

HOUSE BILL 45

Introduced by McCaffree, et al.

7/10	Introduced
7/10	Referred to Taxation
7/11	First Reading
7/11	Fiscal Note Requested
7/14	Hearing
7/14	Fiscal Note Received
7/14	Fiscal Note Printed
	Died in Committee

1 HOUSE BILL NO. 45
2 INTRODUCTION BY Ed M. Caffrey, R-Butt
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON
5 CERTAIN TRANSFERS OF REAL PROPERTY; PROVIDING FOR DEPOSIT OF
6 THE PROCEEDS OF THE TAX IN THE GENERAL FUND; PROVIDING
7 PENALTIES; PROVIDING AN INCOME TAX CREDIT FOR PAYMENT OF THE
8 TAX; AMENDING SECTIONS 15-7-301, 15-7-302, 15-7-303,
9 15-7-305, 15-7-306, 15-7-307, AND 15-7-310, MCA; AND
10 PROVIDING AN EFFECTIVE DATE."
11

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

13 **Section 1.** Section 15-7-301, MCA, is amended to read:
14 "15-7-301. Short title. This part may be cited as the
15 "Realty Transfer Tax Act"."

16 **Section 2.** Section 15-7-302, MCA, is amended to read:

17 "15-7-302. Purpose. The purpose of this part is to:

18 (1) impose a tax on the transfer of certain real
19 property and provide for deposit of the tax proceeds in the
20 general fund; and

21 (2) obtain sales price data necessary to the
22 determination of statewide levels and uniformity of real
23 estate assessments by the most efficient, economical, and
24 reliable method."

25 **Section 3.** Section 15-7-303, MCA, is amended to read:

1 "15-7-303. Definitions. As used in this part, the
2 following definitions apply:

3 (1) "Partial interest" means a percentage interest in
4 property when less than 100%.

5 (2) "Person" means and includes an individual,
6 corporation, partnership, or other business organization,
7 trust, fiduciary, or agent or any other party presenting a
8 document for recordation.

9 (3) "Real estate" includes:

- 10 (a) land;
11 (b) growing timber;
12 (c) buildings, structures, fixtures, fences, and
13 improvements affixed to land.

14 (4) "Transfer" means an act of the parties or of the
15 law by which the title to real property is conveyed from one
16 person to another.

17 (5) "Value" means:

18 (a) in the case of any transfer of interest in real
19 property, other than a gift or transfer with nominal
20 consideration or without stated consideration, the amount of
21 the full actual consideration therefor paid or to be paid,
22 including the amount of any lien or liens thereon; or

23 (b) in the case of a gift or any transfer with nominal
24 consideration, the estimated price that the property would
25 bring in an open market and under the current prevailing



1 market conditions in a sale between a willing seller and a
 2 willing buyer, both conversant with the property and
 3 prevailing market conditions."

4 **Section 4.** Section 15-7-305, MCA, is amended to read:

5 "15-7-305. Certificate of county clerk and recorder.

6 (1) The county clerk and recorder shall cause to be executed
 7 by the parties to the transaction or their agents or
 8 representatives a certificate declaring the consideration
 9 paid or to be paid for the real estate transferred.

10 (2) No instrument or deed evidencing a transfer of real
 11 estate may be accepted for recordation until the certificate
 12 has been received by the county clerk and recorder and the
 13 tax imposed by [section 8] has been paid. The validity or
 14 effectiveness of an instrument or deed as between the
 15 parties to it shall not be affected by the failure to comply
 16 with the provisions in this part.

17 (3) The form of certificate shall be prescribed by the
 18 department of revenue, and the department shall provide an
 19 adequate supply of such forms to each county clerk and
 20 recorder in the state.

21 (4) The clerk and recorder shall prepare a like
 22 certificate for each contract for deed filed for recording.

23 (5) The clerk and recorder shall transmit one copy of
 24 each executed certificate to the department and one copy to
 25 the county assessor."

1 **Section 5.** Section 15-7-306, MCA, is amended to read:

2 "15-7-306. Rules. The department of revenue may
 3 prescribe such rules as are reasonably necessary to
 4 facilitate and expedite the provisions and administration of
 5 this part, including the imposition, collection, and
 6 administration of the tax imposed in [section 8]."

7 **Section 6.** Section 15-7-307, MCA, is amended to read:

8 "15-7-307. Certificate -- exceptions. The certificate
 9 and tax imposed by this part shall not apply to:

10 (1) an instrument recorded prior to ~~July 17, 1975~~ August
 11 1, 1992;

12 (2) ~~the sale of agricultural land when the land is used~~
 13 ~~for agricultural purposes~~ a transfer solely to provide or
 14 release security for a debt or obligation;

15 (3) the sale of timberland when the land is used for
 16 producing timber;

17 (4) the United States of America, this state, or any
 18 instrumentality, agency, or subdivision thereof;

19 (5) an instrument which (without added consideration)
 20 confirms, corrects, modifies, or supplements a previously
 21 recorded instrument;

22 (6) a transfer pursuant to a court decree of partition;

23 (7) a transfer pursuant to mergers, consolidations, or
 24 reorganizations of corporations, partnerships, or other
 25 business entities;

1 (8) a transfer by a subsidiary corporation to its
2 parent corporation without actual consideration or in sole
3 consideration of the cancellation or surrender of subsidiary
4 stock;

5 (9) a transfer of decedents' estates;

6 (10) a transfer of a gift;

7 (11) a transfer between husband and wife or parent and
8 child with only nominal actual consideration therefor;

9 (12) an instrument the effect of which is to transfer
10 the property to the same party or parties;

11 (13) a sale for delinquent taxes or assessments, sheriff
12 sale, bankruptcy action, or mortgage foreclosure;

13 (14) a transfer made in contemplation of death."

