section 1033 of  
 3 the Internal Revenue Code.

~~4~~ ~~{8}~~~~(111)~~ "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}~~~~(121)~~ ~~(a1)~~ "Member of the family" means, with respect  
 8 to any individual, only the individual's:

~~9~~ ~~(i1)~~ ancestor or:

~~10~~ ~~(i11)~~ spouse and the lineal descendants of the  
 11 individual's spouse:

~~12~~ ~~(i111)~~ lineal descendant;

~~13~~ ~~(i111)~~ lineal descendants of the individual's parents;

~~14~~ ~~(b1)~~ Member of the family also includes a spouse of:

~~15~~ ~~(i1)~~ the individual's lineal descendants;

~~16~~ ~~(i11)~~ the lineal descendants of the individual's spouse;

~~17~~ or

~~18~~ ~~(i111)~~ the lineal descendants of the individual's  
 19 parents;

~~20~~ ~~(c1)~~ 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--(121), 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~~ ~~(a1)~~ the value of the produce received by a lessor of  
 2 land on which such produce is grown;

~~3~~ ~~(b1)~~ divided by the cash operating expenses of growing  
 4 such produce which, under the lease, are paid by the lessor.

~~5~~ ~~(141)~~ "Qualified exchange property" means real property  
 6 that is to be used for the qualified use set forth in  
 7 subsection (181).

~~8~~ ~~{10}~~~~(151)~~ "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}~~~~(161)~~ "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)(1)~~ 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 ~~(13)~~ (14) (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 ~~(13)~~ (14)(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     ~~(191) "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 to  
 20    satisfaction--of--the--right--of--such--person--to--a--pecuniary  
 21    request; or  
 22    (3) is acquired by any person from a trust to  
 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."

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

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

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

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

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

(b) if the personal representative elects to have the

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

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

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

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

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

"72-16-338. Disposition or failure to use for qualified use -- additional tax. (1) There is hereby imposed an additional inheritance tax if within ~~±5~~ 10 years after the decedent's death and before the death of the qualified heir:

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

(b) the qualified heir ceases to use for the qualified 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)(b) 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 {8}{11} 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}{18} 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 {+} the ~~15-year~~ 10-year period under 72-16-338 shall

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

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

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

(4) The rules of the last sentence of section 1033(a)(2)(B) of the Internal Revenue Code apply for the purposes of 72-16-331~~(a)(i)~~~~(11)(a)(i)~~.

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

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

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

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

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

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

"72-16-452. Deferred payment for transfer of closely held business interest. (1) If the value of an interest in a closely held business that is taxable under Title 72, chapter 16, part 3, as a transfer from a decedent who was at the time of death a resident of this state exceeds 65% ~~35%~~ of the adjusted gross estate, the personal representative may elect to pay all or part of the tax imposed by Title 72, chapter 16, part 3, in 2 or more but less than 11 equal 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 of the value of 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 of withdrawals of if money and other~~  
2 ~~property attributable to such an interest is withdrawn from~~  
3 ~~the trade or business in which it is held under~~  
4 ~~72-16-452, made with respect to such interest, equal to or~~  
5 ~~exceeds 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)~~<sup>(16)</sup>, 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 Lamson Spauld  
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.

AB 855

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~~

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

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

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

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

(3)(4) Unless the decedent or donee of the power transferor of the interest has otherwise provided, the property or interest renounced devolves as though the person renouncing had predeceased the decedent or, if the appointment was exercised by a testamentary instrument, as though the person renouncing had predeceased the donee of the power. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest 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 1983--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 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       ~~(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 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       ~~(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 (d) 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) ~~(10)(11)~~ 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)~~ (11) of this section under  
 11 which the qualified real property qualified under 72-16-333.  
 12 ~~(12)(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 ~~(12)(11)~~ (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.

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

(a) is used in timber operations; and

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

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

(21) "Timber operations" means:

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

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

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

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

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

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

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

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

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

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

(2) The aggregate decrease in the value of qualified real property taken into account for the purposes of the Montana inheritance tax that results from the application of (1) of this section may not exceed \$500,000 ~~in the case of a decedent dying prior to January 01, 1983, and may not exceed \$750,000 for decedents dying thereafter.~~"

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

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

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

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

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

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

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

(b) if the personal representative elects to have the

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

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

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

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

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

"72-16-338. Disposition or failure to use for qualified use -- additional tax. (1) There is hereby imposed an additional inheritance tax if within ~~25~~ 10 years after the decedent's death and before the death of the qualified heir:

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

(b) the qualified heir ceases to use for the qualified 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 ~~{07171}~~ 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 ~~{97181}~~ 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~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

operation of the farm or business.

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

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

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

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

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

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

(2) the additional tax imposed by 72-16-338 with 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



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

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

(3) For purposes of this section:

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

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

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

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

(b) the term "replaced property" means:

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

or

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

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

"72-16-491. Lien for additional tax attributable to farm and closely held business property. (1) In the case of any interest in qualified real property within the meaning of 72-16-331~~(116)~~, an amount equal to the adjusted tax difference attributable to such interest within the meaning of 72-16-338(3) is a lien in favor of the state on the property in which such interest exists.

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

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

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

(3) Sections 72-16-477, 72-16-479, and 72-16-480 apply 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-