14 **Section 7.** Section 15-7-310, MCA, is amended to read:

15 "15-7-310. Penalty Penalties. (1) A Except as otherwise
16 provided in this section, a person convicted of violating
17 any provision of this part shall be fined an amount not to
18 exceed \$500 or be imprisoned in the county jail for any term
19 not to exceed 6 months, or both.

20 (2) A clerk and recorder convicted of willfully
21 recording any deed or instrument evidencing a transfer
22 subject to tax under [section 8] without ensuring that the
23 proper amount of tax has been paid shall be fined \$50 for
24 each offense.

25 (3) A person convicted of willfully falsifying the

1 value of transferred real estate on the certificate required
2 under 15-7-305 shall be fined an amount not to exceed \$1,000
3 or be imprisoned in the county jail for a term not to exceed
4 1 year, or both, for each offense."

5 NEW SECTION. Section 8. Imposition of tax. A tax is
6 imposed at the rate of 1% of the value of the transferred
7 property as declared in the certificate required by 15-7-305
8 upon the transfer of title to real property.

9 NEW SECTION. Section 9. Collection of tax. Before a
10 deed or instrument evidencing a transfer of title subject to
11 the tax imposed by [section 8] may be recorded, the
12 treasurer of the county where the property or any portion of
13 the property is located shall calculate and collect the
14 amount of tax due from the buyer, who shall present the
15 document for recordation.

16 NEW SECTION. Section 10. Distribution of proceeds.
17 Upon collection of the tax imposed by [section 8], the
18 county treasurer shall immediately transfer the proceeds of
19 the tax to the state treasurer for deposit in the state
20 general fund.

21 NEW SECTION. Section 11. Credit for payment of real
22 estate transfer tax. There is a credit against the tax
23 imposed by this chapter for the tax imposed by [section 8]
24 in the amount of realty transfer tax paid during a tax year.

25 NEW SECTION. Section 12. Codification instruction. (1)

LC 0083/01

1 [Sections 8 through 10] are intended to be codified as an
2 integral part of Title 15, chapter 7, part 3, and the
3 provisions of Title 15, chapter 7, part 3, apply to
4 [sections 8 through 10].

5 (2) [Section 11] is intended to be codified as an
6 integral part of Title 15, chapter 30, part 1, and the
7 provisions of Title 15, chapter 30, part 1, apply to
8 [section 11].

9 NEW SECTION. **Section 13.** Effective date. [This act] is
10 effective August 1, 1992.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0045, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act imposing a tax on certain transfers of real property; providing for deposit of the proceeds of the tax in the general fund; providing penalties; providing an income tax credit for payment of the tax; and providing an effective date.

ASSUMPTIONS:


1. Total residential and commercial sales are 34,890, with an average appraised value \$45,200. Total agricultural sales are assumed to be 32,927, with an average appraised value of \$45,200. For the purposes of this note, it is assumed that the appraised value of real property sold will approximate the sale value of the real property.
2. The income tax credit against the realty transfer tax is a refundable credit.
3. The occurrences of sales of real property is distributed uniformly in the course of any year.
4. The short term interest rate is 5% (compounded monthly).

FISCAL IMPACT: (General Fund)

Revenues: Under the proposal, revenue would come from two sources;

- 1) Absorbing the non-refunded realty transfer tax collected. This revenue would come from individuals who are due a realty transfer tax credit but do not file a Montana individual income tax form, and from non-individuals (businesses, corporations, . . .) that cannot file a Montana individual income tax form. There is insufficient data available to estimate this revenue.
- 2) Short term interest earned on the collections of the realty transfer tax. The short term interest earned in FY 93 (nine months of collections) would be approximately \$483,000. Each fiscal year thereafter the short term interest earnings would be approximately \$711,000.

- Expenditures:
- 1) Income and Miscellaneous Tax Division. Changes in the individual income tax form would require \$22,410 (computer costs, programming costs, data entry, . . .) in FY 93 and \$3,330 in each subsequent fiscal years. The cost of producing refund checks (for those taxpayers whose credit exceeds their liability) cannot be determined.
 - 2) Property Assessment Division. Costs for forms and distribution of the forms will be approximately \$4,100 each fiscal year.



STEVE YEAKEL, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

7/14/92

ED McCAFFREE, PRIMARY SPONSOR DATE
Fiscal Note for HB0045, as introduced

HB 45

Fiscal Note Request HB0045, as introduced
Form BD-15 page 2
(continued)

TECHNICAL NOTES:

The proposal is not clear in defining the income tax credit as a refundable or non-refundable credit. For the purposes of this note, it is assumed that the credit is a refundable credit.

In some cases, the proposal would require the filer to estimate the open market price of the property.